

**A CRITICAL INVESTIGATION INTO THE UTILITY OF THE PETROLEUM  
INDUSTRY ACT, 2021, ON HOST COMMUNITIES IN NIGERIA**

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**ABSTRACT**

The paper investigated the gaps in the provisions of Petroleum Industry Act, 2021, that could hinder the effective application and provision of adequate equitable social economic and sustainable development of the Act in attaining its objectives as the repealed Petroleum Act, 1969, became obsolete and largely incapable of meeting the global needs and best practices in the oil and gas sector due to the inadequate sanctions and failure to address the aspirations of the oil and gas producing host communities in the Niger Delta region of Nigeria. This paper has given an in-depth investigation of the Petroleum Industry Act, 2021, and the issues emanating from some of its provisions that have generated quite some controversies in the Nigerian oil and gas industry. The allocation of 3% to the host communities that suffer the direct consequences of oil and gas exploration activities is considered unfair as against the allocation of 30% to frontier basin state. It is observed that the intent of these provisions, whatever, they may be, are indeed myopic in light of the trend of energy transition in the industry both local and internationally. Hence, this paper suggested the need to overhaul the Petroleum Industry Act, 2021, to meet the global standards through some controversial provisions that posed challenges to its proper implementation.

*Keywords:* Investigation; Utility; Petroleum; Industry; Oil and Gas; Host Communities

**INTRODUCTION**

In Nigeria, oil and gas industry plays significant role in the development and economy both in terms of revenue generation and commercial viability, although the industry contributes about 90% of the foreign exchange earnings and 60% of total income<sup>2</sup>. Consequently, any adverse change in the industry will have a striking and long-term impact on government finances and commercial activities. As a result, successive governments have remained focused on the petroleum industry amidst various discussions on economic diversification. It took Nigeria 20 year of various attempts for a reform in the oil and gas sector and none of the efforts yielded a tangible result until 16<sup>th</sup> September, 2021, when the Petroleum Industry Act, 2021, was signed into law by the government of President Muhammadu Buhari. The Act, offers a radical departure from the past laws in the industry in Nigeria and provides legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters<sup>3</sup>. The Act, provides for the reduction and streaming of royalties<sup>4</sup>. Replacement of regulatory bodies<sup>5</sup>. Selling of shares in a reformed Nigeria National Petroleum Commission (NNPC Ltd)<sup>6</sup>. Rules for

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<sup>2</sup> Oluwafisyo Taiwo, "A Critical Study on Nigeria's Petroleum Industry Act, 2021.

<sup>3</sup> Preamble to the Petroleum Industry Act, 2021.

<sup>4</sup> Section 100 of the Petroleum Industry Act, 2021.

<sup>5</sup> Section 8 of the Petroleum Industry Act, 2021.

<sup>6</sup> Section 53 of the Petroleum Industry Act, 2021.

environmental clean-up<sup>7</sup> and among others. The underlying issues of the Act, is that of deregulation which the arguments of government is in support of deregulation and claimed to have spent Ten Trillion Naira in the last ten years to subsidize the price of petrol. This has caused negative effect as the price of crude oil in the international market increases, making the government to pay more for importation since the country's refineries are ineffective.

The allocation to host communities' development trust fund of 3% actual annual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities' development trust fund was established<sup>8</sup>, has raised more uproar because of the impact on the host communities in view of environmental crises and pollution they have been suffering as result of oil and gas exploration and production, the frontier exploration for the exploration of oil and gas in the northern region of Nigeria, which shall be 30% of NNPC Ltd.'s profit oil and profit gas as in the production sharing, profit sharing and risk service contracts<sup>9</sup>, as opposed to by the host communities for getting 3%. The incorporation and privatization of NNPC Ltd, provided in the Act<sup>10</sup>, will simply make the matter worse than when the NNPC was alone. This has little or nothing to show forth as an achievement compared to other Countries National companies after independence. The introduction of environmental and gas flare management with annual control as an exception to gas flaring<sup>11</sup>, that has the minister assents to it to be legal, is a flop that will make a floodgate for more gas flaring than before because the tons of cases with gas flaring and now that it can be legal, it will get worse.

The goal herein is to investigate the Petroleum Industry Act, 2021, to identify its utility and the way forward, the repealed Petroleum Act, 1969, having been obsolete and largely incapable of meeting the emerging global best practices in the industry due to inadequate sanctions and failure to address the aspirations of the oil and gas producing host communities due to lack of measures that would have directly addressed socio-economic and environmental challenges affecting the host communities due to negative effects of oil and gas extractive activities<sup>12</sup>. Without a doubt, the PIA, 2021, is a landmark improvement in the Nigeria's oil and gas sector.

Nonetheless the flaws observed in the provisions of the Act, are not adequately addressed<sup>13</sup>. Likewise, the need for an energy transition in the context of the global demand and campaign against fossil fuels in an era when decarbonization is a global necessity. Calling for reform of the legislative and regulatory challenges confronting the Act and to take full advantages of its prospects by the oil and gas producing host communities necessitated to bring the Nigeria's petroleum industry in conformity with the best practices and international treaties and agreements.

## **THE CONTENTIOUS ISSUE: HOST COMMUNITY ALLOCATION**

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<sup>7</sup> Section 102 of the Petroleum Industry Act, 2021.

<sup>8</sup> Section 240 (2) of the Petroleum Industry Act, 2021.

<sup>9</sup> Section 9 (4) of the Petroleum Industry Act, 2021.

<sup>10</sup> Section 53 of the Petroleum Industry Act, 2021.

<sup>11</sup> Section 102 (7) of the Petroleum Industry Act, 2021.

<sup>12</sup> O.J. Olujobi, E.S. Olarinde and T.E. Yebisi, "The Conundrums of Illicit Crude Oil Refineries in Nigeria and Its Debilitating Effects on Nigeria's Economy: A Legal Approach", <https://www.10.3390/en.15176197>, accessed 4<sup>th</sup> October, 2022.

<sup>13</sup> O.J. Olujobi, E.S. Olarinde and T.E. Yebisi, et al., "COVID-19 Pandemic: The Impacts of Crude Oil Price Shock on Nigeria's Economy, Legal and Policy Options, <https://www.10.3390/su141811166>, accessed 14<sup>th</sup> August, 2022.

The PIA, 2021, provides for the regulation of oil and gas industry in Nigeria and created a Host Community's development trust and incorporated for the benefit of the host communities which is the responsibility of the settlor (oil and gas company)<sup>14</sup> and make an annual contribution to the applicable host communities' development fund of an amount equal to 3% of its actual operating expenditure of the preceding financial year in the upstream petroleum operations affecting the host communities for which the applicable host communities development trust fund was created<sup>15</sup>. This provision is a major contentious issue because the host communities have disagreed with the stipulated 3% contribution to host communities' development trust fund. The host communities are demanding for higher percentage as such percentage is low to equate the negative impacts to their environment for degradation and the hazards to indigene residents.

Host communities were not expressly defined under the Act<sup>16</sup>, and which is a cause for concern, the standards for selecting a host community is not stated. There is a lacuna in the host communities' definition. Any community where midstream oil and gas operations are held is a host community? The act has failed to proffer answer to this question.

Another contentious issue of the 3% fund for the host communities' development trust is that each host community gets 3% of operating expenses from oil and gas company operating in each host community's environment and the fund is given by the oil and gas company to the host community and not the government against the provisions of the Nigerian Constitution<sup>17</sup>, which vests the ownership and control of oil and all-natural resources in the Government of the Federal Republic of Nigeria. The issue of revenue allocation was brought to light in the case of *AG Federation v. AG Abia State & 35 Others*<sup>18</sup>, where the littoral states contended that their territory extended offshore as far as the continental shelf. Therefore, they laid claim to natural resources derivable from their territorial waters, relying on section 4 of the Revenue Allocation and Fiscal Commission Act, 1989. The court held that petroleum resources in Nigeria are vested in the Federal Government of Nigeria<sup>19</sup>. Again, the 3% fund to the host communities, has offended section 1 of the Land Use Act, 1978, which vested the land in the state on the Governor in trust and by section 176 of the Constitution of the Federal Republic of Nigeria, 1999, the Governor of State shall be the Chief Executive of that state, and yet no consultation of any kind is accorded the Governor of a state in the Act, in terms of providing benefits to the host communities. This paper also observed that the 3% fund to the host communities provided in the Act, did not recognize or pass through the Federation Account to meet the constitutional requirements of revenue from oil and natural resources revenue<sup>20</sup>. The Constitution of the Federal Republic of Nigeria, 1999, is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria, the Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution and if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void<sup>21</sup>. The obvious and consistent violation of the provisions of the

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<sup>14</sup> Section 235 (1) of the Petroleum Industry Act, 2021.

<sup>15</sup> Section 240 (2) of the Petroleum Industry Act, 2021.

<sup>16</sup> Section 318 of the Petroleum Industry Act, 2021.

<sup>17</sup> Section 44 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>18</sup> (2002) 4 SC (pt. 1) p. 1, (2002) 6 NWLR (pt. 764) p. 542.

<sup>19</sup> *South Atlantic Petroleum Ltd. V. Minister of Petroleum Resources (200) JELR p. 49512 (CA)*.

<sup>20</sup> Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>21</sup> Section 1 of the Constitution of the Federal Republic of Nigeria, 1999.

Petroleum Industry Act, 2021, makes it voidable and begging for a proper repeal to be consistent with the supreme law of the land and cause easy administration.

### **THE CONTENTIOUS ISSUE: FRONTIER EXPLORATION FUND**

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), is expected to promote and develop the exploration of frontier basin, wherein the Act, provides, there shall be maintained, for the purpose of this section, a frontier exploration fund which shall be 30% of NNPC Limited's profit oil and profit gas in the production sharing, profit sharing and risk service contracts<sup>22</sup>. According to NNPC, there are about six basins: Chad Basin, Sokoto Basin, Benue Trough, Bida Basin, Kolmani River II Well on the Upper Benue Trough. Gongola Basin in the North-Eastern region of Nigeria<sup>23</sup>. Anambra Basin, Borno Chad Basin, Dahomey Basin, among others<sup>24</sup>. Currently, crude oil is obtained from eight states in the Niger Delta region of Nigeria, which include: Abia, Akwa Ibom, Bayelsa, Delta, Edo, Imo, Ondo, and Rivers States<sup>25</sup>. The Act has not specifically in all sense of legal speculation state or define what is exactly frontier exploration basin or where it is located. This can be said that there is nothing called exploration fund and thus the provision is misleading in the Act and is suspected to be a means to an end for corruption.

It is observed that this frontier exploration fund allocation comes with its benefits and some of them include thus:

- Creation of more funds for the NNPC to generate exploration data on the frontier basin, mature them for detail exploration on behalf of government, multinational and indigenous oil and gas operating companies.
- Promote oil and gas exploration activities in the inland basins and additional investment in oil and gas exploration.
- Promotion of efficient and sustainable exploration of hydrocarbon in frontier basins of Nigeria.
- Equal contribution by all states to oil reserves.
- Promotion of oil exploration activities in order to advert the challenges of finance in the economy.
- Reduction of existing pressure on the oil and gas producing host communities in the Niger Delta region of Nigeria.
- Ascertainment of the level of poverty in the states where the frontier basins are located.

It is said for every general rule there is an exception. Whatever, that has advantages there must be disadvantages. Therefore, the disadvantages of frontier exploration fund are state thus:

- The allocation might give an unnecessary opportunity for some parties to take unchecked resources from the Federation Account.
- There is no guarantee that after the bulk investment for the exploration the government would make money from the investment.

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<sup>22</sup> Section 9 (4) of the Petroleum Industry Act, 2021.

<sup>23</sup> N.G. Obaje, Abu Kasima Adamu, Abullahi Bomai, Mukhta Zanna, "Frontier Exploration Fund Administration Regulations" <https://www.nuprc.gov.ng>, accessed 7<sup>th</sup> August, 2023.

<sup>24</sup> Ibid.

<sup>25</sup> Solance Obiajulu, "Nairametrics-The Eight Oil-Producing States in Nigeria", <https://www.m.facebook.com.post>, accessed 15<sup>th</sup> September, 2023.

- It is favourable to a particular set of people in the country and the oil and gas producing states, who deserve the allocation more would now continue to agitate for it, leaving the country in an uproar.
- The allocation is not explicit on an alternative for oil and gas, in the event that oil and gas is not found in commercial quantity after such investment.
- There are insinuations that the frontier exploration fund, is a money from the oil and gas producing host communities in the Niger Delta region and taking it to the northern region.
- Because of the major trend in the energy transition, it seems quite unreasonable to invest such a huge percentage in the exploration of oil and gas, when the use of hydrocarbons would soon be a thing of the past.

### **ANALYSING THE INVESTIGATION FOR NIGERIAN LESSONS**

Compare with other jurisdictions, it can be seen that it is necessary that there is a clear understanding that the natural resources are to be shared and which mechanisms will be used to balance the interest of the stakeholders in the petroleum industry. According to a briefing paper by the Centre for Humanitarian Dialogue, strictly contained the frameworks which are particularly important for ensuring and should clearly assign revenue bases to each level of government and should also detail any agreed formula for revenue sharing to the affected communities<sup>26</sup>. It is also important to make industry and finance experts available during the early stages of a negotiation process with the oil and gas producing host communities. This will enable a move away from the politics of resources governance towards the technical aspects of revenue governance. Experts will be able to provide stakeholders, oil and gas producing host communities, oil and gas companies and government with a realistic assessment of the issues involved and can deal with unrealistic expectations, especially regarding money. Again, the creation of two different regulation bodies in the industry, wherein the Act provides for the creation of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)<sup>27</sup>. With the specific mandate of regulating the upstream oil and gas activities in the industry<sup>28</sup> and also the creation of Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)<sup>29</sup> and vested with the responsibility of regulating midstream and downstream oil and gas activities<sup>30</sup>. It is expected that the delineation of these regulatory bodies would facilitate the efficiency of the statutory responsibility placed on the oil and gas companies to the oil and gas host communities<sup>31</sup> and reduce the overlapping stakeholder interests in the industry.

Achieving environmental justice for degradation, unemployment rate and pollution impacted communities goes beyond having a restoration fund known as host communities' development trust<sup>32</sup>. The Act provides<sup>33</sup>, settlor shall incorporate host communities' development trust in this Act referred to as "the trust") for the benefit of the host communities which the settlor is responsible, this has qualified the host community as body to sue and be sued and has the benefit from the 3% fund. A safe, healthy and good environmental is a fundamental right of the communities. Environmental disputes are

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<sup>26</sup> Ibid.

<sup>27</sup> Section 4 of the Petroleum Industry Act, 2021.

<sup>28</sup> Section 6 of the Petroleum Industry Act, 2021.

<sup>29</sup> Section 29 of the Petroleum Industry Act, 2021.

<sup>30</sup> Section 31 of the Petroleum Industry Act, 2021.

<sup>31</sup> Section 235 of the Petroleum Industry Act, 2021.

<sup>32</sup> Section 240 (2) of the Petroleum Industry Act, 2021.

<sup>33</sup> Section 235 (1) of the Petroleum Industry Act, 2021.

inevitable due to the nature of oil and gas exploration and production activities. It is sad that oil and gas producing host communities are the ones bearing the brunt of the negative effects of these oil and gas extraction activities. Oil spill is a major cause of environmental disputes and violent conflicts in the Nigerian oil and gas industry and are predominant.

The direct results of these oil spillage and environmental problems is inflicted on the host communities. The host communities of the oil and gas companies in Nigeria are faced with continued flaring of gas and its attendant consequences on the human inhabitants. There is in turn inadequate compensation for the negative consequences of oil and gas exploration activities. Hence disputes continue to rise between host communities and oil and gas companies in Nigeria. It should be noted however, that environmental disputes often involve technical issues and multiple parties, thus making them quite difficult to handle. The 3% allocation to the host communities in the Act, is not enough considering the enormous environmental damage caused by the oil and gas exploration activities in the oil and gas producing host communities in the Niger Delta region of Nigeria. The adequate equitable socio-economic and sustainable environmental development is beneficial to the possibility of the extractive industry and should be an important goal in the exploitation of extractive resources in Nigeria<sup>34</sup>. It is thus, states that the administration of the petroleum and energy industry in Nigeria, has an imperative role to play in providing adequate and equitable compensation and reliefs to the oil and gas producing host communities. Having identified the two contentious issues surrounding the decrease of allocation to host communities from 10% to 3%, despite the proposed 5% and the allocation of 30% to frontier exploration fund. It is important to critically look at the practice in other jurisdictions not only for the sake of comparison, but also as a starting point for proffering viable recommendation.

In the United States of America, there is a system of compensating oil and gas producing states. The system is enforced by not only allocating funds to these oil producing states, but also imposing additional taxes on the properties and equipment used by oil companies in the process of exploration<sup>35</sup>. It is observed from research that additional revenue has been generated via royalties paid based on the value of oil and gas produced from these regions<sup>36</sup>, which have led to a series of conflicts between the inhabitants of these regions, the exploration companies and the states. These monies generated are directed towards building schools, roads, and an overall improvement of infrastructure<sup>37</sup>.

In North Dakota, USA, the State Government allocates a substantial amount of oil and gas revenue to trust funds to public education. In 2012, about \$329 Million was generated from leases granted by the state to oil and gas companies. taking this into consideration in Nigeria situation in the oil and gas sector, there is a need to build a degree of flexibility into the system to benefit the oil and gas producing host communities who suffers the brunt negative effects of the extractive activities. Since political circumstances and economic conditions change and in turn, it should also be possible to adjust any revenue sharing formula. There should be a consensus on a revenue sharing formula which is extremely important for the stability of the formula and for meeting the oil and gas companies' objectives to their oil and gas producing host communities, especially diverse environment, this is because where some key stakeholders disagree on the formula and it is implemented it might be viewed as

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<sup>34</sup> Ibid.

<sup>35</sup> Penseur Rodison, "How Do Americans Benefit from Oil Field Located in the U.S'", <https://www.quora.com>, accessed 25<sup>th</sup> November, 2023.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

illegitimate and not addressing the local concerns leading to violent conflicts<sup>38</sup>. The negative impact effects of the oil and gas producing host communities from oil and gas extraction activities is the concern for agitation for resource control that the non-attention or not been properly handled is the essence of these conflicts that is militarising the oil and gas producing area of Nigeria.

### **NORTH AND SOUTH DIVISION OVER THE 3% AND 30% ALLOCATION FUND**

In an effort to address the petroleum industry long standing issues, the Petroleum Industry Act, 2021, created an intentionally factions between the northern and southern regions of Nigeria on the issue of ideology and benefits from the 3% fund allocation to oil and gas producing host communities and 30% frontier exploration fund to basins in the north. The bill that was passed into law that is now the Petroleum Industry Act, 2021, was proposed by the southern legislators in the National Assembly precisely legislators from the Niger Delta region of Nigeria and who believe it that it favours the interests of the northern and that the law has been modified to benefit the northern part of Nigeria.

The southern legislators believe that they have been cheated, the oil and gas producing communities are dissatisfied since they asked for 10% derivation fund and it was rejected. Pan-Niger Forum (PANDEF), also urged the lawmakers to immediately reverse the 3% allocation to the oil and gas producing host communities in the Niger Delta region<sup>39</sup>. In practice, the Petroleum Industry Act, 2021, incites hostility in the oil and gas producing host communities in the Niger Delta region of Nigeria by the provision of 3% contribution to host community development trust fund is insufficient while 30% profit for frontier basin development fund is higher<sup>40</sup>. The public opinions by some northers have lent credibility to the southern suspicions that frontier basin fund is a ploy for redistribution of resources fund to the north<sup>41</sup>.

An instance case is the Group Managing Director of NNPC, Mele Kyari, is a northern who has no oil well in his place and there is the claim that he will use the law in favour northern region since new crude oil reserves are being discovered in the region and the revenue derivable from exploration would accelerate additional discoveries in the north. This impression undermines efforts to get a national consensus on the petroleum policies that are interpreted in a way that is impartial to the regions and that is in the national interest<sup>42</sup>. The instability in the oil and gas sector does not only affect Nigeria economy but it also affects the environment and livelihood of the indigenous people that do business and traditional occupation to earn their living and any shift in what they do have alternative but starvation.

### **TENSION OVER OIL AND GAS RESOURCES BENEFIT SHARING**

Any revenue resources generating entity owned the Federal Government, must deposit its profits in an account called Federation Account<sup>43</sup>. To be shared amount the three tiers of

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<sup>38</sup> Ibid.

<sup>39</sup> Y.M.M. Alameen, (2016) The Norwegian Oil Experience of Economic Diversification: A Comparative Study with Gulf Oil'', European, Journal of Business Management, 8 (1), p. 94.

<sup>40</sup> See sections 9 (4) and 240 (2) of the Petroleum Industry Act, 2021.

<sup>41</sup> Ibid.

<sup>42</sup> M. Oguntoye and A. Oguntoye, ''An Appraisal of the Impact of the Oil Sector on the Nigerian Economy, LL. M Dissertation, Faculty of Law, University of Lagos, 2021.

<sup>43</sup> Section 162 (2) of the Constitution of the Federal Republic of Nigeria, 1999.

governments<sup>44</sup>. More than 80% of the funds received by the States and Local Governments come from the Federation Account. This means that NNPC Ltd.'s contribution to the Federation Account may be reduced as a result of the requirement of 30% revenue to be set aside for frontier exploration fund. The Federation Account sharing revenue to the three tiers of government will decline. This will intend the States and Local Government to boost their internal revenue generation to be able to fulfil their responsibilities to provide social services to their populace. However, it is a challenge to the States and Local Governments who has no capacity and fiscal efficiency to generate internal revenue to her people<sup>45</sup>.

The success operations of petroleum industry in Nigeria depends seriously on the oil and gas producing host communities, the partnership may be the key in achieving more profitable returns from the most capital-intensive ventures<sup>46</sup>. Petroleum operations have often been interrupted hostility and conflicts from the oil and gas producing host communities for no or less than expected benefits that could cushion the negative effects, the significant theft of crude oil, the destruction of pipelines and the ongoing suspension of large oil fields may be the cause of part of the conflicts<sup>47</sup>. Therefore, the Petroleum Industry Act, 2021, has significant effects on the Federation's revenue as well as those of the States and their Local Governments and these governments may see a drop in the revenue accrued to them as a result of reduction in taxes and royalties. The government has attempted to solve this issue on several intervention with efforts that has produced less result of effectiveness.

Among these interventions is the establishment of the defunct Oil Mineral Producing Areas Development Commission, (OMPADEC), 1992, the derivation fund financed by 13% of the revenue from the Federation Account and distributed among states and their local governments<sup>48</sup>. The establishment of the Niger Delta Development Commission, in 2000, by the Niger Delta Development Commission [Establishment etc.] Act, 2000, Act No. 6, LFN. The establishment of Ministry of Niger Delta Affairs in 2008, with the total budget allocation of N584.6 Billion between 2008 and 2022 among others<sup>49</sup>. In an attempt to restore the already bacterised relationship between the oil and gas companies and the oil and gas producing host communities, the Petroleum Industry Act, 2021, was enacted with the provisions that mandated the oil and gas companies' duty of care to the oil and gas producing host communities' development<sup>50</sup> and incorporated to responsibility of the oil and gas communities<sup>51</sup>. A fund of 3% actual annual expenditure from the preceding year is to contributed to the host communities' development trust fund<sup>52</sup>, to support host communities' infrastructure development, economic development and empowerment. The PIA, 2021, allows the oil and gas companies to use their discretion in determining where is host

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<sup>44</sup> P.E. Tadeo, "A Comparative Study of Oil Resource Management in Norway and Nigeria: Lessons for Kenya (MA Thesis of Diplomacy and International Studies, University of Nairobi) 2016.

<sup>45</sup> A.K. Amabipi, "Understanding Host Community Distrust and Violence Against Oil Companies in Nigeria (PhD Thesis, School of Public Policy and Administration Walden University), 2016.

<sup>46</sup> Ibid.

<sup>47</sup> E.V. Clark, (2016) "The Politics of Oil in Nigeria: Transparency and Accountability for Sustainable Development in the Niger Delta, American International Journal of Contemporary Research, 6 (4), p. 76.

<sup>48</sup> Ibid.

<sup>49</sup> O.J. Olujobi, (2021) "Recouping Proceeds of Corruption: Are There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria?", Journal of Money Laundering Control, 24, (4) pp. 806-833.

<sup>50</sup> Section 234 of the Petroleum Industry Act, 2021

<sup>51</sup> Section 235 of the Petroleum Industry Act, 2021.

<sup>52</sup> Section 249 (2) of the Petroleum Industry Act, 2021.



community<sup>53</sup>. The PIA, 2021, lays forth the formation of petroleum corporations' development of the oil and gas extractive activities with regard to the host communities, including the establishment of fund domicile with companies to contribution to host communities' development<sup>54</sup>.

### **SOCIAL-ECONOMIC IMPACT OF OIL AND GAS EXPLORATION ON THE HOST COMMUNITIES**

In the process of extracting oil and gas, ecological devastation and neglect arising from crude oil production has left of the oil and gas producing host communities of the Niger Delta region desolate, poor and uninhabitable. The fundamental problem that faces the people is the degradation of its environment and the fact is incontrovertible that the environment of the oil and gas producing host communities has been intensely polluted with tragic consequences for the economy of the people and the totality of the quality of life<sup>55</sup>. Considering the oil and gas producing host communities in the Niger Delta region sensitive and fragile ecosystem and in spite of the vast resources endowment, its immense potential for socio-economic growth and its contributions to the overall development of Nigeria, the oil and gas producing host communities remain increasingly under develop from the rapidly economic extraction from her environment<sup>56</sup>.

The perception in the oil and gas producing host communities is even the government neglect in the proper and sustainable development while valuable ecosystems on which the people depend for their livelihood are devastated and until the situation degenerates into violence, which subsequently draws a disproportionate reaction from government that deepens the people's resentment and their alienation<sup>57</sup>. The oil and gas exploration have become a curse for the oil and gas host communities in the Niger Delta region of Nigeria. They have suffered environmental degradation, economic poverty and constant conflicts. To make matter worse, political consideration and greed on the part of corrupt government has kept many earning from these vast reserves<sup>58</sup>. However, in spite of the damaging impact of oil and gas exploitation on the environment and livelihood of the host communities, scientific data on the overall and long-term effects of oil and gas exploitation are only beginning to emerge<sup>59</sup>.

Environments and other experts have focused attention on the environmental degradation resulting from oil and extraction activities<sup>60</sup>. A major bone of contention is the implication of the environmental impact on the livelihood of the people of the oil and gas producing communities in the Niger Delta region of Nigeria. The importance of environmental sustainability cannot be overemphasised because it is fundamental to the people's welfare and development as their existence to a large extent depend on subsistence endeavours from

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<sup>53</sup> Section 318 of the Petroleum Industry Act, 2021.

<sup>54</sup> Ibid.

<sup>55</sup> Abosede Babatunde, (2010) "The Impact of Oil Exploration on the Socio-Economic Life of the Ilaje-People of Ondo State", *Journal of Sustainable Development in Africa*, Vol. 12, No. 5.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> J. Bisina, (2004), "Oil and Corporate Recklessness in Nigeria's Niger Region, *Journal of Africa Voice on Development and Social Justice*, p. 1.

<sup>59</sup> C.O. Nwachukwu, (1999), "Environment, Food and Agriculture Dynamics: Development Policy Implications for Natural Resources Exploration and Exploitation in the Niger Delta Wetlands Wildlife and Biodiversity Region of Nigeria. In: Osuntokun A. ed. (1999), *Environmental Problems of the Niger Delta*. Lagos: Fredrick Ebet Foundation.

<sup>60</sup> M.A.O. Aluko, (2004), "Social Dimension and Consequences of Environmental Degradation in the Niger Delta of Nigeria: Suggestions for the next Millennium: In Osuntkun A. ed (199) *Environmental and Economic Justice*.

the natural resources. The oil and gas host communities perceived their well-being as tied to their environment in terms of livelihood, health, vulnerability and the ability to control their lives<sup>61</sup>. In view of the foregoing, this study investigates the effects of oil and gas exploitation in the host communities that affect the socio-economic life of the people in their own domain without much to show or better their lives and the environment that up till today there is nothing good to record about Oloibiri, where oil was first discovered.

### **THE PETROLEUM INDUSTRY ACT AND THE HOST COMMUNITIES UTILITY PROVISION**

The Petroleum Industry Act, 2021, provides legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and related matters. The host communities trust fund created by the PIA, 2021, was meant to be administered by the oil and gas companies in the collaboration with the host communities<sup>62</sup>.

The oil and gas producing host communities, has expressed concern that two years after the PIA, 2021, was passed into law the host communities in Delta State claimed not receiving benefits from the 3% oil and gas companies' operational cost prescribed by the Act,<sup>63</sup>. The oil and gas producing host communities have observed the act of oil and gas companies in not providing adequate and equitable sustainable development in the area where they carry out the oil and gas extractive activities as negligence induced by the government the resultant consequence is the violent conflicts in the host communities' environment<sup>64</sup>. Like the ugly incidence that took place in Ayetoro, a peaceful community in Ilaje Local Government Area of Ondo State, an historical remarkable settlements along the coastal stretch of the state known as Holy Apostles Community but experienced a loggerheads with the leadership of the community following the oil-spills compensation paid and the government cached in with the policy of divide and rule in corporation with the oil and gas company (Mobile Unlimited) and leaving the community to their faith<sup>65</sup>. The National Oil Spill Detection and Response Agency, told the Associated Press that the spill came from the Trans-Niger Pipeline operated by Shell that crosses through communities in the Eleme area of Ogoni land, a region where the London-based energy giant has faced decadeslong local pushback to sit oil<sup>66</sup> this paper observed that the oil and gas companies know the root cause of oil spillages and means of clean-up but connive with the government who will not give attention to the helpless host communities for gains. Till date the modalities justify what is 3% expenditure in the preceding year is not defined, in another way of cowing the host communities any amount can be given to the host communities in the name of 3%.<sup>67</sup>

### **METHODOLOGY**

The paper investigates the Petroleum Industry Act, 2021, to identify the challenges, prospects and the way forward. The paper uses doctrinal research with reports from existing literature and tertiary data sources such as newspapers, websites, internet and pertinent data collected

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<sup>61</sup> Ibid.

<sup>62</sup> Daniel Igoni, "PIA: Oil Companies Owing Host Communities", <https://www.punchng.com/pia-oil-companies>, accessed 18<sup>th</sup> November, 2023.

<sup>63</sup> Section 240 (2) of the Petroleum Industry Act, 2021.

<sup>64</sup> Ibid.

<sup>65</sup> Hakeem Gbadamosi, "Ayetoro: Oil Spillage Compensation Money Tears Community Apart", accessed 28<sup>th</sup> April, 2023.

<sup>66</sup> Taiwo Adebayo, "Oil Spill from Shell Pipeline Fouls Farms and a River in a Long-Polluted Part of Nigeria", <https://www.apnews.com/article/nigeria>, accessed 26<sup>th</sup> June, 2023.

<sup>67</sup> Ibid.

from these sources were theoretically analysed and argued with current literatures on the subject.

## **RESULTS**

This paper findings is that the Petroleum Industry Act, 2021, does not make adequate equitable social economic and sustainable development provisions for the oil and gas producing host communities as stakeholders and for the energy transition in line with Nigeria's Nationally Determined Contribution under the Paris agreement. The Petroleum Industry Act, 2021, was provided for weak institutions, which translates to weak implementation and enforcement of the law which further widening the gap between the law and reality.

## **CONCLUSION**

This paper concludes that, although the Act delivered the much-needed stability in the petroleum industry in Nigeria, there is a need for an overhaul of the Act to further protect and deliver better interest of the oil and gas producing host communities and a sense of co-ownership of petroleum resources by the State Government. This paper has given an in-depth investigation of the Petroleum Industry Act, 2021, and the issues emanating from some of its provisions that have generated quite some controversies in the Nigerian oil and gas industry. The allocation of 3% to the host communities that suffer the direct consequences of oil and gas exploration activities is considered unfair as against the allocation of 30% to frontier basin state. It is observed that the intent of these provisions, whatever, they may be, are indeed myopic in light of the trend of energy transition in the industry both local and internationally. The paper benchmarks the provisions of the PIA, 2021, with other social legal practices of the petroleum industry in the international jurisdiction in other to gain experience and lessons for the Nigerian oil and gas industry. Given a succinct legal opinion on how host communities can seek redress for environmental degradation and related matters of discomfort, dislodgement of residents, airborne diseases, pollution from extractive sites and chemical emission that are health challenging.