

# A LEGAL APPRAISAL OF THE PETROLEUM LICENCING REGIME UNDER THE NIGERIAN PETROLEUM INDUSTRY ACT, 2021

By Chika Mgbokwere Mba\*

## Abstract

*In the Pre-PIA era, licensing regime was largely regulated by the Petroleum Act, 1969, which vested excessive power on the minister in the grant, suspension and revocation of licenses with significant emphasis on oil license as the fulcrum of its licensing regime. However, the PIA, while reaffirming power of licensing changed the narrative by overhauling the entire facets of petroleum licensing regime with diverse plausible reformations. The author relied on doctrinal research methodology to appraise the extant petroleum licensing regime in Nigeria within the framework of the PIA, with a view to ascertaining its viability towards promoting a fair, orderly and competitive commercial environment within the petroleum industry, and found that the PIA introduced several innovations as distinct from the provisions of the Petroleum Act, 1969, such as the significant change in license type nomenclature and categorizing the petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors, decentralizing the absolute discretion vested on the minister into a shared responsibility with the commission or authority, and streamlining the conduct of license bidding rounds in accordance with the principles of good governance, transparency and sustainable development. The author concludes that the PIA presents a very attractive licensing regime which is tailored towards the optimal achievement of increasing its revenue generation capacity while strengthening its sovereign status in dealings with companies operational in the sector. The author recommended that the*

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\* LLB; BL; LL.M, Ph.D Student at Faculty of Law Rivers State University, Port Harcourt

*intertwined role of the minister and commission should be clearly defined to avoid administrative conflicts, hierarchical uncertainties and contests in decision making process of granting petroleum licenses.*

**Key words:** *Petroleum, Licences, Lease, Permits, Bidding Rounds*

## **1. Introduction**

The establishment of Nigeria's licensing regime can be traced to the frontier time frame, when the British pilgrim organization gave two statutes- the Petroleum Ordinance of 1889, and the Mineral Regulation (Oil) Ordinance of 1907. Though it was specified by 1907 Ordinance that gave exclusive oil investigation rights to the British subjects and British-controlled organizations, the primary concession understanding was conceded to the German Organization in 1908.<sup>1</sup> Investigation was brought to an abrupt halt in 1914 when the World War started in 1914, and further investigation ceased in Nigeria until Shell D'Acry Petroleum Development Company (the principal archetype of the cutting edge Shell Petroleum Development Company of Nigeria) was granted concession award in 1938.<sup>2</sup> Being the sole concessionaire under the Colonial Government arrangement, the Mineral Oil Ordinance of 1914, vested in Shell Petroleum Development Company Nigeria Limited (SPDC) the right to prospect for petroleum over the entire Nigeria. Similarly, profits were assessed based on realizable proceeds and there was not equity participation by Nigerians.<sup>3</sup> As a result, Shell made the first Nigeria's business oil and gas revelation in 1956 which was discovered in commercial quantity at Oloibiri Bayelsa State, Nigeria. Before long after this revelation, other oil organizations, including Mobil and Texaco/Chevron, were

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<sup>1</sup> Y Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse 2003)38-54

<sup>2</sup> Ibid,274

<sup>3</sup> S Dike, *Energy Security: A Case of Nigeria and Lessons from Brazil, Norway and The UK* (2015 Pearl Publishers)66

conceded **licenses** to direct inland and seaward investigations,<sup>4</sup> and shortly afterwards, Nigeria became one of the major oil producing countries in the world. As a result, these International Oil Companies (IOC's) who acquired almost full ownership right over the petroleum in Nigeria started acting like lords and locked up their acreages as the deemed fit and evaded payment of their taxes as concessionaires at will.

Hence, the emergence of the Organization of Petroleum Exporting Countries (OPEC) in 1960 with the main objective of promoting the sovereignty of its members over their active participation and in all department of the petroleum Industry led to the General Assembly Resolution 1803(XVII) of 14 December 1962 on Permanent Sovereignty over Natural Resources. This resolution recognized that the right of nations over their natural resources must be exercised in the interest of their national development.<sup>5</sup> Following this development, Nigeria promulgated its first 'home grown' Petroleum law<sup>6</sup> with the significant achievement of vesting petroleum ownership in the Federal Government and giving the Minister of Petroleum the right to grant licenses and leases to companies interested in engaging in petroleum operations in Nigeria.

## 2. Definition of License

A license is a revocable permission to commit some act that would otherwise be unlawful.<sup>7</sup> In corroboration of the above parlance it can be defined as an authorization given by a constituted authority, in the case of petroleum industry, for carrying out any act which could otherwise be unlawful based on certain obligations and conditions mutually agreed or imposed by the license.<sup>8</sup> Therefore,

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<sup>4</sup> Y Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse 2003)275

<sup>5</sup> S Dike, *Energy Security: A Case of Nigeria and Lessons from Brazil, Norway and The UK* (2015 Pearl Publishers) 67

<sup>6</sup> Petroleum Act, 1969

<sup>7</sup> A Garner, *Black's Law Dictionary* (7<sup>th</sup> edn, West Group,1999) 931

<sup>8</sup> (n5)86

to operate and invest in the oil and gas sector, the investor or company operating in the oil and gas sector is statutorily required to own a license issued by the appropriate issuing authority. In a broader view, a petroleum exploration license encapsulates the express consent granted by a competent authority to execute specific undertakings within delineated geographical area. Thus, in this wise, a license as opposed to ownership vests limited or qualified legal interest, coupled with the fact it is also revocable subject to contract duly signed, sealed and delivered by the respective parties.<sup>9</sup>

In other words, Petroleum licenses can simply be defined as an official authorization or permission issued to a prospective oil and gas operator by a statutorily constituted issuing authority, which qualifies an operator to lawfully and legally engage in a specified petroleum operation within the value chain of the industry comprising of three categories: upstream, midstream and downstream. However, under the Petroleum Industry Act (PIA), license is statutorily defined as the license issued by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) pursuant to the provisions of the PIA.<sup>10</sup>

### **3. Petroleum Licensing Under the PIA 2021**

The Petroleum Industry Act, 2021 upon its enactment became the principal legislation regulating the oil and gas industry in Nigeria. The Act aims at “providing legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters”. It therefore contains the statutory and regulatory rules that constitute the licensing regime applicable to companies operating in the varying streams of the

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<sup>9</sup> Olusola and Olabode, ‘Annulment of Licences in Nigeria’s Upstream Petroleum Sector: A Legal Critique of The Cost and Benefits’ (2017) *International Journal of Energy Economics and Policy*, 365

<sup>10</sup> Petroleum Industry Act, 2021, s 318

petroleum industry in Nigeria.<sup>11</sup> Thus, it is commendably a bespoke legislation that plays an overarching role in the grant, renewal and revocation of petroleum licenses in Nigeria. It is therefore the primary source from which the relevant regulatory bodies derive the impetus to exercise any of the powers associated with petroleum licensing.

#### **4. Grant of Licenses and Leases in Nigeria**

Prior to the enactment of the PIA, the Minister of Petroleum Resources had the exclusive powers to issue licenses and/or leases in the oil and gas sector.<sup>12</sup> There were three major types of licenses issued by the minister of petroleum resources prior to the current licensing regime; the licenses were, Oil Prospecting License (OPL), Oil Exploration License (OEL), and Oil Mining Lease (OML).<sup>13</sup>

Currently, the PIA vide its recent innovative provisions as a key feature introduced a significant change in license type nomenclature by replacing the word ‘Oil’ with ‘Petroleum’ and categorizes the Petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors with a mandate that such licenses may only be granted to company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act<sup>14</sup>, and notably requires companies intending to engage in any of the streams of operations to register and use separate company(s) for each stream.

However, notwithstanding these three (3) streams of petroleum operations, PIA created only two main types of licenses based on these categories of petroleum operations. These are: the upstream petroleum licenses, which deals with the exploration, development and production of petroleum, and the midstream and downstream

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<sup>11</sup> Petroleum Industry Act, 2021, s 70-203

<sup>12</sup> Petroleum Act, 1969, ss 2 (1) & 4 (1)

<sup>13</sup> Ibid, s 2(1)(a), (b) & (c)

<sup>14</sup> PIA 2021, s 70(2)

petroleum licenses, which deals with the construction of pipelines, plants, storage facilities, transportation networks and natural gas supplies.

## **5. Upstream Petroleum Licenses and Leases Under the PIA 2021**

Section 70 of the PIA provides that licenses to be granted under the Act related to upstream petroleum operations are: (i) Petroleum Exploration License (PEL) (ii) Petroleum Prospecting License (PPL), and (iii) Petroleum Mining Lease (PML). According to the PIA, such license may be granted under this Act only to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.<sup>15</sup>

## **6. Petroleum Exploration License (PEL)**

With respect to issuance of upstream licenses, Section 71<sup>16</sup> gives the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) “The Commission” the powers to grant PEL to qualified applicants to carry out petroleum exploration operation on a non-exclusive basis for a period of three (3) years which may be renewable for an additional period of three (3) years subject to the fulfilment of prescribed conditions.<sup>17</sup>

In qualification of its capacity, the PIA provides that the licensee’s rights under PEL shall not include the right to win, extract, work, store, carry away, transport, export or other treat petroleum discovered in or under the license area. However, PEL can be granted in respect of frontier acreages and may cover an area that includes a Petroleum Prospecting License (PPL) and Petroleum Mining Lease (PML); and while the holders of such licenses are under no obligation to purchase the result of the survey conducted

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<sup>15</sup> PIA 2021, s 70(2)

<sup>16</sup> PIA 2021

<sup>17</sup> *Ibid*, s 71(3)

under the PEL, the sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to PEL is vested in the Commission, although the licensee may license such data for use of a third party subject to the Commission's written authorization.<sup>18</sup> While the nature of non-exclusivity of the exploration license remains the same, there is therefore a clear departure from the provision of the Petroleum Act (PA)<sup>19</sup> in respect of the duration of "Oil Exploration Licenses" (OEL) now Petroleum Exploration License. Under the PA, the duration of OEL was for a period of one year in non-exclusive basis.<sup>20</sup>

## **7. Petroleum Prospecting License**

The Act<sup>21</sup> gives the Minister of Petroleum the power to grant Petroleum Prospecting License (PPL) to a qualified applicant subject to the recommendation of the commission. By this, the Act therefore makes the Commission an integral part of the decision making process of the grant or refusal of this license and qualifies its recommendation as a mandatory precursor to the grant of a PPL.<sup>22</sup> To address the issue of uncertainty and delays in securing the ministerial consent for assignment of PPL, the Act has introduced mandatory timelines to act, such that consent of the Minister is deemed after 90 days, following his failure to act on the recommendation of the Commission.<sup>23</sup>

Also, under the PIA, the right of a PPL holder is delineated into the following:

- (i) Exclusive rights to drill exploration and appraisal wells and,

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<sup>18</sup> PIA, ss 71(4) (5) & (6)

<sup>19</sup> (n11)

<sup>20</sup> (n12) 1<sup>st</sup> Schedule

<sup>21</sup> PIA

<sup>22</sup> Ibid, s 72(5)

<sup>23</sup> Ibid, ss 73 (3) & (4)

- (ii) Non-exclusive right to carry out petroleum prospecting operations within the area provided for in the license.

However, unlike the PEL, A PPL licensee shall have the right to carry away and dispose of crude oil or natural gas won during the drilling of the exploration and appraisal wells, as result of production tests, subject to the fulfillment of conditions prescribed by the Act.<sup>24</sup>

Interestingly, in a bid to ensure transparency and foster a fair, orderly and competitive commercial environment, the PIA makes it mandatory for the grant of a PPL to be based on a fair, transparent and competitive bidding process, in compliance with the provisions as set out by the Act, regulations made under the Act and licensing round guidelines issued by the Commission for each licensing round.<sup>25</sup> By tersely vesting the power to issue guidelines for licensing rounds on the Commission the PIA once more makes the role of the commission an indispensable factor in the grant of a PPL.

In effect, the term of a PPL is delineated into two:

- (i) a period of not more than six (6) years for onshore and shallow water acreages, comprising of an initial exploration period of three (3) years and optional extension period of three (3) years.
- (ii) a period of not more than 10 years for deep offshore and frontier acreages, comprising of an initial exploration period of five years and optional extension period of five years.<sup>26</sup>

Notably, at the expiration of any of the respective terms, a holder of PPL shall not be granted an extension except as prescribed under Sections 78(4), (9) and 79(6) of the Act, in relation to requisite

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<sup>24</sup> PIA, ss 72(1) (a) & (b)

<sup>25</sup> Ibid, ss 73,74, 75

<sup>26</sup> Ibid, s 77(1) & (2)

compliance to the submission of an appraisal programme and field development plan (FDP) to the commission in order to obtain permission to declare commercial discovery of crude oil and gas respectively.<sup>27</sup>

Also, the requirement for the extension of the term of a PPL includes the entitlement of a licensee to retain the area of any significant gas discovery for a retention period of not more than 10 years. In addition, the term of the PPL may be tolled for not more than 3 years, to take into consideration delays in the fulfilment of any term or condition on account of *force majeure*.<sup>28</sup>

Therefore, it is instructive to note that following the new introductions in the PIA, a PPL holder is now required to commit to a work programme as well as other terms and conditions as determined by the Commission, supported by a bank guarantee, letter of credit or performance bond issued by the bank and in amount acceptable by the Commission.<sup>29</sup> The requirement that a licensee commit to a work programme is to ensure that prospecting in the licensed area is going on vigorously and in line with the international best industry practices.

In addition, a licensee shall, during the initial exploration period provided for in a PPL, commit to drill at least one exploration well to a minimum depth specified in the licence for each period, except for frontier acreages, where the work program during the initial exploration period may only consist of geophysical work.<sup>30</sup> Thus, where a licensee makes a discovery during the initial exploration period or the optional extension period provided for in the applicable PPL, the licensee shall inform the Commission within 90 days of the discovery if he considers that the discovery merits appraisal or is of

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<sup>27</sup> PIA, s 72 (2)

<sup>28</sup> Ibid, s 72(4)

<sup>29</sup> Ibid, s 78

<sup>30</sup> Ibid, s 78(2)

no interest to him.<sup>31</sup> Where the a licensee considers that a discovery merits appraisal, the licensee shall within 180 days submit to the Commission for approval; a commitment to an appraisal programme of not more than 2 years with a scope and nature permitting the licensee to declare a commercial discovery;<sup>32</sup> and also the appraisal area, which shall not be larger than the outer boundary of the discovery and does not extend beyond the area provided for in the applicable PPL.

## **8. Appraisal Programme**

An appraisal programme is to provide cost effective information that will be used during the field development stage with the aim of reducing the range of uncertainty in the quantity of oil and gas *in situ*, defining the size and configuration of the oil and gas reservoir; and to collect valuable data to ensure an accurate prediction of the reservoir's performance<sup>33</sup>.

Therefore, upon the approval of the appraisal programme and appraisal area by the Commission, a licensee is required to promptly carry out the committed appraisal programme which shall be subject to the approval or refusal of the Commission within 60 days after its submission.<sup>34</sup> Where the Commission fails to act on the appraisal programme within the prescribed 60 days, the appraisal shall be deemed approved.<sup>35</sup> A licensee who has completed the appraisal programme can declare a commercial discovery, declare a significant gas discovery; or inform the Commission that the discovery is of no interest to the licensee.

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<sup>31</sup> PIA, s 78(3)

<sup>32</sup> Ibid, s 78(4)

<sup>33</sup> L Atsegbua, *Oil and Gas Law in Nigeria (Theory & Practice)* (4th edn, Four Pillars Publishers 2021) 75

<sup>34</sup> Ibid, s 78(5)

<sup>35</sup> Ibid, s 78(6)

Notably, a significant gas or crude oil discovery is a discovery of natural gas or crude oil that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the reasons provided in the Act<sup>36</sup>. Accordingly, the declaration of a significant gas discovery entitles the licensee to retain the area of discovery for a period of not more than 10 years from the day the declaration was made,<sup>37</sup> and where the licensee does not declare commercial discovery at the expiration of the retention period, the area shall be immediately relinquished by the licensee to the Government and the applicable PPL shall expire.<sup>38</sup> This provision of the Act demonstrates the Governments committed interest in reaping investments from its business operation and the attendant need for licensee to conduct its operations in a business manner.

## **9. Commercial Discovery and Field Development Plan**

A commercial discovery under the Act is a discovery of crude oil, natural gas or condensates within a PPL or PML which can be economically developed in the opinion of the licensee or lessee after consideration of all the relevant factors normally applied for the evaluation and development of crude oil, natural gas or condensate<sup>39</sup>. Therefore, where a PPL license holder declares a commercial discovery, the licensee shall within 2 years of the declaration, submit to the Commission a field development plan (FDP) with regard to the commercial discovery together with the commitment to carry out the work described in the field development plan. By operation, a field development plan takes place after the completion of the appraisal programme and provides the best technical solution and guide for optimizing the development of the field. Accordingly, it must amongst others

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<sup>36</sup> PIA, s 318

<sup>37</sup> n(28)

<sup>38</sup> Ibid, s 78(14)

<sup>39</sup> n(36)

provide for, a local content plan, an environmental management plan, a decommissioning and abandonment plan and a decommissioning and abandonment fund, a scheme for the recruitment and training of Nigerians, a provision for scholarship schemes. The essence of a good field development plan is to enable a licensee maximize the production from the field. It is however subject to the approval or disapproval of the Commission within 180 days.<sup>40</sup> If the Commission approves the field development plan it shall grant a lease and in the event of the Commission's failure to act on the FDP within the prescribed period of 180 days, it shall be deemed approved. This provision of the Act essentially curbs dereliction of duty on the part of the Commission and engenders commitment to a fair, transparent orderly and competitive commercial environment in the petroleum licensing process.

## **10. Petroleum Mining Lease**

A Petroleum Mining Lease (PML) shall be granted by the Minister, subject to the recommendation of the Commission,<sup>41</sup> for each commercial discovery of crude oil and natural gas or both, to a licensee of PPL who has satisfied the conditions imposed on the licensee or license under the Act and has received approval for the applicable field development plan (FDP) from the Commission.<sup>42</sup> In other words, a PML for conducting upstream petroleum operations shall only be granted on the basis of a commitment from the applicable lessee to, develop and produce the commercial discovery of the crude oil or natural gas in the area which the lease relates in accordance with the applicable development plan; or restart or continue petroleum production in the area to which such lease relates.<sup>43</sup>

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<sup>40</sup> PIA, s 79 (9)

<sup>41</sup> Ibid, s 73 (3)

<sup>42</sup> Ibid, s 81 (1)

<sup>43</sup> Ibid, s 82 (3)

A PML can also be granted to a previously appraised area of PPL or a surrendered, relinquished or revoked PML in, under or upon the territory of Nigeria. In such cases, the Act requires the Commission to conduct open, transparent, competitive and non-discriminatory process for applicants before making the requisite recommendation to the Minister.<sup>44</sup>

The condition for grant of PML has therefore been expanded under the PIA to include where commercial discovery of gas is made, and obtaining the approval of the field development plan (FDP) from the Commission. In other words, the concept of “discovery of oil in commercial quantity” as contained in the 1969 Act, is now replaced by “commercial discovery” and expanded to include natural gas or condensates which can be economically developed in the opinion of the licensee after consideration of all relevant economic factors, more so, the threshold of 10,000 barrels contained in the 1969 Act is also deleted.

However, subject to the approval of the Commission, a PML is granted to each commercial discovery within a PPL, such that the entire PPL is not extinguished but remains valid as it relates to the area (where there are no commercial discoveries) until expiration.<sup>45</sup> A PML shall be granted for a maximum period of 20 years, which term shall include the development period sufficient to construct any required infrastructure and development of the field.<sup>46</sup> Thus, where a holder of PML does not initiate regular commercial production within the development period, the lease may be revoked by the Commission at the end of the development period.<sup>47</sup> Where a PML is revoked, the applicable acreage shall vest in the Government and be controlled and administered by the Commission, which may be

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<sup>44</sup> PIA, s 72 (2)

<sup>45</sup> *Ibid*, ss 81 (4) – (7)

<sup>46</sup> *Ibid*, ss 86 (1) & (4)

<sup>47</sup> *Ibid*, s 86 (2)

subject to a new PML granted in accordance with section 81 of the Act.<sup>48</sup>

In this context, it is noteworthy that the development period for a PML shall be the period established in the FDP and where the development period is not stipulated, the development period shall be:

- (a) 5 years for an onshore lease, and
- (b) 7 years for a lease in shallow water or deep offshore or a lease in frontier acreage.

Generally, a PML holder who intends to renew the lease is required to apply in writing to the Commission for a renewal, not less than 12 months before the expiration of the lease. The criteria for renewal includes the lessee's fulfilment of any obligation or condition relating to the lease and lease development area and meeting all the payment obligations under the Act or any other enactment in respect of royalties, rent, taxes and fees relating to PML which shall be on the terms and conditions determined by the Commission, thus retaining a measure of discretion to the Commission.<sup>49</sup> By these provisions, the PIA therefore makes the verification of a lessee's fulfilment of his fiscal obligations a prerequisite for the renewal of his lease.

Importantly, holders of subsisting Oil Mining Leases (OMLs) or Oil Prospecting Licenses (OPLs), issued prior to the enactment of the PIA may convert to a PML or PPL by executing a voluntary conversion contract with the Commission.<sup>50</sup> Interestingly, the conversion contract is required to embody a clause terminating all outstanding litigation related to the respective OPL or OML.<sup>51</sup> It will also nullify any stability provisions or guarantees provided by

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<sup>48</sup> PIA, s 86 (3)

<sup>49</sup> *Ibid*, s 87

<sup>50</sup> *Ibid*, s 92(1)

<sup>51</sup> PIA, s 92 (3)

NNPC in respect of the respective OPLs or OMLs to be converted and the incentive provisions contained in Section 11 and 12 of the Petroleum Profit Tax Act shall not apply. Hence, where a licensee or lease under a conversion contract complies with the provisions of the Act, such licensee or lease shall benefit from the fiscal incentives provided under the Act.<sup>52</sup>

The Act therefore requires the conversion to be done not later than 18 months from the effective day of the Act and the expiration date of the OML or date of conversion of the OPL to OML,<sup>53</sup> however, where an OPL is converted, the term of years included in such license shall apply to the converted petroleum prospecting license (PPL). Conversely, where a holder of a subsisting OPL or OML does not subscribe to the voluntary conversion contract prior to the conversion date, the terms and conditions applicable to the OPL or OML prior to the effective date of the Act shall continue to apply to the OPL or OML<sup>54</sup>.

## **11. Midstream and Downstream Petroleum Licenses and Permits**

In relation to the midstream and downstream petroleum licenses, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) “the Authority” is responsible for the grant, renewal, modification or extension of licenses or permits for operations in the midstream and downstream sectors.<sup>55</sup>

However, for the establishment of refineries, the license shall be issued by the Minister of Petroleum subject to the recommendation of the Authority. In performing this function, the Authority is required to publish a notification of any application for the grant or renewal of a license in a manner prescribed by a regulation under

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<sup>52</sup> PIA, s 92 (2)

<sup>53</sup> Ibid, s 92 (4)

<sup>54</sup> Ibid, s 92 (6)

<sup>55</sup> Ibid, s 111 (1)

the Act.<sup>56</sup> Upon such publication, interested parties may comment or make representations to the Authority in respect of the application.

The Authority is required to consider such third-party information and representations in the granting or renewing of any of these licenses and to forestall delay is required to make its decision within 90 days of the application for the license.<sup>57</sup> Third parties may now also have greater access to facilities and pipelines for midstream and downstream petroleum operations.<sup>58</sup>

Where the Authority has decided to grant a license or permit, it shall publish a notice of its decision in the form and manner prescribed in the regulation issued by the Authority and where it declines an application, it shall inform the applicant of its refusal of the application and reasons for the refusal.<sup>59</sup> Thus, an applicant that is not satisfied by the reason given by the Authority for refusal of an application may apply to the Federal High Court for judicial review.<sup>60</sup>

In other words, to foster a seamless discharge of its duties, the Act empowers the Authority to make regulations and guidelines for grant or renewal of license for midstream and downstream petroleum operations.<sup>61</sup> The duration of a license or permit is to be specified by such regulations made by the Authority pursuant to the Act, and a revocation of a license or permit may be revoked by the Authority on the grounds set out in Section 120 of the Act and in the manner prescribed in Section 121 of the Act.

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<sup>56</sup> PIA, s 112 (1)

<sup>57</sup> *Ibid*, s 111 (7)

<sup>58</sup> PIA, s 113 (3) & (4)

<sup>59</sup> *Ibid*, s 111 (8) & (9)

<sup>60</sup> *Ibid*, s 111 (12)

<sup>61</sup> *Ibid*, s 113 (1)

## **12. Powers And Categories of Licenses and Permits issued by the Authority**

In the midstream and downstream petroleum operations, the Authority's power to issue licenses and permits is delineated into two categories, namely:

- (i) Midstream and Downstream Gas Operations
- (ii) Midstream and Downstream Petroleum Liquids Operations

### **i. Midstream and Downstream Gas Operations**

In the administration of the midstream and downstream gas operations, the Act provides for the issuance of the different licenses<sup>62</sup> by the Authority with its attendant powers to enforce the prescribed penalties where a person engages in any of the activities without license or permit.<sup>63</sup> Thus, the Authority may issue the following licenses to a qualified applicant:

- (i) Gas Processing License<sup>64</sup>
- (ii) Bulk gas storage license<sup>65</sup>
- (iii) Gas Transportation Pipeline License<sup>66</sup>
- (iv) Gas Transportation Network Operator License<sup>67</sup>
- (v) Wholesale Gas Supply License<sup>68</sup>
- (vi) Retail Gas Supply License<sup>69</sup>
- (vii) Gas Distribution License<sup>70</sup>

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<sup>62</sup> PIA, ss 125(1)-(3)

<sup>63</sup> Ibid, ss 125 (4) & (5)

<sup>64</sup> Ibid, s 129

<sup>65</sup> Ibid, s 132

<sup>66</sup> PIA, s 135

<sup>67</sup> Ibid, s 138

<sup>68</sup> Ibid, s 142

<sup>69</sup> Ibid, s 146

<sup>70</sup> Ibid, s 148

(viii) Domestic Gas Aggregation License.<sup>71</sup>

## **ii. Midstream and Downstream Petroleum Liquids Operations**

In the midstream and downstream petroleum liquids operations, except the crude oil refining license which is issued by the Minister on the recommendation of the Authority,<sup>72</sup> the Authority is empowered by the Act to issue the following licenses:

- (i) Bulk Petroleum Liquids Storage License<sup>73</sup>
- (ii) Petroleum Liquid Transportation Pipeline License<sup>74</sup>
- (iii) Petroleum Liquid Transportation Network Operator License<sup>75</sup>
- (iv) Wholesale Petroleum Liquids Supply License<sup>76</sup>
- (v) License for Distribution of Petroleum Products<sup>77</sup> and,
- (vi) License to Construct and Operate a Facility for Retail Supply and Distribution of Petroleum Products.<sup>78</sup>

Essentially, the PIA provides clear parameters for the general duties and rights of the holders of these midstream and downstream petroleum operations and the conditions applicable to each category of licensed activity. A non-discrimination clause restraining licensed activities to be conducted in a discriminating manner is equally introduced by the PIA.<sup>79</sup> However, unlike what is applicable in the upstream petroleum sector, where there is an option for conversion of subsisting licenses or leases, holders of subsisting

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<sup>71</sup> PIA, s 153

<sup>72</sup> PIA, s 183

<sup>73</sup> PIA, s 187

<sup>74</sup> Ibid, s 190

<sup>75</sup> Ibid, s 193

<sup>76</sup> Ibid, s 197

<sup>77</sup> Ibid, s 201

<sup>78</sup> Ibid, s 203

<sup>79</sup> Ibid, s 116

licenses or permits in the midstream and downstream sectors issued prior to the enactment of the PIA are required to get new licenses from the Authority within 18 months from the effective date of the Act.<sup>80</sup> Therefore the optional voluntary conversion provision is not applicable to the midstream and downstream petroleum operations which therefore rendered all subsisting licenses and permits in these streams ineffective at the expiration of 15<sup>th</sup> February, 2023.

### **13. Revocation of Petroleum License or Lease Under the PIA 2021**

A Petroleum Exploration License, Petroleum Prospecting License and Petroleum Mining Lease may be revoked by the Minister upon the recommendation of the Commission subject to the grounds prescribed by the Act;<sup>81</sup> which includes, where a licensee or lease fails to comply with good international petroleum industry practices, the Act or any law;<sup>82</sup> interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable license, lease or approved development plan, provided that in an event of *force majeure* it shall be an acceptable justification for interruption;<sup>83</sup> fails to fulfill the terms and condition of the applicable license or lease or development plan;<sup>84</sup> fails to pay the Government the due royalties, taxes, rents or other payments or production shares under the Act.<sup>85</sup>

In addition to these grounds are failure to furnish any report or data on operations as required by law;<sup>86</sup> assigns, novates and otherwise transfers any interest in the applicable license or lease other than in

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<sup>80</sup> PIA, s 125 (6)

<sup>81</sup> Ibid, s 96(1)

<sup>82</sup> Ibid, s 96(1)(a)

<sup>83</sup> Ibid, s 96(1)(b)

<sup>84</sup> Ibid, s 96(1)(c)

<sup>85</sup> Ibid, s 96(1)(d)

<sup>86</sup> Ibid, s 96(1)(e)

accordance with section 95 of the Act;<sup>87</sup> has obtained an interest in the applicable license or lease by false representation or contrary to corrupt practices and money laundering laws;<sup>88</sup> is declared to be insolvent or bankrupt by a court of competent jurisdiction or is liquidated in each case, except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement.<sup>89</sup> Finally, where the licensee or lease fails to comply with environmental obligations under the law

Notably, the failure of a holder of PML to commence commercial production within the period stipulated in the FDP (or where none is stipulated, 5 years for onshore and 7 years for shallow waters, deep offshore or a frontier acreage) could lead to revocation of the PML, but where a licensee provides a valid reason to the Commission which is substantial in the Commission's opinion, the Minister can extend the development period on the recommendation of the Commission.<sup>90</sup>

Also, a PML which ceases to produce in paying quantities for a period of not less than 180 days, may except for *force majeure* or any other reason acceptable to the Commission be revoked by the Commission.

However, where a shut-in plan and the commitment to restart production in accordance with the shut-in plan has been submitted to the Commission by a licensee who intends to suspend production for more than 180 days and resume production on a later date; non-production within the period covered by the plan shall not attract any form of revocation from the Commission.<sup>91</sup>

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<sup>87</sup>PIA, s 96(1)(f)

<sup>88</sup> Ibid, s 96(1)(g)

<sup>89</sup> Ibid, s 96(1)(h)

<sup>90</sup> Ibid, s 86 (2)

<sup>91</sup> Ibid, s 86 (7) & (8)

For the revocation of the PPL or PML under Section 96(1), the Commission is under obligation to serve a notice of default on the affected licensee or lease stating the grounds for such recommendation to the Minister. The Commission shall equally provide the licensee or lease with a remediation period of not less than 60days within which to remedy such default, hence, where a satisfactory remedy is received, the revocation process shall be terminated,<sup>92</sup> otherwise it shall be revoked and the revocation decision shall be published in the Federal Government Gazette.<sup>93</sup> Where the license or lease to be revoked is shared by two or more persons, a defaulting holder and non-defaulting holder, and the revocation affects a defaulting holder, only the interest of a defaulting holder shall be revoked and the interest of the non-defaulting holder shall not be revoked.

#### **14. Bidding Process for Grant of PPL or PML**

The Act specifically stipulates that a PPL or PML shall only be granted based on a fair, transparent and competitive bidding process; and in compliance with the provisions of the Act, regulations made under the Act and licensing round guidelines issued by the Commission for each licensing round.<sup>94</sup> Similarly, the award process for the grant of a PPL or PML on a previously appraised area of a PPL or PML surrendered, relinquished or revoked PML shall be by an open, transparent, competitive and non-discriminatory bidding process conducted by the Commission.<sup>95</sup>

In effect, the Minister may on the recommendation of the Commission grant a PPL or PML to a winning bidder who has complied with the requirements of the bid invitation.<sup>96</sup> However, the Minister is required to convey his decision of an approval or

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<sup>92</sup> PIA, s 97 (1) & (2)

<sup>93</sup> Ibid, s 97 (6)

<sup>94</sup> Ibid, s 73(1)

<sup>95</sup> PIA, s 74(1)

<sup>96</sup> Ibid, s73(3)

disapproval of the grant of the requisite license or lease to the Commission within 90 days, failure of which the license or lease shall be deemed granted.

Apparently, the foregoing demonstrates that the bidding process introduced by the Act for the grant of a PPL or OML is a complete departure from the position under the Petroleum Act 1969, where the grant of licenses or leases is at the discretion of the Minister of Petroleum Resources. Although the bidding process was adopted in some cases, it was not a legal requirement under the law. Thus, by the provision of a clear rules on license or lease allocation, the Act seeks to promote that elimination of corruption through transparency and accountability is pivotal to its petroleum licensing system, with its achievement being contingent to acquainting and strict adherence to the legal and regulatory framework that applies to the petroleum industry, which in turn, will attract laudable investments to the petroleum industry.

## **15. Conclusion**

This paper confirms that the petroleum licensing regime in Nigeria has tersely undergone commendable innovations vide the provisions of the PIA. The paper demonstrates that PIA has introduced a holistic reformation of the powers to grant petroleum licenses and by so doing expanded the scope of the petroleum value chains to accommodate the newly introduced licenses. There is a tacit decentralization of the powers to grant petroleum licenses with provisions for shared responsibilities between the minister and the commission and/or authority. While the minister has retained his power to grant petroleum licenses in the PIA, the absolute discretion conferred on it in the 1969 Act, is now qualified under the PIA, with exercise of same mostly contingent on the recommendation of commission or authority (as the case may be), in a bid to create the desired institutional synergy and coordination aimed at ensuring that petroleum licenses (unlike prior to the

enactment of the PIA) are granted to the appropriate and qualified licensees and not at the whims and caprices of the minister. In effect, by placing the commission's role on almost the same pedestal of decision making capacity in petroleum licensing grants with the minister, accountability and transparency will be fostered.

More so, the paper also identified that PIA introduced plethora of midstream and downstream petroleum licenses as a result of the expansion of the value chain of the petroleum industry. Hence, the significant change in license type nomenclature by replacing the word 'Oil' with 'Petroleum' and categorizes the Petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors, is contributory to a more expanded focus on not only crude oil licenses but also on gas licenses which is evident in the proliferation of midstream and downstream gas operations licenses and permits, granted on the basis varying categories of gas operations introduced by the PIA. The researcher views this as marking a significant step forward in the progressive realisation of a cleaner environment for all, in pursuit of the country's alignment to its pledge to rely on gas as its transition fuel, in that gas is a much cleaner source of energy than crude oil. In effect, the paper strives to show the advancements or upward progression in the legal sophistry of our petroleum law, particularly the impact of its legal framework towards creating licenses to foster evinced massive increase in the deployment of domestic gas derivatives to meet the increasing energy demand in the country and global energy transition agenda. It is the researcher's view that while the PIA is apparently a well thought out legislation given the specific areas of reform, the legal appraisal of the current petroleum licensing regime undoubtedly unveils that the PIA presents a very attractive licensing regime which is tailored towards the optimal achievement of increasing its revenue generation capacity in the sector while strengthening its sovereign status in dealings with companies operational in the sector. Particularly, the expansion of the petroleum value chain with the introduction of a more streamlined

upstream licenses and decentralization of the midstream and downstream licenses and/or permits to accommodate newly introduced gas operations licenses, will go a long way in promoting domestic gas utilization and thereby boost the overall investment base of gas as an alternative energy through increased private sector involvement.

## **16. Recommendations**

The following recommendations are proffered;

1. The intertwined role of the Minister and Commission should be clearly defined to avoid administrative conflicts, hierarchical uncertainties and contests in decision making process of granting petroleum licenses.
2. There need for committed monitoring, implementation and enforcement of the compliance provisions of the PIA essentially related to petroleum license bidding process and licensing round guidelines issued by the Commission, in other to achieve the desired objective of ensuring a fair, open, transparent, competitive and non-discriminatory license bidding process.
3. The need to continuously monitor and ensure the implementation of measures aimed at increasing investments in midstream and downstream gas operations such as the operational tax and fiscal policies aimed at incentivizing investments and implementation of Gas projects in Nigeria as prescribed by the PIA, thereby prompting interest in requisite gas operation permits by prospective applicants.