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EVALUATING THE NEXUS BETWEEN POLITICS AND REGULATORY REGIME IN THE OIL AND GAS INDUSTRY

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Abstract

The discovery of oil in commercial quantities in Nigeria changed the narrative economically, but as time would prove, it was a curse disguised as a blessing. Over time as the country's dependence on oil revenue increased, more licenses were granted to IOCs for more operations in order to rake in more revenue. It is a known fact that the oil industry is the most pollution-associated industry in the world, as every stage of its activities, from exploration to distribution of the product is ridden with pollution either of the air, land, and/or sea, and the Nigerian environment has not fared any better. In response to these environmental challenges, the federal government of Nigeria has promulgated laws and policies aimed at regulating the industry and mitigating the negative effect of their activities on the environment. However, the state of the environment considered, it can be argued that the government has been paying lip service to the regulation of the activities of the industry, especially with regard to environmental protection. It can also be alleged that the Nigerian environment and people have become the alternative forgone in the quest for economic benefit to the federal government of Nigeria. This study looks at extant environmental laws, especially those regulating the industry and argues that politics has been the reason for their lack of effectiveness over time, a situation not cured by the PIA.

Keywords: Politics, Regulatory Regimes & Petroleum Act

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1. Introduction

Fossil fuel has remained the driving force of the world's socioeconomic system over the years, despite being cited as the major culprit in climate change crisis,[2]and in fact, environmental degradation generally. The oil is explored, produced, refined and distributed the world over by a host of 'industrial giants, giving rise to a colossal business, which leaves in its wake, dangerous emission of Green-House gases into the atmosphere, a situation which they have continued to deny through funding and lobbying.[3]It was Henry Berenger, a former French Minister of Petroleum who stated that '[h]e who owns the oil will own the world, for he will rule the sea by means of the heavy oil, the air by means of the ultra-refined oils, and the land by means of petrol and the illuminating oils…'[4], an affirmation of the polluting effect the 'black gold'.

With the coming into prominence of the oil into the Nigerian economy in the 1970s, the federal government has since, maintained a strong hold on oil and gas resources, and has promulgated laws claiming exclusive rights to the resource. Some of the laws include the Petroleum Act[5], Territorial Waters Act, Oil Pipelines Act, Exclusive Economic Zone Act, Land Use Act, Minerals and Mining Act, and National Inland Waterways Act.[6] These laws are either a restatement or expansion of the Constitutional provision which states in 44(3) that: …'the entire property in and control of all minerals, mineral oil and natural gas in, and upon any land in Nigeria … shall vest in the government of the federation …'

Nigeria's oil resources are largely concentrated in the Niger Delta's onshore and offshore areas, situate along the Gulf of Guinea, and home to more than 20 million people from more than 20 ethnic and language groups (in addition to dozens of sub-ethnic groups).[7] With a total proven reserve estimated at about 36 billion barrels, and natural gas reserves proven to be well over 150 trillion feet, the Niger Delta has been subjected to severe environmental degradation, owing incessant cases of oil spills, problems of lax environmental regulations, and government complicity, as well as continuous marine and air pollution.[8] This has led to the destruction of the environment and the impoverishment of the people whose livelihood depended on the natural environmental resources.This work would focus on some of the extant laws aimed at regulating the industry and argues that the letters of some of the laws, as well as their lack-lustre implementation considered, it is incontrovertible that the Nigerian government is more interested in the revenue accruable from the industry than the well-being of the people and the environment.

2. Environmental Regulatory Regime in the Oil Industry

Environmental consciousness came to the fore in Nigeria after the incident of toxic waste dump in Koko, a village in Delta state in 1988,[9] when about 3,880 metric tons of hazardous waste of Italian origin was dumped there with the collusion of a Nigerian businessman.[10]Following the incident, awareness heightened among Nigerians on the need to do more for the environment, by way of environmental protection, through the enactment of policies and laws with proper enforcement mechanisms.[11]The incident coupled with the on-going 'global environmental concerns' gave rise to the formulation of the Nigerian Environmental Policy with very lofty objectives, including laws like

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[2]Marco Grasso, 'Oily Politics: A Critical Assessment of the Oil and Gas Industry's Contribution to Climate Change' [April 2019] (50) *Energy Research and Social Science* 106 www.sciencedirect.com accessed 26 January, 2022

[3]ibid

[4] Andrew Nikiforuk, 'The Energy of Slaves: Oil and the New Servitude'. In Oladimeji Philip, 'Ownership of Oil and Gas in Nigeria', [2020] www.ssrn.com/abstract=3636423 accessed 28 January, 2022.

[5] PA 1969

[6] Alex Gboyega and others 'Political Economy of the Petroleum Sector in Nigeria', [August, 2011] ResearchGate www.researchgate.net accessed 28 January, 2022

[7]Kenneth Omeje, 'Oil Conflict and Accumulation Politics in Nigeria', Issue 12 ECSP Report <www.wilsoncentrer.org> accessed 26 January, 2022

[8]Energy Information Association (EIA) 2005, in Omeje

[9]Onyenekenwa C. Eneh and V. C. Agbazue, 'Protection of Nigeria's Environment: A Critical Policy Review' [2011] *Journal of Environmental Science and Technology*https://www.researchgate.netpublication> accessed15 March 2021.

[10]Onyenekenwa C. Ene and V. C. Agbazue, 'Protection of Nigeria's Environment: A Critical Policy Review', [2011] 4 *Journal of Environmental Science and Technology* www.scialert.netfulltext> accessed 27 October, 2021.

[11]Suleiman Ladan, 'The Environment and Environmental Law in Nigeria', [January 2007] 3(1) ResearchGate www.researchgate.net accessed 25 October, 2021.

the Federal Environmental Protection Agency Act of 1989 (repealed 2007 by the National Environmental Standards and Regulation Enforcement Agency Act), the Environmental Impact Assessment Act of 1992,[12] etc. These laws and so many others promulgated down the line, were aimed at regulating the activities of industries whose activities pollute or have the potential to pollute the environment. Some of these laws, including the father of them all, the constitution, as well as the most recently promulgated, the Petroleum Industry Act 2021, are examined below and juxtaposed with the reality of their implementation.

2.1.1 The Constitution of the Federal Republic of Nigeria 1999 (as amended)

The aforementioned Koko dump incident led to the inclusion of issues relating to the environment in the 1999 constitution.[13]The constitution, while making provision however, did not actually provide for environmental protection.[14] It rather makes it an objective of the state, making the provision under the Fundamental Objectives and Directive Principles of State Policy.[15]Section 20 which contains the provision states thus: 'The state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife in Nigeria'. There is no doubting the fact that having the objective of protecting the environment is noble, as it is a prerequisite to the enjoyment of the human rights to life, health, etc. However, the question is whether such provision creates a responsibility that can be enforced.[16] Section 6 (6) (c) of the constitution answers the question. The section provides thus:

The judicial powers vested in accordance with the foregoing provisions of this section, Shall not, … extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy, set out in chapter II of this constitution.A judicial interpretation was given to this provision in the case of Okogie (Trustees of Roman Catholic Schools) and others v Attorney-General, Lagos State,[17]where the Court of Appeal held thus:

While section 13 of the constitution makes it a duty and responsibility of the judiciary, among other organs of government to conform to, and apply the provisions of chapter II, section 6 (6) (c) of the same constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy.[18]

This, in other words means that, section 20 of the constitution makes it the responsibility of the state to ensure that policies are directed towards environmental protection, but section 6 (6) (c) robs the citizens of the legal right to enforce such provisions.[19] Put succinctly, 'environmental rights are unknown to Nigerian law'.[20]

2.1.2 The African Charter on Human and Peoples' Rights

By the provision of section 12 of the constitution, for every any treaty between the Nigerian state and any other country to become effective, it must first of all be domesticated or enacted into law by the National Assembly. Pursuant to this section, Nigeria domesticated the African Charter via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the

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[12] Ibid.

[13] CFRN 1999 Cap C23 LFN 2010; see Akintunde Otubu, 'Environmental and Human Rights: An Overview of Current Trends in Nigeria' <www.umlag.edu.ng> accessed 25 January, 2021.

[14]Cheta T Emejuru, 'Human Rights and Environment: Whither Nigeria?' [2014] (30) *Journal of Law Policy and Globalisation*<www.iiste.org> accessed 23 January, 2020.

[15] See chapter 2 of the 1999 constitution.

[16]Abdulkadir B Abdulkadir,'The Right to a Healthful Environmental Justice in Nigeria' [2014] 3 (1) ABU: *Journal of Sustainable Development Law & Policy*<www.ajol.infojsdlp>article>viewFile> accessed 6 January, 2020.

[17] (1981) 2 NCLR 337; *Attorney-General, Ondo State v Attorney- General Federation* (2000)9 NSC.

[18] Per Nasir P. JSC.

[19] See Hakeem Ijaiya 'Environmental Rights in Nigeria and India' [2012] 9(2) *International Journal of Environment and Development*<.www.law.unilorin.edu.ngindex.php> accessed 15 March, 2020.

[20]Abdulkadir B Abdulkadir & OA Sambo, ' Human Rights and Environmental Protection: The Nigerian Constitution Examined' [2009] (2) *Nigerian Journal of Food Drug and Health Law* 61 <unilorin.edu.ng>publications>samboao> accessed 8 January, 2020.

Federation of Nigeria 2004. In the case of *General Sani Abacha & Ors v Chief Gani Fawehinmi*,[21]the Supreme Court held that once an international treaty has been enacted into law by the National Assembly, pursuant to section 12 (1) of the constitution, the treaty becomes binding. The court also held that where there is a conflict between the provisions of the treaty and another domestic statute, the treaty will prevail, being a statute with international flavour.[22]This however relates to local statutes alone, as the court has also held that it is ranked lower than provisions of the constitution and cannot therefore be 'the basis for further legislations.[23]Article 24 of the African Charter provides that everyone has a right to a 'general satisfactory environment favorable to their development'.There have been a plethora of cases against the oil companies in Nigeria with allegations of pollution from oil-related activities, loss of income, property, etc., most of them being claims for compensation from the oil companies and not environmental protection.[24]

It is submitted that the cases, although not instituted with environmental rights in mind, failed because of the bias of the Nigerian government in favour of the multinationals. This is obvious when investigations into the cause of oil spills are sponsored by the polluter who ensures that the result is manipulated and the community youths cited for sabotage.[25]In the case of *Oronto Douglas v. Shell Petroleum Development Company Ltd*,[26]the plaintiff sued for the protection of the right as guaranteed by article 24 of the African Charter. His contention was the failure of the defendant to carry out an Environmental Impact Assessment before the construction of a Liquefied Natural Gas plant as mandated by the Environmental Impact Assessment Act of 1992.[27]The trial court refused jurisdiction over the matter based on the issue of *Locus Standi*. On appeal however, the trial court was mandated to hear the matter.[28]

The Supreme Court of Nigeria however, in the case of Centre for Oil Pollution Watch v. NNPC[29]held that 'it would be wrong to allow outdated technical rules of *locus standi* to prevent action on unlawful conduct', thereby rewriting the rules on *locus standi*. This however did not help the case of Douglas as it had died before then.

2.1.3 The Petroleum Act and the Petroleum (Drilling and Production) Regulations

The Petroleum Act of 1969, amended by Decree Nos. 16 of 1973, 49 of 1976, and 37 of 1977, is the primary regulatory instrument of oil and gas exploration activities in Nigeria. The Act in sections 1(1&2) vests the ownership and control of all petroleum, wherever found in the state. This includes land in Nigeria covered by water, whether it be in the continental shelf, territorial waters, or exclusive economic zone. Pursuant to the Petroleum Act,[30] the Petroleum (Drilling and Production) Regulations 1979 was enacted. Section 25 of the regulation mandates the licensee/lessee to adopt all possible precautionary measures, including up-to-date equipment, for the prevention of the pollution of land and waters by oil or other fluids. Where such occurs, however, despite the precautionary measures in place, the law also mandates the adoption of prompt necessary action to control and possibly abate it. The responsibility of holders of licenses in the act is to:

> …prevent the pollution of inland waters, rivers, … of Nigeria … by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause

[21] (2002) 6SC (pt.1) 1.

[22] Mathew Adefi Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences', [2012] 15(1) *Journal of Politics and Law* (www.ccsenet.org/jpl.) accessed 27 January, 2019

[23]*Mohammed Gamba and others v Attorney General Lagos state*, Suit No. ID559M/90 (Unreported).

[24]Oluwatoyin Adejonwo-Osho, 'The Evolution of Human Rights Approaches to Environmental Protection in Nigeria' <www.iucnael.org> accessed 28 January, 2019.

[25] See Mythe Verweij, 'Why is Shell Continuing their Environmental Racism?', [18th December 2015] Down to Earth. <https://business-humanrights.org>shell-... > accessed 28 August 2019.

[26] (1999) NWLR (Pt591) 466.

[27] S 2.

[28]Justice C. Nwobike, 'The African Commission on Human and Peoples' Rights and the Domestication of Second and Third Generation Rights Under the African Charter: Social & Economic Rights Action Centre (SERAC) and the Centre for Economic Rights (CESR) V Nigeria [2005] 2 *African Journal of Legal Studies* 130.

[29](2019) 5NWLR (Pt. 1666) 518

[30]S. 9(1)

> harm or destruction tofish, water or marine life, and where any such pollution occurs, shall take prompt steps to control and if possible, end it.

The destruction of the once fertile land of the Niger Delta and the negative impacts the exploration activities have on the people's health and livelihood testifies to the fact that the provision is observed in the default, which in turn has fuelled restiveness in the region.[31] According to Amnesty International, the Niger Delta of Nigeria 'is one of the most polluted places on earth'.[32] The report of the United Nations Environment Programme (UNEP) on Ogoni land concludes that the concentration of hydrocarbons to which the people are exposed is indeed very high and can be found both in the outdoor air and drinking water. They also have the problem of skin exposure to contaminated soil, sediments, as well as surface water.[33]

Other environmental provisions in the regulation are domiciled in Sections 40 and 45 and refer to expectations relating to practices in the drainage of liquid waste, or disposal of refuse to prevent the pollution of land and water, as well as post-operation activities to ensure that the environment is not worse-off after operator's activities. Despite the provision, the discharge associated water into the seas by the corporations go on unchecked by the officers of the Department of Petroleum Resources, who have the responsibility of regulating their activities. Allen, quoting an informant described the situation thus: Government officials only come here to be fed with food and collect money and do nothing to check these companies. Wastes are discharged into the sea recklessly. It is really amazing these things are happening in the face of laws prohibiting them.[34]

The law also provides that the licensee/lessee of an Oil Mining Licence (OML) shall, within five years of the commencement of production, submit to the Minister of Petroleum Resources, a feasibility study, or programme plans for the utilisation of any natural gas discovered in the course of operation.[35]The provision for gas utilisation was, however, not made mandatory and no provision was made for default.[36] Moreso, permission was granted to the corporations to flare gas for five years before the submission of the feasibility report, evidence of the lack of seriousness attached to the subject matter of gas flaring.

2.1.4 Gas Flaring Regulations and Politics

The exploration of crude oil is compulsorily linked with associated gas that of necessity must be separated before the refining process.[37] This can be done in either of three ways – reinjection into the soil pending future need, which requires complex infrastructure; application to domestic and commercial use which entails facilities for liquefaction and transportation; the last and easiest option is flaring the gas.[38] According to a World Bank report, flaring or venting of associated gas contributes largely to the volume of Green House Gas emissions which impact negatively on the health and environment.[39] The World Bank defined the value of gas flaring as 'the lower of the cost of reducing or eliminating CO2 emissions and/or the economic cost of the damage to the physical and/or biological environment caused by the CO2 emission'.[40]

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[31]Editorial, 'Again, Pollution in the Niger Delta' [March 19, 2021] TheGuardian www.guardian.ng accessed 8 February, 2022

[32]Amnesty International, 'Niger Delta Negligence', [2022] www.amnesty.org accessed 8February, 2022

[33]Owhondah Ihunwo, 'Review of UNEP Report on the Environmental Assessment of Ogoniland' [February, 2018] ResearchGate www.researchgate.net accessed 8 February, 2022

[34]Fidelis Allen, *Implementation of Oil Related Policies in Nigeria: Government's Inertia and Conflicts in the Niger Delta* (Cambridge Scholars Publishing, 2012) 7- 8

[35] S. 42; See also Dennis Otiotio, 'Gas Flaring Regulation in the Oil and Gas Industry: A Comparative Analysis of Nigeria and Texas Regulations' [May, 2013] Oil and Gas Law www.academia.edu accessed 31 January, 2022

[36] Uwem Udok and Enobong Bassye Akpan, 'Gas Flaring in Nigeria; Problems and Prospects' [March 2017] Vol.5 (1) *Global Journal of Politics and Law Research*www.eajournals.org accessed 1 February, 2022

[37]Mary Agboola and others, 'Gas Flaring in Nigeria: Opportunity for Household Cooking Utilisation' [2011] Vol. 2, (2) *Int. J. of Thermal and Environmental Engineering* 69 www.researchgate.net accessed 31 January, 2022.

[38]ibid

[39]World Bank, 'Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons from International Experience' Report Number 3 www.worldbank.com accessed 3 February, 2022

[40] 'Assessing the Impact of Gas Flaring on the Nigerian Economy' www.pwc.compdf> accessed 1 February, 2022

It has been reported that Nigeria has the largest proven gas reserves in the whole of Africa and places 9th in the world, as at 2018.[41] Above notwithstanding, gas production remains low in Nigeria.The reason is that the IOCs would rather flare the gas than re-inject it for future production. The gas is flared every day for 24 hours with people practically living next door. This has in no small measure led to a myriad of health and environmental problems including asthma, bronchitis, and blood-related problems, as well as acid rain which negatively impacts soil fertility leading to a reduction in agricultural production and by extension, promoting hunger.[42]

2.1.5 The Associated Gas Re-Injection Act of 1979 (as amended)

This was the first anti-gas flaring regulation in Nigeria, made as a statutory response to the environmental impacts of gas flaring, with the intendment of phasing out gas flaring in Nigeria.[43] Section 1 mandates all companies in oil and gas production to submit to the Minister, not later than April 1, 1980, a proposal for the utilisation of all associated gas produced fields;(b) proposed project(s) for re-injection of all gas produced in association, but not 'utilised in an industrial project'. The Act also makes it a of the companies to submit the said programmes and plans not later than 1 October, 1980.[44]

The politics in the act becomes evident when in section 3 it outlawed gas flaring from January 1 1984, but only subject to the permission of the minister who has the sole discretion to issue such permit. It further gives him power to impose such terms and conditions as he deems fit to allow the continuous flaring of gas by a company that has declared its inability to engage in utilisation or re-injection of associated gas.

It may not be out of place to conclude that the law does not make gas flaring illegal, a position identified to be a major weakness of the said Act.[45]
Oluduro and Oluduro noted that as at the end of 1984, nothing evidenced that the companies had complied with the provisions of the and no evidence indicated that the Minister had insisted on their compliance.[46]

Sequel to the above situation, the Minister made the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations of 1984, which made exemptions to the earlier general ban on flaring.[47] Unfortunately, the financial penalty[48] for continued flaring in the regulation is so grossly inadequate that the companies would rather flare and pay the penalty, than comply with the phase-out of gas flaring.[49]

In Johnah Gbemre V Shell Petroleum Development Company of Nigerian Limited[50] Mr. Gbemre, representing his community and himself filed a suit against Shell, the Nigeria National Petroleum Company (NNPC), and the Attorney-General of the Federation. The plaintiff sought inter alia, a declaration that the rights to life and dignity of the human person guaranteed by the constitution and provided in sections 33 (1) and 34 (1) of the constitution, which rights are further einforced by articles 14, 16 and 24 of the African Charter (Ratification and Enforcement) Act cap A9 LFN 2004, inevitably includes the right to an environment that is clean, pollution and poison-free; a declaration

[41] ibid
[42]Nwamaka Iguh, 'Gas Flaring in Nigeria: An Abridgement of Human Rights' [2016] ResearchGate www.researchgate.net accessed 1 February, 2022
[43]See ibid
[44]S 2(1)
[45] Uwem Udok and Enobong Bassye Akpan, 'Gas Flaring in Nigeria; Problems and Prospects' [March 2017] Vol.5 (1) *Global Journal of Politics and Law Research*www.eajournals.org accessed 1 February, 2022
[46] O. F. Oluduro and O. Oluduro, 'Oil Exploration and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria' [2015] 37, *Journal of Law, Policy and Globalization,* p. 70
[47] Kaniye Ebeku, *Oil and the Niger Delta people in International Law: Resource Rights, Environmental and Equity Issues* in Udok and Akpan (n49)
[48] The Associated Gas Re-Injection (Amendment) Act introduced a penalty of 2 (two) kobo per 1000 standard cubic feet (SCF) of gas flared at any place. This amount was increased to 50 (fifty) kobo per 1000 standard cubic feet of gas in 1990, and the amount was further increased to 10 (ten) Naira per 1000 standard cubic feet of gas in 1998.
[49] Coalitions for Change, Abuja *Existing Laws and Policies in the Nigerian Extractive Industries*, (2010), Nigerian Extractive Industries Transparency Initiative (NEITI), pp. 7-8
[50](2005) AHRLR 151 (NgHC 2005).

that the said rights have been violated by the defendants and an order of perpetual injunction restraining them from 'further flaring of gas in their community.[51]

The court declared the defendants liable for violating the rights of the applicants as provided by the *constitution* and the African Charter.[52] The court further held that section 3(2) (a&b) of the Associated Gas Re-injection Act and Section 1 of the Associated Gas Re-injection (Continuing Flaring of Gas) Regulation are null and void for its inconsistency with the Applicants' rights to life and dignity of the human person guaranteed by the constitution. The court also restrained the Defendants from continuing to flare gas in the said community[53] and ordered the AGF to initiate the process for an Act to quickly amend the relevant sections of the Associated Gas Re-injection Act and the Regulations sequel to it.

In 2018, the federal government made the Flare Gas (Prevention of Waste and Pollution) Regulations, aiming to facilitate the conversion of flared gas into a marketable product as well as develop a bidding process that will be competitive for interested persons and organisations. The objectives of the regulation include inter alia, the reduction of the impact, both environmental and social, of gas flaring, and the prevention of the waste of natural resources, while creating economic benefit from it. It is of interest to note that although the fine for violation has been significantly increased (from N10 per 1000 Standard Cubic Feet to US 2$ per 28.317 SCF). Another point to note is that the minister still reserves the right to issue permits for the flaring of gas at his sole discretion.

Section 4 of the law requires a producer to provide accurate data of flared gas, when such request is made by the DPR within 30 days, and section 5 makes the inaccurate presentation of data upon the request a crime, whether the presenter is acting for himself or on behalf of the producer, punishable with a fine of N50,000.00 or a jail term of not more than 6months, or both .It can be argued that the provisions of the law are observed in the default as the latest regulation notwithstanding, satellite gas flaring data has revealed recently, that Nigeria has been one of the top seven gas flaring states in the world since 2012.[54]

Nigeria is a party to the 2001 Global Gas Flaring Reduction Partnership Principles, committed to a flare-out date of 2030.[55] Following her responsibility under the UNFCCC, Nigeria submitted her First Nationally Determined Contribution in July 2021, pledging inter alia, to end gas flaring by 2030, a pledge which has been criticised as not being real, considering the facilities or lack of it on the ground in the Niger Delta for its achievement.[56]

2.1.6 FEPA and NESREA

The Federal Environmental Protection Agency (FEPA) was established vide the establishment Decree of 1988,[57] following the Koko incident, as earlier stated in this work. The agency had the responsibility to protect and develop the environment and conserve the biodiversity, as well as promote the sustainable development of the country's natural resources among others.[58]

In performing of its functions, the act authorises the agency to establish water and air quality standards, including effluent limitations for both private and public organisations. It went on to prohibit the discharge of hazardous substances into the environment, whether air, land or waters, except where authorised, and prescribes fines/punishment for violation.[59] It further provides for the

[51] Para 2(5).
[52] Para 5(6).
[53] Para 6(5); Abdulkadir B. AbdulKardir, Gas Flaring in the Niger Delta of Nigeria: a Violation of the Right to Life and Comment on the Case of Jonah Gbemre v Shell Petroleum Development Company' [2014] Vol. 22 (1) *IIUM Law Journal* 76 www.journals.iium.edu.my>article> view> accessed 23 March 2020.
[54] According to the NNPC monthly oil and gas reports, Nigeria flared1252.26 trillion cubic feet of natural gas between 2016 and 2020.
[55] Oluwole Ojewale, 'Are Nigeria's Promises to End Gas Flaring Merely Hot Air' [23 Nov, 2021] Institute for Security Studies www.issafrica.org accessed 2 February, 2022
[56] ibid
[57] FEPA (Amendment) Decree No. 59 of 1992 Laws of the Federation of Nigeria.
[58] S. 5
[59] S.21

liability of the offender in the form of payment of the cost of removal, reparation, restitution and compensation, 'as may be determined by the agency'.[60]

In 2007, the federal government of Nigeria promulgated the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act,[61] thereby creating another principal agency for environmental protection in Nigeria and repealing FEPA.[62]

It is a notorious fact that the oil industry is by far the most environmentally unfriendly industry globally, as every stage of its operation gives rise to hazardous waste products that are either emitted into the air, land, or water, depending on the location of the operation and polluting that medium. It, therefore, bears contemplation when the provisions of NESREA expressly declare in sections 7, 8, 24 29, and 30 that its functions do not apply to the oil and gas industry or its operations,[63] and its officers were therefore expressly barred from monitoring, inspecting, searching, or in any way regulating the activities of the industry for compliance with extant environmental laws and standards, even if it is pursuant to a court order.[64]

It is revealing to note that under the FEPA Act (which preceded the NESREA Act), there was provision for cooperation with, and assistance to the Ministry of Petroleum Resources in the abatement of oil-related pollutants, discharged into the environment.[65] It is presumed that the Department of Petroleum Resources (DPR), the successor to the Ministry of Petroleum Resources, is now responsible for monitoring, permitting, and generally overseeing the activities in the oil and gas sector, for purposes of regulation of same.[66] This state of affairs of placing environmental protection in the hands of a department whose responsibility is the development of Nigeria's energy sector, has been questioned by some scholars. 'Many academic and non-governmental sources define the nature of the relationship between the DPR and the companies, as a partnership, which fundamentally conflicts with the concept of an independent regulating body for the industry.'[67] It is arguable therefore, that the nature of the relationship between the oil companies and the DPR, fundamentally conflicts with the concept of an independent regulatory agency.[68]An argument that affirms the politics in the regulation of the oil industry and agrees with the position that politics is the reason for the failure of environmental laws in Nigeria, politics here being seen as a means of accumulating wealth.[69]

2.1.7 Environmental Impact Assessment 1982

The Environmental Impact Assessment law[70] was enacted by the then military government of the Federal Republic of Nigeria, sequel to the formulation of the National Policy on the Environment. The law had for its objectives the conduct of and assessment of the impact or likely impact an activity or undertaking may, or is likely to have on the environment, prior to embarking on such activity, the result of which is made public and memoranda invited from the public. In other words, it is aimed at helping the authorities reach an informed decision regarding public activity or projects and their impacts on the environment. According to the law, where it is the opinion of the agency that a project may have a significant immitigable adverse impact on the environment, the agency shall not permit such 'project to be carried out in whole or in part'.[71] It is worthy of note that paragraph 12 of the

[60]S. 22
[61]Cap 123 LFN
[62]S. 36
[63]S. 7
[64]S.30
[65]Nerry Echefu & E. Akpofure, Environmental Impact Assessment in Nigeria: RegulatoryBackground and Procedural Framework in Vermont Law Review, 'The Illusion of Sustainable Development: How Nigeria's Environmental Laws are Failing the Niger Delta', [February 2012] Vol. 36 397 www.lawreview.vermont.edu accessed 6 February, 2022
[66]ibid
[67]Amnesty Int'l, Nigeria: Petroleum, Pollution and Poverty in The Niger Delta in Ibid
[68]ibid
[69]Suleiman Romoke Monsurat and Raimi Morufu Olalekan and Sawyerr Henry Olawale, 'A Deep Dive into the Review of National Environmental Standards and Regulations Enforcement Agency (NESREA) Act ', [2019] Vol. 4 (1) *Int. Res J of Applied sc.* www.researchgate.net; www.scirange.com accessed 6 February, 2022
[70]Decree No. 86 of 1992
[71]S.22(1)(c)

schedule to the law which lists the activities for which there is a mandatory impact study/assessment lists the petroleum industry, including construction of pipelines, oil and gas fields development, refineries, etc.

As has been stated earlier, the negative impact of oil prospecting and production are enormous and cover all environmental media viz air, land, and water. These negative impacts occur throughout the whole process, beginning with exploration to the distribution of refined products. It is quite unfortunate that five decades following the discovery of oil in the Niger Delta in commercial quantities, the region was described as one of the most severely petroleum impacted ecosystems in the world.[72]

The developers in the industry lay claim to having adequate provisions for the implementation of EIAs. A recent study, however, testifies to the fact that whereas they have established internal environmental policies, implementation mechanisms, procedures for monitoring and regular management reviews, as well as 'health, safety and environmental units',[73] the institutional mechanism or the willingness to implement their environmental policies or even comply with government regulations is lacking, causing them to continue to operate in 'severe environmentally unfriendly ways'.[74] The study states that more often than not they rarely conduct EIA before the commencement of any project.[75] In most cases, EIAs are carried out to create an that the environmental impact of oil and gas and mining projects are taken into consideration, when in actual fact, the reverse is true.[76]

This is why public there is seldom public participation in the EIA process, as provided by the law. This state of affairs is occasioned by the desire of the government to speed up economic development. This desire has also led to the lack of political will to insist on effective EIAs that would help in averting the negative environmental, social, and cultural impacts. The result is a concentration of the benefits of oil development in the hands of the big corporations and a few government officials, and the assignment of development costs to the poor local communities who live in the oil-bearing region.[77]

A case in point is the Nigerian Liquefied Natural Gas (NLNG) project in Bonny, Rivers State, which commenced without the EIA mandatory for projects of its kind. A suit challenging the non-performance, brought by an environmental activist was struck out for lack of *locus standi*. Although the order was reversed on appeal and the suit sent back for trial, the matter was already overtaken as the project had, by then been completed, leading to the discontinuation of the matter. Protests by the affected communities followed and the federal government responded by initiating and facilitating the conclusion of a memorandum of understanding between the NLNG Company and the affected communities, in order to prevent delays in first shipment of natural gas.[78]

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[72]Report of Niger Delta Natural Resource Damage Assessment and Restoration Project of the Federal Ministry of Environment; WWF UK and CEESP-IUCN Commission on Environmental, Economic and Social Policy. In Allan Ingelson and Chilenye Nwapi, 'Environmental Impact Assessment Process for Oil and Gas and Mining Projects in Nigeria: A Criitical Analysis' [2014] Vol. 10 (1), *Law, Environment and Development Journal*www.lead.journal.org/content accessed 6 February, 2022

[73]Fidelis Allen, Implementation of Oil-Related Environmental Policy in Nigeria: Government Inertia and Conflict in the Niger Delta (A Thesis Submitted in Accordance with the Requirements for the Degree of Doctor of Philosophy in the Subject of Political Science, University of Kwazulu Natal, South Africa, March 2010) in ibid

[74] ibid

[75] ibid

[76]Report of Niger Delta Natural Resource Damage Assessment and Restoration Project of the Federal Ministry of Environment; WWF UK and CEESP-IUCN Commission on Environmental, Economic and Social Policy. In Allan Ingelson and Chilenye Nwapi, 'Environmental Impact Assessment Process for Oil and Gas and Mining Projects in Nigeria: A Criitical Analysis' [2014] Vol. 10 (1), *Law, Environment and Development Journal*www.lead.journal.org/content accessed 6 February, 2022

[77]ibid

[78]Engobo Emeseh, 'The Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria' (Paper presented at the Berlin Conference on the Human Dimensions of Global environmental Change, 'Greening of Policies – Interlinkages and Policy Integration', organised by Environmental Policy Research Centre (FFU), Freie Universität Berlin, Berlin, 3-4 December 2004) in ibid

2.1.8 Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN) 1991

Institutionally an arm of the Federal Ministry of Petroleum Resources, the Department of Petroleum Resources (DPR), is the key regulator of and by extension, the enforcer of environmental laws in the oil and gas industry in Nigeria. It issues licenses/permits for oil and gas operations, and establishes environmental guidelines and standards, as required by the Petroleum Act. The DPR is by law empowered to ensure that oil and gas operators in Nigeria do not destroy the environment in the course of their operations.[79] In 1992 the DPR issued the 'Environmental Guidelines and Standards for Petroleum Industry in Nigeria' revised in 2002, which forms the basis for most environmental regulations for the industry.

The guideline provides that before approval is given and permit issued for seismic activities which usually precedes oil exploration, the organization is required to conduct an EIA and the DPR is required to impartially review the EIA before permitting the commencement of a proposed project.[80] This oversight of the DPR is considered problematic because, as discussed above, the DPR may be seen to be favourably disposed towards the oil and gas sector and may not readily take an action that will not favour its development.

The document identifies three primary sources of pollution in the oil industry viz discharge of effluents, oil spills, and gas flaring, and makes express provisions for the prohibitions and limitations aimed at minimising and where possible, eliminating the negative environmental consequences from these categories of sources. Appendix 1 of EGASPIN's discharge limitation standards and prescribed testing methods mirror international best practices and standards. This shows that the regulation, in principle, aims to adopt international best practices, with the application of methods and procedures that are consistent with international standards. Interpretation and implementation, however, remain the key issues.[81]

The law makes it discretionary for the Director of DPR to permit discharges, even in excess of limitation standards. The phrase 'unless otherwise permitted by the Director of Petroleum Resources' appears in a number of key sections of EGASPIN. While this by itself does not expressly pose threat to the environment, the 'why' and 'how' such approvals are granted by the DPR begs for question. The following provisions are insightful:

At the discretion of the Director of Petroleum Resources, the operator shall analyse samples of the wastes for toxic and hazardous substances, as specified. The Director of Petroleum Resources or his accredited representative shall be allowed, at all reasonable times, to enter, inspect, take samples and/or analyse such samples using the operator's equipment, to ascertain whether these conditions have been complied with.[82]

At the discretion of the Director of Petroleum Resources, an operator, whose drilling activity/operation has been observed to cause significant and adverse environmental effects and impacts (including oil and hazardous materials spillages), shall be required to prepare an Environmental Evaluation (Post-impact) Report[83]At the direction of the Director of Petroleum Resources, the operator shall be mandated to analyse samples of the mud system and/or base oil to determine whether and to what extent they contain toxic and hazardous substances, **such as aromatics and heavy metals** (based on the type of mud and additive) as the Director of Petroleum Resources may specify.[84]

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[79]Allan Ingelson and Chilenye Nwapi, 'Environmental Impact Assessment Process for Oil and Gas and Mining Projects in Nigeria: A Criitical Analysis' [2014] Vol. 10 No. 1, *Law, Environment and Development Journal*www.lead.journal.org/content accessed 6 February, 2022

[80]S.3.2

[81]Damilola S. Olawuyi and Zibima Tubodenyefa, 'Review of Environmental Guidelines and Standards for the Petroleum Industry' [2018] Institute for Oil Gas Energy Environment and Sustainable Development (OGEES) www.iucn.orgcontent> accessed 11 February, 2022

[82]S.3.5.7

[83]3.4.8

[84]3.3

The provisions above confer a lot of discretionary powers on the director of DPR. Being a licenser and a regulator, it is submitted, as observed from the ineffectiveness of the regulatory system, that the lack of stringency and loose ends occasioned by these provisions and conflict of interest occasioned by the dual role of the agency underscore the ineffectiveness of the law. This, in other words, testifies to the fact that environmental protection only plays second fiddle to an economic interest in the politics and governance of the country. According to Olawuyi and Tubodenyefa, the objectives of achieving effectiveness in the enforcement of environmental standards, while at the same time allowing for economic development, is one of the fundamental challenges of DPR and limits their ability of the to 'effectively enforce the provisions of EGASPIN'.[85] This was the position of UNEP when their report concluded that clearly a conflict of interest exists in the ministry which, on the one hand, has responsibility to maximize revenue by increasing production and, at the same time,' ensure environmental compliance.'[86]

2.1.9 National Oil Spill Detection and Response Agency (Establishment Act) 2006 (as Amended) (NOSDRA)

The agency was established as in response to the myriad of incidents of oil spill emanating from the activities of the oil and gas companies and the outcry of the people whose lives and livelihood are adversely affected, especially in the Niger Delta. It was established for the purpose of *inter alia*, monitoring and regulating Tiers one and two oil spills, as well as coordinating, implementing and reviewing the National Oil Spill Contingency Plan for Nigeria. This it would achieve through the establishment of a viable operational organization that would coordinate a timely, safe, effective and appropriate response to all oil spills, as well as hazardous and noxious substances in the petroleum sector; identifying priority high-risk areas for protection and clean up; and establishing the mechanism to monitor and assist, or where necessary, direct the response, including the capability to mobilize the necessary resources to save lives, 'protect threatened environment, and clean up to the best practical extent of the impacted sites'.[87]

Section 6 of the act outlines the functions of the agency and includes responsibility for monitoring to ensure compliance with extant environmental legislations in the sector, including those relating to detection, and general management of oil spills, oily wastes and gas flare;[88] enforcing compliance with the provisions of international agreements, protocols, conventions and treaties that relate to oil and gas and oil spill response management and such other related agreements as may from time to time come into force;[89] receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria.[90]

The law also provides for penalties for noncompliance with its provisions. These penalties include the sum of N2,000,000 for failure by a spiller to report an oil spill to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of a spill and a further penalty in the sum of N2,000,000 for every day the occurrence remains unreported; a fine of not more than N5,000,000 or imprisonment for a term not exceeding 2 years, or both such fine and jail term, for failure to clean up an impacted site, as much as is practicable, including an action plan for remediation of the site within two weeks of the occurrence of the spill in consonance with the 'polluter pays principle'.[91]

According to a report from the agency, while working to ensure industrial compliance with extant laws, the agency relies on voluntary engagement and the support of the oil company under investigation for data, logistics, quantity estimation, collection of samples, and the proper cleanup operations.[92]In a Business Day news, the Minister of State for Environment, Sharon Ikpeazu was

[85] D. S. Olawuyi and Z. Tubodenyefa, 'Review of Environmental Guidelines and Standards for The Petroleum Industry' [2018] Institute for Oil Gas Energy Environment and Sustainable Development (OGEES) www.iucn.orgcontent>
[86]UNEP (2011) 'Environmental Assessment of Ogoniland', p. 139
[87]NOSDRA Part 111 S. 5
[88]S.6(1)(a)
[89]S.6(1) (b)
[90] S.6(1)©
[91]S.6 (3)(4)
[92]NOSDRA, 'About Oil Spills in Nigeria' www.nosdra.oilspillmonitor.ng accessed 9 February, 2022

reported as saying that the reason for the continuous incessant cases of the oil spill is that the laws dealing with the subject matter are weak. According to her, there is a need to review the act to make the penalties for violations stiffer.[93]

In the case of NOSDRA v Exxon Mobil,[94] the agency instituted an action against the company, claiming the sum of N10,000,000 as the penalty for the oil spill in the Nembe community. The company in its defense stated that its response mechanism was activated once the spill was noticed and that the situation was remedied, even to the satisfaction of the agency. The trial court in its ruling declared that the agency had no powers to impose fines on the company as the law does not confer on them such powers. The decision was upheld by the court of appeal. Pursuant to the act and in response to the ruling, the Oil Spill Recovery, Clean-up, Remediation, and Damage Assessment Regulations, 2011 was enacted. Section 5 of the regulation stipulates that in the event of a spill, a Joint Investigation Visit (JIV) will be made to the site of the said spill. The team, according to the provision, will consist of representatives from the community, the corporation and the officials of the agency. The regulation also imposed on the spilling corporation, the responsibility of providing the means of transportation to the site of the spill for the investigation. It is submitted that having reliance on the culprit to investigate the act runs contrary to the intendment of the NOADRA Act, which is intended to achieve a speedy and effective response and clean-up of affected spill sites.[95] The report of UNEP on Ogoniland more or less exposed the ineffectiveness of NOSDRA to tackle issues of oil spill due to reliance on the spiller for transporting, equipment and reporting, which invariably leads to delay in response and ineffective investigation into the cause of it.[96]

2.1.10 The Petroleum Industry Bills and the Act 2021

The history of the Petroleum Industry Bill (PIB) is traceable to the Oil and Gas Sector Reform Implementation Committee (OGIC), established by President Olusegun Obasanjo on the 24th of April, 2000, aimed at making the oil and gas regulatory and policy-making institutions distinct from the commercial institutions.[97] The committee was mandated to establish an all-inclusive regulatory framework for the industry, while reviewing and streamlining all other existing petroleum laws.[98]The administration of President Yar'Adua revived the process in 2007, following declining investments and returns in the industry, owing largely to insecurity and uncertain investment climate.[99] On the 7th of September, 2007 President Umaru Musa Yar'Adua appointed a new Chairman for the OGIC, with the mandate to restructure the Petroleum industry to improve its GDP level, making it comparable to the top 20 largest world economies by 2020.[100] The National Assembly received the first bill in 2008.[101]

The bill underwent numerous debates and revisions, as well as other complex set of obstacles. In July 2012, a new version of the PIB was presented by the President Goodluck Jonathan's administration to the National Assembly, for consideration and passing. Partial success was achieved in 2015, when the House of Representatives passed the bill in the 7th Assembly, but progress halted when the bill did not go through the Senate before the dissolution of the 7th Assembly, following the

[93]Anthony Ailemen, 'Oil Spill: FG Mulls Review of NOSDRA Act, Stiffer Penalties for Perpetrators' [November 25, 2021] Business Day www.businessday.ng accessed 10 February, 2022

[94]NOSDRA V Mobil Prod. (Nig.) Unltd (2018) 13NWLR (Pt. 1636) 334

[95] See Noah Afedolorlzou Kumor, 'The Paradox of NOSDRA to Prevent and Quickly Respond to Oil Spills in Nigeria' [2021] (5/1) *American Journal of Humanities and Social Sciences Researc*h (AJHSSR) pp. 158-167 www.ajhssr.com accessed 10 February, 2022

[96]ibid

[97]Azubuike H. Amadi, Victor D. Ola, and John O. Ayoola, 'Review of Nigeria's Petroleum Industry Bill', [September, 2020] (5/9) *European Journal of Engineering, Research and Science* EJERS www.researchgate.net accessed 14 February, 2022

[98]Taiwo Amodu and Leon Usman, 'The Politics, History of the Petroleum Industry Bill: How the North Secured Funding for Frontier Basins' [July 5, 2021]Nigerian Tribune www.tribuneonlineng.com accessed 14 February, 2022

[99]Kenneth C. Ene, 'the Fall and Rise of the Nigerian Petroleum Industry Governance Bill: Examining the History of the Landmark Bill in Nigeria' [February, 2018] *Oxford Policy Management*www.opmi.co.uk accessed 14 February, 2022

[100] Azubuike H. Amadi, Victor D. Ola, and John O. Ayoola, 'Review of Nigeria's Petroleum Industry Bill', [September, 2020] (5/9) *European Journal of Engineering, Research and Science* EJERS www.researchgate.net accessed 14 February, 2022

[101]Taiwo Amodu and Leon Usman, 'The Politics, History of the Petroleum Industry Bill: How the North Secured Funding for Frontier Basins' [July 5, 2021]Nigerian Tribune www.tribuneonlineng.com accessed 14 February, 2022

change of governmental baton in May 2015. Politics, the transition of power, the selfish ambition of the different sector stakeholders, and the bulky nature of the PIB also delayed its passage.

It was argued that the reason for the delay in passing the bill includes some dynamicsmanifest in the form of multiple versions of the PIB, disagreements over fiscal terms between the government and the international oil companies, etc., controversies over Integrated Joint Venture, Frontier Exploration and discontent by the host communities for the 2008 PIB. For the 2012 PIB, it was in the form of controversies over 10% Petroleum Host community fund, disagreements over Fiscal terms between the government and the international oil companies and the clamour to reduce the excessive powers of the Minister of Petroleum. Similar issues were seen playing out when efforts were renewed at the 8th Assembly.[102]

Following the coming into power in 2015, the Buhari administration suggested the passing of the PIB in bits, forming four separate bills (Fiscal Regime Bill, Petroleum Industry Governance Bill, Petroleum Host Communities Bill, Upstream and Midstream Administration Bill,). The PIGB was prioritised as it addresses reforms to the governance of the sector, through the establishment of an independent regulatory commission—the Nigerian Petroleum Regulatory Commission, which would merge the existing Department of Petroleum Resources (DPR) and the Petroleum Product Pricing Regulatory Agency (PPPRA); supervise the unbundling of the Nigerian National Petroleum Corporation (NNPC) into two limited liability companies, with one holding joint venture assets in the upstream sector and the other holding the production sharing contract assets; and make governance and accountability arrangements with respect to the new institutions created.

The PIGM was finally passed by the Senate and the House of Representatives in 2017 and 2018 respectively.On the 16th day of August 2021, the president of the Federal Republic of Nigeria, signed into law the Petroleum Industry Act, 2021,[103] which replaces the hitherto foremost act regulating the Oil and gas industry in Nigeria, the Petroleum Act. It also repeals the Associated gas Reinjection Act 1979, and the NNPC Act, among others.[104]

The act confers enormous powers on the Minister of Petroleum, as provided in section 3 of the act. He the power to inter alia, formulate, monitor and administer the policies of the government in the industry; be the general supervisor over the affairs and operations of the industry; promote an investment-friendly environment for the industry; grant licenses and leases for petroleum operations upon the recommendation of the commission and also suspend same; give policy directives to the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority established under the Act.[105]

The office of the Minister of Petroleum is one that attracts a lot of politics and politicising, as the occupier is often considered the pathway to wealth. It is submitted that these far-reaching powers, vested on a person occupying an office whose appointment rests squarely on the subjective discretionary whims of the president is unhealthy, especially when it is considered that the revenue accruing from this sector is the mainstay of the country's economy.

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), as well as the Nigerian Midstream and Downstream Regulatory Authority were established by the Act in section 4 and section 29 of the Act respectively.The objectives of the NUPRC are *inter alia*, to 'ensure that operations at the upstream are carried out in a way that minimises waste and achieves optimal government revenues; promote safe, healthy and efficient conduct of upstream petroleum operations

[102]Hyginus Chika Onuegbu, 'The Petroleum Industry Bill in Nigeria: Dynamics, Controversies and the Way Forward' being a paper presented at the Workshop of the Trade Union Congress (TUC) Rivers State and the Federal Ministry of Labour on the 10th of March, 2017 in Port Harcourt.

[103]An Act to Provide Legal Governance, Regulatory and Fiscal Framework for the Nigerian Petroleum Industry, the Development of Host Communities and Other Related Matters

[104]S.310

[105]The PIA 2021 S.3(a-k)

in a manner that is acceptable and promotes environmental sustainability; etc.[106]It is submitted that the above objectives and others not reproduced here considered, especially those relating to optimising revenue and promoting 'safe efficient and effective operations in an environmentally sustainable manner' are at variance and would lead to a conflict of interest, a challenge faced by its predecessor, the DPR that lead to their inefficiency.

It has also been argued, that the sole authority to grant, issue, modify or terminate all licenses, permits and authorisations for midstream and downstream sectors vested in the NMDPRA has the potential of being politicised and/or abused.[107] The researcher is in agreement with the sentiment expressed above because in the Nigerian setting, anyone who has the power to grant, modify and terminate, is considered a demigod and can hold out himself as such. It goes without saying, therefore, that where such powers are domiciled in one agency, the possibility for checks and balances is almost non-existent, which invariably leads to unhealthy politicking.

3. Environmental Protection in the PIA

Section 102 0f the act provides for environmental management that a licensee or lessee who engages in the operations of the petroleum sector, whether upstream or midstream, shall submit an environmental management plan for approval within one year of the effective date or six months after the grant of the applicable license or lease, especially in respect of projects for which EIA is required.[108]It is submitted that environmental issues are not more seriously considered in this act than in the ones before it. This can be deduced from the fact that having made provision for contribution to an environmental remediation fund in accordance with the size of operations and the level of risks that may exist,[109] the act went on to provide that the licensee or lessee has the responsibility of assessing its liability annually and increasing its contribution accordingly. It is the view of the researcher that though the act provides that where the commission or authority is not satisfied with the assessment, it would appoint an independent assessor,[110] the arbitrariness and subjectivity made possible by the former provision leaves a lot to be desired as to the stringency of the environmental regime of the PIA.

Section 104 of the act penalizes the flaring or venting of natural gas except 'in an emergency; pursuant to an exemption granted by the commission; or as an acceptable safety practice under established regulations. The Section states that where there is continuous flaring of gas, the prescribed fees will be paid by the licensee or lessee.[111]

It is at once revealing and baffling when the provision of subsection 2 of section 104 is considered. According to the provision, '(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'.[112]This, in other words, implies that the fine is considered a positive and regular income to the government, this notwithstanding the provision of the next subsection, which states that the fund will be for the purpose of environmental remediation of host communities.[113] It is the view of the researcher that if that were the case, then the right place to pay the fine would be the host communities environment remediation fund, which directly caters to the remediation needs of host communities.

Section 106 provides that prior to production, a licensee or lessee is required to install a metering device that measures the volume of gas flared or vented and further provides that failure would attract

[106]The PIA, 2021 S,6(a-k); see also Nigerian Upstream Petroleum Regulatory Commission, 'Functions of NUPRC', <www.nuprc.gov.ng> accessed 29 September, 2022.
[107]Jude Nnaji, 'Petroleum Industry Act (PIA) 2021 and the Nigerian Oil & Gas Industry: A SWOT Analysis'. [October, 2021] *ResearchGate*www.researchgate.net accessed 1 March 2022
[108]S. 102 Petroleum Industry Act No. 6 of 2021
[109]S. 103 (1)(2)
[110]S. 103(6)
[111]The PIA 2021 S.104 (1)(a-c)
[112]S.104(2)
[113]S104(4)

fines as would be stipulated in the regulation's sequel to the act.[114] The commission, however, has the authority to grant a permit for an exemption to flare gas where it is perceived as necessary for a specified period of time.[115]Finally, on gas flaring, the act provides that a licensee or lessee shall within 12 months of the coming into effect of the act submit a gas elimination or monetisation plan to the commission, which shall conform to the form prescribed in the regulation made under the act.[116]

The researcher submits that the provisions on gas flaring above notwithstanding, if the present level of effectiveness of extant regulations is anything to go by, the none outright ban and criminalization of gas flaring by the act, only buttresses the fact that business will go on as usual. There will be no abatement in the flaring of gas, as the political will for the adoption and application of tougher and more stringent measures, or even strict enforcement of the provisions of the act is lacking. This will only leave the environment of the Niger Delta region more degraded and the people more impoverished.

4. Conclusion

It is trite that despite the environmental policy framework and extant laws for the regulation of the oil industry in the country, the Nigerian environment, especially the Niger Delta region where most of the operations are domiciled, has remained in a state of degradation because successive Nigerian governments have paid lip service to the implementation of the said laws. Appointment as the head of the regulatory agencies rather than a call for service, is seen as a chance to 'make it big', as it considered an opportunity to do business with the 'big boys' in the oil business. The foot soldiers in these agencies are not any better. Incidents that should agitate the mind as to the enormity of the danger to the environment as well as how best to tackle the issue to avoid lasting damage, only excites the officers as to how much money they can make from the incident. They end up colluding with the authors of the pollution to write false reports, paint false pictures and point accusing fingers at the wrong persons.

Mindful of the important role of oil resources in the national economy, as well as its equity interest in its joint venture partnerships with the dominant IOCs, the Nigerian state usually intervenes in the crisis involving them, using legislations, public policy, and military reprisal to resolve the conflicts between the oil industry and local Niger Delta host communities.[117] This lends credence to the argument that politics is the reason for failure of environmental laws in Nigeria as politics here is seen as a means of accumulating wealth.[118]That the Nigerian government and people need the revenues from the oil industry is not in doubt.It should however be noted that if the present rate of damage to the environment has continued in a sporadical way, giving rise to problems that all the revenue that accrue from the sector cannot reverse.Not only has this resulted in the neglect of other environmental resources, but also the gradual but certain systematic destruction of the values and livelihood of the people, as well as abuse in the hands of oil companies whose activities have imposed huge burdens on both the environment and host communities. It can be argued that host communities have responded, *inter alia*, through the use of violence, a sequel to their inability to attract the requisite attention to redress the situation due to their political marginalization and lack of adequate means of extracting enduring solutions.[119]

5. Recommendations

The researcher therefore makes the following recommendations: The government should provide the tools for agencies like NOSDRA to work, rather than have them depend on the spiller for the finance and logistics to carry out their functions, as this has compromised the integrity of the system.The

[114]S.106(1&2)
[115]S. 107
[116]S.(108)
[117]ibid
[118]Suleiman Romoke Monsurat andRaimi Morufu Olalekan and Sawyerr Henry Olawale, 'A Deep Dive into the Review of National Environmental Standards and Regulations Enforcement Agency (NESREA) Act', [2019] Vol. 4 (1) *Int. Res J of Applied sc*. www.researchgate.net; www.scirange.com accessed 6 February, 2022
[119]Fidelis Allen, *Implementation of Oil Related Policies in Nigeria: Government's Inertia and Conflicts in the Niger Delta* (Cambridge Scholars Publishing, 2012) 7- 8

penalties for violation of the different laws should be stiffer to discourage violation.The functions of the office of the Minister of Petroleum especially in the PIA should be unbundled to reduce the powers associated with that office and by extension the politics. The office of the Minister of Petroleum should is a very sensitive one and should be politicized. It is the opinion of the researcher, that if the office is held by the most senior officer in the ministry, the politics associated with the office would naturally reduce and the focus would be on the responsibility of the office.

The PIA should be reviewed to out rightly ban gas flaring and criminalise the offense, with stiffer prescribed for offenders.The government should insist on best practices in the operations of the IOCs, especially as is the case in other climes, and insist on strict liability where the need arises.Nigeria should be alive to her responsibilities under the UNFCCC in order to reduce the emission of dangerous gases into the environment and reduce the menace of climate change.