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An Appraisal of the Legal Frameworks and Policy Shift in the Nigerian Energy Sector

Michael Otu*, Brian F. I. Anyatang*, Bassey Kooffreh† and Rose Ohiama Ugbe***

*Faculty of Law, University of Calabar, Nigeria

**Department of Criminal Justice & Legal Studies, University of Mississippi, United States of America

†Corresponding author: Bassey Kooffreh; bekooffr@go.olemiss.edu

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ABSTRACT

This paper will explore policy shifts in Nigeria's oil and gas, solar, nuclear, and mineral energy sectors. This policy shift by way of a transition, indigenization, and Nigerianization, has given way to deregulation, decentralization, and de-indigenization of many industries, most notably in the oil and gas sector, through the Petroleum Industry Act (PIA) of 2021 and the Local Content Act of 2010 (LCA). The paper recommends, amongst others, the establishment of a new legal regime that grants resource-based and property rights to resource-bearing communities and incorporates principles of international law, energy diplomacies, International Environmental Law, and international best practices.

INTRODUCTION

The Nigerian national policy on the energy sector has evolved through the colonial, post-colonial, modern, and post-modern eras (Edomah 2021). These policy shifts have been more consistent and recurrent in exploring hydrocarbons. The basis of regulating energy resources in Nigeria is enshrined in the 1960, 1963, 1979, and 1999 Nigerian constitutions. These constitutional provisions were borrowed from the Mineral Oils Ordinances of 1914, 1948, and 1958, which vested mineral resources in all British colonial territories in the Crown. Since independence in 1960, Nigeria has had several legal regimes in the oil and gas sector, mining and minerals, and electricity sector, witnessing a paradigm shift in the ownership, management, and governance of Nigeria's abundant energy and natural resources (Ekhator 2016) The extant policy, the Petroleum Industry Act (PIA) of 2021 and the Local Content Act of 2010 (LCA), is best described as a liberalization policy.

Many theories have evolved to explain the ownership of energy and natural resources, including qualified ownership, absolute ownership, non-ownership, the domanial system, Islamic ownership, and servitude theories. According to the qualified ownership hypothesis, the landowner has no "title" to the oil and gas in situ but has the exclusive right to drill and produce from his tract and becomes the owner of the product upon its surface. Since oil and gas cannot be owned until they are captured and reduced into possession, the legal implication is that if oil is found on someone's land, that person does not know such a fact or has done no activity that leads him or her to access such resources, then there is no ownership (Anderson & Kramer 2005).

The non-ownership theory implies nobody can own oil and Gas because of their wandering, fugacious nature (Anderson & Kramer 2005). It is also called the non-qualified ownership theory, meaning nobody owns petroleum until it is explored, exploited, and produced. The person who owns petroleum has the right to explore and exploit it by drilling on the land where the straddle of the crude oil is located. This means there can be no absolute right or title to oil and Gas, which might permeate the strata underlying the land's surface as coal or other solid minerals that form part of the soil because they are fixed to it (Black 2020). The import of the non-ownership theory into the 1960, 1979, and 1999 Nigerian constitutions and the Mining and Minerals Act 2007 makes landowner cannot claim ownership of wild animals on land, air, and sunshine across his land or over his land. He cannot claim ownership over oil and Gas because they are fugacious. This reasoning contradicts the Latin property maxim of *Quicquid plantatur solo, solo* credit which means

that whatever is attached to the land belongs to the land (Denman & Prodano 1972). The triviality of this theory is informed by the fact that oil and Gas that are known to be fugacious have not wandered to every part of Nigeria so that every state can lay claim to them. In developing countries that produce oil and Gas, vest ownership of all minerals is in the Crown or central government to manage and govern. The Crown or central government can explore and exploit its energy and natural resources or grant exploration and exploitation rights to third parties on appropriate contractual terms and conditions.

Islamic ownership theory promotes the oil and gas commons concept. This theory is founded on two pillars: petroleum found under Islamic territory is the common property of the global Islamic community and fairness and justice in the redistribution of common property. This theory emphasizes commonality, communality, and conservation of petroleum and another form of property for the common good (Ghorbani 2017)

Policy Shift in the Petroleum Sector

The colonial era Mineral Oils Ordinances of 1914 and 1948 vested absolute ownership of Nigeria's minerals and mineral oils in the British Crown (Steyn 2009). Oil exploration and production were exclusively granted to British natural and corporate subjects bestowing the monopoly of exploring Nigeria's natural/energy resources only on British subjects. The independence era inherited the British legacies by vesting absolute ownership of Nigeria's energy resources in the federal government through the 1960 and 1963 constitutional provisions. The absolute ownership of energy and natural resources adopted by Nigeria at independence was influenced by the United Nations Resolutions of 1952 and 1962, which stated that countries have "permanent sovereignty over natural resources" within their domains. This resolution, it must be rightly stated, was made only to promote the aspirations of developing countries.

The modern era of Nigeria's energy resources regime was ushered in and dominated by the military government(s). On July 12, 1971, Nigeria made a significant stride by joining the Organization of Petroleum Exporting Countries (OPEC), becoming its eleventh member. This move marked a pivotal moment in Nigeria's relationship with its abundant petroleum resources. The decision aligned with Nigeria's ambition to assert greater control and ownership over its natural wealth. This endeavor was further solidified through legislative actions. Nigeria embraced OPEC's resolution of 1968, which advocated for consolidating the federal government's authority over natural resources. The enactment of the Petroleum Act of 1969 exemplified this commitment. Under this legislation, the state was vested with complete ownership and control of all petroleum resources within its territory, reshaping the dynamics of the energy sector. The establishment of the Nigerian National Oil Corporation (NNOC) in 1971 underlined Nigeria's growing involvement in the petroleum industry. This entity was later succeeded by the Nigerian National Petroleum Company (NNPC) in 1977, marking a transition to a state-controlled entity overseeing both upstream and downstream activities. Nigeria's ascendancy in the oil market was evident as it reached a production milestone of 2 million barrels per day in 1972, solidifying its position as the seventh major oil producer globally. This achievement paralleled a shift in the industry dynamics, with increased governmental regulation through the NNPC, reducing the dominance of transnational corporations.

The enactment of the Petroleum Act of 1969 marked a significant shift in the government's role in the petroleum sector. This legislation introduced various licenses and agreements, such as oil exploration licenses (OEL), oil mining licenses (OML), oil prospecting licenses (OPL), joint operating agreements (JOA), and production sharing contracts (PSC). Additionally, concessions were reduced from 30 and 40 years to 20 years, with the option of a 5-year renewal term. This change gradually diminished the virtual ownership and control of Nigeria's energy resources by transnational corporations, paving the way for Nigeria's active participation and effective ownership. While transnational corporations continued to contribute to Nigeria's economy by supplying energy, creating employment opportunities, and supporting government revenues and GDP, Nigeria's assertiveness increased. The Federal Military Government further solidified this shift with the introduction of the indigenization policy through the Nigerian Enterprises Promotion Decree of 1972. This policy aimed to promote local ownership by classifying enterprises for Nigerians to own at least 40% equity participation. Notably, the government acquired significant equity interests in oil and gas production and distribution, leading to the establishment of monitoring entities like NNPC and NICON. However, this policy direction saw a reversal with the repeal of the Nigerian Enterprises Promotion Decrees of 1972 and 1977, replaced by the Nigerian Enterprises Promotion (Repeal) Degree No. 7 of 1995. This new act introduced decentralization, deregulation, and de-indigenization of the petroleum sector. Importantly, it emphasized local content policies to increase government participation. The policy shift in Nigeria's petroleum sector between 1969 and 1998 was influenced by various factors. These include the need to change the contractual status quo, pressures from emerging third-world nations for sovereignty over natural resources,

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and the imperative for post-civil war reconstruction and rehabilitation programs.

The Local Content Act (LCA), 2010

This legislation was enacted in 2010 to build local capacity to exercise control over the management and governance of petroleum resources in Nigeria, restructure the petroleum sector, and promote sustainable development and use of Nigerian energy resources in the interest of the present and unborn generations. The precursors to this law were the NNOC 1971 and NNPC 1977. From the provisions of the Act, the Nigerian government intends to actualize the first consideration to be given to Nigerian operators in the oil and gas sector and develop Nigeria's capacity in project execution and management of the petroleum industry's upstream, midstream, and downstream sectors. The key innovations introduced by the LCA include the establishment of a Governing Council in Section 71 and Nigerian Content Monitoring Board in Section 69, whose functions are stipulated in Section 70 (a – p) of the Act. The LCA, 2010 provides that for all proposed projects, contracts, subcontracts, and purchase orders estimated by the operator to be in excess of $1 000,000 (USD), the operator shall provide to the Board for approval, advertisements, pre-qualification criteria, technical bid documents, technical evaluation criteria and the proposed bidders lists under Section 17. Qualified Nigerians are given first consideration regarding employment and training in projects executed in the industry in Sections 28 and 29. Succession plans and Nigerianisation of positions are also provided for under Section 31(1) LCA 2010; the caveat is that a maximum of 5% of management positions must be reserved for expatriates to cater to investor interests. Through the requirements of the succession plan, Nigerians are expected to understudy each incumbent expatriate for a maximum period of 4 years, after which the position would be Nigerianized. Other key innovations include the employment of only Nigerians in junior and intermediate positions and the establishment of the Research and Development Department to take care of research and training as regulated by the minister on standards, facilities, personnel, and technology for training in the industry. The registration of operators and their professional employees in the Nigerian petroleum industry with Nigerian professional associations in Section 42; transfer of technology; utilization of only Nigerian legal, financial, and insurance services by operators in Section 49; establishment of a Joint Qualification System (JQS), an industry data bank that would be used for Nigerian content registration and pre-qualification of contractors in the industry in Sections 55 and 56 and submission of the yearly Nigeria Content Performance Report by operator to the Board in Section 60, within 60 days of each year. The Act can rightly be described as a piece of legislation that embodies interventionist models with the aim of eventual or ultimate Nigerianilisation of the oil and gas industry.

Petroleum Industry Act (PIA) 2021

The Nigerian petroleum industry has undergone a series of complicated experiences, with many attempts being made to effect changes in the sector's policies from the colonial and independence era up until 2021. The industry has also witnessed significant policy redirections, which are intended, in the main, to separate the regulatory, policy, and commercial roles of the Nigerian government agencies in the petroleum sector in anticipation of the passage of the Petroleum Industry Act. The Petroleum Industry Act (PIA) has several primary objectives, including but not limited to the replacement of outdated and archaic legislation within the petroleum sector. It aims to facilitate liberalization and deregulation, streamlining the regulatory environment for greater efficiency. Additionally, the PIA seeks to codify the existing 16 pieces of laws related to oil and gas into a single coherent legislation, thereby enhancing clarity and consistency in governance. Moreover, it aims to address ambiguities in the management and governance of the petroleum sector. To achieve these objectives, the PIA provides comprehensive legal, governance, regulatory, and fiscal frameworks for the Nigerian hydrocarbon sector, alongside initiatives for the development of Host Communities as outlined in Section 2 of the Act. To enhance efficient management and governance of the petroleum industry, the PIA makes adequate provisions for open, competitive, and transparent upstream awards, strict rules for awarding lifting, midstream, and downstream licenses, defines processes for selling shares in Nigerian National Petroleum Company (NNPC) Limited and joint venture operations, increased access to information through an opening of more kinds of documents and data to public scrutiny in Parts II-VII. This will create incentives for effective performance, attract investment and financing, and prevent illegal practices. It clarifies revenue collection concerning rents, royalties, fees, taxes, crude sales, and bonuses. This will likely boost government revenue that can be utilized for development if corruption and embezzlement do not muzzle the buoyant revenues to be derived from these revenue flows. The PIA also provides for better NNPC oversight and governance to enable the sector to attain its full potential through this new NNPC corporate culture of commercial orientation and transparency to be attained through plugging leakages and wastages. This will also stimulate the investing interests of lenders and investors. The preceding would be achieved against the backdrop of governance and institutions, administration, development of

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Host Communities, and fiscal framework. Before discussing these provisions, it must be noted that the PIA has 5 Chapters, 319 sections, and eight schedules. The Act ensures efficient management, governance, and fiscal accountability through its proposal to establish a commercially-oriented NNPC Ltd under the Companies and Allied Matters Act and other 14 agencies to ensure a conducive business environment for oil and gas operations in Nigeria. Some agencies are responsible for the technical and commercial regulation of the industry's downstream, midstream, and upstream sectors. The Federal Ministry of Petroleum Resources will also be incorporated.

The Act provides efficient administration to promote the exploration and exploitation of Nigeria's Petroleum Resources to benefit citizens and promote the industry's sustainable development. This will be achieved through: Ensuring safe and efficient transportation and distribution, infrastructure, transparency, and accountability in the management and governance of Nigeria's petroleum resources; By avoiding economic distortions through a competitive market for the sale and distribution of petroleum products and national Gas, as well as eliminating cross-subsidies amongst various consumers; Promoting the development of model licenses and model leases plus a carried interest gives NNPC Ltd the right to participate up to 60% in a contract. The Act provides sustainable development and prosperity within Host communities through 3% of derivation benefits, plus a 3% contribution to the Niger Delta Development Commission. The 6% of funds will be provided by upstream companies annually from their operating expenditures for the Host Communities Development Trust Fund in Sections 234-257. The 3% contribution is too nominal, considering decades of environmental degradation of the Host Communities due to Petroleum exploration and exploitation activities in the communities. The Host communities' Funds will be allocated as follows: 75% for capital projects; 20% for reserve; 5% for administrative expenses. The management of the Fund established by the Petroleum Industry Act (PIA) falls under the purview of a Board of Trustees, to be incorporated with a settler according to Section 235(1), or settlors operating under a joint operating agreement in upstream petroleum operations as per Section 235(2). Failure to adhere to these provisions may result in the revocation of their lease/leases, license, or licenses under Section 238. Additionally, the Act provides for the establishment of a Host Communities Advisory Committee tasked with managing the Host Communities' Development Trust, as outlined in Sections 248-249. This committee is responsible for identifying community development projects and monitoring and reporting on their progress. Moreover, the Act mandates the formation of the Management Committee on the Security of Infrastructure to enhance peacebuilding within communities, detailed in Sections 250(a - d). Notably, communities risk forfeiting the costs of repairs if they fail to prevent vandalism, sabotage, or other forms of civil unrest leading to damage to petroleum facilities or disruptions of petroleum activities. Furthermore, the funds of the Host Communities Development Trust are exempted from taxation, as stated in Section 256. The fiscal framework provisioned in the Act encompasses a range of measures aimed at ensuring fairness, transparency, and efficiency in the petroleum sector. These measures include rights of pre-emption, incorporation of joint ventures, establishment of a domestic base price and pricing framework, and formulation of pricing formulas for Gas prices for the Gas-based industries, among others, delineated in Sections 258-306. The fiscal framework outlined in the Act is designed to encourage investment in the industry, provide clarity and increased revenues for the government, and ensure a fair return for investors. Taxes specified under the Act, to be collected by the Federal Inland Revenue Service (FIRS), include Hydrocarbon Tax ranging from 15% to 30% on profits from crude oil production, as detailed in Sections 260-261. Additionally, the Act stipulates a Companies Income Tax (CIT) rate of 30%, with an additional 2% Education Tax, with taxes no longer deductible. The Commission is tasked with collecting rents, royalties, and production shares, while the Petroleum Products Regulatory Authority (the Authority) collects gas flare penalties from midstream operations. Penalties are imposed for late filing of tax returns, with fines escalating for subsequent non-compliance. Certain expenses incurred for petroleum operations are exempt from taxation under Section 264. The Act further delineates chargeable tax rates based on the accounting year and the type of operation, with percentages varying for onshore areas, shallow water areas, deep offshore areas, and new licenses, as articulated in Section 267. Provisions are made for additional chargeable taxes under certain circumstances, while measures are in place to deter tax evasion and avoidance, outlined in Sections 269(1-5). Appeals regarding tax matters may be made to the Tax Appeals Tribunal (TAT), according to Section 288. Moreover, the Act imposes Personal Income Tax on companies engaged in upstream, midstream, and downstream operations, while Company Income Tax applies to entities involved in petroleum operations, including concessionaires, licensees, lessees, contractors, or subcontractors, as detailed in Section 302. Operators in the petroleum sector are subject to royalties ranging from 15% for onshore areas to 7.5% for deep offshore and frontier basins, with potential incentives for gas utilization and investment in gas pipelines to reduce gas flaring. Additionally, the Act makes provisions for the abandonment and decommissioning of onshore and deep offshore platforms through environmental management plans, as articulated in Sections 232-233. However,

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challenges may arise with the effective implementation, enforcement, and compliance of the legislation, including corruption, lack of political will, leadership and enforcement issues, and inadequate skilled personnel. Despite the aim of the PIA to promote international best practices in Nigeria's petroleum industry, it has faced criticism from various quarters. The Nigerian Governors' Forum has raised concerns about specific sections of the Act, which they believe could diminish their revenue share from the federation account.

Furthermore, challenges in the effective implementation of the Act may impede its intended outcomes. The National Petroleum Policy (NPP), a precursor to PIA 2021, was published in 2017. It seeks to achieve the following objectives: Creation of a market-driven Nigeria's petroleum industry; Maximation of production and processing of hydrocarbons; Moving Nigerian oil from being a source of income to oil as fuel for economic growth; Following hydrocarbon from production to market; Incentives investments in a cost-efficient storage, transportation and distribution systems; Promotion of competition; Maximation of the environmental footprint of petroleum exploration in Nigeria, and manage the balance between depleting petroleum resources and renewable energy. The PIA's comprehensive and extensive provisions have covered all these objectives. PIA and NPP will likely cure regulatory and administrative overlaps, mismanagement, and underproductivity in Nigeria's petroleum sector. This is borne out of the fact that the PIA and NPP need to adequately reflect the international and multi-jurisdictional mechanism of a model energy sector. To tackle gas flaring in Nigeria, the Federal Government implemented the National Gas Policy in 2017, aligning with the country's commitment to the Paris Climate Change Agreement of 2015, which advocates zero tolerance for gas flaring. This policy, titled the "Nigerian Gas Flare Commercialization Programme (NGFCP)," aims to end gas flaring in the near term (within 2-3 years). Its implementation carries several benefits, including the reduction of the long-standing practice of gas flaring in Nigeria and the mitigation of health hazards for Niger Delta communities. Economically, the policy is expected to have a significant impact by tapping into approximately 30 million metric tonnes of gas per annum through the Flare Gas (Prevention of Wastes and Pollution) Regulations of 2018, thus accelerating the development of gas infrastructure. The NGFCP was projected to invest $3.5 billion by 2020 to reduce gas flaring in Nigeria, according to reports from THISDAY NEWSPAPER in 2018. Furthermore, the NGFCP offers a market-driven solution by making gas bankable for investors and lenders while ensuring no adverse impact on the safety or operational efficiency of gas production and exploration activities. To operationalize the NGFCP, the Petroleum Industry Act (PIA) includes extensive provisions for the management and governance of gas resources in Nigeria, specifically targeting the reduction of gas flaring, as outlined in Sections 125-173. The Act delineates the rights and responsibilities of gas licensees, suppliers, distributors, and retailers. It also establishes a framework for granting various licenses to gas operators by the regulatory Authority upon payment of prescribed fees. Additionally, the PIA provides for a 5-year tax holiday for investors in gas pipelines to encourage effective implementation of the NGFCP policy and incentivize investment in gas infrastructure development.

Policy Shift in the Minerals and Mining Sector

Before the enactment of the Minerals and Mining Act in 2007, the regulation of minerals in Nigeria was governed by a series of specific laws targeting individual minerals, including the Diamond Trading Act 1990, the Quarries Act 1990, the Gold Trade Act 1990, the Tin Miscellaneous Provision Act 1990, the Tin Production and Development Revolving Loans Act 1990, and the Minerals and Mining Act 1999. These laws lacked comprehensive provisions for reversionary rights in mineral licenses, leaving the federal government's reversionary rights minimally protected. However, the Minerals and Mining Act 2007 ushered in significant changes by stipulating that all lands where minerals are discovered commercially shall be acquired by the federal government. The Act also established the Mining Cadastre Office to administer titles and permissions and prohibited mining exploration and development without proper authorization. Additionally, the Act created Departments of Mines Inspection and Environmental Compliance while granting the Minister authority to establish additional agencies deemed necessary for effective implementation. To incentivize investment in the mining sector, the Act offers various benefits to operators, including the ability to deduct 95% of qualifying expenditure incurred in the year of investment as capital allowance. It also allows deductions for all infrastructure costs and certified exploration costs. Operators enjoy exemptions from customs duties on imported plants, machinery, and equipment for mining operations, as well as quotas for approved expatriates and remittance quotas for expatriate personnel free from any tax on currency transfer out of Nigeria. Furthermore, the Act permits holders of mineral titles to retain a portion of foreign exchange earnings in a foreign exchange domiciliary account for the acquisition of spare parts and necessary inputs. In cases of sale or liquidation due to foreign investment, holders of mining licenses are assured of the free transferability of money for certified foreign loans and repatriation of foreign capital. The Act provides three years of assured tax relief

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for investments, with an additional two years available at the investor's discretion. However, holders of mineral rights are obligated to safeguard the environment during exploratory activities and are required to contribute to an Environmental Protection and Rehabilitation Program fund to fulfill their environmental responsibilities. Nonetheless, the Act has been criticized for perpetuating environmental struggles by vesting mineral-bearing lands in the federal government, lacking a clear definition of "fair and adequate compensation" for damage, and imposing relatively low penalties without provisions for environmental remediation for pollution.

Policy Shift in The Electricity Sector

Every country, including Nigeria, seeks to secure energy security by optimizing supply and demand, as energy security constitutes a severe challenge to a country's socio-economic development and economic growth, hence the unbridled attempts by Nigeria to evolve the legal and institutional frameworks to address its energy challenges. There has been a shift in Nigeria's electricity sector policy from the fusion of generation and distribution of electricity to monopolization of generation, transmission, and distribution by a centralized organization, the National Electric Power Authority (NEPA), and Power Holding Company of Nigeria (PHCN), to liberalization and progressive, investor-driven, legal and institutional regulatory frameworks to promote local and foreign investments in the electricity sector. The old Nigerian electricity regime, which spanned from 1896 during the colonial era to 2000, was replete with state monopoly in electricity management and governance, in contrast to the new regime that reflects liberalization of electricity supply, intending to promote competition and radical private sector participation through direct and indirect investments and technical partnerships with the federal government. Under the old electricity regime, electricity governance was effectuated by the colonial government through the establishment of the Nigerian Electricity Supply Company (NESCO) in 1929 under the Electricity Ordinance Act of 1929, the Public Works Department in 1946, and the Electricity Corporation of Nigeria (ECN) established according to the Electricity Corporation Ordinance no 15 of 1950 and Niger Dams Authority (NDA). The post-independence era witnessed the fusion of generation and transmission of electricity on April 1, 1972, with the merging of the two extant electricity organizations, ECN and NDA, into NEPA by National Electric Power Authority Decree No. 4 of 1972. NEPA proved to be ineffective in its governance of electricity generation, transmission, and distribution as a result of its monopoly over the electricity regime. It was unbundled through the commercialization and privatization decree no. 25 of 1988 into 18 new companies and semi-independent business units under the defunct Power Holding Company of Nigeria (PHCN).

The Nigerian government embarked on electricity reforms in 2000 through the enactment of the Electric Power Sector Reform Act (EPSR Act) 2005. The EPSR Act contains express provisions for liberalization of the electricity regime in Nigeria through the promotion of competition, observation of due process, radical private sector participation through direct and indirect investments, and government technical participation. The new regime, therefore, sharply departs from the old regime of state monopoly in electricity governance in Nigeria. The federal government set targets for Nigeria's power sector through the EPRS Act, which include efficient attainment sage, affordable and cost-effective generation, transmission, distribution, and marketing in Nigeria, attraction of local and foreign investments, development of a transparent, efficient, and effective regulatory framework for the sector. The EPSR Act also provides for consumer protection and high-performance standards by operators to elicit maximum utility and safety for consumers of electricity in Nigeria. On the contrary, the NEPA Act did not provide for the safety of consumers, efficiency, and safety of cables or appliances of consumers. It forbade any other person or state government from obtaining licenses to operate power plants or generate electricity, therefore, the NEPA Act provisions were inconsistent with the 1999 constitutional provision that places electricity generation transmission and distribution in the concurrent legislative list. The policy shift in the development, management, and governance of electricity and other minerals sectors had needed to be faster since the colonial era when the Electricity Corporation of Nigeria (ECN) was established under the Electricity Corporation Ordinance of 1950. After the fusion of ECN and the Niger Dams Authority (NDA) in 1972 by the National Electric Power Authority Decree No 4, which gave birth to the National Electric Power Authority (NEPA), not much happened in this sector until 2023 when the Electric Power Sector Reform Act (2005) was repeal and re-enactment as the Electricity Act 2023. To attract private sector investments in the Nigerian Electricity Supply Industry (NESI), the Electricity Act 2023 Act introduces a comprehensive legal and institutional framework to guide the operation of a privatized, contract and rule-based competitive electricity market in Nigeria. In accordance with the Constitution of the Federal Republic of Nigeria 1999, as amended, the Electricity Act 2023 expressly recognizes the rights of States to make laws for electricity generation, transmission, distribution, system operation, and the establishment of power stations within its territory. This gives state governments the freedom to operate electricity markets independently from the Nigerian Electricity Regulatory Commission (NERC),

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including the ability to issue licenses to private investors for the construction of power plants, the establishment of transmission networks, the operation of mini-grids, and the distribution of power within a state. It is crucial to highlight that NERC will continue to regulate electrical firms in such States until the State has implemented its energy laws and created its electricity market. As the market changes, NERC's role under the Act is to keep it competitive for the sake of consumers and businesses alike. To avoid catastrophic market issues in the NESI, NERC may now intervene to save the licensee firm from bankruptcy. In doing so, NERC can play a more proactive role in regulating the industry and making sure that businesses are functioning efficiently and responsibly. The Act empowers the Federal Ministry of Finance to create tax incentives to encourage and ease the use of renewable energy sources to stimulate the development and use of such sources while striking a balance between possible costs passed on to end-users. Despite these reforms or paradigm shifts in electricity regime policy, electricity demand still constitutes a significant challenge for Nigeria and Nigerians. Nigeria's socio-economic development is still dependent on fixing its energy sector. Persons with access to electricity are still experiencing incessant light shedding and limited electricity supply. Nigeria urgently needs to address its electricity deficit challenge by tapping its abundant renewable energy resources, which can be developed, governed, and utilized from biomass, wind, waves, the sun, hydro-power, bio-fuels, bio-gas, and geothermal sources.

CONCLUSION AND PROPOSALS FOR REFORM

The Nigerian energy sector has experienced significant shifts in policy over the years, but the effective implementation of these policies has often been hindered by various challenges. These challenges, including ambiguous legal provisions, resource mismanagement, and institutional weaknesses, have necessitated urgent reforms to establish a robust energy policy framework. Firstly, there is a pressing need for a new legal regime that grants resource-based and property rights to communities hosting energy resources. This new legislation should not only recognize the rights of these communities but also incorporate principles of international law, energy diplomacy, International Environmental Law, and international best practices. By doing so, Nigeria can ensure fair and sustainable utilization of its energy resources while aligning with global standards and commitments. In addition to legal reforms, strengthening the institutional regulatory frameworks in the energy sector is crucial. This involves addressing issues such as corruption, improving transparency, and recruiting proficient personnel. By enhancing regulatory effectiveness through proactive enforcement and participatory approaches, Nigeria can ensure that energy sector laws and regulations are consistently adhered to. Another vital aspect of reform is the reconsideration of existing contractual arrangements in the energy sector. Contracts such as risk service contracts, production sharing contracts, and joint ventures have often favored multinational companies, leaving Nigeria primarily as a tax collector. To address this imbalance, Nigeria should prioritize contractual arrangements that safeguard its interests, promote equitable distribution of benefits, and maximize revenue generation from energy resources. Furthermore, sustainable development principles must be explicitly incorporated into energy sector legislation. This includes principles of sustainable development, intergenerational equity, and sustainable resource utilization. By embedding these principles into the legal framework, Nigeria can ensure that energy development activities are conducted in a manner that balances present needs with the interests of future generations. This is particularly crucial in addressing global challenges such as climate change and environmental degradation. Nigeria's potential in nuclear energy remains largely untapped, highlighting the need for investment in this area. This involves recruiting and training skilled personnel in nuclear energy science and technology and reviving relevant legislation such as the Nuclear Safety and Radiation Protection Act. By harnessing its nuclear energy potential responsibly, Nigeria can diversify its energy sources and enhance energy security. Finally, flexible dispute resolution mechanisms are essential for addressing complex energy sector contracts and agreements. Incorporating provisions for choice of law, forum, and mode of settlement in energy sector laws can streamline dispute resolution processes and ensure fair outcomes in commercial disputes between multinational companies and the government. Overall, by implementing these comprehensive reforms, Nigeria can overcome longstanding challenges in its energy sector and establish a more efficient, equitable, and sustainable energy policy framework. This will not only enhance energy security and promote socio-economic development but also position Nigeria as a responsible global energy player in the transition towards a more sustainable energy future.

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ORCID DETAILS OF THE AUTHORS

Rose Ohiama Ugbe: https://orcid.org/0000-0003-1052-8995

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