

THE PETROLEUM INDUSTRY ACT 2021 AND QUEST FOR STRICTER ENVIRONMENTAL REGULATION IN NIGERIA'S ENERGY SECTOR*

Abstract

As Nigeria continues to rely on her rich oil and gas deposits for economic survival, the environmental impact of the decades of continuous exploitation of these resources continues to stare her in the face. While several laws had been put in place to address the environmental threats posed by oil and gas (O&G) operation, the government has been continually accused of laxity and poor resilience in enforcing these laws in the face of the unhelpful conduct of the multinational oil companies (MNOCs). However, with the passage of the much awaited Petroleum Industry Act (PIA), many stakeholders are hopeful that many of the wrongs in the sector including as related to environment will be addressed by the new legal regime. Therefore, this paper examines the PIA with a view to seeing how much it may help the nation depart from the old culture of regulatory laxity that has left so much environmental disaster in the Niger Delta region. Adopting the doctrinal research approach, the writers analysed both primary and secondary data. The paper found that the Petroleum Industry Act (PIA) has relevant provisions aimed at safeguarding the environment. Apart from merging all the previous legislations regulating the industry (including as related to the environment), the Act makes some novel prescriptions that have the potential to redefine the landscape of environmental regulation in the Nigeria's O&G sector. However, it was further found that the PIA introduced little or nothing new towards strengthening the mechanism for implementation of the law which was the major reason the previous laws were poorly implemented. Similarly, the Act appears to have failed in some instances to prescribe strict penalties for violation of environmental rules thus making little or no departure from the previous laws that seemed to have been too lenient on offenders. The paper concluded that Nigeria, as against countries like Norway, has been less than decisive, and at best, has been lukewarm in legally regulating O&G operations to secure her environment. It was recommended that the government should strengthen the agencies charged with enforcement of environmental regulations in the O&G sector including by improving their technical and human resources capacity while efforts should also be made to rid these agencies of corruption and shield them from political interference for optimal performance.

Keywords: Petroleum Industry Act, environmental regulation, energy sector, oil and gas sector

1. Introduction

One crucial concern emanating from Nigeria's economic reliance on her rich oil and gas deposits is the environmental impact of the decades of continuous exploitation of these petroleum resources.¹ Therefore, one of the key policy goals of the successive Nigerian governments in the oil and gas (O&G) sector is instituting efficient mechanisms for safeguarding the environment while maximising the economic gains of petroleum resources exploitation. However, the government has been continually accused of being less than strict and resilient in enforcing its laws and regulations related to environmental protection in the sector in the face of the unhelpful conduct of the multinational oil companies.² Thus, for instance, Nwokike 'found that Nigeria has law and policy against gas flaring but its implementation and application is weak.'³ The passage of the much anticipated Petroleum Industry Act (PIA) in 2021 was, therefore, greeted with so much optimism for what was perceived as the promises it holds for addressing the many challenges of the O&G sector including in regard to environmental protection. Against this backdrop, this paper focuses on the extent the PIA may be able to change the status quo in terms of enforcement of environmental regulations in the sector, thus departing from the past culture of laxity that has left so much environmental disaster in the Niger Delta region.

2. Environmental Impact of Petroleum Exploitation in Nigeria

First it will be helpful to briefly highlight the environmental impact of O&G exploitation in Nigeria. There is no gainsaying the fact that activities in the nation's petroleum sector – the mainstay of the Nigerian economy – have continued to negatively affect the environment in a manner that is 'bound to have severe intragenerational

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¹ Michael Akobo, *Nightmare in Oil and the Nigerian Environment* (Environmental Rights Action Benin-City 2014) 14. Also see Millicent Ele, 'Oil Spills in the Niger Delta-Does the Petroleum Industry Act 2022 Offer Guidance for Solving this Problem?' [2022] (13) (1) *The Journal of Sustainable Development, Law and Policy*, 143 <<https://www.ajol.info/index.php/jsdlp/article/view/229870>> accessed 26 September 2022.

² Eferiekose Ukala, 'Gas Flaring in Nigeria's Niger Delta: Failed Promises and Reviving Community Voices' [2011] (2) (1) *Wash. & Lee J. Energy, Climate & Env't*. 97

³ Livinus I. Nwokike, 'Nigeria Law and Policy Issues in Gas Flaring: A Standard for Gas Utilization or Sacrificial Interest?' [2020] (3) (4) *Sapientia Global Journal of Arts, Humanities and Development Studies (SGOJAHDS)* 125.

and intergenerational implications.⁴ Akobo lists the environmental issues arising from O&G exploitation in Nigeria to include, among others, land and water pollution which hampers cultivation and fishing respectively, deforestation, erosion, and risks posed to residents by network of pipelines passing beneath their homes. The writer observes that all these tend to expose the local people, who are predominantly poor, to cancer, respiratory and abdominal illnesses.⁵ The climate change implication of petroleum exploitation has also not gone unnoticed; it has been a key concern for stakeholders. In 1994, Nigeria admitted that a large portion of the greenhouse gas (GHG) emissions in its territory came from the O&G industry. In terms of carbon emissions precisely, the energy sector (including the petroleum industry) accounted for 59.7% and 78% of gross national emissions of carbon dioxide (CO₂) and carbon monoxide (CO) respectively. Gas flaring alone contributed 50.4% of the CO emissions from the energy sector with 58.1 million tonnes released.⁶ Twenty-six (26) years later (2020), the situation has remained as bad. Official data indicates that Nigeria's net GHG emissions stood at 609, 783.8 Gg CO₂-eq, with the energy sector still contributing prominently, accounting for 33.9% of the total emissions. Instructively, 72.9% of the entire gases emitted was CO₂, which is the gas that contributes most to global warming. Also, the energy sector accounted for the most CO, nitrogen oxides (NO_x), and methane (CH₄) emissions at 74%, 62.6% and 61% respectively. Similarly, the energy sector contributed the largest volumes of sulphur dioxide (SO₂) and non-methane volatile organic compounds (NMVOCs) at 53.2% and 77.8% respectively.⁷ In the petroleum sector, gas flaring presents the most climate change concern. It has remained an enduring issue in the Nigerian O&G sector with the nation repeatedly failing to meet the successive deadlines it had set for its ending. In 2020 alone, associated gas (AG) flared in the country was estimated to have worth 1.2 billion US dollars. Apart from its environmental implication, the quantity of gas wasted would be enough to generate electricity for all citizens of Nigeria for four years! Also, from 2012 to 2021, the country flared a whopping 1.8 billion cubic feet of AG each day.⁸ In 2022, the World Bank ranked Nigeria seventh among the top 10 gas-flaring countries globally, with a 10% increase in flaring between 2012 and 2021. The report further indicates that Nigeria alongside nine other nations⁹ accounts for 75% of the entire AG flaring globally.¹⁰ All these sufficiently prove that Nigeria still struggles to contain the monumental environmental challenges emanating from the activities in her O&G industry. Sadly, the scope of these challenges will continue to expand being that Nigeria's development still relies heavily on petroleum resources which the nation is steadily working to exploit further than she is currently doing.¹¹

3. An Overview of the Petroleum Industry Act (PIA)

The passage into law of the Petroleum Industry Bill took a long and tortuous path spanning over a decade. There are several factors responsible for this. Besides opposition from stakeholders like the NNPC and MNOs, there were too many issues and interests that proved too complex to be easily and quickly reconciled.¹² Nonetheless, that chequered journey came to an end with the passage of the final harmonised version of the bill by the Senate on July 15, 2021 and the House of Representatives on July 16, 2021. The presidential assent came on August 9, 2021.¹³ The historic significance of the PIA lies in the fact that, for the first time, a single overarching legislation was becoming a reality for the nation's O&G sector, which many stakeholders have criticised as lacking institutional coherence with various goals and interests conflicting. So, instituting an overarching legal instrument is seen as a critical step towards resolving these shortcomings. Thus, Maiye rightly observes that the

⁴Humer Haider, 'Climate Change in Nigeria: Impacts and Responses' [2019] *K4D Helpdesk Report 675* (Institute of Development Studies Brighton 2019) p.2 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14761/675_Climate_Change_in_Nigeria.pdf?sequence=1> accessed 24 June 2022.

⁵ Michael Akobo, *Nightmare in Oil and the Nigerian Environment* (Environmental Rights Action Benin-City 2014) 14

⁶ Federal Republic of Nigeria, *Nigeria's First National Communication Under the United Nations Framework Convention on Climate Change* (Federal Ministry of the Environment Abuja 2002) 30 – 31

⁷ Federal Republic of Nigeria, *Nigeria's Third National Communication Under the United Nations Framework Convention on Climate Change* (Federal Ministry of the Environment Abuja 2002) 30 – 31, 7

⁸ Yusuf Akinpelu, 'As Nigeria Continues to Miss Gas Flaring Deadlines, Huge Revenue is Lost', *Premium Times* (Lagos 30 April 2021) <<https://www.premiumtimesng.com/news/headlines/458507-analysis-as-nigeria-continues-to-miss-gas-flaring-deadlines-huge-revenue-is-lost.html>> accessed 24 June 2022.

⁹ The countries are Russia, Iran, the United States, Venezuela, Algeria, Mexico, Libya, and China.

¹⁰ Sami Tunji, 'Nigeria, Nine Others Account for 75% Global Gas Flaring – World Bank' *The Punch* (Lagos 13 March) <<https://punchng.com/nigeria-nine-others-account-for-75-global-gas-flaring-world-bank/#:~:text=Read%20More-.Nigeria%2C%20nine%20others%20account%20for%2075.global%20gas%20flaring%20%E2%80%93%20World%20Bank&text=The%20World%20Bank%20has%20said,Mexico%2C%20Libya%2C%20and%20China.>> accessed 24 June 2022.

¹¹ Martin M. Olisa, *Nigerian Petroleum Law and Practice* (Jonia Ventures Ltd Lagos, 2nd edition 1997) p.1.

¹² Azubuike H. Amadi, and Victor D. Ola, and John O. Ayoola, 'Review of Nigeria's Petroleum Industry Bill (PIB)' 2020 (5) (9) *European Journal of Engineering Research and Science* 1081

¹³ *Ibid*

Act is 'a single omnibus law that provides legal, governance, administrative, regulatory and fiscal framework for the Nigerian Petroleum Industry and development of host communities.'¹⁴ The PIA repeals several existing oil and gas-related laws in a bid to institute a more unified and holistic legal governance regime in the country's O&G sector. This goal is evident in the Act's long title, 'An Act to provide legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities; and for related matters.' The pre-eminent position which the draftsman intended for the PIA within the legal and institutional framework of the Nigeria's O&G industry is clearly evident in the fact that the Act will prevail wherever any provision of any other law is found to be inconsistent with its provisions.¹⁵

Precisely, the Act repealed the following laws: Associated Gas Re-Injection Act,¹⁶ Hydrocarbon Oil Refineries Act,¹⁷ Motor Spirits (Returns) Act,¹⁸ Nigerian National Petroleum Corporation (Projects) Act,¹⁹ Nigerian National Petroleum (NNPC) Act,²⁰ Petroleum Products Pricing Regulatory Agency (Establishment) Act,²¹ Petroleum Profit Tax Act²² (upon the completion of the conversion process under s92 of the PIA), and Deep Offshore Inland Basin Production Sharing Contract Act²³ (upon the completion of the conversion process under s92 of the PIA). However, some of the repealed laws will remain applicable only with respect to the affected oil prospecting licences (OPLs) and oil mining licences (OMLs) until the termination or expiration of their tenures.²⁴ Instructively, some of these repealed laws are related to environmental protection. The Act provides further that any existing Act, subsidiary legislation or regulation, guideline, directive and order made pursuant to any law which has been repealed or amended by the PIA will continue to subsist, *mutatis mutandi*, to the extent that it does not contravene the provisions of the PIA until it is revoked or replaced by an amendment or another subsidiary legislation.²⁵

4. Environmental Regulations under the PIA: Any Shift from the Past?

The PIA was enacted to address the shortcomings of the hitherto existing legal framework including as it relates to environmental protection.²⁶ Regarding the environment, it is significant to observe that laws and regulations put in place over the years have proved largely ineffective for realising the target goals, a situation that has been severally blamed on weak implementation process.²⁷ Now the question is: what has the PIA done differently in terms of strengthening the rules and their implementation process? Stated differently, will the new legislation represent a shift from the past or will it prove to be another ineffectual change? To try to answer these questions, we examine the various regulatory measures introduced by the PIA with a view to evaluating their potential for improving the environmental challenges bedeviling the nation's O&G sector.

Separation of Regulatory Duties

One significant change brought by the PIA is establishment of two regulatory bodies; the Nigerian Upstream Petroleum Regulatory Commission (NUPRC)²⁸ and Nigerian Midstream and Downstream Petroleum

¹⁴ Oladipo Maiye and others 'Key Provisions of the Petroleum Industry Act, 2021: Summary and Commentaries' [2021] <<https://www.mondaq.com/nigeria/renewables/1111446/key-provisions-of-the-petroleum-industry-act-2021-summary-and-commentaries>> accessed 28 October 2021

¹⁵ Section 309 reads 'Subject to the provisions of the Constitution of the Federal Republic of Nigeria, upon the commencement of this Act, where the provisions of any other enactment or law except the Nigeria Oil and Gas Content Development Act are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of such other enactment or law shall, to the extent of that inconsistent, be void in relation to matters provided for in this Act.'

¹⁶ CAP A25 LFN 2004

¹⁷ CAP H5 LFN 2004

¹⁸ CAP M20 LFN 2004

¹⁹ CAP N124 LFN 2004

²⁰ CAP N123 LFN 2004

²¹ CAP P10 LFN 2004

²² CAP P13 LFN 2004

²³ CAP D3 LFN 2004

²⁴ Section 311(9) lists the following as the affected legislations: Petroleum Act, Petroleum Profit Tax Act, Oil Pipelines Act, Deep Offshore and Inland Basin Production Sharing Contracts Act, and any other laws or regulations that are consistent with the principle in s92(6) of the PIA.

²⁵ PIA s311(1)

²⁶ Chukwuemeka Chuks-Ezike, 'The Petroleum Industries Bill; A Deficient Policy for Environmental Management in Nigeria's Oil and Gas Sector', [2018] (2) (2) *Environmental Risk Assessment and Remediation* 34 <DOI:10.4066/2529-8046.100038> accessed September 25 2022.

²⁷ Millicent Ele, 143

²⁸ PIA s4(1)

Regulatory Authority (NMDPRA).²⁹ These two bodies are charged with the regulatory duties hitherto undertaken by the Department of Petroleum Resources (DPR), a body abolished by the Act. Importantly, these regulatory duties involves, *inter alia*, setting standards for environmental protection and ensuring compliance with same. The NUPRC takes over the upstream regulatory functions of the defunct DPR.³⁰ The body is vested with the statutory powers and responsibility of ensuring compliance to O&G laws, regulations and guidelines. The performance of these duties entails monitoring operations at all sites where upstream petroleum operations are ongoing. Hence, the Commission beams its regulatory searchlights on drilling sites, storage facilities, refineries, storage depots, pump stations, sales outlets etc. in order to ensure that operators comply to all regulatory standards including as they concern environmental protection.³¹ Thus, among the objectives of the Commission is to ‘promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner.’³²

The Act spells out what it terms the ‘technical regulations functions’ of the Commission and which include to ‘establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations’³³ as well as ‘set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations, and facilities used or to be used in upstream petroleum operations’³⁴ including *inter alia* ‘the elimination of natural gas flaring and venting.’³⁵ These aspects of the Commission’s functions are directly related to environmental protection. Information on the Commission’s website importantly states that among its functions is monitoring oil and gas activities to ensure they are in sync with ‘national goals and aspirations including those relating to Flare Down and Domestic Gas Supply Obligations.’³⁶ On the other hand, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) as created by the PIA³⁷ is a merger of three defunct regulatory agencies as follows: Petroleum Products Pricing Regulatory Agency (PPPRA), Petroleum Equalization Fund [Management] Board (PEFMB), and the Midstream and Downstream Divisions of the Department of Petroleum Resources (DPR). Hence, the agency inherits the midstream and downstream functions of the defunct DPR as well as those of the other agencies named above. The creation of the NMDPRA is aimed at ‘establishing a progressive regulatory framework that encourages investment and full optimization of the midstream and downstream sector of the petroleum industry in Nigeria.’ The agency is responsible for regulating the midstream and downstream petroleum operations in the country including as related to technical, operational, and commercial activities.³⁸ The enabling Act states the objectives of NMDPRA to include promoting ‘healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations’³⁹ as well as ‘the supply and distribution of natural gas and petroleum products in midstream and downstream operations and the security of natural gas supply for the domestic gas market.’⁴⁰ Like NUPRC, the NMDPRA has an overarching regulatory responsibility including in relation to environmental protection.

This paper views the above innovation of the PIA as a welcome development given that it is a fulfilment of a long-standing desire of stakeholders that the regulatory processes of these differing sectors of the petroleum industry be separated for better efficiency. Each of the sectors – upstream, midstream, and downstream – has its own set of specialized activities and the resultant environmental issues that require corresponding specialised knowledge and approach on the part of the regulator. Hence, separating the regulatory bodies may promote efficiency due to enhanced specialisation, knowledge, and focus.

²⁹ PIA s29(1)

³⁰ See PIA s4 to s28

³¹ The regulatory powers of this Commission is omnibus within the upstream petroleum sector as evident in one of its objectives which is to ‘regulate upstream petroleum operations including technical, operational and commercial activities.’ See PIA s6(a)

³² PIA s6(d)

³³ PIA s7(c)

³⁴ PIA s7(e)

³⁵ PIA s7(e)(iv)

³⁶ Nigerian Upstream Petroleum Regulatory Commission, ‘History of DPR’ [2022] <<https://www.nuprc.gov.ng/history-of-dpr/>> accessed 3 March 2022

³⁷ See PIA s29 –s 52

³⁸ The Nigerian Midstream and Downstream Petroleum Regulatory Authority, ‘NMDPRA takes centre stage’ 2021 <<https://www.nmdpra.gov.ng/>> accessed 3 February 2022

³⁹ PIA s31(c)

⁴⁰ PIA s31(e)

Prohibition of Harmful Environmental Practices

The PIA expressly prohibits O&G operators from engaging in any practice that will be harmful to the environment. Thus, the Minister, upon receipt of a written recommendation to that effect, may revoke a petroleum prospecting licence or petroleum mining lease where the licensee or lessee 'fails to conduct petroleum operations in accordance with good international petroleum industry practices'⁴¹ or where he 'has failed to comply with environmental obligations required by applicable law or by the provisions of the applicable licence or lease.'⁴² It is important to note that though similar provisions existed in the now repealed Petroleum Act⁴³ and some of the regulations⁴⁴ made pursuant to the principal Act, evidence clearly shows that there has always been reluctance on the part of the government to wield the big stick by revoking licences of erring operators.⁴⁵ These earlier legislations prescribed that petroleum activities be conducted in line with 'good oil field practice' and that an erring operator risked losing their licence or lease. Ele rightly observes that the term 'good oil field practice' in these previous laws and regulations seems synonymous with the term 'good international petroleum industry practices' used in the PIA.⁴⁶ If this is the case, one wonders how things will turn out differently under the new legal regime since the PIA has practically replicated the provisions of previous laws which are widely believed to have been ineffective.

Every Licensee to Submit an Environmental Management Plan

One innovation introduced by the PIA is the requirement that any entity possessing a licence or lease for operation in the upstream and midstream sub-sectors of the O&G industry submits an environmental management plan to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) as the case may be, provided that the project is such that requires environmental impact assessment (EIA). The said plan is to be submitted within one year of coming into effect of the Act or within six months of obtaining of such licence or lease.⁴⁷ The Commission or the Authority shall approve the plan if it complies with relevant environmental Acts and the applicant possesses 'the capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment.'⁴⁸ This provision is laudable in that it compels each operator to have in place a ready-made plan as well as ensure capability for remedying environmental problems that may arise from their O&G activities. It aims for a proactive response to environmental issues. However, it is important to observe that there is no penalty specifically prescribed for non-compliance with this particular requirement. Apparently, the umbrella penalty of licence or lease revocation under s96(1)(i) of the Act is what applies. This paper considers this unrealistic given that licence or lease revocation comes with serious consequences which may be so far-reaching as to disrupt industry activities and even the economy of the nation, a reason that may have been behind government's reluctance to apply this measure over the years. It is our belief that other punishments such as heavy fines will be more realistic in the circumstance with licence or lease revocation coming only in extreme cases, such as when infraction becomes repeated and serial.

Illegality of Gas Flaring

The PIA outlaws gas flaring except in the case of an emergency, or where the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) has granted an exemption, or in circumstances where it is a part of 'acceptable safety practices under established regulations.' A licensee, lessee or marginal field operator who contravenes this provision is 'liable to a fine as prescribed by the Commission under this Act.'⁴⁹ Instructively, this provision is almost a reproduction of what is contained in the Associated Gas Reinjection Act⁵⁰; however, there are two main points of departure. First, under the PIA, the power to grant exemption is reserved for the Commission as against the Minister as seen under the Associated Gas Reinjection Act.⁵¹ Second, under the PIA, punishment has been reduced to a fine as against the stricter sanctions prescribed by the Associated Gas Reinjection Act wherein an offender 'shall forfeit the concessions granted to him in the particular field or fields in relation to which the offence was committed'⁵², and may in addition forfeit to the government 'all or part of

⁴¹ PIA s96(1)(a)

⁴² PIA s96(1)(i)

⁴³ PA s8(g). Also see s25(1)(a)(iii) of the First Schedule to the Act.

⁴⁴ Mineral Oils (safety) Regulations s7; Petroleum (Drilling and Production) Regulations s25 and s37.

⁴⁵ Millicent Ele, 134

⁴⁶ Ibid

⁴⁷ PIA s102(1)

⁴⁸ PIA s102(3)

⁴⁹ PIA s104(1)

⁵⁰ AGRA s3

⁵¹ See AGRA s3(1)

⁵² PIA s4(1)

any entitlements' due to him which shall then be invested in 'completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oil-field practice.'⁵³ It may not be surprising that the PIA has introduced fines as against revocation of licence or lease prescribed by the old law; perhaps the draftsman was considering the realistic implication of the revocation penalty which, as earlier argued, ought to be applied only in extreme cases or as a last resort. It is also important to note that even the stiffer penalty prescribed by the old law did not prove a sufficient deterrent for the multinational oil companies (MNOCs) who continued with flaring. We argue that the reason for this is government's inability to implement the penalty. It, however, remains to be seen how it will be able to implement the current, and arguably more realistic, penalty as prescribed by the PIA.

The Commission to Take Ownership of Flare Gas

The PIA authorises the Commission to, at its discretion, take – free of charge – natural gas that is destined for flaring.⁵⁴ This provision is obviously geared towards advancing the Flare Gas Commercialization Programme (FGCP) of the Federal Government. This is a scheme designed as part of the strategy for implementation of Nigeria's policy of eliminating gas flares and achieving the environmental and economic benefits attendant on it. The NGFCP aims to attain this objective through encouraging third party investors to develop technically and commercially sustainable gas utilization projects. These investors are invited to take part in a bid process that is designed to be competitive and transparent wherein winners purchase flare gas from the Federal of Government.⁵⁵ The provision of the PIA empowering the Commission to take free ownership of flare gas is adjudged by this paper to be a positive development being that it solidifies the ownership right of the Federal Government over flare gas by including it in an Act of the National Assembly as against the hitherto situation where it was merely a part of a subsidiary legislation.⁵⁶ This way, implementation of the Flare Gas Commercialization Programme (FGCP) receives a more emphatic legal backing.

Every Licensee to Install Metering Equipment

The PIA further requires a licensee to, 'prior to the commencement of petroleum production, install metering equipment conforming to the specifications prescribed on every facility from which natural gas may be flared or vented as the Commission or the Authority may prescribe.'⁵⁷ Failure to comply with this provision amounts to an offence and the offender is liable to a fine as may be imposed by the Commission or the Authority under a Regulation.⁵⁸ This provision is obviously a welcome one as it will, if adequately implemented, enhance accountability in regard to gas flaring. This accountability mechanism is conspicuously lacking in the Associated Gas Reinjection Act, hence the PIA is considered an improvement on the Act as far as this aspect is concerned. However, the penalty prescribed in the Flare Gas (Prevention of Waste and Pollution) Regulations 2018⁵⁹ is considered by this paper too soft to be of a meaningful deterring effect. It prescribes a fine of 2.50 US dollars for each 1, 000 cubic feet of gas flared or vented for as long as the operator continues to fail to install a metering equipment.⁶⁰ It is argued that this fine should be heavy enough for optimal effect. This paper, however, finds appropriate the further provision of the Regulations prescribing possible suspension of operation or revocation of licence or lease in the case of repeated infraction.⁶¹

Every Licensee to Submit a Gas Flare Elimination and Monetization Plan

In what appears to be a bold statement of intent to make gas flaring history in Nigeria, the PIA mandates all operators to make plan for elimination and monetization of gas flare. The Act provides as follows:

Notwithstanding any provisions to the contrary under this Act, a licensee or lessee producing natural gas shall, within 12 months of the effective date, submit a natural gas flare elimination and monetization plan to the Commission, which shall be prepared in accordance with the regulations made by the Commission under this Act.⁶²

⁵³ PIA s4(2)

⁵⁴ PIA s105(2)

⁵⁵ Department of Petroleum Resources, 'Nigerian Gas Flare Commercialization Programme', <<https://ngfcp.dpr.gov.ng/>> accessed 6 June 2022.

⁵⁶ See Flare Gas (Prevention of Waste and Pollution) Regulations 2018, s2(1).

⁵⁷ PIA s106(1)

⁵⁸ PIA s106(2)

⁵⁹ By virtue of s317(2) of PIA, these Regulations made pursuant to the Petroleum Act and Associated Gas Reinjection Act remain in force despite the abrogation of the principal legislations.

⁶⁰ s21(1)

⁶¹ s21(2)

⁶² PIA s108

However, it is observed that no penalty is specifically prescribed for failure to comply with this prescription. Apparently, what will apply is the general penalty of licence or lease revocation under s96(1)(i) for failure 'to comply with environmental obligations required by applicable law or by the provisions of applicable licence or lease.' As earlier noted, it is unlikely that the authorities will readily impose this very severe penalty especially on first-time offenders. Imposition of a heavy fine is viewed as more realistic while licence or lease revocation should be reserved for extreme cases such as when the offender persists in their infraction. Importantly, however, it must be observed that similar provisions that were targeted at definitive elimination and monetization of flare gas existed in the now repealed Association Gas Reinject Act,⁶³ yet nothing came out of them, and gas flaring has continued in Nigeria more than 40 years after. It, therefore, remains to be seen how differently the corresponding provisions of the PIA will be implemented since the new Act did not offer anything new towards a better implementation.

Money Realised from Fines to be invested in Environmental Remediation

The drafters of the PIA included a provision requiring that money received as penalties for gas flaring 'shall be for the purpose of environmental remediation and relief of the host communities of the settlers on whom the penalties are levied.'⁶⁴ This is a novel development in the Nigerian O&G law, and this paper adjudges this to be a wholesome initiative as it makes environmental justice complete by ensuring that justice does not stop at just punishing the offender but also extends to remedying the harm done by them. However, it is important to observe that fines imposed in any particular case should not be less than the amount required for remedying the effect brought about by the offence in question. This does not only accentuate the argument made earlier for fines to be reasonably high (to strengthen deterrence), but also makes case for a flexible approach that allows the authorities to assess fines on case by case basis to reflect the scope of damage done or likely to be done.

Establishment of Environmental Remediation Fund

The PIA provides for an Environmental Remediation Fund to be established by the Commission or the Authority as the case may be for 'the rehabilitation or management of negative environmental impacts' arising from the activities of such a licensee or lessee, who prior to 'the approval of the environmental management plan by the Commission or Authority' must have paid a prescribed financial contribution'⁶⁵ into the fund. Factors to be taken into account in determining the amount of contribution to be made by any licensee or lessee include 'the size of the operations and the level of environmental risk that may exist.'⁶⁶ For accountability purposes, the Act provides that a licensee or lessee shall have the power to audit its 'financial contribution to an environmental remediation fund ... in accordance with guidelines the Commission or Authority may, as the case may be, issue.'⁶⁷ Furthermore, in the event a licensee or lessee fails to rehabilitate or manage or is unable to undertake the rehabilitation or management of any negative impact on the environment, the Commission or Authority, as the case may be, may, upon written notice to the holder, apply the fund ... to rehabilitate or manage the negative environmental impact.'⁶⁸ A licensee or lessee shall every year assess its environmental liability and accordingly 'increase its financial contribution to the satisfaction of the Commission or Authority, as the case may be.'⁶⁹ These provisions are obviously a good one in that if efficiently implemented will substantially ease the process of environmental remediation in the O&G sector. Such remediation, before now, has been stalled by reluctance on the part of the MNOCs to commit resources to such intervention, many times resulting in long and complex litigations between host communities and the MNOCs.⁷⁰ Having a dedicated fund for environmental remediation introduces fiscal security into the environmental management framework in the

⁶³ The provisions read as follows: '1. Notwithstanding the provisions of regulation 42 of the Petroleum (Drilling and Production) Regulations made under the Petroleum Act, every company producing oil and gas in Nigeria, shall not later than 1 April, 1980 submit to the Minister a preliminary programme for (a) schemes for the viable utilization of all associated gas produced from a field or groups of fields; (b) project or projects to re-inject all gas produced in association with oil but not utilized in an industrial project. 2(1) Not later than 1 October, 1980, every company producing oil and gas in Nigeria shall submit to the Minister detailed programmes and plans for either (a) the implementation of programmes relating to the re-injection of all produced associated gas; or (b) schemes for the viable utilization of all produced associated gas.'

⁶⁴ PIA s104(4)

⁶⁵ PIA s103(1)

⁶⁶ PIA s103(2)

⁶⁷ PIA s103(3)

⁶⁸ PIA s103(4)

⁶⁹ PIA s103(5)

⁷⁰ Emeke Chegwe, 'The Impact of Foreign Law Suits on the Realisation of the UNGPs in the Niger Delta Region of Nigeria: A Look at the Activities of Multinational Oil Companies', [2019] <https://www.researchgate.net/publication/333508921_THE_IMPACT_OF_FOREIGN_LAW_SUITS_ON_THE_REALISATION_OF_THE_UNGPs_IN_THE_NIGER_DELTA_REGION_OF_NIGERIA_A_LOOK_AT_THE_ACTIVITIES_OF_MULTINATIONAL_OIL_COMPANIES> accessed 29 September 2022.

O&G industry as there will always be ready resources to be invested in addressing environmental damage that may arise from time to time. Perhaps an arrangement like this could have helped avoid the current situation where the nation has been battling with the monumental and money-guzzling task of cleaning up Ogoni land following decades of inaction in the face of continuous environmental degradation.⁷¹

5. Conclusion and Recommendations

A number of conclusions emerge from the foregoing analysis. First, the Petroleum Industry Act (PIA) has relevant provisions aimed at safeguarding the environment in the face of risk posed by activities in the petroleum industry. Apart from merging all the previous legislations regulating the industry (including as related to the environment), the 2021 Act equally makes some novel prescriptions that have the potential to redefine the landscape of environmental regulation in the Nigeria's O&G sector. One of these is breaking up of the regulatory duties hitherto performed solely by DPR into two specialized parts to allow two newly created bodies – NUPRC and NMDPRA – to take up each of the two parts respectively. Another one is the establishment of an Environmental Remediation Fund to serve as a ready source of resources for addressing environmental damage that may arise from time to time as a result of petroleum industry activities. Furthermore, analysis of the PIA, however, shows that little or nothing new has been introduced by the law towards strengthening the implementation mechanism which has been the bane of environmental regulation in the O&G sector. This perennial challenge has been noted by many scholars and other stakeholders. For example, Nwokike, following his study of gas flaring regulation in Nigeria, found that while the country has relevant laws and policies, the implementation process has been too weak to produce any meaningful effect.⁷² This poor implementation is attributed to certain factors such as the weakness of regulatory agencies who are poorly equipped in terms of technical and human resources,⁷³ corruption, and lack of political will.⁷⁴ In effect, apart from introducing a few novel provisions, the PIA merely reproduces the old laws that had failed to yield the desired result. Also, if the old laws had failed due to weak implementation, then, unless something changes in the system, even the novel provisions are bound to suffer the same fate being that without implementation law remains fruitless. Nonetheless, assuming the PIA becomes sufficiently implemented, there is arguably the fear that some of the penalties prescribed for environment-related offences are just too soft to effectively deter. In other words, the PIA appears to have made little or no departure from the provisions of the old laws that seemed to have been too lenient on offenders. This paper, therefore, agrees with the finding by Chuks-Ezike that the PIA

provides no seeming strict criminal penalty sanctioning oil pollution, nor does it provide any sanctioning against gas flaring... and provides no certainty as to the legal obligation imposed on the Federal government to abide by international treaties for the protection of the environment, it also seems to be in favour of oil operators as it provides clear escape route from some liabilities that might have deterred the extent of criminal pollution they cause in the Niger Delta. It is, therefore, almost clear that though the oil and gas sector presents the worst spate of criminal pollution in the country, the PIB (now PIA) which ordinarily should have become a standard of environmental protection and punishment of criminal pollution within the country, provides no real solution to this challenge.⁷⁵

Evidently, Nigeria may have a lot to learn from the likes of Norway that has been very decisive and uncompromising in its effort to eliminate gas flaring. And the result has reflected this approach. From the time petroleum exploitation began in Norway in 1971, the government enacted a law prohibiting AG flaring by requiring that no oil company could sell crude oil mined from the Norwegian continental shelf until they had found a way to safely dispose of the AG.⁷⁶ This approach was visionary, proactive and categorical. On the

⁷¹ Egufe Yafugborh, '6 Years After, No Meaningful Progress on Ogoni Clean-up —MOSOP', *Vanguard* (Lagos 3 June) <<https://www.vanguardngr.com/2022/06/6-years-after-no-meaningful-progress-on-ogoni-clean-up-mosop/>> accessed 29 September 2022.

⁷² Livinus I. Nwokike, 'Nigeria Law and Policy Issues in Gas Flaring: A Standard for Gas Utilization or Sacrificial Interest?' [2020] (3) (4) *Sapientia Global Journal of Arts, Humanities and Development Studies (SGOJAHDS)* 125.

⁷³ Millicent Ele, 159.

⁷⁴ Abdurafiu Olaiya Noah, and Pawan Adhikari, and Babafemi O. Ogundele, and Hassan Yazdifar, 'Corporate Environmental Accountability in Nigeria: An Example of Regulatory Failure and Regulatory Capture', [2020] (2) (2) *Journal of Accounting in Emerging Economies* 1 – 37.

⁷⁵ Chukwuemeka Chuks-Ezike, 'The Petroleum Industries Bill; A Deficient Policy for Environmental Management in Nigeria's Oil and Gas Sector', [2018] (2) (2) *Environmental Risk Assessment and Remediation* 39 <DOI:10.4066/2529-8046.100038> accessed September 25 2022.

⁷⁶ Jamilu Ibn Mohammad, 'Comparing Nigeria's legal Framework for Combating Gas Flaring with that of Norway: Lessons for Nigeria', [2016] (2) (9) *Imperial Journal of Interdisciplinary Research* 1252 <<http://www.onlinejournal.in/IJIRV2I9/197.pdf>> accessed 26 September 2022.

contrary, Nigeria has not been decisive, at best she has been lukewarm in legally regulating O&G operations to secure the environment. The nation has failed to utilise its strong bargaining power as the host country to compel the MNOCs to strictly play by the rule so much so that the oil companies are sometimes even trying to dictate the direction of regulations.⁷⁷

Based on the discussion so far, this paper recommends as follows: The government should strengthen the agencies charged with enforcement of environmental regulations in the O&G sector including by improving their technical and human resources capacity. Efforts should also be made to rid these agencies of corruption and shield them from political interference for optimal performance. The government should consider amending the PIA to prescribe stiffer penalties for environmental offences where the existing penalties appear too soft and to create penalties where the extant Act provides for none. However, as a makeshift measure, the government may consider promulgating subsidiary legislations as permitted under the Act as a way of expediently addressing the above gaps. In the meantime, there is need for decisive enforcement of the extant provisions of PIA while the required amendments are being pursued. This is crucial given that poor implementation had been key in weakening the effect of the old laws.⁷⁸

⁷⁷ See for instance Okechukwu Nnodim, 'Oil Companies Oppose FG's Penalties Over Gas Flaring' <<https://punchng.com/oil-companies-oppose-fgs-penalties-over-gas-flaring/>> accessed September 26 2022. *The Punch* (Lagos 8 July 2022).

⁷⁸ Olusola Joshua Olujobi, and Tunde Ebenezer Yebisi, and Oyinkepreye Preye Patrick, and Afolabi Innocent Ariremako, 'The Legal Framework for Combating Gas Flaring in Nigeria's Oil and Gas Industry: Can It Promote Sustainable Energy Security?' (14) *Sustainability*, 14, 7626 <<https://doi.org/10.3390/su14137626>> accessed September 26 2022.