

A Legal Analysis of the Challenges and Prospects of Acquisition of Oil Rights in Nigeria Under the Petroleum Industry Act, 2021

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Abstract: *This paper examined the challenges and prospects in the acquisition of oil rights in Nigeria, with particular focus on the legal and regulatory framework established by the Petroleum Industry Act 2021. Through analysis of relevant legislation, scholarly literature, and industry practices, the study identifies significant challenges. These challenges include lengthy administrative procedures, infrastructural deficits, lack of due process in licensing, arbitrary revocation of licences, corruption, and security concerns that continue to impede efficient oil rights acquisition. The research revealed that while the Petroleum Industry Act introduces substantial reforms, including the establishment of the Nigerian Upstream Petroleum Regulatory Commission and a more transparent licensing regime, implementation challenges persist. However, the study also identified promising prospects, including regulatory certainty through the new legislative framework, enhanced transparency obligations, pioneer status incentives for indigenous companies, and improved local content requirements. The paper concluded that while Nigeria's legal framework for oil rights acquisition has evolved significantly, successful implementation requires strong political will, institutional reform, and sustained commitment to transparency and accountability. The findings from the study contributes to the broader discourse on petroleum resource governance and offer insights for policymakers, industry stakeholders, and researchers in the field of energy law and policy.*

Keywords: oil rights acquisition, petroleum industry act, Nigeria, legal reform, energy law, NUPRC

INTRODUCTION

The oil and gas industry remains the backbone of Nigeria's economy, serving as a major source of government revenue and foreign exchange.¹ A key aspect of this sector is the acquisition of oil rights, which dictates who can explore, produce, and benefit from the country's petroleum resources. Under Nigerian law, ownership of all mineral resources, including oil, is vested in the federal government, which grants these rights through regulatory bodies such as the Ministry of Petroleum Resources and the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). This process is fundamental in ensuring the lawful exploitation of petroleum resources.²

The legal framework for oil rights acquisition in Nigeria has evolved, beginning with the Petroleum Act of 1969, which provided for Nigerian participation in oil exploration. Other key legislations, including the Petroleum Profit Tax Act and the Hydrocarbon Oil Refineries Act, sought to regulate the financial and operational aspects of the industry. However, these laws became outdated and failed to address contemporary challenges such as transparency in bidding processes, discretionary ministerial powers, licence conversion issues, and the arbitrary revocation of granted oil rights.³

In response to these issues, the Petroleum Industry Act (PIA) was enacted in 2021, replacing the Petroleum Act after years of legislative struggle. PIA established the NUPRC, which assumed the regulatory functions previously handled by the Department of Petroleum Resources (DPR) as well as relinquishment and revocation⁴ whilst abolishing the discretionary powers of the minister relating to the grant of oil rights.⁵ Among its reforms, the Act is tasked to ensure a fair, open, and transparent process for bidding, granting, and relinquishing oil rights, while also eliminating discretionary ministerial powers.

Nigeria's oil rights acquisition process, despite the potential of the Petroleum Industry Act (PIA), still faces systemic challenges. This study analyses the PIA's impact on oil rights regulation, recommending improvements for transparency, equity, and sustainability to contribute to legal reform and socio-economic development.

¹ V C Ogugua and N G Ikepeze, 'Examination of Some Legislations Referencing Acquisition of Rights for Oil Exploration, Prospection and Mining in Nigeria' [2015] (5) (9) *Journal of Energy Technologies and Policy*, 1.

² L Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (4th Edition, Benin City: Four Pillars Publishers, 2021)

³ *Ibid*

⁴ *Ibid*, s. 3 (1) (h)

⁵ *Ibid*, s.3 (1) (g)

Overview of Oil Rights Acquisition in Nigeria

The exploration of oil⁶ in Nigeria dates back to the early 90s when surveyors from Germany visited Nigeria for the Nigerian Bitumen Corporation and it began prospecting for Tar Sand deposits in South Western Nigeria.⁷ When the First World War broke out in 1914, these innovative endeavours came to an abrupt end. It is interesting to note that the Mineral Oils Ordinance (MOO), which governs the right to find, acquire, and work minerals, was passed in the same year. Among other things, this Ordinance, which is recognized as Nigeria's first major oil law, stated that only British subjects would be qualified to receive oil licenses.⁸ The Ordinance specifically states in Section 6(1) that:

No lease or license shall be granted except to a British subject or to a British company registered in Great Britain or in a British Colony and having its principal place of business within her majesty's dominion, the chairman and managing director (if any) and the majority of the directors of which are British subjects.⁹

The import of the above section is apparent as it upholds the tradition of imperialistic concession by granting exclusive rights to search for, extract, and exploit minerals to British subjects or companies under their control, leaving Nigerians with no rights in the activities of oil exploration. This also laid a foundation for the establishment of investor ownership of oil rights in Nigeria. Thus, with the law, the ownership of natural resources, including oil, was vested directly in the hands of Transnational Corporation.

It should be mentioned that oil exploration in Nigeria did not resume after the initial attempt was abruptly abandoned until 1938. By this time, Shell D'Arcy, a consortium of Dutch Shell was granted a sole concessionary right over the entire nation.¹⁰ However, Shell D'Arcy's attempt to explore for oil was put on hold during the Second World War (1939–1945). Following World War II, oil exploration efforts in Nigeria, especially in the Niger Delta, were resumed in 1946. With this resumption, Shell D'Arcy dug several exploratory oil wells in 1951.¹¹ For a lengthy amount of time (1938–1955), Shell D'Arcy (later Shell–British Petroleum) had a total monopoly on oil exploration. After obtaining a license to explore for oil, Mobil Producing (Nigeria) Ltd, a division of American Socony, Mobil Oil Company, started activities in Nigeria in 1955 using the brand

⁶ 'Oil' as used in this study includes crude oil, petroleum and natural gas.

⁷ U C Anochie & O O Mgbemena, Evaluation of Some Oil Companies in the Niger Delta Region of Nigeria: An Environmental Impact Approach (2015) (3) (2) *International Journal of Environment and Pollution Research*, 13-31

⁸ Ogugua and Ikpeze (n 1).

⁹ S. 6 (1) of Minerals Oil Ordinance, 1914

¹⁰ This was granted under Minerals Ordinance Order

¹¹ Anochie (n.7)

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name Mobil Exploration Nigeria Incorporated. On June 16, 1969, the company changed its name to Mobil Producing Nigeria.¹²

The intensification of the exploratory efforts of multinational corporations in the post-independence era, prompted the Nigerians government engagement in the oil and gas sector.¹³ At this moment, the government's action was made easier by at least three developments.

First, the nation aimed to gradually expand its power and control over oil production. This was motivated by the United Nations (UN)'s resolution on nations' permanent sovereignty over their natural resources. The Resolution read in part thus;

The right of the people to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own subsistence on the ground of any rights that may be claimed by other states.¹⁴

Secondly, the efforts and activities of Organisation of Petroleum Exporting Countries (OPEC), most especially the Declaratory Statement of Petroleum Policy adopted in June 1968.¹⁵ This policy outlined key principles for OPEC member countries (which Nigeria is part of) regarding the exploration, development, and management of hydrocarbon resources, was also a turning point for the Nigerian state.¹⁶ The statement emphasised the importance of direct involvement of FGN in exploration and development of petroleum resources. To seek equity participation in existing concessions, and implementing conservation measures.¹⁷ It also emphasised each country's inalienable claim to perpetual authority of its natural resources in order to further its own development. In accordance with the aforementioned, OPEC would subsequently publish the Solemn Declaration in March 1975 at the First Summit of Sovereigns and Heads of State of OPEC in Algiers, which expanded upon the 1968 Statement. This Declaration further acknowledged the evolving dynamics between oil-producing and consuming nations. It called for OPEC to collaborate with other countries to establish a new international economic order. An order characterised by justice, mutual understanding, and concern for the global well-being of all peoples.¹⁸

¹² A E Ite, U J Ibok, M U Ite, & S W Petters, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 1(4) *American Journal of Environmental Protection*, 78-90.

¹³ A Ogbuigwe, 'Refining in Nigeria: History, Challenges and Prospects.' (2018) (8) *Appl Petrochem Res*, 181–192

¹⁴ S K Benerjee. 'The Concept of Permanent Sovereignty Over Natural Resources' (1968) 8 *Indian J. Int'l Law* 515-517

¹⁵ OPEC, The Brief History of OPEC. <https://www.opec.org/opec_web/en/about_us/24.htm> accessed 28th April, 2025

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

Finally, as Nigerians were restricted to be fully involved in the oil sector industry with regards to natural resource explorations and production by the MOO, in 1969, the Petroleum Act was passed. The Act repealed MOO while maintaining the reliability of licenses and leases granted under the aforementioned ordinance.¹⁹ The Act's first schedule, paragraph 35, provides for the full involvement of the federal government in petroleum exploration and mining under the Minister of Petroleum Resources. The paragraph provides thus;

If he considers it to be in the public interest, the Minister may impose on a licence or lease to which this Schedule applies special terms and conditions not inconsistent with this Act, including (without prejudice to the generality of the foregoing) terms and conditions as to participation by the Federal Government in the venture to which the licence or lease relates, on terms to be negotiated between the Minister and the applicant for the licence or lease.²⁰

Later, in 1971, the Nigerian National Oil corporation was birthed as a result of the Federal Government of Nigeria joining OPEC,²¹ It subsequently became the Nigerian National Petroleum Corporation (NNPC).²² NNPC was in charge of representing the federal government's interests in contracts with multinational businesses for petroleum exploration. The government's involvement grew as a result of these developments since it would now control oil and, using its departments,²³ take on the role of regulator and decide who is granted rights to engage in oil production and exploration. Oil is owned by the federal government, even under PIA,²⁴ and is exclusively available to licensees and contracts.

Oil Rights Acquisition under the Petroleum Industry Act, 2021

No law in Nigeria can stand on its own without having its anchorage on the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN).²⁵ It is the ultimate legal document that controls the nation's oil rights acquisition and management. It gives the Federal Government ownership and authority over all minerals, including natural gas and oil, that are found inside Nigeria's borders and Exclusive Economic Zone. The following are stand of the constitution as regards the purchase of oil rights in Nigeria:

¹⁹ E Omolara, 'Licenses, Leases and Other Contractual Arrangements for the Exploration and Production of Petroleum: A Comparative Study between Nigeria and the United States' (LLM thesis, University of Georgia 2007) <https://getd.libs.uga.edu/pdfs/elumelu_omolara_o_200708_llm.pdf> accessed 25th April, 2025

²⁰ Par 35 (a) of PA, 1969

²¹ Decree No. 48 1971

²² Decree No. 33, 1977

²³ Ministry of Petroleum Resources, Department of Petroleum Resources, and NNPC

²⁴ Section 1, PIA 2021

²⁵ Section 1(3) CFRN

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The entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria; or in, under or upon the territorial waters and the Exclusive Economic Zone is vested in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.²⁶

Again, the Constitution empowered the National Assembly which consists of the Senate and the House of Representatives the power to legislate for the Nigerian Federation, including those that regulate the procedures for acquiring oil rights.²⁷

According to section 44 of the Constitution, no possessions or ownership of natural resources may be taken by force without following the required procedures. Furthermore, section 17 highlights the social values of justice, equality, and freedom and requires that the exploitation of natural resources be in line with international best practices and the welfare of the community.

Judicial interpretations have reinforced these constitutional principles. In *South Atlantic Petroleum v Minister of Petroleum Resources*,²⁸ the court upheld the Federal Government's policy of reclaiming unutilized portions of an Oil Prospecting License (OPL) given the access of an Oil Mining Lease (OML), affirming the practice of constant authority over natural resources. Similarly, in *NNPC v Famfa Oil Ltd*,²⁹ the Supreme Court addressed the government's attempt to compulsorily acquire a 50% interest in an oil block (OML 127) held by Famfa Oil. The court ruled that such acquisitions must comply with constitutional provisions, including section 44, and relevant petroleum laws. It further emphasised that government participation in oil ventures is not absolute and must adhere to due legal process, including compliance with the Petroleum Act. These legal precedents underscore that while the Government holds sovereign rights of Nigeria's minerals, its exercise of authority is constrained by constitutional and statutory provisions. It also highlights the importance of due process and fairness in oil rights acquisition and management. These principles remain fundamental to Nigeria's oil and gas jurisprudence. They ensure that resource governance aligns with constitutional mandates and benefits the community at large. It is these principles that PIA also incorporates.³⁰

²⁶ Sec 44(3), CFRN

²⁷ *Ibid.*, s 4; This power is also granted under item 39 of the Exclusive List

²⁸ (2023) LPELR-59746(SC)

²⁹ (2012) 17 NWLR 148

³⁰ Section 2, PIA

Petroleum Industry Act, 2021

It is crucial to note that the Oil and Gas Industry Reform Implementation Committee (OGIC) was established in 2000, marking the beginning of the effort to reform Nigeria's oil and gas sector.³¹ The National Oil and Gas Policy, which prioritises the division of commercial and regulatory functions within the Nigerian National Petroleum Corporation (NNPC), was developed as a result of the committee's recommendations. The Petroleum Industry Bill's (PIB) initial draft was also the result of this endeavour.³² It must also be noted that the monocultural economy of Nigeria is heavily fixated to the oil industry, which accounts for 60% of the country's income and 90% of its foreign exchange profits. Despite this significance of oil, the Petroleum Industry Act (PIA) has to be passed in 2021 due to decades of governance inefficiencies and transparency problems.³³

Over 20 years ago, the Petroleum Industry Bill (PIB) was originally presented to the National Assembly. The President brought it to the National Assembly for consideration on September 28, 2020, following multiple unsuccessful attempts to enact it. The Senate passed it on July 15, 2021, followed by the House of Representatives on July 16, 2021, and the President signed it into law on August 16, 2021. Through PIA, a system that has failed to function efficiently in accordance with international standards will be overhauled, which will benefit the petroleum industry financially and reduce its worldwide competitiveness, transparency, accountability, and good governance.

The Federal Government is granted the rights to property claims over petroleum resources in Nigeria, its territorial waters, continental shelf, and exclusive economic zones by the Act's five chapters. Among other things, the Act's goals are to create transparent, effective institutions with clear functions that promote accountability and good governance.³⁴ In addition to promoting sustainable growth and regulating upstream operations, including licensing and legal compliance, it aims to establish a favourable business climate for both domestic and foreign enterprises.³⁵ Transparency, third-party access, safe and effective infrastructure operation, and competitive markets for petroleum and its products are all prioritised. The framework also promotes downstream liberalization, value addition, local processing, and a fair business environment, protecting the environment, public health, and safety while optimizing advantages for Nigerians.³⁶ Key provisions of the PIA include restructuring the licensing framework. The new licenses Petroleum Exploration Licence (PEL),³⁷ Petroleum Prospecting Licence (PPL),³⁸ and Petroleum

³¹ H McArdle & T Edwards, 'Nigeria's Petroleum Industry Bill: The Path to Reform and Prosperity?' (*African Law and Business*, 2020) <<https://www.africanlawbusiness.com/news/14703-nigeria-s-petroleum-industry-bill-the-path-to-reform-and-prosperity>> accessed 28th April, 2025

³² *Ibid*

³³ Atsegbua (n. 2) 43

³⁴ PIA, s. 2

³⁵ *Ibid*

³⁶ *Ibid*, 44; s. 66 of PIA

³⁷ *Ibid.*, s 70 (1) (a)

³⁸ *Ibid.*, s 70 (1) (b)

Publication of the European Centre for Research Training and Development –UK Mining Lease (PML)³⁹ now replaces the old Oil Exploration Licence (OEL), Oil Prospecting Licence (OPL), and Oil Mining Lease (OML). All of which are given under more structured and transparent processes, with PPL and PML awarded through competitive bidding, while PEL is discretionary. Individual or non-corporate engagement is discouraged by the fact that these permits are only available to companies that were incorporated under the Companies and Allied Matters Act (CAMA).⁴⁰

PIA also established the Nigerian Upstream Regulatory Commission (NURC),⁴¹ a body in charge of upstream operations and economical oversight activities, replacing the Department of Petroleum Resources (DPR). The Minister retains oversight powers but no longer exclusively manages license administration, as approvals and revocations now fall under the NURC's recommendation purview.⁴² It is interesting to note that, in contrast to the previous administration, the Commission now manages the administration of licenses under the PIA, including approvals and revocations, rather than the Minister alone, as was the case under the Petroleum Act. While PPL and PML will only be awarded following an open and competitive bidding process, PEL will be awarded at the discretion of the awarding authority. Deemed approvals will be used in cases when the Act's consents and approvals are not given within the allotted period.⁴³

A notable reform under the Act is the optional conversion of existing OPLs and OMLs to the new licensing regime.⁴⁴ Conversion provides fiscal incentives and resolves ongoing disputes, although license holders must relinquish up to 60% of their acreage. Licenses not converted by February 2023 remain under the old regime until expiry, after which the PIA applies. It is thus expected to create a business-friendly environment, attract investment, and ensure that petroleum operations adhere to values of environmentally friendly growth, openness, and effective leadership. Through these reforms, the Act addresses the inefficiencies of the past and establishes a framework for maximizing the economic benefits of Nigeria's petroleum resources while safeguarding national interests.

Administrative Procedures for the Acquisition of Oil Rights in Nigeria under the Petroleum Industry Act, 2021

In Nigeria, the entitlement to explore and produce crude oil is derived from a federal licensing system. Petroleum Exploration Licences (PEL), Petroleum Prospecting Licences (PPL), Petroleum Mining Leases (PML), and Production Sharing Agreements with the Nigerian National Petroleum Corporation Limited (NNPC), the national oil firm, are among the available licenses.⁴⁵ Whereas

³⁹ *Ibid.*, s 70 (1) (c)

⁴⁰ *Ibid.*, s 70(2)

⁴¹ S. 7 of the PIA

⁴² *Ibid.*, S. 3

⁴³ *Ibid.*, s73 (4)

⁴⁴ *Ibid.* s. 92

⁴⁵ Atsegua (n. 2)

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a PPL offers exclusive exploration rights for designated onshore, shallow water, deep offshore, or frontier areas, a PEL grants non-exclusive exploration rights within designated areas. Additionally, the PPL permits the holder to remove and discard the generated oil. Ten years after the grant is made, non-producing territories must be given up. PML grants the right to explore for, acquire, and dispose of petroleum.

These permits and leases are granted by the Minister of Petroleum Resources based on NUPRC's recommendation. Concessions, production sharing, profit sharing, and risk service contracts are examples of model contracts that NUPRC uses to establish the terms and conditions of the contracts through competitive bid rounds. Commercial conditions are decided by competitive bidding, but concession contracts include non-negotiable terms codified by PIA. Operators are required to provide a Nigerian Content Plan that demonstrates their adherence to local content regulations.⁴⁶

Requirements for the Issuance of Licenses/Leases/Permits

According to PIA, NUPRC⁴⁷ and NMDPRA⁴⁸ is responsible for issuing permits and authorisations for oil and gas drilling in Nigeria. A permit gives authorisation for particular actions, but a license gives the authority to search for, extract, and manufacture oil and gas.⁴⁹ These procedures are administered by the Minister of Petroleum Resources, who mandates that the candidate be formed in Nigeria in accordance with the Companies and Allied Matters Act.⁵⁰ PPLs, PMLs, and production sharing agreements are awarded through fair and transparent bidding procedures that are supervised by NUPRC and overseen by the Ministry of Finance and the Nigeria Extractive Industries Transparency Initiative (NEITI), among other stakeholders.

Applicants must meet pre-qualification criteria including proof of operational experience and required net worth. The bidding process involves publication of licensing rounds, issuance of guidelines, and pre-qualification stages. Successful bidders must pay a signature bonus, a non-recoverable lump sum, to secure the rights to a marginal field. Farm-out agreements allow companies to assign part of their working interest to others who undertake development activities under the lease terms.⁵¹ These procedures emphasize transparency and accountability in granting oil rights, ensuring that the process remains competitive and benefits local businesses and stakeholders.

⁴⁶ Sections 7, 8, Nigeria Oil and Gas Industry Content Development Act, 2010

⁴⁷ Part II PIA 2021

⁴⁸ *Ibid.*, Part III

⁴⁹ A S Hornby, *Oxford Advanced Learners' Dictionary* (10th edn., Oxford: Oxford University Press 2020) 904.

⁵⁰ Sec. 70 (2) PIA

⁵¹ S. 94 PIA, 2021

Requirement for Transfer of Oil Rights

Under PIA, transferring upstream oil rights requires the permission of the Minister of Petroleum, in line with recommendation from the NUPRC. This process involves a review period of 60 days, with the MPR having 60 additional working days to communicate a decision.⁵² If no decision is made within this timeframe, consent is automatically granted.⁵³ The Act defines ‘qualifying interests’ to include ownership, working, and security interests in upstream assets, emphasizing a more transparent and structured approach to handling these assets. The introduction of a publicly accessible registry aims to enhance security for lenders and attract more investment in the sector. Additionally, mergers in the oil sector must adhere to the Federal Competition and Consumer Protection Commission (FCCPC)’s notification thresholds,⁵⁴ and publicly quoted companies must obtain SEC approval according to specific merger rules.

Procedures for Revocation of Acquired Oil Rights

Revocation means the annulment, cancellation, or reversal of an act or power. With respect to the meaning of cancellation of an instrument or grant, the court in *Nnubia v. Attorney-General of Rivers State*⁵⁵ as follows:

Cancellation means to destroy therefore, effectiveness or validity of. To annul, abrogate or terminate, defacement or mutilation of instruments, words of revocation written across instrument. A means whereby a holder discharges a party's liability on an instrument by physically demonstrating on the face of the instrument the intention to discharge as by writing "CANCELLED" across the instrument's face, striking out the party's signature, or destroying or mutilating the signature or the instrument.⁵⁶

PIA outlines the process and grounds for the revocation of acquired oil rights under section 96. The section provides grounds which can necessitate the revocation of oil rights. These includes failure to conduct operations according to international practices,⁵⁷ interruption of production,⁵⁸ non-compliance with terms and conditions,⁵⁹ failure to pay financial obligations,⁶⁰ illegal transfer

⁵² S. 95 of PIA

⁵³ *Ibid.*, s 95 (7) (b)

⁵⁴ S. 93 of the Federal Competition and Consumer Protection Act, 2018

⁵⁵ (1999) 3 NWLR (Pt. 593) 8270

⁵⁶ *Ibid.*, 110-111, paras. H-B

⁵⁷ *Ibid.*, s 96(1)(a) of PIA

⁵⁸ *Ibid.*, s.96(1)(b).

⁵⁹ *Korea National Oil Corporation v OPS (Nig.) Ltd.*, 2018)2 NWLR (Part 1604) 394.; s. 96(1) (c)

⁶⁰ s.96(10)(d) of PIA

of interest,⁶¹ and failure to meet environmental,⁶² host community,⁶³ and domestic supply obligations,⁶⁴ failure to submit and advance a field development plan.⁶⁵ The Minister of Petroleum Resources is empowered to revoke licences and leases after receiving written recommendations from the NUPRC and a minimum of sixty days for remediation.⁶⁶

When exercising his powers of revocation, the minister must first deliver a notification of failure to the licensee. This should be after the recommendation by NUPRC, detailing the precise basis for possible revocation to the applicable licensee or lessee.⁶⁷ This notice provides transparency and allows the licensee or lessee ninety days to correct any violations. If the licensee or lessee addresses the issues within this period, NUPRC will halt the revocation process. If not, the license may be revoked under section 99 of PIA. Under this section, if multiple holders possess a petroleum prospecting licence or mining lease and the grounds for revocation apply to some but not all, the Minister can withdraw the interest of the defaulting party while preserving the interests of the non-defaulting holders. The revocation of an interest does not eliminate the liabilities and obligations previously incurred by the licensee or lessee. Post-revocation, the obligations to the NUPRC, government, or third parties remain in effect. In accordance with best practices for the global petroleum business, the minister may designate a temporary worker within 30 days of a lawful revocation to go on with petroleum activities in the impacted areas.⁶⁸ During the interim period, a competitive bidding process will be initiated to replace the revoked license.⁶⁹

Relinquishment of Oil Rights (Licences and Leases)

According to PIA, ten years after the operation of a PML, the relevant lessee is required to give up any parcels that are outside the boundaries of a producing field.⁷⁰ Additionally, any formation that is deeper than the most profound producing formation must be given up, with the government gaining the deep rights.⁷¹ When the appropriate Oil Mining Licence (OML) is renewed, holders of OMLs are also subject to relinquishment duties.⁷² At the renewal date, OML holders must select areas or zones within the OML for appraisal, commercial discovery, significant gas or crude oil discovery, ongoing field development, or regular commercial production. The PIA specifies that if the total acreage designated is less than 40% of the OML area, the holder can select additional

⁶¹ *Ibid.*, 96(1)(f)

⁶² *Ibid.*, s.96(1)(i)

⁶³ S. 96(1)(n)

⁶⁴ *Ibid.*, s.96(1)(m)

⁶⁵ *Ibid.*, s 96(1)(k)

⁶⁶ *Ibid.*, s 97(1) (b)

⁶⁷ *Ibid*

⁶⁸ *Ibid.*, s 98(1)

⁶⁹ *Ibid.*, s 98(2)

⁷⁰ S. 93 PIA

⁷¹ S. 93(1) of the PIA

⁷² *Ibid*

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areas covered by the OML up to 40%.⁷³ If the selected acreage is more than 40%, the holder is allowed to retain the bigger portions. PMLs will be granted for areas designated for field development or regular commercial production, and the fiscal terms under the PIA will apply. For areas falling under appraisal, commercial discovery, significant gas or crude oil discovery, or retention areas, Petroleum Prospecting Licences (PPLs) will be awarded. The OML holder must give up all other regions that were not chosen.⁷⁴

Conversion of the Oil Rights

There are two categories of conversions under PIA, to wit; involuntary Conversion and voluntary conversion. In the former, the transition to the new PIA regime is not mandatory for existing OPL or OML holders before their licences/leases expire.⁷⁵ Renewal under the new regime is required post-expiry to ensure clarity in legal framework and operational continuity. Under the latter, OPL and OML holders may voluntarily convert to PIA regime through a conversion contract.⁷⁶ Within 18 months of the Act's effective date, this contract must be finished. It voids all NNPC assurances and mandates the end of any associated arbitral and legal proceedings. OMLs and non-converted OPLs remain under the Petroleum Act until their licenses expire, at which point the new system takes effect.⁷⁷ The owner of a petroleum exploring license or petroleum mining lease is once more prohibited from assigning, novating, or transferring their rights without the approval of the minister. This procedure guards against irrational consent withholding and guarantees transparency.⁷⁸ Finally, producing marginal fields continue at original royalty rates and must convert to a Petroleum Mining Licence within 18 months from the date PIA come into effect. Non-producing fields are converted into Petroleum Prospecting Licences.⁷⁹

Challenges of Acquisition of Oil Rights in Nigeria

Nigeria's oil industry faces numerous obstacles in the acquisition of oil rights, including complex regulations, political instability, corruption, security risks, community protests, and environmental issues. These challenges create an uncertain environment for investors and hinder the country's ability to fully leverage its oil resources for economic development. These challenges are categorised into three sub themes, namely, challenges on legal framework, administrative framework and infrastructural deficits. These will all be discussed below.

⁷³ *Ibid*, s 93(2)

⁷⁴ *Ibid.*, s 93(4)(5)

⁷⁵ *Ibid.*, s 92(1)

⁷⁶ *ibid*

⁷⁷ *Ibid*

⁷⁸ *Ibid.*, s 92(6)

⁷⁹ S. 94 PIA

Lack of Due Process in Granting Licences

The absence of due process in granting oil rights licences in Nigeria creates significant challenges. This deficiency undermines transparency, accountability, and fairness in Licence awards while also compromising the rights of involved parties. The lack of due process often leads to corruption, bribery, and favouritism,⁸⁰ resulting in licences being awarded to companies lacking the necessary expertise or resources.

It is argued that most licences are granted based on government favouritism⁸¹ rather than the merits of individual company applications and capabilities. The government sometimes issues and revokes licences to preferred companies or individuals to avoid corruption accusations, even when these entities lack technical capability in the petroleum value chain. This system of granting licences and renewals prioritises political support over technical and economic merit. This poses a serious problem for the oil sector in particular, as the decisions of the government have a significant impact on the future of the oil industry.⁸² Thus, it is particularly important for the government to exercise its judgment fairly when choosing whether or not to renew or revoke licences to ensure that the best interests of the country are served.⁸³

Arbitrary Revocation of licences

The arbitrary revocation of licences poses a significant challenge to companies operating in Nigeria's oil sector. This practice creates uncertainty and instability, deterring potential investors and jeopardizing existing investments.⁸⁴ The PIA provides for licence revocation,⁸⁵ with the Minister of Petroleum Resources, through NUPRC, exercising discretionary powers, albeit with some limitations under the PIA 2021.

Licence revocations can lead to financial losses, project delays, operational disruptions, and legal disputes. The uncertainty surrounding these revocations creates a hostile business environment and

⁸⁰ A. O. Oyewunmi and O.J. Olujobi, 'Transparency in Nigeria's oil and gas industry: Is Policy Re-engineering the way out?', *International Journal of Energy Economics and Policy*, [2016] (5)(4), 630-636.

⁸¹ *Ibid.*

⁸² A. Akinrele, "The Current impact of Global Crude Oil Prices on Nigeria-An Overview of the Nigerian Petroleum and Energy Sector" [2016] (9) (5) *Journal of World Energy Law and Business*, 314-345.

⁸³ *Ibid.*, 315.

⁸⁴ O. Yanwi and S.C. Dike, Revocation of licences in the Nigerian Petroleum industry: A Critical Appraisal.

Available at:

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://ajieel.com/index.php/a/article/download/60/47/199&ved=2ahUKEwiz9LCu5ZWGAxWvXEEAHdUMC8gQFnoECB0QAQ&usg=AOvVaw2WiT7DpYw7u9jOn9cDSvkB>> accessed 18th May 2024

⁸⁵ Sec. 96 PIA 2021

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impedes companies' ability to plan and operate effectively. This environment of uncertainty and conflict hinders collaboration, innovation, and sustainable development in the oil sector.

Unfavourable Terms and Conditions in Granting Licences

Acquiring oil rights in Nigeria is significantly hampered by unfavourable licensing terms. These unjust conditions, imposed by the government or its agencies on companies seeking to explore and produce oil and gas, stifle the oil sector's growth, deter investment, and create uncertainty for operators. A major obstacle is the complex and opaque licensing process. The lack of transparency and clarity in regulations makes it difficult for companies to navigate the process efficiently. This can lead to confusion, delays, and increased costs.

Furthermore, the terms and conditions attached to the acquisition of oil rights in Nigeria are often unfavourable to oil companies. The government may impose high fees, taxes, and royalties on oil companies, making it less economically viable for them to operate in the country. These terms can erode profit margins, reduce the competitiveness of Nigerian oil projects, and deter foreign investors from entering the market.⁸⁶ For example, in addition to the numerous taxes, the Licences are also required to make financial contributions to the host community development trust fund and environmental management trust coupled with the obligations stated in the Local Content Act 2010.⁸⁷

For instance, in the case *Korea National Oil Corporation v OPS (Nig.) Ltd.*⁸⁸ the Minister of Petroleum Resources revoked the allocation of OPL 321 and OPL 323 granted to appellants because they failed to pay the signature bonus for the licences. By the same letter, the ONGC Videsh Ltd.'s status as the winning bidder for OPL 321 and OPL 323 was restored subject to its payment in full of the signature bonus within the period stated in the letter. The appellants were aggrieved with the voiding of their licences. So, they sought and were granted leave to apply for judicial review. They filed an originating motion in which they sought several declaratory reliefs, an order of certiorari to quash the decision of the Minister voiding their licences, and an order of injunction.

The trial court held that it had the power to review the decision of the Minister. The trial court examined the reasons given for the Minister's decision, found the same untenable, and voided the revocation of OPL 321 and 323 on the grounds that the decision was illegal and procedurally unfair to the appellants. It, therefore, entered judgment in favour of the appellants, declared the revocation of OPL 321 and 323 null and void, and granted the other reliefs sought by the appellants. In appeal, the Court of Appeal allowed the appeal on the ground that a writ of certiorari does not lie against

⁸⁶ S E C Nwosu, 'Law and Nigeria's Petroleum Industry Optimisation: Any Hope in the Petroleum Industry Act 2021', *Journal of International Energy and Environmental Law*, [2021] (5), 23-38

⁸⁷ Yanwi (n 84).

⁸⁸ [2018] 2 NWLR (Part 1604) 394.

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executive or legislative acts and that the trial court lacked jurisdiction to hear and determine the appellants' suit. The Supreme Court affirmed the decision of the Court of Appeal and the appellant's suit was struck out.

Unfavourable terms extend beyond licensing to various aspects of oil and gas operations. For example, production-sharing contracts (PSCs) often impose unfair revenue sharing, limited operational control, and high costs and liabilities on companies. Similarly, gas production and utilization face unfavourable conditions, including high gas prices, limited infrastructure access, and strict regulations. Decommissioning and abandonment also present challenges with high costs and liabilities, limited access to funding, and stringent regulations.

Furthermore, stringent local content regulations, while intended to promote local participation, can become excessive and inflexible. This can hinder operations and limit access to vital expertise, technology, and capital needed for resource development. These unfavourable terms impact oil companies and have broader economic consequences for Nigeria. The potential revenue from oil exploration and production is crucial for national growth, and obstacles to acquiring oil rights hinder the country's ability to maximise its resources and realise its full economic potential.

State Ownership of Petroleum Resources

Nigeria's legal framework, which centres on state ownership of petroleum resources, presents several implications for oil acquisition. This framework is rooted in the Constitution and reinforced by the Petroleum Industry Act (PIA). While intended to ensure national control and equitable benefit sharing, it also creates challenges related to regulatory uncertainty, licensing complexity, and conflicts between federal and local interests.

The notion that countries have "Permanent Sovereignty Over Natural Resources" within their domains is traceable to two major resolutions of the United Nations General Assembly- the 1952⁸⁹ and 1962⁹⁰ editions. The 1952 resolution recognizes that *the right of peoples freely to use and exploit their natural resources is inherent in their sovereignty*.⁹¹

In Nigeria, the CFRN provides that:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in under or upon the territorial waters and the Exclusive Zone of Nigeria shall vest in the government of the Federation.⁹²

⁸⁹ Resolution No. 626 (VII) of the United Nations General Assembly December 21, 1952.

⁹⁰ Resolution No.1803 (XVII) of the United Nations General Assembly, December 14,1962

⁹¹ *Ibid*

⁹² S.44(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

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Similarly, Section 1 of the PIA, 2021 provides that: *The property and ownership of petroleum within Nigeria and its territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.*

The Supreme Court case *Attorney General of the Federation v. Attorney General Abia State & Ors*⁹³ affirmed the federal government's exclusive jurisdiction over mineral resources, including those in territorial waters.

The Nigerian Land Use Act of 1978, by centralizing land ownership in the federal government, *makes oil rights acquisition harder* by creating a complex and often frustrating landscape. Centralising land ownership under the federal government, while seemingly simplifying the process has actually created significant hurdles. Instead of a clear path to acquisition, companies face a quagmire of bureaucratic processes and potential legal challenges. The Act effectively disempowers traditional landowners, leading to protracted negotiations and disputes that can delay or even halt projects. According to Nkem, the need to navigate federal approvals while simultaneously addressing local grievances creates a time-consuming and costly process, adding significant risk to any investment.

Furthermore, the federal government's dominant role in oil resource ownership creates an uneven playing field. While companies may secure federal approvals, they still face the operational necessity of engaging with local stakeholders who, despite lacking legal ownership, maintain significant de facto influence over project success. Any lack of consultation brings perceived unfair distribution of benefits and breeds resentment and resistance, which can manifest in protests, legal challenges, and even sabotage of infrastructure. So even after approvals from the federal government, as provided by the ownership doctrine Nigeria uses, they still have to talk with local stakeholders. Or risk increased security costs, potential project delays, and reputational damage. This dual-track negotiation process - formal federal approval alongside informal but essential local acceptance - makes acquisition more complex than in jurisdictions where legal and practical authority are more aligned.

Challenges of the Administrative Framework

Lengthy Administrative Procedure in Getting Approval

The acquisition of oil rights in Nigeria involves a complex and time-consuming administrative procedure. This procedure encompasses the methods and processes before administrative agencies, defined as a succession of acts and operations issued or performed by an administrative body. These procedures are conducted either on the body's own motion or upon request, to adjudicate rights, interests, and obligations of parties or to make decisions based on public interest, according to prevailing laws and regulations.

⁹³ (2002) 4 S.C. (pt 1)

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Companies seeking to acquire oil rights must engage with various stakeholders, including local communities, traditional leaders, and government officials. This engagement process can be lengthy, especially when conflicts or disputes need resolution before approvals can be granted. The involvement of multiple government agencies with overlapping roles creates confusion and duplication of efforts.⁹⁴

The approval process involves regulatory agencies⁹⁵ such as the Department of Petroleum Resources (DPR), the Ministry of Petroleum Resources, and the Federal Ministry of Environment. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), under the PIA, is responsible for Licence issuance.⁹⁶ Each agency maintains its requirements and procedures, leading to a complex and bureaucratic process.⁹⁷ This review process can take a significant amount of time, as each agency may have different timelines and priorities, leading to delays in obtaining approvals.

Additionally, companies seeking approval for oil rights in Nigeria must provide extensive documentation, including detailed project proposals, environmental impact assessments, financial statements, technical reports, and legal agreements. Gathering and submitting all the necessary documents can be a cumbersome and time-consuming task, especially if there are discrepancies or revisions required by the regulatory agencies. Applications are often subject to prolonged review and approval periods, sometimes taking months or even years to complete. Closely related to this, there is a lack of transparency in the approval process can also contribute to delays in acquiring

⁹⁴ A.D. Adekunle, 'The Effect of Multiple Regulatory Regimes on the Nigerian Petroleum Industry', *International In-house Counsel Journal*, (2018) 1(2). Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.iaia.org/pdf/case-studies/EIANigeria.pdf&ved=2ahUKewjoqI2Y05WGAXWESUEAHdFoC_wQFnoECD8QAQ&usg=AOvVaw01fS_qDlj7X8e0L9OCXRvs1 > accessed 18th May 2024

⁹⁵ D. K. Ogbuishi, 'A Deconstruction of the Petroleum Industry Act (PIA) 2021: Prospects and Consequences for the Nigerian Oil and Gas Sector'. Available at <https://www.researchgate.net/profile/Daberechukwu-Ogbuishi/publication/379431852_A_Deconstruction_of_the_Petroleum_Industry_Act_PIA_2021_Prospects_and_Consequences_for_the_Nigerian_Oil_and_Gas_Sector/links/66089bf410ca867987303388/A-Deconstruction-of-the-Petroleum-Industry-Act-PIA-2021-Prospects-and-Consequences-for-the-Nigerian-Oil-and-Gas-Sector.pdf?origin=publicationDetail&_sg%5B0%5D=vVITIpAWMeDj-Eol-yVpsZSso86sctB0cZY1APqK5SILnTJOzsiMXDKJWyt4dAMwKg6uwFNSINoRTJ0hiDxKWw.ID5bjipR_vsxvdlWzfi4rWcgdikzAb7qJT5Y0VJVO7kXKSfyPCEmp30r62IPoyFsNfIKe36XPhNL7DD8EuMtnw&_sg%5B1%5D=glnPkD0ZPsQkZBAV2IMO1cPLziLxzD2f76VHImrM5Oy_MrYqcAm6zC_CYt6GqlExcoeD6hXcqZQ0NDcyeio2q5YeCRBJMnTNXAC1SfCD0KJx.ID5bjipR_vsxvdlWzfi4rWcgdikzAb7qJT5Y0VJVO7kXKSfyPCEmp30r62IPoyFsNfIKe36XPhNL7DD8EuMtnw&iepl=&rtd=eyJjb250ZW50SW50ZW50IjoibWFpbkl0ZW0ifQ%3D%3D&tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIiwicGF9zaXRpb24iOiJwYWdlSGVhZGVyIn19> accessed 18th May 2024

⁹⁶ Section 318 of the PIA 2021

⁹⁷ Mondaq, 'Procedure For Registration Of DPR Permits And Licences (2021)'. Available at: <https://www.mondaq.com/nigeria/oil-gas--electricity/1075068/procedure-for-registration-of-dpr-permits-and-licences> > accessed 18th May 2024

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oil rights in Nigeria. Companies may face challenges in understanding the reasons for delays or the status of their applications, leading to uncertainties and frustrations that can prolong the overall process.

Lack of Political Will

The absence of political will manifests in the government's failure to create an enabling environment for oil exploration and production. This challenge is often linked to corruption, making it difficult for companies to navigate the regulatory environment and acquire oil rights through transparent and legal means.⁹⁸ With government officials prioritising personal interests over national ones, leading to unfair allocation of oil rights and hindering legitimate⁹⁹ companies' processes.

Political instability and frequent government changes create an unstable environment that discourages investment. The lack of effective regulation and enforcement of laws¹⁰⁰ has created loopholes and inconsistencies in the process of acquiring oil rights.¹⁰¹ This has resulted in social and environmental challenges, including pollution, land degradation, and community displacement.

There are numerous examples where the Federal Government has revoked licences given by earlier administrations. Notably, it was claimed that Eni and Shell Petroleum spent \$1.1 billion for oil block OPL 245 in 2011.¹⁰² The payment was purportedly sent to the federal government, which then forwarded it to the Malabu Company, which was owned by a former oil minister of Nigeria who had given his own business the oil block while in office.¹⁰³

Corruption

Corruption remains a persistent challenge in Nigeria's oil rights acquisition process.¹⁰⁴ As Africa's largest oil producer, Nigeria attracts significant investment from multinational oil companies, but

⁹⁸ O. J. Olujobi and O. A. Oyewunmi, 'Annulment of Oil Licences in Nigeria's Upstream Petroleum Sector: A Legal Critique of the Costs and Benefits', *International Journal of Energy Economics and Policy*, [2017](7)(3), pp. 364-369.

⁹⁹ *Ibid*

¹⁰⁰ O J Olujobi, "Nigeria's Upstream Petroleum In-corruption Legal Framework: the Necessity for Overhauling and Enrichment", (2023) (26)7 *Journal of Money Laundering Control*, 1-27. Available online at <<https://doi.org/10.1108/JMLC-10-2020-0119>> Accessed 15th December 2024

¹⁰¹ Akinrele A, "The Current impact of Global Crude Oil Prices on Nigeria-An Overview of the Nigerian Petroleum and Energy Sector" [2016] (9) (5) *Journal of World Energy Law and Business*, 314-345.

¹⁰² *Ibid*, 365.

¹⁰³ *Ibid*, 365.

¹⁰⁴ O.J. Olujobi, 'Legal Analysis of Erratic Supply of Electricity in Nigeria: Is Renewable Energy a True Alternative? Redeemer's University Nigeria', *Journal of Jurisprudence & International Law (RUNJJIL)* 2022;2(1), pp.14–35. Available at: <http://www.runlawjournals.com/index.php/runjjil/issue/view/3>> accessed 18th May 2024

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corruption has led to inefficiency and lack of transparency in the sector. Government officials often demand bribes or kickbacks for favourable decisions, creating an uneven playing field where connections matter more than expertise.

Though the administration of the licences (including approvals and revocation) will be handled by the Commission and no longer solely under the purview of the Minister as is the case under the Petroleum Act¹⁰⁵, at most times, government officials responsible for awarding oil licences and contracts demand bribes or kickbacks in exchange for preferential treatment or favourable decisions.¹⁰⁶

The Halliburton case exemplifies this issue, where company officials admitted to proposing \$2.4 million¹⁰⁷ in bribes to tax officials for favourable tax rebates. As a result, the company's Licence was revoked.²⁹⁶ As will later be canvassed in this study, transparency in the income of the upstream petroleum industry is the prerequisite to exterminating corruption.

Transparency in Nigeria's upstream petroleum sector is crucial to combat corruption, as evidenced by inconsistent data from the Central Bank, Ministry of Finance, and DPR, as noted by Ayoade.¹⁰⁸ Oyewunmi and Olujobi¹⁰⁹ highlighted the lack of transparency in NNPC's operations due to weak record-keeping stipulations. Public disclosure of financial statements and contracts, without compromising confidentiality, is essential. Corruption, often involving government officials and multinational firms, leads to revenue loss due to inadequate due diligence.

The PIA mandates royalty payments (15% onshore, 12.5% shallow, 7.5% deep offshore) and other taxes (5-30% profit tax, 30% company income tax, 2% education tax) collected by the FIRS, NUPRC, and NMDPRA.¹¹⁰ Non-compliance can lead to Licence revocation.¹¹¹ However, corruption, such as non-payment of royalties due to influence, persists. Ultimately, corruption in

¹⁰⁵ C. Uwaegbute, J. Adeola and O. Williams, Upstream Operations. In *The Petroleum Industry Act: Redefining the Nigerian Oil and Gas Landscape*, 2021. Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pwc-nigeria.typepad.com/files/the-petroleum-industry-act-insights-series_august-2021.pdf&ved=2ahUKEwiK4NOp3pWGAXV7aEEAHUT8AKMQFnoECEAQAAQ&usg=AOvVaw0gZDuIs9LsqEo_gMHeKu-0R > accessed 18th May 2024.

¹⁰⁶ C.B. Achinike, Nigeria: Anti-Corruption Overview in *The Oil and Gas Industry*. Brickmans Law, 2021.

¹⁰⁷ O.J. Olujobi and O.A. Oyewunmi, (n 104), 369.

¹⁰⁸ M.A. Ayoade, "Nigerian National Petroleum Corporation and Prospects for Transparency in the Petroleum Industry Bill", [2011] (5) *KNUST Law Journal*, 89.

¹⁰⁹ O.A. Oyewunmi and O.J. Olujobi, (n 104), 630.

¹¹⁰ Y Obarijima and S C Dike, 'Revocation of Licences in the Nigerian Petroleum Industry: A Critical Appraisal', (2023) (7), *African Journal of International Energy and Environmental Law*, 195-210

¹¹¹ Section 96 (10) (d) PIA 2021.

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oil rights acquisition fuels insecurity and conflict in oil-producing regions, exacerbating disputes over land and compensation, and hindering peace and sustainability.

Security Concerns

Security presents a major challenge in Nigeria's oil sector,¹¹² particularly in the Niger Delta region. Militant groups, such as the Movement for the Emancipation of the Niger Delta (MEND) and the Niger Delta Avengers, frequently attack oil installations and personnel, creating an unstable operating environment.¹¹³

These security issues stem from environmental degradation, economic marginalization, and disputes over oil revenue distribution. Criminal gangs engage in oil theft, sabotage, and piracy, further complicating operations. Companies must invest heavily in security measures, increasing operational costs and reducing profitability.

Capacity Building

Nigeria's Petroleum Industry Act (PIA) has ushered in a new era for oil rights acquisition, bringing with it a complex legal and regulatory landscape that presents significant capacity building challenges for Organisations. This complexity, as highlighted by the Supreme Court in *Shell Petroleum Development Company Ltd v. Federal Board of Inland Revenue (2016)*¹¹⁴, necessitates specialised expertise for navigating the intricacies of petroleum law. The PIA's multifaceted requirements create capacity gaps across several key areas, impacting both established players and new entrants.

One crucial area is the technical capacity to meet the PIA's enhanced environmental protection and community development standards.¹¹⁵ Organisations must invest in expertise related to environmental impact assessments, remediation, and sustainable development practices. This is not merely about acquiring equipment; it requires developing internal competency to manage these complex aspects of operations.

¹¹² T. Oyedele, A. Banjo and T. Tetey, General overview of the industry. In *The Petroleum Industry Act: Redefining the Nigerian Oil and Gas Landscape*, 2021. Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pwc-nigeria.typepad.com/files/the-petroleum-industry-act-insights-series-august-2021.pdf&ved=2ahUKEwiK4NOp3pWGAXV7aEEAHUT8AKMQFnoECEAQAQ&usg=AOvVaw0gZDuIs9LsqEo_gMHeKu-0R > accessed 18th May 2024

¹¹³ The Vanguard Nigeria, Shell declares 'force majeure' on Nigerian crude exports, 2014. Available at: <http://www.vanguardngr.com/2014/03/shell-declares-force-majeure-nigeria-crude-exports>.> accessed 18th May 2024

¹¹⁴ (1996) LLJR-SC

¹¹⁵ 'Host Communities Development Trusts under the PIA: Policy vs. Practice – AO2 Law – Anaje, Olumide, Oke, Akinkugbe. Legal Professionals with International Depth' (*Ao2law.com* 27 May 2024) <<https://ao2law.com/host-communities-developement-trusts-under-the-pia-policy-vs-practice/>> accessed 11 February 2025

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The PIA's provisions for Host Communities Development Trust Funds (HCDTFs) present another significant challenge.¹¹⁶ Understanding and implementing the HCETF framework requires specialised expertise in community engagement, fund management, and sustainable development project implementation. Failing to effectively manage community relations and development obligations can jeopardise acquisition rights.¹¹⁷ This necessitates a shift from traditional corporate social responsibility approaches to a more structured and legally mandated framework.

These capacity challenges disproportionately affect different categories of players:

- **New Market Entrants:** Face the daunting task of simultaneously developing expertise across multiple domains. They lack the established infrastructure and experience of incumbents, making capacity building a significant hurdle.
- **Existing Players:** Must adapt their established processes and systems to meet the PIA's new requirements. This can involve significant restructuring and retraining, requiring substantial investment.
- **Indigenous Companies:** According to Onwuka, local companies lack the resources for extensive capacity development, hindering their ability to effectively compete with international oil companies.¹¹⁸ This reinforces existing power imbalances in the sector.

Capacity constraints also extend to regulatory bodies, regulatory agencies may themselves lack the capacity to effectively implement the PIA. This can lead to delays, inconsistencies in application of the law, and increased uncertainty for operators. Strengthening the capacity of regulatory bodies is therefore crucial for the overall success of the PIA.

Although capacity can be easily acquired through external consultation, the importance of sustained internal capacity for ongoing compliance and stakeholder management is relevant. External consultants can provide valuable support, but they cannot replace the need for internal expertise.

The PIA's complexity creates a barrier to entry, impacting:

- **Speed of Acquisition:** The time required to secure oil rights is significantly extended due to the need for capacity building.
- **Costs:** Developing the necessary expertise involves substantial financial investment.

¹¹⁶ SDN, 'PRESS RELEASE: How the Petroleum Industry Act Could Backfire for Host Communities | SDN' (SDN16 May 2023) <<https://sdn.ngo/how-the-petroleum-industry-act-could-backfire-for-host-communities%EF%BF%BC/>> accessed 11 February 2025

¹¹⁷ Chilenye Nwapi, 'Legal and Institutional Frameworks for Community Development Agreements in the Mining Sector in Africa' (2017) 4 *The Extractive Industries and Society*, 202

¹¹⁸ Onwuka U, 'Strategies for Improving Local Content Development in Nigeria Oil Strategies for Improving Local Content Development in Nigeria Oil and Gas Industry and Gas Industry' <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?params=/context/dissertations/article/11720/&path_info=Onwuka_waldenu_0543D_26202.pdf> accessed 11 February 2025

- **Compliance:** Maintaining compliance with the evolving regulatory framework requires ongoing capacity development.
- **Stakeholder Engagement:** Effective stakeholder management requires specialised skills and resources.

The dynamic nature of the regulatory framework necessitates continuous capacity building. Organisations must be prepared to adapt to future changes in legislation, regulations, and industry best practices.¹¹⁹ This requires a long-term commitment to learning and development.

Challenges of the Infrastructure Framework

Infrastructural Deficit

Infrastructure deficit represents a major challenge in Nigeria's oil rights acquisition process, despite the fact that the Constitution states that *for the purpose of promoting national integration, it shall be the duty of the state to provide adequate facilities for and encourage the free mobility of people, goods and services throughout the federation*.¹²⁰ This deficit manifests in inadequate physical structures and systems necessary for exploration, production, and transportation of oil and gas resources.¹²¹

The lack of infrastructure affects various aspects of the oil and gas industry. Nigeria loses millions of dollars to gas flaring due to inadequate gas transmission and processing infrastructure. The oil-producing regions suffer from a lack of social infrastructure, including healthcare facilities, schools, and housing, requiring companies to invest in community development projects as part of their social responsibility initiatives.

Poor road infrastructure hampers the transportation of equipment, materials, and personnel to and from exploration and production sites, leading to project delays and increased costs. The country's chronic power supply shortages force companies to rely on costly and environmentally unsustainable diesel generators for their operations.

¹¹⁹ 'Strategic Optimization of Nigerian Content in Oil & Gas Operations: Balancing Local Capacity Building with International Expertise' (*Mondaq.com*2024) <<https://www.mondaq.com/nigeria/oil-gas-electricity/1534588/strategic-optimization-of-nigerian-content-in-oil-gas-operations-balancing-local-capacity-building-with-international-expertise>> accessed 11 February 2025

¹²⁰ Chapter II, Sub-section 15 (3) (n 22)

¹²¹ T. Oyedele, A. Banjo and T. Teteye, General Overview of the Industry. In *The Petroleum Industry Act: Redefining the Nigerian Oil and Gas Landscape*, (2021). Available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pwc-nigeria.typepad.com/files/the-petroleum-industry-act-insights-series-august-2021.pdf&ved=2ahUKEwiK4NOp3pWGAXV7aEEAHUT8AKMQFnoECEAQAAQ&usq=AOvVaw0gZDuIs9LsqEo_gMHeKu-0R> accessed 18th May 2024

The lack of investment in infrastructure improvement hinders the potential of oil production in Nigeria. In oil-producing regions of Nigeria, there is a lack of social infrastructure, including healthcare facilities, schools, and housing. Thus, companies are required to invest in community development projects as part of their social responsibility initiatives, further adding to their operational costs.

Unequitable/Hostile Operational Environment

One of the significant challenges faced by companies seeking to acquire oil rights in Nigeria is the inequitable and hostile operational environment. This environment is characterised by various factors such as corruption, security risks, regulatory uncertainties, and community unrest, all of which create obstacles for companies looking to explore and exploit oil resources in the country. Existing laws on petroleum have relegated oil-producing communities' ownership rights and values derivable from oil exploration. Furthermore, exploitation of their land due to the negative impacts on the environment of oil processing is not tackled by the existing regulatory framework.¹²² Private ownership of oil has been removed from indigenous landowners and placed in the hands of the Federal Government.¹²³ Furthermore, the repealed Petroleum Act¹²⁴ bestows exclusive ownership of petroleum in the Federal Government. The Land Use Act¹²⁵ also vested in each state government the right to manage the land for all Nigerians' common benefit. The Exclusive Economic Zone Act¹²⁶ also authorises the government to exploit its natural resources. Likewise, the Mineral Act¹²⁷ vested all minerals in Nigeria to the government. These laws have strained the relationship between native landowners, oil firms and the government by removing land, minerals and oil from the oil-bearing communities. A liberal legal regime on proprietorship of extractive resources is lacking, and as such, oil-bearing communities' interests may be sidelined. It has been suggested that a joint ownership approach may be the way forward.¹²⁸

The challenging environment extends to ethical and regulatory spheres. Companies may feel pressured to engage in corrupt practices to secure licences and permits, creating legal and reputational risks and eroding ethical standards. This lack of clarity in oil exploration and production regulations hampers investment decisions and deters potential investors.

¹²² G. Deinduomo, "Oil Exploration Activities and Oil-Producing Communities: A Framework for Breaking the Barriers to the Development of Oil Producing Communities. In *Law and Petroleum Industry in Nigeria Current Challenges*:" Essay in Honour of Justice Kate Abiri; Emiri, F., Deinduomo, G., Eds.; Malthouse Press: Lagos, Nigeria, 2009, 358–377.

¹²³ Section 44(3) CFRN

¹²⁴ Section 1(1) of the (Repealed) Petroleum Act 1969.

¹²⁵ Section 1 of the Land Use Act 1978 Cap. L5 LFN, 2004.

¹²⁶ Section 2 of the Exclusive Economic Zone Act 1978.

¹²⁷ Section 1 of the Nigerian Minerals and Mining Act, 2007.

¹²⁸ K.G. Kingston, P.N. Nweke and S. Didia-Nweke, "The Effects of Correlative Rights on Oil and Gas Production in Ogoni Lands" [2019] (6), *Rivers State University Journal of Public Law*, 1.

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Local communities often protest and disrupt operations due to perceived unfairness, environmental concerns, and lack of benefits. Oil companies struggle to manage community relations and address grievances.¹²⁹ Beyond unfavourable contractual terms, the operational environment in Nigeria presents significant challenges, particularly in the Niger Delta. Security risks, including militant groups, armed bandits, and criminal syndicates, threaten personnel and assets. Kidnappings, infrastructure sabotage, and extortion are common, forcing companies to invest heavily in security, increasing costs and reducing profitability. Community unrest, fuelled by feelings of marginalization, also disrupts operations. Protests, blockades, and land disputes create tensions between companies and host communities, leading to project delays and reputational damage.

Environmental concerns are another challenge faced by companies seeking to acquire oil rights in Nigeria. The oil and gas sector is known for its negative impact on the environment, including pollution, deforestation, and water contamination. Companies operating in Nigeria are required to comply with strict environmental regulations, but enforcement is often lax, leading to environmental degradation and health risks for local populations.¹³⁰ The lack of effective regulatory compliance mechanisms further exacerbates these issues, as companies may disregard environmental standards in pursuit of profit. Failing to address environmental concerns not only damages the ecosystem but also tarnishes the reputation of companies in the eyes of the public and stakeholders.

Prospects in the Acquisition of Oil Rights in Nigeria

As Africa's largest oil producer, Nigeria presents substantial opportunities for oil exploration and production. Despite various challenges, the country's oil and gas sector offers attractive prospects for investment, with several positive developments shaping the future of oil rights acquisition.

Certainty of Regulatory Regime (PIA)

The Petroleum Industry Act (PIA) 2021 represents a watershed moment in Nigeria's petroleum industry.¹³¹ This landmark legislation establishes a new regulatory framework that provides certainty and stability¹³² for investors and stakeholders. The Act reforms the regulatory landscape

¹²⁹ E.V. Clark, The Politics of Oil in Nigeria: Transparency and Accountability for Sustainable Development in the Niger Delta, *American International Journal of Contemporary Research*, 2016, 6(4), p. 76.

¹³⁰ A.A. Kafada, Environmental impacts of oil exploration and exploitation in the Niger delta of Nigeria, *Global Journal of Science Frontier Research Environment and Earth Sciences*, (2012), 12(3), pp. 2249-4626.

¹³¹ K. Nwuke, Nigeria's Petroleum Industry Act: Addressing old problems, creating new ones, 2021. Available at: <https://www.brookings.edu/articles/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/> >accessed 18th May 2024

¹³² CloD Nigeria, Revolutionizing Corporate Governance: The Implications of Nigeria's Petroleum Industry Act (PIA) of 2021 on Business Performance. Available at: <https://www.iodnigeria.org/blog/ciod-weekly-1/revolutionizing-corporate-governance-the-implications-of-nigeria-s-petroleum-industry-act-pia-of-2021-on-business-performance-2> > accessed 18th May 2024.

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by consolidating existing regulators¹³³ into two primary entities: the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).¹³⁴

The NUPRC oversees all upstream activities, including exploration, production, and development of petroleum resources.¹³⁵ Meanwhile, the NMDPRA regulates midstream and downstream activities, such as refining, transportation, storage, and distribution of petroleum products.¹³⁶ Under Section 126 of PIA 2021, the NMDPRA has the authority to establish rules for midstream and downstream gas operations, including the development of wholesale natural gas market systems.

PIA introduces a predictable and transparent licensing regime¹³⁷ through competitive bidding processes for petroleum licences, leases, and permits. This system ensures that licences are awarded to the most qualified operators, promoting efficiency and innovation. The Act also establishes a clear fiscal regime, outlining specific terms and incentives for petroleum exploration and production activities, providing certainty regarding financial obligations.

Another significant development is the establishment of the Nigerian National Petroleum Company Ltd. (NNPC) as a commercially oriented entity.¹³⁸ Operating as a fully integrated national oil company, the NNPC is positioned to drive growth and development through exploration, production, refining, and marketing activities.

For investors and other stakeholders in the Nigerian petroleum sector, the regulatory framework established by PIA 2021 offers clarity, stability, and openness. The Act encourages accountability, efficiency, and fair competition in the business by outlining precise guidelines, protocols, and operator responsibilities. For many years to come, the Nigerian petroleum industry is anticipated to see sustained expansion, investment, and development as a result of the new regulatory framework established by the PIA.

¹³³ O. Udegbumam, Nigeria scraps DPR, PPPRA, PEF as new oil agencies take off, Premium Times Newspaper, 2021. Available at: <https://www.premiumtimesng.com/news/top-news/490561-nigeria-scraps-dpr-pppra-pef-as-new-oil-agencies-take-off.html>> accessed 18th May 2024.

¹³⁴ Ibid. (n 25)

¹³⁵ Part III, Sec. 4 to Sec. 5 PIA 2021

¹³⁶ Part IV, Sec. 29 to Sec. 30 PIA 2021

¹³⁷ Detail Solicitors, Oil and Gas Guide, 2021: Petroleum Industry Act Focused. Available at: <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.detailsolicitors.com/wp-content/uploads/2021/10/Oil-and-Gas-Guide-2021.pdf&ved=2ahUKEwik-62X9JaGAXUhS0EAHY0kAx8QFnoECC8QAAQ&usq=AOvVaw2hMgcb7q1xgSXgLqY5mHXr>> accessed 18th May 2024

¹³⁸ Sec. 64 PIA 2021

Legislative Obligation for Transparency and Fairness in Granting Oil Rights

The PIA 2021 establishes specific requirements for transparency and fairness in granting oil rights through Sections 83 and 101.¹³⁹ The NUPRC is mandated to create a transparent process for awarding oil rights, including publishing clear guidelines and maintaining a public register¹⁴⁰ of all rights holders.

The Act requires that all applications be evaluated using objective criteria, considering technical and financial capabilities, as well as compliance with relevant regulations.¹⁴¹ Oil rights holders must provide accurate and timely information about their operations, including production and revenue data, which must be made publicly available.

Furthermore, the PIA establishes a robust dispute resolution mechanism, including an independent tribunal and the right of appeal to courts, ensuring fair resolution of any conflicts arising from oil rights allocation.

Granting of Pioneer Status Incentive to Indigenous Exploration and Production Companies

The Pioneer Status Incentive (PSI) represents a strategic measure to encourage investment in the oil and gas sector,¹⁴² particularly for indigenous companies. To qualify, companies must primarily demonstrate non-current tangible assets exceeding N100 million and provide evidence of regulatory compliance documentation.

PSI benefits include an initial three-year tax relief period, extendable for up to two additional years. During this period, companies enjoy relief from corporate income tax, withholding tax on dividends, and other taxes. Additional benefits include:

- Exemption from import duties on equipment and materials
- Access to foreign exchange at official rates
- Priority consideration for oil block allocation
- Eligibility for government-backed financing

Encouragement of Local Content/ Engagement of Indigenous companies in Oil Operation

The Nigerian government has implemented various initiatives to promote local content¹⁴³ and indigenous participation in oil operations. The Nigerian Content Development and Monitoring

¹³⁹ PIA 2021

¹⁴⁰ Sec. 7 PIA 2021

¹⁴¹ Sec. 6 PIA 2021

¹⁴² Resolution Law Firm, The Principle Of Tax Incentives In Nigeria (Pioneer Status), 2021. Available at: <https://www.mondaq.com/nigeria/income-tax/1075238/the-principle-of-tax-incentives-in-nigeria-pioneer-status> (Accessed 18th May 2024).

¹⁴³ J. Balouga, Nigerian Local Content: Challenges and Prospects, International Association for Energy Economics, Third Quarter 2012. Available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.iaee.org/en/publications/newsletterdl.aspx%3Fid%3D176&ved=2ahUKEwjh4e_8qZeGAxVgXUEAHXlmCWgQFnoECB8QAQ&usg=AOvVaw0yW11VadL7M03VrB82T24d accessed 18th May 2024.

Publication of the European Centre for Research Training and Development –UK Board (NCDMB), established in 2010, oversees these efforts alongside the Nigerian Content Act, which mandates prioritisation of Nigerian goods and services.

Key initiatives include:

- Promotion of indigenous operatorship in oil blocks
- Establishment of joint venture partnerships between international and indigenous companies
- Investment in training and capacity-building programs
- Creation of financing options through the Nigerian Content Development Fund
- Implementation of contractual requirements for local content
- Regular monitoring and enforcement of compliance

Conversion of Licences

The Petroleum Industry Act (PIA) 2021 introduces a new licensing regime, which replaces the existing licences with new ones. The conversion of licences is a crucial aspect of this regime, allowing operators to transition from old licences to new ones, aligning with the PIA 2021's provisions.

Under the previous regime, there were the oil exploration licence, oil prospecting licence and oil mining lease. Now the word “Oil” has been replaced with the word “Petroleum”. The PIA has established new procedures that licence holders under the previous system who wish to convert to the current ones must follow in light of the change in licence nomenclature. Present owners of an oil mining lease and an oil prospecting licence (OPL) are typically not required to convert to a PML or PPL, respectively. However, they will no longer be able to hold a licence when it expires and will need to apply for new licences under the PIA.¹⁴⁴ If an OPL or OML holder wants to convert, they can do so by using a conversion contract. All arbitration and related court actions must be settled through the termination clause in the contract in order for the conversion to occur.¹⁴⁵

Current Oil Prospecting Licence (OPL) or Oil Mining Licence (OML) holders have the option to convert their subsisting interests to a Petroleum Prospecting Lease or Petroleum Mining Lease through a Conversion Contract and subsequently enjoy the fiscal incentives under the new regime. Conversion to the new regime will terminate all inconclusive court and arbitration cases and guarantees any stabilisation clauses provided by NNPC including capital allowance on investments enjoyed for gas production. Upon conversion, the OML holders will be required to relinquish up to 60% of their existing acreage. The conversions shall become concluded or effective at the earlier of expiry dates of the current licences or 18 months from the effective date of the Act which is February 2023. Where OPL or OML holders choose not to convert to the PIA regime, the current regime will continue to apply to them until the expiration of the licences. Upon expiration, the new

¹⁴⁴ Section 92 (1) PIA 2021

¹⁴⁵ Section 92 (3) PIA 2021

Publication of the European Centre for Research Training and Development –UK regime will apply to the renewed licences.¹⁴⁶ Also, all existing and producing Marginal Fields are to be granted a separate PML. All Marginal Fields (declared before 1 January 2021) that are not yet producing or in development are to be converted to PPLs and will benefit from the terms for new acreages under the Act.¹⁴⁷

CONCLUSION AND RECOMMENDATIONS

This paper has provided a legal analysis of the challenges and prospects in the acquisition of oil rights in Nigeria, focusing on the regulatory frameworks, institutional structures, and administrative procedures governing this critical aspect of the petroleum industry. The examination highlights the indispensable role of a well-articulated legal regime in ensuring transparency, accountability, and sustainable development in oil rights acquisition. Law serves as a crucial instrument of socio-economic transformation, capable of fostering ethical practices, promoting equitable resource distribution, and aligning industry operations with global standards. The study revealed that while Nigeria's legal frameworks, particularly the Petroleum Industry Act (PIA), are expected to introduce significant reforms and address the challenges inherent with certain outdated provisions of the erstwhile Petroleum Act, the fact is that these challenges persist. These include statutory inconsistencies, high acquisition costs, bureaucratic inefficiencies, corruption, lack of transparency in the bidding processes, weak enforcement mechanisms and administrative redundancies that continue to impede the efficiency and transparency of oil rights acquisition. These issues highlight the need for strong political will and a heightened commitment across all levels of government to foster sustainable development in the petroleum sector. Regulatory agencies must engage in purposeful interventions rather than arbitrary interferences with legitimate corporate activities. This will ensure equitable and transparent engagement while addressing both overt and latent grievances.

The study further revealed that to achieve a sustainable oil and gas industry, it is imperative to establish a balanced partnership between public and private actors within the sector. This requires a formidable legal framework capable of addressing the multifaceted challenges impeding the industry's progress. Moreover, the effective implementation of existing laws and complementary regulations is essential to unlocking the full potential of the sector. Such implementation must also account for rapid technological advancements to ensure that the legal regime remains dynamic and adaptable.

In conclusion, a comprehensive and effective legal framework, coupled with transparent enforcement mechanisms and proactive regulatory oversight, is critical for addressing the

¹⁴⁶ T. Oyedele, A. Banjo and R. Tetey, "The Petroleum Industry Act: Redefining the Nigerian Oil and Gas Landscape" [2021], 12. <https://pwcniigeria.typepad.com/files/the-petroleum-industry-act-insights-series_august2021.pdf> Accessed 24th January, 2024.

¹⁴⁷ *Ibid*, 12.

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challenges in oil rights acquisition. PIA provisions must of necessity be aggressive to issues of corruption and make no room for redundancy and bureaucracy. If these are done, Nigeria can harness its oil resources sustainably, fostering economic growth and ensuring equitable development across the nation.