



An Appraisal of the Environmental Protection Provisions in Petroleum Industry Act, 2021

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Abstract. The development of petroleum resources has contributed immensely to the global energy demand and economic development over the past decades; however, it has left profound negative impacts on the natural environment and adverse human health effects in most oil-producing communities around the world. Apart from the loss of petroleum-derived revenue to corruption and ineffective government's petroleum development policies, the Niger Delta region of Nigeria has experienced a wide range of environmental pollution, degradation, human health risks and socio-economic problems associated with petroleum exploration, development and production. The federal Government of Nigeria has responded by enacting laws and making Regulations. It has established various agencies to ensure the reduction of environmental hazards caused by petroleum extraction. Despite these efforts environmental degradation has continued unabated. This paper discusses the laws and Regulations before the Petroleum Industry Act (hereinafter referred to as Act) and the Act itself. It analyses the impact of the Act and its shortcomings. From the shortcomings or inadequacies identified, useful recommendations are made to align Nigerian Petroleum Industry practices with international standards. The paper adopts doctrinal methods of research.

Keywords: Environment, Environmental law, environmental protection, Niger Delta

1.0 Introduction

Petroleum exploration, production, transportation, distribution and marketing have been ongoing in Nigeria since the country discovered same in commercial quantity in 1956. For a long period of time, oil business has been playing an important role in the development of Nigeria in terms of national economy.¹ Humongous percentage of Nigeria's foreign exchange earnings come from the exploration and production of her crude oil.²

The petroleum industry plays a significant role in the development of the economy of Nigeria, both in terms of revenue generation and infrastructural development. The Nigeria Petroleum industry contributes about 95 percent of the foreign exchange earnings and 80 percent of its budgetary revenues.³ This situation places petroleum products income as the main stay of Nigerian economy. Thus, any adverse change in the industry will have an important and long-term impact on government finances and commercial arrangements in the country.

As a result of this fact, successive governments in Nigeria have put in place legal framework to ensure good governance in the industry. One of the giant strides in this direction is the enactment of Petroleum Industry Act (PIA) in 2021 (hereinafter referred to as the "PIA/Act"). The 2021 Act is a radical departure

¹ M.A. Ajomo, *Oil Law in Nigeria*, (Lagos, Evans Brothers Ltd., 1972) 154.

² Ibid,

³<https://globaledge.msu.edu/countries/nigeria/economy> accessed October 11 2024.

from past norms as it would eventually transform the petroleum industry (if adequately implemented). With the PIA, Nigeria aims to establish a unified legal framework for the petroleum industry, aligning itself with global best practices. This comprehensive legislation repeals several existing laws, signaling a shift towards streamlined governance. The Petroleum Industry Act (PIA) of 2021 represents a comprehensive reform of Nigeria's oil and gas sector, aimed at improving governance, transparency, and efficiency within the industry. The Act *inter alia* provides for environmental protection and remediation; Environmental Remediation Fund; the NNPC became a limited liability company (NNPCL); petroleum products price deregulation; replacement of regulatory bodies; dispute-resolution mechanisms between government and oil companies; reduction and streamlining of royalties, establishment of a midstream government infrastructure fund; and Host Community Development Trusts.

This paper however, seeks to analyze environmental provisions of the Act in terms of its prospects and challenges. One of the important provisions of the Act is its emphasis on environmental protection and sustainability, and this is outlined in Section 102. This is because the petroleum sector's economic interests frequently conflict with environmental protection efforts. The pursuit of economic growth and development through oil and gas exploitation often override environmental concerns, leading to practices that are not environmentally friendly.

This paper in section one deals with conceptual clarifications. Important concepts like the Environment, Environmental Law and Environmental Protection were explained. Section two appraises the previous legislative efforts at reducing environment hazards posed by the exploration and exploitation of oil and gas in Nigeria. Various laws like Environmental Impact Assessment Act, Oil Pipeline Act, 2004, Oil in Navigable Water Act, Associated Gas Re-Injection Act 2004 were examined. The third section analyses the contributions of institutions established to regulate activities in the oil industry. Institutions like National Oil Spill and Detection Response Agency (N.O.S.D.R.A.), Department of Petroleum Resources (DPR), Niger Delta Development Commission (NDDC) were considered. The fourth section examines the salient provisions of Petroleum Industry Act, 2021 (PIA 2021) and its impacts in protecting the Nigerian environment, Environmental Reporting and Transparency, Community Involvement and Environmental Monitoring, Fund for Environmental Remediation, Decommissioning and Abandonment. It identifies the

loopholes in the Act and recommends the way forward.

2.0 The Aim of this Paper

This paper aims to provide an in-depth evaluation of Nigeria's Petroleum Industry Act, assessing its environmental provisions' effectiveness in mitigating the country's environmental challenges, safeguarding the environment from deadly environmental threats like climate change, ozone layer depletion, acid rain and biodiversity loss, and contributing to global sustainability, not only for the benefit of the country, but also for the overall benefit of the entire universe.

3.0. Conceptual Clarifications

This paper uses conceptual clarification, which is a formula-driven process of critical thinking and engagement of building a community of concepts and ideas, as a foundation on which its structure is built.

3.1. Environment

Environment can be defined as a sum total of all the living and non-living elements and their influence on human life. While all living or biotic elements like animals, plants, forests, fisheries, and birds, non-living or abiotic elements include water, land, sunlight, rocks, and air form part of the environment.

Environment may also be defined under the Environmental Protection Act 1990 as consisting of all or any of the following media namely, the air, water and land, and the medium of air includes the air within buildings and the air within other natural or man-made structures above and below ground. From ecology angle, environment is the sum of conditions affecting particular organisms, including physical surroundings, climate and influences of other living organisms. Generally speaking, the environment from the above definitions is seen from nature, that is, the living world, including plants, animals, fungi and all landscape, such as mountainous and rivers.

The National Environmental Standards and Regulations Enforcement Agency (NESREA) and Section 20 of the 1999 Federal Constitution of Nigeria define the environment to include water, forest, wildlife, all atmospheric layers, all organisms and inorganic matter, and their interactions. These definitions collectively emphasize the importance of maintaining a healthy environment for human health, safety and interests.

The Cambridge International Dictionary of English defines the environment as the surroundings and conditions affecting individuals' lives and work, influencing their feelings and effectiveness. This definition, while relevant for lawyers, emphasizes human interaction with their surroundings. Black's Law Dictionary describes the environment as the totality of physical, economic, cultural, aesthetic, and social circumstances affecting property desirability and quality of life. This definition highlights the influence of surroundings on human life but falls short in addressing the sustainability of the environment itself.

3.2. Environmental Law

Environmental laws are laws that protect the environment. They are the integrated rules and principles; i.e., legal norms, the purpose of which is to achieve environmental conservation.⁴ Environmental law is the collection of laws, regulations, agreements and common law that governs how humans interact with their environment. This includes environmental regulations; laws governing management of natural resources, such as forests, minerals, or fisheries; and related topics such as environmental impact assessments. Environmental law is seen as the body of laws concerned with the protection of living things (human beings inclusive) from the harm that human activity may immediately or eventually cause to them or their species, either directly or to the media and the habits on which they depend.

With the threat of climate change facing the planet, environmental law is a growing and increasingly important area of law. At both the national and international levels, environmental lawyers are working to mitigate climate change's impact. Sources of environmental law include the Nigerian law that are related to the environment, the Constitution,⁵ International treaties, state laws, local government laws, and common law.

⁴ O Ajai, Law, Judiciary and the Environment in Nigeria, Essential Readings in Environmental law www.iucnael.org accessed 23 October 2024.

⁵ Constitution of the Federal Republic of Nigeria 1999.

⁶ M Ikhariale, 'A Constitutional Imperative on the Environment: A Programme of Action for Nigeria' in Simpson & Fagbolun, ed, cited in Atsegbua, L, et al.

⁷ P. D Leedy and J. E. Ormrod, *Practical Research: Planning and Design* (Pearson Educational International and

Prentice Hall, New Jersey, 2005), 4.

3.3. Environmental Protection

Law being a means of social engineering has through environmental law protected the environment to some extent. Environmental law is designed to improve and preserve the ecosystem.⁶ It has been argued that unless legal checks and balances are imposed on mankind's present activities, future generations may unduly suffer for present generation's reckless environmentally damaging activity.

4.0. Theoretical Framework

A theory is a system of idea based on general principles that are independent of the thing to be explained, and which allows rigorous, coherent and calculated analysis that provides basis for generalization.⁷ This paper employs the very relevant theory of sustainable development to successfully execute its aim and objectives.

4.1. Theory of Sustainable Development

Theory of sustainable development emphasizes the need to harmonize the ecosystems and man-made systems in such a way that there will be harmonious co-existence of natural and scientific development for man's survival and development that will meet the needs of the present without compromising the ability of the future generations to meet their needs.⁸ Decleris⁹ is a proponent of this theory, and he is convinced that the co-evolution of man-made systems and ecosystems is attainable and depends mainly on the harmonization of decisions to achieve a balanced order.¹⁰ He describes development as being traditionally the process by which a country provides for its entire population, all the basic needs of life like health, nutrition, housing, and provides everyone with opportunities to contribute to the very process through gainful employment as well as scientific and technological innovations; and believes that

⁸ M. Decleris, *The Law of Sustainable Development, General Principles: A Report for the European Commission*,

(Cambridge University Press, 1996), 36.

⁹ M. Decleris studied law and social sciences at the National University of Athens, Greece. He was a Doctoral

Fellow and received Ph.D. from the Law School of Yale University. He is the founder of Hellenic Systems

Group and the European Systems Union based in Paris.

¹⁰ Ibid.

development also implies or means the ability of the national authorities to preserve and maintain the country's natural resources through which revenues may be generated for budgetary financing.¹¹

Declaris' view of sustainability as concerning the dynamic equilibrium between man and nature for the co-evolution of both within the earth surface recognizes the need to effectively protect natural resources; and it is relevant to this study due to the fact that effective protection of natural resources, such as land, rivers, atmosphere, plants, stones and animals, which Declaris is an advocate of, is also achievable through effective control and management of oil pollution. This effective control and management of oil pollution will go a long way in preventing damage to the earthly environment from which natural resources are extracted and explored.

5.0. Appraisal of the Previous Legislative Efforts at Reducing Environment Hazards

Prior to the enactment of the Petroleum Industry Act, Nigeria's environmental legislation was scattered in different statutory documents, and the government's response to environmental issues was often ad hoc. Some of the laws are hereunder discussed.

5.1. Associated Gas Re-Injection Act, 2004

Section 1 of the Associated Gas Re-Injection Act 2004¹² mandates every company producing oil and gas in Nigeria to submit to the Minister a preliminary programme for the viable utilization of all associated gas produced from a field or groups of fields and project or projects to re-inject all gas produced in association with oil but not utilized in an industrial project.¹³ In addition to that, companies were required to submit detailed plans for the implementation of gas re-injection; schemes for the viable utilization of all produced associated gas.¹⁴

Also, Regulation 43 of the Petroleum (Drilling & Production) Regulations provides for the mandatory utilisation of Associated Gas not later than five years after the commencement of production.¹⁵ The reason

for the grace period of five years to flare gas is not given. Flare-out Policy is contained in Section 3 (1) while the Flare Penalty is contained in Section 3 (2) of the Act, which states that in the event of violation of the provisions of the Act, the licensee or lessee forfeits the acreage concerned.¹⁶

The Act made copious provisions to stop gas flaring by 1984; this provision was however weakened by the provision of Section 3 (1) which provided that the Minister of Petroleum resources may issue a certificate allowing the continuation of gas flaring where the utilization or re-injection of the produced gas is not appropriate or feasible in a particular field or fields. Later in 1985 Regulation 1 tagged Associated Gas Re-Injection (Continued Flaring of Gas) Regulations¹⁷ gave few reasons why flaring might be permitted. For the gas flared, the erring company was required to pay penalty fees depending on the volume of gas flared.

Proceeds from gas flare penalties have proved to be a source of substantial income, and this seems to be of more interest to the Federal Government than the pressing demands by the people to stop gas flaring given its proven hazardous effects on human health.¹⁸ Suffice to state that the amount levied as a penalty for flaring should be related to the damage caused thereby. This Act and the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, made thereunder, were apparently not enacted to accomplish the policy to stop gas flaring because the gas could be flared on the permission of the Minister and upon payment of a required penalty.¹⁹

5.2. Oil Pipeline Act, 2004

The Oil Pipeline Act (OPA)²⁰ regulates the grant of licences for the establishment of oil pipelines which was defined to include gas and gas derivatives pipelines.²¹ With the development of the local gas market, there was a growth of an increasingly expanded gas pipeline transportation system. In a bid to ensure that a comprehensive, safe and efficient system is developed, the statutory protection presently given on burial grounds and other venerated land by

¹¹ Ibid.

¹² Cap A25 Laws Federation of Nigeria 2004.

¹³ Section 1(a) and (b).

¹⁴ Section 2(a) and (b).

¹⁵ Regulation 43 of the Petroleum (Drilling & Production) Regulations, Decree No. 51 of 1969.

¹⁶ That is Associated Gas Re-Injection Act.

¹⁷ Associated Gas Re-Injection (Continued Flaring of Gas) Regulations, 1985.

¹⁸ Ayodele-akaakar FO 'Appraising the Oil and Gas Laws: A Search for Enduring Legislation for The Niger Delta Region' <www.jsdafrica.com/Jsda/Fallwinter2001/articlespdf> accessed on 11 July 2024.

¹⁹ Ibid, Ayodele-akaakar FO (n 11) 3.

²⁰ Oil Pipelines Act, Cap O7, Laws of the Federation 2004.

²¹ Section 11(2) Oil Pipelines Act, Cap 338, Laws of the Federation 1990.

the OPA²² should be extended to empower the Minister to declare certain areas as Special Protection Areas and Special Areas of Conservation. These areas should be granted such status to protect the ecology, listed plant and animal species and to promote the maintenance of bio-diversity.²³

Under the OPA, provisions relating to oil also apply to gas in respect of the pipelines.²⁴

5.3. Oil in Navigable Waters Act, 1968

To prevent and control the pollution of Nigeria's water resources by crude oil, this legislation sets out ample provisions to contain water pollution. Firstly, by Section 1 of the Act, an offence is committed when oil is discharged from a Nigerian ship into part of the sea which is a prohibited sea area or if any mixture containing not less than 100 parts of oil is discharged from such a ship into that part of the sea. Here the guilty party is either the master or the owner of the ship in question. The prohibited sea area in this section forms part of international waters.

Secondly, under Section 3 of the Act, an offence is also committed where the owner or master of a vessel, or the occupier of a place on land, or the operator in charge of an apparatus for the transfer of oil from a vessel, discharges oil into Nigerian territorial waters from his vessel, place on land or his apparatus respectively.

In order to enforce compliance with the above pollution prevention measures, an offence is also created under Section 5(5) of this Act for failure to install oil pollution prevention and control equipments on ships in accordance with regulations made under this Act. Again the guilty party is either the owner or master. In section 6 of the Act the penalty on conviction of any of the offences stated above is imposition of fine.

5.4. Environmental Impact Assessment Act, 1992

This Act was enacted in 1992, and its enactment was borne out of the implementation of the country's fifth National Development Plan (NDP) which made provisions for the introduction of an efficient

environmental management system that would ensure that environmental considerations influence all economic and social activities so that the environmentally adverse consequences of such activities can be anticipated and hedged against or minimized.²⁵

The Act, among other things, establishes protocols for conducting environmental impact assessment on certain public and private projects. The Act does not create a separate body or agency to administer and enforce its provisions. Rather, it gives specific powers to the Federal Environmental Protection Agency, created by the Federal Environmental Protection Agency (Establishment) Act, to conduct evaluation of environmental consequences for project approval.²⁶

The text of the Act consists of 62 sections and a Schedule which are divided into three (3) parts of: General Principles of Environmental Impact Assessment; Environmental Assessment of Projects; Miscellaneous. The Schedule lists mandatory study activities which include agriculture, airport, drainage and irrigation, land reclamation, fisheries, forestry, housing, industry, infrastructure, ports, mining, petroleum, power generation and transmission, quarries, railways, transportation, resort and recreational development, water treatment and disposal, and water supply.

The objectives in this Act are straight-forward and unambiguous as they are pushed forward and set out in its opening section. These include systematic examination of both negative and positive impacts of the developmental projects on the environment, and to address the issues during the stage of the design of projects.²⁷ To this extent, the Federal Environmental Protection Agency is to establish those environmental aspects or factors that may have substantial impacts on the environment, and which must be considered and evaluated before any decision is made by an individual, organization or entity, including any level of government planning to execute or permit any activity.²⁸ The Act, therefore, prohibit any public or private sector to undertake or authorize an undertaking of any project except thorough environmental evaluation and consideration are made from the outset.²⁹

²² Section 15(1) (a and b) Oil Pipelines Act.

²³ A clue can be taken of Section 14 of the Act by increasing the protected areas as provided for in this Section.

²⁴ Section 11(2) of the Act.

²⁵ M.S. Shuaibu, 'Trends and Nature of National Development Planning in Nigeria', [2020], *ResearchGate*,

<www.researchgate.net> accessed 23 April 2024.

²⁶ Section 6.

²⁷ Section 1 (a)-(c).

²⁸ Section 1.

²⁹ Section 2.

Assessment of environmental effects involves screening or mandatory study, scoping,³⁰ preparation of screening (Environmental Impact Assessment) report, public consultation in which members of the public are put on notice of the report of the mandatory study and expect comment, if any, to be filed with Agency in respect of the recommendations of the report, decision making and post decision monitoring.³¹

For the purpose of identifying all environmental issues in respect of a project at an early stage, evaluation of environmental effects is to cover the essential elements relating to the description of the proposed activity or project; precise facts and figures that are vital to understand and evaluate the environmental implications of the proposed activity or project; a breakdown of the functional operations involved in the project; a comprehensive analysis of the environmental consequences of the proposed project, including immediate, long term, primary, secondary or cumulative consequences; a statement of uncertainty and knowledge gaps that may impact the accuracy of the required information.³²

Environmental impact assessment will also include a determination and definite analysis of techniques to reduce harmful environmental effects of the planned project, including the evaluation of their effectiveness; a disclosure of whether the proposed project's environmental consequences may extend beyond Nigeria's borders; a concise and simplified abstract of the critical details provided in connection with the environmental effects of the proposed development.³³

The details furnished for environmental risk assessment is to be subject to the agency's objective review prior to making a written conclusion, stating the reason for such³⁴ either in favour or against the establishment of a proposed project.³⁵ However, before the decision of the agency is taken on a proposed project, the agency shall facilitate a review process that enables government agencies, members of the public, relevant experts, and interest groups to provide input on the environmental impact

assessment.³⁶ Where the Agency's decision is against the establishment of a proposed project, it may refer the project to the Federal Environmental Protection Council³⁷ for consideration by a mediation board or review committee.³⁸

Environmental assessment is required where an agency of government at any level is the project sponsor and performs any action which obligates that governmental authority carry out the project in whole or in part.³⁹ It is also mandated when a government agency makes, authorizes or provide a financial guarantee or backing for a loan or other financial assistance to support the project's execution⁴⁰ or where Federal, State or Local Government, in exercise of any statutory or regulatory power, grants a permit, licence or approval or takes any other step to facilitate the project's undertaking.⁴¹

Anyone who contravenes the Act is liable to be prosecuted under the Act. If the offender is an individual, upon conviction, shall be punished with a fine of one hundred thousand naira or imprisonment for five years, and, in the case of a company or corporate entity, a penalty of a fine ranging between fifty thousand naira and one million naira.⁴²

In response to environmental degradation caused by oil spillage and gas flaring the Federal Government enacted the Environmental Impact Assessment Act (EIA Act)⁴³ to curb the menace of oil spillage and gas flaring in the country. The essence of an environmental impact assessment is to assess what the impact of oil and gas exploration and exploitation could have on the environment.⁴⁴ Thus, the assessment ought to be done before the commencement of a project.

The EIA Act makes conducting an EIA study mandatory before an oil and gas project can be commenced.⁴⁵ Environmental Impact Assessment is to be carried out with a view to determining the nature of the project and to what extent the project will affect

³⁰ Process of defining the scope of the project.

³¹ Section 6, 7, 8 and 9.

³² Section 4.

³³ Section 4 (e).

³⁴ Section 9 (a) and (b).

³⁵ Section 6.

³⁶ Section 7.

³⁷ Established by the Federal Environmental Protection Agency (Establishment) Act.

³⁸ Section 26.

³⁹ Section 13 (a).

⁴⁰ Section 13 (b).

⁴¹ Section 13 (d).

⁴² Section 60.

⁴³ Environmental Impact Assessment Act, E12 Laws Federation of Nigeria 2004.

⁴⁴ Usman AK *Environmental Protection Law and Practice* (1st ed. Ababa Press Ltd, Ibadan, Nigeria 2012) 5.

⁴⁵ Section 22 (a) of the Act.

the environment.⁴⁶ EIA studies apply not only to private projects, but also to projects being carried out by public agencies or bodies.⁴⁷ However, the EIA Act does not stipulate whether an assessment is to be conducted in house or through an external body.⁴⁸ To address this gap in the law, it is imperative that an independent body (an external body) should be established and entrusted with the responsibility for EIA study of projects in the petroleum industry.

5.5. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007

The fore runner to NESREA Act was the Federal Environmental Protection Agency Act. It was the statutory threshold of a national policy on environmental protection in Nigeria.⁴⁹ The NESREA Act repealed and replaced both the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Act.⁵⁰ It is an Act that provides for the establishment of the National Environmental Standards and Regulations Enforcement Agency charged with responsibility for the protection and development of the environment in the Country and for related matters.⁵¹

The law states that anyone that obstructs an officer of the agency has contravened the law and upon conviction can be sentenced to a minimum fine of two hundred thousand naira only (N200,000:00) or to a maximum imprisonment of one year or to both fine and imprisonment. In addition, the Act prescribes a further fine of twenty thousand naira only (N20,000:00) for each day the offence continues.⁵² In case of obstruction by a body corporate, the corporation is liable, upon conviction, to two million naira only (N2, 000,000:00) and an additional fine of two hundred thousand naira only (N200,000:00) for each day the offence continues.⁵³

However, the NESREA Council is heavily dominated by government appointees and representatives from the relevant ministries, thus defeating the purpose for

its establishment which is to protect and develop the environment, because the appointing bodies are either the Minister on behalf of the President or government ministries representing the Federal Government. Since the Federal Government is involved in oil and gas exploration and production; the implication is that the Federal Government is being invited to regulate itself. For an organization of this nature to be effective, it must be independent of the government both in appointment and funding.

6.0. Institutional Framework for Environmental Protection

The illuminating positive aspect of the conservation and stewardship of natural resources in Nigeria is that laws and policies are not only enacted and formulated as the case may be, but elaborate institutional arrangements are also put in place for pragmatic and effective protection of the environment. Some of the institutional frameworks include the Niger Delta Development Commission (NDDC); the Department of Petroleum Resources (under the Ministry of Petroleum Resources), as well as the National Oil Spill Detection and Response Agency (NOSDRA).

6.1. Niger Delta Development Commission (NDDC)

NDDC is an interventionist agency; however, before the NDDC was another interventionist agency named the Niger Delta Development Board (NDDDB). The NNDC was established to cater for the welfare of the people of Niger Delta but according to Alasoadura,⁵⁴ ...you find out that over the years, the funds for these interventionist agencies were misapplied by those in charge. If you look at what they were using the money for in the past, the majority of the projects upon which this fund was spent were things you cannot find on ground. The money was spent on consultancy services; this consultancy that, public community relations and so on and so forth, things you cannot lay

⁴⁶ Section 2 of the Act

⁴⁷ Section 2 (1) of the Act

⁴⁸ Section 58 only stipulates that the Agency can facilitate environmental assessment.

⁴⁹ Okorodudu-Fubara MT *Law of Environmental Protection: Materials and Texts* (1st edn. Caltop Publication (Nigeria) Limited, Ibadan, Nigeria 1998) 168.

⁵⁰ Section 63(1) of EIA Act, (Decree No. 48 of 1992). See also Ogbodo SG “National Environmental

Standards and Regulations Enforcement Agency (NESREA) Act – A Review” <<http://nigerianlawguru.com>> accessed on 12 May 2024.

⁵¹ See the preamble to the Act.

⁵² Section 31 on offences and penalties.

⁵³ Section 31 on offences and penalties.

⁵⁴ He was a senator of the Federal Republic of Nigeria and the Chairman of Senate Committee on Upstream Petroleum Sector between 2015 and 2019.

your fingers on. There was a very little infrastructural development.⁵⁵

While another personality in the Niger Delta claimed the NNDC was being starved of fund. He observed that:

The Federal Government has not released enough funds to them. If they are releasing the money to the NNDC, and they do not perform people will now say they are not performing. In a situation where you do not release the funds how do you expect them to perform?⁵⁶

With the comments of these two personalities, it can be deduced that the Commission is not faring well and something urgent need be done to enhance the performance of the Commission.

6.2. Department of Petroleum Resources (DPR)

The Department of Petroleum Resources (DPR) which is under the Federal Ministry of Petroleum Resources plays a key role in regulating and enforcing environmental law in Nigeria. The DPR's regulation-Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN), first issued in 1992 and reissued in 2002, forms the basis for most environmental regulation of the oil industry in Nigeria. In 1999, the Federal Ministry of Environment was formed, followed in 2006 by the establishment of the National Oil Spill Detection and Response Agency (NOSDRA). These institutions based their operations on the DPR Environmental Guidelines and Standards.

However, in the history of oil and gas, regulation appears to be relegated to the background in favour of NNPC and Multinational Oil companies.⁵⁷ DPR's activities are also hampered by human and financial incapacities.⁵⁸ The staff of DPR moved to the NNPC; due to relatively poor civil service compensation, the DPR could not attract to it the right calibre of personnel. So, DPR is dependent on the NNPC for

staffing. The arrangement in place allows DPR to tap into the human resources available in the NNPC and to allow for fluid movement of personnel and for ease of sharing experience.⁵⁹ DPR has been treated just like another arm of the NNPC subject to its directives, those of the Ministry, and the presidency.⁶⁰

6.3. National Oil Spill and Detection Response Agency (NOSDRA)

Sometimes in early 2010, a National Oil Spill and Detection Response Agency (N.O.S.D.R.A.) was established under the Federal Ministry of Environment, and a National Oil Spill Contingency Plan (NOSCP) approved by the Executive Council of the Federal Government. NOSDRA would manage the contingency plan on oil spill under the terms of the new programme on combating environmental pollution caused by oil operations. The approval of the contingency plan and the establishment of the Agency were in compliance with the International Convention on Oil Pollution Preparedness Response and Cooperation (OPPRC) of which Nigeria is a signatory. This convention enjoins signatory nations to intensify efforts towards the compliance, monitoring and enforcement of oil and gas regulations and standards.

7.0. Salient Provisions of the Petroleum Industry Act, 2021 on Environmental Protection

As a result of the inadequacies of the laws and regulations earlier discussed, A Bill for Act in petroleum industry was introduced in 2012 and was finally signed into law in 2021. The Petroleum Industry Bill (PIB) was a comprehensive document covering most of the relevant issues pertaining to oil and gas exploration and exploitation in Nigeria. Some of the matters covered include: issues of state participation – ownership and control, fiscal matters, institutions and regulatory bodies, safety, health, environmental concerns and one of the knottiest issues

⁵⁵ Personal communication by way of an interview conducted for a member of Senate in the Nigeria's National Assembly on the 2 March 2017. This excerpt is quoted from: OA Ayodele, A comparative study of the legal framework governing oil and gas exploration and exploitation in Nigeria, A Doctoral of Law Dissertation of the Faculty of Law of the North West University South Africa.

⁵⁶ An excerpt of the interview conducted for a traditional ruler in Warri, Delta State on the 6 February 2017.

⁵⁷ Subai P *Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's*

Petroleum Industry Reform (PhD-dissertation Newcastle University 2014) 75.

⁵⁸ Gboyega A *et al* 'Political Economy of the Petroleum Sector in Nigeria' (2011) World Bank Policy Research, Working Paper 5779 p 28.

⁵⁹ Nwokeji GU "The Nigerian National Petroleum Corporation and the Development of the Nigerian oil and gas Industry: History, Strategies and Current Directions" (2007) *The James A Baker II Institute for Public Policy and Japan Petroleum Energy Centre* 26.

⁶⁰ Usman AK *Nigerian Oil and Gas Law* (Malthouse Press Ltd 2017) 6.

– the issue of community relations.⁶¹ The bill having been enacted into law is now referred to as Petroleum Industry Act, 2021. However, this paper will discuss its environmental provisions and related matters only.

The Act demonstrates a commitment to minimizing the ecological footprint of the petroleum industry. By integrating environmental considerations into the legal framework, the Act sets a foundation for more responsible resource management. This focus on sustainability is crucial for ensuring that petroleum operations do not irreparably harm Nigeria's diverse ecosystems. Another significant strength is the Act's requirement for operators to prevent pollution, as specified in Section 103. This provision mandates that operators not only avoid causing environmental harm but also take necessary remedial actions when pollution occurs. Such proactive measures are essential for safeguarding ecosystems and public health, as they ensure that any negative impacts are promptly addressed and mitigated.

The PIA 2021 also mandates environmental impact assessments (EIAs) for petroleum operations under Section 104. EIAs are critical tools for evaluating the potential ecological effects of proposed projects. By requiring EIAs, the Act ensures that environmental considerations are factored into decision-making processes, thereby promoting more informed and sustainable development practices. This requirement helps to prevent environmental degradation before it occurs and encourages the adoption of best practices in the industry.

The Act contains copious environmental provisions aimed at protecting the environment. For example, section 101 is on environmental and social responsibilities of licensees and lessees in the petroleum industry aimed at protecting the environment. Section 101(1) provides that:

A licensee or lessee shall not enter upon, occupy, or exercise any of the rights or powers conferred by the license or lease in relation to any-

(a) area to be scared, the question as to whether the area is scared or not shall be decided by the customary court of the area, where necessary;

(b) part of the following relevant areas, except it obtains a written permission from and subject to conditions as may be imposed by the commission, any part-

i) set apart for, used or appropriated or dedicated to public purposes;

ii) occupied for the purposes of the Government of the Federation or States,

iii) situate within a township, town, village, market, burial ground or cemetery.

If the licensees or lessees want to enter any of the places referred to above, then he must obtain written permission from the Commission before entering or occupying these areas. In addition, they must provide notice and fair compensation to lawful occupiers or owners of land. In cases of disputes, licensees or lessees must deposit reasonable compensation with the Federal High Court. The Commission determines the amount of compensation, which is prescribed by regulation. Failure to pay compensation within 30 days may result in sanctions. Therefore, it is mandatory for licensees and lessees to pay fair compensation to the affected community.

Going by the provision of section 102, it is mandatory for licensees or lessees to submit an environmental management plan. Section 102 (1) provides that:

A licensee or lessee who engages in upstream or midstream petroleum operations shall within-

(a) one year of the effective date, or

(b) six months after the grants of the applicable licence or lease, submit for approval an environmental management plan in respect of projects which require Environmental Impact Assessment to the Commission or Authority as the case may be.

(2) The environmental management plan under subsection (1) shall be in accordance with the extant Acts.

In order to ensure the protection of the environment, the licensees and lessees must submit an environmental management plan for approval. This plan must comply with environmental Acts and demonstrate the applicant's capacity to mitigate negative impacts. The Commission or Authority can review and approve the plan, considering national environmental policies. The section also prohibits chemical use in upstream operations without a permit. Furthermore, Section 103(1) provides that -as a condition for the grant of a license or lease and prior to the approval of the environmental management plan by the Commission or Authority, a licensee or lessee shall pay a prescribed financial contribution to an environmental remediation funds established by the Commission or Authority, as the case may be, for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.

⁶¹ Egbogah EO 'Oil and Gas sector reforms in Nigeria: what you should know' <www.nigeria.com> page unknown Accessed 12 May 2024.

In determining the amount of the financial contribution, the Commission or Authority as the case may be, shall take into consideration the size of the operations and the level of environmental risks that may exist.

Section 104 takes a strong position against the harmful practice of gas flaring and venting. Here, any licensee, lessee, or marginal field operator found to be flaring or venting natural gas without permission is committing an offense, except in cases of emergency. Section 104(1) provides that:

A licensee, lessee or marginal field operator that flares or vents natural gas, except-

(a) in case of an emergency,
(b) pursuant to an exemption granted by the commission, or

(c) as an acceptable safety practice under established regulations, commits an offense under this Act and is liable to a fine as prescribed by the Commission in regulations under this Act.

(2) A fine due under this section shall be paid in the same manner and be subject to the same procedure for the payment of royalties to the Government by companies engaged in the production of petroleum.

This section imposes penalties on licensees and lessees who engage in gas flaring. Pursuant to the Flare Gas (Prevention of Waste and Pollution) Regulations, a penalty shall be prescribed and paid by the licensee or lessee. This penalty serves as a deterrent against the wasteful and polluting practice of gas flaring. Furthermore, the Commission has the right to take natural gas destined for flaring at the flare stack, free of charge. This provision empowers the Commission to redirect gas that would otherwise be wasted through flaring, promoting a more sustainable and responsible use of natural resources. In essence, the Act aims to prevent the waste and pollution associated with gas flaring, while promoting the efficient use of natural gas.

In section 105 (2), the Commission reserves the right to take free of charge natural gas that is destined for flaring at the flare stack.

The commission however permits the venting of gas on the condition that the licensee or lessee shall install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the Commission or the Authority may prescribe in a regulation.⁶²

Other provisions are on Decommissioning and Abandonment, Environmental Audits and Host Community Development Trust.

7.1. Decommissioning and Abandonment

Decommissioning and abandonment plans are essential for the safe closure of oil and gas facilities at the end of their operational life.⁶³ Operators must prepare and execute these plans, which detail the steps to safely decommission facilities and restore sites to their natural state.⁶⁴ This provision ensures that environmental degradation is minimized once petroleum operations cease, safeguarding ecosystems and surrounding communities from potential long-term impacts. Section 232(1) states:

The decommissioning or abandonment of petroleum wells, installations, structures, utilities, plants and pipelines for petroleum operations on land and offshore shall be conducted in accordance with good international petroleum industry practices; and guidelines issued by the Commission or Authority, as the case may be, provided that the guidelines shall meet the standards prescribed by the international maritime organisation on offshore petroleum installations and structures.

The requirement for EMPs represents a proactive approach to environmental management. By requiring detailed planning and approval, the PIA seeks to ensure that potential environmental impacts are identified and addressed before operations commence. This provision aims to enhance accountability and transparency, as operators must demonstrate their commitment to environmental protection through their EMPs.

7.2. Fund for Environmental Remediation

The Act established a fund called the Environmental Remediation Fund. This fund is aimed at financing the assessment, remediation, and restoration of areas impacted by petroleum operations. It is expected to be funded through various sources, including a percentage of the operational expenses of petroleum companies.

One of the most critical aspects of the PIA is its emphasis on pollution control and remediation. The Act establishes stringent requirements for managing and mitigating pollution from petroleum activities. Operators are required to implement measures to prevent pollution and to report any environmental incidents, such as oil spills, gas flaring, or leaks, immediately to the relevant authorities. The PIA also

⁶² Sec 106(1) and section 107.

⁶³ Section 232 (1)

⁶⁴ Section 232 (1) (a) & (b).

introduces provisions for environmental remediation. Operators are mandated to take corrective actions to address and remediate environmental damage caused by their activities. The Act establishes a remediation fund to which operators must contribute. This fund is intended to cover the costs of cleaning up and restoring environments affected by petroleum operations, providing a financial mechanism to ensure that remediation is carried out effectively.

7.3. Community Involvement and Environmental Monitoring

The PIA recognizes the importance of involving host communities in environmental management. The Act requires operators to engage with local communities and incorporate their input into environmental management processes. This includes involving communities in environmental monitoring and ensuring that they have access to information about the environmental impact of petroleum activities. The emphasis on community involvement is significant, as local communities often bear the brunt of environmental degradation caused by oil and gas operations. By incorporating community perspectives and ensuring their participation in monitoring efforts, the PIA aims to enhance transparency and accountability, while also addressing the concerns and needs of those most affected by petroleum activities.

7.4. Environmental Reporting and Transparency

Transparency is a key theme in the PIA, particularly in relation to environmental reporting. The Act mandates that operators submit regular reports on their environmental performance, including compliance with environmental standards and any incidents of environmental harm. These reports are to be made available to the public, fostering a culture of openness and enabling stakeholders to hold operators accountable for their environmental impact. The requirement for public reporting is intended to build trust between operators, regulatory authorities, and the public. It ensures that environmental performance is subject to scrutiny and provides a mechanism for stakeholders to engage with and influence environmental management practices.

8.0. Inadequacies/Criticisms of the Petroleum Industry Act in Relation to Environmental Protection

The Petroleum Industry Act's environmental protection provisions, although well-intentioned, are sparse and peripheral, overshadowed by the Act's primary emphasis on fiscal and administrative management of the petroleum sector.

8.1. Adoption of Fault-based Approach

Similar to the trend in ONWA and NOSDRA Act, the Act adopts a fault-based approach rather than strict liability. It includes exceptions permitting environmental degradation under certain circumstances. For example, the Act permits oil companies to flare natural gas under exceptions approved by the Commission, as well as in emergency situations, or when deemed necessary, in accordance with established regulatory guidelines.⁶⁵ Oil companies exploit these loopholes to perpetuate oil and gas pollution, which is a major factor in the endemic oil and gas pollution plaguing Nigeria.

8.2. Adoption of Reactive Approach

The Act's approach to oil and gas pollution is reactive rather than proactive (prevention-focused), emphasizing oil companies' responsibility to respond to incidents of oil pollution. This is evident in the Act's mandatory financial contribution to the established Environmental Remediation Fund (ERF) under section 103. Its penalties for oil pollution and unauthorized gas flaring, which are limited to unspecified amount of money or monetary percentage, as fines, are insufficient to effectively deter potential offenders. The penalties do not include more stringent measures such as revocation of license or asset seizure.⁶⁶

8.3. Lenient Penalties for Environmental Protection Regulation Violation

It has been stated that the PIA's penalties for environmental violations are considered too lenient, failing to serve as an effective deterrent. For instance, under the PIA the punishment for gas flaring has been reduced to a fine as against the stricter sanctions prescribed by the Associated Gas Reinjection Act wherein an offender shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed, and may in addition forfeit to the government all or part of any

⁶⁵ Section 104.

⁶⁶ Section 104 (1)-(4).

entitlement due to him which shall then be invested in completion or implementation of a desirable reinjection scheme or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.⁶⁷ The said section 4 states as follows:

(1) Where any person commits an offence under section 3 of this Act, the person concerned shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed.

(2) In addition to the penalty specified in subsection (1) of this section, the Minister may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.⁶⁸

A civic approach was adopted when Jonah Gbemre (representing the Iwherekan community) brought a claim against Shell Petroleum Development Company Nigeria (SPDC) and NNPC in the Benin Judicial Division of the Federal High Court of Nigeria.⁶⁹ The plaintiff alleged that gas flaring violated the right to life and human dignity guaranteed by the Nigerian Constitution and the African Charter. The plaintiff further claimed that gas flaring negatively impacted on human health, the environment, food, water and housing. On 14 November 2005, the court issued a judgment confirming that gas flaring violated the right to life and dignity of persons. The court ordered the defendants to take immediate steps to stop gas flaring in the community. On 11 April 2006, the Court ordered SPDC and NNPC to end flaring by April 2007 and ordered the Managing Directors of SPDC and NNPC as well as government officials to appear in court on 31 May 2006 to present a programme for stopping gas flaring in the community.⁷⁰ This particular case was frustrated by the counsel to the defendants through frivolous adjournments and complicity of the court clerks. The decision of the trial court was appealed against. However, the Appeal filed was abandoned after a unilateral adjournment by clerk of the Court of Appeal. At the trial court, the trial judge was transferred at next date of adjournment and the case file could not be traced.⁷¹ My account of the case

is that ruling was made to stop gas flaring but the Government failed to implement.

8.4 Improper Clarification of the Concept of Environmental Right

The concept of environmental rights is not explicitly defined, leaving room for interpretation and potential legal ambiguities. This lack of clarity can undermine the effectiveness of the Act's environmental provisions, as stakeholders may have differing interpretations of what constitutes an environmental right. However, the strengths of the PIA lie in its justiciable and enforceable measures. Unlike the non-justiciable provisions of Section 20 of the Constitution, the PIA includes specific and enforceable regulations that can be upheld in a court of law. This gives the PIA a greater potential for practical impact. The Act's specificity in addressing environmental issues within the oil and gas sector is another significant strength. By providing clear guidelines and standards, the PIA offers a structured approach to environmental management that can be effectively monitored and enforced. However, the successful implementation and enforcement of the PIA face potential challenges. Historical weaknesses in regulatory enforcement and oversight in Nigeria raise concerns about the Act's practical effectiveness. Effective enforcement mechanisms are critical for the successful implementation of any regulatory framework. However, the PIA 2021 falls short in this regard. The Act lacks robust enforcement mechanisms, which can hinder the practical application of its environmental provisions.

Without stringent enforcement, operators may not be held accountable for violations, weakening the overall impact of the legislation. This deficiency makes it challenging to ensure compliance and maintain environmental standards.

8.5. Exclusion of Oil-Producing Communities in Decision-Making

The Act does not adequately ensure community involvement in decision-making processes related to environmental concerns. Meaningful community

⁶⁷ Associated Gas Reinjection Act, 1979.

⁶⁸ Section 4 of Associated Gas Reinjection Act, 1979.

⁶⁹ *Mr. Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd, Nigerian National Petroleum Corporation, Attorney General of the Federation* Suit No: FHC/B/CS/53/05.

⁷⁰ Business and Human rights Centre "Gas flaring lawsuit (re oil companies in Nigeria)" (2005)

<<https://business-humanrights.org/en>> accessed on 18 July 2024.

⁷¹ Ayodele Morocco-Clarke 'The case of *Gbemre v. Shell* as a catalyst for change in environmental pollution litigation?' (2021) 12(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)* 38.

participation is vital for ensuring that the voices and interests of those directly affected by petroleum operations are heard and addressed. The absence of such provisions in the PIA 2021 is a significant shortcoming, as it excludes local communities from important discussions that impact their environment and livelihoods.

8.6. Absence of Clear Guidelines for Compensation for Oil Pollution Damage

Another weakness is the lack of clear guidelines for remediation and compensation in cases of environmental damage. The Act does not provide detailed procedures for addressing environmental harm, which can lead to inconsistencies and inadequacies in how such issues are managed.

9.0. Recommendations

Based on the findings of this paper as discussed in detail above, the following recommendations are suggested.

9.1. Clear Guidelines for Effective Implementation of the Act.

In order to ensure that affected communities receive fair compensation over violation of the ecosystem through the reckless operations of multinational companies, there should be clear definition of environmental rights. This will reduce ambiguities in interpretation, given clear and sufficient guidelines on how to seek and attain justice from the provisions of PIA. This will provide a solid legal basis for the protection of rights.

The Nigerian Legal system has not been user friendly; to seek reliefs over violation of the eco-system has been riddled with delays in court proceedings, which is attributed to substantial number of cases being tried under the mono-door court system. Arbitration and reconciliation have to be promoted to complement the court system.⁷²

The courts should also promote substantial justice as against technical justice. The issue of locus standi was raised in *Oronto Douglas v Shell*.⁷³ The applicant filed a case the Shell Corporation for its failure to comply

with the provisions of the Nigerian Environmental Impact Assessment Act. The Court held that the applicant did not have locus standi, notwithstanding that the company's proposed project was due to affect the plaintiff's community.

9.2. Regular Review of PIA

The PIA 2021 should be subjected to regular reviews and updates to address emerging environmental concerns and incorporate best practices. This approach will ensure that the Act remains relevant and effective in responding to new challenges and opportunities. By continuously improving the legislation, Nigeria can better protect its environment and promote sustainable development in the petroleum industry.

Increasing public participation and consultation in environmental decision-making is essential. Policies should be designed to promote economic growth while minimizing environmental harm, ensuring that development is both sustainable and equitable. This can be achieved by creating more inclusive and transparent processes that involve all stakeholders, ensuring that the voices of affected communities are heard and considered. It is germane to balance economic interests with environmental protection and sustainable development.

10. Conclusion

There is no doubt PIA has presented a unique opportunity to grow Nigeria's Petroleum industry and increase government revenue. More importantly, there are ample provisions for the remediation and protection of the environment if implemented will go a long way to improve the environment and reduce friction in the Niger Delta. In order to fully realize its potentials, the Act must address its weaknesses and build on its strengths. Furthermore, if the environmental provisions will be effective, there is the need to strengthen enforcement mechanisms, enhance community participation, develop clear guidelines for remediation and compensation, and regularly review and update the Act. The effective environmental governance cannot be over-emphasized; it requires active participation and involvement all stakeholders.

⁷² O.F. Olayinka, "The Corporate Affairs Commission and the Challenge of Economic Transformation in Nigeria" (2017)(8)(3) The Gravitas Review of Business & Property Law, 64.

⁷³ Unreported Suit No. FHC/L/CS/573/96; see also Olayinka, OF, 'Gas Flaring As "Hell On Earth" For The Indigenous Peoples Of Africa: "Coloniality"

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