Mainstreaming Fiscal Responsibility in Nigeria's Petroleum Sector

A Policy Brief
By
The GIFT Nigeria Project

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The GIFT Nigeria Project

Implemented By:
OrderPaper Advocacy Initiative
Centre for Transparency Advocacy
HipCity Innovation Centre
CLICE Foundation
Nigeria Institute of Quantity Surveyors

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Table of Contents

I. Disclaimer

ii. List of Acronyms

iii. Acknowledgement

iv. About the GIFT Nigeria Project

v. Executive Summary

1. Introduction

    1.1 Objectives and Scope of the Study

    1.2 Political Economy Analysis/Stakeholder Mapping

2. Background to the Study

    2.1 Brief on the Petroleum Sector

    2.2 Accountability Gaps and Nigeria's Fiscal Crisis

    2.3 Nigeria's Global Commitment to Transparency, Accountability and Good Governance

3. Policy and Legal Instruments

    3.1 The 1999 Constitution of Nigeria (as amended)

    3.2 The Fiscal Responsibility Act (FRA), 2007

    3.3 The NEITI Act, 2007

    3.4 The Petroleum Industry Act (PIA), 2021

4. Gaps and Loopholes in the Fiscal Regime

5. The PIA and Fiscal Responsibility

6. Recommendations

7. Conclusion

DISCLAIMER

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List of Acronyms

GDP- Gross Domestic Product

EITI- Extractive Industry Transparency Initiative

FRA- Fiscal Responsibility Act

FRC- Fiscal Responsibility Commission

GIFT- Growth Initiatives for Fiscal Transparency

MTEF- Medium Term Expenditure Framework

NEITI - Nigeria Extractive Industry Transparency Initiative

NBS- Nigerian Bureau of Statistics

NNPC- Nigerian National Petroleum Company (NNPC Ltd)

NNPC- Nigerian National Petroleum Corporation

OGP - Open Government Partnership

PFM- Public Finance Management

PIA- Petroleum Industry Act

SCALE- Strengthening Civic Advocacy and Local Engagement

TAGG- Transparency, Accountability and Good Governance

Acknowledgement

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About the GIFT Nigeria Project

The Growth Initiatives for Fiscal Transparency (GIFT) Nigeria Project is an activity under the Strengthening Civic Advocacy and Local Engagement (SCALE) Project funded by USAID and implemented by the Palladium Group in collaboration with Nigeria Resource Partners (Rps). The SCALE project is designed to enhance local civil society organizations' ability to be positive and responsible change agents in Nigeria. The goal of the project is to "improve public accountability, transparency, and sustainable service delivery in Nigeria" by strengthening the managerial, financial, and advocacy capacity of civil society to engage citizens to influence the Government of Nigeria in key development reforms at national, state, and local levels.

The GIFT Nigeria activity is designed to catalyze reforms around Transparency, Accountability and Good Governance (TAGG) in relation to Public Finance Management (PFM) especially relating to the Extractive Sector of the country. The project will leverage available data to engage state actors; undertake a series of sustained and vigorous public awareness and communication campaigns that will both spotlight gaps in the sector and mount coordinated pressure on relevant stakeholders to drive the much-needed reforms in the extractive sector. The GIFT Nigeria Project is jointly implemented by OrderPaper Advocacy Initiative (OAI), Centre for Transparency Advocacy (CTA), HipCity Innovation Centre, CLICE Foundation and Nigeria Institute of Quantity Surveyors (NIQS). It will be realised through funding/technical support by Palladium Group and the generous support of the American People through the United States Agency for International Development (USAID).

Executive Summary

This Study looks at extant fiscal responsibility instruments as it relates to the oil and gas industry in Nigeria. It considers the fact that the industry is not only the mainstay of the economy and major foreign exchange earner but also the pivot upon which diversification and economic growth and development should stand. However, the widespread perception is that there is transparency and accountability gaps, and a prevalence of corruption, waste, and leakages in the sector. Therefore, the need to ensure fiscal responsibility and responsiveness; as well as instil transparency and accountability in the governance and management of the petroleum sector, is an urgent imperative. Accordingly, this study presents an examination of the petroleum sector within the context of the Petroleum Industry Act (PIA), 2021; identifies gaps that impinge on fiscal responsibility, and offers some recommendations on how these gaps should be addressed. Thus, the ultimate objective of this work is to provide a clear argument to advance advocacy for improved revenue generation and remittances to government coffers in a transparent and accountable manner.

Oke Epia

Executive Director,

OrderPaper Advocacy Initiative

1. Introduction:

1.1 Objectives and Scope of the Study

OrderPaper Advocacy Initiative is leading the implementation of the Growth Initiatives for Fiscal Transparency (GIFT) Nigeria Project designed to catalyze reforms around Transparency, Accountability and Good Governance (TAGG) as it relates to the extractive (petroleum) sector of the country. It is being implemented under the aegis of the Strengthening Civic Advocacy and Local Engagement (SCALE) Project funded by USAID. The goal of the GIFT project is to reduce corruption in the petroleum extractive sector, increase government earnings from the sector, and promote efficient and effective service delivery by the government. In pursuance of this, this Study looks at the underpinning instruments, rules, policies and legislative framework that would support the improvement of transparency and accountable governance of the sector. It is expected to make a detailed interrogation of the extant legal-regulatory environment and come up with recommendations that would contribute towards enhancing improved revenue generation from the petroleum sector. This is imperative given the dire fiscal crisis underpinned by acute revenue shortfalls and rising debts that Nigeria has been entangled in, in recent years. This Study, therefore, aims to lay the foundations for a sustained and coordinated public awareness campaign and targeted advocacy that would lead to policy modifications and iterations as deemed necessary to get Nigeria out of the woods. Therefore, the following are the specific objectives of the Study:

i. To produce a baseline understanding of the fiscal responsibility regime of Nigeria.

ii. To assess and mainstream fiscal responsibility into the operations of the petroleum sector, vis-à-vis the recently enacted Petroleum Industry Act (PIA), 2021

iii. To recommend measures for increasing revenue remittances to government coffers from the petroleum sector.

1.2 Political Economy Analysis/Stakeholder Mapping

It has been established earlier in this Study that petroleum is the mainstay of the Nigerian economy. It defines the character of both the state and its key actors as well as the general direction of the economy including private sector operations. Therefore, the rentier nature of the state weighs heavily on the growth prospects of the economy. Unfortunately, this has been on the adverse side. This too has determined the trajectory of politics, politicking and the leadership recruitment process. The enactment of the Petroleum Industry Act (PIA), 2021, has however become somewhat of a game-changer undergirding the operations of the petroleum industry, and by extension, the economy of the country. The impending 2023 general election is an additional factor that will impact the political economy considerations of the sector as issues thereof will come to the fore in the marketing of manifestoes to secure mandates at the polls.

However, for this study, it is sufficient to enlist a stakeholders' matrix that captures its scope and objectives as this would impact the eventual recommendations. Accordingly, the following constitute relevant stakeholders whose roles and functions have a bearing on reforms of the fiscal environment surrounding the petroleum sector.

i. The Fiscal Responsibility Commission (FRC)
ii. Ministry of Petroleum Resources
iii. Nigerian Upstream Petroleum Regulatory Commission
iv. Nigeria Midstream and Downstream Petroleum Regulatory Authority
v. Nigerian National Petroleum Company (NNPC) Ltd
vi. Nigeria Extractives Industry Transparency Initiative (NEITI)
vii. Office of the Honorable Attorney General of the Federation and Minister of Justice
viii. Extractive Industries Companies Forum
ix. Civil Society Organizations, including Organized Labour
x. National Economic Council (NEC)
xi. National Planning Commission (NPC)
xii. National Assembly
xiii. Central Bank of Nigeria (CBN)
xiv. Revenue Mobilization Allocation and Fiscal Commission (RMAFC)
xv. Federal Ministry of Finance
xvi. Budget Office of the Federation
xvii. Office of the Accountant General of the Federation
xviii. Office of the Auditor General of the Federation
xix. Anti-Corruption Agencies
xx. Development Partners

The implementation of a viable and effective fiscal regime in the oil and gas sector will require the inputs and cooperation of the above-listed (not exhaustive) stakeholders. For the National Assembly, in particular, a lot rest on that arm of government. For instance, the legislature is expected to enact an amendment to the Fiscal Responsibility Act (FRA), 2007 to strengthen the fiscal regime and overall Public Finance Management mechanism of Nigeria.

2. Background to the Study

2.1 Brief on the Petroleum Sector

With a proven reserve of 37 billion barrels of oil and 209.5 trillion cubic feet of gas, Nigeria is the largest producer of crude oil in Africa and comes second to Libya in terms of proven crude oil reserves . It also ranks as the highest producer of gas in West Africa and holds the largest proven natural gas reserve in Africa. Her brand of high value, low sulphur content, and light crude are highly sought after. According to the Nigerian Bureau of Statistics (NBS), the oil sector contributed 8.93 % of the entire Gross Domestic Product (GDP) of the country in the second quarter (Q2) of 2020 .

Also, 94% of Nigeria's total export earnings come from oil. Since the discovery of oil in commercial quantity in Oloibiri (present-day Bayelsa State) in 1956, the petroleum sector in Nigeria has gone through evolution and transformation. The discovery was made by Shell-BP, at the time, the sole concessionaire in the country. Until the establishment of the Nigerian National Petroleum Corporation (NNPC), Nigeria had no stake in production; rather the state restricted itself to regulation and collection of rent. However, the Petroleum Act of 1969 changed the role of the state in the sector by allowing the government to own stakes in oil ventures. This created room for the nationalization wave of the 1970s and the joining of the Organization of Petroleum Exporting Countries (OPEC). Nigeria also moved on to acquiring stakes in existing International Oil Companies (IOCs) and by 1975, the Ministry of Petroleum Resources absorbed the Nigerian National Oil Company (NNOC); and by 1977, the Nigerian National Petroleum Corporation (NNPC) was formally established as a national oil company imbued with regulatory functions and large oversight powers on the sector. In terms of operations, the petroleum sector is divided into upstream, midstream and downstream. The upstream covers the exploration and extraction of black gold and is dominated by multinational oil companies due to its capital-intensive nature. The midstream relates to transportation, logistics, refining and storage of petroleum products and operations like pipelines, shipping, trunks, storage and refining fall into this loop. The downstream sub-sector refers to the end-user lever covering distribution and sales of refined products to consumers.

Due to the monolithic nature of the economy, Nigeria is exposed to volatility in the price of crude oil in the international market. This in turn affects how much the country gets from petroleum at any given time. For example, within the last decade (2011 – 2020), earnings from oil and gas have witnessed a cumulative drop with the highest year-on-year drop witnessed in 2014 – 2015 at 54.5% as highlighted in Fig. 1 below:

1 NMDPRA: Nigeria's Gas Reserves Now 209.5tcf, Increases by 2.87tcf | THISDAYLIVE
2 https://www.nigerianstat.gov.ng/pdfuploads/GDP_Report_Q2_2020.pdf

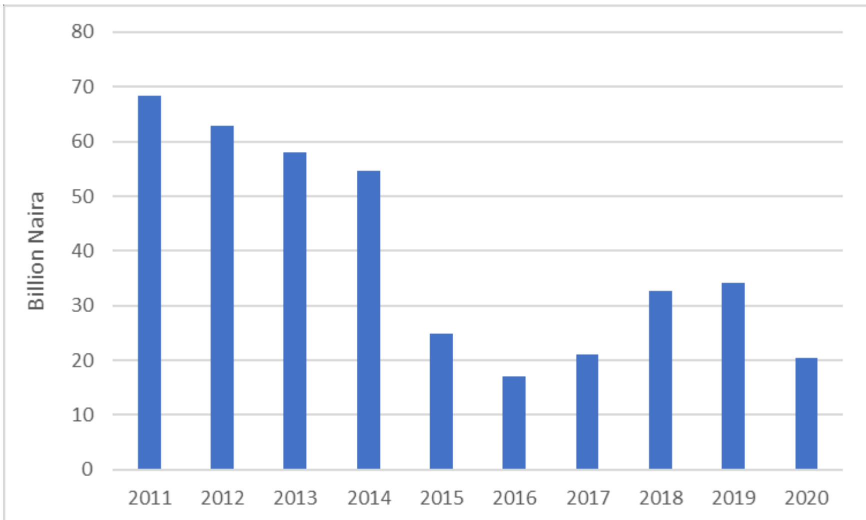


Fig. 1: Earnings of Nigeria from Oil and Gas Sales from 2011 – 2020.

Source: NEITI Oil and Gas Audit Report (2020)

The reason for this drop can be attributed to the significant reduction in crude oil prices during which Nigeria's Bonny Light Crude sold for less than 30 USD per barrel in February 2015. In addition, the massive reduction in global demand for crude oil due to the COVID-19 pandemic reduced earnings from the sector by -40.3% between 2019 and 2020. Meanwhile, the highest year-on-year increase in revenue occurred in 2017 – 2018 at a 55.5% increase; a period that coincided with a significant increase in international crude oil prices. A graphical representation of the percentage variation of revenue earnings from the oil and gas sector is presented in Fig. 2 below:

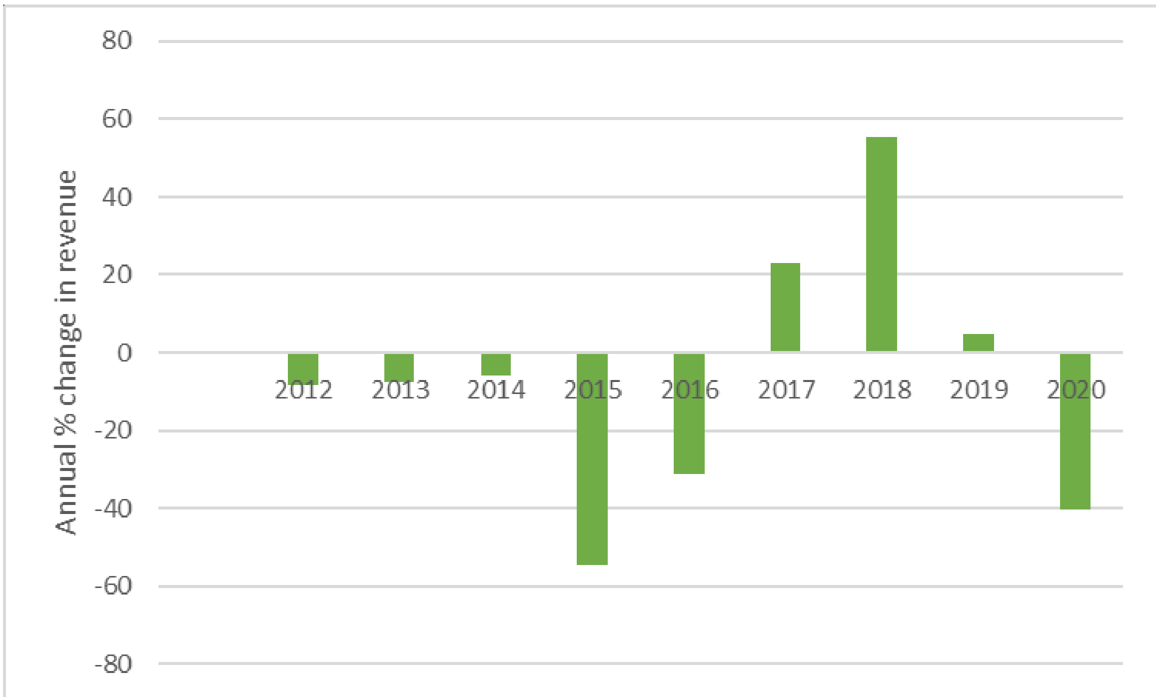


Fig. 2: Annual percentage (%) change in oil and gas revenue from oil and gas sales. Source: NEITI Oil and Gas Audit Report (2020).

2.2 Accountability Gaps and Nigeria's Fiscal Crisis

Over the decades it has become common knowledge that Nigeria's petroleum industry is defined by opacity and accountability gaps. Reports of scandals and corruption are replete in the media space. The Malabu scandal that involved the alleged payments of USD 1.3 billion in bribes by oil multinationals to secure oil rights easily comes to mind. Also recall reports of lack of due process and transparency in the award of oil and gas contracts worth USD 23 billion alleged against the management of the Nigerian National Petroleum Corporation, NNPC (as it then was) by then Minister of State for Petroleum Resources, Mr. Ibe Kachikwu. Furthermore, there have been reports of probes upon probes by the National Assembly of the then NNPC among other entities (both private and public). These unpalatable and undesirable situations can partly be attributed to the existence of weak fiscal regimes governing the sector.

The long-term prevalence of these weak regulatory regimes has consequently had dire consequences on the fiscal health of the country, and ultimately, the standard of living of the Nigerian people. A recent report by the National Bureau of Statistics (NBS) shows that more than 82 million Nigerians live on less than $1 a day. In effect, 40.1 per cent of the total population is poor; or to put it another way, an average four out of ten individuals in Nigeria have real per capita expenditures below N137,430 ($352) per year.

Similarly, the government continues to struggle to meet its public expenditure obligations, leading to a heavy reliance on domestic and external loans that run Nigeria's annual budget to cater for the welfare of her citizenry. According to official figures, Nigeria's total indebtedness stands at 41.6 trillion naira as of the first quarter of 2022. (See illustration in Fig. 3 below). Records also show that Nigeria commits up to 86% of its revenue to servicing debts; a figure that may get to 100% by 2026 according to the International Monetary Fund (IMF).

3 Inside the Bribery Scandal Sweeping Through the Oil Industry - WSJ
4 $25 billion claims in Kachikwu's memo fabricated - Osinbajo | Premium Times Nigeria (premiumtimesng.com)
4 Stakeholders Deplore Nigeria's Inability to Benefit from High Oil Prices | THISDAYLIVE
5 https://nigeria.opendataforafrica.org/lcpafse/revised-absolute-poverty-2004-and-2010-nigeria
6 Debt Management Office of Nigeria, (Nigeria's Total Public Debt Portfolio as at March31, 2022)
7 https://www.dmo.gov.ng/debt-profile/total-public-debts/3938-nigeria-s-total-public-debt-as-at-march-31-2022/file
8 https://www.premiumtimesng.com/news/headlines/534010-debt-servicing-may-take-all-of-nigerias-revenue- by-2026-imf-warns.html

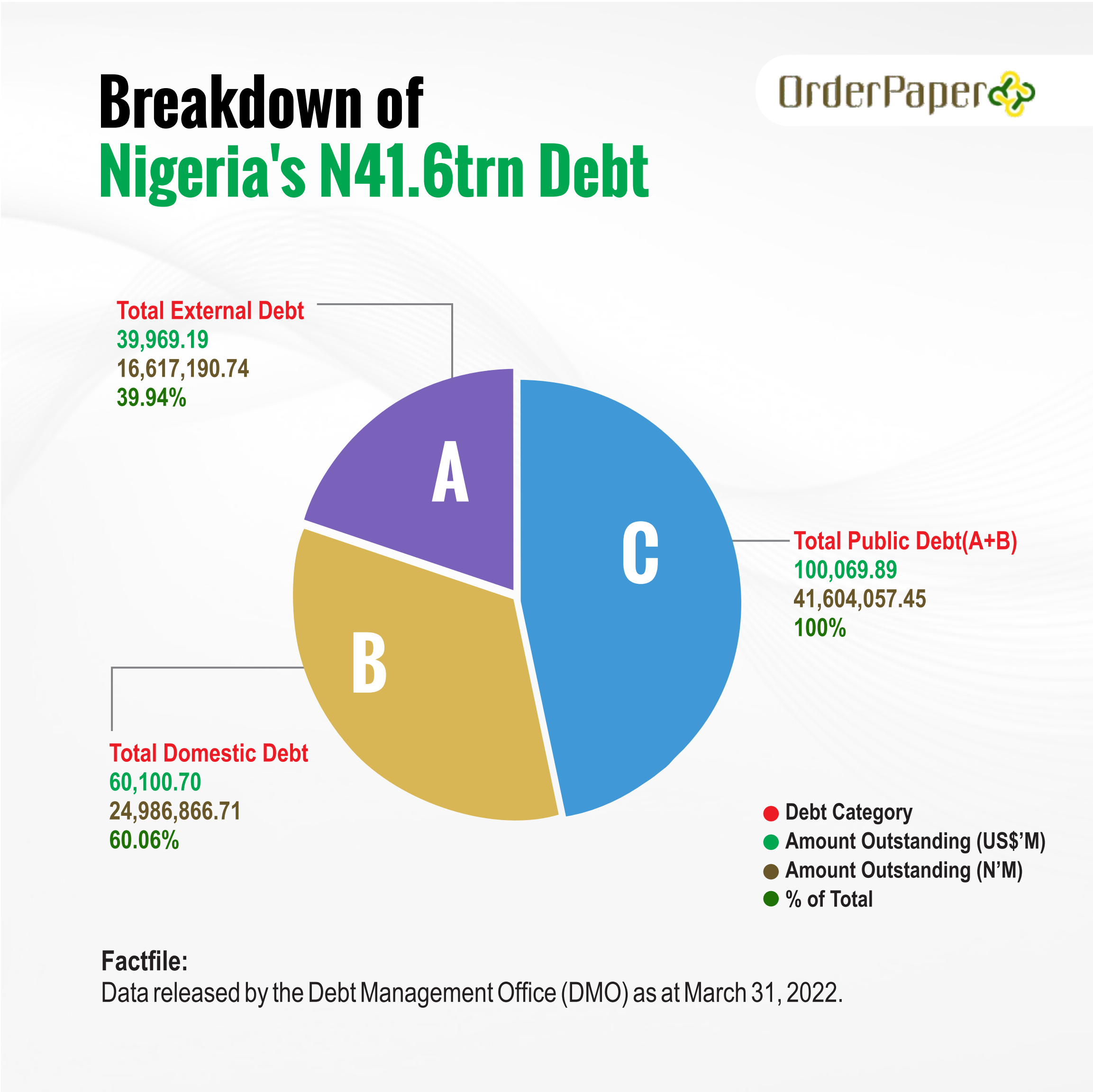


Fig. 3: A breakdown of Nigeria's Debt profile as of March 2022
Source: Debt Management Office (DMO) and OrderPaper

2.3 Nigeria's Commitment to Global Initiatives on Transparency, Accountability and Good Governance

In 2016, Nigeria signed up for the Open Government Partnership (OGP)- an international anti-corruption and transparency initiative. Under the OGP, Nigeria has been implementing substantial governance reforms, including on fiscal transparency and anti-corruption initiatives. These are being done under the National Action Plans co-created by government, civil society and the private sector.

However, before the OGP era, Nigeria had hardly been found wanting in multi-lateral efforts to improve governance, even if for symbolic reasons. This was especially so in the immediate aftermath of return to civilian rule post 1999 where the country was eager to be enlisted as a responsible and responsive member of the international community. This was made even more imperative given certain conditionalities emplaced by global financial institutions and Nigeria's creditors for debt forgiveness under the President Olusegun Obasanjo era. In this regard, the Fiscal Responsibility Act (FRA), the Public Procurement Act, and the Extractive Industries Transparency Initiative (NEITI) Act were specific requirements placed in the way of the country by the Bretton Woods institution and the Paris Club of creditors. While these legislations served the purpose of meeting the conditionalities, they came to be regarded as the sunshine laws to bring about a fiscal regime where transparency, and accountability and fiscal prudence should reign supreme, including in the extractive sectors.

3. Policy and Legal Instruments

This section examines the policies and legal frameworks that regulate the oil and gas sector in Nigeria. Principal among these are:

3.1 The 1999 Constitution of Nigeria (as amended)

The economic objectives of state which are detailed in Section 16 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), is the fundamental basis of Nigeria's economic system. These objectives direct the state to harness the resources of the country and promote national prosperity and an efficient, dynamic, and self-reliant economy; and for control of the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen based on social justice and equality of status and opportunity. The Constitution gives each tier of Nigeria's Federal Government (federal, state and local government council) a set of responsibilities around which service delivery functions are articulated and implemented through the annual budget. Government intervention through fiscal policy is geared towards the achievement of macroeconomic stability and real growth. This is, in turn, expected to improve the welfare and well-being of the citizenry.

3.2 The Fiscal Responsibility Act (FRA), 2007

The FRA was enacted in 2007 'to provide for prudent management of the nation's resources, ensure long-term macro-economic stability of the national economy, and secure greater accountability and transparency in fiscal operations within the Medium Term Economic Framework (MTEF).' The FRA established the Fiscal Responsibility Commission (FRC) to ensure the implementation of the FRA. Globally, Fiscal Responsibility Acts (FRAs) are designed to enhance fiscal prudence by placing statutory obligations on national and sub-national governments to commit to transparent fiscal and budget practices that can be evaluated over time. Examples of countries with FRAs are Argentina, Australia, Brazil, Canada, Chile, Columbia, Ecuador, France, Germany, India, Indonesia, Italy, Mexico, New Zealand, Peru, Russia, South Africa, Spain, and the United Kingdom, and Venezuela, among others.

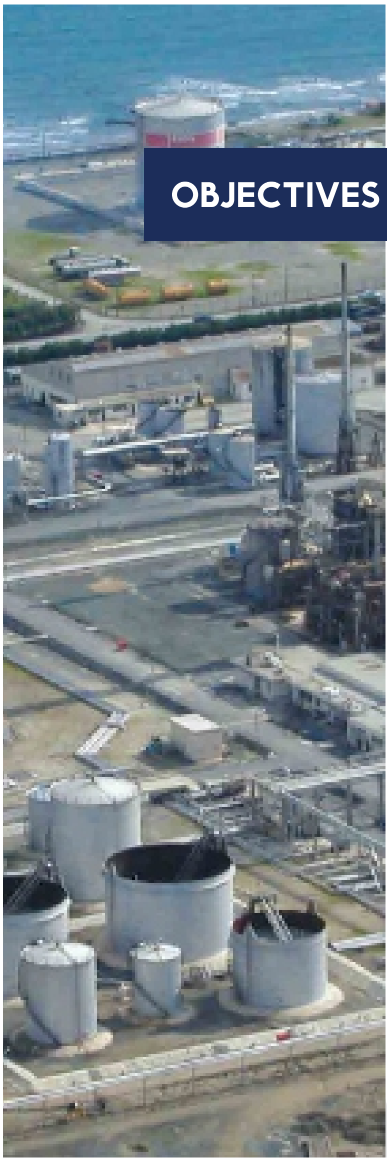
9 https://www.constituteproject.org/constitution/Nigeria_1999.pdf
10 https://fiscalresponsibility.ng/

3.3 The NEITI Act, 2007

The oil and gas industry, a fundamental part of Nigeria's extractive industries, has for a long time remained the mainstay of the economy. The implication is that proper corporate governance and sound fiscal management of the industry are critical to the economic well-being of the country. Unfortunately, the industry appears to be the poster boy of corruption in Nigeria with scandals blowing up now and then. In a bid to reform the industry and make its operations transparent, the Federal Government of Nigeria signed up to the Extractive Industries Transparency Imitative (EITI) in 2003 and went ahead to enact the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 as a mark of its commitment in institutionalizing transparency in the extractive industry. The NEITI Act established NEITI as the implementing agency for the country's EITI commitments.

3.4 The Petroleum Industry Act (PIA), 2021

The Petroleum Industry Act (PIA) 2021 is a consolidated enactment that provides for the legal, governance, administrative, regulatory, and fiscal framework of the Nigerian petroleum industry, including the development of host communities. It repealed certain petroleum-related laws, some of which date back to the 1960s. Among other objectives, the PIA purports to enthrone transparency and accountability in petroleum operations. This much is captured in the objectives of the law (section 2) as indicated in the illustration below:



OBJECTIVES OF THE PETROLEUM INDUSTRY ACT

- Create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- Establish a framework for the creation of a commercially oriented and profit-driven national petroleum company;
- **Promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria;**
- Foster a business environment conducive for petroleum operations; and
- Deepen local content practice in Nigeria Oil and Gas industry

S.2 (a-e)

However, the PIA also entrenched the perceived closed character of the petroleum industry by imposing certain ouster clauses that adversely impact public finance managers and entities like the Fiscal Responsibility Commission (FRC) in providing oversight on the sector. These are clearly pronounced in protections offered the governance institutions – the Nigeria Upstream Petroleum Regulatory Commission (NUPRC); and the Nigeria Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) – created for the industry. As seen in the illustration below, Section 25 of the Act requires any government agency to seek and obtain the permission of the NUPRC before taking any decision or action that may have 'direct impact' on the activities of the petroleum industry (upstream). Same provision is replicated almost verbatim in the section on the NMDPRA.

PETROLEUM INDUSTRY ACT: OUSTER CLAUSE

No Government ministry, department or agency exercising any power or function or taking any action, which may have direct impact on upstream petroleum operations shall make any such issue any regulation, guideline, enforcement order or directive; or exercise any such power or function; or take any such action without notifying the Commission and the Commission's decision on the notification shall be complied with by the relevant ministry, department or agency

S. 25 (PIA)

The PIA contains some notable provisions regarding the Nigerian National Petroleum Corporation (NNPC) which has now become the Nigerian National Petroleum Company (NNPC) after its registration with the Companies and Allied Matters Act (CAMA) as a Limited Liability entity. While the law removes regulatory powers and functions hitherto exercised by the national oil company, it however offers extensive and exclusive functions. See illustrations below:

NNPC UNDER THE PETROLEUM INDUSTRY ACT

- The Nigerian National Petroleum Company shall within 6 months from effective date, be incorporated under the Companies and Allied Matters Act as a limited liability company (NNPC Limited)
- Initial paid-up share capital of NNPC Limited shall be fully paid for by the Government after consultation between the Minister and the Minister of Finance to determine the number and nominal value of the shares to be allotted.
- Ownership of all shares in NNPC Limited shall be vested in the Government at incorporation and held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in equal proportions on behalf of the Federation
- Shares held by the Government in NNPC Limited are not transferable including by way of sale, assignment, mortgage or pledge unless approved by the Government and endorsed by the National Economic Council on behalf of the Federation.

S.53 (1-5)

PETROLEUM INDUSTRY ACT: NNPC POWERS

- Carry out petroleum operations on a commercial basis, comparable to private companies in Nigeria carrying out similar activities including exemption to Public Procurement Act, Fiscal Responsibility Act and Treasury Single Account
- NNPC Ltd to be vested as the concessionaire of all Production Sharing Contracts (PSC), Profit Sharing and Risk Service Contracts as the National Oil Company on behalf of the Federation in line with its competencies
- Lift and sell royalty oil and tax oil on behalf of the Commission and the Service respectively for an agreed commercial fee and in the case of profit oil and profit tax payable to the concessionaire, NNPC Ltd shall promptly remit the proceeds of the sales of the profit oil and profit gas to the Federation less its 30% for management fee and Frontier Exploration Fund as specified in S.9(4) of this Act

S. 64 (a-c)

4. Gaps and Loopholes in the Fiscal Regime

The Fiscal Responsibility Commission (FRC) was established pursuant to the Fiscal Responsibility Act, FRA 2007, to help the country solve some vital fiscal challenges in the management of the country's resources. The function of the FRC is, to amongst others, (a) monitor and enforce the provisions of the FRA and by so doing, promote the economic objectives contained in section 16 of the constitution, (b) disseminate such standard practices including international good practice that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters, (c) undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public (d) make rules for carrying out its functions under the Act and (e) perform any other function consistent with the promotion of the objectives of this Act. In discharging its mandate, the Commission is provided with powers to: (i) compel any person or government institution to disclose information relating to public revenues and expenditure; (ii) cause an investigation into whether any person has violated any provisions of the Act; (iii) if the Commission is satisfied that such a person has committed any punishable offence under this Act, the Commission shall forward a report of the investigation to the Attorney General of the Federation for possible prosecution. The summary deduction of the functions and mandate of the FRC highlighted above implies that the FRC was established to enthrone fiscal responsibility and ensure the macroeconomic stability of the economy. However, within the scope of this Study, there are some glaring gaps in the FRA that have significantly prevented the successful implementation of the law by the FRC. These gaps are highlighted in a lack of mechanisms for the punishment of violations of the Act. Without the powers to impose and enforce some form of sanctions on public entities and individuals that deliberately fail to comply with the FRA as enunciated by the statutory guidelines of the FRC, the Commission can be considered a toothless bulldog whose stipulations can be neglected without consequences. This gap in the FRA strongly limits the Commission in the discharge of its core mandate as regards ensuring fiscal responsibility, prudence, and accountability in Nigeria's public finance space.

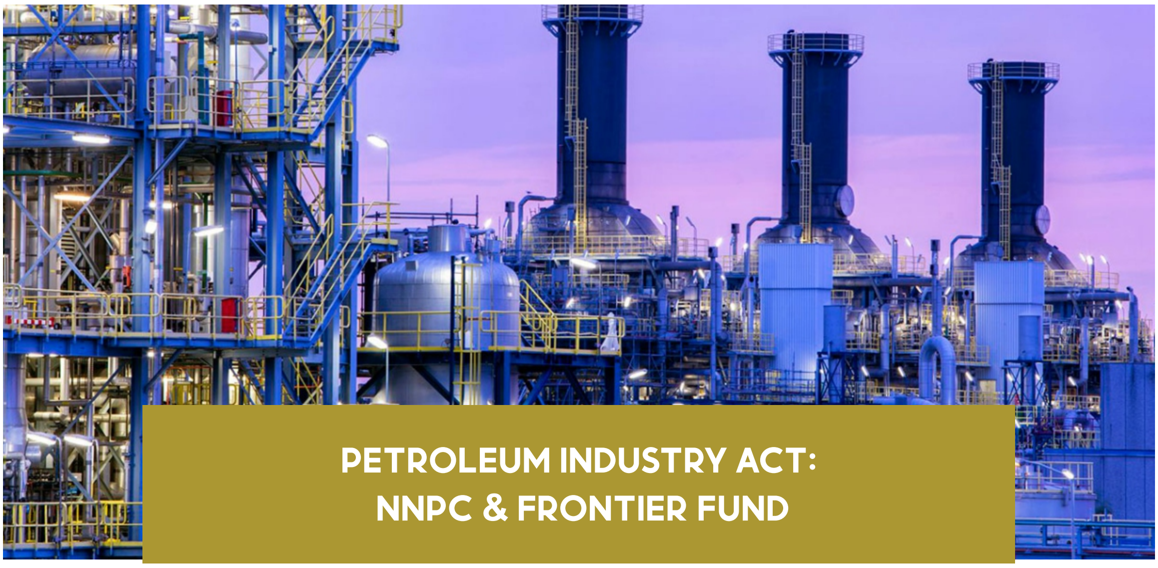
According to a memorandum submitted to the National Assembly by the FRC, not specifying some powers which the Commission ought to wield to fulfil its mandate as expressly provided for in the Act, has led to situations "where requests and directives of the Commission were routinely disregarded without consequence." The Commission is also praying for the proposed amendments to provide for additional documents, including estimated revenue broken down into monthly collection targets which corporations and agencies of government listed in the Act shall prepare and submit along with their Annual Budget & their Revenue and Expenditure Schedule to the Minister of Finance. It further proposes that their projected Operating Surplus be broken down into quarterly estimates to ensure fiscal accountability on the part of Schedule Corporations/Agencies.

5. The PIA and Fiscal Responsibility

As stated earlier, the Petroleum Industry Act (PIA) 2021 is a consolidated enactment for the overall governance and regulation of the petroleum industry in Nigeria. The Act contains five different chapters namely: Governance and Institutions; Administration; Host Communities Development; Petroleum Industry Fiscal Framework; and Miscellaneous Provisions with seven schedules. These schedules are aimed at ensuring that all the relevant value changes and sectors of the industry are covered with an enabling legislative and policy framework. As a result of the importance of this sector to the economic wellbeing of the country, there is a need to effectively manage the sector according to standard fiscal stipulations. A value of the PIA is its overhaul of the existing structure of the governance system of Nigeria's oil and gas industry to incorporate global best practices to ensure transparency, process efficiency and increased investment for overall national development. The Act provides, as regards governance of the sector, that the Minister of Petroleum Resources has the powers to carry out general supervision and oversight functions over the operations of Nigeria's petroleum industry. The Act creates two agencies for governance of the industry, viz: the Nigerian Petroleum Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority. The Commission is responsible for the commercial and technical regulation of the upstream petroleum operations of the industry, which were hitherto carried out by the Department of Petroleum Resources and the Petroleum Inspectorate . In other words, the Commission replaces the upstream regulatory agencies in the sector. The Authority is responsible for the commercial and technical regulation of the midstream and downstream sectors of the industry-functions which were hitherto carried out by the Petroleum Products Pricing and Regulatory Agency (PPPRA) and the Petroleum Equalization Fund (PEF). These two regulatory agencies created by the PIA are mandated to report to the Minister. In addition, the Act which directs the Minister to incorporate a limited liability company has led to the incorporation of the Nigerian National Petroleum Company Limited (NNPC Ltd) under the Companies and Allied Matters Act (CAMA), a replacement of the Nigerian National Petroleum Corporation (NNPC). By the provisions of the Act, the ownership of NNPC Ltd is vested in the Ministry of Finance and the Ministry of Petroleum Resources in equal portions, held in trust for the Federation. In the Act, there are provisions on how the transfer of interests, assets and liabilities and the workforce of the NNPC should be incorporated into NNPC Ltd. The provisions of the Act posit that NNPC Ltd will operate as a commercial entity as other incorporated entities under CAMA . Hence, the sales and transfer of shares of NNPC Ltd would be done at the prevalent market price and through the

11 Section 312 of the Act
12 Section 53(1) and (3) of the Act
13 Section 53(1) of the Act

process of competitive bidding. In line with the global best practices of commercial entities, the Act states the NNPC Ltd will pay its shares of rents, profit oil shares, fees, royalties and other relevant payments to the Federal Government. In addition, NNPC Ltd is expected to pay dividends to its shareholders and retain 20% of its profits for investment purposes. To facilitate the exploration of hydrocarbon in the frontier basins of Nigeria, the Act establishes the Frontier Exploration Fund which is funded by 30% of the profit from oil and gas production sharing, risk service contracts and profit-sharing. (See illustration below):



PETROLEUM INDUSTRY ACT: NNPC & FRONTIER FUND

- There shall be maintained, for the purpose of this section, a Frontier Exploration Fund which shall be 30% of NNPC Ltd's profit oil and profit gas as in the production sharing, profit sharing and risk service contracts

- NNPC Ltd shall transfer the 30% of profit oil and profit gas under subsection (4) to the Frontier Exploration Fund escrow account dedicated for the development of frontier acreages and utilize the funds to carry out exploration and development activities in the frontier acreages subject to appropriation by the National Assembly

S. 9 (4) (5)

In the Act, Frontier Basins refer to basins where exploration for hydrocarbon has not been carried out. These areas include Dahomey, Sokoto, Anambra, Chad and Benue trough or areas as may be declared by the Commission.

Although the PIA has several good initiatives, there are drawbacks related to revenue mobilization into the central pool of government. The law has serious implications for the public finances of the federation and its constituent states and local government areas. See illustration below:

14 Section 53(7) and (8) of the Act
15 Section 9(4) of the Act

NNPC & PUBLIC FINANCE UNDER PETROLEUM INDUSTRY ACT

- NNPC Limited and any of its subsidiaries shall conduct their affairs on a commercial basis in a profitable and efficient manner without recourse to government funds and their memorandum and articles of association shall state these restrictions.
- **NNPC Ltd shall operate as a CAMA entity, declare dividends to its shareholders and retain 20% of profits as retained earnings to grow its business**
- Where NNPC Ltd has a participating interest or 100% interest in a lease or license, NNPC Ltd shall pay its share if all fees, rents, royalties, profit oil shares, taxes and other required payments to Government as any other company in Nigeria

S. 53 (7-8)

From the above provisions in the Act, it is clear that the reduction in remittance of collectables by the NNPC Ltd will result in a considerable reduction in revenues available for service delivery by the three tiers of government. This is reinforced in Section 65 of the law as seen below:

PETROLEUM INDUSTRY ACT: NNPC OUSTER CLAUSE

- NNPC Limited and other parties to joint operating agreements in respect of upstream petroleum operations, may on a voluntary basis restructure their joint operating agreement as a joint venture carried out by way of a limited liability company, each referred to as an “Incorporated Joint Venture Company” (IJV), based on the principles established in the Second Schedule to this Act.

- **The incorporated joint venture companies referred to in subsection (1) of this section shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.**

S.65(1-2)

6. Recommendations

There are two main recommendations from this Study, viz:

1. Amendment of the FRA, 2007 is a major recommendation of this Study. The following are the key areas of amendment that will help facilitate fiscal discipline, prudence and greater transparency and accountability in the petroleum sector of the economy:

* Provide the FRC with the power of enforcement to punish and reprimand agencies and departments that flout the law.
* Mount strong and sustained advocacy on the National Assembly to pass the amendments.
* Impress the Executive arm to push for the amendment with full force

These recommendations are further encapsulated in the illustration below:

FRA AND FISCAL DISCIPLINE FOR CORPORATIONS

Submission of additional documents including estimated revenue breakdown into monthly collection along with their annual budget & revenue and expenditure schedules to the Minister of Finance

Breakdown of projected Operating Surplus into quarterly estimates to ensure fiscal accountability

2. Further interrogation of the Petroleum Industry Act (PIA), 2021, to address ouster clauses it places on the FRA, 2007.

7. Conclusion

The Fiscal Responsibility Act (FRA), 2007 gives legislative backing to prudent fiscal policies, and transparent public finance management, among others. The Fiscal Responsibility Commission (FRC) is responsible for implementing the Act across all sectors of the economy, including petroleum. However, the Petroleum Industry Act (PIA), 2021, has several provisions that impede compliance with sound fiscal policies as provided in the FRA. This Study has espoused these and highlighted the gaps in the extant fiscal regime that need to be addressed.

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