Traversing the Environmental Regulation of the Nigerian Petroleum Industry and Environment from FEPA to the Petroleum Industry Act

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Abstract- ***Since the discovery of oil in the late 1950s in Nigeria, the country has relied on the petroleum industry for most of its earnings. Consequently, a raft of legislation has been put in place to regulate the industry and these regulatory instruments have run the gamut from laws enacted to regulate the exploration and production activities of oil companies, right down to laws passed to protect the environment. This work traverses the major laws, regulators and instruments which shoulder the responsibility of overseeing the activities of the petroleum industry in Nigeria and protecting the environment from those activities. The regulation of the Nigerian petroleum industry over the past decades has come with lots of difficulty, shortcomings and conflicts. This work analyses the regulatory interface between various laws and regulatory bodies and culminates in recommendations to better protect the environment as well as the health and well-being of people residing in close proximity of oil operations.***

Indexed Terms- ***Nigeria, Environmental Protection, Petroleum Industry, Regulation, FEPA, Oil & Gas, Petroleum Industry Act.***

I. INTRODUCTION

Nigeria first discovered oil in commercial quantity in 1956. This discovery was made in Oloibiri in modern day Bayelsa State.[1] Due to its impact and relevanceglobally, oil has been referred to as "a fundamental building block of our modern world."[2]The dominance of oil is one which has spannedover "…a century in which every facet of our civilization has been transformed by the modern and mesmerizing alchemy of petroleum."[3]With over 37 billion barrels of proven reserves of oil[4] and 209 trillion cubic feet (TCF) of proven gas reserves,[5] Nigeria's guards the oil industry due to the income it generates. The revenue derived from the petroleum industry in Nigeria constitutes the largest source of revenue for the country.[6]Between 1960 and 2000, oil worth more than Three Hundred Billion Dollars was extracted from the Niger-Delta region of Nigeria[7] and earned $196 billion from oil and gas exports in the four years from 2007 to 2010.[8]

In a bid to ensure standards are set and there is some oversight with regards to the petroleum industry, Nigeria put in place numerous instruments and bodies, and these have been the mechanisms that regulate the industry. However, despite the indisputable financial advantages that have accrued to Nigeria from its petroleum industry, the exploration and production activities involved in the extraction and transportation of crude oil have resulted in widespread ecological and environmental devastation in the country, particularly the Niger-Delta region.

For numerous years, there have been thousands of incidents involving the spillage of oil into the environment in Nigeria.[9]There are reports that show that in a 12 year period,[10] there were over one thousand five hundred incidents of oil spills documented in Nigeria.[11] Furthermore, a report made by the Nigerian Federal Ministry of Environment, the Nigeria Conservation Foundation, the World Wildlife Fund UK and International Union for the Conservation of Nature and Natural Resources (IUCN) states that there has been at least a quantity of oil equivalent to between nine and thirteen million barrels (1.5 million tons) released into the Niger-Delta eco-system. This amount of oil released is the equivalent of fifty Exxon Valdez spills (or around one Exxon Valdez spill per year).[12] As recently as the 11th of June 2023, a new oil spill was discovered

within the Eleme Local Government Area of Rivers State. This spill polluted the Okulu River and has left about three hundred registered fishermen without a means of a livelihood.[13]

Oil spills are not the only source of pollution emanating from the petroleum industry in Nigeria. Gas flaring is another source of pollution caused by oil exploration and production activities. The problem of gas flaring in Nigeria started from the inception of oil production in the country. According to Climate Justice Programme and Environmental Rights Action/Friends of the Earth Nigeria, "flaring of gas mixed up with the crude oil began right at the start."[14]

This paper aims to look at some key legislation and regulatory mechanisms that govern the Nigerian petroleum industry and its effect on the environment. This shall be undertaken with a view to determine the adequacy and effectiveness of such mechanisms, highlight potential problems or areas of conflict, and finally proffer recommendations which will ensure that the environment is better protected.

II. REGULATORY INSTRUMENTS AND BODIES

2.1 The Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria 1999 succeeded the 1979 Constitution, which in turn succeeded the 1963 and 1960 Constitutions. All previous constitutions had similar provisions regarding ownership of oil/minerals and the protection of the environment.

Despite the fact that there are older statutes than the 1999 constitution which regulate the environment, the power to make such laws is derived from the Constitution. Thus Section 20 of the Constitution states "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria."

In accordance with this directive, various laws have been enacted over the years to deal with issues regarding the environment and quality control. Due to the fact that Nigeria is a federation, there are different environmental laws which operate both at the federal level and the state level. The different states which make up the Federal Republic of Nigeria each have their own state assemblies, which are responsible for passing laws regarding such state. The National Assembly is responsible for passing laws regarding the federation as a whole and it is usually the case that where there are conflicts between the National laws and the state laws, the national law shall prevail. In addition to federal and state laws, local governments are empowered to make bye-laws to cover their jurisdiction. The power to make environmental laws and bye-laws by the state and local governments respectively was hitherto granted by the Federal Environmental Protection Agency (FEPA) Act 1988.[15] Those laws which are relevant to this work shall be addressed one after the other subsequently.

In Nigeria, all oil, gas and minerals arevested in the Federal Government of Nigeria. Section 44(3) of the Constitution states -

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

2.2 The Federal Environmental Protection Agency Act[16]

Though the Federal Environmental Protection Agency (FEPA) Act has been repealed, it is necessary to address it in this work due to its historical importance as the first national legislation dedicated exclusively to the protection of the environment. The FEPA Act was promulgated in 1988 after twelve years of waiting to be passed into law.[17] The Act was passed in the wake of the 1988 dumping of around three thousand nine hundred tons of toxic waste by the Italian company Gianfranco Reaffeli in Koko, Nigeria.[18]

Before the FEPA Act was passed into law, "Nigerian laws in relation to environmental pollution and other

related matters were enacted piece-meal as pollution problems arose."[19] The laws which existed before the FEPA Act was made, were inadequate at best and irrelevant at worst.[20] Bola Ajibola, the former Attorney-General of the Federation put it best when he stated that "the Koko dump has brought in its wake a renowned national consciousness in the area of environmental protection. Hitherto our attitudinal approach to environment issues has more often than not been non-methodical and certainly lacking in vitality and purpose."[21]

The statement of the former Attorney-General can be better appreciated when one considers that before the promulgation of the FEPA Act, the national legislation that dealt with the environment was the Criminal Code Act,[22] which was passed into law in 1916 and the Public Health Act which was enacted in 1917. The provisions of the Criminal Code which deal with the environment are Sections 245 and 247. By virtue of Section 245, any person who corrupts or fouls the water of any spring, stream, well, tank or reservoir so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanour and liable to imprisonment for six months. Section 247 proscribes all forms of air pollution which is likely to injure the health of people in that neighbourhood, with a similar six-month imprisonment punishment for defaulters. The Public Health Act had provisions similar to those under the Criminal Code but with a £10 penalty.[23] The Minerals Act and the Oil Pipelines Act were subsequently passed into law, but like their predecessors, these laws did not pack a punch when it came to environmental breaches.

The FEPA Act was the first national law In Nigeria solely dedicated to environmental matters. Before the FEPA Act was passed into law in 1988, the draft Bill had been amended to include many of Nigeria's obligations under International Conventions.[24] Under the FEPA Act, the Federal Environmental Protection Agency was created with a charge to secure the development and protection of the environment.[25] Section 20(1) of the FEPA Act provided that "the discharge in such harmful quantities of any hazardous substance into the air or upon the land and waters of Nigeria or at the joining shorelines is prohibited, except where such discharge is permitted or authorised under any law in force in Nigeria." Any person or body corporate that violated the provision of Section 20(1) of the Act was guilty of an offence.[26]

From the forgoing provision of the Act, it is clear that the Act criminalised the discharge of harmful quantities of hazardous material. The punishment was either a term of imprisonment and/or a fine for natural persons, or a fine for bodies corporate. The person or body responsible for the discharge was also liable for the cost of removal of such substance as well as costs to third parties in the form of reparation, restoration, restitution and/or compensation.

The FEPA Act thereby cast a two-fold burden on the discharger of the substance, as anyone who was affected by the discharged hazardous substance had a right to make a civil claim against him for compensation and where applicable for *restitutio in integrum*, irrespective of whether or not such a person had been convicted and paid a fine in respect of the same discharge.

Under the FEPA Act, a person would not be punished if it could be proved that the offence had been committed without his/her knowledge and that he/she exercised all due diligence to prevent its commission. However, this did not remove from such a person the liability for the removal of the substance and where applicable liability to pay compensation to affected third parties.

The FEPA also had the duty of initiating policies in relation to environmental research and technology. It was empowered to establish such environmental criteria, guidelines, specifications or standards for the protection of the nation's air and inter-State waters as deemed necessary to protect the health and welfare of the population from environmental degradation.[27] The FEPA also had the powers to establish procedures for industrial or agricultural activities in order to minimise damage to the environment from such activities.[28]

Having been vested with powers to make policies in aid of environmental protection, the FEPA made some Regulations and guidelines in this regard. These regulations included (but are not limited to) –

a) *The 1989 National Policy on the Environment*[29] – This policy sets the goals on achieving sustainable development through a rational, coherent, practicable and comprehensive approach. The National Policy prescribes procedures and strategies targeting amongst other things the *modus operandi* of companies with the grand aim of moving Nigeria ahead in the environmental field and ushering in a regime of sustainable development.

b) *The 1991 National Guidelines and Standards for Environmental Pollution Control in Nigeria* – These guidelines were made by the FEPA to determine the yardstick within which the actions of companies which impact on the environment may be carried out, as well as to lay down the acceptable limits within which pollution and environmentally hazardous materials may be used. "They serve more or less as recommended standards of environmentally good behaviour for industries."[30]

c) *The 1991 National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations* – These were made to set limits on the amount of hazardous and toxic substances that may be released into the environment. Under these regulations, companies/parties must obtain authorisation from the FEPA before they may release or discharge any hazardous or toxic substance exceeding the prescribed limit into the atmosphere or environment. Failure to do so is an offence.

d) *The 1991 National Environmental Protection (Effluent Limitations) Regulations* – Under these regulations, industries are required to install the necessary equipment that are required for detoxification of effluent and chemical discharges. All such waste from the industries must be treated to bring it within the accepted prescribed levels before it may be discharged or released into the environment. Any breach of these provisions of the regulations is an offence.

2.3 Environmental Impact Assessment Act[31]

In 1992, there was an amendment to the 1988 FEPA Act by Decree No. 59.[32] Also promulgated in that year was the Environmental Impact Assessment Act. By virtue of the Environmental Impact Assessment (EIA) Act, the powers of the FEPA[33] was extended to include powers to oversee any activities and projects which maybe likely to a significantly affect the environment before such activities or projects are undertaken. By virtue of the EIA Act, neither the public nor the private sector of the Nigerian economy may embark on or authorise and projects or activities without any prior consideration of the effects such project or activity may have on the environment and where such a project is likely to significantly affect the environment, an environmental impact assessment shall be undertaken.[34]

Under Section 13 of the EIA Act, some projects have been ascribed to the Mandatory Study List (MSL) because of the potential effects such projects may have on the environment.[35] These projects on the MSL must not be executed until the FEPA has exercised its powers in respect thereof or taken a decision regarding the project. Under the Schedule to the EIA Act, oil and gas fields development; construction of off-shore pipelines in excess of fifty kilometres; construction of oil and gas separation, processing, handling and storage facilities; construction of oil refineries and construction of products depot for the storage of petrol, gas or diesel all fall under the MSL.

Although Section 13 of the EIA Act prohibits the carrying out of any project without the FEPA exercising its powers first, it does not make it mandatory for an environmental impact assessment to be performed on all projects listed in the MSL. However, in the second part of the EIA Act, Section 14 makes an environmental impact assessment mandatory in certain instances, one of which is where a Federal, State or Local Government Authority "under the provisions of any law or enactment, issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part."[36] The provisions of Section 14 override any contrary provision which may be in the first part of the EIA Act. The projects and or activities oil industry in Nigeria do fall under the purview of Section 14 of the Act as oil exploration and production activities are carried out subject to the oil companies being issued Oil

Prospecting Licences and Oil Mining Licences by the Nigerian government. Permits are required before any exploration is carried out.

Where an environmental impact assessment has been conducted, the FEPA was obliged under the Act to allow government agencies, experts and members of the public to make a comment on the said assessment[37] and must give its decision on the impact in writing, making it available to interested parties or where there are no interested parties, publishing it in a manner that the public will be notified of the decision.[38]

Communities which make up the areas that form the Niger-Delta region of Nigeria who more often are directly affected by the exploration activities of oil companies have maintained that the provisions of the EIA Act has not been strictly adhered to either by the FEPA/NESREA or the government. It has been a source of complaint by the local communities and industry observers that many oil exploration and production projects and/or activities are undertaken (by the oil companies which operate in these communities) without any environmental impact assessment carried out to determine the effect such projects/activities would have on the environment, and where an EIA is purported to have been carried out, it is not properly conducted or the results are watered down to minimize the impact the project would have on the environment.[39] An example of this is the conduct of activities in the Gbarain oil field near Yenagoa, where according to an investigation carried out by the Environmental Rights Action[40] (ERA), no proper baseline study was conducted by Shell and a Shell whistle-blower stated –

> we made use of consultants from the University of Port Harcourt. But we rejected their first draft for reasons I cannot explain. They brought a new draft which falls in line with the thinking of management and Wilbros was called to do the work.[41]

The consequence of the failure to conduct a proper EIA on the Gbarain field led to the devastating destruction of land and the environment. In that field, Shell contracted a company called Wilbros to construct a road (which included a bridge) to link the field to a main road in Yenagoa. Wilbros decided to build the road and bridge through a lake which fed surrounding forests and vegetation on both sides, and this led to the death of about one thousand acres of woodlands, vegetation and forests. In an interview with Tell Magazine in 1997, the environmental activist, Kemedi Von, stated –

> If an EIA had been carried out, it would have informed on the lay of the land and shed light on how to bridge the waterways to ensure unbroken water distribution to both sides of the forest.[42]

Indeed, this issue of conducting a proper EIA has been challenged in court on more than one occasion by parties who have felt aggrieved by the oil companies breaching the provisions of the EIA Act. The cases of *Ikechukwu Okpara & 7 Others v. Shell Petroleum Development Company of Nigeria Limited & 6 Others*,[43] *Ikechukwu Okpara & 3 Others v. Shell Petroleum Development Company of Nigeria Limited & 5 Others*,[44] *Oronto Douglas v. Shell Petroleum Development Company Ltd & 5 Ors*,,[45] and *Gbemrev. Shell Petroleum Development Company of Nigeria Limited & Others*[46] are some of such actions which have been instituted in the high court and in which one of the issues raised by the respective plaintiffs was the non-compliance of the defendants with the provisions of the EIA Act.

In addition to the foregoing, there have been accusations of "widespread ecological disturbances, including explosions from seismic surveys, pollution from pipe-line leaks, blowouts, drilling fluids and refinery effluents, and land alienation and disruption of the natural terrain from construction of industry infrastructure and installations"[47] which have been levied against oil companies, leading to distrust of the Nigerian authorities and doubts as to the efficacy of the law to protect the interests of ordinary citizens.

2.4 The Department of Petroleum Resources[48]

One Major government department which was meant to oversee the petroleum industry in Nigeria was the Department of Petroleum Resources (DPR). Under the erstwhile NNPC Act, the power to monitor and oversee the oil industry in Nigeria was vested in the Petroleum Inspectorate.[49] In 1985, the Petroleum

Inspectorate was however taken over by the Department of Petroleum Resources which was an arm of the Federal Ministry of Petroleum Resources.

The Department of Petroleum Resources (the DPR) was to undertake the supervision of all operations in the Nigerian petroleum industry. It was responsible for setting the minimum standards and guidelines required for the safety and efficiency of all petroleum operations within the industry. The DPR was also responsible for the issuance of permits for operations.[50] The DPR was the first statutory agency set up to supervise and regulate the petroleum industry in the country.[51]

The DPR was vested with powers by various legal provisions to discharge the following functions and responsibilities:[52]

- supervising all petroleum industry operations being carried out under licences and leases in the country in order to ensure compliance with the applicable laws and regulations in line with good oil producing practices.
- enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.
- keeping and updating records on petroleum industry operations, particularly on matters relating to petroleum reserves, production and exports of crude oil, gas and condensate, licenses and leases as well as rendering regular reports on them to Government.
- advising Government and relevant Agencies on technical matters and policies which may have impact on the administration and control of petroleum.
- processing all applications for licenses so as to ensure compliance with laid-down guidelines before making recommendations to the Honourable Minister of Petroleum Resources.
- ensuring timely and adequate payments of all rents and royalties as at when due.
- Monitoring Government Indigenisation policy to ensure that local content philosophy is achievable.[53]

Thus, as can be seen from the foregoing, the resultant makeup and mandates of the two foregoing bodies i.e. the FEPA and the DPR, led to a situation since the inception of the FEPA, where both had overlapping duties and responsibilities in certain areas relating to the petroleum industry in Nigeria.[54] Since the FEPA had been charged with the duty of protecting the environment in Nigeria and the activities of the Nigerian oil industry has a huge impact on the said environment, there were many instances in which the powers of both the FEPA and DPR overlapped, resulting in problems and clashes.[55] According to Adegoroye –

> Prior to the creation of FEPA, the Department had been responsible for monitoring pollution in the petroleum sector.... In the last three years, two controversial issues have emerged:
> - Who should set the Guidelines and standards for Pollution Control in the Oil industry?
> - Who is to enforce those standards?
>
> After two years of strained relationship, FEPA finally resolved the issue as follows:
> - PIDPR can set Guidelines and Standards on Operational Safety and Environmental Pollution Control in the Petroleum Sector. However, such standards cannot be weaker than and must be subordinate to, the National Standards that would be set by FEPA for the Petroleum Sector.
> - PIDPR would continue to monitor pollution and enforce compliance in the Petroleum Sector but on behalf of FEPA who reserves the right to carry out check inspections to determine how effective PIDPR is carrying out those functions.[56]

Initially, there was some restructuring carried out which saw the environmental unit of the DPR brought under the FEPA. This did not go down well in certain quarters and there was some resistance to this restructure. In 1999 however, the FEPA was

succeeded by the Federal Ministry of the Environment (FMENV)[57] which inherited all the FEPA's duties, obligations and powers. In a bid to provide uniformity in the regulation of the environmental aspects of the oil and gas industry and foster better working relations, the same presidential circular which created the FMENV, brought under its wing, the DPR's Oil and Gas Pollution Control Unit, thus bringing to an end the unnecessary competition and clashes which had hitherto characterised the relationship between the FEPA and the DPR.[58] According to Adeyemo –

> The purpose of the dissolution of FEPA and the creation of the Federal Ministry of Environment was to place environmental issues at the forefront of the political agenda and prioritize environmental issues throughout the country. While the Ministry is making some progress, it has been unable to effectively implement and enforce environmental laws and policies due to bureaucratic issues, which often cause delays in the implementation process. This shortcoming of the Ministry serves as a major impediment to environmental management. The implication of this is that the environment is not being fully protected and this will affect sustainable development and might perpetuate this cycle of poverty and environmental or natural resource degradation.[59]

In 1992, by the Department of Petroleum Resources (DPR) introduced the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN).[60] The purpose of thrEGASPIN was to deal with the control of pollutants and pollution which result from petroleum exploration and production operations. "The EGASPIN is a comprehensive piece of regulatory document[61] which prescribes *interalia* environmental protection and effluent emission standards applicable Nigeria's petroleum industry."[62] The United Nations Environment Programme (UNEP) described the EGASPIN as "most important piece of legislation on environmental management in Nigeria."[63]

2.5 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act[64]

Although the presidency created the FMENV and thereby abolished FEPA, there was no appropriate enabling law on enforcement issues.[65] This situation however created a vacuum in the effective enforcement of "environmental laws, standards and regulations in the country."[66] To address this situation, the National Environmental Standards and Regulations Enforcement Agency[67] was established as a parastatal of the Federal Ministry of Environment.[68] In 2007, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act was passed into law.[69] By virtue of this Act, the NESREA was created with a principal charge which amounts to ensuring that the provisions of Section 20 of the 1999 Constitution of the Federal Republic of Nigeria is taken care of.[70] According to information from the NESREA, the agency is "empowered to enforce all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with the provisions of all international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory."[71]

A thorough look at the NESREA Act reveals that while it was the intention of the lawmakers to make the NESREA to be the agency in charge of general environmental compliance in Nigeria, they did not intend for it to be the enforcement or monitoring agency for the Nigerian oil and gas industry. Under Part II of the NESREA Act, Section 7 delineates the functions of the NESREA. It provides as follows –

7. The Agency[72] shall –

a) enforce compliance with laws, guidelines, policies and standards on environmental matters;
b) coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement;
c) enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas,[73] chemicals, hazardous wastes, ozone depletion, marine and wildlife, pollution,[74] sanitation and such other

environmental agreements as may from time to time come into force;

d) (d) enforce compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement;
e) enforce compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources;
f) enforce compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof;
g) enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector[75];
h) enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector[76];
i) ensure that environmental projects funded by donor organisations and external support agencies adhered to regulations in environmental safety and protection;
j) enforce environmental control measures through registration, licensing and permitting systems other than in the oil and gas sector[77];
k) conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector[78];
l) create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector[79] and publish general scientific or other data resulting from the performance of its functions;
m) carry out such activities as are necessary or expedient for the performance of its functions.

From this section, while subsections (a), (b) and especially (c) give the impression that the NESREA is empowered to monitor and enforce compliance on all environmental matters in Nigeria, subsections (g), (h), (j), (k) and (l) clearly show that the remit of the NESREA is for all enforcement and monitoring of issues with the environment "other than the oil and gas sector."[80]

Thus, a problem and conflict arose from the interpretation of the wording of Section 7(c) which expressly gave the NESREA the mandate to enforce compliance with the provisions of international agreements, protocols, conventions and treaties with regards to oil and gas. Furthermore, the express mandate set by virtue of Section 3(1)(c)(vii) of the NESREA Act which stipulated that a representative of the Oil Exploratory and Production Companies shall be a member of the Governing Council of the NESREA was a clear indication that the lawmakers intended that the NESREA was to have some dealings and oversight over the oil and gas industry. These particular provisions put the NESREA on a collision course with other regulators (e.g. the DPR, NOSDRA, etc.) overseeing the Nigerian oil and gas industry.After more than a decade of the regulatory overlap, the lawmakers thought it expedient to amend the NESREA Act and thus, the National Environmental Standards and Regulations Enforcement Agency (Establishment) (Amendment) Act2018 (NESREA Amendment Act) was passed into law. Under the NESREA Amendment Act, Section 2(b) amends Section 3(1)(c)(vii) of the NESREA Act by deleting the requirement that a representative of the Oil Exploratory and Production Companies shall be a member of the Governing Council of the NESREA and substitutes it with a requirement that a representative of the Federal Ministry of Health shall be a member of the NESREA Governing Council. In addition, Section 3(a) of the NESREA Amendment Act deletes the words "oil and gas" from Section 7(c) of the NESREA Act and thus the NESREA was effectively divested of any powers of oversight whatsoever over the oil and gas industry in Nigeria.

As at 2011, there was a positive buzz around the NESREA. It has been stated that it has recorded some success in trying to fulfil the mandate handed down to it. With the establishment of headquarters in the six Geo-political Zones of Nigeria and state Offices in seventeen of the Nigerian states,[81] the NESREA is trying to ensure that it is effectively spread all over the country. On the 24th of May 2011, the Director-General of NESREA in giving an account of what the Agency had achieved so far stated that "NESREA

was created by the Environmental Act of 2007 to ensure the protection of our environment and the health of our citizens.... Since coming on board, the work of the agency is carried out through the development of regulations and standards and the implementation of various environmental enforcement programmes." She further stated that "...over the years we developed twenty-four regulations which have already been signed into law and aimed at ensuring that our national development agenda is not at variance with the carrying capacity of our fragile environment."

Although it cannot be said that the NESREA is the perfect model of an environmental enforcement and monitoring apparatus – especially with the reports was generated about how Nigeria was a target for the dumping of e-waste and other types of toxic products from countries in the developed part of the world[82] – it is acknowledged that the NESREA is making noticeable efforts to enforce environmental regulations with a reach which aims to stretch all over the country.

Since it has been made clear that the NESREA is no longer empowered to monitor the compliance of the oil and gas industry in environmental matters, the agency which does will be addressed next.

2.6 The National Oil Spill Detection and Response Agency Act[83]

In 2006, the National Oil Spill Detection and Response Agency (NOSDRA) was established and mandated with the the regulation of the petroleum industry in Nigeria. The NOSDRA Act expressly specifies that the NOSDRA is responsible for monitoring and regulating the oil and gas industry. According to Section 6(1)(a), the NOSDRA shall "be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector." Thus, although the NOSDRA was principally created (as its name implies) for the purpose of dealing with oil spills, it is the agency on whose shoulders the regulation of the Nigerian oil and gas industry lies. The NOSDRA is an agency established under the Federal Ministry of Environment (FMENV) and was created "as a deliberate and articulate response by the Federal Government to the persistent environmental degradation and devastation of the coastal ecosystem especially, in the oil-producing areas of the Niger-Delta region."[84]

The powers of the NOSDRA includes establishing a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution; identifying high-risk areas as well as priority areas for protection and clean up; establishing the mechanism to monitor and assist or where expedient 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 site.[85]

Since 2006, the NOSRA has overseen the activities of the oil and gas industry in Nigeria but has not proven to be an effective regulator of oil companies operating in the country as its ability to effectively enforce regulations and ensure due compliance by the industry players is predominantly crippled by inadequate funding and the lack of political will on the part of the Nigerian government. The United Nations Environment Programme (UNEP) in its 2011 report on the Environmental Assessment of Ogoniland,[86] stated –

> ..., in the five years since its establishment, very few resources have been allocated to NOSDRA, such that the agency has no proactive capacity for oil-spill detection and has to rely on reports from oil companies or civil society concerning the incidence of a spill. It also has very little reactive capacity – even to send staff to a spill location once an incident is reported. In the Niger Delta, helicopters or boats are needed to reach many of the spill locations and NOSDRA has no access to such forms of transport other than through the oil companies themselves. Consequently, in planning their inspection visits, the regulatory authority is wholly reliant on the oil company. Such an arrangement is inherently inappropriate.[87]

UNEP further stated in its report, "While a National Oil Spill Contingency Plan exists in Ogoniland and NOSDRA has a clear legislative role, the situation

on-the-ground indicates that spills are not being dealt with in an adequate or timely manner."[88] The UNEP report shows the inherent problem with the NOSDRA i.e. "There cannot be effective regulation of the industry if such a regulatory agency is dependent on the very companies it is supposed to oversee for carrying out its duties."[89]

Over 10 years after the UNEP report revealing the incapacity of NOSDRA to effectively carry out its duties as watchdog and regulator over the petroleum industry in Nigeria, NOSDRA continues to receive damning indictments on the way it operates. In 2021, it was reported that documents from the NOSDRA revealed that approximately 172 thousand barrels of oil was spilt into the environment and only 2% of all oil spilled was cleaned up over the five year period ranging from January 2016 to June 2021.[90] The reason for this abysmal record was given as the dependence of NOSDRA on oil companies to carry out its functions and duties.[91] Talking about the inability of NOSDRA to properly regulate the oil industry, Nnimmo Bassey, an environmentalist and founder of Health of Mother Earth Foundation (HOMEF) said, "Poor funding appears to have forced them to depend on the polluters and possibly distorts their assessment of situations,"[92] It was further stated that, "The country's regulatory agencies rely on oil companies to report themselves. Government agencies responsible for monitoring and regulating the industry only investigative when an incident is reported, and investigating teams rely almost exclusively on the firms themselves to reach incident sites."[93]

From the foregoing, it is clear that though Nigeria reaps huge financial benefits from its petroleum industry, it has failed to invest suitably in the proper and effective regulatory mechanisms for the said industry. By its actions and stance, Nigeria appears to consider the protection of the environment of little import and the ecological devastation the petroleum industry has continually wrought for over six decades does not merit the ramping up of protectionary measures nor does it warrant the much needed investment in saving the environment.

2.7 The Petroleum Industry Act 2021

In 2000, former Nigerian President, Olusegun Obasanjo, sought to overhaul the regulation of the Nigerian oil industry and inaugurated the Oil and Gas Reform Implementation Committee (OGRIC). The OGRIC's mandate was to review and consolidate all existing laws governing the petroleum industry and come up with an all-encompassing regulatory framework which will govern the industry. Thus began the journey and numerous setbacks to what emerged as the Petroleum Industry Act (PIA) 2021. The PIA consists of provisions which are meant to provide sweeping reforms for the Nigerian petroleum industry and it repealed a number of legislations[94] e.g. Associated Gas Reinjection Act 1979[95] and its amendments, the Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993,[96] the Nigerian National Petroleum Corporation Act (NNPC) 1977 No, 33,[97] the Petroleum Profit Tax Act,[98] the Deep Offshore and Inland Basin Production Sharing Contract Act 2019[99] and the Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003.

Although the Minister of Petroleum Resources is the authority with the mandate over the Nigerian petroleum industry,[100] there are two regulatory bodies created under the PIA. The first of these regulatory bodies is the Nigerian Upstream Regulatory Commission (NURC), which is the regulator for all upstream petroleum operations and is vested with the assets, funds, rights, obligations and liabilities of the Petroleum Inspectorate and the DPR with relations to the DPR's upstream operations;[101] and the second is the Nigerian Midstream and Downstream Regulatory Authority (NMDRA), which is the regulator for all midstream and downstream operations and is vested with the assets, funds, rights obligations and liabilities of the Petroleum Products Pricing Regulatory Agency (PPPRA), the Petroleum Equalisation Fund (PEF) and the DPR with relations to the DPR's midstream and downstream operations,[102]

Under the PIA, gas flaring is abolished[103] but can still be permitted by the NURC or NMDRA under certain circumstances.[104] Thus, the era of hard talk but acting soft initiated under the Associated Gas Reinjection Act 1979 and its Regulations (wherein gas flaring

was outlawed but special dispensations were granted to oil production companies to continue flaring gas) still exists till this day.

III. RECOMMENDATIONS AND CONCLUSION

This work has traversed the regulatory instruments and mechanisms that have been set in place to oversee and govern the petroleum industry and protect the environment in Nigeria. What has been shown in the previous section is the lack of organisation and coherence within the regulatory structure. With conflicts, clashes, inadequate enforcement of legislation, and poor funding, the petroleum industry appears to be left to operate with minimal effective oversight. If the petroleum industry is to be better regulated and the environment to be better protected, the *modus operandi* currently adopted in Nigeria must be changed to pave way for an industry that would be held to account for its actions, inaction and obligations.

Below are some recommendations that should help ensure that the Nigerian petroleum industry operates to standards that are more in keeping with global best practices.

3.1 Recommendations

(i) Laying in Place a Proper Environmental Impact Assessment Structure

Improving upon the current system of Environmental Impact Assessments obtainable in Nigeria and ensuring strict adherence to laws and regulations involving Environmental Impact Assessments. The current position as practiced in Nigeria[105] is that neither the public nor the private sector of the Nigerian economy may embark on or authorise and projects or activities without any prior consideration of the effects such project or activity may have on the environment and where such a project is likely to significantly affect the environment, an environmental impact assessment shall be undertaken.[106] Furthermore, Section 14 of the EIA Act makes an environmental impact assessment mandatory where a Federal, State or Local Government Authority "under the provisions of any law or enactment, issues a permit or licence,[107] grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part." It should be borne in mind that where an environmental impact assessment has been conducted, the federal agency in charge of such is obliged under the Act to allow government agencies, experts and members of the public to make a comment on the said assessment[108] and it must give its decision on the impact in writing, making it available to interested parties, or where there are no interested parties, publishing it in a manner that the public will be notified of the decision.[109]

Thus, in theory, environmental impact assessments should be customarily undertaken before the start of any oil exploration and/or production. However, the reality in the Nigerian situation is that this is not always the case,[110] and where such environmental impact assessments may have been carried out, the provisions of Sections 7 and 9 are not strictly adhered to.

In contradistinction to the foregoing, the United Kingdom's Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations[111] with regards to environmental impact assessments on Offshore Petroleum Production and Pipe-lines projects stipulates that all well drilling, structure erections connected with a development and petroleum extraction[112] can only be done subject to an environmental impact assessment being carried out, and require the consent of the Secretary of State.[113] Any decision taken by the Secretary of State may be subject to a review and where a person is aggrieved by the decision of the Secretary of State, he may apply to the court to quash such decision.[114]

The difference between the EIA system in Nigeria and what obtains in countries like the United Kingdom is that, in the United Kingdom, the system works, while in Nigeria, although the legal and regulatory mechanism appears to be there, it is not being applied or enforced. We need to ensure that our system is made to work here as it does in the Global North.

(ii) The Adoption of International Best Practices by the Petroleum Industry

In a landmark decision by a Dutch court in 2021,[115] Royal Dutch Shell was ordered to reduce its carbon emissions by 45% by 2030.[116] This decisions referred to Shell's global emissions, not just that in the Netherlands. The court took the position that Shell was not doing enough to cut and lower its emissions and the decision against Shell is targeted not only at Shell as a singular (but multinational) company, but at its suppliers, sub-contractors etc. worldwide.[117] The ruling shows the recognition of the Dutch court of the fact that the environment and climate change needs to be protected and addressed globally and not just locally and consequently, a uniform and standardised cause of action needs to be put in place.

In addition to the foregoing, the Dutch Court of Appeals ruled in favour of some farmers who were claimants in a case instituted against Shell. The appellate court found Shell liable for the oil spills and pollution that had blighted the claimants' communities and lives.[118] Furthermore, the UK Supreme Court in *Okpabi& Others v. Royal Dutch Shell & Anor.*,[119] allowed an appeal by claimants who consist of a large group of individuals from communities making up areas in the Niger-Delta in which Shell petroleum Development Company Nigeria Limitedcarried out some of its operations. The claimants' claim was made in tort and was for oil spills and pollution from pipelines which had resulted in environmental damage and damage to their water sources which could not be safely used for drinking, fishing, farming and other purposes. The UK Supreme Court overturned the original trial court and Court of Appeal decisions stating that the claimants could not bring/file their claims in the United Kingdom.

Increasingly, people and communities adversely affected by the operations of oil companies in Nigeria are seeking to bring their claims in foreign jurisdictions.[120] Many oil pollution litigants having lost confidence in the system of regulation and accountability in Nigeria are opting to pursue their claims in jurisdictions that they feel are not compromised financially or in value. Nigeria needs to wake up and be alive to its responsibilities to its citizens and the environment. An international best practice approach needs to be enforced in the country as there is no reason why a multinational company can adopt a higher standard of operations, response and pollution control in developed countries (e.g. with the Deepwater Horizon Spill off the Gulf of Mexico) but choose to adopt a practice that decimates the environment and lives of people in Nigeria. It is increasingly clear that if justice is denied in Nigeria, complainants can and will look elsewhere to attain it.

(iii) *Coherence of Laws and a Clear Regulatory Interface*

This work has shown that over the years, there have been numerous instances in which the laws at variance with one another have resulted in clashes and a lock of wills by various regulatory bodies. If the environment is to be properly and adequately protected especially from the effects of oil exploration and production activities, there has to be a coherence of laws and a clear pecking order when it comes to the regulatory oversight of the oil industry in Nigeria.

Laws should be reviewed and streamlined for efficiency. Operators within the petroleum industry must not be left in doubt about their duties and obligations, which should be clear cut and there must be no confusion about their reporting lines. Regulatory bodies are to be given unequivocal mandates within the remits of their operations and a synergy borne of continual co-operation between these regulatory bodies should be established. No regulatory body should be made to feel that they have the exalted position of overseeing the most desirable industry in the country to the detriment of other bodies. All regulatory bodies must have oversight and must be held accountable. Records should be easily available to the public and regular periodic audits should be made on these bodies and their modus operandi.

(iv) Strong Political Will

Despite the fact that Oil is the mainstay of the Nigerian economy, the Nigerian government has to adopt a system and approach in which it juxtaposes its immediate and short term pecuniary interests with the interests, well-being and protection of the environment and its citizens. Financial gains should not be put ahead of the well-being of the environment and people. It is imperative that Nigeria starts to stringently enforce legislation put in place to protect

the environment and ensures that companies, bodies and everyone complies with laid down laws and regulation. To this end, adequate funding, technology, equipment and manpower must be provided for the relevant regulators to enable them competently carry out their duties. No company, body or authority should be sacred, and none should be above the law or exempt from complying with laid down laws and regulations. If the oil companies see that there are no exemptions granted to any individual, company, body or authority, they will have no choice but to comply with the laid down laws and regulations or risk losing their mining or exploration leases/licences, as is the case in developed countries. The Nigerian government needs to ensure that the interests, health and good quality of life of its citizens and the environment are protected, not just for this present generation, but those yet unborn.

3.2 Conclusion

This research has shown that the current laws in place in Nigeria are inadequate in ensuring that the environment is sufficiently protected, as many of the laws are dated and most of them were not enacted to cope with the level of pollution that the oil industry has exposed the country to. In addition, Nigeria has shown very little political will to stringently regulate its oil industry and put the protection of the environment ahead of its pecuniary interests. In the current economic climate with the reliance the country has on oil and the embarrassing issue of institutionalised corruption, Nigeria appears to be currently incapable of effectively regulating its oil industry and ensuring compliance with the law by the powerful economic actors (and indeed the Nigerian government and its agencies). It has therefore become imperative that new paths are forged which put the environment front and center of the exploration and production of oil in the country and it is hoped that the suggestions proffered above would be a solid place to proceed.

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years — Minister' (06 July 2021)*Premium Times*<https://www.premiumtimesng.com/news/headlines/471901-nigeria-records-4919-oil-spills-in-6-years-4-5trn-barrels-stolen-in-4-years-minister.html>accessed 19/05/2023. Also, Saint, E., 'Timeline: Half a century of oil spills in Nigeria's Ogoniland' (21 December 2022) *Aljazeera*<https://www.aljazeera.com/features/2022/12/21/timeline-oil-spills-in-nigerias-ogoniland#:~:text=Since%20oil%20was%20discovered%20in,oil%20spill%20incidents%20have%20happened.> accessed 19/10/2023.

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[17] Y. Omorogbe, *Oil and Gas Law in Nigeria*, (Lagos: Malthouse Press Limited, 2001) 137.

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[25] Section 4.

[26] Section 20 (2&3) of the FEPA Act.

[27] Section 5(g) of the FEPA Act.

[28] Section 5(h) of the FEPA Act.

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[30] Omorogbe, ibid at 139.

[31] No. 86 of 1992.

[32] Subsequently known as Act No. 59 of 1992.

[33] Subsequently the Federal Ministry of the Environment and the Department of Petroleum Resources.

[34] Section 2.

[35] The projects on the Mandatory Study List are specified in the Schedule to the Act.

[36] Emphasis supplied. Section 14(d).

[37] Section 7.

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[39] T. Dadiowei, T., *Environmental Impact Assessment and Sustainable Development in the Niger Delta: The Gbarain Oil Field Experience* (Working Paper No.24, 2009) <http://oldweb.geog.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/Dadiowei_24.pdf>accessed 25/10/2023. It has been alleged in this working paper that Shell rejected an initial EIA report which did not favour their operation. Pages 19 – 21 of the paper.

[40] The Nigerian arm of Friends of the Earth.

[41] Dadiowei, ibid at 19.

[42] Dadiowei, ibid at 20.

[43] Suit No: FHC/CS/B/126/2005 (Unreported).

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[47] Particularly Shell. Ted Studies, 'Ogoni and Oil - Nigeria Petroleum Pollution in Ogoni Region', Case No. 149 <http://www.american.edu/TED/OGONI.HTM>accessed 24/09/2023.

[48] The DPR was one of the regulatory bodies scrapped by the Petroleum Industry Act 2021, however due to the importance it played as a regulator of the petroleum industry, it has been included here.

[49] Section 10 of the Nigerian National Petroleum Corporation Act.

[50] It should be made clear at this point that statutorily it was the duty of the Minister of Petroleum Resources to grant licences and leases. The DPR however vetted and processed all applications for such licenses and leases; as well as made the necessary recommendations to the Minister for consideration.

[51] Department of Petroleum Resources, 'About DPR: Historical Background'<http://www.dprnigeria.com/aboutus.html> accessed 29/03/2022.

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[53] A. Morocco-Clarke and F. Abubakar Sodangi, 'Not Far Enough?: An Assessment of the Regulation of the Nigerian Oil Industry' (2023) African Journal of Law and Human Rights, Vol 7, No 1. Pg. 117 at 124. <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/view/2528/2602> Accessed 22/10/2023.

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[59] A.O. *Adeyemo, Assessing Environmental Protection and Management Systems in West Africa: A Case Study of Nigeria*(Southern Illinois University at Carbondale, (ISBN: 9780549733898; Publication No. AAT 1456946, 2008) 79. <http://www.geography.siu.edu/pdfFiles/Graduate/GradPapers/Adeyemo.pdf>accessed 18/03/2023).

[60] Issued by the Department of Petroleum Resources in 1991. Revised and re-issued in 2002, 2018 and updated in 2022. It is commonly assumed that the EGASPIN were issued based on the powers conferred by to Section 9(1) (b) (iii) of the former Petroleum Act which gives the Minister the power to make regulations with regards to "the prevention of pollution of water courses and the atmosphere." However, there is a dichotomy regarding the legal status of the EGASPIN as nowhere in the document is it stated pursuant to what Act or Regulation it is made. Indeed, the United Nations Environment Programme (UNEP) which conducted a field research of Ogoniland which lasted about fourteen months was unable to clarify whether or not the EGASPIN is a legally enforceable instrument or a non-enforceable guideline.

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[61] Comprising of 361 pages divided into 8 parts.

[62] Morocco-Clarke and Sodangi, ibid at125.

[63] United Nations Environment Programme, ibid at 138. It must be stressed here that the EGASPIN is not a piece of legislation as stated by the UNEP as it is neither a law nor a regulation, but only a series of guidelines stipulating standards and the manner upon which companies/operators which carry out operations in the Nigerian petroleum industry are supposed to conduct these operations.

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[66] Benebo, ibid at 2.

[67] Hereinafter referred to as NESREA.

[68] National Environmental Standards and Regulations Enforcement Agency,'About NESREA: The Establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA)'<http://www.nesrea.org/about.php> accessed 02/08/2023.Also Benebo, ibid.Further, Okenwa, ibid.

[69] The NESREA Act 2007 was accented to by the Nigerian. President on the 30th of July, 2007. Once it came into law, the FEPA Act was repealed. Also The Federal Ministry of Environment of Nigeria, 'NESREA'<http://environment.gov.ng/about-moe/departments-agencies/agencies-paralstatals/national-environmental-standards-regulatory-and-enforcement-agency-nesrea/>accessed 03/08/2022.

[70] Section 20 of the constitution states that "the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria." By virtue of Section 2 of the NESREA Act, the NESREA shall "...have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines."

[71] Federal Ministry of Environment of Nigeria, 'NESREA', ibid.The NESREA has the vision and mission of ensuring "a cleaner and healthier environment for Nigerians" and "to inspire personal and collective responsibility in building an environmentally conscious society for the achievement of sustainable development in Nigeria" respectively. Also Benebo, ibid at 3.

[72] i.e. the NESREA.

[73] Emphasis added.

[74] Emphasis added.

[75] Emphasis added.

[76] Emphasis added.

[77] Emphasis added.

[78] Emphasis added.

[79] Emphasis added.

[80] The exclusion of the oil and gas industry from the ambit of NESREA runs through the entire gamut of the NESREA Act. See Section 8(g), which specifies that the NESREA is empowered to conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage. Sections 8(k), (l), (m), (n) & (s), as well as Sections 24(3), 29 and 30(1)(a) contain similar provisions which state that the scope of the authority of the NESREA does not extend to the oil and gas sector. The notable exception to the foregoing which has been identified above is Section 7(c) of the NESREA Act, which gives the NESREA the power to enforce compliance with international agreements, protocols, conventions and treaties on the environment including those covering oil and gas. It thus leads to the question, how can the NESREA carry out its functions as stated in sub-sections (c) and (e) of Section 7 of the NESREA Act (especially sub-section (c)) without running afoul of the provisions of sub-sections (g), (h), (j), (k) and (l) of the same section. This is more so because most Treaties and Conventions are not enforceable within a State unless and until they have been transposed into domestic law and this is the case with the Treaties in question in sub-section (c). Section 7 of the NESREA Act appears to give powers to the NESREA with one hand, but take it away with the other. It must however at this point be stated that so far, the NESREA's conduct of its functions and duties have been such as they do not involve the petroleum industry as issues involving the petroleum industry are left to the DPR and NOSDRA.

[81] Benebo, ibid at 3.

[82] L. Carney, 'Nigeria Fears E-Waste 'Toxic Legacy'' (19 December 2006) *BBC World Service's Dirty Business*<http://news.bbc.co.uk/1/hi/world/africa/6193625.stm>accessed 18/08/2023.Also G. da Costa, 'Nigerian Official says E-Waste Dumping is Crime Against Humanity', (23 July 2009) *Voice of America*<http://www.voanews.com/english/news/a-13-2009-07-23-voa34-68653672.html>accessed 18/08/2023. Further,D. de Guzman, 'E-waste Dumping in Nigeria', (19 February 2009) *ICIS Green Chemicals*<http://www.icis.com/blogs/green-chemicals/2009/02/e-waste-dumping-in-nigeria.html>accessed 18/08/2023.And P. Ibe, 'Ship Laden With Toxic Waste 'Heading for Nigeria'', (15 April 2010) *allAfrica.com*<[http://allafrica.com/stories/201004150384.html>accessed 18/08/2023.

[83] The National Oil Spill Detection and Response Agency (Establishment) Act No. 15 of 2006.

[84] Federal Ministry of Environment of Nigeria, 'NOSDRA'<http://environment.gov.ng/about-moe/departments-agencies/agencies-paralstatals/national-oil-spill-detection-and-response-agency-nosdra/>accessed 16/08/2021). AlsoNational Oil Spill Detection and Response Agency, '*Foreword',*<http://www.nosdra.org/foreword.html>accessed 18/03/2023.

[85] Section 5 of the NOSDRA Act.

[86] United Nations Environment Programme, 'Environmental Assessment of Ogoniland', ibid.

[87] ibid at 139.

[88] ibid at pg. 206.

[89] Morocco-Clarke and Sodangi, ibid.

[90] C. Mba, 'Only 2% of Oil Spillages cleaned up in 5 years due to NOSDRA's dependent relationship on Oil Companies in Nigeria' (2 July 2021) *Dataphyte*<https://www.dataphyte.com/latest-reports/development/only-2-of-oil-spillages-cleaned-up-in-5-years-due-to-nosdras-dependent-relationship-on-oil-companies-in-nigeria/> Accessed 23/10/2023.

[91] ibid.

[92] Mongabay, 'Latest Nigeria oil spill highlights 'wretched' state of the industry' (24 February 2022) *Mongabay*<https://news.mongabay.com/202

2/02/latest-nigeria-oil-spill-highlights-wretched-state-of-the-industry/> Accessed 23/10/2023.

[93] ibid.

[94] Section 310 of the PIA.

[95] Chapter A25 Laws of the Federation 2004.

[96] Chapter N124 Laws of the Federation of Nigeria 2004.

[97] Chapter N123 Laws of the Federation of Nigeria 2004 (as amended), when NNPC ceases to exist pursuant to Section 54(3) of the PIA.

[98] Chapter P13 Laws of the Federation of Nigeria 2004, upon completion of the conversion process under Section 92 of the PIA.

[99] As amended upon completion of the conversion process under Section 92 of the PIA.

[100] Section 3.

[101] Sections 4-28 and 312.

[102] Sections 29-52 and 313.

[103] Section 104.

[104] Section 107.

[105] By virtue of the Environmental Impact Assessment (EIA) Act.

[106] See Section 2 of the EIA Act.

[107] Emphasis supplied. See Section 14(d). Oil exploration and production Activities firmly fall under this provision, since licences have to be acquired from the government before any of these activities are undertaken.

[108] See Section 7 of the EIA Act.

[109] See Section 9 of the EIA Act.

[110] See the cases of Ikechukwu *Okpara & 7 Others v. Shell Petroleum Development Company of Nigeria Limited & 6 Others*[Suit No: FHC/CS/B/126/2005 (Unreported)], *Ikechukwu Okpara & 3 Others v. Shell Petroleum Development Company of Nigeria Limited & 5 Others* [Suit No. FHC/PH/CS/518/2005 (Unreported)] and *Gbemre v. Shell Petroleum Development Company of Nigeria Limited & Others* [Suit No. FHC/CS/B/153/2005], where all the plaintiffs in all three cases raised issues before the court regarding non-compliance with the provisions of the EIA Act by the defendant(s).

[111] Which were made to implement Council Directive 85/337/EECon the assessment of the effects of certain public and private projects on the environment.

[112] Where the amount extracted is more than 500 tonnes per day for oil and 500,000 cubic metres per day for gas (except where it is a by-product of the drilling or the testing of any well).

[113] Regulation 4.

[114] Regulation 16.

[115] *Milieudefensie and Others v. Royal Dutch Shell Plc.* (2021) ECLI:NL:RBDHA:2021:5339. (case number: C/09/571932 / HA ZA 19-379).

[116] 45% compared to its 2019 levels.

[117] R. Bousso, B.H. Meijer and S. Nasralla, 'Shell ordered to deepen carbon cuts in landmark Dutch climate case', (26 may 2921) *Reuters* <https://www.reuters.com/business/sustainable-business/dutch-court-orders-shell-set-tougher-climate-targets-2021-05-26/> accessed 31/10/2023.

[118] *Four Nigerian Farmers and Stichting Milieudefensie v. Royal Dutch Shell Plc and another* [2021] ECLI:NL: GHDHA:2021:132 (Oruma), ECLI:NL:GHDHA:2021:133 (Goi) and ECLI:NL:GHDHA:2021:134 (Ikot Ada Udo).

[119] [2021] UKSC 3.

[120] In 2023, another case was filed in the London High Court, UK against Shell by natives of the Nigerian Niger-Delta for oil pollution resulting in damages and loss of livelihood. See M. Dzirutwe, 'Nigerian communities file damages claim against Shell in London court' (02 February 2023) *Reuters*<https://www.reuters.com/world/africa/nigerian-communities-file-damages-

claim-against-shell-london-court-2023-02-02/> accessed 31/10/2023. Also, S. Meredith, 'More than 13,000 Nigerian residents take Shell to court over oil spills', (02 February 2023) *CNBC*<https://www.cnbc.com/2023/02/02/over-13000-nigerians-take-shell-to-court-over-devastating-oil-spills.html#:~:text=Over%2013%2C000%20residents%20from%20two,and%20compensate%20devastating%20environmental%20damage.> accessed 31/10/2023.