



## THIRD PARTY ACCESS RIGHTS FOR GAS AND PETROLEUM LIQUIDS: MATTERS ARISING

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### Abstract

*This paper examined third party access rights for gas and petroleum liquids. The paper noted that sections 179 and 180 of the PIA, 2021 are vital to achieving the Act's broader policy goals of liberalization, competitiveness, and efficiency in Nigeria's petroleum sector. Therefore, by institutionalizing third-party access, the Act enhances transparency and market fairness, promotes infrastructure optimization, and encourages private sector participation. These provisions are particularly crucial in ensuring that the nation's energy resources are developed and utilized in a manner that maximizes national benefit while fostering a level playing field for all stakeholders.*

**Keywords:** *Third Party, Access, Petroleum and Rights*

### 1.0 Introduction

The Petroleum Industry Act, 2021, fundamentally reshapes the legal and regulatory framework of Nigeria's oil and gas sector. Sections 179 and 180 of the Act specifically address third-party access rights to midstream and downstream petroleum infrastructure, particularly pipelines and facilities used for the transportation and bulk storage of natural gas and petroleum liquids.<sup>1</sup> The core objective of these provisions is to promote open and non-discriminatory access to these essential facilities, thereby encouraging competition, improving efficiency, and attracting investment into the sector.<sup>2</sup>

Section 179 of the PIA provides that licensees or lessees operating midstream or downstream petroleum liquids or gas transportation pipelines and associated infrastructure must allow third-party access on a fair and transparent basis.<sup>3</sup> This access is subject to the availability of capacity and is governed by negotiated terms, provided such terms are non-discriminatory. The section empowers the Nigerian Midstream and Downstream Petroleum Regulatory Authority to ensure compliance and to intervene where access is unjustly denied or where negotiations break down. This regulatory oversight is key to preventing monopolistic behaviour by facility owners.<sup>4</sup>

Section 180 complements Section 179 by establishing the legal mechanisms through which third parties can apply for access. It allows aggrieved third parties who are denied access to apply to the NMDPRA for a determination. The Authority, after due consideration, may mandate access and determine fair tariffs and other terms to ensure equity. This section, therefore, creates a formal dispute resolution

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<sup>1</sup> S C Dike and E Ehie, 'Appraising the Layers of Governance under the Petroleum Industry Act, 2021' [2022] (6) *African Journal of International Energy and Environmental Law* 113-130.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*



framework and gives regulatory teeth to the access rights, ensuring that facility owners cannot unjustifiably lock out potential users.

The scope of these provisions extends across all petroleum liquids and natural gas transportation and bulk storage facilities designated as regulated assets.<sup>5</sup> It includes both existing and new infrastructure, thereby fostering a liberalized infrastructure-sharing regime. This framework enables producers, marketers, and other operators to transport their products even if they do not own the relevant infrastructure, reducing barriers to entry and lowering overall operational costs across the sector.<sup>6</sup>

In essence, Sections 179 and 180 of the PIA, 2021 are vital to achieving the Act's broader policy goals of liberalization, competitiveness, and efficiency in Nigeria's petroleum sector. By institutionalizing third-party access, the Act enhances transparency and market fairness, promotes infrastructure optimization, and encourages private sector participation. These provisions are particularly crucial in ensuring that the nation's energy resources are developed and utilized in a manner that maximizes national benefit while fostering a level playing field for all stakeholders.

## **2.0 Historical Background and Rationale for Third-Party Access Rights to Gas and Petroleum Liquids under the PIA, 2021**

Historically, Nigeria's oil and gas sector operated under a heavily monopolized and vertically integrated structure, where a few major players particularly international oil companies (IOCs) and the national oil company (formerly NNPC), controlled both upstream production and the associated midstream infrastructure.<sup>7</sup> This dominance allowed asset owners to restrict access to pipelines and storage facilities, creating significant barriers for smaller or independent producers and marketers. The lack of regulatory provisions for infrastructure sharing led to underutilization of key assets, discouraged investment, and stifled competition within the gas and petroleum liquids market.<sup>8</sup>

The need for reform became more pressing as Nigeria sought to diversify its economy and maximize its vast natural gas resources. Despite having one of the largest gas reserves in Africa, gas utilization remained low due to poor infrastructure access and limited investment in midstream facilities. As early as the 2000s, various policy documents including the Gas Master Plan identified third-party access (TPA) as a necessary mechanism to unlock the sector's potential.<sup>9</sup> However, without a clear legal framework, these policy ambitions were not fully realized, and infrastructure owners continued to operate without accountability or incentive to share assets.

The Petroleum Industry Act, passed in 2021 after nearly two decades of legislative effort, introduced a comprehensive legal and regulatory framework that aligned with global best practices.<sup>10</sup> The inclusion of third-party access rights in Sections 179 and 180 reflects a deliberate shift toward a liberalized and

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<sup>5</sup> A L Adejare, 'Adoption of CNG and National Security in Nigeria' [2024] (10) (2) *International Journal of Social Science* 099-109.

<sup>6</sup> *Ibid.*

<sup>7</sup> A K Imam, 'Evaluating Regulatory Frameworks for Sustainable Transport (CNG Adoption in Nigeria)' [2019] (19) *Journal of Research and Development* 20-25.

<sup>8</sup> A K Imam, 'Evaluating Regulatory Frameworks for Sustainable Transport (CNG Adoption in Nigeria)' [2019] (19) *Journal of Research and Development* 20-25.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*



transparent petroleum market.<sup>11</sup> It recognizes that enabling access to essential facilities like pipelines and storage terminals is critical to fostering competition, reducing operational costs, and driving the commercialization of gas. The Act's midstream and downstream provisions, therefore, aim to dismantle monopolies and create a more inclusive environment for new entrants.

From a policy rationale perspective, third-party access rights are rooted in the principles of non-discrimination, efficiency, and resource optimization. By mandating fair access to infrastructure, the PIA ensures that all market participants — regardless of size — can participate in the transportation and processing value chain. This not only levels the playing field but also promotes the full utilization of existing infrastructure, avoids duplication of facilities, and attracts investments by reducing upfront capital requirements for infrastructure development. It also aligns with Nigeria's energy transition agenda by encouraging broader gas utilization for power, industry, and domestic consumption.

### **3.0 Legal Framework Governing Third-Party Access Rights to Gas and Petroleum Liquids in Nigeria: Sections and Challenges**

The legal framework for third-party access (TPA) rights to gas and petroleum liquids in Nigeria is primarily established under the Petroleum Industry Act (PIA), 2021, which provides the most comprehensive and unified legal basis for regulating the oil and gas sector. Specifically, Sections 179 and 180 of the PIA govern TPA rights, targeting the midstream and downstream segments of the petroleum value chain.<sup>12</sup> Section 179 mandates that owners of petroleum transportation and bulk storage infrastructure must allow third parties to access their facilities on a fair, transparent, and non-discriminatory basis, provided that spare capacity is available. This provision ensures that infrastructure is not hoarded or used to exclude competitors.

Section 180 of the PIA empowers the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) to intervene in disputes involving access to regulated facilities. Where a third party is denied access or where negotiations fail, the Authority may assess the matter and determine fair and equitable terms including tariffs under which access must be granted. This regulatory oversight ensures that infrastructure owners cannot exercise undue dominance or engage in anti-competitive practices. Importantly, this marks a shift from previous regimes where such intervention was limited or non-existent, and third parties had no clear recourse.

The PIA also ties TPA rights to the concept of “regulated open access infrastructure.” Facilities designated as such by the NMDPRA are subject to mandatory access provisions. This legal classification is critical because it distinguishes between infrastructure built for public utility versus those considered private-use assets. Regulations under the PIA also mandate transparency in tariff setting, publication of available capacity, and the use of standardized access agreements. These measures collectively aim to create a level playing field and reduce operational uncertainty for investors and market entrants.

Despite the legal clarity introduced by the PIA, several challenges remain in the implementation of third-party access rights. One key issue is regulatory enforcement — the NMDPRA is still developing

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<sup>11</sup> *Ibid.*

<sup>12</sup> PIA, 2021, ss 179-180.

the capacity and technical expertise to monitor compliance effectively and adjudicate disputes impartially. Moreover, infrastructure owners may still find ways to delay or frustrate access through prolonged negotiations, claims of lack of capacity, or legal loopholes. There is also a lack of clarity in the criteria used to designate infrastructure as open access, creating room for discretion and inconsistency in regulatory decisions.

Furthermore, legacy infrastructure agreements and vested interests in existing midstream assets may pose resistance to full implementation. Some operators argue that forced access undermines their investment returns, particularly where infrastructure was privately financed. In addition, the lack of supporting infrastructure such as metering systems, interconnection facilities, and dispute resolution mechanisms may hinder seamless third-party operations. To overcome these challenges, Nigeria will need sustained regulatory reforms, stakeholder engagement, and capacity building within the NMDPRA to ensure that the promise of open access translates into real benefits for the sector and the wider economy.

#### **4.0 Regional and International Legal Framework Governing Third-Party Access Rights to Gas and Petroleum Liquids in Nigeria: Sections and Challenges**

Regionally, within Africa, the legal framework for third-party access (TPA) to gas and petroleum liquids is still evolving, with only a few countries having developed comprehensive laws similar to Nigeria's Petroleum Industry Act (PIA), 2021.<sup>13</sup> However, regional economic blocs such as the Economic Community of West African States (ECOWAS) and the African Union (AU) have promoted harmonization of energy policies and infrastructure integration through initiatives like the ECOWAS Energy Protocol and the African Energy Commission (AFREC). These frameworks emphasize cross-border infrastructure access, energy trade liberalization, and non-discriminatory use of shared facilities, indirectly supporting TPA rights across member states, including Nigeria. While they do not contain binding enforcement mechanisms, they provide a policy foundation that complements Nigeria's domestic laws.

Internationally, TPA rights are more deeply entrenched in mature energy markets, especially within the European Union (EU) and under global trade and investment frameworks. The EU Gas Directive (Directive 2009/73/EC), for example, mandates member states to ensure third-party access to gas transmission and distribution infrastructure on regulated, transparent, and non-discriminatory terms. Similarly, the Energy Charter Treaty (ECT), which Nigeria has signed (but not ratified), promotes open energy markets and fair access to infrastructure. These international instruments provide guiding principles that have influenced Nigeria's regulatory reforms under the PIA and offer models for implementation and enforcement.

In the Nigerian context, the alignment with these regional and international frameworks is visible in the PIA Sections 179 and 180, which reflect global best practices by legally mandating open access to infrastructure, regulatory intervention in access disputes, and fair tariff-setting mechanisms. Nigeria's approach under the PIA thus mirrors the EU's regulated access model rather than purely negotiated

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<sup>13</sup> I O Aigbedion, 'Fiscal Incentives and Regulatory Reforms in the Nigerian Natural Gas Sector' [2022] (40) *Journal of Energy and Natural Resources Law* 150-167.

access systems found in some developing countries. This alignment enhances Nigeria's attractiveness to international investors by creating regulatory predictability and supporting cross-border gas and petroleum liquids trade within West Africa.

Despite this alignment, challenges remain in integrating these frameworks effectively. A key challenge is the lack of regional infrastructure connectivity — even with TPA rights in place, cross-border pipelines and storage networks across Africa remain limited. Regulatory fragmentation among African states, varying levels of institutional capacity, and inconsistent enforcement mechanisms make harmonization difficult. Additionally, Nigeria's non-ratification of the Energy Charter Treaty weakens its formal commitment to international access standards, even though its domestic legislation aligns with those principles.

Finally, there is the challenge of capacity building and policy coherence. For Nigeria to fully leverage regional and international frameworks, its regulatory bodies, such as the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), must strengthen their ability to coordinate with international partners, enforce access rules, and engage in cross-border regulatory dialogue. Moreover, greater investment in infrastructure, clear designation of open-access assets, and dispute resolution mechanisms will be essential to making both regional integration and international cooperation in petroleum access a practical reality.

### **5.0 Infrastructure Ownership and Control Issues, Implementation of TPA, and Regulatory Bodies in Nigeria**

The implementation of Third-Party Access (TPA) rights in Nigeria faces significant challenges due to issues surrounding infrastructure ownership and control.<sup>14</sup> Historically, the vast majority of gas and petroleum liquids transportation and storage infrastructure in Nigeria has been owned or controlled by a few dominant players primarily the Nigerian National Petroleum Company Limited (NNPCL) and a handful of international oil companies (IOCs). These entities often built and maintained pipelines and storage terminals with their capital, leading to a perception that such assets are private property. This ownership structure complicates the enforcement of TPA provisions, as asset owners may resist granting access to competitors, citing concerns over asset integrity, investment protection, and commercial confidentiality.<sup>15</sup>

Control over infrastructure is another issue that affects the smooth implementation of TPA. Even where infrastructure is owned by a joint venture (JV) involving the government, control is often exercised by the operating partner usually an IOC with limited public oversight. This creates operational bottlenecks, especially where the operator is not incentivized to grant access to third parties.<sup>16</sup> The situation is further complicated when infrastructure runs across multiple license areas or regions, making coordination of access, maintenance, and tariffs more complex. Without centralized digital systems and transparency tools, it is difficult for regulators and third parties to assess available capacity or track access requests.

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<sup>14</sup> I O Aigbedion, 'Fiscal Incentives and Regulatory Reforms in the Nigerian Natural Gas Sector' [2022] (40) *Journal of Energy and Natural Resources Law* 150-167.

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*.

The implementation of TPA under Sections 179 and 180 of the Petroleum Industry Act (PIA), 2021 has begun in principle but remains slow in practice. Some operators have begun publishing access protocols and tariffs, in compliance with the law, but widespread implementation is still hindered by technical, legal, and financial barriers. There is also a lingering culture of exclusivity among infrastructure owners, and in many cases, asset-sharing agreements have not been standardized. Moreover, many third parties do not have the legal or financial strength to challenge access denials through regulatory or legal means, especially where there is no immediate or clear recourse mechanism.

Two key regulatory bodies are responsible for overseeing the implementation of TPA rights in Nigeria: the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) and, to a lesser extent, the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). NMDPRA is primarily responsible for licensing midstream and downstream infrastructure, monitoring access arrangements, approving tariffs, and resolving disputes under the PIA's TPA provisions.<sup>17</sup> The NUPRC may become involved in situations where upstream operators are affected by access to evacuation infrastructure. However, the effectiveness of these regulators is currently limited by capacity constraints, lack of detailed secondary legislation, and the need to build institutional independence and enforcement power.

The full realization of TPA rights in Nigeria's gas and petroleum liquids sector will depend on addressing core ownership and control issues, improving regulatory capacity, and ensuring that infrastructure operators comply with the spirit and letter of the law. Standardization of access protocols, digitalization of capacity reporting, and clear tariff frameworks will be key. More importantly, regulators must be empowered both legally and financially to compel compliance, adjudicate disputes efficiently, and foster a more competitive and open energy infrastructure market that aligns with national development goals.

## **6.0 Conclusion**

The establishment of Third-Party Access (TPA) rights for gas and petroleum liquids under the Petroleum Industry Act (PIA), 2021 marks a critical turning point in Nigeria's effort to liberalize and modernize its oil and gas sector. By mandating open, fair, and non-discriminatory access to essential infrastructure, such as pipelines and storage facilities, the Act seeks to dismantle monopolistic control, promote market competition, and attract both local and foreign investments. These provisions, particularly Sections 179 and 180, provide legal clarity and recourse for aggrieved parties, helping to unlock the full economic potential of Nigeria's vast natural gas reserves. For instance, small-scale LPG operators or modular refineries that previously faced exclusion from critical infrastructure can now invoke the law and seek redress through the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), enhancing operational viability and investor confidence.

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<sup>17</sup> S C Dike and E Ehie, 'Appraising the Layers of Governance under the Petroleum Industry Act, 2021' [2022] (6) *African Journal of International Energy and Environmental Law* 113-130.





### **7.0 Recommendations**

To fully realize the benefits of TPA, it is recommended that the Nigerian government and regulatory bodies take concrete steps to strengthen enforcement mechanisms, enhance regulatory capacity, and promote transparency in access arrangements. The NMDPRA should issue detailed secondary regulations and guidelines on TPA procedures, including standardized tariffs, dispute resolution timelines, and digital platforms for reporting available capacity. Additionally, awareness campaigns and stakeholder engagement forums should be held to educate local operators on their rights under the law.

Finally, building regional infrastructure interconnectivity and harmonizing access rules with neighbouring countries can support cross-border energy trade and position Nigeria as a regional gas hub much like the West African Gas Pipeline, which connects Nigeria to Benin, Togo, and Ghana, and could benefit from clearer TPA enforcement and expansion.