NINETEEN

INNOVATIONS, PROSPECTS AND SHORTFALLS OF PETROLEUM INDUSTRY ACT (PIA) 2021

Nweke Prince Nweke*

Abstract

This paper examined the 'Innovations, Prospects and Shortfalls of Petroleum Industry Act (PIA) 2021'. Over the years, the need to enact legislation to provide for the required legal, institutional and fiscal framework for the regulation of the oil and gas industry in Nigeria became a necessity as the prevailing pieces of legislation before the enactment of PIA were adjudged to be anachronistic, archaic and falls short of International standard. The theme of this paper is to highlight, analyse and adumbrate some of the innovations entrenched by the PIA as well as its shortfalls. Among others, it is the position of this paper that the PIA made some impeccable institutional, fiscal and commercial innovations. It is also the position of this paper that the PIA encourages litigation and little or no provision was made for the prevention, control and management of oil spillages in Nigeria vis-à-vis compensation of its victims. Accordingly, it is suggested that a Regulation should be made to address the shortfalls highlighted in this paper to encourage alternative dispute resolution in place of litigation and to also ensure fair and prompt compensation of victims of oil spillages in Nigeria.

Keywords*:* Innovations, Shortfalls and Prospects of the Petroleum Industry Act.

*Dipl. (Nig), B.Sc (Nig), LLB. (Jos), BL. (Abuja), LLM. (RSU), MNIM, DRS, PhD (in view).

1. Introduction

This article centres on the 'Innovations, Prospects and Shortfalls of the Petroleum Industry Act 2021'. In dealing with the above issue, consideration of International Treaties vis-à-vis comparative analysis of the Petroleum Industry Act and its counterparts elsewhere in the world is deliberately left out due to the scope of this paper. It suffices to say that Nigeria is among the top oil-producing nations of the world and accordingly ranks as one of the highest African producers of oil and the 6th largest oil-producing country in the world.[2] Historically, it is also factual that oil was first discovered in Nigeria in the year 1956 in a place called Oloibiri in the present-day Bayelsa State and this discovery was made possible by the combined operation of the Royal Dutch Shell and British Petroleum. After the discovery, Royal Dutch Shell and British Petroleum started production in 1958 and were later joined by some other foreign companies in the 1960s after the independence of Nigeria.[3]

However, from the time of the discovery of oil in Nigeria till date, the Multinational Oil Companies (MOCs) and their local partners/allies have continued in incessant exploration and mining of oil and gas in Nigeria without a well-guided pragmatic blueprint or legal framework to protect the environment, host communities and her citizens or compensate victims of oil spillages and other vices associated with oil and gas exploration in Nigeria. This lacuna which is advantageous to the multinationals and disadvantageous to the host Communities and their inhabitants is caused due to lack of clear-cut, purpose-oriented and/or articulated legal and institutional framework to effectively regulate and govern the oil and gas industry in Nigeria. To circumvent the technical damage caused by the loopholes in the legal and institutional framework regulating the oil and gas industry in Nigeria, the Petroleum Industry Act (PIA) 2021,[4] was enacted principally to among others provide for the legal, institutional, regulatory and fiscal framework for the Nigerian Petroleum Industry as well as the development of host communities.[5]

Accordingly, the PIA being the latest principal legislation regulating the oil and gas industry in Nigeria is not all-encompassing in its provisions. However, there are innovations made by the PIA and these innovations stand out when compared with the provisions of the erstwhile Petroleum Act.[6] Therefore, the consideration of the innovations, prospects and shortfalls of the PIA is the fulcrum of this paper and in content-analysing same, the challenges and prospects these innovations/shortfalls the PIA poses to practitioners, oil and gas pundits, scholars and the entire society are succinctly distilled.

Before proceeding further, it is pertinent to say that before the enactment of PIA, the Petroleum Act was the principal legislation regulating the oil and gas industry in Nigeria, however, due to some inherent lacuna in the Petroleum Act and its Regulation,[7] particularly as it relates to the concessionary arrangement of oil prospecting and exploration licence, mining lease, development of host communities, porous, uncoordinated, ineffective and unproductive legal, institutional and fiscal framework, etc. the call for the enactment of an all-encompassing legal, institutional and fiscal framework for the regulation of the oil and gas industry began to gain momentum in the late 1990s thereby leading to the introduction of the Petroleum Industry Bill in the year 2008 which eventually became an Act of Parliament in the year 2021.

Haven enacted the PIA, one may ask, whether there are points of departure between the PIA, the Petroleum Act and other associated legislation regulating the oil and gas industry prior to the

---

2 Nigerian National Petroleum Corporation 'Oil Production'. Available at https://nnpcgroup.com/NNPC-Business/Upstream/OilProduction.asspx#:~:text=With%20a%%20maximum%20crude%20oil,producing&20country%20in%20the%20world. Accessed 15/10/2021

3 O. Mustapha and others 'Adequate Compensation as a Tool for Conflict Resolution in Oil Pollution Wetland of Niger Delta Region of Nigeria' (2016) 3rd International Conference on African Development Issues (CU-_/CADI 2016) 455. Available at http://eprints:Convenantuniversity.Edu.ng/6683/1/icadi16pp455-461. Accessed 18/1/2017

4 The Petroleum Industry Act or its bill was first initiated in 2012 by the 7th Senate, passed into law by the 9th Senate and accordingly assented to by President Mohammadu Buhari on the 16th day of September 2021.

5 See the Long title of the Petroleum Industry Act (as Amended), 2021.

6 Cap P.10 Laws of the Federation of Nigeria, 2004.

7 Petroleum (Drilling and Production) Regulation 1969 made pursuant to s.9 (1) of the Petroleum Act. Though the Petroleum Act is said to be repealed, its Regulation and certain acts carried out under it are saved under s. 311 of the PIA.

enactment of the PIA in 2021? Answers to the above question bring us to the Innovations, Prospects and Shortfalls of the PIA.

2. Prospects and Innovations of the PIA

No doubt, the coming on board or enactment of the PIA is a new dawn for the legal, institutional and fiscal framework in the Nigerian oil and gas industry. The PIA ushers in some commendable innovations which include the institutionalization of effective corporate governance, the establishment of a strong regulatory framework, the commercialization of the NNPC and the development of host communities, to mention but a few. Some of these innovations are summary discussed below.

1. ***Institutionalization of Effective Corporate Governance***:

The PIA no doubt is positioned to entrench effective corporate governance and proper accountability in the Nigerian oil and gas industry. It is also geared towards the creation of a commercially oriented Incorporated National Petroleum Company, hence, the provision for the Nigerian National Petroleum Corporation Limited (NNPC Ltd) is principally aimed at fostering a conducive environment for petroleum operations in Nigeria.[8] This is so because, before 2021, the NNPC as established under the NNPC Act 1997, now repealed,[9] operated as a Corporation and not as an incorporated personality as it is hitherto. Accordingly, NNPC and some other institutions are now positioned so that their accountability, probity and commercial viability are somewhat guaranteed.

2. ***Streamlining and Strengthening the Institutional Framework for the Regulation of the Oil and Gas Industry in Nigeria***:

Prior to the enactment of the PIA, there existed multiple institutional frameworks regulating different aspects of the oil and gas industry in Nigeria with interwoven, uncoordinated, undefined and unproductive responsibilities. Also, these institutions were minded by different bodies, ministries and parastatals such as the Nigerian National Petroleum Corporation, Federal Ministry of Petroleum Resources, Federal Ministry of Environment, etc. Accordingly, with the coming on board of the PIA, the erstwhile duplicated institutions like the Department of Petroleum Resources (DPR),[10] The Nigerian National Petroleum Corporation (NNPC),[11] Petroleum Product Price Regulation Agency (PPPRA) and Petroleum Equalization Fund among others were abrogated,[12] in other to provide a strong institutional framework for the oil and gas industry, the PIA established only two (2) well-streamlined and role-defined institutions *viz*:

a. The Nigerian Upstream Regulatory Commission is referred to as 'The Commission'.[13] Statutorily, the Commission is charged with the responsibility of providing technical and commercial regulation for Upstream Petroleum Operations including the implementation of environmental laws and policies for the Upstream Operations in the Nigerian Oil and Gas Industry.[14]
b. The Nigerian Midstream and Downstream Petroleum Regulatory Authority is referred to as 'The Authority'.[15] The Authority is charged with the responsibility of providing technical and commercial regulation for the midstream and downstream petroleum operations in Nigeria as well as licensing the players in those subsectors.[16]

It is noteworthy that under the erstwhile Petroleum Act,[17] the Minister of Petroleum Resources was empowered to grant to willing individuals or legal persons Oil Exploration Licence, Oil Prospecting

---

[8] See s.53-65 of the PIA.
[9] See PIA 2021 (as Amended), 310 (1) (e).
[10] Then minded by the Federal Ministry of Petroleum Resources as empowered under s. 10 of the repealed NNPC Act.
[11] As a corporation.
[12] PIA 2021 (as Amended), s. 310.
[13] PIA 2021 (as Amended), s. 4.
[14] *Ibid* Ss. 5, 6, 7 and 8. Also, according to NOSDRA Act 2011, s.1, the Upstream Subsector consists of crude oil, condensates and gas exploration and production activities including crude oil terminals. The Midstream Subsector consists of crude oil pipeline transportation, storage, refining and petrochemicals production, liquefied natural gas and gas conversion including all processing facilities. Downstream subsectors entail final consumers involved (marketing operation, jetties, above storage tanks, retail outlets, product pipelines and underground tanks operations).
[15] *Ibid* s. 29.
[16] *Ibid* Ss. 30, 31, 32, 33 and 35
[17] Cap P. 10 Laws of the Federation of Nigeria 2004, s. 2

Licence or Oil Mining Lease.[18] However, under the PIA, this enormous power vested in the Minister has been institutionalized as the same is now exercisable by the 'Commission' and the 'Authority' in line with the provisions of the PIA.

3. ***Incorporation and Commercial Viability of NNPC Ltd***:

Unlike under the Petroleum Act and the NNPC Act wherein NNPC was strictly operated as a corporation, the PIA now provides for the Incorporation of a commercial and profit-oriented or business-focused NNPC Ltd. The incorporation of NNPC Ltd is to comply with the provision of the Companies and Allied Matters Act (CAMA) relating to the incorporation of companies. Importantly, the PIA set a six (6) months period reckoning from the date of the commencement of the PIA within which the NNPC Ltd must be floated and that has been complied with. Interestingly, the PIA vested the Government owned shares of NNPC Ltd in the Ministry of Finance Incorporated and Ministry of Petroleum Incorporated and the same is to be held on behalf of the Federation. Also, NNPC Ltd is statutorily empowered to take over the assets, interests and liabilities of the NNPC.[19] The incorporation of NNPC Ltd and its commercial orientation/viability are indeed worthy of commendation. However, whether or not the alter ego would effectively manage the newly incorporated NNPC Ltd to achieve its economic yearning and aspiration is a topic for another day.

4. ***Provision for Development of Host Communities***:

One of the most encouraging innovations of PIA is its objective to propel or foster sustainable development as well as prosperity within the host communities. The PIA made provisions to ensure direct social and economic benefit *cum* harmonious co-existence between holders of Petroleum Exploration and Prospecting or Mining Licences with their host communities.[20] Accordingly, companies holding or to whom Petroleum Prospecting Licences, Mining Leases or any company operating on behalf of a Joint Venture Partners[21]are required to contribute three per cent (3%) of its actual operating expenditure in the immediate proceeding calendar year to the 'Host Community's Development Trust Fund.' Interestingly, the Fund is tax exempted and any contribution by a Settlor is tax deductible. Importantly, Settlors are mandated to incorporate Host Communities Development Trust,[22] though communities will forfeit the cost of repairs in the event of sabotage, vandalism and other restiveness or civil unrest precipitating or causing damage to petroleum facilities, equipment or disturbance of petroleum activities.[23]

5. ***Effective and Realizable Fiscal Framework***:

Unlike the era before the coming onboard of the PIA where issues on abuses in the petroleum industry fiscal framework abound or are not statutorily clarified in terms of percentages accruable to/to be collected by the Federal Inland Revenue and its likes thereby creating a *lacuna* for all manners of administrative fraud in the hydrocarbon tax collections as well as institutional conflicts, in terms of who collects what and more so, uncertainty over what is collected and/or to be remitted as taxes from the oil and gas industry particularly from hydrocarbon tax, as at today, under the PIA, the percentage of deductibles and hydrocarbon tax to be collected by the Federal Inland Revenue is unambiguously specified.

In that regard, it is now well defined that the Federal Inland Revenue Service is empowered to collect hydrocarbon tax of 15% to 30% on profit accruing from crude oil production or exploration; Company Income Tax at the rate of 30% and Education Tax at the rate of 2% which will no longer be tax deductible. Similarly, the Commission is now the body charged with the responsibility of collecting rents, royalties and production shares while the Authority will collect gas flare penalties from the midstream operations.[24] Once more, this clear-cut fiscal arrangement is also worthy of commendation

[18] Under s. 70, 71 and 72 of the PIA, Oil Exploration Licence, Oil Prospecting Licence and Oil Mining Lease are now technically called Petroleum Exploration License, Petroleum Prospecting License and Petroleum Mining Lease.
[19] PIA 2021 (as Amended), s. 53.
[20] PIA 2021 (as Amended), s. 258.
[21] Any Company operating on behalf of a Joint Venture Partner is tactically referred to as "Settlor" in the PIA.
[22] See PIA 2021 (as Amended) Ss. 235, 236, 237 and 238.
[23] Ibid Ss. 240 and 244.
[24] PIA 2021 (as Amended), Ss. 259, 267 and 297.

as it has the propensity to circumvent any form of institutional conflicts of uncertainty over fiscal arrangements.

6. ***Conglomeration and Harmonization of the Legal Framework in the Nigerian Oil and Gas Industry***:

It is no gainsaying that beforethe advent of PIA, there were multiple legislation and regulations governing or regulating the Nigerian oil and gas industry. These pieces of legislation range from the now-repealed Associated Gas Reinjection Act,[25] Hydrocarbon Oil Refineries Act,[26] Motor Spirits (Returns) Act,[27] Nigerian National Petroleum Corporation (Projects) Act,[28] Nigerian National Petroleum Corporation Act,[29] Petroleum Product Price Regulation Agency (Establishment) Act,[30] the Petroleum Profit Tax Act,[31] Deep Offshore and Inland Basin Production Sharing Contract Act 2019 (as amended),[32] Petroleum Act,[33] Petroleum Profit Tax Act,[34] Oil Pipeline Act,[35] etc.

Hitherto, the PIA has harmonized areas covered by the above legislation which before the enactment of the PIA existed piecemeal. The conglomeration of the areas covered in the above legislation by the PIA makes it a giant stride worthy of an accolade. This stride is more or less a one-stop-shop for oil and gas pundits, scholars, practitioners and members of the public who in one piece of legislation can easily access what before this time, cannot be found in over eleven (11) different pieces of legislation.

We can go on and on highlighting and adumbrating many other prospects and innovations of the PIA, however, haven x-rayed the above, it is pertinent to consider the other limbs of this article, that is, the shortfall of the PIA and in the long run, its prospects and challenges.

3.0 Shortfalls of the PIA.

In considering the shortfalls of the PIA, we would, for want of space specifically narrow it down to a particular and devastating aspect of the Nigerian Oil and Gas Industry which has not been given comprehensive statutory attention for years yet the PIA failed to fill in the gap despite it recentness. This aspect relates to Incidents of Oil Spillages and Compensation of Victims of Oil Spillages in Nigeria.

1. ***Lack of Straight-Cut Provision for Prevention, Management and Compensation of Oil Spillages in Nigeria***:

As contemporary as the PIA and as wide as it tried to cover the field in terms of deregulation of the oil and gas industry or the extractive industry in Nigeria, the PIA made little or no provision for the prevention and management of oil spillages, compensation of victims of oil spillages, principles of assessment and quantum of compensation accruable to victims of oil spillage. For the sake of non-legal practitioners that may come in contact with this paper, 'oil' and 'petroleum' are used interchangeably in this article and it connotes hydrocarbons or substances associated with hydrocarbons as they exist in their natural state in strata. These substances include crude oil, natural gas, condenscent or a mixture of any of them excluding coal and bitumen.[36]Accordingly, oil spillage occurs whenever the above substances are allowed or caused to flow out, run out, fall out or escape uncontrollably from their place of existence, storage or accommodation to an unwanted area.[37]

In reality, spillages are associated with a wide range of negative effects. To that extent, the effects of oil spillages are unquantifiable, devastating and catastrophic and it ranges from loss of National

[25] I979 Cap A. 25 LFN 2004.
[26] No. 17 of 1965 Cap H. 5 LN 2004.
[27] Cap. M. 20 LFN 2004.
[28] No. 94 of 1993 Cap N.124 LFN 2004.
[29] 1977 Cap N.123 LFN 2004.
[30] No. 8 2003.
[31] Cap P. 13 LFN 2004.
[32] 2019.
[33] Cap P.10 LFN 2004.
[34] Cap P. 13 LFN 2004.
[35] Cap O. 7 LFN 2004.
[36] PIA 2021 (as Amended), s. 318.
[37] A.E. Ogbuigwe 'Compensation and Liability for Oil Pollution in Nigeria: Need for Positive Approach' (1985) (3) Journal of Private and Property Law (JPPLL) 21

Income to environmental degradation to wit: air pollution, water pollution, destruction of plants and animals, health disasters such as respiratory problems, skin rashes, tumours, gastrointestinal challenges, cancer, malnourishment to mention but a few.[38]The above haven been said, it is therefore surprising and indeed unexpected that the PIA failed woefully in the area of addressing issues of spillages, environmental restoration/remediation and in particular, compensation of victims of spillages in Nigeria.

Though it can be argued that there exists a National Oil Spill Detection and Response Agency (NOSDRA) Act[39] and ancillary to that is the existence of the National Oil Spill Detection and Response Agency established under the NOSDRA Act to tackle issues of oil spillages, however, such an argument is not tenable as the PIA which is the most contemporary legislation in the Oil and Gas Industry ought to have incorporated in it, the provisions of NOSDRA Act as was the case with the other multiple pieces of legislation numbering over eleven (11), repealed under the PIA.[40]
Be that as it may, NOSDRA Act and the two (2) Regulations[41] made under s.26 of the NOSDRA Act, does not in itself make any express provision for compensation of victims of oil spillages in Nigeria, rather, the Agency,[42] created under the NOSDRA Act is among others charged with the responsibility of surveillance, ensuring compliance with all existing legislation, detection of oil spillages in the petroleum sector, receiving report of oil spillages, and coordinating oil spill response activities across Nigeria, to mention but a few.[43]

In essence, the PIA which ought to have provided the legal framework for the management, prevention and other issues about cases of oil spillages and compensation of its victims therein, failed woefully in that regard as it limited itself to compensation for 'Acquisition of Land' and 'Venerated Objects'. Now, the question is, on which legal framework will NOSDRA as an Agency ride on since most of the pieces of legislation in the oil and gas industry have been repealed and the most contemporary legislation being the PIA did not make robust provisions to take care of cases of oil spillages in Nigeria? This is no doubt also a question for another day.
However, at this juncture, it suffices to say that out of the 319 Sections of the PIA, only two (2) sections expressly referred to compensation,[44]and these sections made provisions for compensation for the acquisition of land to be used for oil and gas purposes and payment of compensation for venerated objects. Accordingly, with respect to Compensation for the acquisition of land, the PIA provides viz:
s. 115 Compensation for Acquisition of Land
(1) *A licence or permit shall be issued subject to compliance by the applicant with the provisions of the Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 in respect of compensation for acquisition of land for midstream and downstream petroleum operations.*
(2) The Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy under the Land Use Act in respect of the land and in accordance with existing state law.
From the above, it is indubitable that the section under consideration is not one providing for compensation of victims of oil spillages in Nigeria, rather, the section is enshrined or made to ensure compensation of owners or occupiers of land by holders of Petroleum Prospecting Licensees, Petroleum Mining Lessees or persons holding any form of license or permit to operate in the downstream, midstream or upstream sub-sectors of the oil and gas industry in Nigeria. Admittedly, it may be argued that the provision of this section is more of an advantage than a loophole but it cannot

[38] S.I Omofunwan and L.O. Odia 'Oil Exploration and Conflict in the Niger Delta Region of Nigeria' (2009) *Kamlaray Journal of Human Encology* 25-30.
[39] NOSDRA Act 2006
[40] PIA 2021 (as amended) s. 310.
[41] Oil Spill and Oil Waste Management Regulation 2011 and Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations 2011.
[42] NOSDRA
[43] NOSDRA Act s. 6 (1) – (7).
[44] That is s. 101 and 115 of the PIA.

be said to be an innovation as the right for compensation over the compulsory acquisition of land is, before the enactment of the PIA, constitutionally guaranteed.[45]

However, there are some inherent prospects embodied in the section under consideration.[46] Conspicuously inherent in this section, is the mandatory requirement that before the issuance of a license or permit under the PIA and extension under any other law, the Applicant's compliance with the provisions of the Land Use Act[47] regulating compensation for the acquisition of land for the midstream and downstream operations must be satisfied.[48] By this, the PIA under section 115 safeguarded compensation of owners of the land upon acquisition of their land for the upstream and downstream operation to the extent that the Governor of the State whose land in his or her State is to be acquired to carry out a downstream or upstream petroleum operation is enjoined to issue out a 'Certificate of Occupancy' and same is a requirement or a condition precedent for the grant of a licence or permit under the PIA.[49] In essence, it simply means that issues of the compensation would have been sorted out before Certificate of Occupancy would be granted to a licensee or lessee by the Governor.From the above, it is noted with emphasis that this prospect of the PIA overwhelmingly protects owners and/or lawful occupants of land acquired to be used for midstream and downstream petroleum operations and some of the indices of this overwhelming protection as inherent in s. 115 of the PIA are:

a. The operating verb implored by the framers of the PIA in stipulating that owners of land/occupiers of land are to be compensated upon acquisition of their land is 'shall' and in law, it is trite that once the word 'shall' is used in a statute, it connotes compulsion or obligation to do that which is mandated and the person, bodies or authorities mandated to do or carry out such acts are left with no discretion other than to adhere to the directives or carry out the obligations as stipulated.[50]
b. The PIA made compensation of owners or occupiers of land to be acquired for downstream, midstream or upstream Petroleum operations a condition precedent for the issuance of petroleum prospecting or exploration licence, mining lease or any other form of permit under the PIA.
c. The PIA under s. 115 subjects Applicants for licence or permits to comply with the provisions of the Land Use Act dealing with compensation for the acquisition of land for upstream, midstream or downstream petroleum operations. By this, it implies that the provisions of the Land Use Act accordingly dealing with compensation payable upon compulsory acquisition of land, particularly, as it relates to compensation upon acquiring land for mining purposes, oil pipelines or any purpose connected therewith is to be complied with.[51]
d. The PIA entrusted owners or occupiers of land with the power to first be compensated before authorizing the documentation of an acquired area for oil and gas operations. For verisimilitude and as a way of assurance, confirmation or verification of compensation for the acquisition of land sought to be used for midstream or downstream petroleum operations, the Governor of the State whose land is to be acquired is enjoined to produce a Certificate of Occupancy in line with the provisions of the Land Use Act. This safeguard is very protective in the sense that the process of documentation and registration of land instruments requires an authority letter from the owner of the land. It, therefore, implies that an owner or occupier of land yet to be compensated or fully compensated will readily decline to author an authority or consent letter in favour of an Applicant for a licence, lease or permit which will inevitably militate against successful registration of land instrument or application for C of O for the acquired area for midstream, downstream or upstream operations.
e. Another safeguard worthy of mention is the fact that the PIA authorized the Commission or the Authority to revoke any licence or permit where the holder fails to comply with the applicable

[45] CFRN 1999 (as amended) s. 44.
[46] PIA 2021 (as amended) s. 115.
[47] 1978 Cap L5 LFN 2004.
[48] PIA 2021 (as Amended) s. 115 (1).
[49] Ibid s. 115 (2).
[50] *Adeosun v. Gov. Ekiti State* (2012) 1 S.C.N.J. 260 at 279 para 10.
[51] Land Use Act 1977 s. 28 and 29.

laws, Regulations or terms and conditions stipulated in the lease or permit.[52] It follows therefore that the issuing Authority of the licence or permit can as well revoke an issued licence or permit where the holder of such a licence or permit did not comply with the requirements for issuance of same.

However, as fantastic and applaudable as s. 115 of the PIA is, it is and rightly so, worthy to posit that the section confined itself to compensation for acquisition of land *simplicita* and accordingly has no nexus with compensation of victims of oil spillage. These findings now leave us with nothing more than to appraise the provisions of s. 101 which is another section under the PIA dealing with compensation.

First and foremost, on the face of it, s. 101 of the PIA provides for damage to protected and venerated objects but a cursory look, conjunctive and meticulous appraisal of the entire s. 101 goes to show that its provisions therein go beyond damage to protected and venerated objects. However, of interest to this paper is whether its provision also covers prompt, fair and adequate compensation of victims of oil spillages in Nigeria? Answers to be above question are unravelled as we succinctly appraise the relevant sub-sections and paragraphs of the said section 101 of the PIA.

Under the PIA, holders of Petroleum Exploration Licence, Petroleum Prospecting Licence, Petroleum Mining Lease or any other permits are not authorized to enter upon, occupy or exercise any of the rights or powers vested on them by virtue of their licenses or leases in relation to any area held to be sacred; or where necessary, any land or part of a land designated for public purposes; occupied by the Government of the Federation or that of the State; including land situate within a burial ground/cemetery; town; market, village or land situate within 50 yards of any public road, tramway, buildings, water reservoir, installations vis-à-vis land situate within 100 metres of any railway; under cultivation or part of any land privately owned or better still legally occupied parcels of land unless permission to do so have been obtained by the holders of the leases or licences from the Commission on the one hand and on the other hand, fair and adequate compensation have been paid to the person in lawful occupation of the land.[53]

Without more, it is worthy to state and rightly so that Ss. 101 (1) (a), (b) and (c) deals with compensation of occupiers, owners or those in possession of parcels of land held to be sacred or other areas of land such as cultivated land, privately and lawfully occupied land. The section also regulates what is to be done by the holder of a licence or lease where land designated for public purposes, occupied by the Government of the Federation or that of the State forms part of a licence/lease and it equally regulates what obtains in such circumstances where the land subject matter of a lease or licence lies within 50 yards of a township, village, burial ground, market, buildings, water reservoir, dams, public roads or 100 metres away from a railway.

Also, it is provided under s. 101 (1) of the PIA that no person or a hold of a licence, lease or permit shall in the course of Petroleum Operations, damage, destroy or injure any tree or object of veneration to the community or persons within the area subject matter of the lease or licence, tree or objects of commercial value, buildings or properties, disturb or damage the surface of the land or rights to any person who either owns or is in lawful occupation of the area covered by the lease or license.[54] It further provides that a licensee or lessee, who causes damage, destroys any economic tree, buildings or property or disturbs or causes damage to surface of the land covered in the area of the licence or lease shall pay fair and adequate compensation to the persons or community of persons who directly suffered the damage or injury.[55] The amount payable as compensation under this section,[56] is subject to be determined by the Commission and accordingly required to be prescribed in the Regulation to be made under the PIA by the Commission and whatever amount payable as may be prescribed by the Commission is required to be paid within 30 days by the Holder of a licence or lease else the

[52] PIA 2021 (as Amended) s. 120 (1) (d)
[53] PIA 2021 (as Amended) s. 101 (1) (a), (b) and (c).
[54] PIA 2021(as Amended) s. 101 (2) (a), (b) and (c).
[55] Ibid s. 101 (3).
[56] Ibid s. 101 (1) (c)

Commission will apply sanction *per* its Regulations.[57]Before setting out to consider whether the provisions of s. 101 of the PIA sufficiently covers issues of oil spillages or expressly provides for compensation of victims of Oil Spillages in Nigeria, it is worthy to further highlight some of the pitfalls inherent in the said s. 101 of the PIA.

2. ***The PIA Encourages Litigation***

The PIA, rather than being proactive, coined or enacted in a manner to circumvent litigation which is capable of depriving victims who have suffered some form of deprivation, damage, injury, etc. the benefit of prompt compensation expressly encouraged that disputes emanating from issues about whether an area is held sacred or not should be adjudicated by the customary court in the area.[58] By this, it has *ab initio* encouraged litigation which any of the aggrieved litigants can ventilate from the Customary Court (which is one of the lowest courts in the land) to the Supreme Court and this can last for years, in which case, most of the poor litigants may capitulate when faced with the technical know-how, financial muscle and intimidating capacity of the licence or leaseholders. Also, in the course of litigation, some of the litigants would have died out of frustration before the matter travels to the Supreme Court. Painfully, many of the litigants will even wave their rights to litigate when counselled that the cost of litigation is not even at per or commensurate with what may be eventually paid to them as compensation at the end of the legal marathon.

3. ***Delay in Payment of the Available Compensation***

It is also provided under the PIA that whenever there arises a dispute as to who is in lawful occupation of an area of land covered by a licence/lease or who is the owner of such land vis-à-vis disputes as to the amount payable as compensation, the licensees or lessees, pending the determination of the issue of ownership and the amount payable as compensation, such an amount as may be determined by the Federal High Court to be reasonable and fair compensation to the rightful owner and occupiers of land having regard to the inherent regulatory framework should be deposited with the Federal High Court with the jurisdiction over the matter.[59] By this provision, the Federal High Court has been vested with the power to deal with issues arising from the determination of the ownership of land, rightful occupant(s) of land as well as the amount payable as compensation for injury or disturbance occasioned on the surface of the land or to the right of the owner/occupant on the land covered by a licence or lease which does not align with the exclusive jurisdiction of the Federal High Court as enshrined in the Constitution of the Federal Republic of Nigeria.[60]Accordingly, it is worrisome that litigation or resort to a Court was proffered by s. 101 of the PIA as a panacea to resolving issues as to ownership of land/rightful occupation of land covered by a licence or lease as well as determination of the quantum of compensation payable to those who suffered injury as a result of petroleum operations by the holders of licence or lease.

At this juncture, it is pertinent to point out the fact that the PIA rightly subjected itself to the constitution which is an undisputable jurisprudential principle of the Nigerian Legal System,[61] but unfortunately, the PIA equally arrogated to the Federal High Court a jurisdiction it lacks under the Constitution and this conspicuously goes to show that an incurable pitfall exists therein. This is because any law that is inconsistent with the provisions of the Constitution shall be void to the extent of its inconsistency.[62] Little wonder, it is opined that the PIA is a statute which addresses old problems and creates new ones.[63] In the circumstance, it would have been better that the Customary Courts were vested with such jurisdiction concerning rural lands as it has unlimited jurisdiction over rural lands in its district[64] the same way the State High Courts would rightly be vested with such jurisdiction as in

[57] Ibid s. 101 (4) & (5)
[58] PIA 2021 (as Amended) s. 101 (1) (a).
[59] Ibid s. 101 (1) (d).
[60] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 251.
[61] The Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 1 (3) and PIA s. 309.
[62] Ibid.
[63] See Kasirim Nwuke 'Nigerian Petroleum Industry Act: Addressing Old Problems, Creating New Ones'. Available at https://www.brookings.edu/bog/africa-in-focus/2021/ii/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones. Accessed 16/5/2022.
[64] See the Rivers State Customary Court Laws N0. 3 of 2014 s. 6 of the first schedule.

exception to the exclusive jurisdiction of the Federal High Court, the State High Court has what is often referred to as an unlimited jurisdiction over matters brought before it.[65]

More worrisome is the fact that the beneficiaries of the compensation payable by holders of licences or leases often than none lack the qualitative or quantitative orientation or zeal to approach the court due to impecuniousness, intimidation, the meagre amount of compensation involved, etc. with all these put together, it is opined that the reference to court in s. 101 of the PIA rather than the mediatory process does more harm than good for those entitled to be compensated and inevitably will occasion delays in compensating victims entitled to be compensated.

4. ***Stipulation of Unrealisable Time Frame for Payment of Available Compensation***

It is irreconcilable and indeed a big pitfall that whereas no Regulation hitherto made under the PIA exists, the PIA provides that the amount of compensation payable to persons in lawful occupation of land or owners of the land by a holder of a licence/lease is to be determined by Regulation made under the PIA. It is equally unpardonable that the PIA provides that where a licensee or lessee fails to pay compensation as prescribed under the PIA within 30 days,[66] the Commission will apply sanctions per the hitherto non-existing Regulations made under the PIA.[67] Accordingly, it is therefore unrealizable that Holders of Licence/Lease are required to pay fair, adequate and prompt compensations in respect of the wrongs covered under s. 101 of the PIA within 30 days when no clear-cut legal or institutional framework is put in place to actualize the prescribed time frame of 30 days. More disturbing is the fact that references are made to Courts as enumerated above for the determination of certain issues ancillary to payment of compensation concerning the wrongs covered by s. 101 of the PIA and one is left to ask, whether any cause of action, no matter how little, referred to any Court of competent jurisdiction in Nigeria can be comprehensively litigated within 30 days when the right of appeal up to the Supreme Court exists in favour of the loser at the lower Courts and the time within which to file an appeal in respect of final judgment ranges from 30 days and above? The answer is negative. For instance, in Rivers State appeals from Customary Court to the High Court is to be lodged within thirty (30) days.[68] Similarly, Appeals from the High Court of a State to the Court of Appeal are to be lodged within ninety (90) days or three (3) months[69] depending on whether it is a civil or criminal appeal while an appeal from the Court of Appeal to the Supreme Court is to be filed within three (3) months or thirty (30) days in civil and criminal cases as the case may be.[70]

5. Further, whereas the PIA provides for compensation to be paid to deserving victims of the wrong contemplated under s. 101 of the PIA within 30 days, it nevertheless saved the Petroleum (Drilling and Production) Regulation,[71] made under the Petroleum Act to continue to remain in force until any other Regulation is made under the PIA,[72] unfortunately, the said Petroleum (Drilling and Production) Regulation made pursuant to the Petroleum Act does not stipulate the time within which compensation of any kind is to be paid to victims of oil spillage and this goes to show that a lacuna still exists in the legal and institutional framework for compensation of the victims whose kind of wrong suffered is covered under s. 101 of the PIA. More can be said on the pitfalls of the PIA with respect to prompt, fair and adequate compensation of victims whose nature of wrong suffered is covered by s. 101 of the PIA, however, for want of space, it cannot all be ventilated in this article, hence, this article confined itself to some of the pitfalls militating against timeous compensation of victims whose kind of wrong suffered are covered by the PIA.

Now returning to whether or not s. 101 of the PIA provides for compensation of victims of oil spillages, close content analysis of the PIA reveals that of all the Sections of the PIA[73], only s.101 (2)

[65] The Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 272 (1)
[66] PIA 2021 (as Amended) s. 101 (4)
[67] PIA 2021 (as Amended) s. 101 (4) & (5)
[68] High Court of Rivers State (Civil Procedure) Rules, 2010, Order 40 Rule 16.
[69] Court of Appeal Act 2004 s.24 (2).
[70] Supreme Court Act 2004 s. 27 (2).
[71] 1969
[72] PIA 2021 (as Amended) s. 311
[73] That is Ss.1-319 of the PIA.

(c) and (3) made provisions relating to compensation for the disturbance or damage caused to the surface of the land or disturbances/damages injurious to the rights of persons in lawful occupation or owners of land covered by a Petroleum Prospecting Licence or Petroleum Mining Lease. For proper analysis and adumbration, the said s. 101 (2) (c) & (3) is reproduced viz:

s.101 (2)

A person shall not in the course of Petroleum operation-

(c) Disturb or damage the surface of the land or any other right to any person who owns or is in lawful occupation of the surface area covered by the licence or lease.

(3) A licensee or lessee who causes damage under sub-section (2) shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.

Without hesitation, it is worthy and important to state that the above provision of the PIA is in *parimateria* with the provisions of paragraph 36 of the First Schedule to the erstwhile Petroleum Act[74] which provides thus:

> *The Holder of an Oil Exploration Licence, Oil Prospecting Licence, or Oil Mining Lease shall, in addition to any liability for compensation to which he may be subjected under the provisions of this Act, be liable to pay for adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licenced/leased land.*

Before undertaking the appraisal of the provisions of the PIA reproduced above, it is necessary to once again, succinctly state that hitherto, the Petroleum Act has not been completely abrogated or repealed by the PIA, rather, it is saved and any of its provisions or subsidiary legislation or Regulations not inconsistent with the PIA shall continue to be in force *mutantis mutandis* as if it had been issued by the Commission or Authority under the PIA until expressly revoked or replaced by an amendment or by subsidiary legislation made under the PIA. Also, provisions of the Petroleum Act not inconsistent with the PIA shall continue to be in force until the termination or expiration of all the Petroleum Prospecting Licences and Petroleum Mining Leases concessions under it.[75]

Accordingly, from the provisions of s. 101 (2) (c) & (3) of the PIA reproduced above, it is no gain saying that there is still no express provision for compensation of victims of oil spillage. Similarly, it equally suffices to say that ancillary issues to compensation for victims of oil spillage such as who qualifies as a victim of oil spillage, the quantum of damage payable to victims of oil spillage, evaluation of damages payable to victims of oil spillage, panacea to health challenges inherent or associated with oil spillage, measures to circumvent oil spillages, remediation and clean-up of the spilt environment, principles of assessment of compensation/damages, etc. were not provided for in the PIA.

However, it can be argued that disturbances or damage to the surface of the land covers or encompasses the incidence of Oil Spillage, but if the above argument is taken as a yardstick, then, an unambiguous legal and institutional framework would have been put in place under the PIA to ensure that victims of Oil Spillages are compensated fairly and adequately within a reasonable time. Sadly, the PIA under s.101 (2) (c) & (3) only limited the right to be compensated upon damage or injurious affection of the surface of the land covered by a lease/licence to only those directly affected by such injurious affection and the Licensees and lessees are only enjoined to pay compensation for disturbances in respect of an area covered by their Licence or Lease.[76] This implies that where there is a transnational effect or trans-state or border incident of oil spillage, the holder of the lease or licence will only be obligated to compensate the victims within the area covered by his/her lease or licence. Could this be the intendment of the section under consideration? The answer is definitely negative.

Considering the newness of the PIA and its recent legal birth, more so, the fact that it came on board at a time when the lacuna in the legal regime regulating the oil and gas industry has caused unquantifiable compensational deprivation to victims of oil spillages, it ought to have been explicit in providing a clear cut framework for compensation in causes of oil spillages. Accordingly, the fact that the PIA is completely

[74] Cap. P10 LFN 2004.
[75] PIA 2021 (as Amended) 311 (1), (2) & (9).
[76] Ibid.

silent on areas such as what constitutes spillages, the quantum of compensation, remediation of the catastrophic effects of spillages, and above all, the fact that no straight-cut institutional framework was put in place by the PIA to ensure prompt, fair and adequate compensation of oil spillage, constitutes monumental and unpardonable lacuna. In fact, the mere reproduction of the provisions of paragraph 36 of the First Schedule of the Petroleum Act in Section 101 of the PIA has not in any way solved the problem of the said para. 36 of the First Schedule of the PIA could not solve before the advent of the PIA. It is so because the filling of old wine into a new bottle can never alter the taste of the old wine. In essence, the PIA has not in any way solved the dreaded problem associated with compensation of victims of oil spillages in Nigeria.

4. Conclusion

The PIA is indeed robust in its provision with respect to providing a legal, institutional and fiscal framework for the regulation of the oil and gas industry in Nigeria. However, it is not far-reaching as it relates to prompt, fair and adequate compensation of victims of oil spillages. Accordingly, just as there exist too many applaudable innovations as enumerated above, there are also multiple pitfalls in the PIA which ought not to be considering the fact that it is an Act or Statute as contemporary as 2021. Be that as it may, some panaceas are proffered below.

5. Recommendations

1. In lieu of the fact that the PIA made little or no provision for cases of oil spillages and compensation of victims of oil spillages in Nigeria, it is recommended that, rather than continuing to save the Regulations, guidelines and/or directives made under some of the repealed legislation, there should be a new Regulation made pursuant to the PIA wherein cases of oil spillages to wit: prevention, control and management of oil spillage, the effect of oil spillage, environmental remediation and clean-up upon spillage, principles of assessment of compensation, the quantum of compensation and compensation of victims of oil spillage can be provided for or properly regulated.
2. Secondly, in the contemplated regulation in 1 above, provisions for alternative dispute resolution rather than litigation should be provided for in respect of compensation of victims whose kind of wrong suffered emanated from or are related or connected to operations in the downstream, midstream and upstream sectors of the Nigerian oil and gas.