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Implications of Nigeria's Petroleum Industry Act for SDG 5

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Abstract

*This paper analyzes the Petroleum Industry Act (PIA) using the lens of the SDG 5, the United Nations Sustainable Development Goal which aims to achieve global gender equality. The crux of the consideration here is if the legislation scores any points for the Nigerian energy sector in the fight for gender equality. If not, what the way forward should be. Nigerian oil and gas regulators have shown a willingness to tackle, using legislation, any gaps that arise, both directly affecting the sector and even tangential to it. For instance, the most wholesome legislation to oversee triangular/co-employment scenarios in Nigeria regulates the sector. Furthermore, there is the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) (the **"Local Content Act")**, which seeks to ensure active Nigerian participation in the Nigerian oil and gas industry. However, even with this proven diligence, Nigerian oil and gas industry regulators have consistently overlooked one glaring challenge: the underrepresentation of women in the industry. Using doctrinal research methodology, the paper evaluates the extent the PIA addresses the challenge of gender imbalance in Nigeria's oil and gas industry. It finds that the PIA seems to have a blind spot: the lack of provisions specifically relating to the empowerment of women. The paper argues that the mainstreaming of gender equality and inclusiveness in the legislative and institutional frameworks of Nigeria's petroleum industry is imperative for the achievement of SDG 5.*

Keywords: Oil and Gas, Petroleum Industry Act, Sustainable Development Goals, gender equality, gender diversity and inclusiveness.

1. Introduction

Nigeria is a country rich in natural resources. For context, each of the thirty-six (36) states of the federation has, at least, one mineral resource in commercial quantity.[1] Additionally, Nigeria is the twelfth (12th) largest producer of oil and gas in Africa,[2] with the sector contributing about 65% of government revenue and over 85% of total exports.[3] Petroleum is the most abundant of the natural resources available in Nigeria, and by that fact, the more valuable. Little wonder that it is the mainstay of the Nigerian economy.

In late 2021, the Petroleum Act of 1969 (the "PA"), the primary legislation that governed the energy space in Nigeria was repealed. A relic of the colonial administration, as it was enacted mere 9 years after independence, the PA gave way to the Petroleum Industry Act 2021,[4] a forward-looking, innovative piece of legislation. The PIA has been lauded by key players in the Nigerian oil and gas sphere because it tackles longstanding problems that have bedeviled the Nigerian oil and gas industry for decades.

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[1] 'Nigeria Extractive Industries Transparency Initiative (NEITI), Oil and Gas Industry Report' (NEITI, 2020) <https://neiti.gov.ng/cms/wp-content/uploads/2022/03/NEITI-OGA-2020-Report.pdf> accessed 30 January 2023

[2] 'Extractive Industries Transparency Initiative (EITI) Report on Nigeria' <https://eiti.org/countries/nigeria> accessed 30 January 2023.

[3] Ibid.

[4] Hereinafter referred to as the "PIA" or the "Act".

This historic Act came on the heels of several backs and forths with the legislative arm of the Nigerian government. The PIA is a single omnibus law that provides legal, governance, administrative, regulatory and fiscal framework for the Nigerian Petroleum Industry and development of host Communities. It repealed existing petroleum-related laws (but for some savings provisions), with the bid to comprehensively reform the Nigerian Petroleum Industry.[5]

The Act contains 5 chapters that govern different areas of interest to the petroleum industry in Nigeria. The five areas are: Governance and institutions, Administration, Host Communities development; Petroleum Industry Fiscal Framework and Miscellaneous Provisions. The Act also contains seven schedules. Some of the most important provisions of the Act include:

a. Establishment of the Nigerian Upstream Regulatory Commission (the "NUPRC" or the "Commission") and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the "Authority")

The Act provides for a body which oversees the regulation of the Nigerian upstream sector to be known as the Nigerian Upstream Regulatory Commission.[6] The extent of the Commission's responsibilities extends to the regulation of technical, commercial, and environmental activities related to the upstream petroleum sector in Nigeria.[7] The Commission takes over the responsibility of the Department for Petroleum Resources (the "**DPR**") as established under the defunct Petroleum Act.

Additionally, the PIA also provides for the establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the "Authority").[8] The Authority is the body responsible for overseeing the regulation of the midstream and downstream petroleum sectors in the country.[9] The Authority also takes over the functions of the DPR with reference to the regulation of the technical and commercial aspects of the downstream sectors.

b. Establishment of the Host Communities Development Fund/Plan

In a bid to ensure a harmonious co-existence between petroleum companies and host communities, adequate provisions were made in the PIA to address the needs of the host communities.[10] The PIA provides that exploration and production companies[11] will be required to set up a Host Communities Development Trust ("HCDT" or "Trust") for the benefit of the host communities where they operate.[12] The HCDT will be funded by a contribution from each settlor of an amount equal to 3% of its actual annual operating expenditure in the immediately preceding financial year, with respect to its upstream petroleum operations affecting the host communities.[13] Where a settlor fails to comply with its obligations regarding the setting up of the

[5] O Maiye *et al*, 'Key Provisions of the Petroleum Industry Act 2021 – Summary and Commentaries' (Mondaq, 15 September 2021) <Key Provisions Of The Petroleum Industry Act, 2021- Summary And Commentaries - Renewables - Nigeria> accessed 30 January 2023.
[6] PIA, s 4. (the "NUPRC" or the "Commission").
[7] PIA, ss 5 and 6.
[8] PIA, s 29.
[9] PIA, s 30.
[10] L Afuye and D Abdulai, 'Petroleum Industry Act, 2021: the Road to Compliance for Upstream Companies' (Mondaq, 10 May 2022) <https://www.mondaq.com/nigeria/oil-gas--electricity/1191336/petroleum-industry-act-2021-the-road-to-compliance-for-upstream-companies> accessed 6 February 2023.
[11] referred to as settlors in the PIA.
[12] PIA, s 235.
[13] PIA s 240.

Fund, the Commission will inform the settlor of such a failure and if not rectified, it may be a ground for the revocation of the license of lease held by such a settlor.[14]

c. Environmental Protection Provisions

Generally, petroleum operations come with the risk of negative environmental impacts. The PIA, taking this into consideration, created a process for mitigating the effects of the petroleum exploration process. Based on the provisions of the PIA, operators in either the upstream or downstream sectors are required to submit for approval, an Environmental Management Plan in respect of projects which require environmental impact assessment.[15] The Environmental Management Plan will only be approved where it complies with relevant environmental Act and the applicant has the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.[16]

The PIA also requires that a precondition to the grant of a lease or license and prior to the approval of the Environmental Management Plan by the licensee or lease is that the licensee or lessee pay a prescribed financial contribution to an environmental remediation fund established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the license or lease.[17]

d. Natural Gas Flare Elimination and Monetisation Plan

The PIA provides that the holder of a licence or lease shall within 12 months of the effective date of the Act, submit a natural gas flare elimination and monetisation plan to which would be prepared in accordance with regulations made by under the Act.[18]

e. Setting Up of the Petroleum Fiscal Industry Framework

Chapter 4 of the Act introduces the Petroleum Fiscal Industry Framework (PIFF). The objectives of PIFF include establishing a progressive fiscal framework that encourages investment in the Nigerian petroleum industry, balancing rewards with risk and enhancing revenues to the Federal Government of Nigeria; provide a forward-looking fiscal framework that is based on core principles of clarity, dynamism, and fiscal rules of general application, etc.[19] The Act provides that all money collected from the petroleum industry that is due to the government are to be transferred to a federal account and such collection of the government revenue in the petroleum industry shall be the function of the Federal Inland Revenue Service (FIRS).[20]

2. The SDG 5

On September 2015, the United Nations General Assembly adopted 17 Sustainable Development Goals (SDGs) to provide a policy roadmap for the attainment of sustainable development globally.[21] The expanded version of the 8 Millennium Development Goals (MDGs), the SDGs call for action to address certain global challenges such as poverty, inequality, climate change

[14] PIA, s 238.
[15] PIA, s 102.
[16] PIA, s 102 (2).
[17] PIA, s 103(1).
[18] PIA, s 108.
[19] PIA, s 258(1).
[20] PIA, s 258.
[21] United Nations, 'Envision2030: 17 Goals to Transform the World for Persons with Disabilities' (United Nations) <https://www.un.org/development/desa/disabilities/envision2030.html> accessed 30 January 2023.

and justice.[22] Member states of the UN abide by the guiding principles enshrined in the SDGs with the intention to achieve global equilibrium on all the goals by 2030.

The SDG 5, specifically, aims to achieve gender equality and empower all women and girls.[23] This goal is in realization of the fact that gender equality is not just a fundamental human right, "but a necessary foundation for a peaceful, prosperous and sustainable world."[24] In fact, it is not far-fetched positing that the achieving of the SDG 5 is a precondition for realizing all goals in the 2030 Sustainable Development Agenda.[25] Thus, though girls and boys on average face similar challenges in early childhood, gender disparities become more pronounced as children grow. Adolescent girls, due to expected gender roles, often face a disproportionate burden of domestic work, expectations to be married, risks of early pregnancy, as well as sexual and gender-based violence.[26] Practically, a successful implementation of the SDG 5 would require a balanced participation of men and women in education and training, the labour market and in positions of leadership.[27]

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), enacted in 1979, was, perhaps the first most comprehensive effort in legislating gender equality. CEDAW expounds the legal rule on non-discrimination from a gender viewpoint. This convention moves from a gender-neutral rule which compels equal treatment of men and women, ordinarily determined by how men are treated, to one that acknowledges the fact that the distinct nature and dynamics of women require distinctive legal responses.[28] In 1995, the Beijing

[22] 'What are the Sustainable Development Goals (SDG) Executive Factsheet' (HEC Paris) <https://www.hec.edu/en/faculty-research/centers/society-organizations-institute/think/so-institute-executive-factsheets/what-are-sustainable-development-goals-sdg> accessed 21 February 2023.

[23] The specification of the targets under the SDG 5 are delineated as follows:

5.1 End all forms of discrimination against all women and girls everywhere;

5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation;

5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation

5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate;

5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life;

5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences;

5.A Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws;

5.B Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women;

5.C Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

[24] The United Nations Regional Information Center for Western Europe, 'Gender Equality' <https://unric.org/en/sdg-5/> accessed 21 February 2023.

[25] United Nations International Children Emergency Fund (UNICEF), 'Goal 5: Gender Equality' <https://data.unicef.org/sdgs/goal-5-gender-equality/> accessed 30 January 2023.

[26] Ibid.

[27] 'The EUROPA', <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=SDG_5_-_Gender_equality>

[28] Rebecca Cook, 'Women's International Human Rights Law: The Way Forward' [1993] 15 *Human Rights Quarterly* 230, 239

Declaration and Platform for Action was adopted at the Fourth World Conference on Women.[29] The dedicated 12 critical areas of concern in the Platform for Action established the key areas that gender equality efforts ought to be channeled towards.

No doubt, the world has come a long way from the Beijing conference. At the very least, there is enhanced visibility created by the inclusion of gender equality as one of the foremost goals of the United Nations. Beyond that, there have been positive strides towards gender equality in the years following the conference. There are more women and girls going to school today, the global incidence of forced marriages involving girls are reduced and there is an improved representation of women in leadership positions across several spheres.

However, a lot remains undone, as women, even currently; remain at the receiving end of various forms of gendered discrimination.[30] In fact, at the current pace of the strive for equality, it has been projected that the world is not on track to achieve gender equality by 2030.[31] This is due, in part, to the fact that certain sectors have proven impervious to various gender balancing interventions. One sector that shown a deep disinclination to close the gender inequality gap and hence display a disproportionate amount of gendered inequality is the global energy sector.

3. Discrimination Against Women in the Energy Industry: A Global Phenomenon

It is no secret that there is a dearth of women in the oil and gas industry globally. According to data from Catalyst and S&P Global, women make up just about one-quarter of oil and gas employees worldwide. While 17% of senior and executive-level positions comprise women, 27% of entry-level jobs are filled by women candidates.[32]

Additionally, in the instances where women manage to get into oil and gas spaces, they experience various forms of discriminatory practices and micro aggressions. For instance, the Global Energy Talent Index 2023[33] revealed that men were slightly more likely than women to receive bonuses/commission (37 vs 32 per cent), support for professional development (10 vs 5 per cent), and a retirement/pension plan.[34] Male petrochemical employees also feel more comfortable than women expressing their values and views at work. Overall, 76 per cent of

[29] United Nations, 'Beijing Declaration and Platform for Action' (The Fourth World Conference on Women held in Beijing on 15th September 1995) <www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf> accessed on 30 January 2023.

[30] The Sustainable Development Goals Report 2022 shows that globally, 26 per cent of ever-partnered women aged 15 and older (641 million) have been subjected to physical and/or sexual violence by a husband or intimate partner at least once in their lifetime, 35 per cent and 28 per cent of young women were married in childhood, respectively in sub-Saharan Africa and Southern Asia, At least 200 million girls and women today have been subjected to female genital mutilation, mainly in 31 countries and Only 15 out of 52 reporting countries included sufficient provisions in their legal frameworks to protect women's rights to land. (The report is accessible here: <https://unstats.un.org/sdgs/report/2022/> accessed 14 February 2023.).

[31] 'The United Nations Sustainable Goals' (United Nations) <https://www.un.org/sustainabledevelopment/gender-equality/#:~:text=Gender%20equality%20is%20not%20only,achieve%20gender%20equality%20by%202030.> accessed 14 February 2023.

[32] Council of Petroleum Accountants Societies (COPAS), 'Women in the Oil and Gas Industry' (COPAS, 28 December 2021) <https://copas.org/women-in-the-oil-and-gas-industry/> accessed 14 February 2023.

[33] Global Energy Talent Index (GETI) 2023, <https://3277184.fs1.hubspotusercontent-na1.net/hubfs/ 3277184/Gated%20PDFS/GETI-report-2023-web-version.pdf?__hstc=&__hssc=&hsCtaTracking=4cd1fd69-0f4e-4f38-aa77-3494f0fe501a%7C2ca7229d-52ef-40e0-a0e8-9ef5951803fb> accessed on 14 February 2023.

[34] Ibid.

respondents feel comfortable expressing their views or values at work, but strikingly, 42 per cent of men feel very comfortable, versus just 16 per cent of women.[35]

It could even be argued that the odds are better for women seeking entry-level roles. Records reveal that women occupy about 50 per cent of non-technical positions at entry level compared to only 15 per cent of technical and field role positions.[36] Additionally, Gender diversity in the oil and gas industry also decreases with seniority. There is only a tiny proportion of women in executive positions. The percentage of women in the industry drops over time from 36 per cent to 24 per cent between the middle and executive level.

In the Nigerian oil and gas space, the story is not different. If anything, it is worse. A report released by the Nigeria Extractive Industries Transparency Initiative (NEITI) disclosed that of the 60 entities in the oil and gas industry that provided employment data for the 2020 audit, 18,712 employees were captured out of which 15,266 were male, while just 3,446 were female.[37]

In Africa, a Mckinsey report[38] puts the percentage of women in Africa's senior management in the energy and materials sectors at 22%. Similarly, an Energy and Economic Growth-commissioned survey[39] of three African countries revealed that women made up just about 14% of technical employees in the energy, reporting the existence of occupational segregation by position, with most women working in non-technical positions.[40]

Perhaps the dire straits women in energy is in is exhibited by the fact that the tale is no different even in developed societies that have managed to establish some sort of balance in the employment paradigm across various sectors. In this wise, two jurisdictions will be highlighted. In the United States, the energy workforce[41] is 74% male dominated as against the 53% male domination as found in other sectors. In fact, as at 2020, the number of female CEOs in the energy sectors in the United States fell[42] to 5%, even though the figure was closer to a double digit in 2017. In Canada, women made up just 18.7% of the labour force in mining, quarrying, and oil and gas extraction in 2021.[43]

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[35] Ibid.

[36] T Sylva, 'Leveraging Opportunities for Women in the Oil and Gas Industry' (Speech delivered by Timipre Sylva, Minister of State for Petroleum Resources, at the Second edition of the Women in Oil and Gas Conference 2022).

[37] E Addeh, 'Stakeholders Seek Women Inclusion, Diversity in Oil, Gas Industry' (THIS DAY. 28 April 2022) <https://www.thisdaylive.com/index.php/2022/04/28/stakeholders-seek-women-inclusion-diversity-in-oil-gas-industry/> accessed 30 January 2023.

[38] Lohini Moodley, Tania Holt, Acha Leke, and Georges Desvaux, 'Women Matter Africa' (McKinsey, 2016) <https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Women%20matter/Women%20matter%20Africa/Women%20Matter%20Africa%20August%202016.ashx> accessed 28 February 2023.

[39] Nathyeli Yethzi Acuna Castillo, 'Closing Gaps in Women's Employment in the Energy Sector' (Energy and Economic Growth Report) <https://www.energyeconomicgrowth.org/node/307> accessed 28 February 2023.

[40] Ibid.

[41] The United States Energy and Employment Report (USEER), the US Energy and Employment Report Fact Sheet (2022). <https://www.energy.gov/sites/default/files/2022-06/USEER%202022%20Fact%20Sheet_0.pdf> accessed 20 February 2023.

[42] M Tonello, J D. Schloetzer and F McKenna, 'CEO Succession Practices in the Russell 3000 and S&P 500, 2021 Edition' (Havard Law Forum on Corporate Governance, 7 July 2021) <https://corpgov.law.harvard.edu/2021/07/07/ceo-succession-practices-in-the-russell-3000-and-sp-500-2021-edition/> accessed on 20 February 2023.

[43] 'Labour Force Characteristics by Industry' (Statistics Canada. 2022) <Table: 14-10-0023-01: Labour force characteristics by industry, annual (x 1,000)> accessed 20 February 2023.

4. The Gaps: Is the PIA Gender-friendly?

Perhaps, the most appropriate answer to the question is to state that the PIA has no gender leaning. Indeed, certain provisions in the PIA make use of gender-nonspecific terms in referring to persons covered under the Act. For instance, persons who are qualified and entitled to licenses and leases under the Act are referred to as "applicants", a word that does not admit of any gender.[44] However, the Act falls into the same trap as much other legislation in Nigeria, using gendered language to refer to situations and provisions that apply to both genders. Slight as it may appear, this is discriminatory as it fails to fully represent women in the Act.

Furthermore, it is also interesting to note that the key agencies in the Nigeria energy sector have all been headed, at various times, since inception, exclusively by men. These agencies include the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) (formerly DPR), Nigerian National Petroleum Company Limited (NNPCL), Nigerian Content Development and Monitoring Board (NCDMB). The only exception is the Petroleum Products Pricing Regulatory Authority (PPPRA), now Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), that once had Mrs Sotonye Oyoyo as its acting Executive Secretary between 2016 and 2018.[45]

Similarly, the appointments made pursuant to the PIA also do not reflect gender equity.[46] At the moment, the 8-member board of the Nigerian Upstream Petroleum Regulatory Commission has just 2 women.[47] The 10-member board of the Nigerian National Petroleum Corporation limited, (NNPC) has just 3 women, although the chairman of the board is a woman, Senator Margery C. Okadigbo.[48] Similarly, the management of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) has just one woman in the 7-member panel.[49] The 14-member National Stakeholders Working Group (NSWG), the board of the National Extractive Industries Transparency Initiative (NEITI) has just one woman as a member.[50]

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[44] PIA, s 70

[45] A Bademosi, 'Oil and Gas: Women Took Meagre 10,400 of 57,000 Employments in 3yrs' (Nigerian Tribune, 1 August 2022) <https://tribuneonlineng.com/oil-gas-women-took-meagre-10400-of-over-57000-employments-in-3yrs-report/> accessed 30 January 2023.

[46] It is perhaps in recognition of the gaps in the legislation and generally in the Petroleum sector that the Nigerian government has taken steps to empower women in the oil and gas sector. For instance, the Federal government of Nigeria, through its Nigerian Content Development and Monitoring Board (NCDMB) – Nigerian Export-Import Bank (NEXIM) partnership, has rolled out a 40 million dollar fund to empower women in the oil industry. (Juliet Ukanwosu, 'Expert Faults Petroleum Law, Says it is Gender Blind' (Extractive 360, 30 September 2021) <https://extractive360.com/2021/09/30/expert-faults-petroleum-law-says-it-is-gender-blind/> accessed 28 February 2023.)

Similarly, there have been some laudable steps in form of some appointments made in the oil and gas sector. For instance, Elohor Aiboni, was in March 2021 appointed as the first female Managing Director of Shell Nigeria Exploration and Production Company Limited. (SNEPCO). Notably also, in January 2022 appointed Senator Margery Chuba-Okadigbo as the pioneer Board Chairman of the Nigerian National Petroleum Company (NNPC) Ltd. (Solomon Asowata, 'Why Women Inclusion is Key to Nigeria's Oil and Gas Industry' (Premium Times, 3 July 2023) <https://www.premiumtimesng.com/features-and-interviews/540579-feature-why-women-inclusion-is-key-to-nigerias-oil-and-gas-industry.html?tztc=1> accessed on 14 February 2023.)

[47] Find the members of the NUPRC Board here: <https://www.nuprc.gov.ng/board/>

[48] Find the members of the NNPC Board here: <https://www.nnpcgroup.com/who-we-are>

[49] Find the members of the NMDPRA Board here: <https://www.nmdpra.gov.ng/management/#>

[50] Wale Odunsi, 'Nigeria Inaugurates NEITI Board' (Daily Post, 24 July 2021) <https://dailypost.ng/2021/07/24/nigeria-inaugurates-neiti-board-full-list/> accessed 28 February 2023

As reiterated in the opening of this section, the problem with the PIA is that it is, as designated by an oil and gas expert, gender blank.[51]There is no provision that can be argued to specifically target and empower women, and this, in the opinion is this author, is problematic. Given the dire straits that the global oil and gas industry is in and the fact that the PIA is a fairly recent legislation, it is bewildering that there is no provision that seeks to bridge the gap and properly tackle the glaring gender-based challenges in the Nigerian energy sector. The arguments in the next section will highlight the need for having gender considerations in legislations in the energy sector, and seeing as the PIA is the overarching law in the Nigerian energy space, then the Act ought to be the first port of call.

5. Why an Argument for a Broader Framework in the PIA is Necessary

The Extraneous Matter Argument

It might be argued that considerations of gender may be outside of the scope of the intendment of the PIA. This line of thinking is grounded on the fact that since the purview of the PIA is the Nigerian oil and gas sector, tasking it with issues relating to gender equality might not be appropriate. However, it has been noted that discrimination can be embedded overtly or covertly in laws.[52] To develop progressive and inclusive societies, the law needs to recognise the structural and socio-cultural nuances of gender and contemplate how gender dynamics influence regular interactions and experiences.[53] Being that laws are primarily designed to influence, if not engineer human interactions, then it would only be right to argue that every law is supposed to fully reflect socio-economic realities, whatever their primary focus is. To that extent, it can be argued that every piece of legislation has a gender equality responsibility.

However, even more specifically, tackling issues that are not the main focus of the energy sector but which nonetheless are intertwined with the sector is not alien to the PIA. For instance, the Act provides for the compensation of individuals who have their land expropriated due to the grant of a license under the Act.[54] This is although the full regulation of the sector is governed by the Land Use Act. Furthermore, there are provisions relating to the prevention, restriction and distortion of competition,[55] even though the extant body relating to competition is the Federal Competition and Consumer Protection Commission.

Additionally, the PIA also veers off its supposed central theme when it makes non-discriminatory provisions to be a staple of the Act. The PIA specifically provides that a holder of a licence or permit shall not discriminate against customers, classes of customers or their related undertakings …except for justifiable and identifiable differences regarding such matters as quantity, transmission distance, length of contract, etc.[56] Similarly, tariffs charged by licensees for the use of any facility or infrastructure licenced by the Authority for use in midstream and downstream petroleum operations ought to be according to tariff methodologies developed by the Authority. The tariff methodologies are to avoid discrimination between customers with similar

[51] Juliet Ukanwosu, 'Expert Faults Petroleum Law, Says It Is Gender Blind' (Extractive 360, 30 September 2021) <https://extractive360.com/2021/09/30/expert-faults-petroleum-law-says-it-is-gender-blind/> accessed on 28 February 2023.

[52] Jane Ezirigwe, 'Making the Law Work for Men and Women: Advancing Gender Equality and Non-Discrimination in Nigeria's Anti-Open Laws', [2020] 11 (2) *The Journal of Sustainable Development, Law and Policy*, 362-381.

[53] A Chang and S Wildman, 'Gender In/sight: Examining Culture and Constructions of Gender' [2017] 18 *Geo. J. Gender & L.* 43, 45.

[54] PIA, s 115.

[55] PIA ss 149 (i), 154 (f).

[56] PIA s 116 .

characteristics such as similar size or similar consumption profile…[57] The holder of a gas processing licence is tasked with undertaking the activities contemplated in the licence in a manner that complies with the following general obligations, treating all customers in a non-discriminatory manner...[58] More so, one of the conditions for the provision of open access in relation to gas operations is that the open access to the gas transportation pipeline gas transportation network shall be provided on a non-discriminatory basis between system users with similar characteristics under the Act.[59] Crude oil refiners are mandated to treat all customers in a non-discriminatory manner as stipulated under section 116 of the Act.[60]

Indeed, these provisions, even though they do not strike at the core of the subject matter of the PIA, their insertion can be justified on the grounds that they are related and are hence crucial to the attainment of the main object of the legislation. Indeed, what they establish is that the PIA contains justifiable extraneous provisions. If the PIA does indeed make extraneous provisions, the only requirement being that there has to be a corollary to the main subject matter, that is the regulation of the energy sector, then it suffices if a sustained connection between gender imbalance in the sector is established, it is enough to require a provision in that light. To that effect, since every statistical and empirical data sheds light on how male-dominated the sector is, it only makes it imperative that the powers that be utilize every opportunity to tilt the scale – to whom much is given, after all, much is expected.

More so, the PIA itself is a compendium of provisions that reflect historical antecedents and provide solutions to multiple societal malaise. One of the clearest examples of this is the insertion of the provisions touching on host communities in the PIA. The overarching aim of the insertions was, no doubt, to legislate an amicable resolution of the hostilities that have historically dodged relations between host communities and their oil and gas companies.[61] Host communities are communities situated in or appurtenant to the area of operation of a settlor and any other community as a settlor may determine.[62] Chapter 3 of the PIA makes elaborate provisions for the obligations of settlors, entitlements of host communities and possible penalties for any infractions of the responsibilities provided under the law.

Prior to the enactment of the PIA, there were two broad categories of host community development initiatives. The first category was voluntary and involved operators commencing community development initiatives mostly managed under (Global) Memoranda of Understanding (MOU), which are negotiated between individual operators and the respective host communities.[63] The second broad category are government-led initiatives, in particular the Niger Delta Development Commission (NDDC) initiatives.[64] However, regardless of the fact that

[57] PIA s 123 (d).
[58] PIA s 130.
[59] PIA s 162(a).
[60] PIA s 184 (g).
[61] Hostilities between host communities and oil companies is legendary. The hostilities may also have contributed partly to the massive theft of crude oil, vandalization of pipelines and the incessant shutdown of major oil fields. (PWC, 'The Petroleum Industry Act and the Attempt at Addressing Host Community Restiveness.' (PWC, May 2022)<https://www.pwc.com/ng/en/assets/pdf/the-petroleum-industry-act-and-the-attempt-at-addressing-host-community-restiveness.pdf> accessed 13 March 2023.
[62] PIA, s 318.
[63] Deloitte, 'The Petroleum Industry Act (PIA)–Host Communities Development' (Deloitte) <https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/energyresources/PIA_Tax_Newsletter_Host%20Communities%20Development.pdf> accessed 13 March 2023.
[64] Ibid.

these mechanisms for attending to the aims of the host communities were already in place, the government saw the need to take the issue of responsibilities owed by the settlors to their host communities out of the realm of obligatory corporate social initiative of the oil & gas companies but rather a legal obligation that must be complied with.[65] If the PIA can legislate equity into existence in this instance, then why can the same not be made for women affected by the industry. If the concerns do not merit the attention in the law, is that not itself a sign of a tacit endorsement or entrenchment of the ills that have trailed the energy industry globally?

Even if a direct amendment cannot be made, the consideration of women and gender issues can be an area that spurs the birth of a new regulation.[66] Take the Local Content act for example. Previously, the oil and gas industry played host to IOCs who engaged in various exploration and exploitation activities in Nigeria using imported machinery and human resources. The status-quo was devoid of national participation and saw a monopoly of expertise in the foreign expatriates. The Local Content Act was the government's response in its effort to ensure active domestic participation in the oil and gas industry in Nigeria, making provisions for areas that do not directly affect the activities of the oil and gas sector but rather ancillary issues that are intertwined with the sector. By virtue of the Local content Act, Nigerians and Nigerian companies are to be considered first in employments[67] and contract awards[68] while the IOCs are to also take active steps to ensure significant local recruitment, training[69] and transfer of expertise[70]. The Local content Act was created specifically to increase local participation as a solution to a prevailing challenge similar to the issue of gender imbalance in the oil and gas sector today. Nothing prevents the enactment of a framework legislation to address the issue of gender imbalance.

6. Benefits of a Gender-Balanced PIA: Other Considerations

Since the PIA governs the entirety of the energy sector in Nigeria, a PIA that has a gender-balanced leaning will no doubt set the pace for the entire industry. Progressively, if the PIA fosters gender equality, there are various attendant benefits not just for the Nigerian energy sector, but for Nigeria as a whole. Firstly, even though it may appear to be a stretch to project that gender diversity would lead to improved productivity in the Nigerian energy sector, there is evidence[71] that suggests that the most productive companies are the ones with high levels of gender diversity.

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[65] Folashade Oluyadi, and Others, 'Unbundling the PIA: Host Communities Development' (Mondaq, 30 August 2022) <https://www.mondaq.com/nigeria/fund-management-reits/1218484/unbundling-the-pia-host-communities-development> accessed 13 March 2023.

[66] The PIA currently provides for, and it has been the practice, for the use of regulations to address some matters not adequately captured under the PIA due to an oversight or for the purpose of making the PIA less unwieldly. See PIA, ss 113, 126, 159(2).

[67] Local Content Act, s 10.

[68] Local Content Act, s 3.

[69] Local Content Act, ss 28 and 30.

[70] Local Content Act, s 7alsomandates operators to submit a Nigerian Content Plan to the Board demonstrating compliance with the Nigerian content requirements of the act while bidding for any licence, permit or interest and before carrying out any project in the Nigerian oil and gas industry .

[71] Research by the Harvard Business School in 2019 conducted across 1,069 firms in 35 countries and industries, the Harvard researchers found that gender diversity relates to more productive companies, as measured by market value and revenue. Research can be accessed here: <https://hbr.org/2019/02/research-when-gender-diversity-makes-firms-more-productive>

Furthermore, research has shown that if women participated in the economy in the same way as men, with equal wages and labour-force participation, global annual gross domestic product (GDP) could be boosted by up to US$ 28 trillion by 2025.[72] Relatedly, it has been argued[73] that including women as field agents and suppliers allows a company to mirror its customers and employee base, enhancing the company's brand and enabling it to tap into local networks and knowledge. In such a scenario, the expected result would be an improved competitive advantage, especially in light of the changing global energy landscape. Specifically, evidence from the energy sector shows that more gender-diverse leadership can lead to improved shareholder returns. An analysis by Ernst and Young (EY) of the world's 200 largest utilities (by revenue) found that having more women in leadership leads to improved financial performance.[74] For instance, the Mckinsey report cited earlier revealed that energy companies with a larger proportion of women board directors had significantly higher earnings than those with less diversity.[75]

Additionally, a gender-balanced PIA will give full expression to the non-discriminatory provisions replete in the Act. Deliberateness in creating a gender-balanced energy space through legislation will aid, rather than detract, from the PIA. Firstly, gender mainstreaming is a focal point of the global Extractive Industries Transparency Initiative (EITI) which Nigeria is a member of**.**[76] This foists a responsibility on Nigeria to disclose information along the extractive industry value chain, including publishing a commitment and/or policy on gender diversity in the oil, gas or mining sectors and support reporting by EITI implementing countries under the EITI Standard by disclosing employment in the sectors disaggregated by gender.[77] Legislating gender parity through instruments in the Nigerian energy sector will merely be in furtherance of its responsibilities under the Initiative. More so, as argued elsewhere in this work, the PIA is replete with provisions that proscribe discrimination in specific areas. While the provisions are indeed noble and on the face of it might seem to promote an egalitarian state of affairs, they fall flat when one considers the historical, structural and often insidious barriers women face at every stage of the energy sector in Nigeria. For instance, the bidding process for the grant of the licenses and leases under the PIA is supposed to be based on a fair, transparent and competitive bidding process,[78] as well as being in compliance with the Act. Specifically, section 74 of the PIA provides that the grant of a petroleum prospecting licence or a petroleum mining lease…shall be *an open, transparent, competitive and non-discriminatory bidding process* conducted by the Commission. On the surface, these non-discriminatory provisions may seem to work in the favour of women. However, in truth, this provision, and others like this, actually achieves nothing. This is because a "level playing field" in a space that is high male-dominated is

[72] McKinsey, 'How advancing women's equality can add $12 trillion to global growth' (McKinsey) <www.mckinsey.com/featured-insights/ employment-and-growth/how-advancing-womens-equality-can-add-12-trillion-to-global-growth> accessed 30 January 2023.

[73] E Vazquez and A Sherman, 'Buying for Impact: How to Buy from Women and Change our World' (AMG, 2013) <https://www.adb.org/sites/default/files/publication/830311/gender-equality-renewable-energy-sector.pdf> accessed 20 February 2023.

[74] L Jelena, F Manuela and P Bernice, 'Exploring Opportunities for Gender Diversity in the Mining and Energy Sector in Serbia' (World Bank Group)<http://documents.worldbank.org/curated/en/099452412072225216/IDU012c8be240d3a904fed09c9b00d37e9aeee21> accessed 28 February 2023.

[75] Ibid.

[76] EITI, 'Expectations for EITI-Supporting Companies' (February 2022) <Expectations for EITI supporting companies|EITI> accessed 28 February 2023.

[77] Ibid.

[78] PIA, s 73

not equitable.[79] This is especially as the Commission is supposed to determine pre-qualification criteria of prospective bidders in terms of technical and financial requirements and previous experience. [80] Men historically have had the means, access and experience to bid for, win and work petroleum licences and leases and in most cases, the women who do end up getting these licences or lease still depend significantly on their male counterparts during negotiations[81]. To defray this undue advantage, the law will have to take a step further by either ensuring that women are entitled to certain quota of the licence granted in each period, are given priority, or offered support in some way. Like the Local Content Act, an ancillary framework can be enacted as a similar response to the issues the Local content act was created to solve. In the absence of this, the non-discriminatory provisions under the PIA will be but a mirage.

Finally, one benefit that is easy to be overlooked is the practical implications of a gender-diverse energy sector in Nigeria for women and girls in Nigeria. Supposing, for the sake of argument, if not for anything else, that laws like the PIA, or ancillary laws like the Local Content Act can be made, focusing solely on encouraging women participation in the Nigerian oil and gas sector, the ripple effect, no doubt, will be enormous. Positive action in the wise of what is advocated here will spur and incentivize women to get into the oil and gas space, inspire a generation of young girls and help to dismantle the stereotypes that have dogged the sector for years. What is more? Whatever positive actions that can be taken to better empower women in the energy sector will come at no cost to the men. Again, assuming, but not conceding, that men will have to yield some of their coveted spots over the years to women in order to achieve parity, the yawning gap between men and women, the pinch would hardly be felt.

7. Legislations (in the Energy Sector) That Promote Women's Right to Inclusion

Admittedly, the infusion of gender considerations into legislations in the energy sector is not popular. However, deliberateness in enshrining gender equality generally in legislations, and specifically in Energy legislations, is not exactly unfathomable.

Generally, there is a global tilt towards the use of gender-inclusive language in legislative drafting. Gender-neutral legislation is considered legislation that is drafted in universal terms, ignoring gender-specific situations and power relations between women and men that underpin sex-and gender-based discrimination, including gender-based violence against women.[82] The importance of gender-neutral language is widely recognized, so much so that some countries, for instance, the United Kingdom, have developed guides[83] for gender-neutral drafting. In stating the importance of gender-neutral drafting, the UK government noted that the use of masculine words to cover people regardless of gender or sex is unnecessary, inaccurate and tends to reinforce

[79] If the argument for male dominance in the energy sector is sought to be explained by the fact that men have more expertise in the oil and gas sectors, hence explaining their dominance, then a counter argument can be made to the effect that men have more experience. Men have more experience simply because of the ease of access they have enjoyed over the years. If women were to be given the same opportunity, they would have the means to garner the requisite experience.

[80] PIA, s 74(6)

[81] In a podcast by the *energy talk*, Dr. Amy Jadesimi (CEO of Lagos Deep Offshore Logistics Base) complained about the difficulty in holding negotiations in the industry as a woman "…to the extent that negotiations can't continue unless I let a male colleague takeover" link to the podcast - <https://open.spotify.com/episode/69BLI8jHPjHsnRd811fLxz?si=SAltzun6R2yxMt1KiiLN6A&utm_source=native-share-menu>

[82] European Institute of Gender Equality, 'Gender-neutral Legislation' <https://eige.europa.eu/thesaurus/terms/1192> accessed 28 February 2023.

[83] In 2007, the United Kingdom's Office of the Parliamentary Counsel and the Government Legal Department published the Guide to Gender-Neutral Drafting.

historic gender stereotypes.[84] The same can be a rebuttal to arguments that the use of masculine language has been used and does work in being used to refer to people regardless of their gender.

Furthermore, active legislative actions in the energy sector as a means of correcting gender imbalance is an option that is novel, but nonetheless explored in some jurisdiction, and can be also applied in Nigeria. For instance, a Norwegian law that became effective in January requires that 40% of the board members of Norwegian listed companies, including more than three dozen energy companies, must be women.[85] While this lone instance may seem insignificant, it is itself an indication that legislation in the petroleum industry, specifically, can be used as a means to bring about the change desired.

8. Conclusion

It goes without saying that the energy sector in general and the Nigerian energy space is male dominated. What is worse is that there doesn't appear to be concerted efforts to sort out this imbalance. This is concerning because it would be foolhardy to expect that the figures would right themselves, without deliberate serious actions. The introduction of the PIA ushered in amendments that embraced the need to operate a more sustainable and well-structured oil and gas sector, paying attention to both socio-economic issues as well as institutional deficiencies. As a major player in the Nigerian economy, the stability of the oil and gas sector is of paramount importance and therefore the new PIA introduced more inclusive and functional system for the key players in the sector by providing solutions to prevalent issues that have plagued the industry. However, when placed side-by-side with the core aims of the SDG 5 agenda, the PIA seems silent on the issue of gender disparity, a challenge that has persisted over time. Regardless of its rather neutral language and indication as an all-inclusive Act, the PIA does not pay attention to the need for a more inclusive industry even as the issue of gender disparity continues to gain relevance in society today. It takes a rather oblivious approach by providing for a seemingly level playing ground when in fact; there is an urgent need to bridge an already existing large divide.

The industry is no stranger to regulations that are built around issues that are not directly related to the activities affecting the oil and gas sector both as provisions in existing laws and as separate frameworks, therefore, it is expected that a challenge of this magnitude should also receive legislative notice. The neutrality of the PIA In such a male dominated sector cannot help create a more inclusive ecosystem for women to participate and so, it is recommended that the government take concise steps to enact provisions that cater for the interest of women in the petroleum industry. An inclusive industry will pave the way for quicker and more diverse innovations that will largely benefit the industry. Specifically, gender diversity strategies should be mainstreamed into the extant legislation and relevant regulations as a conscious legislative action to confront attitudes that limit gender equality in the oil and gas industry.

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[84] D Bailey, 'Breaking Down Gender Stereotypes in Legal Writing' (Civil Service Blog, 10 January 2020) <https://civilservice.blog.gov.uk/2020/01/10/breaking-down-gender-stereotypes-in-legal-writing/> accessed 20 February 2023.

[85] P Brown. 'Women in Energy: Closing the Gender Gap' (FDM Group, 20 0ctober 2023) <https://www.fdmgroup.com/news-insights/women-in energy/#:~:text=Achieving%20pay%20equity%20and%20providing,compensated%20fairly%20for%20their%20contribution> accessed 28 February 2024.