

**STATUTORY CONTROL OF OIL POLLUTION IN NIGERIA:  
THE NEW PETROLEUM INDUSTRY ACT REGIME\*<sup>1</sup>**

**Abstract**

*Pollution has posed a great danger to mankind in the world today and by virtue measures are taken to control the disposal of wastes to preserve the sanitation of the environment making it conducive for people to inhabit in. The 1999 Constitution have vested upon the National Assembly the power to make laws for the peace, order and good government of the Federation. The National Assembly possesses Concurrent Legislative power in respect of items specified under the Concurrent Legislative, by virtue, residual matters are vested upon the National Assembly. Pursuant to these provisions various legislations dealing with environment have been enacted. This position is further enhanced by Section 20 of the Constitution which provides for the protection and improvement of the environment and safeguards the water air and land, forest and wild life in Nigeria. Therefore, there is a fundamental mission upon the state to create legislation that will protect and sustain a sanitary environment in the state. The aim of this paper is to examine the existing laws on Pollution control and the current Petroleum Industry Act, 2021 to see if the new regime has assisted in reducing the incidences of pollution.*

**Keywords:** Pollution Control, Statutory Control, Petroleum Industry, PIA Regime.

**1. Introduction**

It has been observed in recent times that the role the environment play to a nation's development process cannot be relegated to the background. Apart from being the physical surrounding for natural habitats, the environment provides the basis for human exploits for agricultural, industrial, commercial, technological and tourism development of a society. For this and several other reasons, environmental issues now occupy a centre stage in academic discourse and other public fora both at the national and international levels. Recorded evidence has also shown that the environment represents a wide range of the external circumstances, conditions and the things that affect the existence and development of an individual, organism, group and/or society. In Nigeria for instance, environmental issues did not gain official prominence until the 1988 Koko toxic waste dumping saga which also brought to the fore the exigent need to establish the Nigeria Federal Environmental Protection Agency (FEPA), Federal Ministry of Environment and other relevant agencies, ostensibly to tackle environmentally related issues, in the country. These include issues such as environmental pollution, sanitation, depletion of ozone layer, desertification, flooding, erosion, poverty, bush burning, deforestation, soil conservation etc. All these mentioned above are a pointer to the fact that issues of environment and in fact environmental pollution which forms the basis of this paper has taken a centre stage in the nation's (Nigeria's) development process.

The enforcement of environmental laws in Nigeria is a basic fundamental on the part of the government to ensuring sustenance of a sanitary and orderly state. The relevance of environmental legislations to the economic, social and political wellbeing and development of Nigeria cannot be overemphasized. It is undisputable that in the course of development of the state could bear unprecedented degradation to the environment. Therefore, every developmental plan and programme, which is primarily based on benefitting human urge to attain economic comfort, poses some threat to the environment. This urge for development, coupled with the need for a pollution free environment poses a tough question whether we should prioritize development over a cleaner environment? It is a difficult ask as it is counter-intuitive to claim that we want development oblivious of the results on the environment. Likewise, we cannot opt for a clean environment if the result is underdevelopment. A pollution free environment is the goal; however, industrialization has proven to be a major short coming to that effect. In respect to that, efforts have been made to foster eco-friendly development, with the aim of ensuring a proper balance between developmental policy and environmental policy. The government aims to achieve this through the enactment of statutes to ensure that development does not degrade the environment. This article will review the relevant statutes addressing oil pollution in the country.

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## 2. What is pollution?

'Pollution'<sup>2</sup> is the contamination of the earth's environment<sup>3</sup> with materials that interfere with human health, the quality of life or the natural functioning of ecosystems.<sup>4</sup> According to the Nigerian National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 'pollution' is defined as 'the man-made or man-aided alteration of the chemical, physical or biological quality of the environment beyond acceptable limits'.<sup>5</sup> Thus, an environment is deemed polluted when it is altered in composition or condition directly or indirectly as a result of human activities such that it becomes less suitable for all or some of the uses for which it was naturally suitable.<sup>6</sup> Generally, sources of pollution are classified into 'point sources'<sup>7</sup> and 'non point sources',<sup>8</sup> while pollutants are categorised into two broad categories namely: 'biodegradable pollutants'<sup>9</sup> and 'non biodegradable pollutants'.<sup>10</sup>

## 3. Environmental pollution in Nigeria

In Nigeria, varying degrees of pollution afflict the environment in the form of air pollution,<sup>11</sup> water pollution,<sup>12</sup> land pollution<sup>13</sup> and noise pollution. However, the effects of pollution are most obvious in the highly populated urban areas and the Niger Delta region. The need to protect the environment cannot be over-emphasised.<sup>14</sup>

## 4. Highly populated urban areas

Highly populated cities in Nigeria like Lagos, Ibadan, Benin, Onitsha, Aba, Kano and Port-Harcourt face a serious environmental pollution crisis. Pollution in these cities is mostly caused by blocked drains or poor drainage systems, noise and carbon emissions from industries, homes, motor vehicles, generators, improper incineration of wastes, decomposing trash dumps<sup>15</sup> and improper disposal of industrial and domestic wastes.<sup>16</sup> Environmental pollution in urban areas has been shown to have grave implications on public health. For example, the results of

<sup>2</sup> The term 'pollution' is derived from the Latin word 'polluere' which means 'dirt' or 'to make dirty'. See Encarta Dictionaries (Microsoft Corporation 2007).

<sup>3</sup> The 'environment' is defined to mean the components of the earth such as land, water, air including all layers of the atmosphere; all organic and inorganic matter and living organisms and their interaction with the natural system. See s 61(1) of the Environmental Impact Assessment Act Cap E12 LFN 2004; s 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (July 2007) 94/92 Official Gazette of the Federal Republic of Nigeria 31 (hereafter NESREA Act 2007).

<sup>4</sup> See P Engel King, 'Pollution' in Encarta Encyclopedia.

<sup>5</sup> See s 37 of the NESREA Act 2007.

<sup>6</sup> See AO Adenuga and others, 'Sustainability of the Environment and Pollution in Nigeria: Problems, Management and Policy Options' (2006) *Global Journal of Environmental Sciences* <<http://www.econwpa.wustl.edu>> last accessed 30 November 2010; I Ehighelua, *Environmental Protection Law* (New Pages Pub, Warri 2007) 3.

<sup>7</sup> Pollution is classified as originating from a 'point source' where it emanates from a single and identifiable source such as a discharge pipe from a factory, ditch, channel, tunnel, conduit, well, container or vessel. See s 37 of the NESREA Act.

<sup>8</sup> Pollution is classified as originating from a 'non point' source where it does not emanate from a single source or point. An example is where rainfall washes over land and carries away pollutants such as oil, pesticides and fertilisers, depositing them in lakes, rivers, wetlands, coastal waters and even into underground sources of drinking water. See <<http://www.waterencyclopedia.com/po-re/pollution-sources-pointandnonpoint.html>> last accessed 30 November 2010.

<sup>9</sup> Biodegradable pollutants are pollutants that are recyclable within the ecosystem such as materials that rapidly decompose within the ecosystem.

<sup>10</sup> Non biodegradable pollutants are pollutants that are not recyclable. They either do not decompose or decompose slowly into the natural environment. Once non biodegradable pollutants are released into the environment it becomes difficult or impossible to remove them. Mercury and radioactive materials are examples of non biodegradable pollutants. These materials can get into the food chain in the ecosystem through a process known as bioaccumulation. See Engel King (n 8).

<sup>11</sup> Air pollution is the release of toxic materials into the atmosphere resulting in damage to the environment and the life that exists in it.

<sup>12</sup> Water pollution is the contamination of water bodies like streams, rivers, lakes, seas, oceans and underground water sources as a result of the introduction of toxic substances that are harmful to living things.

<sup>13</sup> Land pollution is the degradation of land by human activities such as the dumping of harmful waste materials which are harmful to vegetation and agricultural production. See 'Soil Management' in Encarta Encyclopedia.

<sup>14</sup> Okongwu, C.J and Imoisi, S.E, 'Enhancing Environmental Litigation: The Key to Sustainable Environmental Protection in Nigeria,' *International Review of Law and Jurisprudence*, Vol. 2, No. 2, (May, 2020), 116

<sup>15</sup> Decomposing refuse heaps are a common sight in highly populated Nigerian cities. It is presently estimated that only about 30 to 50% of waste is collected in urban areas. See O Osibajo, 'Pollution and Waste: Issues and Management Strategies', National Environment Summit (Federal Ministry of Environment Housing and Urban Development, Abuja 20–21 October 2008) 16.

<sup>16</sup> Ibid. 20 See JO Adelan, *The History of Environmental Policy and Pollution of Water Sources in Nigeria (1960–2004): The Way Forward* (2004) <[http://web.fu-berlin.de/ffu/akumwelt/bc2004/download/adelan\\_f.pdf](http://web.fu-berlin.de/ffu/akumwelt/bc2004/download/adelan_f.pdf)> last accessed 30 November 2010. Nigeria is presently reputed to have the highest number of typhoid cases in the world. See Osibanjo (n 18) at 13.

scientific studies in some urban areas in Nigeria have revealed a direct link between environmental pollution in urban settlements and high mortality from certain diseases such as diarrhea, dysentery, cholera and typhoid<sup>17</sup>.

### **5. National Legal Frameworks**

Prior to 1988, legislative efforts to control environmental pollution were characterised by a total lack of awareness.<sup>18</sup> Concerns to control some forms of pollution such as industrial pollution were treated as an attempt to slow down industrialisation. Most of the laws that contained provisions on pollution abatement were inchoate and inadequate.<sup>19</sup> Nor was there a regulatory agency with the responsibility for pollution control. The turning point came in 1988 when the Nigerian Government discovered that toxic wastes had been dumped in Koko village in Delta State by five Italian ships. The incident clearly exposed the lack of legal and institutional capacity to address environmental pollution. In response, the Nigerian Government immediately set up a Ministerial Task Force to evacuate the toxic wastes and further enacted several laws on pollution abatement.<sup>20</sup> In this section, attempts will be made to review critically the relevant provisions of various national laws that deal with pollution abatement, including those that were enacted prior to 1988.

#### **Constitution of the federal Republic of Nigeria 1999 (as amended)**

The Nigerian Constitution recognises the importance of pollution control; accordingly, it provides in its fundamental objectives and directive principles of state policy<sup>21</sup> that ‘the state shall protect and improve the environment and safeguard the water air and land, forest and wildlife of Nigeria’<sup>22</sup>. In fulfilment of this objective, pollution abatement laws have been enacted in Nigeria.<sup>23</sup> However, present realities indicate that the enactment of pollution abatement laws appears not to have reduced environmental pollution in Nigeria. According to a writer, Nigeria is gradually being condemned to desolation and bareness by sustained and unmitigated pollution of her air, land and sea. Sometimes one wonders what will be the state of health of Nigerians in the next 20 years given the sustained and worsening nature of the scourge<sup>24</sup>. There also appears to be a connection between environmental pollution and the rise of violent armed struggle in the Niger Delta area<sup>25</sup>.

#### **Petroleum Act<sup>26</sup>**

The Petroleum Act was enacted in 1969 to regulate activities in the Nigerian petroleum industry. The Act provides that the Minister of Petroleum may make regulations concerning licences and leases granted under the Act and operations carried on thereunder including the prevention of the pollution of water ways and the atmosphere.<sup>27</sup> Some of the Regulations that have been made by the Minister of Petroleum in this regard include: the Petroleum (Drilling and Production) Regulations and the Petroleum Refining Regulations.

#### **Petroleum (Drilling and Production) Regulations<sup>28</sup>**

The Petroleum (Drilling and Production) Regulations mandate every holder of a licence or lease under the Regulations to adopt all practicable precautions including the provision of ‘up-to-date equipment’ to prevent oil pollution in Nigeria’s inland and territorial waters. It is also provided that where pollution occurs, that the holder of a licence or lease shall take prompt steps to control and end the effects of the pollution.<sup>29</sup> Regulation 37(d) provides that:

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<sup>17</sup> See JO Adelagan, *The History of Environmental Policy and Pollution of Water Sources in Nigeria (1960–2004): The Way Forward* (2004) <[http://web.fu-berlin.de/ffu/akumwelt/bc2004/download/adelagan\\_f.pdf](http://web.fu-berlin.de/ffu/akumwelt/bc2004/download/adelagan_f.pdf)> last accessed 30 November 2010. Nigeria is presently reputed to have the highest number of typhoid cases in the world. See Osibanjo (n 18) at 13.

<sup>18</sup> See S Ebomhe, ‘Environmental Legislation Changes in Nigeria: What Impact on Foreign Investment?’ <[http://www.geplaw.com/environmental\\_law.htm](http://www.geplaw.com/environmental_law.htm)> accessed 30 November 2010; L Atsegbua and others, *Environmental Law in Nigeria: Theory and Practice* (Ababa Press, Lagos 2004) 2–6.

<sup>19</sup> See A Adegoke, ‘The Challenges of Environmental Enforcement in Africa: The Nigerian Experience’ in *Proceedings of the Third International Conference on Environmental Enforcement* 43–54; Atsegbua and others (n 37).

<sup>20</sup> *Ibid.*

<sup>21</sup> See c II of the Constitution of the Federal Republic of Nigeria (1999) (hereafter CFRN).

<sup>22</sup> *Ibid.* s 20

<sup>23</sup> Most Nigerian pollution abatement laws were enacted prior to the 1999 Constitution. However, the Constitution recognises these laws as ‘existing laws’ and they are deemed an Act of the National Assembly. See CFRN s 315

<sup>24</sup> See AO Uzokwe, ‘Devastating Effects of Pollution in Nigeria’ <<http://www.nigeriaworld.com/columinist/uzokwe/081103.html>> accessed 20 June 2010

<sup>25</sup> See 1.2.2.

<sup>26</sup> Cap 350 LFN 1990, Cap P.10 LFN 2004.

<sup>27</sup> See s 9 of the Petroleum Act.

<sup>28</sup> LN 69 of 1967, Cap P. 10 LFN.

<sup>29</sup> Reg 25.

a licensee or lessee shall maintain all apparatus or appliances in use in his operation and all boreholes and wells capable of producing petroleum in good condition in accordance with the Regulations and practices accepted by the Director of Petroleum Resources and good oil field practices and ... take all steps practicable; to prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbor.

Additionally, a licensee or lessee is under an obligation to drain all waste oil, brine and sludge or refuse from all storage vessels, boreholes and wells in compliance with the safety regulations made under the Petroleum Act and dispose of them in a manner approved by the Director of Petroleum Resources.<sup>30</sup> It has been aptly observed that the enforceability of the Petroleum (Drilling and Production) Regulations depends on the interpretations to be given to such terms as 'practicable precautions', 'up-to-date equipment', 'prompt steps', 'good oil field practices' and 'good refining practice', as these terms were not defined in the Petroleum Act or in the Regulations.<sup>31</sup> The Regulations also fail to create provisions explicitly for sanctions.

### **Mineral and Mining Act<sup>32</sup>**

Section 8 of the repealed Mineral Oils Act allowed all regulation to be made pursuant thereto in respect of the exploration of mineral oils. Very importantly, the Petroleum Act<sup>42</sup> did not address the environmental problem caused by petroleum exploration activities. In fact, most of the regulations are concerned with the safety of the personnel working in the oil wells and safety precautions to be observed in the course of oil exploration activities. In line with this, there was in place an institutional structure for the implementation of the provisions of the Petroleum Act<sup>43</sup>. This of course led to the establishment of the Ministry of Petroleum Resources, with the Department of Petroleum Resources charged with the power to enforce the regulation. The Petroleum Regulation made pursuant to section 9 (I) of the Act relates to the grant and operation of leases and licenses. The aspect of the regulation that seeks to protect the environment is the conservation of petroleum resources and prevention of pollution of water courses and the atmosphere. It should be noted that this regulation, like the previous regulation, was not targeted at environmental protection, but an incidental regulation on the protection of the environment. Essentially, the Act and regulation created offences and imposed penalties for non-compliance, which include short term imprisonment and payment of meager amount of fines. The punishment is too inadequate for deterrence purposes.

### **Oil in Navigable Waters Act<sup>33</sup>**

The Oil in Navigable Waters Act was enacted in 1968 to implement the International Convention for the Prevention of Pollution of the Sea by Oil and also to make provisions for the prevention of oil pollution in the navigable waters of Nigeria.<sup>34</sup> The Act prohibits the discharge of oils such as: crude oil, fuel, lubricating oil and heavy diesel oil into prohibited sea areas.<sup>35</sup> Section 3 of the Act also prohibits the discharge of oil into Nigerian waters.<sup>36</sup>

### ***Defences under the Act***

Where a person discharges oil into Nigerian waters or in a prohibited sea area, criminal liability will not arise if the person proves that the oil was discharged for the purpose of securing the safety of any vessel or cargo; or that such discharge was for the purpose of preventing damage to any vessel or cargo or for the purpose of saving life.<sup>37</sup> It is also a defence for an offender to prove that the discharge was accidental and that it was caused by damage to the vessel or leakage and that reasonable care was taken to end the discharge. An offender under section 3 will be exempt from criminal liability where he/she proves that the discharge was caused by the act of a trespasser<sup>38</sup> or that the oil discharged was contained in an effluent produced during oil refining operations, and that it was not reasonably practicable to dispose of the effluent by any other means other than by discharging it into the water<sup>39</sup> and that all reasonable practical steps had been taken to eliminate oil from the effluent.<sup>40</sup> Apparently, the numerous defences that are available to an offender under the Act indicate that a higher priority is placed on protecting the offender and not on protecting the environment from oil pollution. Accordingly, it is suggested that defences under

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<sup>30</sup> Reg 40.

<sup>31</sup> See MTF Okorodudu, *Law of Environmental Protection: Materials and Texts* (Caltop Publications, Ibadan 1994); Ehiguelua (n 10) at 43.

<sup>32</sup> Cap M12 LFN 2004

<sup>33</sup> Cap 06 LFN 2004.

<sup>34</sup> See Preamble to the Act.

<sup>35</sup> *Ibid.* s 1.

<sup>36</sup> S 3(3).

<sup>37</sup> S 4(1). 57; S 4(2)(a) (b) & (3).

<sup>38</sup> S 4(4). 59 S 4(5)(a).

<sup>39</sup> S 4(5)(b).

<sup>40</sup> S 4(5)(c).

the Act should be reviewed to impose a strict liability on offenders in accordance with the 'polluter pays principle'.<sup>41</sup>

### ***Penalties for offences***

Where a person is guilty of discharging oil into Nigerian waters or into prohibited sea areas, such a person will be liable on conviction to a fine exceeding N2000 (US\$12.5).<sup>42</sup> Also where the owner or master of a vessel fails to report the discharge of oil into the waters of a Nigerian harbour, he will be liable to a fine exceeding N400 (US\$2.5) on conviction.<sup>43</sup> It is apparent, that the fines stipulated for offences under the Act are ridiculous and too low to serve as an effective deterrent or punishment. It has also been pointed out that the imprecise nature of punishments prescribed under the Act indicates that it would be practically difficult, if not impossible, to secure the conviction of any person under the Act.<sup>44</sup>

### ***Prosecution and enforcement***

Criminal proceedings for offences committed under the Act can only be instituted by the Attorney-General of Nigeria or with his consent.<sup>45</sup> In some specified cases, the Harbour or Ports Authority has the exclusive right to institute criminal proceedings against an offender.<sup>46</sup> However, other provisions of the Act do not specifically vest the powers of enforcing the Act in any regulatory agency. The powers of making regulations under the Act are vested in the Minister of Transport.<sup>47</sup> The Act fails to create provisions for citizens' suits, and the absence of this mechanism hinders public participation in the enforcement of the law.

### ***Compensation of victims and environmental rehabilitation***

The Act fails to provide explicitly for compensation to persons affected by oil pollution. However, it provides for the application of fines. Section 13(2) of the Act provides that: where a person is convicted for discharging oil into prohibited sea areas or in Nigerian waters and the court imposes a fine in respect of the offence, if it appears to the court that any person has incurred or will incur expenses in removing any pollution which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person towards defraying those expenses.<sup>48</sup>

It is observed that by the provisions of section 13(2), an offender is not liable for the cost of removing the pollution. Rather an offender is only liable to pay a fine exceeding the sum of N2000 (US\$12.5), which may be given to the person who will be responsible for restoring the polluted area. A review of this provision is suggested in order to make an offender liable for the total cost that has been incurred in restoring a polluted area.

### ***Oil Pipelines Act***<sup>49</sup>

The Oil Pipelines Act was enacted in October 1966 to regulate the granting of licences for the establishment and maintenance of oil pipelines.<sup>50</sup> Some provisions of the Act seek to prevent the pollution of lands and waters by oil pipelines. Under the Act, the holder of a permit to survey land for the purpose of laying an oil pipeline is required to take all reasonable steps to avoid unnecessary damage to any land entered in pursuance of the permit. However, where damage has been done to the land, the holder of the permit will be liable to pay compensation to the owners or occupiers of the land.<sup>51</sup> Accordingly, section 11 (5)(d) of the Act provides that: 'the holder of a licence shall pay compensation to any person suffering damage (other than on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation ...' This provision however implies that a person affected by oil pollution from an oil pipeline will be entitled to compensation except where the pollution is caused by his own default or by the malicious act of a third party such as sabotage. Thus, the provision creates a defence for the holder of an oil pipeline licence in the event of an action for compensation

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<sup>41</sup> The 'polluter pays principle' promotes the approach that the polluter should in principle bear the cost of pollution. See Principle 16 of the Rio Declaration on Environment and Development U.N.DOC.A/CONF.151/5/Rev 1, 31 ILM 874 (1992) <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> accessed 11 April 2011.

<sup>42</sup> S 6.

<sup>43</sup> S 10.

<sup>44</sup> See Ehighelua (n 10) at 41.

<sup>45</sup> Ibid. s 12(1).

<sup>46</sup> S 12(2).

<sup>47</sup> Ss 1(3), 2(3), 5(1) & (3), 7(1) & (2), 15 & 20.

<sup>48</sup> S 13(2).

<sup>49</sup> Cap O2 LFN 2004.

<sup>50</sup> See Preamble to the Act.

<sup>51</sup> S 6(3).

<sup>52</sup> Ibid

under section 11(5)(d) of the Act. The negative effect of this provision has been clearly illustrated in several cases. For example, in *Atubin v Shell Petroleum Development Company (SPDC)*<sup>53</sup> the plaintiff claimed damages for the escape of crude oil from the defendants' pipelines. The court dismissed the claim of the plaintiff on the ground that the oil spill was due to the act of vandals who damaged the pipeline and that the defendants could not be held liable for the acts of third parties not directly under their control. Also in *SPDC v Amachree*<sup>54</sup>, the plaintiff claimed N10 million as damages for an oil spill from the appellant's oil pipelines which had damaged the plaintiff's property. The Court of Appeal held that the appellant could not be held liable since there was a clear evidence of sabotage on an oil installation. Apparently, the purpose of section 11(5)(d) is to exempt the holder of an oil pipeline licence from liability where an oil spill is caused as a result of the sabotage of oil installations. This is intended to prevent criminally minded individuals from benefiting from their own act. For example, it is possible for criminal actors to vandalise pipelines and claim compensation or damages. However, studies have revealed that most oil spills in the oil producing areas and other parts of the country are caused by the use of faulty and obsolete equipment.<sup>55</sup> In this regard, the National Council on the Environment has noted thus: 'Most cases of oil spills across the country are results of old and faulty pipelines that were laid more than three decades ago. They have become obsolete resulting most of the time into rupture and equipment failure. Some of these pipelines are on the surface making them easy targets of vandalism'.<sup>56</sup>

Another factor that is worth mentioning is that when oil spills occur due to the rupture of an old or faulty pipeline, persons within the affected area are often more interested in collecting and selling the petroleum products being pumped through the ruptured pipelines<sup>57</sup>, due to their poor socio-economic situation. So when persons who have been affected by such oil spills institute actions for damages and compensation, it becomes technically complex and difficult to prove that the pipelines were not deliberately vandalised by them or a third party. In the light of this, it is suggested that the use of old oil pipelines should be criminalised under the Oil Pipelines Act. Additionally, the holder of an oil pipeline licence should be held strictly liable for any spill resulting from the rupture of a faulty or old pipeline. Furthermore, where a licensee raises the defence that an oil spill was caused by the malicious act of a third party under section 11(5)(d) of the Act, the onus of proof should lie on licensee.

#### **Oil Terminal Dues Act<sup>58</sup>**

The Oil Terminal Dues Act prohibits the discharge of oil into any part of the sea from a pipeline, vessel or as a result of any operation for the evacuation of oil, except at an oil terminal.<sup>59</sup> An offender under the Act is liable to offences and penalties under sections 3 and 6 of the Oil in Navigable Waters Act. Additionally, the defences available to an offender under the Oil in Navigable Waters Act are also open to an offender under the Oil Terminal Dues Act.<sup>60</sup>

#### **Associated Gas Re-Injection Act<sup>61</sup>**

The Associated Gas Re-Injection Act was enacted in September 1979 to regulate gas flaring in Nigeria. The Act set 1 January 1984 as the deadline for the cessation of gas flaring in Nigeria. Under the Act, every company producing oil and gas in Nigeria is to submit preliminary programmes and detailed plans for the implementation of gas re-injection and utilisation.<sup>62</sup> Section 3(1) of the Act prohibits the flaring of gases produced in association with oil without the permission of the Minister of Petroleum. However, under section 3(2) of the Act, the Minister of Petroleum has discretion to grant gas flaring permits where he is satisfied that either the utilisation or re-injection of gas is inappropriate or not feasible in any particular field. This is subject to certain conditions or the payment of certain levies. Where an oil company violates the provisions of section 3(1), it shall forfeit the

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<sup>53</sup> (Unreported) Suit no UAC/48/73 of 12 November 1973 cited in Ehighelua (n 10) at

<sup>54</sup> (2002) FWLR (Pt 130) 1654.

<sup>55</sup> See Adenuga and others (n 10).

<sup>56</sup> See S Akinwumi, 'Oil Companies to Replace Old Pipelines Before 2007' (Oct–Dec 2004) 4:6 *The Environment* 5.

Following this observation, the National Council on the Environment issued a directive that all pipelines between 20 to 25 years old should be replaced.

<sup>57</sup> See for example the Jesse Town Tragedy of 18 October 1998 where about 1000 persons were burnt to death while fetching fuel from a ruptured oil pipeline in Delta State; G Campbell, 'The Killing Fields: Oil Ravages the Niger Delta' (June 2001) *These Times Magazine* <[http://www.thirdworldtraveler.com/oil\\_watch.html](http://www.thirdworldtraveler.com/oil_watch.html)> last accessed 30 November 2010; Environmental Rights Acton and Friends of the Earth Nigeria, 'Idjerhe ( Jesse ) Oil Fire Disaster, Nigeria Petrol Pipeline Explosion: An Avoidable Tragedy' <<http://www.nigerianscholars.africanqueen.com>>; see also 'Gasoline Pipeline Blast Kills Up to 200 in Nigeria' <<http://www.cnn.com>> (13 May 2006 posted 2.29am EDT (06:29 GMT)) accessed 30 November 2010.

<sup>58</sup> Cap 08 LFN 2004.

<sup>59</sup> S 6(2)(a) (b) & ( c ).

<sup>60</sup> S 6(3).

<sup>61</sup> Cap 08 LFN 2004.

<sup>62</sup> See Preamble to the Act.

concessions granted in the particular field where the offence was committed.<sup>63</sup> Additionally, the Minister may withhold any entitlements of an offending company towards the cost of completion or implementation of a desirable gas reinjection scheme.<sup>64</sup>

#### **Harmful Waste (Special Criminal Provisions) Act<sup>65</sup>**

The Harmful Waste (Special Criminal Provisions) Act was enacted in November 1988 following the dumping of toxic waste at Koko village in Delta State. The Act prohibits the transportation and dumping of harmful waste<sup>66</sup> on any land or waters of Nigeria without lawful authority.<sup>67</sup> It also creates criminal liabilities where any person transports,<sup>68</sup> imports<sup>69</sup> or trades<sup>70</sup> in any harmful waste without lawful authority. In this regard, an offender will be liable to life imprisonment. An offender under the Act is also liable to forfeit any carriers used in the transportation of the harmful waste and any land on which the waste was deposited or dumped to the federal government of Nigeria.<sup>71</sup> The Act also creates civil liability for offences. In this regard, section 12(1) of the Act provides that: Where any damage has been caused by any harmful waste which has been deposited or dumped on any land, or territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland water ways, any person who deposited, dumped or imported the harmful waste shall be liable for the damage except where the damage was:

- (a) due to the fault of the person who suffered it or;
- (b) was suffered by a person who voluntarily accepted the risk thereof.

It has been submitted that above section (section 12(1)(b) of the Act) should be expunged considering the fact that a person voluntarily accepting harmful waste may be ignorant of the exact nature of the consignment and also taking into consideration the poor social economic solution in Nigeria.<sup>72</sup> However, while it is agreed that a person who is voluntarily accepting harmful waste may not know the exact nature of the consignment and the associated risk due to illiteracy or lack of awareness; yet these reasons are not sufficient to expurgate the provisions of section 12(1)(b). It could be helpful if the determination of liability on the basis of illiteracy or lack of awareness is left to the courts. Although the Harmful Waste Act makes a radical departure from pre-1988 pollution abatement laws with the introduction of sanctions such as life imprisonment without the option of fine, the forfeiture clause and civil liability, the Act has not been effectively enforced by regulatory authorities.<sup>73</sup>

#### **National Environmental Standards and Regulations Enforcement Agency (Establishment) Act<sup>74</sup>**

Initially, the overall responsibility for environmental protection and management in Nigeria was vested in an agency known as the Federal Environmental Protection Agency (FEPA). In 1999, the federal government of Nigeria merged FEPA and other relevant departments in various ministries to form the Federal Ministry of Environment. However, there was no enabling law on enforcement issues. This situation created a vacuum in the effective enforcement of environmental laws and regulations in the country. To address this vacuum, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act was enacted. The NESREA Act repealed the FEPA Act and established NESREA as an agency of the Federal Ministry of Environment, Housing and Urban Development.<sup>75</sup> The Agency is responsible for enforcing compliance with environmental laws and

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<sup>63</sup> S 4(1).

<sup>64</sup> S 4(2). 84; SI 43 of 1984, Cap A25 LFN 2004.

<sup>65</sup> Cap 165 LFN 1990; Cap H1 LFN 2004.

<sup>66</sup> 'Harmful waste' is defined as: 'any injurious, poisonous, toxic or noxious substance and in particular includes nuclear wastes emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health'. See s 15 *ibid*.

<sup>67</sup> S 1(2)(a) *ibid*.

<sup>68</sup> S 1(2)(b).

<sup>69</sup> S 1(2)(c).

<sup>70</sup> S 1(2)(d).

<sup>71</sup> S 6.

<sup>72</sup> See GU Ojo, *Environmental Laws of Nigeria: A Critical Review* (Environmental Rights Action and Friends of the Earth Nigeria, Benin 2003) 31.

<sup>73</sup> See generally Osibanjo (n 18); E Uzodinma, 'Constraints to Effective Pollution Control and Management in Nigeria' 20 *The Environmentalist* 13–17 at 13.

<sup>74</sup> See the NESREA Act 2007.

<sup>75</sup> See NESREA, *What Is the Historical Background of Environmental Compliance and Enforcement in Nigeria?* <<http://www.nesrea.org/faq.php>> last accessed 11 April 2011.

regulations in Nigeria<sup>76</sup>. However, its powers do not extend to the oil and gas sector.<sup>77</sup> The Act creates provisions for the setting of air quality standards and atmospheric protection.<sup>78</sup> An individual that violates any regulations made to protect and enhance the quality of Nigeria's air resources will be liable to a fine not exceeding N200,000 (US\$1250) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. The offender will also be subject to an additional fine of N20,000 (US\$165) for every day the offence subsists.<sup>79</sup> Where the offence is committed by a body corporate, it shall be liable on conviction to fine not exceeding N2,000,000 (US\$12,500) and an additional fine of N50,000 (US\$312.5) for every day the offence subsists.<sup>80</sup>

The responsibility for recommending and enforcing compliance with regulations and programmes to control noise pollution also lies with NESREA.<sup>81</sup> Where an individual violates a regulation made by the Agency on noise control, the individual will be liable on conviction to a fine not exceeding N50,000 (US\$312.5) or to imprisonment for a term not exceeding one year or to both fine and imprisonment. An individual offender shall also be liable to an additional fine of N5000 (US\$31.25) for every day the offence subsists.<sup>82</sup> Where the offender is a corporate body, it shall be liable on conviction to a fine not exceeding N500,000 (US\$3125). Such corporate body will also be liable to an additional fine of N10,000 (US\$62.5) for every day the offence subsists.<sup>83</sup> The Act also provides for the powers of the Agency to make regulations to enhance water quality standards for the purpose of protecting public health and welfare.<sup>84</sup> An individual who violates the water quality standards set by the Agency shall be liable to a fine not exceeding N50,000 (US\$312.5) or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. Additionally, the individual will be liable to a fine of N5000 (US\$31.25) for every day the offence subsists.<sup>85</sup> Where the offence is committed by a corporate body, it shall be liable on conviction to a fine not exceeding N50,000 and an additional fine of N10,000 (US\$62.5) for every day the offence subsists.<sup>86</sup>

NESREA is empowered to make regulations on effluent limitations. In this regard, section 24(3) of the Act provides that: 'notwithstanding the existing regulations in force, other than in the oil and gas sector, the Agency may make regulations on effluent limitations, on existing and new point sources, for the protection of human, animal, marine and plant life'. An individual who violates regulations on effluent limitation will be liable on conviction to a fine not exceeding N200,000 (US\$1250) or to imprisonment for a term not exceeding two years or to both fine and imprisonment. There will also be an additional fine of N5000 (US\$31.25) for every day the offence subsists.<sup>87</sup> Where the offender is a corporate body, it shall on conviction be liable to a fine not exceeding N1,000,000 (US\$6250) and an additional fine of N50,000 (US\$312.5) for every day the offence subsists.<sup>88</sup> The NESREA Act further provides for the powers of the Agency to make regulations for environmental sanitation,<sup>89</sup> and the protection of the quality of land resources as well as natural water shed quality.<sup>90</sup> The Act also prohibits the discharge of hazardous substances into the air or upon the land and waters of Nigeria or at the adjoining shorelines except where such discharge is permitted or authorised under any law in force in Nigeria.<sup>91</sup> An individual who violates this prohibition will be liable to an offence punishable on conviction by a fine not exceeding N1,000,000 (US\$6250) or to imprisonment for a term not exceeding five years.<sup>92</sup> Where the offender is a corporate body, it shall be liable to a fine not exceeding N1,000,000 (US\$6250) and an additional fine of N50,000 (US\$312.5) for every day the offence subsists.<sup>93</sup> Additionally, the directors and officers of a corporate body who were responsible for its management at the time the offence was committed shall be liable for prosecution.<sup>94</sup> However, conviction will be determinate on the success of the prosecution to prove that an offence

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<sup>76</sup> See ss 2 & 7 of the NESREA Act.

<sup>77</sup> *Ibid.* ss 7 (g), (h), (j), (i), 8(g), (i), (m), (n) & 24(3). The enforcement of environmental laws and regulations in the Nigerian oil and gas sector is mainly the responsibility of the Department of Petroleum Resources.

<sup>78</sup> *Ibid.* s 20(1).

<sup>79</sup> *Ibid.* s 20(3).

<sup>80</sup> *Ibid.* s 20(4).

<sup>81</sup> *Ibid.* s 22(2).

<sup>82</sup> *Ibid.* s 22(3).

<sup>83</sup> *Ibid.* s 22(4).

<sup>84</sup> *Ibid.* s 23(1).

<sup>85</sup> *Ibid.* s 23(3).

<sup>86</sup> *Ibid.* s 23(4).

<sup>87</sup> *Ibid.* s 24(4).

<sup>88</sup> *Ibid.* s 24(5).

<sup>89</sup> *Ibid.* s 25(1).

<sup>90</sup> *Ibid.* s 26(1).

<sup>91</sup> *Ibid.* s 27(1).

<sup>92</sup> *Ibid.* s 27(2).

<sup>93</sup> *Ibid.* s 27(3).

<sup>94</sup> *Ibid.* s 27(4).



was committed with the knowledge of the management of the corporate body, or that the management did not exercise due diligence to prevent the commission of the offence. Compared to other pollution abatement laws, the NESREA Act creates more stringent sanctions for environmental pollution; however, many sections of the Act appear to be inelegantly drafted.<sup>95</sup> The Act fails to create provisions for citizen suits or public interest litigation. This hinders effective public participation in environmental protection. Furthermore, the enforcement of most criminal provisions of the Act depends on the establishment of legal regulations on several aspects of the environmental protection. As such, a person cannot be effectively prosecuted for an offence if it is not shown that he violated a regulation made pursuant to the Act. Where the required regulation does not exist, such a person will not be deemed to have committed an offence.<sup>96</sup> This apparently creates a problem, as most of the regulations that ought to be made in accordance with the NESREA Act are not yet in existence.

### **Environmental Impact Assessment Act<sup>97</sup>**

The Environmental Impact Assessment (EIA) Act was enacted in December 1992 to ensure the integration of the environment in development concerns. The Act aims to control pollution by requiring a mandatory environmental impact assessment<sup>98</sup> for projects and activities which will have impact on the environment.<sup>99</sup> Under the Act, establishments in the public or private sectors of the economy are under an obligation not to embark on projects without the prior consideration of their environmental effects.<sup>100</sup> The Act also stipulates the procedures that are to be followed in carrying out environmental impact assessments.<sup>101</sup> Where a project is listed in the Mandatory Study List specified in the Schedule to the EIA Act, such a project will not be carried out until a decision is taken by the environmental protection Agency.<sup>102</sup> An individual who fails to comply with the provisions of the Act will be liable to an offence punishable on conviction with a fine of N100,000 (US\$625) or imprisonment for a period of five years. Where the offender is a firm or corporation, it shall be liable to a fine of not less than N50,000 (US\$312.5) and not more than N1,000,000 (US\$6250).<sup>103</sup> The Environmental Impact Assessment Act fails to create provisions for citizen suits or public interest litigation. This has greatly hindered citizen participation in environmental governance. For example, in *Oronto Douglas v Shell Petroleum Development Company (SPDC)*,<sup>104</sup> the plaintiff brought an action for a court order directing the defendant to comply with the provisions of the Environmental Impact Assessment Act in respect of a liquefied natural gas project. The defendants contended that the plaintiff lacked the locus standi to institute the action and urged the court to strike out the action. In striking out the claim, the court held that: 'the plaintiff has shown no prima facie evidence that his right was affected nor any direct injury was caused to him or that he suffered anything at all more than the generality of the people'.

### **Petroleum Industry Act**

In line with the provision of the Petroleum Industry Act to repeal all extant laws regarding oil and gas in Nigeria, it is expected that the former should seek to further environmental management in the oil and gas sector. This it can do by providing solutions to the current environmental challenges associated with Nigeria's oil and gas industry that existing legislations might have been unable to remedy. Scholars have pointed out some deficiencies that might have inhibited the ability of these legislations to effectively solve the environmental menace of Nigeria's oil and gas sector as including: lack of clarity on core terms within the Acts to convey the message of the Act, very weak sanctions that are not commensurate with the extent of pollution they have been provided against, inability of the Acts to sanction a failure of the agencies they create (as laws) to perform the very purpose for which their individual Acts has created them; hence an inability of the Acts to provide true enforcement of

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<sup>95</sup> For example, s 21(4) of the Act provides for a penalty without creating any offence.

<sup>96</sup> See s 36(12) CFRN which provides that: 'Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law'.

<sup>97</sup> Cap E12 LFN 2004.

<sup>98</sup> Environmental impact assessment refers to the analysis and assessment of planned developmental activities with the aim of ensuring sustainable development.

<sup>99</sup> See s 1(a) of the Act.

<sup>100</sup> Ibid. s 2(1).

<sup>101</sup> Ibid. s 2(3).

<sup>102</sup> 113 Ibid. s 12. Items listed in the mandatory study list include: mining, petroleum development activities, power generation and transmission, waste treatment and disposal. See Items 11, 12, 13 & 18 of the Schedule of the Environmental Impact Assessment. With the repeal of the Federal Environmental Protection Agency (FEPA) Act of 1988, the Directorate of Petroleum Resources (DPR) is now responsible for enforcing the Environmental Impact Assessment Act in the Nigerian oil and gas sector. See <<http://www.dpr.org>> last accessed 11 April 2011. The National Environmental Standards Regulations Enforcement Agency (NESREA) is responsible for enforcing the Environmental Impact Assessment Act in other sectors.

<sup>103</sup> Ibid. s 60.

<sup>104</sup> Unreported Suit no FHC/C5/L/573/93 of 17 December 1997.

their purpose, etc.. It therefore means the Petroleum Industry Act under normal circumstances ought to address these inadequacies in its structure towards solving Nigeria's oil and gas pollution. The paper shall therefore examine how it has fared in this regard. The PIB seeks to 'provide for the establishment of a legal, fiscal and regulatory framework for the Petroleum Industry in Nigeria and for other related matters.' This implies that the Bill covers all matters relative to oil and gas in Nigeria including environmental matters that relate to both spheres. Subject to Section 6(1), 'The Federal Government shall, to the extent practicable, honour international environmental obligations and shall promote energy efficiency, the provision of reliable energy, and a taxation policy that encourages fuel efficiency by producers and consumers.' The clause '....to the extent practicable,' as in Section 6(1) of the Bill, above, restates the provisions in the NESREA Act as pertain to international environmental treaties and obligations on oil and gas matters, only shifting responsibility on such international obligations from NESREA to the federal government. However, by employing the caveat '.....to the extent practicable' the provision suddenly reduces the certainty and introduces some elasticity with regard to the extent to which the federal government can honour such international treaties. This is because such caveat creates some form of escape to the federal government from actually committing to the international environmental obligations not only merely in form, but in substance.

### **Petroleum Industry Act 2021**

The Federal government signed the Petroleum Industry Act 2021(PIA) on the 16th of August 2021, with its purpose being enactment being to create a more conducive environment for the growth of the sector and addressing legitimate grievances of communities most impacted by extractive industries. The PIA 2021 has introduced an array of provisions and innovations that aid in sustaining the environment. This article will give a brief overview of the salient provisions of the Act addressing oil pollution in the country. The Act provides for the governance and institution of the petroleum industry vesting ownership and control of petroleum within Nigeria and its territorial waters upon the Government of the Federation of Nigeria. The Minister of Petroleum Resource heads the Petroleum Industry and by powers vested upon him virtue of **Section 3(1)** is mandated to formulate, monitor, and administer government policy in the petroleum industry, amongst other functions.<sup>105</sup> It is also crucial to this article to note that the Act established dual regulators for the petroleum industry which are;

- i. The Nigerian Upstream Petroleum Regulatory Commission;
- ii. Nigerian Midstream and Downstream Petroleum Authority.

The Nigerian Upstream Petroleum Regulatory Commission' being a body corporate with perpetual successions with functions that are limited to only the upstream petroleum activities shall be responsible for the technical and commercial regulation of all upstream petroleum operations.<sup>106</sup> The Commission is charged to ensure compliance with all applicable laws and regulations governing upstream petroleum operations. The Act makes provision for environmental management by the Commission to foster environmental sustainability. Looking into Section 102 of the Act which provides that a licensee or lessee who engages in upstream or midstream petroleum operations is required within one year or six months of the effective date or after the grant of the applicable license or lease, to submit for approval an environmental management plan in respect of projects which require environmental impact assessment to the Commission or Authority.<sup>107</sup> This plan shall be approved if it has been established to comply with the relevant Environmental Acts and the applicant has such capacity to rehabilitate and manage negative impacts on the environment.<sup>108</sup>

The other regulatory agency is the 'Nigerian Midstream and Downstream Petroleum Authority'.<sup>109</sup> This regulatory authority is charged to handle technical and commercial regulation of the midstream and downstream petroleum operations in the petroleum industry pursuant to the provisions of Section 29(3) of the Act. The Nigerian Midstream and Downstream Petroleum Authority is ordained to grant, renew, modify or extend individual licenses or permits, provided it relates to the establishment of refineries shall be issued by the Minister on the recommendation of the Authority.<sup>110</sup> One of such requirements for which a license for midstream and downstream petroleum operations may be granted is provided in Section 111(3)iii of the Act expressly stating that where it meets the health safety and environmental standards as determined by the Authority as one of the major criteria's for which a license maybe granted . Thus, petroleum operations in the midstream and downstream sectors by virtue of the PIA is properly scrutinized on its effect to the safety of the environment before license or permits to carry out operations is issued. Such companies must however, be incorporated and validly existing in Nigeria

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<sup>105</sup> Petroleum Industry Act 2021, Sec. 1

<sup>106</sup> Ibid, Sec. 4

<sup>107</sup> Ibid, Sec. 102

<sup>108</sup> Ibid, Sec.102(3)

<sup>109</sup> Ibid, Sec. 29

<sup>110</sup> Ibid, Sec. 111

under the Companies and Allied Matters Act.<sup>111</sup> Sec. 67 of the Act provides that the administration and management of petroleum resources are to be conducted in accordance with the Act and principles of good governance, transparency, and sustainable development in Nigeria.<sup>112</sup> This provision ensures that exploration and exploitation of petroleum resources in Nigeria are for the benefit of the Nigerian people and promotes the efficient and effective development of the country, which can be interpreted as ensuring the process of oil exploration is considerate to the state of the environment which in fact is major threat to the people of the country.

## **6. Conclusion**

This paper examined Nigeria's pollution abatement laws and some of the factors hindering the effective control of environmental pollution in Nigeria. It has shown to a great extent that the existing pollution abatement laws are weak and ineffective. It has also shown that there is an apparent link between environmental pollution, poor health conditions and insecurity in some parts of Nigeria. The question then is 'can our environment be free from pollution?' While this article does not suggest that our environment can be entirely free from pollution, environmental pollution can be minimised to harmless levels through effective regulation. The achievement of this state of affairs in the final analysis will entail a strong political commitment and intensive efforts by the Nigerian Government to tackle environmental pollution as a national emergency through the promotion of sustainable development. In this regard, institutions responsible for pollution control should be adequately strengthened in terms of facilities, human capacity and funding to ensure optimum performance. The judiciary will also have to adopt activist approaches to pollution control. Finally, given the inadequacies of most Nigerian pollution abatement laws, there is a need for a comprehensive review of these laws to ensure adequate penal sanctions, adequate public participation, proper regulatory co-ordination and collective responsibility in pollution control.

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<sup>111</sup> Sec. 70(2)

<sup>112</sup> Sec. 67