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To cite this article: Felicia A Anyogu and Empire Hechime Nyekwere ‘Appraisal of the Legal and Institutional Framework for Sustainable Environmental Management in Nigeria’ (2020-2021) 16 *The Nigerian Juridical Review*, pp 155 – 176.

To link to this article: <https://doi.org/10.56284/tnjr.v16i1.18>

APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR SUSTAINABLE ENVIRONMENTAL MANAGEMENT IN NIGERIA

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Abstract

The legal and institutional framework for sustainable environmental management (SEM) in Nigeria consists of the laws and statutory institutions (agencies) regulating the environment. There are several laws and institutions which seek to protect and sustainably manage the Nigerian environment from degradation, especially, through the activities of the oil and gas companies operating in the country. Oil and gas exploration, extraction, and production in Nigeria, especially, in the Niger Delta region of the country, have caused severe environmental degradation in the region, owing to the legacy of decades of oil spills and gas flaring. Despite the laws and institutions intended to protect and sustainably manage the Nigerian environment, the nation's environment keeps deteriorating at an alarming rate. The aim of this paper is to appraise the laws and institutions expected to sustainably protect and manage the environment of Nigeria. The paper adopted the doctrinal research methodology and generated its data through local statutes, case laws, policy documents, textbooks, journal articles, seminar papers, manuscripts, newspaper reports, monographs, some unpublished works, and internet websites. The paper carefully examined the principal laws in Nigeria dealing with environmental protection and management with a view to reviewing their provisions and the method of environmental protection and management through these laws. Also, the paper examined the principal statutory institutions or agencies regulating the Nigerian environment with a view to achieving national environmental sustainability. The paper found that the laws enacted to protect the Nigerian environment are generally weak on the account of some flaws contained therein. The paper also found that the statutory institutions established to enforced environmental laws are ineffective in their enforcement mandate.

Keywords: Sustainable development, oil pollution, ecosystem degradation, agencies, regulation

1. Introduction

Nigeria, particularly, its Niger Delta region, represents a closely woven, long-standing relationship between people and the environment. Nigeria's Niger Delta region is the largest wetland in Africa and among the third largest in the world.¹ About 2,370sq/km of Nigeria's Niger Delta consists of rivers, creeks, estuaries and stagnant swamps cover approximately 8600sq/km, the Delta mangrove swamp

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¹S C Izah, 'Ecosystem of the Niger Delta region of Nigeria: Potentials and Threats' (2018) 2 (4) *Biodiversity International Journal* 339; CNP Okonkwo, L Kumar and S Taylor, 'The Niger Delta wetland ecosystem: What threatens it and why should we protect it?' (2015) 9 (5) *African Journal of Environmental Science and Technology* 452.

spans about 1900sq/km as the largest mangrove swamp in Africa.² Nigeria's environment, among others, harbours a tropical rainforest ecosystems comprising of diverse species of flora and fauna, aquatic and terrestrial species, and a coastal area of mangrove vegetation traversed by many rivers, tributaries and creeks.³ Nigeria is blessed with abundant natural resources, including large oil and gas deposits, extensive forests, good agricultural land, and water resources supportive of numerous species of terrestrial and water-living organisms.⁴

Since pre-colonial days, oil and gas has played a crucial role in the Nigerian economy. However, the exploitation of oil and gas has hampered the nation's potential for environmental sustainability as one fundamental problem that faces Nigeria today is the degradation of its environment.⁵ The Nation's future is being threatened by environmental degradation and deteriorating economic conditions which are not being addressed by present policies and actions.⁶ Land resource degradation, renewable resource depletion and oil and gas pollution are now the irreversible consequences of prolonged dependence on oil and gas exploitation by the nation.⁷ The rich biodiversity of Nigeria, especially, its Niger Delta region, is under threat from unsustainable oil and gas mining activities. Nigeria has lost a large portion of its protected areas in the last five decades as a result of these pressures.⁸

²UC Anochie and OM Onyinye, 'Evaluation of Some Oil Companies in the Niger Delta Region of Nigeria: An Environmental Impact Approach' (2015) 3 (2) *International Journal of Environment and Pollution Research* 16; LF Awosika, 'Impacts of Global Climate Change and Sea Level Rise on Coastal Resources and Energy Development in Nigeria' in JC Umolu (ed), *Global Climate Change: Impact on Energy Development* (Damtech Nigeria Limited 1995).

³See NC Ugochukwu, *Sustainable Environmental Management in the Niger Delta Region of Nigeria: Effects of Hydrocarbon Pollution on Local Economy* (Unpublished PhD Thesis, Faculty of Environmental Sciences and Process Engineering, Brandenburg University of Technology Cottbus, 2008) 29; E Hutchful, 'Oil Companies and Environmental Pollution in Nigeria' in A Claude (ed), *Political Economy of Nigeria* (Longman Press 1985) 114; See World Bank, *Defining an Environmental Development Strategy for the Niger Delta, Nigeria* (1st edn, World Bank, 1995) 24.

⁴See HY Okhumode, 'Addressing Environmental Health Problems in Ogoni land through Implementation of United Nations Environment Program Recommendations: Environmental Management Strategies' (2017) 4 (2) *Environments* 28.

⁵Ugochukwu (n 3); See AO Atubi, 'Effects of Oil Spillage on Human Health in Producing Communities of Delta State, Nigeria' (2015) 4 (8) *European Journal of Business and Social Sciences* 15.

⁶See Ugochukwu, *ibid* 27.

⁷*Ibid* 28; UJ Ibok, 'Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta' (2013) 1 *American Journal of Environmental Protection* 70.

⁸See IUCN Niger-Delta Panel, 'Sustainable Remediation and Rehabilitation of Biodiversity and Habitats of Oil Spill Sites in the Niger Delta: Main Report including Recommendations for the Future' A Report by the Independent IUCN-Niger Delta Panel (IUCN-NDP) to the Shell Petroleum Development Company of Nigeria (SPDC) (Gland, Switzerland: IUCN

The environment of Nigeria has been deteriorating at an alarming rate due to unsustainable oil and gas exploitation. A number of oil pollution impact assessment studies suggest that the high levels of pollution from oil and gas operations in Nigeria, particularly, in the Niger Delta region of the country, has severely impacted habitats, livelihoods and people.⁹ Decades of a near complete lack of attention to environmental concerns have turned Nigeria, especially, its Niger Delta region, into one of the world's most endangered ecosystems; an epicentre of human rights abuses and environmental injustice.¹⁰ Thus, an urgent need exists to implement mechanism to protect the life and health of the region's inhabitants and its environmental systems from further deterioration.¹¹

This paper which aims to appraise the legal and institutional framework for SEM in Nigeria is divided into five parts. Part one is the introduction, part two discuss the legal framework for SEM in Nigeria, while part three examined the institutional framework for SEM in Nigeria. Part four x-rayed the challenges to the legal enforcement of environmental laws in Nigeria, while the paper concludes with recommendations in part five.

2. Legal Framework for Sustainable Environmental Management in Nigeria

This section examines some select laws enacted to protect and sustainably manage the Nigerian environment, especially, the Niger Delta region, against environmental pollution and degradation, especially from the activities of the oil and gas operations. They include the Constitution of the Federal Republic of Nigeria 1999; the Harmful Waste (Special Criminal Provisions, etc) Act; the Petroleum Industry Act; the Petroleum Act; the Oil in Navigable Waters Act; the Oil Pipelines Act and the Environmental Impact Assessment Act. The relevant provisions of these laws are discussed in some detail in the following paragraphs.

2.1 Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999)

One of the objectives of Part II of the CFRN 1999 (Fundamental Objectives and Directive Principles of State Policy) is to ensure a safe and improved environment for the citizenry. Section 20 clearly obligates the state to 'protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'. By this provision, activities, including those aimed at achieving an economically vibrant state, must be carried out in a manner that achieves the purpose set out in section 20 of the CFRN 1999. This position is further strengthened by the provision

2013) (IUCN Niger-Delta Panel Report); See UNDP Niger Delta Human Development Report 2006 (United Nations Development Programme, Abuja: Nigeria, 2006) 185.

⁹ Ibid; See UNEP, *An Environmental Assessment of Ogoni land* (United Nations Environment Programme 2011); O OEmoyan and IA Akpoborie and EE Akporhonor, 'The Oil and Gas Industry and the Niger Delta: Implications for the Environment' (2008) 12 (3) *Journal of Applied Sciences and Environmental Management* 29.

¹⁰ Ugochukwu (n 3) 28; See EC Odogwu, 'Impact of Environmental Regulations on the Petroleum Industry: Economic and Social Considerations' in A Claude (ed), *Political Economy of Nigeria* (London and Lagos: Longman Press 1885); A Babatunde, 'The Impact of Oil Exploitation on the Socio-Economic Life of the Ilaje-Ugbo People of Ondo State, Nigeria' (2010) 12 (5) *Journal of Sustainable Development in Africa* 7.

¹¹ Atubi (n 5).

of section 17(2)(d) which forbids the exploitation of human or natural resources in any form whatsoever for reasons, other than for the good of the community.¹²

While section 20 of the CFRN 1999 at first sight appears to give some hope for the environment by providing that ‘the State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria,’ it has in most cases been interpreted as a non-justiciable right on the ground that it falls under Fundamental Objective and Directive Principles of State Policy (FODPSP) as contained in Chapter II of the CFRN 1999. Rights under FODPSP are believed to be non-justiciable,¹³ and therefore, lacks judicial enforcement in Nigeria since by virtue of section 6(6)(c) of the CFRN 1999: The judicial powers vested in accordance with the foregoing provisions of this section – shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.¹⁴ Unfortunately, as envisaged by section 6(6)(c), there is no other provision for the protection of the environment in the CFRN 1999.¹⁵

The interpretation of section 20 of the CFRN 1999 as a non-justiciable right by the Nigerian courts, for several years, rendered those seeking to judicially enforce their environmental rights incapable of doing so.¹⁶ The attitude of the Nigerian courts is well illustrated in *NNPC v Fawehinmi*,¹⁷ where the Nigerian Supreme Court held that the provisions of Chapter II of the Constitution are wholly unenforceable under any guise whatsoever and remain mere governmental aspirations. Also, in *AG Ondo State v AG Federation*,¹⁸ the Supreme Court stated that the provision of section 6(6)(c) of the Constitution makes rights under the FODPSP non-justiciable except as otherwise provided in the Constitution. Further, in *Archbishop Olunmi Okogie (Trustees of Roman Catholic Schools) and Ors v The Attorney General of Lagos State*,¹⁹ the Court of Appeal held that section 6(6)(c) of the Constitution makes rights outlined under FODPSP as contained in

¹²F O Ugbaja, *Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach* (Unpublished Master's Thesis, Faculty of Law, University of Calgary, Alberta, Canada 2016) 53.

¹³RO Ugbe and ME Umo, ‘Enforcement Provisions of Major Environmental Law Regimes in Nigeria’ (2015) *5University of Ibadan Law Journal* 233; F Olarewaju, ‘Reappraising the Nigerian Constitution for Environmental Management’ (2002) 1 (1) *AAU Law Journal* 44.

¹⁴CFRN 1999, s 6(6)(c).

¹⁵See TT Onifade, *Legal and Institutional Framework for Promoting Environmental Sustainability in Nigeria through Renewable Energy: Possible Lessons from Brazil, China and India* (Master's Thesis, Faculty of Law, University of Ibadan, Nigeria 2014) 47.

¹⁶Ibid.

¹⁷*NNPC v Fawehinmi* [1998] 7 NWLR (Pt 559).

¹⁸*AG Ondo State v AG Federation* [2002] 9 NWLR (Pt 772).

¹⁹*Archbishop Olunmi Okogie & Ors v Attorney General of Lagos State* [1981] 2 NCLR 337 350.

Chapter II of the CFRN 1999 non justiciable.²⁰ However, the growing trend in the jurisprudence of human rights, especially, through the African Charter on Human and Peoples Rights (ACHPRs), have rendered the notion of non-justiciability of section 20 of the CFRN 1999 untrue. In *Jonah Gbemre v SPDC*,²¹ the Federal High Court held that gas flaring violated the right of the plaintiff to enjoy a healthy environment as provided by Article 24 of the African Charter and the constitutional guaranteed right to life and dignity of persons provided for in sections 33 and 34 of the CFRN 1999. The Court which ordered SPDC to stop gas flaring in the plaintiff's community affirmed that the constitutionally guaranteed rights to life and dignity of persons inevitably includes the rights to a clean, poison-free and healthy environment and that the actions of the defendants in continuing gas flaring was a violation of the rights.²² It is however, noteworthy, that the decision of the court is yet to be enforced as gas flaring has continued in Nigeria till date.

Also, in *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAP) v Nigeria*,²³ the African Commission on Human Rights held that the Federal Government of Nigeria (FGN) and its multinational oil partners operating in the Niger Delta region had violated the environmental rights of the Ogonis, as provided for in Article 24 of the ACHPRs, in the process of oil exploration and production activities. The Commission took cognisance of the fact that the Federal Republic of Nigeria had incorporated the African Charter into its domestic law with the result that all the rights contained therein can be invoked in Nigerian courts including the environmental rights violations alleged by the plaintiff.²⁴ This case and the case of *Jonah Gbemre v SPDC* is a clear manifestation of how the provisions of the ACHPRs can help to protect the right to a clean and healthy environment in Nigeria.²⁵

2.2 Harmful Waste (Special Criminal Provisions, Etc) Act²⁶

This Act was the first enactment directed at protecting the Nigerian environment. The Harmful Waste (Special Criminal Provisions, etc) Act 1988 No 42 was enacted as a consequence of the illegal dumping of toxic wastes in Koko Port, Bendel State (now Delta State) in 1988 to provide the legal framework for the effective control of the disposal of toxic and hazardous waste into any environment within the

²⁰ See generally, E OEkhator, 'Improving Access to Environmental Justice under the African Charter on Human and Peoples Rights: The Roles of NGOs in Nigeria' (2014) 22 (1) *African Journal of International and Comparative Law* 71.

²¹ *Gbemre v Shell* [2005] FHC/B/C/153/05.

²² T Rhuks, 'The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India' (2010) (3) *NUJS Law Review* 436.

²³ *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAP) v Nigeria*, Communication No 155/96.

²⁴ Rhuks (n 22) 434.

²⁵ E Emejuru, MA Ebikake-Nwanyanwu and C Ajie, 'Right to a Healthy Environment in Nigeria and other Jurisdictions: A Legal Assessment' (2020) 8 (3) *Global Journal of Politics and Law Research* 11; AB Abdulkadir, 'The Right to a Healthful Environment in Nigeria: Review of Alternative Pathways to Environmental Justice in Nigeria' (2014) 3 (1) *Afe Babalola University Journal of Sustainable Development, Law, and Policy* 125.

²⁶ Harmful Waste (Special Criminal Provisions, etc) Act Cap H1 LFN 2004.

confines of Nigeria.²⁷ The act prohibits and declares unlawful the carrying, depositing and dumping of harmful waste on any land, terminal waters and matters relating thereto. Section 1(1) of the Act prohibits all activities relating to purchase, sale, importation, transit, transportation, deposit and storage of harmful waste. The Act makes it a general offence for anyone to deal with harmful waste.²⁸ Section 2 of the Act provides that any person who, without lawful authority, carries, deposits, dumps or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways shall be guilty of a crime.

The Act in section 6 provides penalties for any person found guilty of violating the provisions of sections 1 to 5 of the Act. Section 1-5 of the Act talks about crimes against the environment. It is because of the importance of leaving in an environment that is not polluted that the Act provided for stiff penalties for any person that violates the law. In the light of this, Section 6 provides that, ‘Any person found guilty of a crime under sections 1 to 5 of this Act shall on conviction be sentenced to imprisonment for life and in addition (a) any carrier, including aircraft, vehicle, container and any other thing whatsoever used in the transportation or importation of the harmful waste; and (b) any land on which the harmful waste was deposited or dumped, shall be forfeited to and vest in the Federal Government without any further assurance other than this Act’.²⁹

Section 7 of the Act provides punishment for environmental crime committed by corporate body. It provides that ‘Where a crime under this Act has been committed by a body Corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of- (a) A director, manager, secretary or other similar officer of the body Corporate; or (b) Any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, he as well as the body corporate shall be guilty of the crime and shall be liable to be proceeded against and punished accordingly’.³⁰

The summary of the provisions of both sections 6 and 7 of the Harmful Waste Act is that anyone found contravening the provisions of the Act will on conviction be sentenced to imprisonment for life, forfeit to the Federal Government of Nigeria any carrier used in the transportation or importation of the harmful waste deposited or dumped by corporate bodies, including any director, manager, secretary or any

²⁷N Echefu and E Akpofure, ‘Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework’ *Law, Policy and Institutional Arrangements* (UNEP EIA Training Resource Manual- Case Studies from Developing Countries, Case Study 7) 63 <<https://www.iaia.org/pdf/case-studies/EIANigeria.pdf>> accessed 12 August 2021; See GS Ogbodo, ‘Environmental Protection in Nigeria: Two Decades After the Koko Incident’ (2009) 15 (1) *Annual Survey of International & Comparative Law* 2.

²⁸C Mordi and others, Corporate Social Responsibility and the Legal Regulation in Nigeria’ (2012) 64 (1) *Economic Insights – Trends and Challenges* 3.

²⁹Harmful Waste Act (n 34), s 6(a)(b).

³⁰Ibid s 7(a)(b).

other similar officer of such corporate bodies, will be held liable, if found guilty of contravening the provisions of the Act

The provisions of the Act can be applied to oil pollution (a major cause of environmental degradation in Nigeria, especially, in the Niger Delta region) which falls within the definition of ‘harmful waste’ in the Act. In other words, for proper understanding of the protection of environment by the Act, reference to the interpretation of section 15 of the Act is imperative. ‘Harmful waste’ according to section 15 of the Act³¹ means anything injurious, poisonous, toxic, or noxious substance. The activities of oil and gas companies will certainly come within the ambit of this provision. It therefore means that any oil company that pollutes the environment will be caught by the provisions of the Act. In summary, if the provision of the Act is religiously complied with, the environment will be safe, healthy, and clean particularly for the residence of the oil producing areas because environmental degradation by oil companies will be at its minimal.³²

2.3 Petroleum Industry Act (PIA)

The PIA contains provisions that seek to protect the Nigerian environment, especially the Niger Delta region of the country. The PIA provides for a mechanism to tackle oil spillage and gas flaring induced environmental pollution and degradation in Nigeria.³³ Section 102 of the PIA 2021 provides that a licensee or lessee who engages in upstream or midstream petroleum operations is required to within one year or six months of the effective date or after the grant of the applicable license or lease, submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority as the case may be.³⁴ The plan shall be approved where it complies with relevant Environmental Acts and the applicant has the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.³⁵

The PIA 2021 also made provisions for financial contribution for remediation of environmental damage. Section 103 of the PIA 2021 provides that as a condition for the grant of a license or lease and prior to the approval of the environmental management plan, the licensee or lessee is required to pay a prescribed financial contribution to an environmental remediation fund for the rehabilitation or management of negative environmental impacts of the petroleum operation. The

³¹Ibid s 15.

³²A Ibrahim, *Assessment of the Legal and Institutional Framework for the Prevention of Environmental Degradation by Oil and Gas Companies in Nigeria* (PhD Thesis, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria 2014) 98.

³³SN Dambatta, ‘Effects of the Petroleum Industry Act’ *The Cable* (Lagos, 25 November 2021).

³⁴PIA Act 2021, s 102 (1) (a)&(b).

³⁵Ibid, s 102(3) (a)&(b); Resolution Law Firm, ‘Nigeria: Overview of the new Petroleum Industry Act 2021’ (21 September 2021) <<https://www.mondaq.com/nigeria/oil-gas-electricity/1113104/overview-of-the-new-petroleum-industry-act-2021>> accessed 24 January 2022.

financial contribution will take into account the size of the operations and the level of environmental risk that may exist.³⁶

Further, the PIA addresses the issue of gas flaring by prohibiting the flaring or venting of natural gas. Section 105 of the PIA provides that a licensee or lessee shall pay a penalty prescribed pursuant to the Flare Gas (Prevention of Waste & Pollution) Regulations.³⁷ Also, section 104(1) of the PIA provides that a licensee, lessee or marginal field operator that flares or vents gas, except in the case of an emergency, pursuant to an exemption granted by the Commission, or as an acceptable safety practice under established regulations, commits an offence under this Act and is liable to a fine as prescribed by the Commission in regulations under this act.³⁸

To better protect the Nigerian environment from the adverse effects of gas flaring and encourage gas utilization in the country,³⁹ section 52 of the PIA establishes a Midstream and Downstream Gas Infrastructure Fund (MDGIF), which shall be financed primarily from the 0.5% levy on the wholesale price of petroleum and natural gas sold. The Fund is expected to be deployed as equity investments of Government-owned participating or shareholder interests in infrastructure related to midstream and downstream gas operations to increase domestic gas utilization (consumption of Natural Gas in Nigeria) and encourage investments in gas projects, while also eliminating gas flaring.⁴⁰ Furthermore, based on the PIA, gas flaring penalties arising from midstream operations will also be credited to the MDGIF for environmental remediation and relief of the affected host communities of the settlor on which the fine is levied.⁴¹ Also, section 108 of the PIA requires a licensee or lessee producing natural gas to prepare and submit a natural gas flare elimination and monetization plan to the Nigerian Upstream Regulatory Commission (NURC). However, the PIA 2021 outlines the conditions in which gas may be flared in Nigeria. Section 107 of the PIA 2021 provides that the Commission or the Authority may grant a permit to a licensee or lessee to allow the

³⁶PIA Act 2021, s 103(1) and (2).

³⁷PIA 2021, s. 105; S Bhadare, 'Nigeria Petroleum Industry Act brings positive change' *African Law and Business News Analysis* (London, 2 September 2021).

³⁸PIA 2021, s. 104(1)(a),(b)&(c).

³⁹'Petroleum Industry Act – A New Era for the Nigerian Oil and Gas Upstream Industry' *Vanguard Newspaper*, (Lagos, 22 September 2021); Highlights of the Petroleum Industry Act, 2021 <<https://www.manifieldsolicitors.com/2021/09/16/highlights-of-the-petroleum-industry-act-2021/>> accessed 8 April 2021.

⁴⁰Petroleum Industry Act – A New Era for the Nigerian Oil and Gas Upstream Industry *ibid*; Highlights of the Petroleum Industry Act, 2021 *ibid*; S N Dambatta; Analysis of Petroleum Industry Act 2021 in Nigeria (Bomes Resources Consulting, 30 September 2021) <<https://www.bomesresourcesconsulting.com/review-petroleum-industry-act-2021-nigeria.html>> accessed 8 April 2022.

⁴¹O Maiye and T Kolade, Nigeria: Petroleum Industry Act 2021: Opportunities for Key Industry Players (24 August 2021) <<https://www.mondaq.com/nigeria/oil-gas-electricity/1104754/petroleum-industry-act-2021-opportunities-for-key-industry-players>> accessed 8 April 2022; Petroleum Industry Act – A New Era for the Nigerian Oil and Gas Upstream Industry (n 39); Highlights of the Petroleum Industry Act, 2021 (n 39).

flaring or venting of natural gas for a specified period- (a) where it is required for facility start-up; or (b) for strategic operational reasons, including testing.⁴²

2.4 Petroleum Act⁴³

The Petroleum Act is one of the laws not repealed by section 310 of the PIA. By virtue of the saving provisions of section 311 of the PIA 2021, the Petroleum Act shall continue to be in effect until the termination or expiration of all oil prospecting licenses and oil mining leases granted under the Petroleum Act that is subsisting at the effective date of the PIA 2021.⁴⁴ The Petroleum Act and the regulations made thereunder contain provisions that seek to protect and sustainably manage the Niger Delta environment. Section 9(1) of the Act⁴⁵ provides that the minister may make regulations for the prevention of pollution of water courses and the atmosphere.

The Petroleum (Drilling and Production) Regulation 1969⁴⁶ which was issued pursuant to the Petroleum Act in its Regulation 25 seeks to ensure that oil operators do not pollute the environment in the course of drilling and production by providing that a holder of an oil exploration and or oil prospecting licenses shall, ‘Adopt all practicable precautions including the provision of up-to-date equipment approved by the Chief Petroleum Engineer (Department of Petroleum Research) to prevent the pollution of inland waters, rivers, water courses, the territorial water of Nigeria or the high seas by oil mild or other fluid or substances which might contaminate the water, banks or shore line or which might cause harm or destruction to fresh water or marine life, and where any such pollution occurs or has occurred will take prompt steps to control and, if possible, end it’.

Under Regulation 37 oil operators are enjoined to carry out their operations in a proper and workmanlike manner and to take reasonable steps to among others, prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuarine or harbour, and cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property thereon.⁴⁷

2.5 Oil in Navigable Waters Act (ONWA)⁴⁸

The ONWA 1968 prohibits the discharge of oil or any mixture containing oil into the sea and territorial or navigable inland waters of Nigeria.⁴⁹ Section 1(1) of the Act provides that ‘If any oil to which this section applies is discharged from a Nigerian ship into a part of the sea which, in relation to that ship, is a prohibited sea

⁴²PIA 2021, s 107(a) and (b).

⁴³Petroleum Act, Cap P10 LFN 2004.

⁴⁴ PIA 2021, s 311(2)(c) and (9)(a).

⁴⁵Ibid, s 9(1)(b)(iii).

⁴⁶Petroleum (Drilling and Production) Regulation, Regulation 25; M T Abdulmumini, *An Assessment of Liabilities of Oil Producing Companies for Oil Spillage in Nigeria* (Masters Thesis, Faculty of Law, Ahmadu Bello University, Zaria, Nigeria 2013) 45.

⁴⁷Petroleum (Drilling and Production) Regulation, Regulation 37(d)&(e).

⁴⁸Oil in Navigable Waters Act, 1968, Cap O6 LFN 2004 (hereinafter, ONWA).

⁴⁹See Abdulmumini (n 46) 45.

area, or if any mixture containing not less 100 parts of Oil to which this section applies is discharged from such a ship into such a part of the sea, the owner or master of the ship shall, subject to the provisions of this Act, be guilty of an offence under this section'.⁵⁰

Section 3 of the Act provides that (1) if any oil or mixture containing oil is discharged into waters to which this section applies from any vessel, or from any place on land, or from any apparatus used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel), then subject to the provisions of this Act- (a) if the discharge is from a vessel, the owner or master of the vessel; or (b) if the discharge is from a place on land, the occupier of that place; or (c) if the discharge is from apparatus used for transferring oil from or to a vessel, the person in charge of the apparatus, is guilty of an offence under this section.⁵¹ Sub section 2 provides that this section applies to the whole of the sea within the seaward limits of the territorial waters of Nigeria; and all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.⁵²

The Act imposes obligation on ship owners to install anti-pollution equipment for the purpose of preventing water pollution. Section 5(1) of the Act further provides that for the purpose of preventing or reducing discharges of oil and mixtures containing oil into the sea, the minister may make regulations requiring Nigerian ships to be fitted with such equipment and to comply with such other requirements, as may be prescribed.⁵³

The primary purpose of the provisions of sections 1(1), 3 and 5(1) is to prevent the sea (water environment) from oil pollution by discouraging oil operators and owners or masters of ship from discharging oil from their ships into the sea in the course of transporting oil or oil related product by ship. Compliance with the provision of the Act will certainly prevent pollution of the sea by ships which will result in a clean, safe, and healthy environment.⁵⁴

Section 6 of the Act prescribes penalties for violations of the provisions of sections 1, 3 and 5⁵⁵ by providing that: A person guilty of an offence under sections 1, 3, or 5 of this Act shall, on conviction by a High Court or a superior court or on summary conviction by any court of inferior jurisdiction, be liable to a fine: provided that an offence shall not by virtue of this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding N2,000.⁵⁶

⁵⁰ONWA (n 47) s 1(1).

⁵¹Ibid s 3(1)(a-c).

⁵²Ibid s 3(2)(a-b).

⁵³Ibid s 5(1).

⁵⁴Abdulmumini (n 44).

⁵⁵Oil in Navigable Waters Act (n 47), ss. 1, 3, 5 and 6.

⁵⁶Ibid s 6.

2.6 Oil Pipelines Act (OPA)⁵⁷

The OPA, enacted in 1956, contains model provisions that, where effectively used, could protect the Nigerian environment from the impacts of oil and gas developments.⁵⁸ The OPA and the regulations made pursuant to it, govern the grant of permits and licenses for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining and for ancillary purposes. The OPA seeks to regulate the transportation of oil and gas through pipelines in order to effectively protect the environment from oil spills and pollution arising therefrom.⁵⁹ Section 17(4) of the OPA provides that ‘Every license shall be subject to the provisions contained in this Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public utility in, over and under the land included in the license and the prevention of pollution of such land or any waters as may from time to time be in force.’⁶⁰

Regulation 8(b) of the Oil and Gas Pipeline Regulations (OGPRs) of 1995 provides that where the pipeline crosses or passes within 100 metres of a watercourse, the operator shall assure the Department that adequate contingency plans have been made for protecting the environment. Additionally, Regulations 9(a)(ii), (b)(ii) and (iii) of the OGPRs of 1995 provides that a licensee shall establish a written emergency plan for implementing in the event of systems failure, accidents or other emergencies which shall include procedures for prompt and expedient remedial action for the protection of property and the environment and the control of accidental discharge from the pipeline.⁶¹ To further protect the environment from damage resulting from oil pipelines operations, Part four of the OPA provides for the payment of compensation to a person whose land was adversely affected by pipeline operations or who suffered damage due to a permit holder’s neglect or due to pipeline breakage or leakage.⁶²

2.7 Environmental Impact Assessment (EIA) Act⁶³

The EIA Act was enacted in 1992 as the core legislation that governs environmental impact assessment in respect of proposed projects in Nigeria. It is particularly directed at regulating the industrialization process with due regard to the environment. By the provisions of the Act, no industrial plan/development/activity of both public and private sector of the economy can be executed without prior consideration of the environmental consequences of such a

⁵⁷Oil Pipelines Act Cap O7 LFN 2004.

⁵⁸F O Ugbaja (n 16) 67; See O Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria’s Oil Producing Communities* (Intersentia Publishing, United Kingdom 2014) 137.

⁵⁹FO Ugbaja ibid 67.

⁶⁰Oil Pipelines Act (n 57) ss 17(4) and 33(c).

⁶¹Oil and Gas Pipeline Regulations of 1995, Regulations 9(a)(ii), (b)(ii)&(iii).

⁶²Oil Pipelines Act (n 57), ss. 11(5) &20(2); See O Ayotunde, *Legal and Institutional Framework for Multi-Stakeholder Participation in Oil and Gas Management in Nigeria: Perspectives on the Multi-Stakeholder Dialogue Approach* (Master’s Thesis, University of Saskatchewan, Saskatoon, Canada 2016) 61.

⁶³Environmental Impact Assessment (EIA) Act, 1992, Cap E12 LFN 2004 (hereinafter, EIA Act).

proposed action, in the form of an environmental impact assessment. In other words, the EIA Act made environmental impact assessment mandatory for both public and private sectors for all development projects.⁶⁴ Section 2(2) of the EIA Act requires that where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment should be carried out before undertaking such projects.⁶⁵

If in the opinion of the Federal Ministry of Environment (FME), the project is likely to cause significant adverse environmental effects that cannot be mitigated and cannot be justified in the circumstances, it may refuse to grant a permit required to embark on the project in whole or in part.⁶⁶ An equally significant provision of the EIA Act is its requirement for the consultations of persons where the proposed projects are likely to have a substantial impact on the environment of surrounding villages and towns.⁶⁷ However, under the EIA Act, an impact assessment is not required for a proposed project in the following circumstances: where the President of Nigeria or the Federal Environmental Protection Council is of the view that the environmental impacts of the project may likely be minimal, the project is to be undertaken during national emergency period for which the government has taken temporary steps, and the Federal Ministry of Environment is of the view that such a project is in the interest of public health or safety.⁶⁸

Considering the laws discussed in this section, it may be safe to state that there are laws intended to sustainably manage and protect the Nigerian environment, including the Niger Delta region of the country, against oil and gas companies induced environmental pollution and degradation. However, the enforcement of these environmental laws has been a major challenge. Hence, the continued pollution and degradation of the Nigerian environment, especially, that of the Niger Delta region of the country.

3. Institutional Framework for Sustainable Environmental Management in Nigeria

This section looks at some select institutions (agencies) for sustainable environmental management in Nigeria. Key statutory institutions that currently regulate and manage the Nigerian environment include National Environmental Standards Regulation Enforcement Agency, National Oil Spill Detection and Response Agency, The Nigerian Upstream Regulatory Commission, Niger Delta Development Commission, and the Ministry of Niger Delta Affairs.

⁶⁴Ibid s 2(1); N Echefu & E Akpofure (n 27).

⁶⁵EIA Act (n 63) s. 2(2); See AA Ibrahim and others, 'Environmental impact Assessment in Nigeria - A Review' (2020) 8 (3) *World Journal of Advanced Research and Review* 332.

⁶⁶EIA Act, s 40(1)AND (b).

⁶⁷Ibid s 1(c).

⁶⁸EIA Act, s 15(1)(a) – (c). See generally, CC Ekeolisa, *Framework for Obligations Regarding Environmental and Human Rights Protection in Nigeria's Bilateral Investment Treaties* (Master's Thesis, College of Law, University of Saskatchewan, Canada) 7.

3.1 National Environmental Standards Regulation Enforcement Agency (NESREA)

NESREA was established in 2007 by the *NESREA Act*⁶⁹ as the lead environmental agency charged with the mandate of protecting the Nigerian environment and ensuring compliance with enacted environmental laws.⁷⁰ Section 2 of the NESREA Act saddles NESREA with the 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, polices and guidelines.⁷¹ Thus, section 2 empowers the NESREA to act for the environmental good of the country by ensuring a sustainable environment for Nigerians through the enforcement of existing environmental laws as well as regulations made pursuant to the *NESREA Act 2007*.⁷²

Section 7 of the NESREA Act provides for the functions of NESREA. These functions include enforcing compliance with laws, guidelines, policies and standards on environmental matters; coordinating and liaising with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations and enforcement; enforcing compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force; enforcing compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement; enforcing compliance with guidelines and legislations on sustainable management of the ecosystem, biodiversity conservation and the development of Nigeria's natural resources; enforcing compliance with any legislation on sound chemical management, safe use of pesticides and disposal of spent packages thereof.⁷³

Further, by the provisions of section 7(g)(h)(j)(k), NESREA is saddled with the functions of enforcing 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; enforcing 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; enforcing environment control measures through registration, licensing and permitting system other than in the oil and gas sector; conducting environmental audit and establishing data bank on regulatory and enforcement mechanisms of

⁶⁹National Environmental Standards Regulation Enforcement Agency (NESREA) Act 2007.

⁷⁰Ibid s 1(1); Ugbaja (n 12) 56; See MT Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) 8 (1) *Law, Environment and Development Journal* 120.

⁷¹NESREA Act (n 69) s 2; See Ladan, Ibid.

⁷²See Ugbaja (n 12) 56.

⁷³NESREA Act (n 69) s 7(a)(b)(c)(d)(e)(f).

environmental standards other than in the oil and gas sector; and creating 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.⁷⁴

To ensure compliance with the provisions of the NESREA Act and to enable the Agency to perform its functions diligently, section 8 of the Act made some enforcement powers available to the Agency and her officials. This includes the power to compel and conduct public investigations on pollution and the degradation of natural resources, except investigations on oil spillage; power to submit for the approval of the Minister, proposals for the evolution and review of existing guidelines, regulations and standards on environment other than in the oil and gas sector;⁷⁵ power to develop environmental monitoring networks, compile and synthesize environmental data from all sections other than in the oil and gas sector; at international levels, undertake, coordinate, utilize and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organizations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may, from time to time, determine; power to enter into agreement and contracts with public or private organizations and individuals to develop, utilize, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities other than in the oil and gas sector;⁷⁶ power to do such other things, other than in the oil and gas sector, as are necessary for the efficient performance of the functions of the Agency.⁷⁷

Section 29 which also stipulates that the agency ‘shall, in the face of pollution, co-operate with other government agencies for the removal of any pollution’ excludes the removal of oil and gas related pollution.⁷⁸ Another rather startling provision of the *NESREA Act* is in section 30 which expressly prohibits officials of the NESREA from enforcing any environmental regulations in the oil and gas sector.⁷⁹ It is rather interesting that Nigeria's principal environmental agency is under the provisions of section 29 of the NESREA Act prohibited from supervising or participating in the clean-up of any pollution resulting from oil and gas industry activities and from enforcing any environmental regulations in the oil and gas sector.

⁷⁴Ibid s 7(g)(h)(i)(j)(k)(l).

⁷⁵Ibid s 8(g)(k).

⁷⁶Ibid s 8(k)(l)(m)(n).

⁷⁷Ibid s 8(o)(p)(s).

⁷⁸Ibid s 29.

⁷⁹Ibid s 30(1)(a); See L Stevens, ‘The Illusion of Sustainable Development: How Nigeria's Environmental Laws are Failing the Niger Delta’ (2011-2012) 36 *Vermont Law Review* 397; Ugbaja (n 12) 59.

3.2 National Oil Spill Detection and Response Agency (NOSDRA)

NOSDRA was established by the NOSDRA Act⁸⁰ in 2006 as the lead agency with responsibility for preparedness, detection and response for all matters relating to oil spills management in Nigeria.⁸¹ The NOSDRA Act provides for certain objectives of the Agency ranging from monitoring and regulating oil spill; development, coordination and implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria,⁸² ensuring a safe, timely, effective and appropriate response to major or disastrous oil pollution; identify high-risk areas as well as priority areas for protection and clean up; establish the mechanism to monitor and assist or where expedient direct the response to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site.⁸³

Inasmuch as the functions of NOSDRA are partially embedded in the range of its objectives as detailed above, the NOSDRA Act for the avoidance of doubt, went on to specify the functions of NOSDRA in section 6 by providing that the Agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation in the petroleum sector including those relating to prevention, detection and general management of oil spills, oily wastes and gas flare; enforce compliance with the provisions of international agreements, protocols, conventions and treaties relating to oil and gas and oil spill response management and such other related agreements as may from time to time come into force; receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria; co-ordinate the implementation of the NOSCP as may be formulated, from time to time, by the Federal Government; co-ordinate the implementation of the NOSCP for the removal of hazardous and noxious substances as may be issued by the Federal Government pursuant to the NOSDRA Act.⁸⁴ In addition, section 7 of the NOSDRA Act provides for the special functions of NOSDRA.⁸⁵

Further, the NOSDRA Act empowers the agency to impose penalties upon an oil spiller for failure to report an oil spill incident within 24 hours and for failure to clean up polluted site to a reasonable extent. Section 6(2) of the Act specifically provides that an oil spiller is by this Act to report an oil spill to the Agency in writing, by fax or electronic mail not later than 24 hours after the occurrence of an oil spill in default of which the failure to report shall attract penalty in the sum of N2,000,000 for each day of failure to report the occurrence. Section 6(3) of the Act further provides that the failure to clean up the impacted site, to all practical extent including action plan for remediation within two weeks of the occurrence of the spill in accordance with the polluter pays principle shall constitute an offence and on conviction the oil spiller shall be liable to a fine not exceeding N5,000,000 or to

⁸⁰National Oil Spill Detection and Response Agency (Establishment) Act (NOSDRA Act), Cap N157 LFN 2006.

⁸¹Ibid ss. 1 and 19(2).

⁸²Ibid s 5.

⁸³Ibid s 5(a-c); See also s. 5(e-l) for other objectives of NOSDRA.

⁸⁴Ibid s 6(1)(a-e).

⁸⁵Ibid s 7(a-f).

imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.⁸⁶

3.3 Nigerian Upstream Regulatory Commission (NURC)⁸⁷

NURC, which repealed the Department of Petroleum Resources (DPR) and statutorily empowered to perform the functions of the defunct DPR,⁸⁸ is an agency of the Federal government established on the 18th of October 2021, following the passage and implementation of the Petroleum Industry Act (PIA).⁸⁹ The NURC has the mandate of environmental protection and management in compliance with the provisions of the PIA 2021. The NURC has among others, the objectives of promoting healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner;⁹⁰ ensuring strict implementation of environmental policies, laws and regulations for upstream petroleum operations; and⁹¹ enforcing health safety and environmental regulations in the oil and gas industry and ensuring that those operations conform to national and international best oil field standards and practices.⁹²

By the provision of section 102 of the PIA, the NURC is empowered to approve an environmental management plan (EMP) in respect of projects which require environmental impact assessment, only where such EMP complies with relevant Environmental Acts and the applicant has the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.⁹³ Also, section 103 of the PIA 2021 empowers the NURC to only grant a license or lease and approve the EMP of a licensee or lessee who has paid a prescribed financial contribution to an environmental remediation fund for the rehabilitation or management of negative environmental impacts of the petroleum operation.⁹⁴ It is hoped that the NURC will sufficiently discharge its statutory function of environmental protection and management by ensuring that petroleum industry operators do not continue to pollute the environment in the course of their operations. Recently, the Chief Executive Officer of the NURC, Gbenga Komolafe,

⁸⁶Ibid s 6(2) and (3).

⁸⁷Established by section 4 of the PIA 2021.

⁸⁸See O Udegbonam, 'Nigeria Scraps DPR, PPPRA, PEF as New Oil Agencies Take Off' *Premium Times* (19 October 2021); K Jeremiah, 'Finally, Government Scraps DPR, PPPRA, PEF for New Agencies' *The Guardian Newspaper* (Nigeria, 19 October 2021); E Addeh, 'Upstream Commission, Midstream/Downstream Authority Formally Begin Operations' *THISDAY Newspaper* (Nigeria, 19 October 2021).

⁸⁹PIA 2021, s 4(1).

⁹⁰Ibid s 6(d).

⁹¹Ibid s 9(i).

⁹²See Nigerian Upstream Regulatory Commission (NURC), 'Functions of NURC -What We Do' (NURC, 2021) <<https://www.nuprc.gov.ng/functions-of-nuprc/>> accessed 24 January 2022.

⁹³PIA, s 102(3)(a) and (b); Resolution Law Firm, 'Nigeria: Overview of the new Petroleum Industry Act 2021' (21 September 2021) <<https://www.mondaq.com/nigeria/oil-gas-electricity/1113104/overview-of-the-new-petroleum-industry-act-2021>> accessed 24 January 2021.

⁹⁴PIA 2021, s 103(1) and (2).

assured on the Agency's commitment to tackle oil spills in Nigerian communities in fulfilment of its regulatory mandate.⁹⁵ However, since the NURC was only set up on the 18th of October 2021, only time will tell how well the NURC will fare in discharging its mandate of environmental protection and management in compliance with the provisions of the PIA 2021.

3.4 Niger Delta Development Commission (NDDC)

NDDC is a Federal Government Agency established in 2000 by the NDDC Act⁹⁶ with powers to implement policies for the development of the Niger Delta region and protection of the region from environmental degradation among others.⁹⁷ The establishment of the NDDC is largely a response to the demands of the Niger Delta region that had for several years, confronted the Nigerian Government and multinational oil companies (MOCs) on the issue of extensive environmental pollution and degradation from oil activities of the MOCs that have operated in the region since the late 1950s.

Section 7(1) of the NDDC Act provides for the functions and powers of the Commission including its environmental functions. Section 7(1)(h) of the NDDC Act specifically provides that the NDDC shall tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta area and advise the Federal Government and the Member States on the prevention and control of oil spillages, gas flaring and environmental pollution.⁹⁸ Further, section 7(1)(i) of the NDDC Act provides that the NDDC shall liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control.⁹⁹

From the provisions of section 7(1)(h) & (i) of the NDDC Act, it is obvious that the NDDC operates under the mandate of improving environmental conditions in the Niger Delta region.¹⁰⁰ However, the Commission, like others referred to above, is not living up to expectation in terms of discharging its responsibilities. The commission is characterized by greed and corruption. It is more into who gets what than ensuring that the core objectives of the commission i.e., tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta area is achieved. Oil spill and gas flaring which are the major mediums of environmental degradation in the region are still on the increase.¹⁰¹ Recently, the

⁹⁵H Edeh, 'Upstream Regulatory Commission to explore provisions of PIA in tackling oil spills, says CEO' (International Centre for Investigative Reporting (ICIR), December 6, 2021) <<https://www.icirnigeria.org/upstream-regulatory-commission-to-explore-provisions-of-pia-in-tackling-oil-spills-says-ceo/>> accessed 20 February 2022.

⁹⁶Niger-Delta Development Commission (Establishment, Etc) Act Cap N86 LFN 2004 (hereinafter, NDDC Act).

⁹⁷See NDDC Act, s 1; See Ayotunde (n 62) 88.

⁹⁸NDDC Act, s 7 (1)(h).

⁹⁹Ibid s 7 (1)(i).

¹⁰⁰See Ibrahim (n 40) 136,139; See PC Nwilo and OT Badejo, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas' 8 <<https://www.fig.net>>chapters>chapter_8> accessed 30 July 2018.

¹⁰¹Ibrahim (n 32).

Minister of Niger Delta Affairs-Senator Godswill Akpabio was credited to have alleged that the majority of the NDDC projects were awarded to the National Assembly members.¹⁰² Because of the high level of corruption, the Commission is notorious for cases of abandoned projects meant to prevent environmental degradation and contribute to the sustainability of the Niger Delta environment.¹⁰³

3.5 Ministry of Niger Delta Affairs (MNDAs)

MNDAs was established by the Nigerian government in 2008, basically as an interventionist ministry to enhance, promote and coordinate government's efforts to tackle the challenges of infrastructural development, environmental protection and youth employment in the Niger Delta Region of the country.¹⁰⁴ To fulfil its environmental protection function, the MNDAs established an Environmental Management (EM) Department with the mandate to develop appropriate and effective strategies for restoring, conserving and protecting the environment of the Niger Delta Region.¹⁰⁵ However, it is asserted that the Ministry was created as a measure of placating the restive youths of the Niger Delta region. That it serves a political purpose of peace at that time but has now become a counterproductive measure. The existence of two bodies, that is, NDDC and MNDAs result in overlap in the discharge of their responsibilities. It is in the light of this, that many Nigerians argued that the creation of the MNDAs is superfluous, given the fact that the NDDC is sufficiently empowered by law to address the issues in the region.¹⁰⁶ The allegation of non-performance and duplication of ministry seems to be the major criticisms of MNDAs. The region has not change for good since the creation of the ministry as it is arguably alleged that the MNDAs has not made any concrete effort to tackle the problem of environmental pollution and degradation in the region.¹⁰⁷

4. Challenges to the Legal Enforcement of Environmental Laws in Nigeria

It is hardly arguable that environmental policies and legislation no matter how beautifully conceived towards the protection of the Nigerian environment will at best be an exercise in futility and of little significance unless and until they are

¹⁰²D Elumoye and A Akinwale, 'Akpabio Fires Back, Lists Senators, House Members Awarded NDDC Contracts' *THISDAY Newspaper* (Lagos, 27 July 2020); AM Jimoh and J Osahon, 'Akpabio's Letter Exposes Senators, Reps in NDDC Contract Scams' *The Guardian Newspaper* (Lagos, 27 July 2020); L Nwabughio, 'NDDC Contracts Beneficiaries: Akpabio Finally Names Senators, Reps' *Vanguard Newspaper* (Lagos, 27 July 2020).

¹⁰³Ibrahim (n 32) 14.

¹⁰⁴C Ochay, 'Buhari's Determination for a New Niger Delta Sacrosanct-Akpabio' *Vanguard Newspaper* (Lagos, 25 June 2021); 'Nigeria: Why We Created Niger Delta Ministry, By Yar'Adua' *THISDAY* (Lagos, 12 September 2008) <<https://allafrica.com/stories/200809120002.html>> accessed 12 August 2021.

¹⁰⁵ Ministry of Niger Delta Affairs, Environmental Management <<https://www.nigerdelta.gov.ng/index.php/departments-units/environmental-management>> accessed 10 March 2020.

¹⁰⁶ Ibrahim (n 32) 136.

¹⁰⁷Ibid.

accompanied by effective means of enforcement and compliance. This section identifies and discusses the challenges to the legal enforcement of environmental laws in Nigeria

4.1 Inadequate Penalties or Punishments for Violators of Environmental Laws

The penalties or punishments prescribed by the laws for offenders or violators of environmental laws are in most cases, low and inadequate and thus, not deterrent enough to compel compliance with environmental laws. For example, sections 1, 3 and 5 of the ONWA prohibit discharge of oil into the waters of Nigeria and mandates ships to install anti-pollution equipment for the purpose of preventing water pollution.¹⁰⁸ If the above provisions are violated, the violator (ship owner or master) will be liable and guilty of an offence and will pay a fine of N2,000 for such violation.¹⁰⁹ The authors regards the punishment of a fine of N2,000 too small and grossly inadequate to serve the purpose of this law as it is not likely going to serve as an effective tool for deterrence to polluters of the environment, especially, the oil and gas companies operating in the Niger Delta region.¹¹⁰

Also, there is no provision in the NOSDRA Act that specifically imposes fines for an oil spill incident; only failure to report an incident and to clean up and remediate the impacted (polluted) site within two weeks of the occurrence of the spill is punishable.¹¹¹ This provision is particularly concerning, as an oil spiller who would have assumed an obligation to report an oil spill incident may prefer to pay the fine of two million naira rather than engage in the clean-up process. This situation then removes deterrence and fosters an environment where the law is observed more in its breach than in compliance. Besides, the violators are usually multinational companies that are extremely rich and can afford to pay the fine with ease.¹¹²

4.2 Exemptions in Environmental Laws that Impedes Enforcement of its Provisions

There are exceptions in some environmental laws that impede the enforcement of their provisions by environmental enforcement agencies. For example, under the EIA Act, an impact assessment is not required for a proposed project where the President of Nigeria or the Federal Environmental Protection Council is of the view that the environmental impacts of the project may likely be minimal, the project is to be undertaken during national emergency period for which the government has taken temporary steps; and the Federal Ministry of Environment is of the view that such a project is in the interest of public health or safety.¹¹³ These exceptions are

¹⁰⁸See ONWA, ss. 1, 3 & 5.

¹⁰⁹Ibid s 6.

¹¹⁰Ibrahim (n 32) 93-94.

¹¹¹See NOSDRA Act, s 6(2)&(3).

¹¹² Ugbaja (n 12) 61.

¹¹³See EIA Act, s 15(1)(a-c).

mostly responsible for non-compliance with the provisions of the EIA Act.¹¹⁴ The last exception that allows non-compliance with the environmental impact assessment requirement appears to counteract the entire objective of the EIA Act. This is because the only way to determine whether a project is safe or healthy for the public is by assessing its potential impacts on the environment.¹¹⁵

Also, the PIA which prohibits the flaring or venting of natural gas and imposed penalties on violators, equally allows the flaring or venting of natural gas for a specified period under certain conditions, such as where it is required for facility start-up; or (b) for strategic operational reasons, including testing.¹¹⁶ These exceptions in the PIA which allows gas flaring may defeat the original intention of the PIA to put a stop to gas flaring in Nigeria.

4.3 Lack of Awareness of the Existence of Environmental Rights in Nigeria

Ignorance of the existence of the right to a healthy environment based on the notion of non-justiciability of section 20 of the CFRN 1999 has for several years hindered the enforcement of environmental laws. This lack of awareness of the existence of environmental rights was further promoted by the interpretation of section 20 as a non-justiciable right as evidenced in the cases of *NNPC v Fawehinmi*,¹¹⁷ *A.G. Ondo State v A.G. Federation*,¹¹⁸ and *Archbishop Olubunmi Okogie (Trustees of Roman Catholic Schools) and Ors v The Attorney General of Lagos State*,¹¹⁹ where the Nigerian Court held that the provisions of Chapter II of the 1999 Constitution, including environmental rights provisions of section 20, are non-justiciable and therefore, unenforceable in Nigeria.

Most Nigerian are not yet aware that the growing trend in the jurisprudence of human rights, especially, through the African Charter on Human and Peoples Rights (ACHPRs), have rendered the notion of non-justiciability of section 20 of the CFRN 1999 untrue, as illustrated in the cases of *Jonah Gbemre v SPDC*,¹²⁰ and *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAP) v Nigeria*,¹²¹ where both the Nigerian court and the African Commission on Human Rights held that Nigerians have a right to a healthy environment.

4.4 Placing more Value on Economic Benefits over Environmental Protection

In the seemingly steady struggle between environmental protection and economic development, economic considerations still influence government's decisions in

¹¹⁴ CC Ekeolisa (n 68); See E Oshionebo, *Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study* (University of Toronto Press 2009) 59.

¹¹⁵Ekeolisa (n 68) 38.

¹¹⁶See PIA 2021, s 107(a) and (b).

¹¹⁷*NNPC v Fawehinmi* (n 17).

¹¹⁸*AG Ondo State v AG Federation* (n 18).

¹¹⁹*Okogie & Ors* (n 19).

¹²⁰*Gbemre* (n 21).

¹²¹ *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights (SERAP)* (n 23).

environmental protection issues in Nigeria.¹²² This is well illustrated by the fact that the NESREA Act, the most comprehensive piece of legislation ever enacted for the sustainable management of the environment in Nigeria,¹²³ clearly exempted itself from providing protection to the environment against pollution arising from oil and gas companies in Nigeria. Sections 7, 8, 29 and 30 of the NESREA Act expressly exclude the Agency from entertaining issues of environmental pollution arising from the activities of oil and gas companies, which arguably accounts for more than 90 per cent of environmental pollution and degradation in Nigeria.¹²⁴

4.5 Lack of Political Will on the Part of Government to Enforce Environmental Laws

A major challenge in the enforcement of environmental laws in Nigeria seems to be a lack of political will on the part of government to enforce the provisions of the laws. For example, in the case of *Jonah Gbemre v SPDC*, the court gave a judgment that SPDC should stop gas flaring since 2005, but the Nigerian government has since displayed the lack of political will to enforce this judgment through its environmental institutions (agencies).

5. Conclusion

It is obvious that several environmental laws and statutory regulatory institutions have been put in place by successive governments in Nigeria to protect and sustainably manage the Nigerian environment against environmental pollution especially arising from the oil and gas sector. Yet, the Nigerian environment, particularly, the Niger Delta Region of the country, is presently today, a typical global example of a negatively degraded environment through unsustainable oil exploration and exploitation. There are basically, two reasons for the degraded state of the Nigerian environment, particularly, the Niger Delta region of the country. Firstly, there are some flaws in the laws designed to protect the nation's environment, which includes, inadequate penalties or punishments for violators of environmental laws, exemptions in environmental laws that impedes enforcement of its provisions, and lack of awareness of the existence of environmental rights in Nigeria. Secondly, there are factors making the environmental regulatory agencies ineffective in enforcing the laws, which includes placing more value on economic benefits over environmental protection and lack of political will on the part of government to enforce environmental laws. It is in the light of the above that the authors recommend the following in order to achieve the protection and sustainability of the Nigerian environment:

- (i) The laws examined should be reviewed and amended in line with the observations made therein for effectiveness.

¹²² See generally, J Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment' (1997) 15 *Boston Univ Intl LJ* 291.

¹²³ Ugbaja (n 12) 56.

¹²⁴ *Ibid.*

- (ii) Stiffer penalties and punishments should be enshrined in the laws enacted for environmental protection.
- (iii) Government should create awareness, educate, and enlighten the citizens on the existence of environmental rights and the need to judicially enforce same.
- (iv) Government should strike a balance between economic development and environmental protection.
- (v) Government should exert strong political will to enforce environmental laws.