

**The Environmental And Conceptual Review on the Adherence to Health And Safety in the Oil and
Gas Industry in Nigeria**

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Degree**

2024.

Declaration

I hereby declare that this thesis titled ‘The Environmental And Conceptual Review on the Adherence to Health And Safety in the Oil and Gas Industry in Nigeria’ was performed by me in the Faculty of Law, Lead City University, Ibadan, Oyo State under the supervision of Dr. Oluyinka Adedeji. The information derived from the literature has been fully acknowledged in the text and the lists of references provided. No part of this work has been presented for another degree or diploma at any institution.

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Approval

This research titled ‘The Environmental And Conceptual Review on the Adherence to Health And Safety in the Oil and Gas Industry in Nigeria’ written by **ABIODUN-OYEKAN Tayelolu** has been read and approved as meeting the standards of the Faculty of Law, Lead City University, Ibadan, Oyo State, in partial fulfilment of the requirement for the award of Masters in Law (LL.M) Degree of Lead City University, Ibadan, Oyo State

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Dedication

This project work is dedicated to God Almighty for the successful completion of this thesis and for His protection upon me throughout the course of the study in this great citadel of learning.

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Acknowledgement

This is to express my profound gratitude and appreciation to Almighty God, who has always been protecting me and assisting me through my course of study in this great citadel of learning.

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Acronyms

AC	Appeal Court
QB	Queen's Bench
NWLR	Nigerian Weekly Law Reports
NMLR	Nigerian Monthly Law Reports
NLR	Nigerian Law Reports
EIA	Environmental Impact Assessment
DPR	The Department of Petroleum
NNPC	Nigerian National Petroleum Corporation
HSE	Health, Safety and the Environment

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Abstract

Over the years, it has been observed that no serious efforts have been directed towards making a concrete unique rules and regulations to combat menace of various pollutant elements in the world environment. One of the issues associated with the environment is oil spillage and pollution. Most of the nations of the world, despite various threat posed by the environmental hazards, had no national policy or national statutes directed or enacted to forestall or curb the menace. Those that have a legal framework lacked enforcement mechanism. This study has appraised the legal framework of environment issues in the oil and gas sector in Nigeria. The research methodology explored in this study is qualitative. That is, library-oriented research. It is also interesting to mention that the Stockholm Declaration on the Human Environment at the conference of 1972 draws the attention of the world to problems of human environment which for the first time in the history of the world, present a blue print on a legal regime for environmental protection, which highlights the problems and suggests measures to make the system of regulatory environmental management more effective and proactive. It has also been discovered through the findings of this study that a consistent review of the laws in relation to oil and gas will reduce environmental hazards and it is concluded that the legislature should be up and doing in enacting related laws that will enhance a good environment.

The methodology adopted and explored in this research work is qualitative.

Keywords: Oil and gas, Health, Safety, Gas, Environment, oil Spillage, over-exploitation, Pollution

Word Count: 249

Chapter One

Introduction

1.1 Background to the Study

Environmental Law is the field of law dealing with the maintenance and protection of the environment, including preventive measures such as the requirements of environment-impact statements, as well as measures to assign liability and provide cleanup for incidents that harm the environment.¹ The growth of the oil industry, combined with population explosion and the lack of inadequate implementation of environmental regulation, has led to substantial damage to Nigeria's environment.² Various activities in the oil industry account for the deleterious condition of the environment, including oil spillages, gas flaring, and seismic movements causing tremors.³ Exploration of oil affects different elements of the environment leading to varied consequences. In the light of discussing environs depletion and oil spillage, it is imperative to examine environmental degradation. Environmental degradation is the process that compromises the natural environment by reduction of biological diversity and the general health of the environment.⁴ It involves the progressive contamination, over-exploitation, or destruction

¹ B. A. Garner, *Black's Law Dictionary*, (9th Ed. United States: Thomson Reuters Publishing Company 2009), 614.

² H. Philip & U. Ucheckuwku; "Oil Exploration, Environmental degradation, and Future Generations in the Niger Delta; Options for Enforcement of Intergenerational Rights and Sustainable Rights and Sustainable Development Through Legal and Judicial Activism" (2000) 3 (4), 10.

³ *Compagnie Genralede Geophysique (Nig). Ltd. v. Ogu* (2005) 8 NWLR (Pt. 927) 366, 386.

⁴ D.L. Johnson et al., Meanings of Environmental Terms, 26 J. ENVTL. QUALITY 581 (1997); see also What Is Environmental Degradation? WISEGEEK, <https://www.wisegeek.com/what-is-environmental-degradation.htm> accessed on 21st August, 2023.

of environmental elements like air, water, and land.⁵ Depletion of resources may arise from natural causes, such as disasters or pressure of the ecosystem, or human exploitation, such as overuse and pollution.⁶ Human activities accelerate the process of environmental degradation. This phenomenon is a major threat to the continuous existence of the human race on this planet.⁷ Hence, the need to protect the rights of men against every environmental hazard. Any person who intends to pursue environmental interest in court is expected to approach the court expeditiously before it become statute bar.⁸

"Our environment is faced with the twin pressure of population and development, results in its deterioration and depletion of the natural resources at an alarmingly fast rate. Besides the traditional pollutants, the strain of unchecked effluents and emissions from hazardous industries has caused pollution of the environment and consequent human health hazards. The reckless industrial growth may lead to an over exploitation and destruction of natural resources to such an extent that our future generations may discover that life support system has been damaged beyond repair. Therefore, there is a need for striking a balance between environment and development so that we may have sustainable development". He added further that "Environmental pollution which has become a worldwide problem, is receiving considerable attention today. The United Nations Conference on Human Environment in 1972 was an initial

⁵ NATIONAL INSTITUTE OF OPEN SCHOOLING, Environmental Degradation and Disaster Management Module-4 Contemporary India: Issues and Goals, 245, 250–51, <https://www.slideshare.net/indianeducation/disaster-management-in-india> accessed on 21st August, 2023.

⁶ Ighodalo Akhakpe, "Oil-Environmental Degradation and Human Security in the Niger-Delta Region of Nigeria: Challenges and Possibilities", (2011) 2 (3) *EUR. SCI. J.* ,77.

⁷ John Harte, "Human Population as a Dynamic Factor in Environmental Degradation", *POPULATION & ENV'T* (2007) 2 (8), 223-224.

⁸ There is plethora of cases on limitation of statute in Environmental law which include the case of Daniel Holdings v U.B.A Pc (2005) 11 M.J.S.C 69; Royal Ade v. National Oil (2004) 9 M.J.S.C 4; Gonzee v. Neir D.C. (2005) 12 M.J.S.C 199.

major effort to diagnose the unsatisfactory state of global environment. In India (for instance) the commitment to this international effort has given births to environmental movement and protection of environment received constitutional status in 1974"⁹

From the above, it can be seen that before 1972, no serious efforts have been directed towards making a concrete unique rules and regulations to combat menace of various pollutant elements in the world environment. Most of the nations of the world, despite various threat posed by the environmental hazards, had no national policy or national statutes directed or enacted to forestall or curb the menace¹⁰. It is interesting to mention that the Stockholm Declaration on the Human Environment at the Conference of 1972 draws the attention of the world to problems of human environment which for the first time in the history of the world, present a blue print on a legal regime for environmental protection, which highlights the problems and suggests measures to make the system of regulatory environmental management more effective and proactive¹¹.

Arguably, Environmental law is comparatively undeveloped in Nigeria for a very long period¹². Specifically, 'there was' no national environmental law or policy so to speak in Nigeria which protects the individual's rights from encroachment from the activities of others resulting in infectious and paralytic diseases and in the degradation of the quality of our environment. With its attendant adverse effects on the ecological base of Nigeria's natural resources; the economy of

⁹ K.C. Nnadozie, *Lawrence Atsegbua et al.*, *Environmental law in Nigeria, Theory and Practice* (Lagos: Ababa Press Ltd, Surulere, 2004), 15.

¹⁰ K.C. Nnadozie in a paper presented titled: *Pollution Control in Nigeria: The Legal Frame Work* at a workshop in Lagos, Sheraton and Towers Hotels; April (1994), 43.

¹¹ E.A. Matt, Ivbijaro et al, *Sustainable Environmental Management in Nigeria*, (Ibadan: Maltiri Production, 1986), 14.

¹² Ibid

the nation and the health of the people"¹³ Meanwhile, the National Assembly has made plethora of enactments in relation to environment in Nigeria. In fact. There are regulatory agencies who ensure that all the local laws and international treaties regulating the environment are properly enforced¹⁴

Furthermore, one of the natural resources in the global market is Oil and this is located in the environment. It is seen as one of the valuable commodities in the world market. Unfortunately, the process involved in its exploration, extraction and transportation most often impinge on the environment¹⁵. Cases of oil spillage considered damaging to the environment has been recorded in local communities of the oil-bearing Niger Delta and other areas remotely distant from the region.

According to Ntukekpo¹⁶ Oil spill can occur through mechanical failure, operational error natural hazard, corrosion of pipelines, third party activity and sabotage. Oil spill through acts of sabotage or pipeline vandalism by idle youth in Nigeria has peaked up in the last few decades.

¹³ C.S. Ola: *Town and Country Planning and Environmental Law in Nigeria*; (OUP, Jericho, Ibadan 1984) P. 12.

¹⁴ The body saddled with the regulation include National Environmental Standards and Regulations Enforcement Agency (NESREA); National Oil Spill Detection and Response Agency; Federal Ministry of Environment; Directorate of Petroleum Resources; Nigerian Nuclear Regulatory Authority; Federal Ministry OF Water Resources; Erosion, Floods and Coastal Zone Management, Drought and Desertification Agency etc... And the laws among others include National Environment Standards Regulations and Enforcement Agency (Establishment) Act 2007; Environmental Impact Assessment Act (Cap E12 LFN, 2004); Harmful Waste(Special Criminal Provisions etc.) Act (Cap H 1 LFN, 2004); Endangered Species (Control of International Trade and Traffic) Act (Cap E9 LFN, 2004); National Oil Spill, Detection and Response Agency Act 2006; National Park Services Act (Cap N65 LFN, 2004); Nigerian Minerals and Mining Act, 2007; Water Resources Act (Cap W2 LFN, 2004) and Oil in Navigable Waters Act etc.

¹⁵ K.N. Aroh, I.U. Ubong; "Oil Spillage Incidents and Pipeline Vandalization in Nigeria" (2010) 19 (1), 70.

¹⁶D.S. Ntukekpo, *Spillage: Bane of Petroleum, Ultimate Water Technology and Environment*, Ota (1996).

Also, it has been greatly observed by Isirima¹⁷ that poor implementation of memorandum of understanding (M.O.U) between oil companies and host communities, lack of employment and environmental degradation has been blamed for this trend. Apart from the loss of lives and property through pipeline fire, the run off from impacted sites usually degrade the quality of fresh water sources which serves the domestic rural water supply needs of most communities in Nigeria¹⁸.

It is also noted that oil pollution is one problem for which no effective and final solution has been found anywhere in the world in spite of efforts to control it. It is indeed extremely difficult to separate oil spill incidents from oil exploration and exploitation¹⁹.

Okafor²⁰ also reported that whenever there is incident of oil spillage, it usually causes serious economic problem, contaminate drinking water and cause general discomfort and disruption of normal life.

Whenever there is oil spillage and environs depletion, the people in the community always suffer great pains and to this end, there are provisions for the environmental rights and human rights

Flowing from the above, it can also be said that there is an upward trend in the consumption of oil and gas products in Nigeria, with data from 2006-2011 indicating the a 53, 67.3, and 68.5 percent of overall energy consumption in Nigeria.²¹

¹⁷ N.O. Isirimah, , A.C. Chinda, and S.A. Braide, “Environmental protection: problems, progress, practice and prospects: case for Niger Delta”, paper presented at the Nigeria Environmental Society Monthly Seminar Series, Amphitheatre Rivers, State University of Science and Technology, Port Harcourt, (2006).

¹⁸ Ibid.

¹⁹ M. Kontagora, “Address”, International Symposium on the National Oil Spill Contingency Plan for Nigeria, Badagry, February, (1991), 1-3.

²⁰ Okafor, N. Aquatic and Wastes Microbiology, 4th Dimension Publishers, Enugu, (1985), 41-128.

²¹ Energy Information Administration (EIA). *Annual Energy Review 2011*. US Energy Information Administration, September (2012), 31.

This consumption levels are driving the demands for more oil and gas products, mostly for the fact that it remains the highest earning and performing sector, that is run by both foreign and international organizations. The industry apart from the civil service in Nigeria holds the highest number of staff employment contracts in Nigeria.²²

There are various activities that are linked to the exploration and harnessing of crude products before there are refined to petroleum and other relevant products. These onshore and offshore activities include drilling, production, processing, underwater construction, maintenance and repair, and the transport of the oil and gas.

The above activities pose dangers not only to the workforce but to the immediate environment, including the inhabitants at the various locations such activities take place. There have been several incidences that have rocked the lives of workers involved in on field accidents during oil explorations activities, ranging from third degree burns, to losing parts of bodies, and death.

Most studies have looked at a post-legislative solution to family's and victims affected by oil and gas exploration activities. Citing Statutes with only tangential reference to compensation for oil and gas pollution and accidents.²³

This study takes pre-legislative solution, that aims at ensuring that there is combating issues related to possible environmental and employee safety. The legislation was however meant to confer ownership of the resources solely to the state to regulate exploitation²⁴. Notable in this piece of legislation were the regulations geared toward environmental protection. The law required that operators to adopt all practicable precautions to prevent pollution of the waters as a

²² I.O Fadeyibia, P.I, Jewob, P. Opoolaa, O.S. Babalolaa, A. Ugburoc, S.A, Ademiluyia, "Burns and Fire Disaster from Leaking Petroleum Pipes in Lagos, Nigeria: An 8 Years-experience". *Burns Journal*, 3 (7), (2011), 145-152.

²³ <http://www.dw.com/en/oil-spills-keep-devastating-niger-delta/a-18327732> accessed on 21st of August, 2023.

²⁴ Petroleum Act, ch.350, Laws of Federal Nigeria, (1990)

result of oil spillage and where it occurred, to take steps to control and end it and to provide a research work on environment in accordance with health and safety regulations.

Historical Analysis of Need for Health and Safety Consideration in Nigeria

There are different concepts in relation to health, safety and environment. The Oil and Gas Industry has dealt blow on the environment and it has been an issue of concern for the people all over the world. In order to regulate oil spillage and environment depletion, there are lot of legal framework and institutions in place.

Against this backdrop, this chapter will only explain different concepts in relation to oil industry and the implications of oil spillage and related issues on the environment. The industrial revolution of 1760-1800 introduced in its wake, a myriad of problems. With the introduction of machinery and the advancement of manufacturing processes, mass production became necessary to meet the growing demand. Also, cheap labor, child labor and poor conditions at work especially in hazardous industries coupled with poor pay became a growing concern. Other countries followed suit after Britain and other parts of Europe and industrialization became a household name. prevalent among the problems that came with industrialization were long working hours for children, working in hazardous industries without proper protective equipment meant that a lot of workers contracted diseases that were incurable and died at very young ages. Business owners at the time, did not care much about the safety of employees as making profit at the time was their prime motive.²⁵

In the United Kingdom, the Factory Act of 1802 was passed. Introduced by Sir Robert Peel, it was also known as the Health and Morals of apprentices Act. The Act was introduced primarily to impose certain restrictions on the age which children could start working and also

²⁵ Don Cameron < <https://staysafeapp.com/blog/2020/08/21/history-workplace-health-and-safety/> > accessed on 24 September, 2023

address the issue of long hours of work which most children had to endure. The Act set the much-needed tone for several other Acts is often referred to as the “Pioneer Act” in Health and Safety. The Act helped to address those issues for a while but noncompliance by factory owners led to the introduction of Factory Inspectors from 1833-1868. The inspectors were employed mainly to ask the workers questions about the conditions of work and were given access to all mills and factories. Their responsibilities included making sure that nobody was overworked after workers in most factories started the “Ten hours movement” protesting the existing twelve hours a day which they had been subjected to by factory owners. Also, the mines and quarries where the raw materials that fed the factories were from, had to be regulated as well because workers started to raise similar concerns and this led to the introduction of the Mines and Collieries Act of 1842, the Mines Inspectorate of 1843, The Coal Mines Inspection Act of 1850, The Coal Mines Regulation Act of 1872 and the Mines Regulation Act of 1881²⁶

In 1835, the concept of ‘Employer’s duty of care to employee’ was introduced. The first ever recorded case of an employee suing an employer for work related injury was in 1835 in England when Charles Priestly sued his employer after suffering a broken thigh and a dislocated shoulder as a result of a faulty wagon which had been overloaded by his employer Thomas Fowler. The jury awarded Charles Priestly a sum of one hundred pounds in damages²⁷. This landmark case was very instrumental in setting the stage for the Employers Liability Act of 1880 which allowed employees seek for compensation for work related injuries.

Nigeria’s industrialization journey can be grouped into four phases. First, the pre independence era (1943-1959), this era saw factories that were used to feed other bigger manufacturing factories in Britain and other parts of Europe. As colonialism begun to gradually

²⁶ K Makuch and R Pereira, *Environmental and Energy Law* (Blackwell Publishing Ltd. 2012), 87.

²⁷ *Ibid*, 3.

fade away and become unpopular in the 1950's, the need for economic independence became more apparent. European trading companies who had set up factories in Nigeria to feed their factories back home with raw materials begun to venture into manufacturing in order to keep their factories and maintain a market in Nigeria.

Second, the post-colonial era (1960-1969) saw Nigeria being at the helm of its own affairs and prioritizing industrialization. The aim was to produce locally and to help grow indigenous businesses. Third, the era of the oil bloom (1970-1979), this era saw the government trying to implement even development in parts of the country that were considered deprived. Industries like oil refineries, petrochemical companies, textile factories among others were set up in those areas when the nation had for the first time realized sufficient revenue from its first oil bloom.

Fourth, the decade of the 1980's, 1990's and beyond. In this era, the government's main priority was to encourage and build a competitive economy and remove all barriers that hindered industrial development and to increase the rate of employment by encouraging private sector participation²⁸. Industrialization in Nigeria meant that more people had been employed in these factories that had been set up in the pre-colonial era up until the era of the decade of the 1980's and beyond. Working under proper, clean and conducive environments at that time was a far cry considering the fact that even in the United Kingdom and most parts of Europe where Health and Safety laws originated from were not being adhered to. Most of the health and safety protocols in place were modeled round the existing laws in the United Kingdom.

²⁸ Daibi W Dagogo, 'Nigerian Industrial Development between 1943 and 2013: challenges and opportunities (2014) 1(1) IRREM < http://globalbizresearch.org/files/irrem_daibi-w-dagogo-6985.pdf> accessed on 25 September, 2023.

1.2 Statement of the Problem

It is interesting to state that the environmental problems have no exclusive terrain, but rather a universal global problem.²⁹

Flowing from the above, it is observed that most of the laws in relation to the environment and oil and gas in Nigeria are not enforceable. It is in this light this research work seeks to critically appraise the provisions for legal frameworks regarding different environmental and petroleum laws and the institutional arrangements for monitoring and enforcement to examine their adequacy for making sure there is safe and proper management of the environment within the oil and gas upstream and downstream sector.

Also, mostly, employees are at the receiving end of the problems, more disturbing is how the problem continues to persist as the management of most oil and gas corporations are not usually affected, even the compensation they could end up paying are just meager of the chunk of profits the company earns. This study therefore categorizes the issues that surround oil and gas health and safety regulations to be more of an enforcement problem and the study will examine various existing laws on health and safety in the oil and gas industry.

Furthermore, there is no doubt that issues concerning environment is of concern not only to environmental scientists, but also to every person who lives on this planet.³⁰ The application of the concept of interrelatedness, shared planet, global citizenship, and spaceship cannot be restricted to environmental issues alone. They apply equally to the shared and inter-linked responsibilities of environmental protection and human development and it is in this light this

²⁹ M.T. Okorodudu – Fubara: *Law of Environmental Protection: Materials and Text*, (Nigeria; Caltap Publication (Nigeria) Limited, Ibadan, Nigeria, 1998), 25.

³⁰ The need to have a working knowledge of environmental issues is not confined to environmental scientist, engineer and policy-makers. In our society, all educated people need to have working understanding of the fundamental principles involved for environmentally responsible decision-making.

study will also address the problems of environmental protection and human development in the light of legislative framework and reforms.³¹

Also, this study is not only highlighting the inadequacies within the legal frameworks on health and safety in the oil and gas industry that have left so much lacuna for the management and legal representatives to be able to get away with the accidents sustained by employees in the course of field activities, other issues that the study will emphasize is the bigger implications on the environmental health, and the role of management of oil and gas corporations at ensuring enforcement and support for a more efficient legislation to ensure that oil and gas industries are not weapons of mass destruction to their various operational environments.

1.3 Aim and Objectives of the Study

The aim of this study is to examine the legal relationship between the environment, health and safety in the light of Oil legislative reforms in Nigeria. The objectives of the study *are to*:

1. examine the body of laws and regulations available in the environmental issues in Nigeria.
2. assess progress of the regulatory tenure in the environment from the colonial period up till this present period.
3. examine the existing legal frameworks on health and safety in the oil and gas industry.
4. evaluate if oil and gas industry adhering to the framework.

1.4 Research Questions

1. What are the body of laws and regulations available in the safety and health in the environment?

³¹ Dutta A, Duttas & P.N. Pandey, *Environmental Issues and Challenge*. (New Delhi: A.P.H. Publishing Corporation, 2009), 2.

2. Has the regulatory tenure put in place to regulate the environment from the colonial period improved at this present period?
3. How often are legal reforms made with regards to health and safety in the industry?
4. How is the oil and gas industry adhering to the framework?

1.5 Methodology

The methodology adopted and explored in this study is qualitative i.e., library-oriented research.

The materials employed in the research include;

Primary sources: for instance, National Environment Standards Regulations and Enforcement Agency (Establishment) Act 2007; Environmental Impact Assessment Act (Cap E12 LFN, 2004); Harmful Waste (Special Criminal Provisions etc.) Act (Cap H 1 LFN, 2004); Endangered Species (Control of International Trade and Traffic) Act (Cap E9 LFN, 2004); National Oil Spill, Detection and Response Agency Act 2006; National Park Services Act (Cap N65 LFN, 2004); Nigerian Minerals and Mining Act, 2007; Petroleum Act; Minerals and Mining Act; Water Resources Act (Cap W2 LFN, 2004), Oil in Navigable Waters Act; Petroleum Industry Bill (PIB) (Draft) and National Oil Spill Detection and Response Agency (NOSDRA) Amendment Bill; the 1999 Constitution of the Federal Republic of Nigeria, as amended and judicial precedents.

Secondary sources include relevant information from leading authorities, textbooks on the subject matter of the research, journal articles, and periodicals, opinion of specialists and practitioners all of which are expected to add value to the quality of the work.

1.6 Literature Review

A lot of research has been done on the environmental impacts, health and safety of oil and gas in Nigeria but little attention has been paid to the occupational hazards faced daily by Nigerians residing and working within the oil rich states in Nigeria.

In the Oil and gas industry, what is common is oil spillage and environs depletion, in order to address this menace, Ntukekpo³² made us to understand that oil spill can occur through mechanical failure, operational error natural hazard, corrosion of pipelines, third party activity and sabotage. Oil spill through acts of sabotage or pipeline vandalism by idle youth in Nigeria has peaked up in the last few decades.

Also, Isirima³³ observed that poor implementation of memorandum of understanding (M.O.U) between oil companies and host communities, lack of employment and environmental degradation has been blamed for this trend. Apart from the loss of lives and property through pipeline fire, the run off from impacted sites usually degrade the quality of fresh water sources which serves the domestic rural water supply needs of most communities in Nigeria³⁴.

It is also noted that oil pollution is one problem for which no effective and final solution has been found anywhere in the world in spite of efforts to control it. It is indeed extremely difficult to separate oil spill incidents from oil exploration and exploitation³⁵.

³²D.S. Ntukekpo, "Spillage: Bane of Petroleum, Ultimate Water Technology and Environment, Ota" (1996).

³³ N.O. Isirimah, , A.C. Chinda, and S.A. Braide, "Environmental protection: problems, progress, practice and prospects: case for Niger Delta", paper presented at the Nigeria Environmental Society Monthly Seminar Series, Amphitheatre Rivers, State University of Science and Technology, Port Harcourt, (2006).

³⁴ Ibid.

³⁵ M. Kontagora, "Address", International Symposium on the National Oil Spill Contingency Plan for Nigeria, Badagry, February, (1991), 1-3.

Okafor³⁶ also reported that whenever there is incident of oil spillage, it usually causes serious economic problem, contaminate drinking water and cause general discomfort and disruption of normal life.

Whenever there is oil spillage and environs depletion, the people in the community always suffer great pains and to this end, there are provisions for the environmental rights and human rights. It is a notorious fact that human rights are rights that are inherent in human. They are inalienable and cannot be taken away³⁷ Fundamental rights have a common quality: they are regarded as basic to human worth and dignity or individual liberty and are protected as such.

In Ogbodo's work, he creates ties between environmental sustainability and justice for oil and gas safety and health regulations. Citing how the procedures that guarantee every individual access to justice when there is concerns about public health and safety due to oil and gas activities. The salvaging of the immediate surroundings is critical for the understanding of human rights because human rights will not be guaranteed in an environment not free of pollution.³⁸

Also, Dr. Yakemi describes health investment as the investment for workers to help them spend their working lives in a healthy way both mentally and physically and enable them enjoy better health in later life as well. It is the sum total of all the activities and programs that are aimed at preventing, protecting and maintaining the highest level of health and safety.

Diugwu et al³⁹ states further on the new challenge coming to the oil and gas industry as it starts to utilize advanced impact of oil and gas industry on the environment. International labor

³⁶ N. Okafor, *Aquatic and Wastes Microbiology*, (4th Dimension Publishers, Enugu, 1985) pp. 41-128.

³⁷ Y. Olomajobi, *Human Rights and Civil Liberties in Nigeria*: (Lagos; Princeton & Associate publishing Co. Ltd. 2016), 2.

³⁸ A.B. Abdulkadir, and A.O. Sambo, 'Human Rights and Environmental Protection: The Nigerian Constitution Examined' *Journal of Food, Drug and Health Law* (2009) 6(1), 73.

³⁹ Ibid.

standards such as Recommendation No. 197 highlight the importance of identifying new and emerging hazards and risks in the workplace and the host communities. The accelerating trend towards overlooking new working models, accompanied by new safety, health and environmental risks among other factors, poor work design, the lack of a social work context, and the proliferation oil and gas components places both workforce and the host communities at risk, hence stronger laws to protect health and safety of employees as well the environment. New realities in the workplace, and the accompanying risks, should be addressed.

Ibebuikwe in the work of Aluko and Oyebode⁴⁰ stated that there is need for strong regulatory frameworks from the relevant authorities to tie offshore and environmental health and safety to create a stronger framework for operators in the Nigeria oil and gas industry to stick to. Regulations keep distinguishing these factors in legislative frameworks, because of the failure of contemplating the interrelations between technical and environmental challenges in offshore petroleum operations. When the laws bind the safety of workers to the environment of operations, then it will make both the host communities and the employees to obtain a single framework to support themselves against the selfishness from operators who seek legal loopholes to exploiting both workforce and host communities.⁴¹

According to Wonika⁴², section 20 of the 1999 Constitution of the Federal Republic of Nigeria, as amended clarifies the legal stands of the country to ensure the health and safety of every Nigerian through the enforcement of protecting the land, air, water, forest and wildlife. Considering the impact of oil exploring activities across the Niger-Delta degrading lands, waters and the life in it, damaging forest and wild life existence, Nigerians are still not constitutionally

⁴⁰ Aluko and Oyebode (2006) *The International Comparative Legal Guide to Environment Law* Global Legal. Group Ltd: London.

⁴¹ *ibid*@ 12.

⁴² M. A. Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences' *Journal of Politics and Law* (2012) 5(1) 100.

empowered to state their grievance at a competent court of the law. This provision of section 20 is therefore totally irrelevant to be in the Constitution if there is no way it can be enforced when there is a possible breach of the law by defaulters. In the face of violation or threatened violation of such provision, which the law has overtime polished to be called the Fundamental Objectives and Directive Principle of State Policy in chapter II of the constitution indicates the fear of enshrining human and environmental rights in Nigerians, because of the possibility of multiplicity of suits against the Federal Government. The above reasoning of the court concerning multiplicity of action is with respect untenable. The right of the public cannot be sacrificed in fear of multiplicity of action.

Furthermore, in the work of Abdulkadir⁴³ he concerns himself with findings to a serious situation like gas flaring, environmental pollution, poor insurance of the safety standards that makes the oil and gas exploring companies a danger to Nigeria. Abdulkadir is baffled about how there is a lack of outright laws in the Constitution to protect the health and safety of the people in an environment like Nigeria rich in natural resources both in the dry land and the water bodies.

What can be deduced from the writing of Abdulkadir is the fact that there are higher chances for places with natural resources to come under human activities to tap such resources in turn exposing the environment to high levels of pollution.

In the defining studies carried out by Cullet⁴⁴, his findings centres on the discussion of laws for health and safety beyond what the narrowed discuss as to only to ensure the protection of the workforce of the companies involved in any place of exploration. The broader impact is mostly

⁴³ A. B Abdulkadir, "The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice In Nigeria". *Afe Babalola University: Journal Of Sustainable Development Law and Policy* (2014), (3) (1), 18.

⁴⁴ Philippe Cullet, 'Definition of an Environmental Right in a Human Rights Context' (1995) <http://www.ielrc.org/content/a/9502.pdf> accessed on 23 August 2021.

felt by the host communities as we already see in the situation of the Niger-Delta. Ogoni is still rated as one of the places on earth with a very low life expectancy, averaging 50 years.⁴⁵

Having considered all the relevant literature on the subject matter, it is seen that there is a lot to be done in improving the standard of all Nigerians prone to Oil hazards and it is in this light this study will address the regulatory framework and reforms in relation to environmental and oil and gas enactments.

1.7 Scope and Limitation of the Study

The scope of this study will focus on the existing legislative frameworks that discuss the health and safety of employees and the environment in the oil and gas industry in Nigeria. This research work is limited because of time constraint and non-available of literature review.

1.8 Significance of the Study

The review revealed the limitations of the framework such as incoherent laws, overlaps, duplications and conflicting regulatory functions. In addition, the research will look beyond the regulatory framework to factors within wider socio-political and governance context that contribute to the non-effectiveness of the regulatory framework. Poor governance, rent seeking culture and inadequate funding will be identified as the key contributing factors to implementation deficit.

Also, so many issues are associated with the environment. Most of the countries in the world survive on the natural resources found in the environment. The exploration and exploitation of these natural resources has wreaked havoc to the people in the environment. Meanwhile, some of these issues which include the negative effects of oil spillage are not properly understood by the

⁴⁵ United Nations Environment Programme, Environmental Assessment of Ogoniland (2011) https://wedocs.unep.org/bitstream/handle/20.500.11822/25282/ogoniland_chapter1_UNEP_OEA.pdf?sequence=1&isAllowed=y retrieved and accessed on 22nd August 2023.

people. It is also imperative to state that the need to have a working knowledge of environmental issues is not confined to environmental scientist, engineer and policy-makers. In our society, all educated people need to have working understanding of the fundamental principles involved for environmentally responsible decision-making. Thus, this study is relevant for the proper enlightenment of every individual in the society to know the duties imposed on them by law and their rights associated with the environment.

Also, the literatures available in the environmental law are emerging and as such, it is not out of place to have comprehensive research on the environmental issues like oil spillage vis-a- vis the environmental rights and human rights as a whole.

Consequent upon the above, the above gives the research an expansive nature that will allow for a bedrock analysis of the underlying issues that would be specific factors that students of law, environmental and oil researchers, lecturers in the field of environmental law in the future will want to carry out further research on, after going through this study.

Chapter Two

Literature Review

2.1 Historical Analysis of Need for Health and Safety Consideration in Nigeria

There are different concepts in relation to health, safety and environment. The Oil and Gas Industry has dealt blow on the environment and it has been an issue of concern for the people all over the world. In order to regulate oil spillage and environment depletion, there are lot of legal framework and institutions in place.

Against this backdrop, this chapter will only explain different concepts in relation to oil industry and the implications of oil spillage and related issues on the environment. The industrial revolution of 1760-1800 introduced in its wake, a myriad of problems. With the introduction of machinery and the advancement of manufacturing processes, mass production became necessary to meet the growing demand. Also, cheap labor, child labor and poor conditions at work especially in hazardous industries coupled with poor pay became a growing concern. Other countries followed suit after Britain and other parts of Europe and industrialization became a household name. prevalent among the problems that came with industrialization were long working hours for children, working in hazardous industries without proper protective equipment meant that a lot of workers contracted diseases that were incurable and died at very young ages. Business owners at the time, did not care much about the safety of employees as making profit at the time was their prime motive.⁴⁶

In the United Kingdom, the Factory Act of 1802 was passed. Introduced by Sir Robert Peel, it was also known as the Health and Morals of apprentices Act. The Act was introduced

⁴⁶ Don Cameron < <https://staysafeapp.com/blog/2020/08/21/history-workplace-health-and-safety/> > accessed on 24 September, 2023

primarily to impose certain restrictions on the age which children could start working and also address the issue of long hours of work which most children had to endure. The Act set the much-needed tone for several other Acts is often referred to as the “Pioneer Act” in Health and Safety. The Act helped to address those issues for a while but noncompliance by factory owners led to the introduction of Factory Inspectors from 1833-1868. The inspectors were employed mainly to ask the workers questions about the conditions of work and were given access to all mills and factories. Their responsibilities included making sure that nobody was overworked after workers in most factories started the “Ten hours movement” protesting the existing twelve hours a day which they had been subjected to by factory owners. Also, the mines and quarries where the raw materials that fed the factories were from, had to be regulated as well because workers started to raise similar concerns and this led to the introduction of the Mines and Collieries Act of 1842, the Mines Inspectorate of 1843, The Coal Mines Inspection Act of 1850, The Coal Mines Regulation Act of 1872 and the Mines Regulation Act of 1881⁴⁷

In 1835, the concept of ‘Employer’s duty of care to employee’ was introduced. The first ever recorded case of an employee suing an employer for work related injury was in 1835 in England when Charles Priestly sued his employer after suffering a broken thigh and a dislocated shoulder as a result of a faulty wagon which had been overloaded by his employer Thomas Fowler. The jury awarded Charles Priestly a sum of one hundred pounds in damages⁴⁸. This landmark case was very instrumental in setting the stage for the Employers Liability Act of 1880 which allowed employees seek for compensation for work related injuries.

Nigeria’s industrialization journey can be grouped into four phases. First, the pre independence era (1943-1959), this era saw factories that were used to feed other bigger

⁴⁷ K Makuch and R Pereira, *Environmental and Energy Law* (Blackwell Publishing Ltd. 2012), 87.

⁴⁸ *Ibid*, 3.

manufacturing factories in Britain and other parts of Europe. As colonialism begun to gradually fade away and become unpopular in the 1950's, the need for economic independence became more apparent. European trading companies who had set up factories in Nigeria to feed their factories back home with raw materials begun to venture into manufacturing in order to keep their factories and maintain a market in Nigeria.

Second, the post-colonial era (1960-1969) saw Nigeria being at the helm of its own affairs and prioritizing industrialization. The aim was to produce locally and to help grow indigenous businesses. Third, the era of the oil bloom (1970-1979), this era saw the government trying to implement even development in parts of the country that were considered deprived. Industries like oil refineries, petrochemical companies, textile factories among others were set up in those areas when the nation had for the first time realized sufficient revenue from its first oil bloom.

Fourth, the decade of the 1980's, 1990's and beyond. In this era, the government's main priority was to encourage and build a competitive economy and remove all barriers that hindered industrial development and to increase the rate of employment by encouraging private sector participation⁴⁹. Industrialization in Nigeria meant that more people had been employed in these factories that had been set up in the pre-colonial era up until the era of the decade of the 1980's and beyond. Working under proper, clean and conducive environments at that time was a far cry considering the fact that even in the United Kingdom and most parts of Europe where Health and Safety laws originated from were not being adhered to. Most of the health and safety protocols in place were modeled round the existing laws in the United Kingdom.

⁴⁹ Daibi W Dagogo, 'Nigerian Industrial Development between 1943 and 2013: challenges and opportunities (2014) 1(1) IRREM < http://globalbizresearch.org/files/irrem_daibi-w-dagogo-6985.pdf> accessed on 25 September, 2023.

2.1.1 Nature of Health, Safety and Environmental Challenges in the Oil and Gas Industry

Convention No. 187 provides that mechanisms for the collection and analysis of data should take into account the relevant ILO instruments, including the Protocol of 2002 to the Occupational Safety and Health Convention⁵⁰, the List of Occupational Diseases Recommendation, 2002 (No. 194), and the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases, 1996. Protocol on Convention states that “statistics shall be established following classification schemes that are compatible with the latest relevant international schemes established under the auspices of the ILO or other competent international organizations”. Systems for the recording and notification of accidents and diseases are instrumental to the collection of the data necessary for developing preventative action in the oil and gas industry.⁵¹ It encourages governments, in consultation with the most representative organizations of employers and workers, to ensure that such systems are established in law and function effectively in practice. This may include undertaking an examination of the causes of under-reporting, including insufficient knowledge and avoidance of insurance costs related to reporting, and then taking proactive measures to address the difficulties identified. Meanwhile, the court has been proactive in protecting the environment from being polluted resulting into causing damage to the people where there is a damage, the court usually award compensation⁵².

It is the duty of the Federal Ministry of Labor and Productivity (Inspectorate Division) to enforce the Factories Act of 1990, while the Labor, Safety, Health and Welfare Bill of 2012 (which repealed the Factories Act) empowers the National Council for Occupational Safety and

⁵⁰ No. 155 of Occupational Safety and Health Convention, 1981.

⁵¹ No. 155 of Article 7 of the Protocol to Convention, 2002.

⁵² See the case of Shell Petroleum Development Company of Nigeria Limited v. Chief G.B.A. Tiebo VII & Ors (2005) 9 M.J.S.C 158.

Health of Nigeria to administer the proceeding regulations on its behalf, still the dangers to the health and safety of oil and gas workers in Nigeria lingers as will be discussed further.⁵³

In the oil and gas industry there are many tasks in which the health and capacity of a worker could have an impact on the safety of a task being conducted, or could worsen the health conditions of the worker. Workers who are unable to complete a task safely place themselves and others at risk. The primary occupational hazards associated with offshore exploration and production operations include illnesses from exposure to geographical and climatic elements, stress from travelling long distances over water, and personal injury. Psychological problems may result from the physical isolation of exploratory sites and their remoteness from base camps, and the extended work periods required on offshore drilling platforms.⁵⁴

In the work of Parkes argues that some workers cannot handle the stress of working offshore at a demanding pace, for extended periods of time, under relative confinement and subject to ever-changing environmental conditions. The signs of stress in workers include unusual irritability, other signs of mental distress, excessive drinking or smoking or use of drugs. Seasickness and drowning, as well as exposure to severe weather conditions, are other hazards in offshore work. Injuries while working in drilling and production activities may result from many causes, including slips and falls, pipe handling, lifting pipe and equipment, misuse of tools and mishandling explosives. Burns may be caused by steam, fire, acid or mud containing chemicals such as sodium hydroxide. Dermatitis and skin injuries may result from exposure to crude oil and chemicals.⁵⁵

⁵³ D. Valentic, D. Stojanovic, V. Micovic, M. Vukelic, "Work-related Diseases and Injuries on an Oil Rig", , (2005), 6 (1), *In International Maritime Health*, 56–66.

⁵⁴ K. R. Parkes, Offshore working time in relation to performance, health and safety; A Review of Current Practice and Evidence, Research Report RR 772 (London, Health and Safety Executive, 2010).

⁵⁵ *ibid*

2.2. Conceptual Framework

2.2.1 Health

According to the world health organization, Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity⁵⁶. The international labor organization equally defines health as the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations by preventing departures from health, controlling risks and the adaptation of work to people and people to their jobs.⁵⁷ Living a healthy life is a fundamental requirement to long life. Healthy living is not always about not being sick or feeling sick for that matter. It is also about mental health and social well-being. Maintaining a healthy life at the workplace is very important as this reflects in the output of an individual. (Nigerian laws on health)

2.2.2 Safety

Safety is described as the condition of feeling safe from injury, risk and danger. In other words, when one is safe, it means that one is protected from potential harm. Safety at the workplace is very necessary because when employees feel safe in their working environment, productivity is affected positively. Also, enforcing safety protocols mean that not only are employees safe but the entire environment is safe. The international labor organization has set out more than 40 standards aimed at improving occupational safety and health. It also has about 40 codes of practice and these include, safety in health and mines convention, safety and health

³< <https://www.who.int/about/who-we-are/constitution>> accessed on 22nd August, 2023

in agricultural convention, radiation protection convention, chemicals convention among others.⁵⁸(Nigerian laws on safety)

Health and safety are a general term used to refer to laws, rules, regulations⁵⁹ and efforts put in place to protect the safety and health of employees and the public as well as the environment from workplace associated hazards. This also means that it is what organizations must do in order not to harm anyone. The National Policy on Labor is based on the provisions of Section 17 of the 1999 Constitution of the Federal Republic of Nigeria⁶⁰ which provides that “the State social order is founded on the ideals of Freedom, Equality and Justice”. It is clearly stated in Section 17 subsection 3, that the State shall direct its policy towards ensuring that: a) All citizens without discrimination on any group whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. b) Conditions of work are just and humane and that there are adequate facilities for leisure and for social, religious and cultural life. c) The health, safety and welfare of all persons in employment are safeguarded and not endangered or abused. d) There are adequate medical and health facilities for all persons. e) There is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever.

It is important to note that the 1999 Constitution makes safety, health and welfare of labor an extent of Federal and State Legislative Powers. Item 34 of Part I (Exclusive Legislative List), of the Second Schedule of the Constitution stated labor as including Trade Unions, industrial relations, conditions, safety and welfare of labor and industrial disputes. Furthermore,

⁵⁸ <<https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang-en/index.htm#:~:text=The%20ILO%20Constitution%20sets%20forth,injury%20arising%20from%20their%20employment.&text=ILO%20standards>> accessed on 24th August, 2023

⁵⁹ Digital Learning Techniques for Effective EHS Training < <https://blog.commlabindia.com/training-solutions/elearning-to-create-engaging-ehs-training> > accessed on 24 August, 2023

⁶⁰ CRFN,1999.

Section 17 of the Part II (Concurrent Legislative List) of the same Second Schedule of the Constitution, on Extent of Federal and State Legislative Powers, also stated that the National Assembly may make laws for the federation or any part thereof with respect to: a) The health, safety and welfare of persons employed to work in factories, offices or other premises or inter-state transportation and commerce including the training, supervision and qualification of such persons b) The regulation of ownership and control of business enterprises throughout the Federation for the purpose of promoting, encouraging or facilitating such ownership and control by citizens of Nigeria. c) The establishment of research centers for agricultural studies d) The establishment of institutions and bodies for the promotion or financing of industrial, commercial or agricultural development of the State. Section 18 of the same document also states that subject to the provisions of the Constitution, a House of Assembly may make Laws for that State with respect to industrial, commercial or agricultural development of the State.

Occupational health is a means of protecting and maintaining the physical, psychological and social health of workers and their families.⁶¹ It can also be viewed as the study of factors or conditions influencing the health and wellbeing of workers not only in the place of work but also at home with the aim of promoting health, safety and welfare of the workers and their family⁶²

The joint International Labor Organization (ILO) and the World Health Organization (WHO) constituted in 1950 and revised in 1995, defined Occupational Health as the “promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupation”. ILO further summarized Occupational Health definition as the “prevention of departure from health among workers caused by their working conditions; the promotion of workers in their employment from risks resulting from factors adverse to health, the placing and

⁶¹ IOSR Journal of Environmental Science, Toxicology and Food Technology (IOSR-JESTFT) e-ISSN: 2319-2402, p- ISSN: 2319-2399. Volume 8, Issue 12 Ver. I (Dec. 2014), PP 22-53.

⁶² *ibid.*

maintenance of the worker in occupational environment adapted to their physical and psychological well-being; and the adaptation of work to man and man to his work.⁶³ Dr. Yakemi describe it as the health investment for workers to help them spend their working lives in a healthy way both mentally and physically and enable them enjoy better health in later life as well. It is the sum total of all the activities and programs that are aimed at preventing, protecting and maintaining the highest level of health and safety.

2.3 Forms of Hazards

2.3.1 Physical Hazards

A physical hazard is a factor within the environment that can harm the body without necessarily touching it. Vibration and noise are examples of physical hazards. Employers to take all the necessary measures according to the operating conditions of a workplace to protect the life and health of workers.⁶⁴ Parkes highlights how in Angola, employers are required to establish protective measures, provide information and notify authorities regarding ionizing radiation, which is completely lacking in Nigeria. In most offshore rig facilities like the Eni one, closed areas assigned to workers are deprived of or insufficiently provided with openable windows directly overlooking the outside, measures shall be taken to introduce fresh air at a rate of 30 cubic metres at least per hour and per person. Similarly, Gabon's law requires that premises in which work is performed shall be ventilated. Premises shall be supplied with windows or other openings directly to the outside and which ensure a sufficient natural or artificial ventilation. The

⁶³ Supra 11.

⁶⁴ Labor, Safety, Health and Welfare Bill of 2012.

atmosphere of workplaces shall be free from smells obstructing breathing, from condensation and from hazardous unhealthy and inconvenient pollutants such as steams, gases or dust.⁶⁵

2.3.1.1 High Temperature

Workers may be at risk of heat stress when exposed to hot environments or extreme heat. This can result in illnesses including heat stroke, heat exhaustion, heat syncope, heat cramps and heat rashes, or death. Heat also increases the risk of workplace injuries such as those caused by sweaty palms, fogged-up safety glasses or dizziness, and may reduce brain function responsible for reasoning ability, creating additional hazards. Heat stress can be reduced by modifying metabolic heat production or heat exchange by convection, radiation, or evaporation. Although most healthy workers will be able to acclimatize over a period, some workers may be heat intolerant. Heat intolerance may be related to many factors; however, a heat tolerance test can be used to evaluate an individual's tolerance, especially after an episode of heat exhaustion or exceptional heat stroke.⁶⁶

The nature of heat in Sub-Saharan countries have specific provisions for protecting workers in the oil and gas industry from high temperatures. According to the Cameroonian hygiene law, closed working spaces shall be equipped with winders or other openings and shall ensure adequate ventilation to prevent excessive temperature rises. Under Mozambique's laws, workers exposed to high temperatures must use personal protective equipment. Mining activities must be suspended when the temperature exceeds 33o C.⁶⁷In Gabon, the law states that the ambient temperature shall be at an acceptable level, consistent with workers' health and without

⁶⁵ Issues paper for discussion at the Sub-Saharan African Tripartite Workshop on Occupational Safety and Health in the Oil and Gas Industry (Maputo, Mozambique, 17–18 May 2017).

⁶⁶ D. S., Moran, T. Erlich, Y. Epstein, "The heat tolerance test: An efficient screening tool for evaluating susceptibility to heat", (2007), 16 (3), in *Journal of Sport Rehabilitation*, 215–221.

⁶⁷ Legislative Decree No. 48/73 of 5 July; General Safety Rules at Work in Industrial Units 1973-07-05 (Art. 135).

discomfort for physical obligations required to perform the job. It shall be monitored by thermometers installed in workplaces. The temperature shall not cause any discomfort or any risk to workers' health and safety.⁶⁸ The Decree contains detailed provisions related to thermal environment, in particular:

- rest periods granted to workers exposed to extreme temperatures;
- means to protect workers from heat⁶⁹; and
- personal protective equipment for workers who perform their work outside to protect them from bad weather.⁷⁰

In 2016, the US National Institute for Occupational Safety and Health (NIOSH) substantially updated criteria for a Recommended Standard on Occupational Exposure to Heat and Hot Environments, reflecting the recent research and findings of incidents including the Deepwater Horizon oil spill response of 2010. NIOSH recommends that employers implement measures to protect the health of workers exposed to heat and hot environments. Employers need to monitor environmental heat and determine the metabolic heat produced by workers (e.g. light, moderate or heavy work).

Additional modifications (e.g. worker health interventions, clothing and personal protective equipment) may be necessary to protect workers from heat stress, on the basis of increases in risk.⁷¹ In hot conditions, medical screening and physiological monitoring are recommended. Employers, supervisors and workers need to be trained to recognize symptoms of heat-related illness; proper hydration; care and use of heat-protective clothing and equipment; effects of various risk factors affecting heat tolerance (e.g. drugs, alcohol, obesity); the

⁶⁸ Art. 40 of Decree No. 01494/PR/MTEPS.

⁶⁹ Art. 42 of Decree No. 01494/PR/MTEPS.

⁷⁰ Art. 44 of Decree No. 01494/PR/MTEPS.

⁷¹ Issues paper for discussion at the Sub-Saharan African Tripartite Workshop on Occupational Safety and Health in the Oil and Gas Industry (Maputo, Mozambique, 17–18 May 2017).

importance of acclimatization; the importance of reporting symptoms; and appropriate first aid.⁷² Employers should have an acclimatization plan for new and returning workers, because the lack of acclimatization has been shown to be a major factor associated with worker heat-related illness and death.⁷³ NIOSH recommends that employers provide the means for appropriate hydration and encourage their workers to hydrate themselves with potable water at less than 15°C (59°F) made accessible near the work area. Workers working in hot environments for less than two hours and involved in moderate work activities should drink one cup (8 oz.) of water every 15–20 minutes, but during prolonged sweating lasting several hours, they should drink sports drinks containing balanced electrolytes. In addition, employers should implement a work/rest schedule and provide a cool area (e.g. air-conditioned or shaded) for workers to rest and recover. These elements are intended to protect the health of workers from heat stress in a variety of hot environments.⁷⁴

2.3.2 Economic Hazards

An ergonomic hazard⁷⁵ is a physical factor within the environment that harms the musculoskeletal system. Ergonomic hazards include, among others, repetitive movement, manual handling, inappropriate workplace/job/task design, uncomfortable workstation height and poor body position. In Angola, the employer must ensure that no worker is exposed to manual handling of loads without being informed about the damage that they can cause to his/her health and the preventative measures to be taken.⁷⁶ The employer must ensure the health surveillance of workers exposed to risks, giving particular attention to those who perform monotonous or

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ <https://www.google.com/search?q=ergonomic+hazard&oq=ergono&aqs=chrome.4.0i512j69i57j0i512j0i433i512j0i512l6.10344j0j15&sourceid=chrome&ie=UTF-8> accessed on 16 September 2023.

⁷⁶ K. McAndrews, 'Consequences of Macondo: A Summary of Recently Proposed and Enacted Changes to U.S. Offshore Drilling Safety and Environmental Regulation' (2011).

cadenced work. The Gabon law requires worker to have enough free space where he/she may work without any risk for his/her safety and health. Each workstation shall be supplied with a suitable seat. Workplaces and premises for workers shall have, as far as possible, natural lighting and shall be supplied with adequate artificial or electric lighting to ensure good vision to workers. Similarly, in Cameroon, the law requires that there shall be provided suitable seats for the use of workers whose work is carried out while sitting continuously or intermittently.⁷⁷

2.3.3 Biological Hazards

Biological hazards are organic substances that pose a threat to the health of humans and other living organisms. They include pathogenic micro-organisms, viruses, toxins, spores, fungi and bio-active substances. According to the International Labor Organization laws which countries like Angola and Gabon adopted to protect its oil and gas industry workers, the law obliges the employer to ensure that no worker is exposed to the action of biological agents without being informed about the damage that they can cause to his/her health and the preventative measures to be taken. The employer must ensure health surveillance of workers exposed to risks. In Gabon, the law requires that appropriate measures shall be taken in all workplaces where hazardous materials are produced, handled, used, stored or transported.⁷⁸

2.3.4 Chemical Hazards

Hazardous chemicals in the workplace are substances, mixtures and materials that can be classified according to their health and physio-chemical risks and dangers. Such hazards include skin irritants, carcinogens or respiratory sensitizers that have an adverse effect on a worker's

⁷⁷ S. Theriot, 'Changing Direction: How Regulatory Agencies Have Responded to the Deepwater Horizon Oil Spill' *LSU J. Energy L. & Res. Current I.* (2014) 1 (5), 14.

⁷⁸ R. L Glicksman, 'Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence' (2010) GW Law Faculty Publications & Other Works. Paper 608 accessed on September, 2021.

health as a result of direct contact with or exposure to the chemical, usually through inhalation, skin contact or ingestion. The Globally Harmonized System of Classification and Labelling of Chemicals (GHS) of the United Nations⁷⁹ brings together effective systems to improve safety of management of chemicals across borders. Chemical hazards particularly relevant to oil and gas workers include:

- i. Hydrogen sulphide (H₂S): H₂S is often found in oil and natural gas deposits, and in some mineral rocks, and can irritate lungs, throat, nose and eyes. With high levels of H₂S, poisoning can be quick and fatal with little warning.
- ii. Drilling fluids: During drilling, a high volume of drilling fluids is flown through the well and into systems that are open, partially enclosed or completely enclosed at elevated temperatures. When those fluids are agitated, as they are during part of the recirculation process, workers may suffer significant exposure and subsequent health effects.
- iii. Silica: Silica is a fundamental component of sand and rock. Prolonged breathing of crystalline silica dust will cause silicosis disease. The particles are deposited in the lungs, leading to thickening and scarring of lung tissue. Initially, employees with silicosis may have no symptoms, but when the disease progresses, they may suffer shortness of breath, severe coughing and weakness. These symptoms can become worse over time and induce death. Workers carrying out the activities listed below are at high risk of breathing silica dust:
 - a. abrasive blasting using silica-containing products;

⁷⁹ United Nations, Globally Harmonized System of Classification and Labelling of Chemicals (GHS), ST/SG/AC.10/30/Rev.4 (New York and Geneva, 2011). Available at: https://www.unece.org/fileadmin/DAM/trans/danger/publi/ghs/ghs_rev04/English/ST-SG-AC10-30-Rev4e.pdf. Accessed on September 2023.

- b. drilling using dry product additives that contain quartz;
 - c. cementing operations;
 - d. shale dryer maintenance (dry particulate may comprise quartz);
 - e. hydraulic fracturing (loading, unloading, moving or storing sand); and
 - f. sweeping or moving sand or gravel that contains silica.
- iv. Mercury: mercury can be released from geological deposits by heat and pressure, and then migrated to oil and gas traps as a vapor. When those gas reservoirs are produced and processed fluids are cooled, the liquid mercury can condense in heat exchangers, separators, coolers, valves and piping. When such equipment (components made from aluminum alloys or magnesium) is disassembled for maintenance or repair, employees can be exposed to mercury vapor.

These hazardous substances for which sufficient hazard and exposure data are available continue to be of great concern, particularly those to which workers may be exposed for long periods of time.⁸⁰ Examples of these include heavy metals; substances that cause respiratory diseases, such as coal dust; solvents harmful to the nervous system; substances that induce asthma and dermatitis; or carcinogens. A good number of these substances are identified in national lists of occupational diseases.⁸¹ Most Sub-Saharan African countries establish and maintain lists that regulate hazardous substance concentration levels to which workers may be exposed via inhalation, ingestion or skin contact, for specified time periods without being at risk. These limits can be binding or indicative, and may also cover other hazards such as heat, noise, radiation and cold.⁸²

⁸⁰ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *The Gulf Oil Disaster and the Future of Off-shore Drilling: A Report to the President* (Steadfast 2011) 57.

⁸¹ *Ibid.*

⁸² *Ibid.*

In Nigeria⁸³, the law requires employers to ensure the health surveillance of workers exposed to risks. The prevention of occupational risks must be developed according to the principles, standards and programs applicable to substances and agents, occupational exposure limit values, technical standards, sampling, measurement and evaluation of results. In Côte d'Ivoire, the law requires employers to take special precautions for the protection of workers who perform painting or varnishing spraying work or those working with lead and benzoyl.

2.3.5 Psychosocial Hazards

Psychosocial hazards include, among others, stress, violence and substance abuse. There are circumstances in which work can have adverse consequences for health and wellbeing. Risks to psychological health at work may arise from organizational or personal factors, with the major factors being poor design of work and jobs, poor communication and interpersonal relationships, bullying, occupational violence and fatigue. Risks to psychological health due to work should be viewed in the same way as other health and safety risks and a commitment to prevention of work-related stress should be included in an organization's health and safety policies.

Workers who make use of drugs or alcohol often do so in the misperception that they help to reduce the stress of work, or for mood adjustment, performance enhancement, helping to get over peer pressures, or socializing. However, substance abuse generally leads to increased chances of accident, increased absenteeism, and lower productivity and general performance of the company. To some extent, some SSA countries have laws prohibiting substance abuse in the workplace.

⁸³ s. 10 of Petroleum Act 1969.

2.3.6 Communicable Diseases

Communicable diseases are infectious diseases transmissible from person to person by direct contact with an affected individual or the individual's discharges or by indirect means. Oil and gas workers often work in confined areas for extended periods of time, which presents the risks of exposure to communicable diseases⁸⁴ including Ebola, enterovirus D68, flu, hantavirus, hepatitis B, HIV and AIDS, measles, Methicillin-resistant *Staphylococcus aureus* (MRSA), pertussis, rabies, sexually transmitted diseases, shigellosis, tuberculosis, West Nile virus and Zika. The ILO List of Occupational Diseases⁸⁵ reflects the state-of-the-art development in the identification and recognition of occupational diseases in the world today. It indicates clearly where prevention and protection should take place. This list serves as a model for the establishment, review and revision of national lists of occupational diseases. In addition, the ILO adopted an international labor standard on HIV and AIDS in the world of work in 2010 which provides policy and legislative guidance.⁸⁶

2.3.7 Working Time Arrangements

Various working time arrangements are utilized in the oil and gas industry. Fly-in, flyout (FIFO) rosters are one example. These are frequently two weeks on/two weeks off, although schedules of two weeks on/three weeks off and even two weeks on/four weeks off are also observed. Extended rosters such as four weeks on/four weeks off are seen in some remote/overseas locations.⁸⁷ Offshore specialists routinely move from one installation to another and tend to have no fixed work/leave cycle. These irregular working time arrangements could give rise to

⁸⁴ International Labor Office (ILO). Guidelines on Occupational Safety and Health Management Systems (ILO-OSH 2001) (Geneva).

⁸⁵ International Labor Office (ILO). List of Occupational Diseases (rev. 2010) (Geneva). (ILO-OSH 2001) (Geneva).

⁸⁶ No. 200 of the HIV and AIDS Recommendation, 2010.

⁸⁷ G. Ayittey, *Africa unchained: The blueprint for Africa's future* (New York, Palgrave Macmillan, 2005).

concerns for workers and their families. Furthermore, FIFO workers are often expected to work extended shifts; a 12-hour shift is the most common. There is a consistent relationship between long working hours and negative effects on workers' health, alertness and performance.⁸⁸

Diugwu et al⁸⁹ buttresses further on the new challenge coming to the oil and gas industry as it starts to utilize advanced impact of oil and gas industry on the environment. International labor standards such as Recommendation No. 197 highlight the importance of identifying new and emerging hazards and risks in the workplace and the host communities. The accelerating trend towards overlooking new working models, accompanied by new safety, health and environmental risks among other factors, poor work design, the lack of a social work context, and the proliferation oil and gas components places both workforce and the host communities at risk, hence stronger laws to protect health and safety of employees as well the environment. New realities in the workplace, and the accompanying risks, should be addressed.

2.3.8 Environmental Challenges

Generally, two main parts are distinguished in the oil and gas industry: (1) upstream, which concerns with the exploration and production part of the industry and (2) downstream, which caters for the refining and processing of crude oil and gas products, distribution and marketing. Usually, a company in this industry may be fully integrated meaning it undertakes both the upstream and downstream operations or may just concentrate in just one aspect such as exploration and production alone or distribution or marketing. Within each part of the industry, there may be mini companies (commonly termed as the contractor companies) providing various degrees of services. For instance, the upstream may consist of sub-companies providing technical

⁸⁸ I. A., Diugwu, D. I., Nnedinma Umeokafor, K., Jones, B. Umead, "Enforcement of Occupational Safety and Health Regulations in Nigeria: An Exploration", *European Scientific Journal*, (2014), 3. 7.

⁸⁹ Ibid.

services like geophysical surveying, drilling and cementing or non-technical services such as catering, hotels and cleaning services. The oil and gas exploration and production basically involve five main processes: (1) prospecting surveying (2) exploration drilling (3) Appraisal (4) development and production (5) decommissioning and rehabilitation. The prospecting surveying starts with a review of geological maps to identify major sedimentary rock basins. This may be followed by an aerial photography to identify promising geological formations such as faults or anticlines. A field assessment is then done to gather more detailed information. Finally, surveying is undertaken using one of these three methods: magnetic, gravimetric and seismic. The exploration drilling involves creation of exploration wells (“wildcats”) to confirm the presence of hydrocarbons and the thickness and internal pressure of reservoirs.

Hydrocarbon exploration in Nigeria dates back to 1896 when oil seeps were found in the offshore Tano basin in the western region of Ghana. This eventually led to drilling of exploration wells in the vicinity of Half-Asini (GNPC, 2009). Till date, a total of about 10 discoveries have been made and about 79 exploration wells drilled in Ghana including 18 onshore wells. None but the Salt Pond field, discovered in 1970 and located approximately 100km west of Accra, had undergone production between 1978 and 1985, producing about 3.47 million barrels of oil (MMbo) and flaring of 14 billion cubic feet of gas (Bcf) (GNPC, 2009). Hydrocarbon exploration and production activities remained dormant after 1986 till the year 2000 when operations were revived. Currently, exploration and production operations of various degrees are ongoing in Nigeria’s four sedimentary basins namely the Cote d’Ivoire-Tano Basin (including Cape Three Points Sub-basin), Central (Saltpond) Basin, Accra/Keta Basin and Inland Voltaian Basin.

According to existing legislature⁹⁰, the Minister of Petroleum has the powers to carryout directives on oil seismic licensing, oil license prospecting, also mining of oil lease are giving to a company that is registered under Corporate Affairs Commission in Nigeria,⁹¹ on the other hand a permit for survey is allowed to “any individual” and an oil pipeline license is given to the holder of a permit of survey according to the law, and the reference can only be meant by “any company” as incorporated in Nigeria, as the philosophy of the law is to enable Nigerian institutions, without stopping an individual from being a holder of the license⁹².

The grantee or holder of the above office possess the power to go into any land and carryout wide range of operations including clearing of bush, activities regarding exploration deploying explosives, drilling equipment, dredging, gas flaring and production operations⁹³.

2.4 Seismic Activities (Exploration)

This entails the decoration of explosives and electric charges underground at periodic intervals while ground recording the resonances and resistivity electronically on a chart. The interpretation is crucial to understanding the likelihood of the subsurface content of the given area. In the process shock waves and tremors are transmitted in all directions⁹⁴.

2.4.1 Drilling

Drilling is the process of boring hole through the earth’s surface or through river or seabed. During drilling, very toxic chemicals ranging from bentonite, brutes and crude sodium

⁹⁰Section 2 of the Petroleum Act (cap. P10) LFN 2004.

⁹¹ Section 2(2) of the Petroleum Act (cap. P10) LFN 2004.

⁹² ibid

⁹³ ibid

⁹⁴Y. Wang, H. Wang, C. Cue and B. Zhao, Investigating Different Grounds Effects on Shock Wave Propagation Resulting from Near-Ground Explosion. *Multidisciplinary Digital Publishing Institute*, 3 September 2019.

chloride are used in keeping the earth profile in place while the cuttings are recalculated or waste mud are pumped into the environment¹²

2.4.2 Gas Flaring

Oil production involves the burning of hydrocarbon gases. The flaring off of natural or associated gas is done as a byproduct of the drilling of crude oil from reservoirs in which oil and gas are mixed. Nigeria flares more gas than any other country in the world⁹⁵.

⁹⁵ L. E. Nwosu, "Compensating Environmental Damage in Oil and Gas operations" being a *Paper Presented at the Annual General Conference of the Nigerian Bar Association*. Port Harcourt, 28th, August, 2006. P.4.

Chapter Three

Legal Framework of Oil and Gas Safety Legislation on Environmental Protection

3.1 Legal Framework

In Nigeria, it is apposite to mention that there is legal framework for oil and gas industry. Each of these laws shall be appraised in this chapter, their defects shall be discussed and recommendations shall be provided in relation thereto. These laws include but not limited to the Nigerian Constitution, Petroleum Act, and Environmental Impact Assessment Act among others. Consequent upon the foregoing, this study seeks to examine laws and necessary institutions that govern the environment and oil and gas industry in Nigeria.

There are laws protecting the environment from hazards and risks emanating from the activities of oil and gas industry in Nigeria. Some of the laws include the Constitution, the Petroleum Industry Act, and The Environment Impact Assessment Act among others. These laws shall be discussed under this heading.

3.1.1. The Constitution of the Federal Republic of Nigeria, 1999, As Amended

The Constitution is seen as the first legislative work in discussing environmental law and oil and gas in Nigeria. The reason is because of its supremacy over any other law.⁹⁶ The core of oil and gas legislation in the Nigerian Constitution gears towards the protection of the health and safety of persons, with regards to the protection of the environment. This came into force with the 2011 amendment of the Constitution.⁹⁷ The 2011 amendment categorically cites health and safety in the oil and gas industry, as an aspect of environmental protection, which has to be considered a

⁹⁶ Section 1(1), (2) of the 1999 CFRN, as amended. See also *Nigerian Army v. Mowarin* (1992) 4 NWLR pt. 235, p. 345 CA.

⁹⁷ Constitution of Federal Republic of Nigeria, 1999.

national objective with provisions for the protection of the environment in the chapter two on Fundamental Aims and Directive Principle of State Policy.⁹⁸ There is express provision that ensures that the state must protect and improve the environment and safeguard the air, water, land forest and wild life in Nigeria.⁹⁹ The essence of the section 20 in the Constitution for the promotion of a healthy environment is the first gasp for ensuring reformed protection of human rights of Nigerians when there are health and safety concerns which are possible from the activities of an oil and gas servicing company that mostly breeds pollution.¹⁰⁰ In Ogbodo's work he creates ties between environmental sustainability and justice for oil and gas safety and health regulations¹⁰¹. Citing how the procedures that guarantee every individual access to justice when there is concerns about public health and safety due to oil and gas activities. The salvaging of the immediate surroundings is critical for the understanding of human rights because human rights will not be guaranteed in an environment not free of pollution.¹⁰² Essentially the protection through legislation of land, air, water and wild life as corroborated in section 20 of the Nigerian Constitution has been lauded by international communities. This study draws a critical highlight, which point to the fact the all actions bound towards safety is aimed at security and foremost the human life. It means that while section 20 aims at improving health and safety in the natural environment to ensure the safety of the individual, there seem to be issues with the enhancement of the powers the laws give the individual to confidently approach a court if aggrieved.¹⁰³

⁹⁸ See the provisions of the Chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

⁹⁹ S. 20 of the Constitution of the Republic of Nigeria as Amended.

¹⁰⁰ G. Ogbodo 'Environmental Protection in Nigeria: Two Decades After Koko Incidence' (2004) 15(1) *Annual Survey of International and Comparative Law*, 18.

¹⁰¹ Ibid.

¹⁰² A.B. Abdulkadir, and A.O. Sambo, 'Human Rights and Environmental Protection: The Nigerian Constitution Examined' (2009) 1 (4) *Journal of Food, Drug and Health Law*. 74.

¹⁰³ S. 6(6) (C) of the Constitution of the Federal Republic of Nigeria 1999. (As Amended in 2011).

3.1.1.1 Overview of Section 6 (6) (C) of the Nigeria Constitution

According to the section 6(6) (C), the powers of the judiciary as accrued from the provisions made in the Constitution of the Federal Republic of Nigeria, shall not unless as otherwise stated in the Constitution, extend to any problem or question as to if any act or omission by judicial decision is in conformation with the basic aims and directives principles of state policy highlighted in chapter II of this constitution. The provisions of section 6(6) (C) have analyzed as denying the court the powers to adjudicate on any problem that has to do with the individual exercising his or her rights to enforce section 20 of the Constitution.¹⁰⁴

This is because section 20 also falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution which by section 6(6)(c) are generally not enforceable. The Court of Appeal, while evaluating the status of the Chapter II, conformed that section 13 of the Constitution makes it a duty and responsibility of the judiciary as empowered by the law to ensure that the provisions of section 20 are applicable at every point in time, but the court is stuck with the contradiction from another section of the Constitution, with clear indication that no court of the land has the jurisdiction to pronounce on any matter brought before it at individual capacity with regards to health and safety concerns challenges within the environment.¹⁰⁵

Buttressing on scenarios that make the section 20 of the Nigerian Constitution unjustifiable, Wonika¹⁰⁶ states thus: section 20 of the 1999 Constitution of the Federal Republic of Nigeria clarifies the legal stands of the country to ensure the health and safety of every Nigerian through the enforcement of protecting the land, air, water, forest and wildlife. Considering the impact of

¹⁰⁴ M. A. Olong, 'Human Rights, the Environment and Sustainable Development: Nigerian Women's Experiences' (2012) 5(1) *Journal of Politics and Law*, 108.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

oil exploring activities across the Niger-Delta degrading lands, waters and the life in it, damaging forest and wild life existence, Nigerians are still not constitutionally empowered to state their grievance at a competent court of the law. This provision of section 20 is therefore totally irrelevant to be in the Constitution if there is no way it can be enforced when there is a possible breach of the law by defaulters. In the face of violation or threatened violation of such provision, which the law has overtime polished to be called the Fundamental Objectives and Directive Principle of State Policy in chapter II of the constitution indicates the fear of enshrining human and environmental rights in Nigerians, because of the possibility of multiplicity of suits against the Federal Government. The above reasoning of the court concerning multiplicity of action is with respect untenable. The right of the public cannot be sacrificed in fear of multiplicity of action.

While this issue is one that is not entirely understood by Nigerians with regards to the lack of justice for people of the Niger-Delta with place like Ogoni that the issue of cleanup of polluted water ways is still lingering for the last twenty years, the study captures the law on safety and health regulations as dangerous to the life expectancy of persons within oil and gas exploration zones in Nigeria. The fact that the provision in the Nigerian Constitution as amended is uncharacteristically “undemocratic and open to abuse”.¹⁰⁷ Looking at such non-justiciability of the provision the quality of life within communities rich in resource is reduced to a situation of resources cause, because the laws that are supposed to avert the cause has been reduced to a worthless platitude.¹⁰⁸

¹⁰⁷ A.B.U. Student Union ‘Rotimi’s Constitution: Our Opinions on Fundamental Objectives and Directive Principles of State Policy’ cited in in Ofonagoro WI, Oko A, and Jinadu A, (eds), *The Great Debate: Nigerian Viewpoints on the Draft Constitution* (Lagos Daily Times Nigeria, 1977), 26.

¹⁰⁸ O. Awolowo, ‘My Thoughts’ cited in Ofonagoro W.I., Oko A, and Jinadu A, (eds), *The Great Debate: Nigerian Viewpoints on the Draft Constitution* (Lagos Daily Times Nigeria, 1977), 15.

The section 6 (6) (c) according to the conclusion of Michael¹⁰⁹ can best be described as an exclusion clause, crippling the jurisdiction of the court for ensuring the section 20 of the Nigerian Constitution as amended serves justice to the communities that have been robbed of their health and safety, which contradicts the goal of National Policy on Environment to protect and conserve the water, air, land and the natural resources.¹¹⁰ The fussed reading of section 20 and section 6(6)(c) of the Nigerian Constitution projects the notion that the Constitution does not make for express provision for the right to a healthful and safe environment.

The implication of this is that, activities likely to cause environmental devastation and human rights abuse cannot be challenged in the court because it is not enforceable. Thus, the non-justiciability of the provision of section 20 operates as an impediment to the realization of the right to a healthful environment in Nigeria because the court through which the enforceability of section 20 could be secured has been denied the power to entertain any question concerning its violation. However, notwithstanding the exclusion clause, the hope to secure the protection of the environment is not totally loss. This is in view of other available alternatives through which the citizens can seek environmental justice and protect their right to a healthful environment. Also, where the provisions of chapter two of the 1999 CFRN as amended can be read in conjunction with the provisions of Chapter Four of the same constitution, then same rights become justiciable in the eyes of the law.

3.1.2 Petroleum Industry Act, 2021

This is the reviewed petroleum act as far as oil and gas is concerned in Nigeria.

¹⁰⁹ K. J. Michael, 'Promoting Political Rights to protect the Environment' (2006) 18(1) *The Yale Journal of International Law*, 389;

¹¹⁰ See paragraph 1 of the National Policy on Environment for Nigeria 1988 revised in 1999.

3.1.2.1 Overview of the Petroleum Industry Act, 2021

The petroleum Industry Act, 2021, was signed by President Muhammadu Buhari on the 16th September, 2021. The Act seeks to provide Legal, Governance, Regulatory and Fiscal framework for the Nigerian Petroleum Industry and development of Host communities.

It contains 5 chapters, 319 sections and 8 schedules dealing with the Rights of pre-emption, incorporated joint ventures, domestic base price and pricing framework, pricing formula for Gas Price for the Gas Based Industries, Capital Allowances, Production Allowances and Cost Price Limit, Petroleum Fees, Rents and Royalty, and the creation of the Ministry of Petroleum incorporated.

The Act in Section 2 (a) and (b) created two principal regulatory bodies which are The Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority, the former being responsible for the technical and commercial regulation of the upstream and petroleum operations, including implementing environmental laws and policies for the upstream; and the latter being responsible for the technical and commercial regulation of the midstream and downstream operations in Nigeria as well as licensing of players in the sector. The above commissions are exempted from the provisions of any law relating to the taxation of companies or Trust Funds.

This study analysis clearly shows that PIA as passed by the Senate is seriously flawed. It does not provide for health, safety and environment (HSE) concerns. There is no provision for an end to gas flaring. There is a lack of independence for regulators and a glaring neglect of host communities' interest in the proposed new institutions.¹¹¹ The provisions of the PIA as passed by the Senate do not demonstrate an understanding of the need to guarantee energy access as a right

¹¹¹ M. A. Olong op. cit. p. 5.

of citizens. Moreover, the powers and functions of the new institutions like the Petroleum Regulatory Commission created under the Act do not reflect current global best practices. Our conclusion is that the version of the PIA as passed by the Senate is an unconscionable attempt to legalize the appropriation of national oil and gas assets to some powerful private interests.¹¹²

Specifically, the ill-advised separation of a hitherto comprehensive bill into bits (by the Senate) has created a sufficient setback to a holistic and more effective effort to revamp the energy sector in Nigeria for the benefit of citizens.¹¹³

On the provisions of the Act, it is strange that the Senate is swift to create new institutions in the industry including the National Oil Company, the Nigeria Petroleum Assets Management Company, the National Petroleum Regulatory Commission, the Ministry of Petroleum Incorporated and the Petroleum Equalization Fund etc., without first creating the enabling environment on which these entities will thrive. The vacuum of the non-effective and clear-cut provision(s) for Health, Safety and Environment in the Act is disturbing and lamentable.¹¹⁴ In point of fact, the bill does not have any part or section dealing with environmental protection. In its current form, the PIA cedes virtually all powers on environmental regulation from the Ministry of Environment to the New Petroleum Regulatory Commission. Sadly, the Commission is saddled with functions that are conflicting with each other. For example, Section 5(f) mandates the Commission to “promote an enabling environment for investments in the petroleum industry” and in doing so “ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders” (as we find in Section 5(g)). Now the question is, how will a commission charged with the task of promoting conditions for maximum

¹¹² *ibid*

¹¹³ P. E. Agbonifo, ‘Risk Management and Regulatory Failure in the Oil and Gas Industry in Nigeria: Reflections on the Impact of Environmental Degradation in the Niger Delta Region’ (2016) 9 (4) *Journal of Sustainable Development*, 1.

¹¹⁴ O. Awoyemi, *A Critical Analysis of the Statutory and Regulatory Provisions in Nigeria* (Ibadan: Independent Law Publishing, 2014) 24.

profitability of investments in one stroke, turn round in another stroke to rigorously enforce environmental regulations against the same commercial entities¹¹⁵

One of the tools for making environmental polluters accountable for their actions is litigation. In such cases, the typical claimants are individuals; families and communities where oil and gas corporations operate. The expectation is that a law like the PIA that seeks to create a new governance structure for the petroleum industry should expand the opportunity for people to use the legal process as a means of making companies, government institutions and agencies accountable for environmental pollution.¹¹⁶ Regrettably, sections 31 and 61 of the PIA as currently drafted places restrictions on the exercise of the enforcement of civil rights as the limitation of action is shorter than the time provided for civil action under the Statutes of Limitation. The PIA provides a maximum of 12 months period for suits against the institutions and agencies created under the PIA, a member of the governing boards or an employee in respect of their functions and powers under the Act to be instituted against them. After 12 months such cause of action would lapse.¹¹⁷

Claimants in oil and gas pollution are known to have difficulties with collating evidence, raising money to fund their case and other structural problems with litigation against oil companies. Therefore, the 12 months limitation of cause of action in this respect is not in the interest of the poor people who are most times the victims of the oil politics in Nigeria. It is suggested that the general laws of limitation be application to the oil industry.¹¹⁸ At this juncture, we would like to

¹¹⁵ The DPR is the regulatory body that has the statutory responsibility of ensuring compliance with Petroleum Laws, Standards and Regulations in Nigeria. See DPR, 'About' accessed 6th September 2021.

¹¹⁶ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, Deep Water The Gulf Oil Disaster and the Future of Offshore Drilling, Report to the President (US 2011) 218.

¹¹⁷ C. Coglianesi and others, 'Performance-Based Regulation: Prospects and Limitations in Health, Safety and Environmental Protection' and Gas law: Current Practice and Emerging Trends (Dundee University Press, 2010) 206.

¹¹⁸ K. S A Ebeku, Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues" (2008) 1 (2) *University of calabar law journal*, 195.

pertinently point out that whereas Nigeria is said to be a federal entity where Justice, Equity and Fairness is supposedly in place, yet a look at the legal regime governing natural resource extractives of Solid Minerals on one hand and Oil and Gas on the other hand, call this supposed truism to question.¹¹⁹ Under the Minerals and Mining Act, 2007 lives and livelihoods of communities and individuals are better respected. Section 3(1) (c) of the Mining Act provides that:

“no mineral title granted under this Act shall authorize exploration or exploitation of mineral resources on, or, in, or the erection of beacons on or the occupation of any land – occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or sited within fifty meters for a railway, or which is the site of, or within fifty meters of, any government or public building, reservoir, dam or public road”.

In the PIA passed by the National Assembly, unlimited and unqualified powers are given to the Nigeria Petroleum Regulatory Commission by section 6(1) (s) to issue petroleum licenses at will and with no regard whatsoever for lives and property of landowners and communities in oil-bearing areas. This has been the unjust old order and has been sadly retained by the Senate in the PIA.

It is all not bad news. It is clear to note that the bill has made some worthy landmarks as regards pruning the hitherto overbearing powers of the Minister in the Industry to free it from meddlesomeness and lack of institutional independence (for the entities in the sector). However, the PIA in its present state is not comprehensive enough and lacks clarity of intention. Restructuring of the oil and gas industry must not only be to serve the commercial interest of

¹¹⁹ A. E. Ite and others, ‘Petroleum Industry in Nigeria: Environmental Issues, National Environmental Legislation and Implementation of International Environmental Law’ (2016) 4 (1) *American Journal of Environmental Protection*, 21.

multinational oil companies and a few local businesses but the general interest of the country and her people.

In conclusion, a comprehensive package of the intended new legal regime for the Nigerian petroleum industry should be tabled before the National Assembly and other stakeholders for consideration simultaneously. That will show transparency on the part of government and give opportunity for relevant stakeholders, civil society organizations, environmentalists and sustainable development advocates to do proper analysis of the legal regime to ascertain its relevance to issues of environmental protection, termination of gas flares, fiscal accountability and transparency, easy access to justice and host community development and equity. Anything less may not be good for the petroleum industry, stakeholders and the Nigerian populace.

3.1.3 The Environmental Impact Assessment Act, 2004

This is one of the enactments that cannot be looked in protecting the environment in Nigeria. It safeguards the environment from being abused.

3.1.3.1 Nigeria's application of EIA and implementation

Nigeria's adoption of EIA was initiated dumped by an Italian company in Koko, of the then Bendel State, now Edo State, in 1987¹²⁰. The nation suddenly rose together to demand a viable law that will safeguard and protect the environment from abuse and abandonment. In view of this EIA is conducted in Nigeria involving nine steps starting with EIA processes, EIA studies/ report preparation, the EIA review process, in-house reviews, public review, review panel, mediation,

¹²⁰ H. Abaza, Strengthening future environmental assessment practice: an international perspective cited in. N. Lee, and C. George, Environmental Assessment in Developing and Transitional Countries. (2000) 11 *Chichester: John Wiley and Sons journal*, 13-15.

EIA approval, EIA mitigation¹²¹. As follows;

3.1.3.2 EIA procedures and legislative requirements

In Nigeria, the Federal Environmental Protection Agency (FEPA) was initially in charge of EIA before the Department was moved to the Ministry of Environment with the principal legislation EIA, 2004 which made EIA mandatory for both public and private sectors for all development projects¹²². It has three goals and thirteen principles.

The goals are;

- i. Before any person or authority takes a decision to undertake or authorize the undertaking of any activity that may likely or significantly affect the environment, prior consideration of its environmental effects should first be taken¹²³.
- ii. To promote the implementation of appropriate procedures to realize the above goal.
- iii. To seek the encouragement of the development of reciprocal procedures for notification, information exchange and consultation in activities likely to have significant trans-state (boundary) environmental effects.

Before the enactment of Environment Impact Assessment (EIA) Act, 2004 analysis of the environmental and socioeconomic impacts of major development projects were to a large extent scanty or in some instances nonexistent¹²⁴. Spurred by growing environmental awareness in many parts of the world, recognition of EIA as a tool for better environmental protection and management at the national level became evident in the early 1980s, starting with the Fourth

¹²¹ Y.J. Ahmad, and G.K. Sammy, "Guidelines to Environmental Impact Assessment in Developing Countries" (2004) *Hodder and Stoughton journal*, 69-179.

¹²² S. Appiah-Opoku, "Environmental impact assessment in developing countries: the case of Ghana". (2001) 21 (3) *Environmental Impact Assessment Review*, 59 –71.

¹²³ S.A. Awobanjo, "Oil spillage in Nigeria: 1976 –1980", Paper presented at the 1981 International Seminar on the Oil Industry, Lagos, NNPC (1876) 6.

¹²⁴ M. El-fadal, M. Zeinati, and D. Jamali., "Framework for environmental impact assessment in Lebanon" (2003) 1 (2) *Environmental Impact Assessment Review*, 579-604

National Development Plan (1981–1985)¹²⁵. This plan proposed the development of environmental impact statement (EIS) on feasibility studies for all projects (private and public) and stipulated that an EIS should include plans to mitigate adverse environmental effects of a project. Also, for the first time in Nigerian development planning, a section on environmental planning and protection was included. The need for EIA was reiterated at a seminar on environmental awareness for national policy makers organized by the then Federal Ministry of Housing and Environment in 1981 (FMHE, 1982).¹²⁶ Similarly, various national documents on environment, construction, and agriculture policy recognized the use of EIA as a strategy for achieving sustainable development. Many academicians wrote of the need for EIA, and grassroots-producing areas. Consequently, some form of EIA studies started around the mid-1980s in the oil industry. Related developments were observed in land use planning and development permit approval in states such as Lagos and Bendel¹²⁷. Nonetheless, there was never a systematic, legal and institutional framework for EIA until the promulgation of Decree No. 86 of 1992. The latest enactment was in 2004.

3.1.3.3 Legal requirements for Environmental Impact Assessment

In most countries of the World the process and procedures are similar but the implementation and or enforcement vary in accordance with how seriously a nation views environmental issues¹²⁸. In Nigeria, Federal Environmental Protection Agency (FEPA) Decree No. 58 of 1988 aptly can be described as the forerunner of the 1992 EIA law.

¹²⁵ B.U. Ekuerhare, and C.O. Orubu, “Economics of the Niger Delta. Technical Report, Niger Delta” (2008) 3 (2) *Environmental Survey Journal*, 7.

¹²⁶ L.O. Chukwu, C.O. Brown, C. O. and D.I. Nwankwo, “The impact of oil pollution on the hydrochemistry and biota of the tidal creeks and canals in Ondo State. 9th International Conference on the Petroleum Industry and the Nigerian Environment”, Abuja, November, (1988), 538-576.

¹²⁷ A. Field, *Discovering statistics using SPSS*, (Third Edition. London: SAGE publication Ltd, 2009), 821.

¹²⁸ J. Glasson, R. Therivel, and A. Chadwick, *Introduction to Environmental Impact Assessment* (2nd ed. London, UCL Press, 1999) 5.

The EIA Act defines environment to mean the:

- (a) Land, water, and air, including all layers of the atmosphere;
- (b) All organic and inorganic matter and living organisms; and
- (c) The interacting natural systems that include components referred to in paragraphs (a) and

This definition encompasses the socioeconomic and biophysical attributes of the environment.

According to Section 4, EIA is expected to cover at least the following matters:

- (a) A description of the proposed activities;
- (b) A description of the potential affected environment including specific information necessary to identify and assess the environmental effect of the proposed activities;
- (c) A description of the practical activities, as appropriate;
- (d) An assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect, cumulative, short-term and long-term effects;
- (e) An identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures;
- (f) An indication of gaps in knowledge and uncertainty, which may be encountered in computing the required information;
- (g) An indication of whether the environment of any other state or local government area (LGA) or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives; and
- (h) A brief and nontechnical summary of all the information provided.

The EIA report—which is expected to include proposed measures to be undertaken by a proponent to mitigate or ameliorate the negative environment effects—to be submitted to the Agency for approval. If approved, an environmental assessment statement and certificate of approval will be issued by the Agency.

Similarly, the Environmental Impact Assessment Act, 2004 provides a fine of not less than fifty thousand naira and not more than hundred thousand naira for a body corporate who violates the provision of the Act.¹²⁹ It therefore means that a body corporate as a proponent of a project could endanger the environment and risk the life of people by going ahead to undertake a project without proper environmental impact assessment in compliance with the provision of EIA Act only to pay a fine of not more than hundred thousand naira for such an unquantifiable damage which may have been done to the environment. Several environmental protection laws for the preservation of biodiversity in Nigeria fall short in this regard with obsolete sanction provisions which are not adequate to guarantee compliance¹³⁰.

3.1.4 Oil Spill Recovery, Clean Up, Remediation and Damage Assessment Regulations, 2011

These regulations establish procedures, methods, and other requirements for detection, response, clean-up and remediation of oil spills from onshore and offshore petroleum facilities into or upon land and navigable waters of Nigeria or adjoining shorelines. The regulations also apply to all onshore and offshore petroleum facilities engaged in exploration, production, storing, processing, refining, and distribution of oil products that have the potential to spill into or upon land and navigable waters of Nigeria provided that these regulations shall apply without prejudice to any existing regulations for the prevention of oil spill into or upon land and navigable waters of Nigeria. In Section 9 of the regulation, operators of oil and gas is mandated to remove oil from contaminated shorelines to avoid oil weathering. Also, section 4 empowers any person to report the issue of oil spill.

¹²⁹ EIA Act 2004 s. 60.

¹³⁰ B.U. Ekuerehare, and C.O. Orubu, "Economics of the Niger Delta. Technical Report, Niger Delta" (2008) 3 (2) *Environmental Survey Journal*, 7.

3.1.5 National Data Repository Regulations, 2020

This is the enabling law that makes provisions for the Department of Petroleum Resources popularly known as “DPR”. It also provides for a repository which is in charge of the platform that prepares for the timely and holistic submission of all oil and gas data by the holder of an oil prospecting license, oil mining lease, marginal field operator, speculative and data trading company.¹³¹ The repository also carries out storage, management, transfer, quality control and validation of all data and materials submitted to it, ensure data preservation, value maximization and compliance with all the regulations, standards and procedures, it also provides for digital platform for the DPR.

Thus, this national collation of data enables the DPR to punish any license holder who is culpable for oil hazards and spillage in Nigeria. The relevance of this law is that it enables the Federal Government to know any licensee who is not doing his job as at when due. Any operator, oil mining lease or oil licensee who is in default to the relevant laws shall be properly identified under this law and will be dealt with.

3.1.6 Petroleum Royalty Regulations, 2022

These Regulations establish the procedure for the determination and administration of the royalty regime under the Petroleum Industry Act, 2021, hereinafter referred to as the Act. Production from oil prospecting licences and oil mining leases. Subject to Section 311(9) of the Act, petroleum production from oil mining leases or oil prospecting licenses shall continue under the provisions of the Petroleum Act, 1969 until their conversion date or renewal date.

Payment of royalty Paragraph 3 (1) Subject to the provisions of Paragraph 5 hereof, all production of petroleum, including production tests, shall be subject to royalties pursuant to

¹³¹ Section 2 of the National data Repository Regulations, 2020 passed into law on the 2nd Day of January, 2020.

section 306 of the Act. Royalties shall be levied on a non-discriminatory basis with respect to all lessees and all licensees of petroleum prospecting licenses and shall be paid into the Federation Account and verified by the Commission. (2) Where two or more persons are holders of a petroleum prospecting license or petroleum mining lease, and have appointed an operator, the royalty shall be paid by the operator, provided that at all times the obligation to pay royalty shall remain that of the licensee or lessee pursuant to sub-paragraph (3), and where an incorporated joint venture was created, the incorporated entity shall pay the royalties pursuant to paragraph 1 (4) (b) of the second schedule of the Act. (3) Where two or more persons are holders of a petroleum prospecting license or petroleum mining lease, they shall be jointly and severally responsible for the payment of royalties.

3.1.7 Flare Gas (Prevention of Waste and Pollution) Regulation, 2018

Nigeria has recently issued the Flare Gas (Prevention of Waste & Pollution) Regulations 2018. Its objective is to completely phase out gas flaring which has persisted notwithstanding several efforts to encourage associated gas utilisation and discourage the process. This work assesses the Regulations in light of enabling legislation, particularly the Petroleum Act 1969 and the Associated Gas (Reinjection) Act 1979 to address questions that arise regarding some of its innovative aspects such as the taking of all flare gas by the Federal Government of Nigeria and a new permits regime to enable third-party investors access to petroleum lease areas to effect the taking of the flare gas. It argues that public interest is at the heart of the Regulations and considering enabling legislation and previous case law, justifies its provisions given the pollution and economic waste ill-effects of gas flaring.

3.1.8 Climate Change Act, 2021

In order to protect the Nigerian environment and ecosystem from the ravages associated with climate change and to achieve the reduction of greenhouse gas emissions in Nigeria, President Muhammadu Buhari of Nigeria signed the country's climate change bill into law on 18th November 2021. Some of the key features of the Act include the following:

Applicability

The Climate Change Act 2021 (the "CCA") applies to all Ministries, Departments and Agencies ("MDAs") of the Federal Government of Nigeria as well as to public and private entities in Nigeria. The CCA primary aim is to develop and implement mechanisms that will foster low carbon emission and develop a sustainable environment in the country.

National Council on Climate Change

The CCA establishes the National Council on Climate Change (the "Council") which is vested with the powers to develop policies and make decisions on all matters concerning climate change in Nigeria. The Council is also required to manage the implementation of the provisions of the CCA. The Council is required to administer the climate change fund which was established by the CCA, collaborate with the Federal Inland Revenue Service ("FIRS") to develop a mechanism for imposing a carbon tax, and to coordinate the implementation of sectoral targets and guidelines for the regulation of Green House Gas ("GHG") emissions and other anthropogenic causes of climate change. The membership of the Council will include members of the various ministries and departments of the Federal Government of Nigeria. The Council will also include a representative of the private sector on climate change, or environment-related matters, as well as representatives of women, youth and persons with disabilities, who will be nominated by the most representative registered national umbrella association.

The CCA also establishes a Secretariat to handle the administrative, scientific, and technical functions of the Council and a Director-General of the Secretariat who will oversee the administration of the Council.

Climate Change Fund

The CCA establishes a Climate Change Fund which is to be which is to be financed by the following: (a) sums appropriated by the National Assembly for the running of the Council; (b) subventions, grants and donations, fees and charges for services rendered or publications made by the Council; (c) funding from international organisations and funds due to Nigeria for meeting her Nationally Determined Contributions; (d) fines and charges from private and public entities for flouting their Climate Change mitigation and adaptation obligations; (e) carbon tax and emissions trading; and (f) such other funds as the council may prescribe from time to time.

The Climate Change Fund is to be applied towards: the cost of administration of the Council, payments of emoluments, allowances and benefits of members and staff of the Council; climate change advocacy and information dissemination; funding innovative climate change mitigation and adaptation projects; conducting assessments of climate change impact on vulnerable communities and population; incentivising entities for their efforts toward transiting to clean energy and sustaining a reduction in GHG emissions; and any other expenditure in connection with any function of the Council.

Under the CCA, the Secretariat shall keep proper accounts and records of the income and expenditure of the Council and submit a comprehensive report of all the activities of the Secretariat and prepare a statement of account in respect of each financial year. The accounts of the Council is to be audited within 6 (six) months after the end of the financial year to which the

accounts relate, and the accounts is to be audited in accordance with the guidelines issued by the Auditor-General for the Federation.

The CCA also permits the Council to accept gifts of land, money, or other property on such terms and conditions, as may be specified by the person or organisation making the gift. However, these conditions must not be inconsistent.

Carbon Budget

The CCA provides that the Federal Ministries of the Environment and National Planning shall have the responsibility to set the carbon budget (which means the approved quantity of GHG emission that is acceptable over a specified time) and the budgetary period for Nigeria, and periodically revise the carbon budget in line with Nigeria's Nationally Determined Contributions in order to comply with international obligations.

The goal of the carbon budget is to keep the average increase in global temperature within 2 degrees Celsius and make a concerted effort to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.

Under the CCA, within 12 (twelve) months to the end of a carbon budgetary period, the Federal Ministry of Environment ("the Ministry") is required to submit to the Federal Executive Council ("FEC"), through the Council, a new carbon budget for approval. Where, however, there is a need to review a carbon budget within a carbon budget cycle, the Ministry shall, within 3 (three) months of the revision of the carbon budget, submit it to the FEC through the Council for approval.

The Ministry shall also be responsible for publishing guidelines for the measurement, reporting and verification of national emissions that will serve as the basis for setting and annually reviewing the carbon budget.

National Climate Change Action Plan

Under the CCA, the Secretariat, in consultation with the Ministry and the Federal Ministry of Budget and National Planning, is required to formulate a National Climate Change Action Plan ("Action Plan") every five years, the first of which is to be produced within 12 (twelve) months from the commencement of the CCA.

The CCA also outlines the process through which the Action Plan is to be formulated. The process includes consultation with the public for a period of not less than 8 (eight) weeks ending 14 (fourteen) days before the presentation of the Action Plan to the Council for approval.

The Action Plan shall serve as a basis for establishing national goals, objectives and priorities on climate adaptation and for identifying activities to ensure that the national emissions profile is consistent with the carbon budget goals. The Action Plan shall also prescribe measures and mechanisms for, among other things: (a) identifying actions for adaptation and mitigation against climate change; (b) identifying strategic areas of national infrastructure requiring climate proofing, (c) enhancing energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses; and (d) achieving Nigeria's climate change goals.

The CCA also provides some components of the Action Plan. Some of these components include an articulated carbon budget for the five-year cycle and for each of the years in the five-year cycle, details on the level of compliance with international climate commitments, past, current and projected GHG emission profile of GHG emission sectors of the economy, and incentives for private and public entities that achieve GHG emission reduction.

The Director-General of the Secretariat is also required to submit a detailed report on the state of the nation regarding climate change to the Council and the National Assembly Committee on Climate Change. This report shall be submitted for each five-year cycle and shall include

information on the progress of the implementation of the Action Plan, the extent to which the GHG emission profile is consistent with the annual carbon budget, assessment of risk and management of risks and vulnerability, and fines issued against private and public entities for non-compliance with the provisions of the CCA.

The Director-General is also required to submit to the National Assembly, within 3 (three) months after the end of every financial year, an evaluation report on the performance of climate change duties by private and public entities.

Obligations

The CCA sets out the climate change obligations of the MDAs, public entities, and private entities. MDAs, among other things, must establish a climate change desk for ensuring integration of climate change activities into their core mandate. MDAs shall also adhere to the annual carbon emission reduction targets, in accordance with the Action Plan and carbon budget made under the CCA. Where an MDA fails to meet its carbon emission reduction target, it shall be subjected to a review, and if found liable, its principal officers shall be sanctioned and may be fined as determined by the Council.

In relation to public entities, the CCA provides that the Council may by regulations impose obligations relating to climate change on such entities and may vary or revoke any such obligations, where necessary.

Private entities that have a minimum of 50 employees also have obligations under the CCA. These include the requirement to put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan and to designate a Climate Change Officer or an Environmental Sustainability Officer with the responsibility of submitting the annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan. The

Council may also require a private entity to prepare reports on the status of its performance of its climate change obligations, and prescribe the period for reporting.

Where a private entity fails to meet its target, it shall be liable to a fine determined by the Council, who shall rely on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services.

VIII. Reducing Emissions from Deforestation and Forest Degradation (REDD+) Registry

The REDD+ refers to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests, and the enhancement of forest carbon stocks. The CCA empowers the Federal Ministry of Environment to set up a registry with sub-national nodes for capturing REDD+ activities in Nigeria, including updates on Forest Reference Emission Level (FREL). The CCA also empowers the Council to provide fiscal support for REDD+ activities.

Offences

In relation to offences, the CCA states that any person, private or public entity that acts in a manner that negatively affects efforts towards mitigation and the adaptation measures made under the CCA or contravenes any obligations it has under the CCA commits an offence and is liable to a penalty as will be determined by the Council.

It is expected that the implementation of the CCA will enable Nigeria to achieve a reduction of greenhouse gas and carbon emissions to internationally acceptable levels. Private entities should be aware of their obligations and put in place the necessary structures that will ensure they are compliant with the CCA, especially where the Council has been given a wide discretion to determine the applicable penalties for non-compliance.

3.2 Judicial Attitude on Environmental Regulations in the activities of the oil and gas industry

3.2.1 Gbemre v. Shell¹³²

The applicant, Gbemre, a representative of the Niger Delta Iwherekan community instituted an action against (i) the Nigerian government for its failure to stop the oil and gas company Shell in gas flaring for decades and (ii) Shell for engaging in massive and unceasingly intense gas flaring in the community, in the course of its exploration and production activities (jointly respondents).

The Applicant sought a relief that gas flaring should be perpetually prohibited in their community and a declaration that gas flaring grossly violates their fundamental human rights.

The Court granted all the reliefs sought by the Plaintiff. However, it was discovered that the said judgment is not enforced till date has the issue of gas flaring is still a major issue that the oil producing states and their citizens are contending with.

The decision in Gbemre v. Shell, which delivered an exciting victory for environmental protection, though lauded over fifteen years ago, seems to have been a Pyrrhic victory when viewed over the years. This is because Nigeria continues to routinely flare gas despite it being outlawed by legislation since 1984 and despite the subsisting decision in the case of Gbemre v. Shell¹³³, which said decision has still not been overturned on appeal by either the Court of Appeal or the Supreme Court. The decision in the Gbemre case therefore remains good law and it is hoped that other courts will bravely follow in footsteps of the decision of this case and put environmental protection and the protection of the fundamental rights of people being affected by the actions of the oil industry before financial gain. The Gbemre case shows the herculean

¹³² Gbemre v. Shell Petroleum Development Company of Nigeria Limited & Others Suit No. FHC/CS/B/153/2005 (Unreported).

¹³³ Supra

task some litigants have to surmount in order to get environmental and fundamental rights justice. It is further hoped that the Nigerian government stops its bluster and actively/expeditiously works towards achieving a zero routine gas flaring target, as this will ensure that crucial funds needed to sustain the economy does not continually go up in smoke and additionally will reduce environmental pollution.

3.2.2 Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation¹³⁴

On May 13, 2005, the Centre for Oil Pollution Watch (COPW) commenced legal action against the Nigerian National Petroleum Corporation (NNPC). The NNPC was established by an Act of Parliament and carries on business of prospecting, mining, producing, exploring and storing persistent hydrocarbon mineral oil such as crude oil. It has offices, oil installations, oil pipelines, oil rigs and so on in different parts of Nigeria. The case was brought in the Federal High Court, Lagos Division, over an oil spillage in ACHA Community of Abia State of Nigeria. The oil spillage was allegedly caused by the defendant's negligence resulting from its pipeline, which had corroded due to lack of maintenance, had ruptured, fractured and spewed its entire Contents of persistent hydrocarbon mineral oil into surrounding streams and river of Ineh/Aku, resulting in contaminating two community streams that were the major sources of water supply to the community. The plaintiff alleged that although the defendant contained the spillage on the surface, it failed to clean up or reinstate the Ineh/Aku streams/river. Furthermore, the plaintiff averred that the respondent was negligent in both the causation and containment of the oil spillage; that the spillage had harmful effect on living resources, marine life, human health and other usage of the streams.

¹³⁴ (2018) LPELR-50830(SC).

The respondent challenged the plaintiff's standing to sue and sought an order striking the suit. On February 9, 2006, the trial court struck out the suit for lack of locus having not suffered any injury at all, let alone any injury above every other member of the Acha community resulting from the alleged oil spillage. On January 28, 2013, the Court of Appeal dismissed the appeal by reaffirming the trial court's ruling. The plaintiffs appealed to the Supreme Court on March 9, 2013. On July 20, 2018, the Supreme Court unanimously granted the appeal in favor of the appellant. The Supreme Court of Nigeria held that:

1. That the appellant NGO had the standing to sue the respondent, thereby liberalizing or broadening the rule of standing. The Supreme Court specifically highlighted "that public spirited individuals and organizations can bring an action in courts against relevant public authorities and private entities to demand their compliance with relevant laws and to ensure the remediation, restoration, preservation, restoration, protection, maintenance and protection of the environment."
2. The Supreme Court further clarified that "Accordingly, every person, including NGOs, who bonafide seek the due performance of statutory functions or enforcement of statutory provisions or public laws, especially laws designed to protect human lives, public health and the environment, should be regarded as proper persons clothed with standing in law to sue and be sued when it comes to public nuisance and other environmental matters.
3. The Supreme Court also acknowledged that recognizing public interest litigation will help address some other barriers to access to justice, as poor communities without "the financial muscle to sue" which usually and disproportionately bear the brunt of environmental and climate change problems, will have the benefit of public-spirited persons and organizations fighting their cause.

4. The Supreme Court noted particularly, for the first time, that: “there is no gain saying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding and global warming etc... Both nationally and internationally, countries and organizations are adopting stronger measures to protect and safeguard the environment for the benefits of the society, citizens and the general public Per Eko, JSC.

5. The Supreme Court also made significant strides in ‘greening’ the Nigerian Constitution and confirming the existence and enforceability of environmental human rights in Nigeria, in a manner that increases the possibility of successful climate change litigation in the country, especially by allowing public interest litigation. Under this position, two things can be deduced. They are: First, the Supreme Court held that Section 20 of the Nigerian Constitution on duty to protect the environment by the State is justiciable when read together with, and in the context of, a provision like section 4(2) of the Constitution, on the power to make laws to give effect to section 20.

Second, the Supreme Court explicitly recognized for the first time, that section 33 of the Constitution which guarantees the Right to Life, implicitly includes and constitutes a fundamental right to a clean and healthy environment for all. Third, the Supreme Court explicitly affirmed the enforceability of the environmental right in Article 24 of the African Charter on Human and Peoples’ Rights as domesticated in Nigeria by the African Charter Act, Cap. A9 LFN 2004.

Finally, the Supreme Court decision in the above case aligns with the Constitutional Human Rights approach to Environmental and Climate Protection taken earlier by the Lower Court/Federal High Court in *Jonah Gbemre vs Shell and others*¹³⁵. It demonstrates a significant positive paradigm shift in the attitude of the Supreme Court to environmental and climate change

¹³⁵ *Supra*.

related claims. It provides additional human rights and constitutional tools for potential climate litigation.

3.2.3 Cameron Offshore System (Nig) Ltd V. Akwa Ibom Environmental Protection & Waste Management Agency & Anor¹³⁶

Legislation - Environmental Protection and Waste Management Agency Law Of Akwa Ibom State, 2000

- Provisions of the Environmental Protection and Waste Management Agency Law of Akwa Ibom State with respect to environmental standards and pollution discharge fees; instance where an activity will be held to be outside the purview of Schedule II Category A (i) of the Law

"...The provisions of Sections 25 - 35 of the Environmental Protection and Waste Management Agency Act, Cap. 47 Laws of Akwa Ibom State, 2000 contains myriads of Environmental standards while Schedule 11 thereof, listed the pollution Discharge fees. The criminal summons issued against the appellant was that it defaulted in paying pollution fees to the tune of N9,000,000.00 (Nine Million Naira) contrary to Section 34 and 35 and punishable under Sections 37 (1) (4) and (5) of the Akwa Ibom State Environmental Protection and Waste Management Agency Law, Cap. 47, Laws of Akwa Ibom State of Nigeria, 2000. The provisions of Sections 34 and 35 of the law which the appellant allegedly contravened read as follows: - "34. No person shall establish petrol stations, gas plant or other petroleum related activities without adherence to approved environmental standards. 35. No person shall engage in any form of petroleum exploration or exploitation activities which cause pollution of the environment

¹³⁶ (2021) LPELR-53003 (CA)

through spillage." From the content of the charge, the appellant was clearly not charged with infractions of Sections 34 and 35 aforesaid but for failure to pay pollution fees contemplated in Schedule II of the law. It is therefore imperative to set down the activities that attract fees under Schedule II to the law. Category A of Schedule II listed the followings: -

- (i) Petroleum refineries & petroleum producing and petroleum products manufacturing companies.
- (ii) Asphalts and Bitumen producing Industries
- (iii) Rubber/Tyres manufacturing Industries.
- (iv) Iron, steel, other metals industries,
- (v) Marbles, Terrazzo Industries.
- (vi) Glass Industries.
- (vii) Cable electronics Manufacturing Industries.

" I have earlier reproduced paragraph 7 of the 1st respondent's counter affidavit which categorically stated the basis of the claim against the appellant at the Revenue Court to the effect that the appellant in the course of carrying out its activities uses generators and cars capable effluent discharge. Effluent discharge is a liquid waste other than waste from kitchens or toilet, surface water or domestic sewage. I therefore cannot but agree with the learned Counsel for the appellant that the appellant's activities which is providing support service to companies engaged in oil exploration and production is outside the purview of Schedule II Category A (i) of the Environmental Protection and Waste Management Agency Law of Akwa Ibom State."

Legislation - Environmental Protection and Waste Management Agency Law of Akwa Ibom State, 2000

- Area of coverage of the Environmental Protection and Waste Management Agency Law of Akwa-Ibom State; whether a Law restricted by territory cannot be applied outside that territory

"...The next germane issue relates to area of coverage of the said Environmental Protection and Waste Management Law. By virtue of Section 48 of the Environmental Protection and Waste Management Agency Law, its coverage remains the Akwa Ibom State. Furthermore, the legislative competence of the Akwa Ibom State House of Assembly pursuant to Section 4 (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended is confined and restricted to the geographical area of Akwa Ibom State. Thus, any law that seeks to impose civil or criminal penalty outside the territorial area of the state shall be ultra vires the legislative powers of the State House of Assembly. Furthermore, Courts in a given state shall only exercises jurisdiction within the confines of that particular state. The appellant in this case had averred that its area of operation is within the Exclusive Economic Zone and the Territorial Waters of the Federal Republic of Nigeria which fact was nowhere denied or controverted by the 1st respondent. The provision of Section 1 (1) of the Exclusive Economic Act, Cap. 17 of the Laws of the Federation of Nigeria, 2004 leave no one in doubt that same is outside the domain of a state. The said Section 1(1) of the Act provides: "Section 1(1) - Subject to the other provision of this Act, there is hereby denominated a zone to be known as the Exclusive Economic Zone of Nigeria (in this Act referred to as the "Exclusive Zone") which shall be an area extending from the external limits of the territorial waters of Nigeria up to a distance of two nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured." If a law is restricted by territory, that law cannot be applied outside that territory. The only circumstances where the Court in the territory where the law is made can apply is where part of the offence is committed

in that territory which is not the case here. See *MORAH V. FEDERAL REPUBLIC OF NIGERIA* (2018) 75 NWLR (prt 1641) 60.

3.2.4 *Helios Towers Nig. Ltd V. Nesrea & Anor*¹³⁷

The court was of the view that:

We have already in this judgment reproduced the goal and objectives of the Environmental Impact Assessment Act in Section 1(a) and (b). We have also reproduced the definition of environmental impact assessment. They are relevant here; without the need to reproduce them again. It is however important to state that E.I.A. involves a processes of information exchange, notification and consultation between organs and persons where proposed activities are likely to have significant effects on boundary or trans-state on environment of bothering towns or villages.

See Section 1 (c) of E.I.A Act. Now Section 12 provides: "*When a project is described on the mandatory study list specified in the Schedule to this Act is referred to mediation or a review panel, no Federal, State or Local Government or any of their authority or agency shall exercise any power or perform any duty or functions that would permit the project to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it, or has taken a decision or issued an order that the project could be carried out with or without conditions*". (Underlining for emphasis only) Section 14 (2) provides: "*For greater certainty, where the Federal, State or Local Government exercises power or*

¹³⁷ (2014) LPELR-24624 (CA)

performs a duty or function for the purpose of enabling projects to be carried out, an environmental assessment may not be required if- (a) The project has been identified at the time the power is exercised or the duty or function is performed; and (b) The Federal, State, or Local Government has no power to exercise any duty or perform functions in relations to projects after they have been identified".

Section 42 defines jurisdiction to include: b) the government of a State c) any other agency established pursuant to an Act, law or By-Law or legislature of a State and having powers, duties or functions in relations to an assessment of the environmental effects of a project. d) A government of a foreign State or of a sub-division of a foreign State, or any institution of a government and e) An international organization of States or any institution of such an organization. S. 61 defines Federal authority to mean. a) a Minister of the Government of the Federation of Nigeria; b. an agency of the Government of Nigeria or other body established by or pursuant to an Act or law that is ultimately accountable through a Governor of the State of Nigeria in the conduct of its affairs. While the learned counsel for the Appellant contended that these provisions are clear and unambiguous and their ordinary and plain meaning should be ascribed to them in their construction, learned counsel for the 1st Respondent has urged upon us to employ the principle of interpretation that enjoins on the Court to adopt the purposive community canon of interpretation and not to construct a provision in isolation of the whole. As a golden rule of interpretation, no word would require any interpretation other than the plain and ordinary one.

Thus, no Court will attempt to interpret or construct an Act or statute contrary to the express words of the Act or statute. In construing a statute including the Constitution,

the words used in the statute must be given their ordinary and plain meaning where such words are not ambiguous. In effect, clear and unambiguous words must be given their ordinary and evident meaning. RABIU V STATE (1980) 8 - 11 SC 130; HAEED VS A.G. FED. (2012) All FWLR (Pt.629) 1011 at 1061 F; FEDA v GCN, TF (2011) All FWLR (Pt 570) 7223 at 7259 para A. Where however, the words are not clear or are ambiguous then, the Courts are enjoined to be liberal in the construction of the provision in a manner that one section does not defeat the intention and purpose of another. RABIU V STATE (1981) 2 ANCLR 293, ATIKU ABUBAKAR V A.G. FED (2008) All FWLR (Pt 441) 870 at 900 - 901 H -A. Now turning to the referred Sections 12, 14 (2), 42, can they be said to be clear and unambiguous as to ascribe their plain and ordinary meaning to them? Section 12 excludes the Federal, State or Local Government or any of their authorities from performing any duty or function that would permit project from being carried out where the project is either on the mandatory study list, or is referred to mediation or a review panel, until the Agency has taken a cause of action conducive to its powers under the Act or has taken a decision or issued an order that the project could be carried out with or without conditions. The exclusion of the powers of the Federal, State and Local Government or any of their authorities or Agency from exercising any power or performing any function with respect to the 3 circumstances until the Agency has taken a cause of action conducive with its power or taken a decision or issued an order, logically connotes that all the 3 tiers, the Federal, State or Local Government and their authorities or Agencies, may in other cases as may be so provided by the Act, have the power to perform the function of conducting E.I.

Assessment. Section 14 referred to, is also another exclusion provision where E.I.A. is not required. However, Sub-section 2, unlike S. 12 provides that where the Federal, State or Local Government exercises power or performs a duty or function for the purpose of enabling projects to be carried out, an E.I.A. may not be required - if it falls in any of the situations in Sub-paragraphs (a) and (b). This Section 14 (2) like Section 12 also connotes that all the 3 tiers of government and or their Agencies have power or function to exercise for purpose of enabling projects to be carried out. However, the exercise of such power or function in the circumstance stated therein is one for which an Environmental Impact Assessment may not be required. Section 42 defines "jurisdiction" at Paragraph (b) and (c) to include a State Government or any other Agency including an agency established pursuant to a law or bye law having powers or duties and functions in relation to an assessment of the environmental effects of a project. Learned Appellant's Counsel argued that by this definition, the States and Local Government Areas can conduct an Environmental Impact Assessment and issue an Environmental Impact Assessment Certificate. It is to be stated that Section 42 is only the definition Section for the word "jurisdiction". To relate the definition to the text, it is necessary to run through the Act to see the context in which the word "jurisdiction" was used. The only Section where it is used is the Section immediately following the Section 42. It is used in (Section 43) where the referral of a project to a review Panel is required by the Act, then, the "jurisdiction" referred in Paragraphs (e) and (f) of Subsection 1 of Section 42 is given responsibility or an authority to conduct an assessment of the environmental effect of the project or any part of it, the Council or the Minister of External Affairs, may

establish a joint review Panel with the "jurisdiction". The jurisdiction in Paragraph (e) and (f) are: - (e) a government of a foreign State or a sub-division of foreign State, or any institution of such a government; and (f) an international organization of States or any institution of such an organization. It is crystal clear that although "jurisdiction" as defined in Section 42 (b) and (c) includes the Government of a State or its agency, the jurisdiction referred to in Section 43 which may be assigned the responsibility to conduct an Environmental Impact Assessment and which the Council or Minister may constitute together with the review Panel as a joint review Panel, is the jurisdiction in Paragraphs (e) and (f) which are a government of a foreign State or its sub-division or an international organization. In this context, I lend my full weight to the submission of the learned Respondent's Counsel that it cannot be the intention of the makers of the Environmental Impact Assessment Act that a foreign State or its Sub-division or an international organization would be the body to conduct and issue an Environmental Impact Assessment Certificate.? Section 43 neither confers the sole power on a "jurisdiction" to conduct Environmental Impact Assessment nor does it confer any power on the "jurisdiction" to issue any Environmental Impact Assessment Approval Certificate or permits. It will definitely be absurd and against the spirit of the Act to interpret Sections 42 and 43 as conferring the "jurisdiction" or the power to issue an Environmental Impact Assessment Certificate on a foreign government or an international organization. Learned Counsel for the Appellant also referred us to the definition of "Federal Authority" in Section 61 to include an agency of the Government of Nigeria or other body established by an Act or Law that is ultimately accountable through a Governor.

As with the definition of "jurisdiction" in Section 42, there is also no provision of the law other than those already referred to or similar to those, that specifically grants the Federal authority the power or duty to perform Environmental Impact Assessment and then issue an Environmental Impact Assessment Certificate. ? An overview of all these Sections do not therefore present a clear position as the Appellant's Counsel has argued. All the referred Sections apart from stating that all the 3 tiers, the Federal, the State and Local Government and their agencies would have powers to conduct an Environmental Impact Assessment, but in those cases, the Environmental Impact Assessment are not required, do not go beyond that stage. The purport of Sections 42 and 43 in particular is anything but clear. These Sections and many other Sections are far from being clear. It thus means that the golden rule of interpretation of ascribing the plain and ordinary meaning of the words used in the statutes would not apply with respect to Sections 12, 14 (2), 42 of the Act because they are not in themselves clear or unambiguous. They are to the contrary. They are unclear and ambiguous. However, what is discernable is that an Environmental Impact Assessment being a process that eventually leads to verification of the suitability or otherwise of the proposed project before a decision is taken to allowed the project, it necessarily requires that the assessment be carried out in stages or at different levels involving many persons or organizations or bodies. This is because Environmental Impact Assessment involves the process of information gathering which is carried out by the developer and other bodies to enable the authority understand the environmental effects before deciding whether to grant or refuse to grant planning permission for the proposed project.? The process involves not only information

gathering, but also information sharing between the organizations or persons in the affected environment and also especially where the environmental effect of a project in one place, State, town or village would have an environmental effect in on that environment or other State, town or village. This fact Section 1 (c) of the Act recognizes and by Section 11, a State in which a project is planned to be undertaken is required to notify, and transmit any relevant information to or enter into timely consultation with the other State, town or village which is likely to be significantly affected by the proposed activity. See also Section 7. In such cases, the States and local Government agencies undoubtedly have a role to play. The Act also empowers the "Agency" to delegate any part of the screening or mandatory study of a project, but not the duty to take any cause of action or any decision which the Agency is empowered to take after the completion of the screening or mandatory study. See for instance Sections 17, 22. Indeed where the Agency delegates its duty of screening and mandatory study, it is required not to take any cause of action or decision until the delegated duty has been carried out or the comments by the members of public have been received as in Section 7. The result of all this is that the States or Local Government Areas are not completely excluded from playing any role with regards to Environmental Impact Assessment in their areas. As to whether they have the power to issue an Environmental Impact Assessment Approval Certificate, another excursion into the Act is necessary. The starting point is Section 61 where the word "Agency" is defined. The Act defines "Agency" to mean the National Environmental Protection Agency established by the Federal Environmental Protection Agency Act, unless the context otherwise provides. The Environmental Impact Assessment Act

addresses the "Agency" as the enforcement agency or implementer of its provisions. All applications by public or private institutions or agencies are to be made in writing to the "Agency" before embarking on any proposed project. (Section 2 (4). By Section 6, the "Agency" shall impartially examine information provided as part of an Environmental Impact Assessment prior to any "Agency"? By Section 7, before the "Agency" gives a decision on any activity, it shall give an opportunity to government agencies, members of public etc. to make comment. Sections 8 and 9 also confer on the Agency the right to make the decision, on the proposed activity. Section 15 is also on the same line and wherever a decision or approval is intended to be made or given, or cause of action taken, the Act refers to the "Agency". In Section 41, the Act provides. "A Certificate stating that an environmental assessment of a project has been completed, and signed by the Agency that exercises a power or performs a duty or function referred to in Section 8 of this Act in relation to the project, is in the absence to the contrary, proof of the matter stated in the Certificate". (Underlining for emphasis only) The purport of the thorough scrutiny of the provisions of the Environmental Impact Assessment Act is to discover the real intention of the law makers as to the body empowered to conduct Environmental Impact Assessment and more importantly, to issue Environmental Impact Assessment Certificate. This is necessary because in the process of discovery of the intention of the law makers, it is a cardinal rule of construction that a Section of the statute is not considered in isolation of the whole, but as interpretation is approached on the footing that the Section is part of the greater whole. See *ORUBU VS. INEC* (1988)5 NWLR (Pt.94) 323. The Court is therefore duty bound not to construe any of the provisions of a

statute to defeat the obvious ends of that statute or what it was designed to serve, especially where another construction which is more consistent within the sense of the provisions will enforce and protect the ends for which the statute is made. **RABIU VS. KANO STATE (Supra); NBN LTD VS. WEIDE Per AMINA AUDI WAMBAL, JCA (Pp 44 - 61 Paras E - A).**

3.3 Institutional Framework

In Nigeria the main regulatory bodies are the Federal Ministry of Environment and the Department of Petroleum Resources (DPR) under the Federal Ministry of Petroleum Resources. However, this arrangement is causing a lot of confusion and contributed to duplication of process. The Institutional set-up and legislation related to environmental management of the oil and gas industry in Nigeria have evolved over the past 50 years and are very complex. The long history of environmental problems caused by oil spills also gives the Nigerian judicial system and some government agencies a prominent role on how it deals with penalties and punishments for environmental and oil-related offences and crimes, as well as with compensation claims for victims.

3.3.1 Federal Ministry of Environment

In Nigeria the Federal Ministry of Environment is the sole Government Agency mandated by law to conduct EIA in both oil and gas sector and any other project that require EIA; but for some reasons that are not clear DPR also carried out in-house EIA studies strictly on oil and gas¹³⁸. Environmental Impact Assessment offers great opportunities for the achievement of sustainable

¹³⁸ E. I. Elenwo and S. C. Urho, "Challenges and Prospects of Enforcement of environmental laws in Port Harcourt Metropolis Rivers State Nigeria" (2017) (19) (6) *British Journal of Applied Science and Technology*,1.

development in Nigeria. However, one of the major constraints for the effective implementation of EIA as a central tool for sustainable industrial development is that the EIA is seen differently from technical feasibility studies. The approach, however, by the Ministry is more detailed and rigorous. It involves both the States and Local Council concerned and also ensures adequate participation of the communities and the general public.

3.3.2 Department of Petroleum Resources

The present-day Department of Petroleum Resources started as a hydrocarbon section of the Ministry of Lagos Affairs in the early fifties. It is the first statutory Agency set up to supervise and regulate the petroleum industry in the country. At the time, it reported to the Governor-General. Later, the section was upgraded to a Petroleum Division within the then Ministry of Mines and Power. The Division, in 1970, became the Department of Petroleum Resources (DPR). In 1971, a new body, called Nigerian National Oil Corporation (NNOC) was created to engage in commercial activities in the petroleum industry with the Department continuing to perform the statutory supervision and control duties in the oil industry¹³⁹.

The DPR was in 1975, constituted into the Ministry of Petroleum Resources (MPR) after energy matters were excised and transferred to another arm of government. Through the proclamation of Decree 33 of 1977, MPR and NNOC were merged to form the Nigerian National Petroleum Corporation (NNPC)¹⁴⁰. This was in a bid to optimise the utilization of the then scarce local manpower resources in the public sector of the industry. The Decree also created the Petroleum Inspectorate as an integral part of the Corporation and granted it a semi-autonomous status; with its Head reporting to the Minister of Petroleum Resources, who also doubled as Chairman of

¹³⁹ S Rousseau, 'Empirical Analysis of Sanctions for Environmental Offences' (2009) (3) *International Review of Environmental and Resource Economics*, 161.

¹⁴⁰ E. J. Chigonu, F.P. Igwela & C.J. Ezeilo, "Environmental Compliance and Enforcement Measures: Challenges and Opportunities In Nigeria", (2022) 1 (2) *Port Harcourt Journal of Business of Law*, 5.

NNPC. The Petroleum Inspectorate continued to regulate the industry but was barred by the Decree from engaging in any commercial transactions or being involved in the commercial decisions of the Corporations.

In 1985, a new Ministry of Petroleum Resources (MPR) was again created, while the Petroleum Inspectorate remained in the corporation and retained its regulatory functions¹⁴¹. On the 23rd of March 1988, with the commercialization of NNPC, the Petroleum Inspectorate was excised from the corporation, due to the non-commercial nature of its functions, and merged with the new MPR to form its technical arm. The DPR continued to oversee all the activities of companies licensed to engage in any petroleum activity in the country, with the objective of ensuring that national goals and aspirations are not thwarted, and that oil companies carry out their operations according to international oil industry standards and practices. It keeps records and other data of the oil industry's operations and informs Government about all activities and occurrences in the petroleum industry.

The Department of Petroleum Resources (DPR) under the Federal Ministry of Petroleum Resources plays a key role in regulating and enforcing environmental law in Nigeria. The DPR regulation Environmental Guidelines 'an (EGASPIN), first issued in 1992 and reissued in 2002, forms the basis for most environmental regulation of the oil industry.

In 1999, the Federal Ministry of Environment was formed, followed in 2006 by the establishment of the National Oil Spill Detection and Response Agency (NOSDREA)¹⁴². Both of these Institutions base their operations on the DPR Environmental Guidelines and Standards.

¹⁴¹ C. A. Omaka, *Municipal and International Environmental Law*, (Lagos: Lions Unique Concepts 2012), 349.

¹⁴² E. I. Elenwo and S. C. Urho, "Challenges and Prospects of Enforcement of environmental laws in Port Harcourt Metropolis Rivers State Nigeria" (2017) (19) (6) *British Journal of Applied Science and Technology*, 1.

There are also Departments at the State Ministries of Environment and Water Resources both dealing with the management of environmental issues. Local government bodies do not have an official role in either environmental management or regulation of the oil industry in Nigeria, but have some involvement with both issues because of their physical presence on the ground ‘.

3.3.3 National Oil Spill Detection Response Agency

The Objectives of the Agency shall be to co-ordinate and implement the National Oil Spill Contingency Plan (NOSCP) for Nigeria as follows¹⁴³:

- (a) Establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;
- (b) Identify high-risk areas as well as priority areas for protection and clean up
- (c) Establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site
- (d) Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is Clean Nigeria Associates (CNA) in implementing appropriate spill response;
- (e) Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;
- (f) Provide a programme of activation, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management and operational personnel

¹⁴³ Accessed on NOSDRA site @ www.Nosdra.federalgovt.com on the 15/10/2023.

- (g) Co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;
- (h) Provide support for research and development (**R&D**) in the local development of methods, materials and equipment for oil spill detection and response
- (i) Co-operate with the International Maritime Organization and other national, regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to the best practical extent
- (j) Establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities
- (k) Determine and preposition vital combat equipment at most strategic areas for rapid response
- (l) Establish procedures by which the Nigerian Customs Service and the Nigerian Immigration Services shall ensure rapid importation of extra support response equipment and personnel
- (m) Develop and implement an appropriate audit system for the entire plan;
- (n) Carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the Plan.

3.3.4 NESREA and NODSRA

NESREA Act empowers NESREA as an enforcement Agency for environmental standards, regulations, rules, laws, policies and guidelines,¹⁴⁴ to enforce environmental standards on noise,

¹⁴⁴ NESREA Act 2007 s. 1(2)(a).

air, land, seas, oceans and other water bodies through compliance monitoring.¹⁴⁵ The medium of compliance monitoring as expressed by the law to be used by NESREA to enforce environmental standards can only be achieved through environmental enforcement measures such as inspection and searches. The NESREA Act also empowers NESREA to conduct field follow up of compliance, public investigation, and developed monitoring network, all in a bid to ensure effective environmental compliance and enforcement.¹⁴⁶ Inspection and searches are also used by NOSDRA as a means of detecting oil spillage. NOSDRA Act mandates NOSDRA to be responsible for surveillance and ensure compliance with all existing environmental legislation and detection of oil spills in the petroleum sector of Nigeria.¹⁴⁷ Similarly under the Harmful Waste (Special Criminal Provisions) Act, a Nigerian police officer is empowered to enter and conduct search without warrant on any land, building or carrier, including aircraft, vehicle, container or any other thing whatsoever which the police officer has reason to believe is related to the commission of a crime under the Act associated to harmful waste.¹⁴⁸ However under the NESREA Act, NESREA requires a warrant issued by Court to enter and conduct search on any premises including land, vehicle, tent, vessels, floating craft except maritime tankers, barges or floating production, storage, offload (FPSO) and oil and gas facilities or any inland water and structure, at all times for the purposes of conducting inspection, searching and taking samples for analysis reasonably believed carries out activities or stores goods which contravene environmental standards or legislation.¹⁴⁹

¹⁴⁵ *Ibid* s. 7.

¹⁴⁶ *Ibid* s. 8.

¹⁴⁷ NOSDRA Act 2008 s. 6(1).

¹⁴⁸ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 10(1)(a).

¹⁴⁹ NESREA Act 2007 s. 30(1)(a).

3.4 Nature of the Legal Regulation on Risk Governance in Nigeria Oil and Gas Industry

The risk governance laws relevant to offshore oil activities in Nigeria seem inadequate to the extent that it will prevent the future occurrence of oil accidents such as the Deepwater Horizon Accident. It will be argued that the offshore risk governance regime is not adequate enough to prevent the occurrence of offshore accidents in Nigeria looking at the Petroleum Act 1969, the Petroleum (Drilling and Production) Regulation 1969 and the Mineral Oil (Safety) Regulation 1963 as the risk governance regime for offshore oil activities in Nigeria.¹⁵⁰ Firstly, it will be argued that the prescriptive nature of the regulations mentioned above undermines its effectiveness in preventing offshore risk related accidents. Besides, there are provisions in the Petroleum Regulations 1969 that give room for the minimization of the cost of risk governance at the expense of the actual prevention of environmental accidents. What is more, there is a general lack of regulatory capacity that undermines the possibility of the Department of Petroleum Resources (DPR)¹⁵¹ effectively regulating risk governance. Furthermore, it is argued that the position of the DPR as the regulator and, the regulated raises questions of conflict of interest which erodes the effectiveness of the risk governance regime.

As reiterated in the previous section, the Macondo accident awakened a paradigm shift in offshore oil risk governance in some jurisdictions. The premise of the shift for most jurisdictions was an appraisal of the adequacy of existing framework in securing the health, safety of workers, and environmental protection.¹⁵² The Petroleum Act 1969 (amended in 2004)¹⁵³ is the umbrella

¹⁵⁰ P. E. Agbonifo, 'Risk Management and Regulatory Failure in the Oil and Gas Industry in Nigeria: Reflections on the Impact of Environmental Degradation in the Niger Delta Region' (2016) 9(4) *Journal of Sustainable Development*, 1.

¹⁵¹ The DPR is the regulatory body that has the statutory responsibility of ensuring compliance with Petroleum Laws, Standards and Regulations in Nigeria. See DPR, 'About' accessed 6th June 2021.

¹⁵² B. Newman, 'Environmental Regulation in the Upstream Oil and Gas Industry: Is Ghana Prepared for Offshore Oil Pollution?' (2017) 15(1) *Ogel law Journal*, 1.

¹⁵³ The Petroleum Act, Cap P10, Laws of the Federation of Nigeria (LFN) 2004.

law that governs petroleum operations and, creates the legal basis for the making of regulations in the Nigeria's petroleum sector.¹⁵⁴ The Petroleum (Drilling and Production) Regulations 1969 was made in furtherance to the Petroleum Act to regulate every facet of petroleum operations including risk prevention and management.¹⁵⁵ Also, the Mineral (Safety) Regulations 1963 were adopted as a valid regulation under the Petroleum Act 1969 to secure the protection of health and safety of petroleum workers, which includes those working offshore.¹⁵⁶

The Petroleum Act is a federal law that vests the ownership and control of all petroleum resources in Nigeria's land, and waters on the government.¹⁵⁷ It provides that 'the entire ownership and control of all petroleum in, under or upon any lands ... is vested in the State'.¹⁵⁸ It defines land to include 'land covered by water which- is under the territorial waters of Nigeria; or forms part of the continental shelf, or the Exclusive Economic Zone of Nigeria.'¹⁵⁹ A combined read of the above provisions means that the ownership and control of offshore petroleum resources are vested in the federal government.¹⁶⁰ This has received judicial vent from the Nigerian Supreme Court in the case of Attorney General of the Federation v. Attorney General Abia State (No. 2)¹⁶¹, where it was reiterated that 'the federal government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters and sovereign rights over the Exclusive Economic Zone subject to universally recognized rights'.¹⁶²

¹⁵⁴ E. Godfrey, *Nigerian Petroleum Law*, (Dredew Publishers Lagos, 2004) 13-24.

¹⁵⁵ T. Folala and M. Heaton, *A History of Nigeria* (Cambridge University Press 2008) 185.

¹⁵⁶ Omukoro (n 28) 7.

¹⁵⁷ E. Egede, 'Who owns the Nigerian Offshore Seabed: Federal or States? An Examination of the Attorney General of the Federation v. Attorney General of Abia State & 35 ors Case' (2005) 49(1) *Journal of African Law*, 73.

¹⁵⁸ The Petroleum Act, Cap P10, 2021, s.1(1).

¹⁵⁹ Ibid, s.1(2). See M A Ajomo, 'Ownership of Mineral Oils and the Land Use Act' (1982) 1(2) *Nigerian Current Law Review*, 335.

¹⁶⁰ L. Aladetin, 'Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: between Legality and Legitimacy' (2004) 3 (8) *Thurgood Marshall Law Review*, 159.

¹⁶¹ (2001) All N.L.R. 121

¹⁶² Attorney Gen. of the Federation v Attorney Gen. of Abia State [2002] 4 NSCC 51 (Nigeria).

It provides that ‘the licensee or lessee shall comply with all existing safety regulations and all such instructions as may, from time to time, be given in writing by the Director of Petroleum Resources for securing the health and safety of persons engaged on or in connection with operations under his license or lease’.¹⁶³

3.5 Effects of legislations on Environmental Protection in Nigeria

Speaking on the way out, Ibebuike stressed the need for DPR to ensure that efforts are directed towards periodic reporting of safety measures by the operators, adequate monitoring and verification to ensure compliance and independent third-party inspection of the design and construction of wells in order to satisfy itself that adequate safety measures to prevent hydrocarbon releases and major well blowout are taken.

He added, “an independent agency separates from DPR that oversees economic regulation of the sector should be created to regulate offshore health, safety and environmental standards in line with the current international best practice. To this end, National Assembly has reflected this in the PIA, 2021. The regulator should endeavour to set up a dedicated website for publishing Health and Safety Regulations, Directives and Standards for easy access. This would encourage studies and research, which will ultimately lead to an improvement of the existing system.¹⁶⁴ The regulatory body should carry out physical inspection of offshore installations to ensure that process safety and asset integrity are being maintained by the operators. Efforts should be directed towards ensuring that offshore workers are trained to gain competence on safety measures and learn dynamics of the industry.¹⁶⁵ Workforce involvement in offshore health, safety and environmental monitoring and implementation should be encouraged through a legal

¹⁶³ The Petroleum Regulations 1969, Reg 37.

¹⁶⁴ A. Banwo and others, ‘Review of the Petroleum Industry Governance and Institutional Framework Bill’ (2021) 13 (5) *University of Port Harcourt Law Journal*, 67.

¹⁶⁵ *ibid*

framework. The regulator should ensure consultation and collaboration with the industry to ensure that health and safety regulations and directives are being implemented without compromise. Government should endeavor to set up an investigative committee to unravel the cause of any accident/incident offshore with a view to advancing health and safety measures from the lessons learnt.¹⁶⁶ Outcome of such investigations should be made public to encourage further studies and research. The envisaged Regulations, Standards and Guidelines to be made pursuant to the PIA should incorporate the observed deficiencies in the offshore health and safety regulation.”

¹⁶⁶ *ibid*

Chapter Four

Appraisal of Adherence to International and Local Health and Safety Regulations in The Oil and Gas Industry in Nigeria

4.1 The Legal Administration of Health and Safety, A Comparison with other Jurisdictions

The oil industry is Nigeria's main revenue earner, and stories that frequently feature about it in the news are about fluctuations in crude oil price, juicy labor earnings by workers, as well as billions of dollars investment companies and the government are making to find more oil. But issues about investments to guarantee industry workers' safety are hardly heard until major disasters strike¹⁶⁷. The department of Petroleum Resources (DPR) tasked with regulating the health and safety of workers in both upstream and downstream has been able to do little in that regard.

The DPR report of the oil and gas industry activities in 2015 shows that death toll in the oil and gas industry hit 217 from 2010 to 2015. The deaths were recorded from 298 incidents reported industry-wide within the five-year period¹⁶⁸. Some of DPR's reports are arguably inaccurate because most of these accidents go unreported. There are hundreds of oil and gas companies operating in the upstream and downstream sectors but in-house data about occupational injuries or fatalities from their operations are scanty or non-existent¹⁶⁹.

However, local exploration and production giant, SEPLAT reported in its 2016 result that its mortality in service was around 63 with workers above 45 accounting for the highest deaths of 26. Those in their 40's that died in service were 14 and those around 35 were nine. The causes of the mortality were not stated.

¹⁶⁷ <https://dailytrust.com/oily-but-deadly-how-308-deaths-haunt-oil-sector> accessed 22 October, 2023.

¹⁶⁸ *ibid*

¹⁶⁹ *ibid*

Findings show that some industry-related deaths might not have been captured in the DPR 2015 report¹⁷⁰. For instance, Bristow Helicopters (Nigeria) Limited confirmed that six people were killed in an offshore helicopter accident in the Oworonshoki area of Lagos on August 12, 2015.

In Nigeria, there are quite a number of statutes which undoubtedly, overtly or covertly provides for compensation in matters pertaining to land or landed property acquisition but unfortunately, only the Oil Pipelines Act¹⁷¹ and two other municipal legislation or regulations contain provisions that directly address matters pertaining to compensation emanating from oil spillage in Nigeria. Other Nigerian statutes such as the Land Use Act 1978, Minerals Act, Petroleum Act, Oil in the Navigable Waters Act 1968 and others are only superficially relevant to compensation for oil spillage, as they deal primarily with land acquisition in Nigeria rather than injurious affection emanating from oil spillage¹⁷² a problem the study will evaluate.

The statutory provisions which vest control of petroleum/mineral resources on the Federal Government on behalf of the Nigeria citizens do not impede the right to compensation arising from petroleum operation activities. This proposition was canvassed and upheld in the case of *Elf Nigeria Limited v. Opre Sillo and ors*¹⁷³ where it was unequivocally held that no law in Nigeria impedes the right to compensation arising from petroleum activities. Agreeably, no law prohibits payments of compensation in cases of oil spillage in Nigeria but the study will assess the accessibility of the common man to such compensations, drawing from Deinduomo¹⁷⁴ accordingly postulated as follows:

Over the years it has been observed that, due to the many grey areas in the statutes governing compensation in oil and gas operations, oil multinational

¹⁷⁰ Ibid.

¹⁷¹ Cap O7, Laws of the Federation Of Nigeria, 2004.

¹⁷² O. Mustapher (2016).

¹⁷³ (1994) 6 NWLR (pt. 350) 258.

¹⁷⁴ F. Emiri and G. Deinduomo (ed). *Law and Petroleum Industry in Nigeria; Current Challenges: Essay in Honour of Justice Kate Abiri* (Malthouse Press Limited 2009), 139.

giants dodge the payment of compensation totally or for a good time or get off lightly. Sometimes they continue operations undisturbed whilst the case suffers undue delay (which is almost endemic in the Nigeria Judicial System) and they ultimately dodge the payment of compensation by winning the case on technical grounds or because of the inferiority of victims' Lawyer or the inability of the victim to reach the standard of proof required to succeed.

With the above proposition in mind, it is pertinent to embark on an empirical and analytical assessment of the various heads of compensation in the main statutes relating to compensation of victims of oil spillage or compensation of those who suffer damage due to the negative effects of oil spillage in Nigeria. Apparently, the assessment can better be achieved by careful examination of some of the major municipal Legislation relating to environmental protection and compensation of victims of Oil Spillages in Nigeria.

This study is basically important to three sections of the public as will be highlighted below. The first group will be the legal system. There are unending talks about inconsistency in the judiciary and most of the laws on compensation seem to be outdated possibly because of the fact they were designed without adequate consultations and excitement about just having laws to regulate the petroleum sector without a broader insight to the implications oil and gas flaring would eventually have on the environment of host communities. Current effect on the land and people of host communities makes the study very critical for adjustments to be made regarding inadequacies in compensation regulations.

The second group will be those directly impacted by oil and gas activities even workers in such multinational organisations directly impacted, likewise the common man whose water and lands are totally polluted. Compensation goes beyond financier benefits as will be established in the

study. Looking at the fact that the World Health Organisation (WHO) has cited that life expectancy in the Niger-Delta as dropped as much as 45yrs, and continues to drop, makes this study relevant to hit on the essence of given the victims of oil and gas pollution, cleaner air to breath, fresh water to drink and fish, also adequately fertile land to farmer.

The third group involves the students of law both past and present who are exposed to various existing municipal legal regimes of the oil and gas industry in Nigeria. Proper analysis of the nature and consequences of such laws in present Nigeria, doing a comparative analysis with the legal administration on compensation in other oil producing nation will broaden the horizon of scholars who are interested in oil and gas safety including the environment in Nigeria.

While in the United Kingdom, the matters of offshore oil and gas are reserved so the Parliament in the United Kingdom is saddled with the responsibility of its regulation.¹⁷⁵ The UK offshore oil and gas regulatory regime is dynamic and constantly develops. This is because the laws are amended regularly to address new environmental concerns.¹⁷⁶ The UK offshore oil and gas industry has got a wider scope and is tougher in its implementation of environmental regulations.¹⁷⁷ The operators are held accountable for their operations through laid down environmental principles. The companies that explore and develop oil and gas resources in the UK are subjected to environmental regulations that are balanced. This is achieved through national, European and international laws.¹⁷⁸ To facilitate the regulation of the offshore oil and gas activities, the United Kingdom Offshore Operators Association (UKOOA) has negotiated

¹⁷⁵ C. Carrigan, 'Captured by Disaster: Reinterpreting Regulatory Behaviour in the Shadow of the Gulf Oil Spilling David Carpenter and David A Moss (eds), Preventing Regulatory Capture (Cambridge University Press 2014) 240.

¹⁷⁶ C. Wolfson and others, *Paying for the Piper: Capital and Labor in UK's Offshore Oil Industry* (Routledge 2013) 283-297.

¹⁷⁷ J. Ray, 'Offshore Safety and Environmental Regimes: A Post-Macondo Comparative Analysis of the United States and the United Kingdom' (2014) 33 *Miss. C. L. Rev.* 11.

¹⁷⁸ J. Paterson, 'Health, Safety and Environmental Regulation on the United Kingdom Continental Shelf in the Aftermath of the Macondo Disaster' (2015-2016) 4 *LSU J. Energy L. & Resources* 259

agreements with appropriate government agencies and developed guidelines and voluntary codes.¹⁷⁹

Offshore oil and gas activities in the UK are regulated by laws that contain procedures and standards that protect the marine environment by controlling different types of offshore E&P wastes. They include the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005; Offshore Chemical Regulations 2002; Food and Environment Protection Act 1985; Merchant Shipping (Prevention of Oil Pollution) Regulations 1996; and the OSPAR Convention. The Department of Energy and Climate Change (hereafter DECC) is in charge of administering and ensuring compliance with the UK oil and gas laws. The discharge of produced water in the UK is mainly regulated by the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005. The OPPC Regulations prohibit the discharge of oil into the sea unless a permit has been issued for such discharge. In the UK, under the OPPC Regulations, the effluent limitation for the discharge of produced water into offshore water bodies is 30 mg/l. The transfer or export of produced water to another field for re-injection in the UK also requires a licence. A licence is also required for unplanned produced water injection and contingency oil discharge.

The environment no doubt is nature's gift to mankind¹⁸⁰. The right to use, explore, discover and utilize the environment and its resources necessarily implies that corresponding duties exist to protect, recover and conserve them.¹⁸¹ Consequently environmental laws are enacted to set out environmental regulations, procedures, standards and guidelines to ensure environmental

¹⁷⁹ D. Indige, *Drilling in Extreme Environments: Challenges and Implications for the Energy Insurance industry* (Lloyds 2013) 20.

¹⁸⁰ E. J. Chigonu, F.P. Igwela & C.J. Ezeilo, "Environmental Compliance and Enforcement Measures: Challenges and Opportunities In Nigeria", (2022) 1 (2) *Port Harcourt Journal of Business of Law*, 5.

¹⁸¹ E. I. Elenwo and S. C. Urho, "Challenges and Prospects of Enforcement of environmental laws in Port Harcourt Metropolis Rivers State Nigeria" (2017) (19) (6) *British Journal of Applied Science and Technology*, 1.

compliance. Although it is desirable that there be voluntary compliance with the statutory commands on the protection of the environment giving its importance to the continued existence of man on earth, yet the reality is that compliance is still far from voluntary and would have to be compelled by a strong will power and steadfast determination of the enforcement agencies to enforce the laws without fear of evil.¹⁸²

In Nigeria, the issue of environmental compliance has remained a great concern giving the fact that despite the environmental laws, its effective enforcement to guarantee compliance is still lacking. This is evidently seen with the continuous degradation of the environment by industry operators. The often question of whether law is really an effective tool for the control of environmental degradation has gotten some affirmative remark. Sax¹⁸³ within this premise pontificate that:

Laws set and enforce scientific standards for human health and enjoyment by regulating the use of air, water and land. The law also has broader responsibilities that require it to make complex policy judgment. For example, it must decide how stringently to control strip mining that pollutes streams, in the light of demand for coal as fuel. And if coal production is limited the effect of that decision on the production of other fuels that also affect the environment such as oil or nuclear power, must be considered. The law must also balance the imposition of environmental control against other important social values, such as potential unemployment. It draws upon economics, biology and other

¹⁸² C. A. Omaka, *Municipal and International Environmental Law*, (Lagos: Lions Unique Concepts 2012), 349.

¹⁸³ J L Sax in C A Omaka, op. cit. 361.

decisions. To a large extent, it is preventive law, for its attempts to probe an uncertain future to prevent irrevocable mistakes.

The view of Sax is in tandem with the reality that an effective environmental legislation could guarantee environmental compliance if effectively enforced by regulatory institutions established by the law. However, the law can as well strengthen institutional mechanism for enforcement in other to achieve desired compliance with the law. For example an environmental legislation that provides for citizen's suit and the right of citizens to environmental protection as found in developed climes such as the United State of America, will enhance enforcement and compliance to environmental laws in such jurisdiction better than where such rights are not guaranteed by environmental legislation- as is the case of Nigeria where citizens are precluded from raising any question as to whether or not the government is complying with environmental objectives provided by the Constitution.¹⁸⁴ These dimensions also help citizens to shoulder some of the Agency's responsibility in ensuring compliance to environmental legislation where especially Agency's resources are insufficient to address all violations.

4.2 Challenges of Environmental Regulation in the Oil and Gas sector in Nigeria

Environmental compliance in Nigeria is faced with a lot of constraints affecting its realization. In recent times environmental compliance appears to be a non-negotiable concept that have attracted both developed and developing nations on the need to preserve a pristine environment bequeathed by nature to mankind. To every society, the need to comply with environmental standard is been confronted with its own unique challenges of which Nigeria is not an exception. It is a notorious fact that laws and regulations guide human behaviour and every facet of life including the environment is guided and regulated by law. Meanwhile, as lofty as these laws are,

¹⁸⁴ CFRN 1999 (as amended) s. 6(6)(c).

one of the issues associated with them is that some of these laws are archaic, old, anachronistic and ageing. Some of them need total overhauling and in fact, majority of them lack enforcement mechanism.

Thus, this sub heading will discuss the challenges associated with environmental regulations in Nigeria. The challenges include the following:

4.2.1 Weak Environmental Sanctions

In order to have an effective and efficient environmental policy, it is necessary to complement the legislation with a well- thought out enforcement strategy, without which the regulation's target group will have little or no incentive to comply with the rules and the environmental objectives are not likely to be met.¹⁸⁵ A stiffer environmental sanction provided for by an environmental legislation gives a better deterrence effect on violators and so helps to encourage environmental compliance. Weak sanction manifest as a challenge to environmental compliance because even though the regulators are able to enforce them, it still will not be able to sustain environmental compliance on a violator giving the fact that the violator can always pay meagre fines for the damage caused to the environment. For example, where a multinational oil company undertaking petroleum activities in Nigeria is made to pay a fine of 1million naira for unlawful discharge of hazardous substance into the air, water and land of Nigeria as well as the adjoining shorelines,¹⁸⁶ is not a stiffer penalty on such a body corporate as to achieve regular environmental compliance in the course of their petroleum operations as it relates to discharge of hazardous substance to the environment.

¹⁸⁵ S Rousseau, 'Empirical Analysis of Sanctions for Environmental Offences' (2009) (3) *International Review of Environmental and Resource Economics*, 161.

¹⁸⁶ NESREA Act 2007 s. 27(3).

Similarly, the Environmental Impact Assessment Act, 2004 provides a fine of not less than fifty thousand naira and not more than hundred thousand naira for a body corporate who violates the provision of the Act.¹⁸⁷ It therefore means that a body corporate as a proponent of a project could endanger the environment and risk the life of people by going ahead to undertake a project without proper environmental impact assessment in compliance with the provision of EIA Act only to pay a fine of not more than hundred thousand naira for such an unquantifiable damage which may have been done to the environment. Several environmental protection laws for the preservation of biodiversity in Nigeria fall short in this regard with obsolete sanction provisions which are not adequate to guarantee compliance.

4.2.2 Financial Constraint

It is obvious that financial resources drive the success of every program- environmental enforcement program inclusive. Funding helps in building regulatory capacity for optimum discharge of duties and responsibility as provided for under the establishment Act. Funding constraints is one of the challenges faced by environmental regulators in Nigeria and therefore affect environmental enforcement and compliance. In some circumstance, economic down turn in the country has turned governments' financial pledge born out of enthusiasm and genuine desire for environmental protection into a mirage.¹⁸⁸ A regulatory Agency as the case of Nigeria faced with funding constraints will not be able to train its personnel adequately to undertake required services; such agency will not be able to acquire required instruments, equipment and machines for effective service delivery. Lack of funding also affects the regulatory competence of the regulator or inability to discharge its duties independently.

¹⁸⁷ EIA Act 1992 s. 60.

¹⁸⁸ A Adejoroye, 'The Challenges of Environmental Enforcement in Africa: The Nigerian Experience' <<https://www.nigerianlawguru.com>> accessed 20/10/2023.

4.2.3 Weak Regulatory Institution

The aim and objectives of any law is achieved through effective implementation and enforcement. Consequently, the law will usually establish a regulatory institution to enforce it. This explains the obvious- that it is one thing to have a law, and another for the law to be enforced effectively to realize the purpose of the law. It follows that where the regulator is weak in enforcing the law then the purpose of the law will not be achieved. This has been the bane of the Nigerian society with respect to environmental compliance amidst several environmental protection laws. The glaring situation of the inability of regulatory agencies to effectively enforce environmental standards as provided by the laws could be seeing in the continuous environmental degradation especially arising from industries operations, in which case the regulators have not been able to bring the violators in compliance with environmental standards. It is clear that for there to be environmental compliance, enforcement of environmental standards and regulations must be effective.

4.2.4 Regulatory Capture

Regulatory capture is one of the challenges facing environmental compliance in Nigeria because it has made enforcement of environmental standards by regulatory agencies difficult. It entails a situation where the regulatory agency relies on the regulated to carry out its duties, in such circumstance, the regulator is said to have been captured by the regulated.¹⁸⁹ This is often the situation especially in the oil industry in Nigeria where an oil spill for instance occurs and the regulatory institution – NOSDRA lacks the enabling capacity to discharge its responsibilities with respect to the spill and often relies on the spiller company for assistance financially and

¹⁸⁹ J E Chigonu, 'Corruption Perception and Tax Compliance in Nigerian Petroleum Industry' in CC Wigwe (ed) *Readings in Law and Cotemporary Issues* (2nd edn, Port Harcourt: Faculty of Law Rivers State University 2020) 258.

technology wise to discharge its duties. In such circumstance such a regulator cannot effectively bring the regulated in compliance with environmental standards operational in the industry. This similar situation plays out with other regulatory institutions enforcing environmental standards in Nigeria.

4.2.5 Corruption and Lack of Political Will

Corruption as a societal enemy impact on environmental enforcement and consequent compliance to environmental standards in Nigeria. Corruption which undermines good governance, fundamentally distorts public policy and result to misappropriation of resources,¹⁹⁰ is one of the advanced reasons for lack of an effective environmental enforcement programme that translate to poor environmental compliance. This is made manifest in the overarching corruption of public officials charged with enforcing environmental standards in Nigeria.¹⁹¹ Considering whom enforcement agents have to deal with most times (oil companies), it becomes even easier to see how this official can be easily co-opted and bribed. Similarly, diversion of ecological funds to other use possibly of lesser significance has also been seen as a big problem to environmental enforcement and compliance in Nigeria.¹⁹²

Another point worthy of note as a challenge facing environmental compliance in Nigeria is lack of goodwill on the part of Nigerian government to environmental protection. The government seems reluctant in imposing stringent penalties on activities that cause serious environmental damage in the Country especially coming from the petroleum industry. The case of gas flaring has shown a clear example considering the several shifting of zero tolerance stance on gas flaring

¹⁹⁰ T Lawal and O K Victor, 'Compacting Corruption in Nigeria' [2012](1)(4) *International Journal of Academic Research in Economic and Management Sciences*, 1.

¹⁹¹ Z O Edo, 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' [2012] (14)(6) *Journal of Sustainable Development in Africa*, 261.

¹⁹² *Ibid.*

even after been declared illegal in Nigeria since 1984, its practice continues unabated.¹⁹³ As such Nigeria has a higher rate of global ranking on the percentage of flared gas.

Understandably the government is yet to fall in tune with global environmental sustainable development which should also accommodate economic growth. The nature of the Nigerian economy answers for this. The Nigerian economy is basically a mono product one which solely depends on crude oil as a major source of revenue. Hence the Nigerian leadership is ready to subject the economic livelihood and health of its citizens over the continuous dangerous effect of the petroleum industry operations which ordinarily can be effectively regulated to conform to international best practices and guarantee environmental sustainable development.

4.2.6 Contradiction in Legislatures

Section 6(3) of the act¹⁹⁴ provides for compensation assessment to be done according to the provisions of the Land Use Act so far as they are applicable and not in conflict with anything in the Oil Pipelines Act. The Land Use Act addresses compensation for Land Acquisition and not damage. It also absolves itself from any dealings with land acquisition for the petroleum industry or minerals and mining sector of the economy.

In section 29 subsection (2) of the Land Use Act, it provides that if a right of occupancy is revoked for the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals and Mining Act or the Petroleum Act or any legislation replacing the same. This is the crux of the oil spill compensation regime in Nigeria, not lack of standards alone but lack of an enabling statute on which the standards can then be developed and

¹⁹³ *Ibid.*

¹⁹⁴ The Oil Pipelines Act Cap 07, LFN 2004

adhered to. The caveat 'so far as they are applicable' makes it possible to use some of the provisions of the LUA in compensation valuation assessment.

4.2.7 Lack of Unifying Document

The NNPC Act, provides for the payment of compensation in respect of any loss or damage that may have been suffered in consequence of the operation of the provisions of the Act. It does not provide any specific information on what the heads-of claim should be and is quite vague. The compensation characteristics, or the basis and method of valuation to be adopted are not specified. The NNPC Act recommends that the amount of compensation should be as prescribed under Land Use Act. The land Use Act as indicated earlier is an Act that was designed primarily to facilitate compensation in instances of compulsory acquisition for overriding public interest and not damage assessment. From the position of the Land Use Act stated earlier, it distances itself from any dealings on matters in the Petroleum industry which means that the NNPC Act has no clearly defined basis for valuation or any specified method.

With these conflicting positions in different Acts, a unifying document in the form of a distinct code is necessary. At present, neither the claimant nor the polluter can be held accountable for over-demanding or underpaying since there is no clearly defined modus-operandi in the valuation-for- compensation process in the oil industry in Nigeria. More importantly, issues of pollution span far beyond the normal land acquisition challenges as both environmental media and ecosystems are concerned. This expands the sphere of influence to include other regulatory agencies such as the Ministry of Environment, National Oil Spill Detection and Response Agency (NOSDRA) and the National Environmental Standards and Regulatory Agency (NESREA). A fresh start must be made to get it right and ensure that all media are adequately provided for in a new compensation regime. It is on this premise that the team has considered the

use of illustrative case studies to reveal the lapses in the current system. A summary of the contents of different enabling statutes with regards to damage assessment and compensation in Nigeria can provide a guide to the development of a new compensation code in so far as the following issues are incorporated.

4.3 Prospects of Environmental Regulations

Apart from the fact that some of the environmental regulations are old and do not meet up with modern day reality, some of them have a lot of prospects that can be tapped into. This study is emphatic on a whole lot of progress that the law on environmental regulation in the oil and gas environment would have made from a better interaction if the laws are amended as at when due. There is without any doubt that the Nigerian law makers did not graciously capitalize on the possible improvements that could have help curtail the level of damages oil and gas flare has done to the environment.

The opportunity for a better environmental compliance and enforcement in Nigeria underscores the proactive measures that can transform the present state of affairs to the better. A better environmental compliance attitude and enforcement mechanism requires a common consciousness among the Nigerian society giving that the environment is where we live and exist. Hence the protection and preservation of the environment is reflected in the role of the government, the law, institutions, corporate bodies and individuals in ensuring that human activities do not degrade the environment.

Environmental protection laws in Nigeria can undermine their purpose in a situation where they lack stiffer penalty that will help deter environmental violators. Adopting a stiffer sanction for environmental offences will aid a better environmental compliance culture in the country. Similarly, the prescriptive approach taken by most environmental protection laws in Nigeria by

prescribing environmental standards to be met by the regulated society as well as the measures or steps to be taken for such standards to be met is also slowing down environmental compliance in Nigeria. The adoption of a goal setting approach to environmental regulation as is the case with other developed nations like the UK, USA and Australia who are more environmentally sustained, presents a better opportunity for environmental compliance in Nigeria. The goal setting approach is more assuring as it is flexible thereby giving the regulated society the opportunity to employ best measures at a time in ensuring that the environmental standards which is the goal is met. This approach also helps environmental regulatory agencies to primarily focus on the goal (compliance to environmental standards) without bothering about how the regulated society arrive at meeting the required standards.

The prospect of environmental compliance and enforcement in Nigeria also underscores the role of the government in ensuring that environmental regulatory agencies are well funded, properly trained and being provided with necessary technology and machinery for effective and efficient environmental enforcement. This role also underscores the need for the government to maintain and instil environmental consciousness especially among industry operators. This need is to guarantee that industry operators especially the petroleum industry are able to comply with environmental standards and observe good oil field practice according to international best practices as found under the current Institute of Petroleum Safety Codes, American Petroleum Institute Codes, or American Society of Mechanical Engineers Codes.¹⁹⁵ An environmentally sustained industry operation will show the government's conscious effort in achieving environmental sustainable development.

Environmental compliance which ensures for the protection and preservation of the environment no doubt is a business for all hence the need for environmental consciousness among individuals

¹⁹⁵ Mineral Oil (Safety) Regulations 1962 reg. 7.

and corporate entities. This therefore pictures the role of public participation in ensuring environmental compliance. Rio Declaration of 1992 provides that environmental issues are best handle with the participation of all concerned citizen at the relevant level. The Declaration therefore laid emphasis on the need for individuals at the national level to compulsorily have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision making process.¹⁹⁶ Consequently States shall facilitate and encourage public awareness and participation to judicial and administrative proceedings, including redress and remedy shall be provided.¹⁹⁷

Citizen's participation in Nigeria to environmental concerns should encourage citizen's suit that will help to check the government on its role of ensuring environmental standards as well as aid environmental regulatory agencies in the enforcement of environmental standards. Citizen's suit is recognized where environmental protection is enabled by law as the right of the citizen. This recognition is lacking in Nigeria to the extent that environmental objectives as provided by the Constitution¹⁹⁸ is simply one of the Fundamental Objectives and Directive Principles of State Policy,¹⁹⁹ of which the Constitution had precluded the Court from entertaining to any question as to whether or not the government is meeting up with the set out environmental objectives.²⁰⁰ This constitutional position also underscores the role of judicial activism in environmental protection. The role of judicial activism in this regard is to conform with the approaches adopted by other nations such as India, Philippines and Bangladesh whose Courts in the course of ensuring

¹⁹⁶ Rio Declaration 1992.

¹⁹⁷ *Ibid*.

¹⁹⁸ CFRN 1999 (as amended), s. 20.

¹⁹⁹ *Ibid* Chapter II.

²⁰⁰ *Ibid* s. 6(6)(c).

environmental compliance had interpreted right to safe and healthy environment to be consistent with right to life.²⁰¹

Environmental compliance has remained a veritable concept bent on achieving the necessary need of environmental protection. The preservation of the environment in recent times has become a non-negotiable concern for nations. This concern is geared towards accommodating developmental strives in an environmentally sustained atmosphere hence; environmental sustainable development is a desired developmental growth of modern society. The efficacy of environmental compliance has necessitated environmental enforcement measures that help to guarantee a pristine and resilient environment favourable for human existence and survival.

Enforcement of environmental standards through enforcement mechanisms is a prerequisite in achieving environmental compliance. Thus, effective and efficient enforcement of environmental standards, policies, laws, regulations and guidelines in a society such as Nigeria brings about environmental compliance culture and guarantees environmental protection. However, in Nigeria, environmental compliance and enforcement is faced with several challenges ranging from weak regulatory institutions, lack of political goodwill on the part of the government, poor funding of environmental protection agencies, weak sanctions as provided for by some environmental protection laws, corruption, and regulatory capture among others. In the midst of these challenges is a call for environmental consciousness and conscientious efforts of relevant stakeholders in ensuring that a better environmental compliance attitude is achieved in the country. Hence the role of the government, environmental protections laws, public participation, environmental regulatory institutions, corporate bodies, individuals and judicial activism are

²⁰¹ *Surbash Kumar v. State of Utar Pradesh* (1991) SC 539; *Mohiueddin Faruoque v. Bangladesh* (1996) 48 DLRHCH 438; J E Chigonu, (n 6).

required to transform the Nigerian society to a more environmentally sustained one as is the case with other developed countries such as the UK, USA, Australia, among others.

Many experts continue to label the Petroleum Industry Act, 2021 (PIA) as the answer to the inadequate provision for environmental regulations in the oil and gas sector²⁰². The PIA is commended for its “strong environmental and societal component” since it encourages environmental clean-ups and other green initiatives. The PIA makes provision for an account for an environmental remediation funds,²⁰³ with an environmental management plan in place for any project that needs an environmental evaluation,²⁰⁴ and prohibits the utilization of chemicals in upstream activities, except a permit has been obtained from the relevant authorities such as the commission.²⁰⁵ It becomes one of the various legislations that is emphatic on overdue steps to catch Nigeria’s petroleum industry up to speed with environmental standards for the sector. The stance of the Act on gas flaring regulations amendment, sets to prohibit gas flaring and will require companies to install metering equipment; flaring or venting except for in the case of an emergency, pursuant to an exemption by the Commission, or as an acceptable safety practice, would result in a fine that is not eligible for cost recovery and not tax deductible.²⁰⁶ The Act also requires gas producing licensees or lessees to submit an elimination and monetization plan for the associated gas within one year of the effective date of the law.²⁰⁷

²⁰² E. J. Chigonu, F.P. Igwela & C.J. Ezeilo, “Environmental Compliance and Enforcement Measures: Challenges and Opportunities In Nigeria”, (2022) 1 (2) *Port Harcourt Journal of Business of Law*, 5; E. I. Elenwo and S. C. Urho, “Challenges and Prospects of Enforcement of environmental laws in Port Harcourt Metropolis Rivers State Nigeria” [2017] (19) (6) *British Journal of Applied Science and Technology*,1.

²⁰³ S. 103 of the PIA, 2021.

²⁰⁴ S. 102 of the PIA, 2021.

²⁰⁵ S. 103 (7) of the PIA, 2021.

²⁰⁶ S. 104 of the PIA, 2021.

²⁰⁷ S. 104-108 of the PIA, 2021.

The PIA also includes notable social considerations such as a chapter on Host Communities Development, which includes the establishment of host communities' development trusts that act as funds for environmental, social, and infrastructure projects.²⁰⁸

The PIA has already talked about above is a legislative document that is expected to exterminate all loopholes regarding the legislation in the oil and gas industry, enhancing the sector's attractiveness to investors from other climes, expanding the possibilities for more foreign direct investments.²⁰⁹

The Act includes a strong environmental and social component as it proposes encouragement for environmental clean-ups and other green initiatives. The Act is considered the messianic document that will not only improve the attractiveness of the oil and gas industry, but will increase the levels of safety in the industry. The oil and gas industry has grown over the years to be really unsafe to both the workforce and host communities.²¹⁰

Health and safety in the environment still continue to raise concerns of being prioritized for the Nigeria oil and gas industry, because it is the backbone of the oil sector general sector. The oil and gas working environment is a high-risk working environment, which makes imperative any form of possible error to be eliminated as soon as it is spotted.²¹¹ Multinational oil companies (MOCs) functioning in Nigeria are continuously under criticism by the local communities, domestic and international legal groups because of outright unwholesome health, safety and environmental practices. MOCs are creating speedy ecological disruption to the host communities has noticed in the land, air, water and forestry pollution and extermination of sea and wildlife in Nigeria most especially in the Niger-Delta region. These are due to pollution from

²⁰⁸ S. 234-257 of the PIA, 2021.

²⁰⁹ O. Nana (2021), Nigeria's Petroleum Industry Bill Awaiting Green Light, <https://energycapitalpower.com/nigerias-petroleum-industry-bill-awaiting-green-light/> Retrieved from 15⁰⁹/2023.

²¹⁰ Ibid.

²¹¹ Ken Sara-Wiwa and Ken Saro-Wiwa (1995), Nigeria in Crisis: Nigeria, Oil and the Ogoni, Taylor & Francis, Ltd. Review of African Political Economy, 22 (64), 244-246.

pipe-line leakages; blowouts; drilling fluids and refinery effluents; land alienation; and disruption of the natural earth surface while engaging oil and gas activities.²¹²

Ibebuike in the work of Aluko and Oyeboade²¹³ stated that there is need for strong regulatory frameworks from the relevant authorities to tie offshore and environmental regulation to create a stronger framework for operators in the Nigeria oil and gas industry to stick to. Regulations keep distinguishing these factors in legislative frameworks, because of the failure of contemplating the interrelations between technical and environmental challenges in offshore petroleum operations. When the laws bind the safety of workers to the environment of operations, then it will make both the host communities and the employees to obtain a single framework to support themselves against the selfishness from operators who seek legal loopholes to exploiting both workforce and host communities.²¹⁴

Apparently, health and safety offshore without adequate rules and standards to protect its implementation is only exposed to operators who will exploit every weakness to actualize commercial gains, compromising safety. Given the Nigeria scenario were the Department of Petroleum Resources (DPR), which stipulates health and safety regulations in the oil and gas industry, stands as the same body that ensures the economic regulation of the industry which is another major challenge in the design of the safety standards highlighted for PIA.²¹⁵

An overview of the PIA²¹⁶ proves a possible failure in the future to correct the anomalies of safety, health and environmental concerns in Nigeria, even if the framework creates two bodies

²¹² Ibid @ 246.

²¹³ Aluko and Oyeboade (2006) *The International Comparative Legal Guide to Environment Law* Global Legal Group Ltd: London, 24.

²¹⁴ *ibid*@ 12

²¹⁵ C. C., Croft, and J. Samiama(2012), 'Environmental Regulation and Pollution Control in the Global Oil Industry in Relation to Reform in Nigeria' *Stakeholder Democracy Network*, 18.

²¹⁶ 2021.

which are the 'inspectorate' and the 'agency' to regulate issues in the upstream and the downstream respectively compared to just the DPR currently carrying out such operations.²¹⁷

4.4 Environmental Enforcement Measures in Nigeria

The legal regime on environmental compliance in Nigeria has made provisions for mechanisms through which environmental standards could be effectively enforced by the established regulatory agencies in order to achieve environmental compliance. The provided mechanisms include: inspection and searches; sealing and seizure; arrest; permit, licence and certificate forfeiture; criminal prosecution; and civil liabilities. These enforcement mechanisms are there to serve the purpose of effective environmental enforcement in a giving circumstance of environmental violation, and in accordance with the provisions of a particular environmental protection law which is violated. It therefore follows that an environmental enforcement measure can only be relevant in a giving circumstance where an environmental legislation permits the use of such measure for the enforcement of environmental standard that is in violation.

Environmental protection and regulation will ever remain the recurrent need in human affairs giving the importance of the environment to man's continuous existence and the impact of his activities on the natural environment as well.²¹⁸ This reality has informed various coordinated attempts to balance the relationship between man and his natural environment through legislation that strengthens the relationship for man's optimum benefit. The imperativeness of environmental compliance is tied to the benefits humans derive from the environment as its sources of existence. Thus, it is within the environment that both natural and manmade things are

²¹⁷ M. Christou, and M. Konstantinidou(2012), 'Safety of Oil and Gas Offshore Operations: Lessons from Past Accident Analysis' - Joint Research Centre, p. 19.

²¹⁸ R O Adeoluwa, 'Appraisal of the Operationalisation of National Environmental Regulation in Nigeria under the National Environmental Standards and Regulations Enforcement Agency' (2018), (9) (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*,199.

found and sustained.²¹⁹ Consequently man being blessed unarguably with the environment and the opportunity to exploit same to his advantage is obliged for his own singular benefits to maintain his environment, hence the need for environmental compliance. However it is clearly shown that anthropogenic activities have remained one of the greatest threats to the environment.²²⁰ Therefore for the environment which is the human habitat to remain suitable for man, it undoubtedly needs protection against the scourge of degradation often perpetrated by man.²²¹ The resultant pains faced by millions of people all over the world as well as the dangers posed to the world's future and human society by anthropogenic impact on the environment such as pollution, climate change, ozone layer depletion, destruction of marine ecosystem and so on has compelled coordinated attempts towards maintaining a balance between human affairs and the natural environment.

The need for environmental compliance has taken a different dimension in recent times involving a universal consciousness which was never there in time past. The dangerous effect of human activities and industries on the environment has deepened nations' consciousness for environmental compliance while achieving development. Consequently, environmental system development is the desire of every society in recent times. This underscores the values of environmental compliance which cannot be slaughtered on the altar of development and industrialization. Environmental compliance therefore guarantees the preservation of natural environment; sustains life and healthy living as well as ensuring sustainable development.

²¹⁹ A. O. Obabri and Others, 'An Appraisal of the Concept of Sustainable Environment under Nigeria Law' (2009) (28) (2) *Law Journal of Human Ecology*, 135.

²²⁰ S B Lugard, 'Environmental Rights and Development in the Niger Delta: Incongruent Life Partners or Reconcilable Adversaries' (2013) (3) (2) *Petroleum Technology Department Journal*, 115.

²²¹ *Ibid.*

4.4.1 Inspection and Searches

Inspection and searches are enforcement measures provided by environmental legislation to ensure that the laws applicable to individuals, industries and companies are complied with. These measures serve as a check in knowing who has violated environmental laws in order to be able to take legal actions against such persons. Inspection and searches are often the first environmental enforcement measures applied by regulatory agencies as a means that necessitate other enforcement measures such as sealing and seizure, arrest, criminal prosecution or civil liabilities as the case may be. Thus, they are essential enforcement measures used by regulatory agencies to ensure environmental standards.

NESREA Act empowers NESREA as an enforcement Agency for environmental standards, regulations, rules, laws, policies and guidelines,²²² to enforce environmental standards on noise, air, land, seas, oceans and other water bodies through compliance monitoring.²²³ The medium of compliance monitoring as expressed by the law to be used by NESREA to enforce environmental standards can only be achieved through environmental enforcement measures such as inspection and searches. The NESREA Act also empowers NESREA to conduct field follow up of compliance, public investigation, and developed monitoring network, all in a bid to ensure effective environmental compliance and enforcement.²²⁴ Inspection and searches are also used by NOSDRA as a means of detecting oil spillage. NOSDRA Act mandates NOSDRA to be responsible for surveillance and ensure compliance with all existing environmental legislation and detection of oil spills in the petroleum sector of Nigeria.²²⁵ Similarly under the Harmful Waste (Special Criminal Provisions) Act, a Nigerian police officer is empowered to enter and

²²² NESREA Act 2007 s. 1(2) (a).

²²³ *Ibid* s. 7.

²²⁴ *Ibid* s. 8.

²²⁵ NOSDRA Act 2008 s. 6(1).

conduct search without warrant on any land, building or carrier, including aircraft, vehicle, container or any other thing whatsoever which the police officer has reason to believe is related to the commission of a crime under the Act associated to harmful waste.²²⁶ However under the NESREA Act, NESREA requires a warrant issued by Court to enter and conduct search on any premises including land, vehicle, tent, vessels, floating craft except maritime tankers, barges or floating production, storage, offload (FPSO) and oil and gas facilities or any inland water and structure, at all times for the purposes of conducting inspection, searching and taking samples for analysis reasonably believed carries out activities or stores goods which contravene environmental standards or legislation.²²⁷

4.4.2 Sealing and Seizure

Sealing and seizure as environmental enforcement measures are often used on site which have been, will be or is being used directly or indirectly for the purposes of depositing or dumping any harmful waste. The Harmful Waste (Special Criminal Provisions) Act provides for the use of sealing and seizure as environmental enforcement measures against any crime associated with harmful waste under the Act.²²⁸ The Act on this premise enjoins the Minister of Environment to seal up any area or site which is reasonably believed to be used, is being or will be used directly or indirectly to deposit or dump harmful waste.²²⁹ Again the police officer is empowered to seize any item or substance which is reasonably believed to have been used to commit any crime associated with harmful waste.²³⁰

²²⁶ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 10(1)(a).

²²⁷ NESREA Act 2007 s. 30(1)(a).

²²⁸ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 1(2)(a)-(d).

²²⁹ *Ibid* s. 11(1)

²³⁰ *Ibid* s. 10(1)(d)

Similarly, under the NESREA Act, an officer of NESREA may seize any article used in contravention of the provisions of the Act,²³¹ as well as obtain an order of Court to seal and close down premises including land, vehicle, tent, vessel, floating craft or any inland waters and other structures reasonably found to be used in contravention of the provisions of the Act.²³²

By the provisions of the Petroleum Industry Act,²³³ the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the Authority) has the power to: seal the premises where midstream and downstream gas operations are undertaken; as well as seize the facilities by which the activities are carried out, without appropriate licence obtained for such operations.²³⁴ Same also applies where midstream or downstream petroleum liquids operations are undertaken without appropriate licence.²³⁵

4.4.3 Arrest

The arrest of a person guilty of environmental crime as provided by an environmental legislation is another measure to enforce environmental standards which the law holds sacred. This measure of enforcement is used as permitted by environmental legislation whose environmental standards have been violated. For instance, the Harmful Waste (Special Criminal Provisions) Act empowers any police officer to arrest without warrant any person reasonably believed to have committed a crime under the Act with respect to harmful waste.²³⁶

²³¹ NESREA Act 2007 s. 30(f).

²³² *Ibid* s. 30(g).

²³³ PIA 2021.

²³⁴ PIA 2021 s. 125(4).

²³⁵ *Ibid* s. 174(4).

²³⁶ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 10(1)(c).

4.4.4 Permit, Licence and Certificate Forfeiture

Permit, licence and certificate forfeiture serve as enforcement mechanisms to the extent that it ensure that the permit or licence holder complies with the conditions set out therein and failing which such permit, licence or certificate will be forfeited. These measures are used by regulatory Agencies to ensure that prescribed standards are met. At times this measure could be in the form of a revocation in which case the granted licence or lease could be revoked upon the non-compliance with the standards set out by the lease or licence. A clear example is the case of oil industry operation where the Minister of Petroleum Resources is empowered by the Petroleum Act to revoke oil prospecting licence or oil mining lease where such holder is not conducting operations in line with good oil field practice.

Similarly, the Petroleum Industry Act gives the Minister the discretion to revoke a Petroleum Prospecting Licence or Petroleum Mining Lease, where the licence or lease holder fails to conduct petroleum operations in accordance with good international petroleum industry practices,²³⁷ or fails to comply with environmental obligations required by applicable law or by the provisions of the licence or lease.²³⁸ Part of the gains of ensuring for good oil field practice in the petroleum industry is that it will bring industry operations in harmony with the essential need of environmental preservation and protection.

4.4.5 Criminal Prosecution

This enforcement measure is used when permitted by an environmental legislation in which case a violator of such environmental protection law is charged to Court for criminal prosecution. Under the Harmful Waste (Special Criminal Provisions) Act, the act of depositing harmful waste

²³⁷ PIA, 2021 s. 96(1)(a).

²³⁸ *Ibid* s. 96(1)(i).

on the environment is a subject matter of criminal prosecution, in which case any person found guilty shall on conviction be sentenced to imprisonment for life and in addition forfeit any instrument or land used in the course of committing the crime to the Federal Government.²³⁹ This enforcement measure as provided by the Harmful Waste (Special Criminal Provisions) Act with respect to harmful waste is really adequate in ensuring full compliance against the crime. Again the adequacy of this measure can also be seen in the approach taken by the Act in bringing officers of corporate bodies within the ambit of the provided punishment where such crime is committed by a body corporate,²⁴⁰ as well as any person who attempts the commission of the crime.²⁴¹ In the same vein, the Act provides for exclusion of immunity to the extent that immunity from prosecution conferred on certain persons by or under the Diplomatic Immunities and Privileges Act, shall not extend to any crime committed under the Harmful Waste (Special Criminal Provisions) Act.²⁴² Similarly the NESREA Act provides that anyone who commits the offence of noise pollution shall on conviction be liable to a fine not exceeding ₦50, 000 or imprisonment for a term not exceeding one year or both, with additional fine of ₦5, 000 for any day the offence subsists.²⁴³

4.4.6 Civil Liabilities

Civil liabilities are also some of the enforcement measures employed by environmental protection laws to ensure environmental compliance. It entails the payment of damages or cost as a result of the violation of any of the environmental protection laws in Nigeria.²⁴⁴ Where an

²³⁹ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 6.

²⁴⁰ *Ibid* s. 7.

²⁴¹ *Ibid* s. 8.

²⁴² *Ibid* s. 9.

²⁴³ NESREA Act 2007 s. 22.

²⁴⁴ H Ijaiyo and O T Joseph, 'Rethinking Environmental Law Enforcement in Nigeria' (2014) (5) *Beijing Law Review*, 306.

owner or operator of any vessel or onshore or offshore facility is responsible for the discharge of hazardous substance, such owner or operator will in addition to the prescribe criminal penalty under the law, be liable for cost of removal of the hazardous substance as well as any cost incurred by the government or its agencies in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge; and cost of third parties inform of reparation, restoration or restitution or compensation as the case may be determined by NESREA from time to time.²⁴⁵

The Harmful Waste (Special Criminal Provisions) Act similarly provides that where any damage has been caused by any harmful waste 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 or cause same to be deposited, dumped or imported, shall be liable for the damage, except where such damage was due wholly to the fault of the person who suffered it; or was suffered by a person who voluntarily accepted the risk thereof.²⁴⁶ Damage within this context includes the death of, or injury to any person (including any diseases and any impairment of physical or medical condition).²⁴⁷

²⁴⁵ H Ijaiyo and O T Joseph, (n 39).

²⁴⁶ Harmful Waste (Special Criminal Provisions) Act Cap H1 LFN 2004 s. 12(1)(a) and (b).

²⁴⁷ *Ibid* s. 12(2).

Chapter Five

Conclusion

5.1 Summary of Findings

The study focuses on the legal frameworks regarding different environmental and petroleum laws and the institutional arrangements for monitoring and enforcement to examine their adequacy for making sure there is safe and proper management of the environment within the oil and gas upstream and downstream sector.

Mostly employees are at the receiving end of the problems, more disturbing is how the problem continues to persist as the management of most oil and gas corporations are not usually affected, even the compensation they could end up paying are just meager of the chunk of profits the company earns. This study therefore categorizes the issues that around oil and gas health and safety regulation to be more of an enforcement problem and the study will examine various existing laws on health and safety in the oil and gas industry.

The study is not only highlighting the inadequacies within the legal frameworks on health and safety in the oil and gas industry that have left so much lacuna for the management and legal representatives to be able to get away with the accidents sustained by employees in the course of field activities, other issues that the study will emphasize is the bigger implications on the environmental health, looking at the role of management of oil and gas corporations at ensuring enforcement and support for a more efficient legislation to ensure both oil and gas industries are not weapons of mass destruction to their various operational environments.

There are various aspect that have been looked into in this work which makes it seem a twofold study, with the first looking at the position of regulatory reforms for the protection of the

workforce in the oil and gas field. The study highlights various aspects of hazards that the oil and gas worker is exposed to both physical and psychological, which makes safety of pressing concern for the employee in the field.

Experts in the field of oil and gas research press on the need for high levels of safety because of the high-risk environment that the worker is operating in. This oil and gas environment are energy charged, because of the oil and petroleum elements to which the employees are exposed during the Nigeria Oil and Gas exploratory activities since the discovery of crude oil in 1956 by the Shell group energy charged, because of the oil and petroleum elements to which the employees are exposed during the Nigeria Oil and Gas exploratory activities since the discovery of crude oil in 1956 by the Shell group.

This sector is characterized by exploration and production of crude Oil and Gas.

Seismic Activities (Exploration)

This entails the decoration of explosives and electric charges underground at periodic intervals while ground recording the resonances and resistivity electronically on a chart. The interpretation of the resistivity is crucial to understanding the likelihood of the subsurface content of the given area. In the process shock waves and tremors are transmitted in all directions²⁴⁸.

Drilling

Drilling is the process of boring hole through the earth's surface or through river or seabed. During drilling, very toxic chemicals ranging from bentonite, brines and crude sodium chloride are used in keeping the earth profile in place while the cuttings are recalcitrated or waste mud are pumped into the environment¹²

²⁴⁸Y. Wang, H. Wang, C. Cue and B. Zhao, Investigating Different Grounds Effects on Shock Wave Propagation Resulting from Near-Ground Explosion. *Multidisciplinary Digital Publishing Institute*, 3 September 2019.

Gas Flaring

Oil production involves the burning of hydrocarbon gases. The flaring off of natural or associated gas is done as a byproduct of the drilling of crude oil from reservoirs in which oil and gas are mixed. Nigeria flares more gas than any other country in the world.²⁴⁹

These makes for exposure to various consequences, like the physical hazard, which is a concern, because it is innate within the surroundings of the oil and gas worker, who have to in various ways feel the impacts. These include the vibrations and noises from the machineries that are deployed for the various activities. These have the potency of causing disruption within the body, and the fact remains that no matter the level of safety these actions from exploration will impact the worker directly which could in the long run, cause hearing impairments or Parkinson's due to continual vibrations. One of the ways the experts have proposed to overcome the impact is the time of the oil and gas exploration platform, to allow the body time to recover from the vibration, noise and ionizing radiations.

Other concerns raised are the biological one which means that the level of heat in oil and gas work environments makes it evidenced that fungi and bacterial breed more, exposing the workforce to high tendencies for exposure to communicable diseases. While experts have impressed on licensees and managers to make the environments for the oil and gas workers to be as cool as possible, they are still worried that the small enclosures that makes cooling possible could still be a reason for psychosocial concerns. So, the best options for the worker is an average of 3 weeks off the platform which is the best times for recovery, yet workers are deprived of the time off, without any responsive actions. This has held sway mostly with the recent Local Content Act.

²⁴⁹ L. E. Nwosu, "Compensating Environmental Damage in Oil and Gas operations" being a *Paper Presented at the Annual General Conference of the Nigerian Bar Association*. Port Harcourt, 28th, August, 2006. P.4.

Workers are treated like slaves without any concern for their wellbeing or working conditions, as licensees and managers keep exploiting the deformities in the oil and gas industry legal regulations, which deprives the worker from seeking proper legal backing for compensation, even in situations where body parts and lives are lost due to work environment accidents.

Just like the workforce is handicapped, the other aspect of the study concerns environmental safety, which has big impact on host communities. The study will concern such problem that exists some fragmented legislation as contended earlier, it appears that on the general context, the said existing pieces of legislation are not clearer in terms of its protection of the environment from spillage and in the area of compensation of victims of oil spillage in particular. However, it cannot only be said that the existing legal regime/framework is not clear but rather it is contradictory in some vital areas which is a very critical aspect of problems the study will examine.

Furthermore, there are quite a number of statutes which undoubtedly, overtly or covertly provides for compensation in matters pertaining to land or landed property acquisition but unfortunately, only the Oil Pipelines Act²⁵⁰ and two other municipal legislation or regulations contain provisions that directly address matters pertaining to compensation emanating from oil spillage in Nigeria. Other Nigerian statutes such as the Land Use Act 1978, Minerals Act 1946, Petroleum Act 1969, Mining Act 1990, Oil in the Navigable Waters Act 1968 and others are only superficially relevant to compensation for oil spillage, as they deal primarily with land acquisition in Nigeria rather than injurious affection emanating from oil spillage²⁵¹ a problem the study will evaluate.

²⁵⁰ Cap O7, Laws of the Federation Of Nigeria, 2004.

²⁵¹ O. Mustapher (2016).

The statutory provisions which vest control of petroleum/mineral resources on the Federal Government on behalf of the Nigeria citizens do not impede the right to compensation arising from petroleum operation activities. This proposition was canvassed and upheld in the case of *Elf Nigeria Limited v. Opre Sillo and ors*²⁵² where it was unequivocally held that no law in Nigeria impedes the right to compensation arising from petroleum activities. Agreeably, no law prohibits payments of compensation in cases of oil spillage in Nigeria but the study will assess the accessibility of the common man to such compensations, drawing from Deinduomo²⁵³ accordingly postulated as follows:

Over the years it has been observed that, due to the many grey areas in the statutes governing compensation in oil and gas operations, oil multinational giants dodge the payment of compensation totally or for a good time or get off lightly. Sometimes they continue operations undisturbed whilst the case suffers undue delay (which is almost endemic in the Nigeria Judicial System) and they ultimately dodge the payment of compensation by winning the case on technical grounds or because of the inferiority of victims' Lawyer or the inability of the victim to reach the standard of proof required to succeed.

With the above proposition in mind, it is pertinent to embark on an empirical and analytical assessment of the various heads of compensation in the main statutes relating to compensation of victims of oil spillage or compensation of those who suffer damage due to the negative effects of oil spillage in Nigeria. Apparently, the assessment can better be archived by careful examination of some of the major municipal Legislation relating to environmental protection and compensation of victims of Oil Spillages in Nigeria.

²⁵² (1994) 6 NWLR (pt. 350) 258.

²⁵³ F. Emiri and G. Deinduomo (ed). *Law and Petroleum Industry in Nigeria; Current Challenges: Essay in Honour of Justice Kate Abiri* (Malthouse Press Limited 2009), 139.

This study is basically important to three sections of the public as will be highlighted below. The first group will be the legal system. There are unending talks about inconsistency in the judiciary and most of the laws on compensation seem to be outdated possibly because of the fact they were designed without adequate consultations and excitement about just having laws to regulate the petroleum sector without a broader insight to the implications oil and gas flaring would eventually have on the environment of host communities. Current effect on the land and people of host communities makes the study very critical for adjustments to be made regarding inadequacies in compensation regulations.

The second group will be those directly impacted by oil and gas activities even workers in such multinational organisations directly impacted, likewise the common man whose water and lands are totally polluted. Compensation goes beyond financier benefits as will be established in the study. Looking at the fact that the World Health Organisation (WHO) has cited that life expectancy in the Niger-Delta as dropped as much as 45yrs, and continues to drop, makes this study relevant to hit on the essence of given the victims of oil and gas pollution, cleaner air to breath, fresh water to drink and fish, also adequately fertile land to farmer.

The third group involves the students of law both past and present who will be exposed to various existing municipal legal regimes of the oil and gas industry in Nigeria. Proper analysis of the nature and consequences of such laws in present Nigeria, doing a comparative analysis with the legal administration on compensation in other oil producing nation will broaden the horizon of scholars who will use this work in the future, either for academic research purpose or other forms of study.

As much as the researcher will like to have a first-hand interaction with victims of oil and gas exploration, the researcher due to proximity and educational engagements will focus on

secondary materials. Hardcopy and softcopy materials with necessary information on compensation for Oil and gas victims will be well studied, mostly interviews and court sessions. Hence existing videos and other voice recordings will be utilized.

The data gathered from such materials will be analyzed empirically utilizing existing laws, hence Doctrinal (or “black letter”) methodology which refers to a way of conducting research which is usually thought of as “typical legal research” will be utilised. Using the doctrinal approach makes the research focus on case-law, statutes and other legal sources. It differs from other methodologies in that it looks at the law within itself; a pure doctrinal approach makes no attempt to look at the effect of the law or how it is applied, but instead examines law as a written body of principles which can be discerned and analysed using only legal sources.

5.2 Observations

This study concludes that there is little or no laws to protect the staff of oil and gas industry, neither the environment. The risk governance laws relevant to offshore oil activities in Nigeria seem inadequate to the extent that it will prevent the future occurrence of oil accidents such as the Deepwater Horizon Accident. It will be argued that the offshore risk governance regime is not adequate enough to prevent the occurrence of offshore accidents in Nigeria looking at the Petroleum Act 1969, the Petroleum (Drilling and Production) Regulation 1969 and the Mineral Oil (Safety) Regulation 1963 as the risk governance regime for offshore oil activities in Nigeria.²⁵⁴ Firstly, it will be argued that the prescriptive nature of the regulations mentioned above undermines its effectiveness in preventing offshore risk related accidents. Besides, there are provisions in the Petroleum Regulations 1969 that give room for the minimization of the cost

²⁵⁴ P. E. Agbonifo, ‘Risk Management and Regulatory Failure in the Oil and Gas Industry in Nigeria: Reflections on the Impact of Environmental Degradation in the Niger Delta Region’ (2016) 9(4) Journal of Sustainable Development 1.

of risk governance at the expense of the actual prevention of environmental accidents. What is more, there is a general lack of regulatory capacity that undermines the possibility of the Department of Petroleum Resources (DPR)²⁵⁵ effectively regulating risk governance. Furthermore, it is argued that the position of the DPR as the regulator and, the regulated raises questions of conflict of interest which erodes the effectiveness of the risk governance regime.

The only penalty that the laws mentioned above is a fine of a 100 naira or a penalty of six months jail term, to licensees or managers who default in making sure that the workers are under relevant health and safety guidelines face the above stated penalty.

This without any doubt puts the responsibility of the health and safety of the worker in the oil and gas industry under the care of the licensee or the manager. What is not clear is that the law does not stipulate how and when the worker can seek redress if subjected to unhealthy and unsafe working conditions. The introduction of the Nigerian Oil and Gas Industry Content Development Act, 2010 from which the Local Content Act 2010 were derived are supposed to reposition the health and safety concerns faced by the workers of the oil and gas industry. The complaints that the need for control by more local managers and licensees over the oil and gas industry in Nigeria will eradicate the old laws, like the Petroleum Act 1969, the Petroleum (Drilling and Production) Regulation 1969 and the Mineral Oil (Safety) Regulation 1963 which did not give voice to the workers under the foreign managers, has come to disrepute. The new laws from 2010 show that the industry is designed for profiting and protection of the personnel such as licensees and managers driving the profit to the Department of Petroleum Resources, which is both the revenue collect and the health and safety regulations. This study concludes that the multiplicity of roles to the DPR indicates that a stiffer penalty and fine to licensee and

²⁵⁵ The DPR is the regulatory body that has the statutory responsibility of ensuring compliance with Petroleum Laws, Standards and Regulations in Nigeria. See DPR, 'About' accessed 11th October, 2023.

managers could drive down the level of profiting generated, as companies will be forced to pay compensations. So, the laws are not even made light enough to protect the workers, let alone the environment from which the oil and gas are exploited from. There is the constant call for the clean-up of the Ogoni land area and compensation to the host communities that are affected by oil and gas exploration activities, like gas flaring, and oil spillage.

The region of Niger-Delta has been described as the most polluted part of the world²⁵⁶. Okeowo²⁵⁷ noted that about 90% of oil spill in Niger Delta is yet to be cleaned up, thus subjecting the region to serious environmental pollution especially the fragile natural environment from where many of the residents derive their means of livelihood.

The impact of oil spill on the people of Niger Delta region cannot be overemphasized. These include colossal loss of farmland, shrink fisheries activities, pollution of source of drinking water, desecration of sacred places, health hazards, and ultimately loss of lives. Oil spill have both short and long term physical and psychological effect on people²⁵⁸. In the words of Oluduro²⁵⁹, “the people of the Niger Delta region have continued to pay the price of development of the nation with their lives, health, cultures, environment and other means of livelihood”. Many of the residents of the region have been displaced from their native land as a result of poverty arising from unproductive land and oil polluted environment²⁶⁰.

²⁵⁶ J. Vidal, Nigeria ‘s Agony Dwarfs the Gulf Oil Spill: The US and Europe Ignore It, 2010. <http://www.theguardian.com/world/2010/may/30/oil-spillsnigeria-niger-delta-shell> last accessed 22nd October, 2023.

²⁵⁷ A. Okeowo, Oil Thieves of the Niger Delta, Business Week (20 February, 2014) available at: <http://www.businessweek.com/articles/2014-02-20/nigerias-delta-oil-thieves-scrape-out-a-precarious-living> last seen 22nd October, 2023.

²⁵⁸ Institute of Medicine, Assessing the effects of the Gulf of Mexico oil spill on human health: A summary of the June 2010 workshop. Washington, DC: The National Academies Press.

²⁵⁹ O. Oluduro, Oil Exploration and Ecological Damage: The Compensation Policy in Nigeria. Canadian Journal of Development studies (2012), 3(2), 45.

²⁶⁰ A.A. Kadafa, “Oil Exploration and Spillage in the Niger Delta of Nigeria” *Civil and Environmental Research*. (2012), 2(3), 2012.

A redress available to the oil spill victims is to seek compensation for their impaired interests. It is worrisome to note that many compensation claimants are dissatisfied with monetary compensation paid for the impaired interests and many have resorted to vandalizing oil and gas installations, oil theft, abduction of employee of oil and gas industries, operation of illegal oil refinery, violent protests, among other mischievous activities. This unwholesome activity is drowning the Nigeria mono economy, which has its foreign earnings of ninety five percent from exploitation of oil and gas resources. Making Compensation laws effective will eradicate the injustices victims have faced and regulate the possible insecurities oil and gas professionals are exposed to, saving the Nigerian economy also.

Nigeria has a number of Statutes that provide for compensation in matters relating to land or landed property acquisition, only the Oil Pipelines Act contains provisions that are directly related to compensation arising from oil pollution. Other statutes such as the Land Use Act (1978). Nigeria's LUA in its current form contains legal gaps, ambiguities, and grants broad discretion to State Governors to make expropriation and compensation decisions with limited oversight by the judiciary. For these reasons, the law leaves affected populations vulnerable to expropriation without adequate compensation or remedies in the event that their tenure rights are violated. To ensure that compensation covers the losses borne by the affected, this Tagliarino, Bununu, Michael, De Maria and Olanmi²⁶¹ argues that the LUA should require the government to follow clear legal procedures that ensure government transparency. From the foregoing, compensation is critical as a remedy for oil spillage in Nigeria, but the Quantum form of Compensation remains the tool for calculating compensation in Nigeria.

²⁶¹ N.K. Tagliarino, Y. A. Bununu, M. O. Micheal, M. De Maria and A. Olanmi, Compensation for Expropriated Community Farmland in Nigeria: An In-Depth Analysis of the Laws and Practices Related to Land Expropriation for the Lekki Free Trade Zone in Lagos. Multidisciplinary Digital Publishing, 11 February 2018.

The legal framework regulating the oil and gas sector in Nigeria covers a broad range of legislation. The bedrock of the legislation is the Constitution of the Federal Republic of Nigeria, which vests ownership of mineral resources, including oil and gas, exclusively in the federal government²⁶² and further confers on the federal government exclusive powers to make laws and regulations for the governance of the industry²⁶³. The Nigerian Constitution, Ch. IV (Fundamental Rights), pt. 44, ‘Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the national Assembly.’²⁶⁴

The Petroleum Act and the Schedules and Regulations made pursuant to it – providing the framework for the licensing of oil and gas companies to engage in activities connected with the exploration, production and transportation of crude oil.²⁶⁵ The Petroleum Act and its regulations remain the primary law regulating oil and gas exploratory activities in Nigeria. The Act vested the entire ownership and control of oil and gas resources in, under or upon all land or territorial waters in the Nigerian government, and authorizes the Federal Ministry of Petroleum Resources to issue licenses to Nigerian citizens or companies incorporated in Nigeria for oil prospecting, drilling, production, storage, refining, and transportation activities (Navigation)²⁶⁶.

²⁶² Constitution of the Federal Republic of Nigeria 1999 (as amended, CFRN) Section 44(3). See further, Petroleum Act, Cap P10, Laws of the Federation of Nigeria (LFN) 2004, Section 1(1).

²⁶³ CFRN, Item 39, Second Schedule, Part 1.

²⁶⁴ ss.3 of The CFRN (1999)

²⁶⁵ Petroleum Act, s. 2, 4 and 9.

²⁶⁶ *ibid*

This is the primary legislation on oil and gas activities in Nigeria. It ensures public safety and environmental protection²⁶⁷. There are three basic regulations under the Petroleum Act. They are: In section 3²⁶⁸, Petroleum Drilling and Production regulations which places restrictions on licensees from using land within fifty yards of any building, prohibits the cut down of trees in forest reserves and establishes that reasonable measures be taken to prevent water pollution and to end it, if it occurs. In section 4²⁶⁹, Petroleum Refining Regulation which requires the manager of a refinery to take measures to prevent and control pollution of the environment. In section 8²⁷⁰, Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations which provide that precautions should be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution.

The Oil in Navigable Waters Act²⁷¹ was enacted pursuant to the adoption of the International Convention for the prevention and control of pollution of the sea by oil. The Act is in fact the first law that deals specifically and solely with the industrial waste generated by oil production. The Act has created some offences in respect of oil pollution for the purpose of reducing the incidence of pollution of the world high sea generally and particularly Nigeria waters²⁷².

Penalties for offences under sections 1, 3 and 5 of the Act²⁷³, proves that the enforcement of this legislation has been watered down by several loopholes in its provision through which offenders may wriggle through. It is indeed a comical rhetoric to assume that there does not seem to be

²⁶⁷ Environmental Law Research Institute Synopsis of Laws and Regulations on the Environment in Nigeria
“Environmental law and policies in Nigeria”. <<http://www.elri-ng.org/newsandrelease2.html>> Accessed
On 22nd October, 2023.

²⁶⁸ Petroleum Act (1969)

²⁶⁹ *ibid*

²⁷⁰ *ibid*

²⁷¹ The Oil in Navigable Waters Act (1968)

²⁷² J.O., Akande. Allocation of Environmental Responsibilities, Institutional Challenges and Conflicts in Ajomo
M.A.
and Adewale O.,(1994), 35-36.

²⁷³ The Oil in Navigable Waters Act

many differences between legislation riddle with lacunas and the water tight legislation in the absence of concrete steps towards the latter's enforcement²⁷⁴.

5.3 Recommendation

It is a fact that the issue of oil and gas in Nigeria is a serious issue that requires urgent attention from the federal government and general public. In spite the fact that it is recognized by different international legislative instruments with the rights of people in Nigeria and the oil gas flaring is still bedeviled with a wide range of issues and in order to solve these issues, it is recommended as follows:

There should be an awareness among to people on where to reside and situate their real property in order to avoid gas flaring and environmental pollution.

Also, the court as the last hope of the common man should be up and doing in the discharge of their duties. That is, there should be more judicial pronouncements on the issue gas flaring and environmental issues generally.

Also, the local statutes in Nigeria in relation to environmental issues are not only outdated, ageing, anachronistic and archaic but also insufficient in dealing with the recent issues with environmental law. It should be thoroughly reviewed in order to reflect the dynamism of the society.

Monetary compensation be paid to aggrieved party.

5.4 Contribution to Knowledge

Nigeria currently has no mechanism to standardize compensation, not due to lack of technical knowhow on the part of compensation professionals but largely due to incomplete, insufficient or simply non-existent statute. Generally, professional associations within the practice of Estate

²⁷⁴ J.O. Akande (1994).

Surveying and valuation are able to cope with changing demands in the realworld practice environment and respond accordingly. Unfortunately, the constraints associated with statutory valuation are such that Valuers cannot change what is stipulated in the law ahead of a change in the law itself or an amendment to the troublesome clauses that are contained therein²⁷⁵.

Three Possible factors impacting quantum of compensation in Nigeria as analyzed in the study will include:

- (i). The area polluted; whether it is an area of high value of land or not. The size of the crops affected, whether they are seedlings, medium or mature, the amount of money put in their care and the farm-gate price of the items.
- (ii). Contradictions in Legislatures; and
- (iii). Lack of Unifying Document.

i. Valuing Polluted Areas

Section 37 of the regulations²⁷⁶ provides for the licensee to take all steps practicable to cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property thereon. It makes no provision for compensation where this provision is violated and as such no provision for damage assessment or claims. In Section 37 of the First Schedule to the Act, the holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.

²⁷⁵ I. I. Kakulu, U. Okorji and T. Wokoma, New Compensation Systems and mechanisms in the Oil and Gas Industry in Nigeria. National Oil Spill Detection and Response Agency Research Report Summary JULY, 2014

²⁷⁶ The Petroleum Act P10, LFN 2004.

The method of assessment is not specified other than that the value of the productive tree should be the 'commercial value'. The commercial value of a tree can be either its value as a fruit bearing tree, its value in terms of soft wood or its value in terms of hard wood. Its environmental value as a carbon sink is not regarded in any of the laws and this is a common loss should pollution occur. The question regarding who should be compensated for a public good such as air pollution will have to be decided amongst other ecosystem services so destroyed.

ii. Contradiction in Legislatures

Section 6(3) of the act²⁷⁷ provides for compensation assessment to be done according to the provisions of the Land Use Act so far as they are applicable and not in conflict with anything in the Oil Pipelines Act. The Land Use Act addresses compensation for Land Acquisition and not damage. It also absolves itself from any dealings with land acquisition for the petroleum industry or minerals and mining sector of the economy.

In section 29 subsection (2) of the Land Use Act, it provides that if a right of occupancy is revoked for the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith the holder and the occupier shall be entitled to compensation under the appropriate provisions of the Minerals and Mining Act or the Petroleum Act or any legislation replacing the same. This is the crux of the oil spill compensation regime in Nigeria, not lack of standards alone but lack of an enabling statute on which the standards can then be developed and adhered to. The caveat 'so far as they are applicable' makes it possible to use some of the provisions of the LUA in compensation valuation assessment.

iii. Lack of Unifying Document

The NNPC Act, provides for the payment of compensation in respect of any loss or damage that may have been suffered in consequence of the operation of the provisions of the Act. It does not

²⁷⁷ The Oil Pipelines Act Cap 07, LFN 2004

provide any specific information on what the heads-of claim should be and is quite vague. The compensation characteristics, or the basis and method of valuation to be adopted are not specified. The NNPC Act recommends that the amount of compensation should be as prescribed under Land Use Act. The land Use Act as indicated earlier is an Act that was designed primarily to facilitate compensation in instances of compulsory acquisition for overriding public interest and not damage assessment. From the position of the Land Use Act stated earlier, it distances itself from any dealings on matters in the Petroleum industry which means that the NNPC Act has no clearly defined basis for valuation or any specified method.

With these conflicting positions in different Acts, a unifying document in the form of a distinct code is necessary. At present, neither the claimant nor the polluter can be held accountable for over-demanding or underpaying since there is no clearly defined modus-operandi in the valuation-for- compensation process in the oil industry in Nigeria. More importantly, issues of pollution span far beyond the normal land acquisition challenges as both environmental media and ecosystems are concerned. This expands the sphere of influence to include other regulatory agencies such as the Ministry of Environment, National Oil Spill Detection and Response Agency (NOSDRA) and the National Environmental Standards and Regulatory Agency (NESREA). A fresh start must be made to get it right and ensure that all media are adequately provided for in a new compensation regime. It is on this premise that the team has considered the use of illustrative case studies to reveal the lapses in the current system. A summary of the contents of different enabling statutes with regards to damage assessment and compensation in Nigeria can provide a guide to the development of a new compensation code in so far as the following issues are incorporated.

5.5 Suggested Areas for Further Studies

There is need for further studies into the overview of the Petroleum Industry Act to tilt towards a full legal reform regarding the health and safety of Nigeria Oil and Gas workers and the host communities as well. This should be looked at from the position of how affected parties can seek redress in court and improved penalties drawing from the US and UK laws.

5.6 Conclusion

The legal regime on environmental compliance in Nigeria has made provisions for mechanisms through which environmental standards could be effectively enforced by the established regulatory agencies in order to achieve environmental compliance. The provided mechanisms include: inspection and searches; sealing and seizure; arrest; permit, licence and certificate forfeiture; criminal prosecution; and civil liabilities. These enforcement mechanisms are there to serve the purpose of effective environmental enforcement in a giving circumstance of environmental violation, and in accordance with the provisions of a particular environmental protection law which is violated. It therefore follows that an environmental enforcement measure can only be relevant in a giving circumstance where an environmental legislation permits the use of such measure for the enforcement of environmental standard that is in violation.

Environmental protection and regulation will ever remain the recurrent need in human affairs giving the importance of the environment to man's continuous existence and the impact of his activities on the natural environment as well.²⁷⁸ This reality has informed various coordinated attempts to balance the relationship between man and his natural environment through legislation that strengthens the relationship for man's optimum benefit. The imperativeness of

²⁷⁸ R O Adeoluwa, 'Appraisal of the Operationalisation of National Environmental Regulation in Nigeria under the National Environmental Standards and Regulations Enforcement Agency' [2018] (9)(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*,199.

environmental compliance is tied to the benefits humans derive from the environment as its sources of existence. Thus, it is within the environment that both natural and manmade things are found and sustained.²⁷⁹ Consequently man being blessed unarguably with the environment and the opportunity to exploit same to his advantage is obliged for his own singular benefits to maintain his environment, hence the need for environmental compliance. However it is clearly shown that anthropogenic activities have remained one of the greatest threats to the environment.²⁸⁰ Therefore for the environment which is the human habitat to remain suitable for man, it undoubtedly needs protection against the scourge of degradation often perpetrated by man.²⁸¹ The resultant pains faced by millions of people all over the world as well as the dangers posed to the world's future and human society by anthropogenic impact on the environment such as pollution, climate change, ozone layer depletion, destruction of marine ecosystem and so on has compelled coordinated attempts towards maintaining a balance between human affairs and the natural environment.

The need for environmental compliance has taken a different dimension in recent times involving a universal consciousness which was never there in time past. The dangerous effect of human activities and industries on the environment has deepened nations' consciousness for environmental compliance while achieving development. Consequently, environmental system development is the desire of every society in recent times. This underscores the values of environmental compliance which cannot be slaughtered on the altar of development and industrialization. Environmental compliance therefore guarantees the preservation of natural environment; sustains life and healthy living as well as ensuring sustainable development.

²⁷⁹ A O Obabri and Others, 'An Appraisal of the Concept of Sustainable Environment under Nigeria Law' [2009] (28)(2) *Law Journal of Human Ecology*, 135.

²⁸⁰ S B Lugard, 'Environmental Rights and Development in the Niger Delta: Incongruent Life Partners or Reconcilable Adversaries' [2013](3)(2) *Petroleum Technology Department Journal*, 115.

²⁸¹ *Ibid.*

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Lead City University Ibadan, Oyo State 2015-2020

C. Academic and Professional Qualifications with date (Including other destinations and awards with dates)

Academic Qualifications with date

Barrister and Solicitor Of Supreme Court Of Nigeria (BL) 2024

Bachelor of Laws (LLB)	2020
Senior Secondary School Certificate	2015
Primary School Leaving Certificate	2010

Professional Qualifications with date

Graduate Member IPDCRM	2020
Associate - Institute Of Chartered Arbitrators	2023

D. Research Interests

- Family Law
- Land and Property Law in Nigeria
- Oil and Gas Law in Nigeria

E. Publications

- Authored Books (2)

Signature

Date

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University Compliance Certification

This is to certify that the thesis by ABIODUN-OYEKAN Tayelolu with the matriculation number LCU/PG/002791 in the Faculty of Law, Lead City University, is in full compliance with the approved University format and style.

Signature

Date

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