

Is Nigeria's Petroleum Industry Act 2021 Designed to Fail? A Cautionary Tale

By

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Abstract

After many decades of an opaque oil and gas industry that has been non-responsive to the Nigeria's energy needs and its global commitments, the enactment of the Petroleum Industry Act 2021 is considered a major step forward towards reforming the industry. The expectation is that the new law will reposition the sector to attract private investments that have significantly diminished, boost efficiency and achieve energy transition towards renewables and away from fossil fuels. The paper, however, argues that the Act have band-aided most of the pre-existing challenges and even created new ones. The Act contains provisions that are inconsistent with the Constitution, featuring a flippant donation of wide berths of discretionary powers to partisan political actors, inhospitable investment climate manured by corruption, non-delineation of roles, overlap of functions and powers and the castration of regulatory institutions by a lack of independence in form and substance and finally, a weak energy transition path that is ill-positioned to meeting Nigeria's Nationally Determined Contributions. The Act is booby-trapped by challenges plainly in sight that if left unattended, would a case of a legislation designed to fail, ab initio! The Act is missed but not lost opportunity to transpose Nigeria's oil and gas industry towards sustainable and enduring reforms. The paper signposts some compelling challenges that need to be legislatively attended to in order to allow Nigeria's oil and gas sector to deliver the contemplated developmental outcomes of transparency, accountability, and good governance.

Key Words: Oil and Gas industry, Nigeria, Regulatory Institutions. Reforms, Ministerial Powers. Independence. Discretionary Powers

Introduction

Opaque legal, regulatory, fiscal and governance frameworks underlined Nigeria's oil and gas sector since exploitation of petroleum commenced in the 1960s. The overarching legislation, the Petroleum Act, 1969 was designed for the industry at its infancy and over time it became non-responsive to modern-day global energy realities and technological advancements. The National Oil Company, Nigerian National Petroleum Corporation "NNPC" far from being a commercial entity it was designed to be, was "huge amorphous cost center with little or no sensitivity to the bottom-line."¹ Its entire institutional architecture was civil service driven, incapable of championing the formulation of policies that would birth innovation, growth and development of the sector.² The sector developed headwinds that led Nigeria to contract the "Dutch disease" that

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¹Egbogah, E., (2012). quoted in Yinka Omorogbe, Energy Policy and the Petroleum Industry Bill: A Comparative Study of the Energy Policy, the Oil and Gas Policy and the Petroleum Industry Bill, OSIWA

² Omorogbe, Y., (2023). The Petroleum Industry Act from A Governance Perspective, <https://cuab.edu.ng/wp-content/uploads/2023/09/8.-Omorogbe-PIA-from-Governance-Perspective.pdf>

de-industrialized Nigeria's economy and crowded out the erstwhile mainstay for the nation – agriculture.³

By 2000 when government started taking steps towards reforms,⁴ petroleum exports accounted for over 98% of export earnings and 83% of federal government revenues and more than 14% of the country's GDP constituting in the process, 95% of foreign exchange earnings.⁵ This gave rise to a “paradox of plenty”⁶ where underdevelopment, corruption, poverty⁷ thrived in the midst of abundant resources. The reforms were informed by outdated legislation, fragmented regulations, regulatory and fiscal uncertainty, rising production costs and the need for increased efficiency in the sector. The reforms were objectified at diversifying and liberalizing the macro-economy landscape of the nation thereby attracting the much-needed investment into the sector which was sluggish as a result of lack of investor confidence,⁸ promoting local content and indigenous participation, addressing legitimate grievances of host communities that were negatively impacting extractive activities. Other accentuating reasons included promoting a competitive market, tackling environmental concerns, and finally upscaling revenue yields through the modernising of the outdated fiscal regime. Capping all these was the overriding need to change the regulatory and governance landscape in order to tackle corruption that was prevalent and allow for an equitable deployment of the oil wealth for development.⁹

Paradoxically, notwithstanding the importance of the sector to the economic well-being of Nigeria, and the criticality of the reforms, it took 21 years for these initiatives to crystallize into the Petroleum Industry Act 2021 “the Act”. Even though the reasons implicated for this long and winding reform path are beyond the remit of this paper, it is to be noted in passing that much of the delay was as a result of the unique nature of the political economy of the nation, among other reasons.¹⁰

³ Peel, M., A (2010). *Swamp Full of Dollars, Pipelines and Paramilitaries at Nigeria's Oil Frontier*, BookcraftAfrica, Ibadan, Nigeria at 41; Falola, T & Heaton, M.M., (2008). *A History of Nigeria*, Cambridge University Press <https://sciendo.com/article/10.2478/auseb-2020-0002>;

⁴ Ministry of Petroleum Resources, Abuja (2024). *Our History*, A Comprehensive Overview of the Ministry of Petroleum Resources, <https://petroleumresources.gov.ng/our-history/>

⁵ World Bank (2013). *Nigeria Economic Report*: <https://worldbank.org/curated/en/934931468291633000/pdf/776840WP0Niger0Box0342041B00PUBLIC0.pdf>

⁶ Borha DOE & Olujobi OJ. (2023). *An examination of the Petroleum Industry Act 2021: prospects, challenges, and the way forward* [version 2; peer review: 2 approved] *F1000Research* 12:551 <https://doi.org/10.12688/f1000research.132539.2>

⁷ Amin, M., (2009). *Dutch Disease vs. Nigerian Disease*, World Bank Blogs, <https://blogs.worldbank.org/en/psd/dutch-disease-vs-nigerian-disease>

⁸ Shosanya, M. (2015). *PIB: How Long Will the Waiting Game Continue?* Daily Trust. Available from: <https://www.dailytrust.com.ng/pib-how-long-will-the-waiting-game-continue.html>. [Last accessed on 2019 Oct 15]

⁹ Omorogbe, note 2

¹⁰ Young, M.R., (2022). *Unhappy anniversary: Nigerian oil industry one year after Petroleum Industry Act*; <https://www.financialnigeria.com/unhappy-anniversary-nigerian-oil-industry-one-year-after-petroleum-industry-act-blog>,

724.html#:~:text=More%20than%20one%20year%20after, August%202021%20%E2%80%93%20has%20significant%20implications; Nwazor, A., Shola, J., Adedire, S.A., Lawal, E.E., (2020). *Reform in a Limbo: The Politics and Politicization of Reforms in Nigeria's Petroleum Sector*; *International Journal of Energy Economics and Policy*, 10(4), 184-193

The Challenge

The Act has been in force for a little over three years now. The bolts and nuts of its implementation are still being oiled and tightened. The duration is relatively short to make an informed review of its effectiveness in addressing the myriad of challenges that have constrained the development of the sector. This paper does not intend to undertake that exercise. Rather, the paper poses one fundamental question that is embryonic from the Act: given the nature of fabric from which the Act was designed and sewn from, can it entrench itself within the Nigerian political economy and thrive as designed and deliver the developmental outcomes of transparency, accountability, and good governance in alignment global best practices?

In seeking to provide an answer to this question, the paper untangles the myriad of challenges in the Nigeria's petroleum ecosystem at the intersection of her political economy to puncture the underlying assumptions being bandied around that with the passage of the Act, the sector is on a firm footing, primed to thrive. Rather, the paper argues that the foundational design of the Act is of a poor or compromised quality, interspersed with seemingly deliberate loopholes and mindless overlaps and duplication of roles and powers that are characterised by the problematic donation of discretionary powers and functions to political actors without regard to the plain-in-sight political economy of Nigeria. It is the conclusion of the paper therefore, that there are inherently embedded-to-fail bobby-traps in the design of the Act that have been and continue to constrain its effectiveness and success and it was and is designed to fail unless salvaged.

In undertaking the above task, the paper discusses the challenges in the design of the Act under themes of its adherence to the Constitution, overlap of functions and poor delineation of roles, lack of regulatory and managerial independence, unwieldy ministerial powers, limited capacity, corruption viz avis investor friendliness and climate change and energy transition.

Adherence to the Constitution

The 1999 Constitution of the Federal Republic of Nigeria unequivocally asserts itself to be the supreme law binding all persons and authorities throughout the Republic and declares void any law that goes against its grain (Section 1(1) & 3). This position has been reinforced by numerous decisions of the Supreme Court of Nigeria which hold all the three arms of the government to be "slaves of the Constitution"¹¹ and must all "dance to the music and chorus of the Constitution and must be ready to eat from the delicacies offered by it, whether palatable or unpalatable".¹²

With the above in mind, a review of the provisions of the Act show that certain aspects are not in conformity with to the provisions of the Constitution and are open to being struck down by courts of law as unconstitutional, if and when challenged.¹³ Two examples testify to this position. Section 162 of the 1999 Constitution provides that all "revenues collected by the Government of the Federation" shall be deposited into a Federation account and distributed to the different tiers of

¹¹ Saliu, S., (2021). The Supremacy of the Constitution of the Federal Republic of Nigeria 1999 (As Amended): A Myth or Reality? ABUAD Law Journal (ALJ) Vol. 9, No. 1, Pages 93-104, <https://doi.org/10.53982/alj.2021.0901.06-j>

¹² A.G Abia vs. A.G Federation (2006). 16 NWLR (Pt. 1005) SC Pg. 265 per Justice Niki Tobi at 389; Uzodima v. Commissioner of Police, (1982). 325 at 327; A.G Bendel v. A.G Federation, (1983) All NLR 208 12, Inakoju v. Adeleke (2007) 4 NWLR (pt. 1035) Pg. 403

¹³ Borha & Olujobi, note 6

Government.¹⁴ However, and notwithstanding this clear constitutional provision, Section 9 (4 &5) of the Act mandates NNPC to retain 30% from the production sharing contracts, profit sharing, and risk service contracts meant for frontier basins exploration. Another example is that Section 240(2) of the Act requires a settlor to make an annual contribution of an amount equal to 3% of its actual annual operating expenditure of the preceding year in the upstream petroleum operations to the host communities where the settlor is operating. The Act defines a settlor as the holder of an interest in a petroleum prospecting license or a petroleum mining lease which language can be construed to include the NNPC, the National Oil Company. Where NNPC, an arm of government is mandated by an act of Parliament to essentially undertake acts that are unconstitutional by withholding and misapplying parts of its income into areas not allowed by the Constitution, this *ab initio* violates the Constitution and is void, to the extent of its inconsistency with the Constitution.¹⁵

Overlap of Functions and Poor Delineation of Roles

Section 2 (a) of the Act states that one of its cardinal objectives is to create efficient and effective governing institutions with clear and separate roles for the petroleum industry. This legislative intent goes to the heart of reform agenda and seeks address the elephant in the room, for all those have been familiar with the petroleum sector in Nigeria. The NNPC, established by National Petroleum Corporation Act, 1977 was legislatively designed to have overarching, multiple and conflicting roles of policy maker, regulator, and commercial operator in the sector as borne out from the legislative intent for the creation NNPC as contained in Purpose or Opening Clause of the:

An Act to dissolve the Nigerian National Oil Corporation and to establish the Nigerian National Petroleum Corporation empowered to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate department. (underlining mine).

In the process of NNPC operationalising its functions and enforcing its powers under the law aforesaid, it blurred the jurisdictional effectiveness of all the other institutions in the sector. NNPC, like an octopus, has ended up having its hand in all aspects of the sector, be it regulation, operations, ownership, and management. Where roles are not clarified and there are overlaps which give rise to institutional conflicting agendas, overlap of roles, turf fights and duplication of efforts leading to movement paralysis, where everyone is moving but pulling in different directions and at cross purposes. In reforms, where roles are clarified and delineated clearly, it leads to intended outcomes already envisaged. This, in turn, fosters transparency, good governance, and accountability, a key aim of the Act

¹⁴ Ibid

¹⁵ Jolaoso, M., (2023). The Petroleum Industry Act 2021: The Long-lasting Solution to the Challenges Bedevilling the Nigerian Petroleum Industry. Available at SSRN: <https://ssrn.com/abstract=4616660> or <http://dx.doi.org/10.2139/ssrn.4616660>

With that background in mind, we identify several blurred roles, overlapped functions and misallocation of roles in the institutional design of the Act that portend confusion and uncertainty in its implementation.

First, the Act lavishly donates purely regulatory functions and powers due to the two regulatory institutions in the Act to the Minister of Petroleum Resources without pondering on the profound implications of this capriciousness. Three instances highlight the anomaly. Firstly, rulemaking powers are at the heart of regulation but the power to approve rules made by regulatory institutions lies with the Minister. That, in fact, is what makes an agency ‘regulatory’. The power to determine how to conduct its affairs, to determine conditions under which players can enter, operate, and exit the agency’s regulatory space, regulation/setting of tariffs and promotion of competition. These are, among others, are purely institutional endowments of regulatory institutions particularly in ubiquitous utilities such as energy.¹⁶ Secondly, licensing powers which is a key tool utilised to regulate entry and exit into the market. Thirdly, the power of determining the rents, fees, and charges, tariff, pricing methodologies and cost benchmarks. All these purely regulatory functions have been donated to the Minister of Petroleum Resources in the Act with the third aspect allowing the regulatory institutions to make recommendations to the approval of the Minister of Petroleum Resources (Section 3(1) (g-h, j)).

Second, the overarching general oversight and supervisory powers of the petroleum industry granted the Minister of Petroleum Resources in Section 3 of the Act and the authority to approve on the recommendations of the Commission or Authority, the grant or revocation of oil licenses would appear on the surface to be a normal provision devoid of political overreach. However, when recourse is had to the peculiar norm in Nigeria where, in the past decades, the President of the federation holds the office of the Minister of Petroleum Resources, it becomes doubtful if he can be bound or agree to be bound by those recommendations.¹⁷ Furthermore, the power of the Minister of Petroleum Resources to grant, revoke, assign interests, suspend operations, and approve fees, ‘upon the recommendation of the Commission or the Authority’ show exactly where these pure regulatory powers lie – with the Minister of Petroleum Resources and not the Commission or the Authority.¹⁸

Third, the Act blurs regulatory and commercial roles in the Act by the provisions that pertain to management of Frontier Basins and the Frontier Exploration Fund. Section 9 of the Act empowers the Commission to “promote the exploration of frontier basins.....”, “develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages” and identify opportunities and increase information about the petroleum resources base within the frontier basins....” among other functions.¹⁹ The Act goes ahead to stipulate that where testing and drilling is required and “no commercial entity has publicly expressed an intention of testing or drilling such prospects” the Commission shall request NNPC to perform these functions in return for a fee. The full ambit of the mandate given to the Commission under the Act, therefore, includes determining what a frontier basin is, and then proceeding to explore the basin for its economic

¹⁶Brown, A., et al, *World Bank Handbook for Evaluating Infrastructure Regulatory Systems*, 2006, The World Bank, Washington, DC at 103

¹⁷ Idiong, M. (2023). A Critical Appraisal of the Petroleum Industry Act 2021: Challenges and Opportunities. *AJIEEL*, 6(01), 178–191. Retrieved from <https://ajieel.com/index.php/a/article/view/38>

¹⁸ Omorogbe, note 2

¹⁹ Ibid

viability and to finally hire NNPC or any other competent entity to test or drill the prospects. All the above functions, processes and activities are clearly of a commercial nature and cannot be conceivably stretched to be of a regulatory nature and ought not to be warehoused as a function for the Commission to undertake, it being a regulatory institution.

Four the Act warehouses commercial and investment functions to a regulatory agency, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) as evidenced in the provisions governing the Midstream Gas Infrastructure Fund. The Act spells out the purposes of the Fund (Section 52(10) (a-c)) to be the elimination or reduction gas flaring, making equity investments of government-owned participation or shareholder interests in infrastructure related to midstream gas operations, and encouraging private investment. The above functions are clearly of a commercial and business nature and not of regulatory nature, no matter how they are interpreted.

Five, the Act makes the Minister of Petroleum Resources the Chairman of the Midstream Gas Infrastructure Fund Council. With this provision, imagine the scenario: The Commission superintends over investments in the Fund as primary investment Managers and then are subjected to the supervisory control of the Minister of Petroleum Resources, who also happens to be the President of the Republic (Section 52 (3)). This clearly limits the independence of the regulator given that it would be inconceivable under the nature of the prevailing political economy of Nigeria for the regulator to operate in an autonomous manner.

Six, by the NCDMB Act, 2010 the Nigerian Content Monitoring Board exists to develop, deepen and promote Nigerian content in the oil and gas industry which includes the planning, supervision, co-ordination, monitoring, and implementation of Nigerian content. The Act through its Section 2(e) also gives the upstream regulator, Nigerian Upstream Regulatory Commission, (NUPRC), these same powers and functions. The same overlapping donation of powers is contained in the Section 10 (c) of the Act that empowers the NUPRC to ensure compliance with the Nuclear Safety and Radiation Protection Act when there is in place a Nuclear Regulatory Authority that exists under the Nuclear Safety and Radiation Protection Act 1995 charged with the responsibility for nuclear safety and radiological protection regulation in Nigeria. When the two examples above are closely examined, one cannot but fathom a recipe for turf wars due to the overlapping nature of these two provisions in two separate laws.

Regulatory and Managerial Independence

The regulatory landscape of a utility industry determines its virility and productivity in a liberalised economy. Regulators play a very distinctive and powerful role in every utility including one as ubiquitous as energy. The quality of the regulatory design determines its effectiveness. Given that they wield a lot of power over critical assets, they require an unhindered ability, legislatively endowed, to operate without interference, be it from state actors or the regulated entities. The power to determine entry and exit within a regulatory space, regulation of tariffs and prices, promoting competition and curbing market distortions and failures require “cool heads” devoid of

political or emotional considerations but economic, solely for the benefit of the market and the consumer.²⁰

In addition, independently driven regulation provides assurances of the enforceability of credible commitments made by government to provide comfort for investors in order to tackle the vulnerabilities of the typically large, long-term, and immobile investments in the oil and gas industry.

Thirdly, given the mutually exclusive interests of the varied players in the oil and gas value chain, autonomous driven regulation is desirable to protect consumers from abuse and exploitation by firms with substantial market power while insulating investors from arbitrary actions of the State. This regulatory delicate balancing act has a third equation into the mix - the government expecting the regulator to ensure a win-win situation that promotes social harmony and tranquility with eyes firmly fixed on the next electoral cycle. Another perspective to the competing interests in the sector that needs regulation is government's legitimate concern in the strategic direction and overall efficiency and effectiveness of regulatory institutions particularly in the sector such central as oil and gas industry that is the mainstay of the nation.

The Act subjects some core regulatory functions of the regulatory institutions including licensing, fees, and levies to the approval of the Minister. This is a sure recipe for the exercise of these functions to further political causes in place of sound economic goals. This is more so, considering the overly political nature of oil and gas industry to Nigeria's political economy. Another area that is worrisome is the subjecting of the powers of discipline of regulators of the regulatory agencies only to the whims and caprices of the President (Section 14 and 37) as the Act does not require legislative concurrence before any disciplinary could be taken. This negates non-insulation of regulators principle and opens them the real risk of regulatory capture by state actors and portends a scenario wherein regulators could be beholden to state actors for fear of discipline and or removal under capricious grounds without just cause.

The history of arbitrariness in the discipline of regulators in the Nigerian Electricity Supply Industry is as a case in point to be wary of.²¹ The political economy of tenure stability in the petroleum industry in Nigeria speaks volumes to its delicate nature and the compelling need to insulate regulators from capricious discipline and removal. This is evidenced by the fact the National Oil Company, NNPC has had 19 Chief Executives in its 46 years' history with an average tenure of only two and half years.²² There has been clear pattern of impunity which is one of the

²⁰ Andzenge, T., (2023). A Preliminary Evaluation of the Independent Status of Regulatory Institutions in Nigeria's Petroleum Industry Act 2021, Petroleum Technology Development. Vol 13, Number 1 accessed online at <https://www.academia.edu/102175790/>

²¹ Abdul-Razaq Alimi & the AG of the Federation, Suit No..FHC/ABJ/CS/295/09, contained in Andzenge, T, (2015). Legal Issues in the Contextual Diffusion of Independent Regulatory Agencies in Nigeria, an unpublished thesis presented for the Degree of Doctor of Philosophy in the Department of Public Law, University of Cape Town, August 2015 at 227

²² The International Centre for Investigative Reporting (2023). accessed online at <https://www.icirnigeria.org/gmds-of-the-nnpc-who-had-managed-nigerias-oil-cash-cow-since-1999/>

features of Nigeria's political economy²³ and if the power of discipline is left only in the hands on one branch of government it is susceptible to abuse.

Granting such wide-ranging powers to a political actor to commit an agency that wields enormous powers that are required to be exercised independently, fairly, and transparently is a recipe for abuse. This is considered within the context that under the Act, the power of discipline and removal of regulators lies with the President wholly and does not require legislative concurrence.

Ministerial Powers under the Act

The Act grants the Minister a wide breath of discretionary powers to carry certain functions and exercise powers that are of regulatory and commercial/operational coloration apart from the normal powers of determining the policy direction of the oil and gas sector. Such overlapping functions include giving general policy directives to the regulatory agencies, approving grant and revocation of licenses and leases, tariffs, regulations apart from chairing the Chairman of the Midstream Gas Infrastructure Fund Council, among others Section 3(4) of the Act.

Given the sweeping nature of these powers and the wide berth of what amounts to "general policy directives", and the obligatory requirement mandating the regulatory institutions to obey all such directives (Section 3(4) of the Act), abuse of the powers is not a matter to be considered far-fetched. These wide-ranging powers are worrisome for the following reasons:

Firstly, the Minister is an appointee of the President and answerable to him and obligated to carry out instructions of the President. Secondly, the Minister is usually a political actor with partisan leanings. Of more primary concern too is the fact that in the past three republics, the President has retained the Ministerial portfolio and acts as a Minister of Petroleum Resources. Granting such wide-ranging powers to political actors to commit several agencies that wields enormous powers that are required to be exercised independently, fairly, and transparently is a recipe for abuse. Thirdly, investors require regulatory certainty and predictability when considering investments in emerging economies such as Nigeria and where very fundamental powers are wrapped in discretionary garb, it creates an atmosphere of unease for the private sector.²⁴ This is considered within the context that under the Act, the power of discipline and removal of Commissioners lies with the President wholly and does not require legislative concurrence.

Given the primacy of oil and gas revenues to Nigeria's economic well-being, whoever is vested with powers to exercise in matters within the sector that has overarching impact of the entire citizenry, some measure of check and balance ought to be instituted. Even though the Act requires the Minister to give only general policy directives that are in line with the provisions of the Act, the question that begs an answer is who would resist the Minister of Petroleum Resources (who has for the past decades always been the President) in the event that he gives directives that overreach the Act? Would it not be asking too much of Commissioners of the regulatory institutions who hold their offices at the pleasure of the President and could be removed by the President to challenge any directives that are ultra vires the Act?

²³ Ejiofor, C.C., & Udeogu, C.U., (2017). Political Culture of Impunity and the Challenges of Democratic Consolidation in Nigeria, South East Journal of Political Science Vol.3 No.1

²⁴ Leon, P., (2014). Engelbrecht, Inside Mining 15

Limited Capacity

The Act is a new piece of legislation that leapfrogged Nigeria's oil and gas industry decades ahead in one fell swoop. Even though the law was long in coming, when it did, it came clothed in complex and complicated regalia. Since oil exploration began in 1938 with a joint venture of Royal Dutch Shell and British Petroleum²⁵ human capital and capacity in the exploration and exploitation stages has been built steadily over the years. Notwithstanding the existing capacity, the institutional, legal, fiscal, and regulatory framework the Act espouses are wholly novel and requires wholly new set skills and capacities to thrive. Complexity and precision-driven operations is a feature of the petroleum sector with each phase of exploration, drilling, production, and refining cycle requiring a diverse set of skills and expertise. The operation of sophisticated machinery, interpretation of complex geological data, management of logistics, and the compliance with stringent safety and environmental regulations all require skilled workers.²⁶

It is an open question as to whether the required the technical and managerial manpower required to implement the complex regulatory and fiscal framework provided for the Act exists in Nigeria given their novelty. Even though capacity has been steadily built in the different aspects of oil production and allied services, there is however, a lacuna in the middle level manpower needs of the sector. Nigeria's educational system has seen a concentration of the production of university graduates with a lack of qualified middle level technicians and Technical Vocation Education for middle level qualified artisans in the oil and gas sector.²⁷ This has seen the gradual but steady rise of the domination of expatriate staff in the middle and lower levels of sector.²⁸ The importance of middle-level skills enhancement has been identified as a key factor that would transform the abundant rudimentary natural human capital into long-term economic development in the oil and gas industry of African countries.²⁹

Corruption and Investor Friendliness

Oil and gas exploration, development, and production is capital-intensive with numerous and wide-ranging risks.³⁰ Thus for developing countries, most of the capital needed for fund the exploitation of petroleum resources is mostly sourced from Foreign Direct Investment (FDI).³¹ For an environment to be friendly enough to attract FDI for the sector, the climate must be conducive.

²⁵ Emembolu, G. (1975). Future Prospects and the Role of Oil in Nigeria's Development. *The Journal of Energy and Development*, 1(1), 135–151. <http://www.jstor.org/stable/24806785>

²⁶ Bento, F. (2018). *Journal of Open Innovation: Technology, Market, and Complexity*. 4:11: <https://doi.org/10.1186/s40852-018-0092-5>

²⁷ Okwelum, C.O. (2022). Critique of Manpower Development in Oil and Gas Sector of Nigeria, *International Journal of Law, Politics & Humanities Research*, Cambridge Research and Publications IJHSS ISSN-1640-7277 (Print) 109 Vol. 25 No. 4

²⁸ Aregbesola, R., (2023). Nigeria Says Oil Sector Still Dominated By Foreigners Despite Government's Efforts: <https://www.arise.tv/nigeria-says-oil-sector-still-dominated-by-foreigners-despite-governments-efforts/>; Ukpog, U (2024). PENGASSAN laments expatriate domination in Nigeria's oil industry: <https://dailytimesng.com/pengassan-laments-expatriate-domination-in-nigerias-oil-industry/>

²⁹ Darvas, P. & Palmer R. (2014). Demand and supply of skills in Ghana: how can training programs improve employment and productivity? A World Bank Study. Washington, DC: World Bank Group

³⁰ Bret-Rouzaut, N. (2022) Economics of Oil and Gas Production. In: Hafner, M., Luciani, G. (eds) *The Palgrave Handbook of International Energy Economics*. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-030-86884-0_1

³¹ Nejati, M., & Bahmani, M. (2020). The economic impacts of foreign direct investment in oil and gas sector: A CGE analysis for Iranian economy. *Energy Strategy Reviews*, 32, 100579. <https://doi.org/10.1016/j.esr.2020.100579>

Investor friendliness speaks majorly to one concept that investors look out for when investing - Ease of Doing Business. Ease of doing business is a World Bank Group index that measures how easy it is to start and run a business in a country. There is a link between investor friendliness, corruption and FDI which shows that where high levels of corruption thrive, investment climate is not business friendly and tends to dissuade FDI³² due to “increased uncertainty, high transaction costs, and the perception of unfair business practices, ultimately discouraging companies from establishing operations there....”.³³ Globally, the domestic resources lost to oil producing developing countries on account of corruption flowing from corruption and illicit funds in oil trade goings-on are conservatively estimated to exceed the value of foreign direct investment (FDI) and official development assistance (ODA) of these countries.³⁴ Conversely, cross-country empirical studies show a pattern that in countries where corruption is controlled, investment flows easier.³⁵

In the Nigerian context, to interrogate whether or not the design of the Act is attractive for investors, it is needful to reflect over how Nigeria has fared in the Ease of Doing Business indices prior to the coming into effect of the Act. In the past few years, there has been a steady decline in FDI in Nigeria's oil and gas industry as only 4 percent of the \$70 billion FDI inflows into Africa's oil and gas industry between 2015 and 2019 came to Nigeria notwithstanding the fact that the country is the continent's biggest producer with the largest reserves.³⁶ The prevailing argument before the Act was passed was that the legal, regulatory, fiscal and institutional framework of the industry was archaic and a turn-off for investors. Now that there is a new regime - the Act, a review is desirable to ascertain the attractiveness of the industry to FDI.

Nigeria's ranking at the World Bank's "Ease of Doing Business" reports, just before and since the Act is telling: Nigeria ranked 131st out of 190 economies in terms of ease of doing business in 2019, 2020, 2021, 2022, 2023.³⁷ These figures tell one story: notwithstanding the Act, nothing much has happened to boost investor confidence given that the Ease of Doing Business in Nigeria indices have not changed.

Corruption as a phenomenon is corrosive on everything it touches.³⁸ It is also one major obstacle militating against investor friendliness, rapid growth and development of the Nigeria's oil and gas sector.³⁹ Corruption undermines good governance, structurally distorts public policy, leading to the misappropriation and misapplication of resources which ends up harming the poor.⁴⁰ Oil theft

³² Nageri, K.I. & Gunu, U., (2020). *Acta Universitatis Sapientiae, Economics and Business*, Vol 8 (2020): Issue 1

³³ Moustafa, E., (2021). The relationship between perceived corruption and FDI: a longitudinal study in the context of Egypt, https://unctad.org/system/files/non-official-document/diaeia2021d2a4_en.pdf

³⁴ Porter, D. & Anderson, C., (2021). *Illicit financial flows in oil and gas commodity trade: Experience, lessons and proposals*, OECD Publishing, Paris

³⁵ Belgibayeva, A., & Plekhanov, A., (2015). *European Bank for Reconstruction and Development, Working Paper No. 176*

³⁶ Nwuke, K., (2021). 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/>

³⁷ World Bank, 2023: <https://tradingeconomics.com/nigeria/ease-of-doing-business>

³⁸ IMF Blog: (2017). Corrosive and Costly Corruption:

<https://www.imf.org/en/Blogs/Articles/2017/07/14/corrosive-and-costly-corruption>

³⁹ Nagar, K. T., Umar, G., Addull, F.A. (2013). Corruption and economic development: Evidence from Nigeria. *Kuwait Chapter of Arabian Journal of Business and Management Review*, 3(2), 40-56

⁴⁰ Ajao, O.S., Dada, S.O., Olaoye, S.A. (2013). Application of forensic accounting technique in effective investigation and detection of embezzlement to combat corruption in Nigeria. *Unique Journal of Business Management Research*, 1(4), 065-070

costs Nigeria millions of dollars yearly with \$23 million being lost daily in 2022, and \$1.43 billion was lost in March 2023 alone.⁴¹

In ascertaining if the legal, regulatory, institutional, and fiscal environment introduced by the Act is conducive to business, this paper flags two key issues that emanate from the design of the Act that impact negatively on Ease of Doing Business: the correlation between the large berth of discretion the Act gives to public officers and corruption.

Corruption does not occur in vacuums and only occurs when two essential ingredients coexist: motivation and opportunity. State officials that have a wide berth of discretionary powers over natural resources have as a motivating factor - personal benefit and the presence of discretion presents the opportunities to nurse those corrupt tendencies.⁴² As it is unique to discretionary powers, accountability is low or non-existent. Within the Nigerian political economy, oil and gas revenues are central for the nation's functioning as it also has an overarching bearing on both the economy and national security and has understandably functioned under heavy government controls. Public knowledge of oil and gas management is scanty. Government is solely responsible for the administration of sectors and responsible for the issuance of permits, licenses, contracts, fiscal regime and the enforcement of environmental regulations.⁴³ This entire trajectory is perfect scenario of corruption that invariably hampers ease of doing business.

As has been pointed out the ideal situation for corruption to thrive occurs when a "few individuals hold all the power to make certain decisions, public information about decision-making is scanty, procedures to hold decision-makers accountable do not exist, and decisions can yield personal (private) rewards for decision-makers." This is the landscape that the Act through the granting of a wide range of discretionary powers to the Minister of Petroleum Resources has engendered on the oil and gas sector in Nigeria.

Climate Change and Energy Transition

The global consensus of the reality of climate change and compelling need for nations to transform their energy systems to achieve two competing demands - meeting the increasing energy demand of a growing global population while simultaneously mitigating global emissions in line with global climate change protocols goals makes it incumbent upon petroleum producing nations globally to utilise the full arsenal of legal regulatory, fiscal and institutional frameworks to meet the above twin challenges.⁴⁴

⁴¹ Emeka, E., (2024). Oil production rises as Nigeria intensifies clampdown on theft, Voice of America Bulletin, October 17, 10:12 PM <https://www.voanews.com/a/oil-production-rises-as-nigeria-intensifies-clampdown-on-theft-/7827079.html>

⁴²U4 Anti-Corruption Resource Centre, Basic guide to corruption and anti-corruption in oil, gas, and mining sectors, accessed online at <https://www.u4.no/topics>

⁴³ Musbau, Yusuf & Maikudi, Yusuf & Suleiman, Abubakar. (2025). Corruption in Nigeria's Oil and Gas Industry: Measure and Extent. PanAfrican Journal of Governance and Development (PJGD). 6. 84-111. 10.46404/panjogov.v6i1.6190.

⁴⁴ Dongo, D. F., & Relvas, S. (2025). Evaluating the role of the oil and gas industry in energy transition in oil-producing countries: A systematic literature review. *Energy Research & Social Science*, 120, 103905. <https://doi.org/10.1016/j.erss.2024.103905>

A body of literature gravitate towards one conclusion – the Act has not shown sufficient commitment to and a demonstrated desire to meet Nigeria's Nationally Determined Contributions (NDC) under the Paris Climate Agreement⁴⁵ neither does it make provision for a concerted transition away from fossil fuels to cleaner energy sources⁴⁶ consistent with global stipulations such as the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement and the Montreal Protocol and the 2030 Agenda for Sustainable Development, among others. Even though there is an extant national legislation, the Nigeria's Climate Change Act 2021, there expressed interface between this latter with the Act. The Act lacks precise provisions that actively encourage the evolution of concrete principles and processes towards the transition to low-carbon energy sources, notwithstanding that it is the main law for the nation's oil and gas industry. Critics further assert that the law majorly prioritises oil and gas exploitation and have fallen short in addressing the need to decarbonize the sector in line with global climate change concerns.⁴⁷ The lack of preciseness in making provisions for and addressing climate change issues in the Act is germane given the overarching influence of oil and gas on the nation's socio-economic growth and security.

Conclusion

Nelson Mandela ended his Long Walk to Freedom⁴⁸ with the end of apartheid in South Africa. Nigeria's long walk towards sustainable and enduring reforms in the petroleum sector, which is not an event but a process appears hazy and problematic, booby-trapped by challenges plainly in sight that if not ameliorated, would be a case of a reform designed to fail, *ab initio*! The Act, though viewed as a panacea that addresses the old challenges in the sector, appears to have band-aided most of the preexisting challenges and created new ones.⁴⁹ The result is the flippant donation of a wide berth of discretionary powers to partisan political actors, inhospitable investment climate as a result of corruption, non-delineation of roles, overlap of functions and powers and the castration of regulatory institutions by a lack of independence. The Act is a “missed—but not lost—opportunity to position Nigeria to face a future without oil or fossil fuels”⁵⁰ No legislation is perfect and the Act does in fact deliver some measure of the predictability and modernity to an otherwise archaic and outdated oil and gas sector in Nigeria and offers a veritable foundation upon which further progress can be built upon.

This paper, in identifying the deficiencies in the design of the Act, aims at providing a guide to lawmakers, policymakers, energy practitioners and investors in the sector to move towards its overhaul. This second bite at the cherry will permit addressing the gaps in the design of the Act particularly in areas such as aligning the Act with the nation's Constitution, making it investor-

⁴⁵ Borha and Olujobi, note 6

⁴⁶ Nwuke, note 36; Imoisi, S.E., Aidonojie, P.A., Edetalehn, O.I., (2023). Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry, NAU.JCPL Vol. 10(2); Jolaoso, note 16; Atawheke, I., (2022). Info Guide Nigeria' 10 Problems and Challenges of Petroleum Industry Act Implementation in Nigeria' available at <https://infoguidenigeria.com/problems-and-challenges-of-petroleum-industry-act-implementation/> accessed January 14th, 2023

⁴⁷ Umenweke MN, Chukwuma WA: (2021). An Examination of the Petroleum Industry Act 2021 and the Quest for a New Nigeria, Law and Social Justice Review (LASJURE) 2 (2) accessed online at <https://nigerianjournalonline.com/index.php/LASJURE/article/viewFile/2228/2172>

⁴⁸ Nelson Mandela, (1995). Long Walk to Freedom: The Autobiography of Nelson Mandela, Rovingheights Books

⁴⁹ Nwuke, note 36

⁵⁰ Ibid

friendly by hemming in corruption via the whittling down of the huge discretionary powers given to political actors, addressing limited capacity issues through school curriculum retooling, addressing the apparent overlaps and lack of delineation of roles and making adequate provisions for the energy transition in line with Nigeria's Nationally Determined Contributions (NDC) under the Paris agreement to contain climate change ecosystem dislocations.