



LEGAL APPRAISAL OF PETROLEUM PRODUCTION AND SUPPLY SECURITY MEASURES IN NIGERIA

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Abstract

Nigeria is blessed with abundant petroleum and other natural resources such as oil and gas, yet the citizens are energy poor. Nigeria's petroleum concern could be expressed in a paradoxical state. That is energy poverty in the midst of energy wealth. Generally speaking, Nigeria's economy is mono-cultural where almost every economic activity revolves around oil and gas. Petroleum oil accounts for about 80% of government revenues, including export and foreign exchange earnings and 70% of electricity generation. Our transportation system is completely dependent on petroleum. This author adopted the doctrinal research method relying on primary and secondary sources of law. It found out among other factors bedeviling petroleum production and supply security to include the overbearing influence in the operation of the industry by the government. Corruption and the impotency of the extant laws on petroleum. The article therefore concluded with a call for a more robust; deliberate and concerted efforts towards improving the petroleum production and supply security architecture. Consequently, the author recommended amongst others for a robust improved and better legal framework, elimination of corruption in the industry and prioritization of domestic supply obligation by the IOC's.

Keywords: Legal, Petroleum, Security, Nigeria.

1.0 Introduction

The task of meeting the nations need for accessible petroleum in a reliable, affordable and sustainable way has become an onerous task for various participants in the petroleum industry viz the government, national oil companies and international oil companies. This is particularly so because of the large population across the nation who do not have access to modern commercial petroleum energy. The Nigeria Petroleum Security situation is both a contradiction and paradox as there is glaring evidence of inadequate supply of petroleum product for the teeming domestic consumers.

Generally, petroleum security simply refers to the availability, affordability and sustainability of petroleum products to the teeming population. Ironically, Nigeria currently has four (4) government owned refineries under direct supervision of the Nigerian National Petroleum Corporation (NNPC) with a combined total refining capacity of the four refineries put at 470,000 barrels per day.¹ The

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¹ Global subsidy initiative Report: Compensation Mechanisms for Fuel Subsidy Removal in Nigeria. <<http://www.usd.org/sites/default/files/publication/compensation.mechanism.fuel-sbsidy-removal-nigeria>> accessed October 2019.



domestic consumption of Petroleum Product hovers within 5,000,000 metric tonnes thereby leaving a significant shortfall of 6000,000 metric tonnes for which its makeup comes from the importation of refined products.² This shortfall in the domestic consumption and refining capacity of Nigerian petroleum inevitably creates petroleum insecurity and unprecedented poverty. Therefore, to ameliorate the adverse effect of petroleum insecurity, socioeconomic and political policies such as petroleum products subsidy and privatization are the resultant regimes; yet petroleum insecurity epidemic remains unabated in Nigeria. Hence opinions and suggestions tilt towards an alternative energy supply regime as a panacea to the energy needs of Nigerians. Unfortunately, diverse laws which has been promulgated by successive governments to ensure smooth transition to renewable energy at least to supplement the petroleum source as a means of supplementing energy needs has never been potent or successful.

2.0 Origin of Petroleum in Nigeria

The search for oil in Nigeria dates back to 1901³ when a German firm known as Nigerian Bitumen Company started exploration and exploitation activities in Okitipupa area of Lagos State, Nigeria. This expedition was unsuccessful for two main reasons. First, oil was not discovered in commercial quantity,⁴ and second was the outbreak of the First World War.⁵ However, interest and possibility of petroleum oil discovery in Nigeria never waned and in 1937 Shell/D'Arcy Petroleum Development Company of Nigeria an affiliate of mineral oil companies, Shell Petroleum Company and British Petroleum Company⁶ was established. Consequently, in November 1938, Shell-Bp received from British Colonial Government an Oil Exploration Licence (OEL) covering the whole of Nigeria of about (357 000 square miles). Although the outbreak of the Second World War also affected the commencement activities of the company nevertheless, years after, shell made her major breakthrough in oil exploration and exploitation when oil was discovered in commercial quantity in 1956 at Oloibiri in the present day Bayelsa State. This was followed by another discovery at Afam in Rivers State.⁷ These discoveries marked a milestone in petroleum development and by 1958 production had reached 5100 barrels per day with the first shipment of Nigerian petroleum made to Europe which heralded Nigeria as one of the oil producing nations of the world.⁸

² Ibid.

³ Mineral Regulation (Oil) Ordinance of 1907.

⁴ OPEC Bulletin, November 1981, 2.

⁵ Z Mik Dashi, *The Community of Oil Exporting Countries* (New York: Council University Press, 1972) 17.

⁶ E O Ogbogah and W O Orosaye, 'Nigerian Oils Future Propat San Koyed to Government Policies (1979) (18/25)(x).

⁷ (n4).

⁸ Ibid.



Meaning and Nature of Petroleum

The word petroleum is derived from a combination of the Greek word ‘Petra’ or rock and the Latin ‘Oleum’. It is a composite, natural liquid mixture derived from deep beneath the earth surface.⁹ It is also made up of hydrocarbon, oxygen, nitrogen and sulphur with colour ranging from clear to black usually in liquid or solid form. The predominant hydrocarbons contained in crude oil (petroleum) include Aliphatics, Alicyclics and Polycyclic Aromatic Hydrocarbon (PAH).¹⁰

The Petroleum Act¹¹ defines petroleum as a mineral oil (or any other related hydrocarbon or natural gas as it exists in its natural state in strata and it does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillations. It also defines “crude oil” as oil in its natural state before it has been refined or treated, excluding water and other foreign substances.¹²

Black’s Law Dictionary defines the term “Petroleum” to mean the process or act of producing that which is produced or made i.e. goods.¹³ It is the way and manner in which goods and other property items are produced. For petroleum to be produced, crude oil must be refined. Crude oil in its natural state does not become petroleum until it is refined. The refinement of crude oil involves complex and sophisticated application of various technologies.

Also Oxford Advanced Learner’s Dictionary, 7th edition defined petroleum as mineral oil that is found under the ground or the sea and is used to produce petrol and gas, paraffin, diesel oil and so on which is made up of hydrocarbon, oxygen, nitrogen and sulphur with colour ranging from clear to black usually in liquid or solid form. It further defines “crude oil” as oil in its natural state before it has been refined or treated (excluding water and other foreign substances).¹⁴ In the same vein, it defines “natural gas” as gas obtained from boreholes and wells consisting primarily of hydrocarbon.

Petroleum Security

The term petroleum security has a multifaceted dimension ranging from economic, social, environmental, political, military and foreign policy.¹⁵ The concept “petroleum security” succinctly refers to the ability to reach an existing petroleum source rather than the depletion of potential sources.

⁹ K G Kingston, Oil and Gas Law: A Guide for International Practitioners (Germany: Lap Lambert Academic Publishing (2018) 65.

¹⁰ Ibid.

¹¹ Petroleum Act 1969 Cap p10 LFN 2004, s.15.

¹² Ibid.

¹³ B A Garner, Black’s Law Dictionary (9th edn. West Publisher 2004) 1209.

¹⁴ (n2).

¹⁵ A F Aihaji, ‘What is Energy Security? Economic, Environmental, Social, Foreign Policy, Technical and Security Dimensions (2008)(6) OGEL 1 -5.



The definition also includes sustainability of a reliable and affordable petroleum supply within both short and long terms.¹⁶ It therefore suffices according to the United Nations that petroleum scarcity vis-à-vis insecurity results from the absence of sufficient choice in accessing adequate, affordable, reliable, high quality, safe and economically benign energy services to support economic and human development¹⁷ remains a critical issue with respect to Nigerian petroleum energy support to Nigerian socio-economic development.

Generally, the definitional elements in petroleum security architecture traditionally include the following elements, availability, reliability and affordability of petroleum products. In contemporary sense, the concept understandably includes the fourth element of environmental sustainability.¹⁸

Availability deals with the ability to secure the petroleum energy needed by the consumers. Certain energy source maybe abundant but commercially unavailable due to a number of factors such as technological gaps. One such example is the class of compound called methane hydrates in which methane is held in lattice from under high pressure at low temperature. Interestingly, methane hydrate have the potential to add sustainability to global natural gas reserves if the methane can be extracted on the cost effective basis. Unfortunately, even after decades of research, widespread commercial exploitation of methane hydrate is not imminent.¹⁹ Reliability involves the extent to which petroleum energy services are protected from interruption. Petroleum energy is an essential building block of economic activity. It enables daily life but interruptions jeopardise the ability to run factories, illuminate hospitals and heat home continuously.²⁰ Furthermore, affordability refers to the use of petroleum supply, when petroleum energy is not affordable. It means that such energy supply cannot be used. Approximately 1.8 billion people across the world suffers chronically from petroleum energy poverty. They do not have electricity in their homes. Consumers naturally tend to prefer in expensive energy at least in the short run because low petroleum energy prices allow them to spend their disposal income on another things.

Finally, is the contemporary environmental consideration otherwise known as sustainability. Contemporary approach to petroleum security must place emphasis on environmental sustainability. This is more so because petroleum energy infrastructure typically is long lived and promotes the use of technologies and practices that will exacerbate climate change; account for some reasons why sustainability as an element is essential. Importantly too, environmental concern is predicated on the

¹⁶ L Erdal, Determinant of Energy Supply Security: An Econometric Analysis for Turkey (2015) 154.
<<https://www.researchgate.net>> accessed 15th October 2019.

¹⁷ Ibid.

¹⁸ J Elkind Energy Security, call for a broder Agenda in C Pascal and J Elkind.

¹⁹ (n1)

²⁰ Ibid.



“needs of the present without compromising the ability to future generations to meet their own needs”.²¹ Thus, the magnitude of energy impact on the environmental system suggest an array for additional linkages to petroleum energy security.²² These links are generally based on the assumption that society can become stressed to the point of collapse when environmental conditions deteriorate to the point that necessary resources are available.²³

3.0 Legal Framework for Petroleum Production and Supply Security in Nigeria

The fact that petroleum production and supply insecurity has been the bane of Nigeria petroleum industry cannot be overemphasized. Therefore, the need for legislating for security of production and supply of petroleum resources as a panacea to the lingering petroleum insecurity is an onerous task for every successive government in Nigeria. The concept for legislating for security of production and supply of petroleum products involves among others the recognition of an enforceable right to adequate supply of petroleum products for domestic consumption. It further involves the imposition of general and specific duties to provide adequate petroleum products for domestic consumers respectively on the national, international oil companies and the host government.²⁴ The legislative measures imposes great responsibility on the government to enshrine the right into the national petroleum legislative Act or other regulatory framework that will bind the parties.²⁵ Furthermore, in order to make the right recognizable by national laws (constitution), the government, national oil companies and international oil companies is enjoined to recognize the right to adequate security of supply as a public service obligation and also set out the required incentives, sactions and remedies for breach of this rights.²⁶

Constitution of the Federal Republic of Nigeria 1999 (As Amended)

In the hierarchy of norms, the constitution²⁷ is the supreme law of the land. It is referred to as the grunmorm and the vein from which all other sources of law derives their validity.²⁸ Nigeria as a Federal State is made up of a Federal Government and a division of the country into 36 states and the Federal capital territory.²⁹ Hence, there is evidence of allocation of responsibilities between the Federal/Central Government and the components units (state). The National Assembly consisting of the Senate and

²¹ G H Brundland, *Our Common Future* (Oxford University Press 1987) 43.

²² M A Brown and M Dwarkin, ‘The Environmental Dimension of Energy Security in B K Soracool, *The Routeledge Handbook of Energy Security* (New York, Routledge 2011)126.

²³ J Diamond, *Collapse: How Societies choose to fail or succeed* (New York).

²⁴ S C Dike, *Energy Security, the case of Nigeria and lessons from Brazil, Norway and the UK* (Pearl Publishers 2015) 311.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ CFRN 1999 (as amended).

²⁸ *Ibid* 1(1)*3), PDP VPC (2011) 17 NWLR (Pt 1277) 485 at 511.

²⁹ (n1).



House of Representatives³⁰ shall have the power to make laws for the peace order and good government of the federation or any part thereof. Consequently, the need for the enhancement of petroleum production security measures has attracted the attention of the National Assembly.³¹ The National Assembly has enacted the Petroleum Act,³² the National Environmental Standards and Regulation, Enforcement Agency (Establishment) Act³³ and the Nigeria's Extractive Industry Transparency Initiative Act. Others are the Nigeria Renewable Energy Master plan³⁴ and the Nigerian Renewable Energy and efficiency policy.³⁵

The Petroleum Industry Act (PIA) 2021

Over two decades, the much touted Petroleum Industry Act (PIA) has been in the saddle passing the legislative bureaucracy of the National Assembly until it was assented to and signed into law by the President of the Federal Republic of Nigeria on August 16th 2021 to repeal the extant Petroleum Act 2004. The fundamental essence of the new PIA (2021) is to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry and Development of the host communities. It contains 5 chapters, 319 sections and 8 schedules. In all it brought about 20 changes³⁶ as elucidated hereunder. The governance and institution is contained in chapter one of the Act and provides that the key objective is ensuring good governance and accountability, creation of a commercially oriented natural petroleum company and fostering a conducive business environment for petroleum operation. It further provides for the creation of the Nigerian upstream regulatory commission responsible for the technical and commercial regulation of the upstream petroleum operations and the Nigerian midstream and downstream petroleum regulatory authority responsible for technical and commercial regulation of the midstream and downstream operations in Nigeria.

The commission and Authority are exempted from the provisions of any enactment relating to the taxation of companies or trust funds. Similarly, the imposition of up to 1% levy on the wholesale price of petroleum products sold in the country (0.5% each for the authority fund and midstream gas infrastructure fund). Also, incorporation of a commercial and profit focused NNPC limited under companies and Allied Matters Act (CAMA) within 6 months from commencement of the new law with ownership vested in the Ministry of Petroleum Incorporated on behalf of the federation to take over assets, interest and liabilities of NNPC. This structure is expected to pave the way for eventually sale of shares to Nigeria. Again any assets, interest and liabilities not transferred to NNPC limited remain

³⁰ (n4).

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ 2002 and 2012.

³⁵ 2015

³⁶ www.modaq.com/Nigeria/oil-gas-electricity/1113/04 accessed 4th October 2021.

with NNPC until extinguished or transferred to the government after which NNPC shall lease to exist. Transfer and sale of the shares are subject to approval by the government and endorsement by the National Economic Council. Finally, NNPC limited will earn 10% of proceeds of the sale of profit oil and profit gas as management fee while 30% will be remitted to frontier exploration fund for the development of frontier acreages in addition to 10% of rent on petroleum prospecting licences and mining leases.

It further provides for general administration under the act in chapter two which the main objective is to provide for the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people and promote for sustainable development of the industry, ensure safe, efficient transportation and distribution, infrastructure and transparency and accountability in the administration of petroleum resources in Nigeria in other to avoid economic distortions and ensure a competitive market for the sale and distribution of petroleum product and natural gas in Nigeria and avoid cross - subsidies among different categories of consumers. Besides, the commission is required to develop a model licence and model lease to include a carried interest provision giving NNPC limited the right to participate up to 60% in a contract.

In the same vain, the development of the host communities is as elucidated in chapter three of the Act wherein the main objective is to foster sustainable prosperity within host communities, provide direct social and economic benefits and enhance harmonious co-existence. Also, any company granted an oil prospecting licence or mining lease or an operating company on behalf of Joint Venture Partners (settlor) is required to contribute 3% -5% (upstream companies) and 2% (other companies) of its actual operating expenditure in the immediately preceding calendar year to the host communities' development trust fund. This is in addition to the existing contribution of 3% to the NDDC. The fund is tax exempt and contribution by a settlor is tax deductible. Furthermore, board of trustees and executive members of the management committee may include persons of high integrity and professional standing who may not necessarily come from any of the host communities. Again, available funds are to be allocated 75% for capital projects 20% as reserve and 5% for administrative expenses. However, a community will forfeit the cost of repairs in the event of vandalism, sabotage, and other civil unrest causing damage to petroleum facilities and disruption of petroleum activities.

The fiscal framework is captured in chapter four of the Act which the key objective is to establish a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, provide clarity, enhances revenues for the government while ensuring a fair return for investors. It also provides that the Federal Inland Revenue Services (FIRS) to collect hydrocarbon tax of 15% - 30% or profits from crude oil production, CIT at 30% and education tax at 2% which will no longer be tax deductible. The Commission will collect rents, royalties and production shares as applicable while the Authority



will collect gas flare penalty from midstream operations. Late filing of tax returns will attract ₦410m on the first day and ₦2m for each subsequent day the failure continues. A ₦20m fine is applicable to an offense where no penalty is prescribed. Furthermore, generally, expenses must be wholly, reasonable, exclusively and necessarily incurred to be tax deductible. However, a cost price ratio limit of 65% of gross revenue is imposed to hydrocarbon tax deduction purposes, any excess cost incurred may be carried forward.

Again, no tax deduction of Head-office cost while tax deduction of interest on monies borrowed is subject to the satisfaction of the commission that the fund was employed for upstream operations and the interest rates reflect market conditions. Royalties are payable at the rates of 15% for onshore areas 12.5% for shallow water and 7.50% for natural gas.

In addition, a price-based royalty ranging from 0% - 10% is payable to be credited to the Nigerian sovereign investment authority. Gas utilization incentive will apply to midstream petroleum operations and large scale gas utilization industries. An additional 5 years' tax holiday will be granted to investors in gas pipeline. Finally, from the foregoing it is evident that the PIA 2021 repeals about 10 laws including the Associated Gas Reinjection Act, Hydrocarbon Oil Refineries Act, and when NNPC leases to exist, PPPRA Act, Petroleum Equalization Fund Act, PPTA, and Deep offshore and inland Basin Psc Act. It amends the pre-shipment inspection of oil Exports Act.³⁷

National Environmental Standard and Regulations Enforcement Agency Establishment Act (NESREA) 2007

The NESREA Act³⁸ established the National Environmental Standard and Regulations Enforcement Agency.³⁹ The Agency is charged with the responsibility of protecting and developing Nigerian environment. Petroleum industry is equally operated within the Nigerian environment hence affected by the frameworks of NESREA.⁴⁰ Specifically Sections 2 and 35 of NESERA Act⁴¹ preserve the various guidelines and standards made by FEPA which apply generally to all sectors including pollution from oil and gas.⁴² According to Laden: NESERA Act and Regulations constitutes a new down because in both purpose and content, they aim at addressing the preponderance of obsolete

³⁷ Petroleum Industry Act, 2021.

³⁸ NESREA Act 2007 Cap 164 LFN 2004.

³⁹ Ibid, s.1.

⁴⁰ Ibid, s.2

⁴¹ Ibid.

⁴² National Guidelines on Environmental Management System in Nigeria made Pursuant to Section 37 of the Defunct FEPA Act, NESREA Act 2007.



environmental regulations, standards and enforcement mechanisms which resulted over the years in the high rates of non-compliance with environmental laws, regulations and standards.⁴³

Sadly it could not attack the very petroleum industry that mostly degrades the Nigerian environment due to lack of jurisdiction over hydrocarbon industries.⁴⁴

Nigeria's Extractive Industry Transparency Initiatives Act 2007

It is trite that transparency, corruption and good governance in the petroleum industry are the bane of development of the industry in Nigeria.⁴⁵ It therefore contributes to the underdevelopment of infrastructure, the non-exploration activities which are constraints to developing the oil-producing region.⁴⁶ Unfortunately too, the Petroleum Act failed to resolve. The problem of corruption and transparency in view of the monopolistic right granted NNPC and corrupt practices of the officials of the Ministry of Petroleum.⁴⁷ Therefore, in order to properly address the aforesaid anomalies, the government promulgated the Nigerian Extractive Industry Transparency Initiatives (NEITI) Act⁴⁸ in line with the Extractive Industries Transparency initiatives (EITI). Its primary objective is to ensuring transparency in the receipt and payment of oil revenue between the government and the industry as well total reduction of corruption level as to enhance infrastructural and other needed developmental issues.⁴⁹ This laudable objective as discovered in course of this dissertation remains a subject of grave concern to well-meaning Nigerians as well as host communities.

Coastal and Inland Shipping (Cabotage) Act No. 5, 2003

The Coastal and Inland Shipping Act 2003 (Cabotage Act) is designed to restrict the use of foreign vessels in the domestic coastal territorial waters thereby encouraging indigenous ownership of vessels and to actively take charge of ownership of vessels engaged in carriage of goods within Nigerian territorial waters. In otherwords, the Act restricts the type of vessels that can engage in coastal trade in Nigeria to vessels which are wholly owned and managed by Nigerian citizens and which also are built and registered in Nigeria.⁵⁰ However, the Act also provides the exception that a foreign owned vessel operators wishing to participate in the coastal trade within Nigerian territorial water must obtain a restricted license from the Minister of Transport and thereafter seek for waiver to participate in coastal

⁴³ M T Laden, Review of NESREA Act 2007 and Regulation 2009 - 2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria (2012)(8) Law, Environment and Development journal, 121.

⁴⁴ (n24).

⁴⁵ C Obi, 'Oil Extraction, Dispossession, Resistance and Conflicting Nigeria's Rich Niger Delta' (2010) Canadian Journal of Development Studies, 224.

⁴⁶ 'National Extractive Industry Transparency Initiatives' <<http://eiti.org/Nigeria>> Accessed 20 May 2013.

⁴⁷ P Eigen, Fighting Corruption in Global Economy. Transparency Initiative in the Oil and Gas Industry (2007) 29 Houston Journal of Inter Law, 332.

⁴⁸ 2007.

⁴⁹ Ibid, s.2.

⁵⁰ See Section 3 Cabotage Act (2003).



trade where it's impossible to obtain the requirement of cabotage Act.⁵¹ These are aptly stated in Section 3 and 7(2) of the Act.

Section 3 of the Act states that, a vessel other than a vessel wholly owned and manned by a Nigerian Citizen, built and registered in Nigeria shall not engage in the domestic coastal carriage of cargo and passengers within the coastal territorial inland waters. Island or any point within the water of the Exclusive Economic Zone of Nigeria. Whereas, Section 7(2) of the Act further states that vessels built in a foreign yard but forfeited to any Nigerian government for breach of any law of Nigeria or captured as a war prize are exempted from the Nigerian built requirement,⁵² and that minister may grant waivers to foreign vessels who do not meet the requirement as to Nigerian ownership, manning and building of the vessel where he is satisfied that:

- a) there is no Nigerian wholly owned vessel that is suitable and available to provide the services or perform the activity described in the application;⁵³
- b) there is no qualified Nigerian officer or crew for the position specified in the application; and⁵⁴
- c) no Nigerian shipbuilding company .has the capacity to construct the particular type and size of vessel specified in the application.⁵⁵

Therefore, from the purport of the forgoing, the Act is designed to regulate Upstream and Downstream Sectors of Petroleum Industry in Nigeria. it is primarily designed to actively engage indigenous firms in the distribution of petroleum and its products. It's also meant to ensure full patriotism by the indigenous firms and actors in order to ensure security of supply of petroleum, yet insecurity still persist and has remained legendary.

Oil Pipeline Act, 1956

The transportation of crude oil from the well head by pipeline is governed and regulated by the oil Pipeline Act (Cap 338) 1956.⁵⁶ The Act which came into force on 4th October 1956 also provides for licences to be granted for the establishment and maintenance of pipelines incidental and supplemental to oil field.⁵⁷ The Act was later amended in 1965 to actually give effect to the above objective. It also has a subsidiary legislation, the oil and gas regulation of 1995. Importantly section 4(1) of the pipelines

⁵¹ Section 7(2).

⁵² Section 7(2).

⁵³ Section 9.

⁵⁴ Section 10.

⁵⁵ Section 11.

⁵⁶ Oil Pipeline Act (Cap 338) 1956.

⁵⁷ L Atsegbua, *Oil and Gas Law in Nigeria Theory and Application* (3rd Edition) Fifers Lane Publishers, Benin' Lagos 2012.



Act provides that any person may make an application to the Minister in accordance with the provisions of this Act and of any regulations made thereunder for the transportation of mineral oil or any product of which oil or gas to any point of destination to which such person requires such oil, gas or product to be transported for any purpose connected with petroleum trade or operations.⁵⁸ Similarly, every application for permit to survey shall specify the approximate route or alternative route proposed.⁵⁹ Furthermore, it also provided that the Minister may in the circumstance grant the permit to survey on payment of fees required by Section 31 of the Act or the Minister may for reasons sufficient onto him refuse to grant the permit to survey.⁶⁰ It is trite law that any person other than the holder of a licence shall construct, maintain or operate an oil pipeline. Every person who acts in contravention of subsection (4) shall be guilty of an offence and shall be liable on conviction to a term of imprisonment, not exceeding two years or a fine not exceeding one thousand Naira or both and the Minister may also require such convicted offender under this section to remove the pipeline and any ancillary installations.⁶¹

From the foregoing scenario, it is evident that the intention of this Act is to ensure safety of delivery of petroleum products to the ultimate consumers. Regrettably enough there are myriad of issues arising from pipeline transportation of petroleum products from the well head point to the ultimate consumers. Such as vandalization of pipelines or diversion of pipelines, to unauthorized destination, sabotage, fire incidents, rapture of pipelines resulting to oil spill as well as the nefarious activities of bounkerers. This ultimately result to petroleum production and supply insecurity in Nigeria.

Petroleum Profit Tax Act, 1990

The Petroleum Profit Tax Act which came into force on 1st January 1958 has seen several amendments. The present law is contained in Cap. 354 LFN 1990.⁶² The Act provides for the assessment and imposition of tax on the profits of companies engaged in petroleum operations.⁶³ The Federal Board of Inland Revenue is responsible for the administration and tax revenue as provided by the Act.⁶⁴ By the purport of Section 8 of the Act, tax is levied upon the profits of each accounting period of any company engaged in petroleum operations.⁶⁵

Furthermore, under Section 10, in computing the adjusted profit of a company, there shall be deduction of all outgoing and expenses wholly, exclusive and necessarily incurred within or outside Nigeria;

⁵⁸ Section 4(1) 1990.

⁵⁹ Section 4(2).

⁶⁰ Section 4(3)(4).

⁶¹ Section 17(4).

⁶² Petroleum Profit Tax Act, Cap 354 LFN 1990.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Section 8.



whereas Section 11 of the Act provides for areas of exception from tax deductions.⁶⁶ In the case of Gulf Oil Co. (Nig.) Ltd. Vs F.B.I.R.⁶⁷ where the issue for consideration was whether or not charges and or commission paid by Gulf oil to the Central Bank of Nigeria (CBN) as a result the Federal Government directive that Gulf oil company's profit tax be paid into an account abroad instead of in Nigeria where expenses wholly, exclusively and necessarily incurred for the process of Gulf Oil Company's Petroleum Operation within the meaning of Section 10(1) of the Petroleum Profit Tax Act. Whereas, the contention of the appellant is that the bank commission is deductible from its profit before tax, the respondent refused to allow the appellant to deduct the bank commission.⁶⁸

The Court of Appeal unanimously upheld their appeal on the ground that the payment of Central Bank charges/commission imposed by the Federal Government is an expense incurred in the course of the appellant's business which is petroleum operation and therefore qualifies for deduction under Section 10(1) of the Petroleum Profits Tax Act. This is also in line with the Supreme Court decision in the case of Shell Petroleum Development Company of Nigeria Limited vs Federal Board of Inland Revenue.⁶⁹ It is therefore noteworthy to state that the fiscal policy of the Petroleum Profit Tax Act is well intended to provide adequate financial mussels for the industry wherein the tax payable should have been ploughed back into the industry to ensure adequate maintenance of the infrastructure thereby making the existing refinery produce at its installed capacity as well as building new ones in order to avoid insecurity of supply of petroleum products.

The Nigerian Oil and Gas Industry Content Development Act 2010

The Nigerian Oil and Gas Industry Content Development Act came into force 22nd April 2010. It also established the Nigerian Content Monitoring Board charged with the responsibility to manage the coordination, monitoring and implementation of the local content law.⁷⁰ Generally speaking, the objective of the Nigerian content policy is to increase the quantum of composite value added to or created in the Nigerian economy through a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human and material resources and services in the country's oil and gas industry⁷¹ for example, Section 2 of the Act provides that all stakeholders including licensees and sub-contractor to develop a local content plan and consider it as part of their policy.⁷² Furthermore Section 3 makes compliance with local content requirements by the industry as

⁶⁶ Section 10.

⁶⁷ (1996) 8 NWLP Part 466 p. 256.

⁶⁸ (n13).

⁶⁹ (1996) 8 NWLR Part 466, p. 256.

⁷⁰ Nigerian Oil and Gas Industry Content Development Act 2010.

⁷¹ [www.nigcontent.com/ index.php?option.com](http://www.nigcontent.com/index.php?option.com).

⁷² Section 2.



a condition precedent for the award of contracts and licences.⁷³ The Nigerian Oil and Gas Industry Content Development Act has both short and long term development plans. But suffice me to emphasis here that these plans is only meant to ensure availability, reliability and sustainability of petroleum products so as to ensure security of production and supply of petroleum and its allied products in Nigeria.

From the foregoing it is also noteworthy highlight some institutional framework established by law that have assumed prominent roles in ensuring that petroleum products are available and affordable. Such as Ministry of Petroleum Resources, the Department of Petroleum Resources, the Nigerian National Petroleum Corporation, Ministry of Environment, Petroleum Products Pricing Regulatory Agency (PPPRA) and others will be discussed.

Ministry of Petroleum Resources

This Ministry of Petroleum Resources is charged with the function of specifically development of the petroleum sector as well as advising the government on its policy⁷⁴ and supervision of all the various players in the petroleum industry. The technical department known as Department of Petroleum Resources⁷⁵ is saddled with the responsibility of regulating the industry. Specifically, section 9 of the Petroleum Act grants the Minister of Petroleum the power to make regulations and prescribe anything for the purpose of enforcing and implementing the provisions of the Act. Consequently, the minister made the petroleum (Drilling and Production) 1969, as amended in 2003 and the petroleum (Refining) Regulations⁷⁶ etc. According to Thurber et al, the frequent clashes between the Ministry and NNPC over the administration of the industry and the interference by the government in the affairs of the Ministry has undermined the effective discharge of the role of the Ministry as a watchdog of the activities of the NNPC.⁷⁷ Interestingly, NNPC is an agency under the Ministry of Petroleum Resources whose duty is prescribed under the NNPC Act of 1977 (NNPC Act) which according to section 5 of the NNPC Act charges the corporation with such vertical integrate function as exploration, production, transportation and marketing of petroleum product.

The Department of Petroleum Resources

The Department of Petroleum Resources was formally established as part of the Nigerian National Petroleum Corporation (NNPC) pursuant to NNPC Act 1977⁷⁸ saddled with the responsibility of regulating and enforcing legal framework concerning oil and gas sector. It is also the function of DPR

⁷³ Section 3.

⁷⁴ (n7), s.8 and 9.

⁷⁵ Department of Petroleum Resources' <http://www.dpmigeria.com/dpr_role.html> accessed 5 June 2020.

⁷⁶ There are many regulations but these two are more relevant here.

⁷⁷ M Thurber and others, NNPC and Nigeria's Oil Patronage' (2010)(95) Programme on Energy and Sustainable Development, 5.

⁷⁸ NNPC Act 1977 Cap N123 LFN 2004.



to oversee the various activities of companies engaged in petroleum activities which entails ensuring that these companies comply with operational specification in accordance to domestic regulations, guidelines and best international oil industry best practices. This is also in furtherance to enforcing the provisions of the petroleum law, issuance of necessary permits, licenses etc. in Nigeria. Expectedly, DPR developed the Environmental Guidelines and Standards for Petroleum Industries in Nigeria (EGASPIN) 1981.⁷⁹ This advertently became a framework for benchmarking standards and enforcing environmental pollution some of which are effluent discharge and waste disposals. Furthermore, EGASPIN provides a concrete environmental signpost with respect to environmental standards and guideline for petroleum operations in Nigeria such as abatement, monitoring and containment of all forms of petroleum waste. However, the major constraints for effective delivery of its mandate is over bearing influence of the parent body NNPC as a government agency.

Ministry of Environment

Before the establishment of Ministry of Environment, the issue of environmental protection and regulatory framework were fragmented into other ministries and departments. In short, the issue of regulating environmental standard was not accorded its priority not until the establishment of Ministry of Environment in 1999 - wherein specific responsibility of ensuring and coordinating all Environmental Protection and Standard.⁸⁰ In 1988, the Federal Environmental Protection Agency Act 1988, herein (FEPA) was promulgated and subsequently amended in 1992.⁸¹ The FEPA Act created the Federal Environmental Protection Agency under the Ministry of Environment. This Agency subsequently developed the National Environmental Protection Pollution Abatement in Industries and facilities generating waste) Regulation 1991 (Protection Abatement) all made pursuant to section 37 of the FEPA Act. Expectedly, the industry was required to comply with these guidelines as relevant regulation in Nigeria which area of coverage include but not limited to protection of nations air, water, and land as well as monitoring of environmental quality and the determination of the permissible level of any hazardous discharges into the environment.⁸²

Specifically, section 23 of the FEPA Act entitles it to cooperate with Ministry of Petroleum and the DPR for the removal of oil-related pollutants discharged into the Nigerian environment.

Although the FEPA Act has been repealed and replaced with the National Environmental Standard Enforcement and Regulation (Establishment) Agency (NESERA) Act of 2007, some of the

⁷⁹ C Uagha, D O Okechuku and M Zagi, The Development of Environmental Guideline and Standards for Petroleum Industry in Nigeria: A Systematic Approach and Future Challenges (International Conference on Health, Safety and Enforcement of Oil and Gas Industry Calgary 2004) 65.

⁸⁰ 'Federal Ministry of Environment' <<http://environment.gov.ng/about-more/profile/>> accessed 5 June 2013.

⁸¹ FEPA Act 1992 No.86 of 1992.

⁸² FEPA Act 1992 No.86 of 1992.



Regulations were well preserved under the NESERA Act hence the reference to it in this research work.

Petroleum Products Pricing Regulatory Agency (PPPRA)

The PPPRA is an Agency of the government of Nigeria established in 2003 to among others monitor and regulate the supply of petroleum resources and also to determine the prices of petroleum products in Nigeria. Through its regulatory roles, PPPRA ensures the promotion of efficient and effective energy supply in Nigeria and same is achieved through the role it plays in subsidizing the petroleum products in Nigeria.

4.0 Conclusion/Recommendations

From the analysis so far, it is obvious that there exists enough legal framework for a robust and successful oil industry in Nigeria. It is also discovered that despite these legal framework and institutions, security of petroleum production and supply in Nigeria still remain a mirage. This is mainly because of the weaknesses of the legal and institutional framework coupled with the issue of general corruption and others vices. However, one can safely conclude that the recently passed Petroleum Industry Act (PIA) when fully implemented will be able to address the lapses/lacuna inherent in the extant Petroleum Act 2004 and ensure security of production and supply in Nigeria.

In the light of the foregoing and conclusion, it is pertinent to recommend as follows:

- 1) The government regulatory framework for petroleum industry especially the PIA although recently ascended by the President should be amended to encourage local content by limiting the operation of the IOC's to some sector of the industry in order to encourage indigenous oil companies compete favourably with their foreign counterparts.
- 2) The PIA should also have the obligatory provision for domestic supply obligation.
- 3) The existing refineries in the country should be made to function at its full installed capacity while deliberate actions should be made to encourage private business individuals to establish private refineries in form of modular refineries.
- 4) The full privatization of the nations National Oil Company holds enormous benefit in making the corporation independent of government interferences and function more effectively.
- 5) The government should take adequate and practical steps towards taking renewable energy programme more seriously as an alternative to petroleum energy.