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Legal Issues and Innovations Introduced by the Petroleum Industry Act 2021 in the Nigerian Oil Industry

Simon Ejokema Imoisi PhD[□],

Paul Atagamen Aidonojie[□□]

Oaihimire Idemudia Edetalehn[□□□]

Abstract

The assenting to the Petroleum Industry Act by the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. Mohammadu Buhari, came up with remarkable changes to the Nigerian oil and gas sector. In this regard, Act has brought a lot of innovations and has solve the problems of petroleum Act. Before the repeal of the Petroleum Act, there was no provision to compensate and develop the host communities, the Nigerian National Petroleum Corporation (NNPC) was not a corporate body, no effective tax policy, no effective fiscal policy and several other problems. It is regard, of this short comings of the Petroleum Act that, the Petroleum Industry Act was enacted with several innovations aimed at solving the problems and challenges encountered with the petroleum Act. Is concerning this that this article sort to analyse the various innovation brought by the Petroleum Industry Act that are different from the Petroleum Act and highlight some of its shortfall notwithstanding its innovations. The paper also makes some recommendation that will help to improve on the Act.

Keywords: Innovations, Petroleum Industry Act and Petroleum Act.

Introduction

The widely anticipated Petroleum Industry Act's passing and signing mark a turning point for all parties involved in the oil and gas industry, whether they work for the government or the private sector. [1] Since the sector reform initiatives started, a lot has changed both domestically and internationally.[2] A variety of provisions and innovations have been created by the new Petroleum Industry Act 2021, which was recently approved and signed into law by the President of the Federal

□ **Simon Ejokema Imoisi PhD,** Acting Dean, Faculty of Law Edo State University Uzairue. Email: imoisi.simon@edouniversity.edu.ng

□□ **Paul Atagamen Aidonojie,** Faculty of Law, Edo State University Uzairue, Nigeria aidonojie.paul@edouniversity.edu.ng Phone No.: 07030294932

□□□ **Oaihimire Idemudia Edetalehn,** Faculty of Law, Edo State University Uzairue, Nigeria, oaihimare.edetalehn@edouniversity.edu.ng +234(0)7030858005

[1] Ogri, O. R., "A review of the Nigerian petroleum industry and the associated environmental problems," The Environmentalist, (2001), 21 (1). 11-21; Eunice A. et al, 'Nigeria: Highlights And Key Innovations In The Petroleum Industry Act, 2021'*Mondaq*(26 August 2021) available at https://www.mondaq.com/nigeria/oil-gas-

electricity/1105356/highlights-and-key-innovations-in-the-petroleum-industry-act-2021>accessed on January 1st 2023

[2] Vassiliou, S., The A to Z of the Petroleum Industry: Scarecrow Press, 2009; Salu, A., "Securing environmental protection in the Nigerian oil industry. Modern Practice," Journal of Finance and Investment Law, (1999), 3 (2). 1782-1788; N. Kashirim, Nigeria's Petroleum Industry Act: 'Addressing Problems and Creating New Ones' November 24th, 2021 > available at https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigeriaspetroleum-industry-act-addressing-old-problems-creating-new-ones/> assessed on January 2nd, 2023

Republic of Nigeria on August 16th, 2021 to replace the existing Petroleum Act 2004, which will have an impact on the private, public sector, and stakeholders in the oil and gas industry.[3]

The main objectives of Petroleum Industry Act 2021 is to seek to encourage investment in the Nigerian petroleum industry[887]. By balancing rewards with risk, the new law seeks to increase the revenue of the Federal Government of Nigeria[5]. It also seeks to provide a forward-looking fiscal framework[888]. However, a fiscal framework that excludes renewable energy may be relevant for a short period[889]. The additional sources of funds such as levies, statutory contributions will expand the revenue of the Federal Government [890]. Nevertheless, an equitable and transparent administration is necessary to attain the objectives[891]. The petroleum industry in Nigeria has upstream, midstream, and downstream operators.[10]

The Petroleum Industry Act repeals about 10 laws including the Associated Gas Reinjection Act; Hydrocarbon Oil Refineries Act; Motor Spirit Act; NNPC (Projects) Act; NNPC Act (when NNPC ceases to exist); PPPRA Act; Petroleum Equalisation Fund Act; PPTA; and Deep Offshore and Inland Basin PSC Act.[892]

[887] Ite, A. E., and U. J. Ibok, "Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta," American Journal of Environmental Protection, (2013), 1 (4). 70-77. [5] Kampa, M., and E. Castanas, "Human health effects of air pollution," Environmental Pollution, (2008), 151 (2), 362367

[888] Ite, A. E., and K. T. Semple, "Biodegradation of petroleum hydrocarbons in contaminated soils," Microbial Biotechnology: Energy and Environment, R. Arora, ed., pp. 250-278, Wallingford, Oxfordshire: CAB International, 2012

[889] Eweje, G., "Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria," Journal of Business Ethics, (2006), 69 (1). 27-56

[890] Daniel-Kalio, L. A., and B. Solomon Amabaraye, "The Impact of Accidental Oil Spill on Cultivated and Natural Vegetation in a Wetland Area of Niger Delta, Nigeria," Ambio, (2002), 31 (5). 441-442

[891] Kamalu, O. J., and C. C. Wokocha, "Land Resource Inventory and Ecological Vulnerability: Assessment of Onne Area in Rivers State, Nigeria," *Research Journal of Environmental and Earth Sciences*, (2011), 3 (5). 438-447 [10] BRT, 'Analysis of Petroleum Industry Act 2021 in Nigeria' (September, 2022) available at https://www.bomesresourcesconsulting.com/review-petroleum-industry-act-2021-nigeria.html#objectives accessed on January 5th, 2023

[892] Aziza, Petroleum Industry Act 2021 Highlights / Benefits' (August 10th, 2022) available at https://www.aziza.com.ng/petroleum-industry-act-

The Petroleum Industry Act was passed to establish the upstream, midstream, and downstream petroleum industry's regulatory, fiscal, legal, and administrative frameworks as well as to construct and develop host communities and address other associated issues[893]. The primary innovations and clauses of the recently passed Petroleum Industry Act are examined in this article[894]. The Act establishes a legal, administrative, regulatory, and financial framework for the growth of host towns and the Nigerian petroleum industry.

[3] Aghalino, S. O., and B. Eyinla, "Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria," Journal of Human Ecology, (2009), 28 (3). 177-182; Adomokai, R., and W. R. Sheate, "Community participation and environmental decision-making in the Niger Delta," Environmental Impact Assessment Review, (2004), 24 (5). 495-518; Resolution Law Firm, 'Nigeria: Overview Of The New Petroleum Industry Act 2021' *Mondaq*(21 September 2021) available at https://www.mondaq.com/nigeria/oil-gas--electricity/1113104/overview-of-the-newpetroleum-industry-act-2021 > accessed on January 10th, 2023

An Overview of the Petroleum Industry Act, 2021

The Nigerian government has tried numerous times over the last ten years to create new institutional, legal, and regulatory frameworks for the country's petroleum industry. These initiatives got their start in 2000, when the Federal Government established the Oil and Gas Sector Reform Implementation Committee (OGIC), whose task it was to suggest changes for the sector. A draft National Oil and Gas Policy (NOGP) that OGIC presented to the Federal Government in 2004 was eventually approved by the Federal Executive Council in 2007. The Petroleum Industry Bill (PIB) 2008 was drafted and submitted to the sixth National Assembly by the Federal Government in an effort to execute the NOGP that had been authorized. Although this Bill was circulated in numerous forms, the houses of the National Assembly never enacted it into law.

After the PIB was discussed again in 2011, another executive bill that was filed to the National Assembly in July 2012 resulted. The Petroleum Industry Bill, 2021, was the result of the drawnout parliamentary process. On August 16, 2021, the Federal Republic of Nigeria's President ratified this Petroleum Industry Bill into law.

Salient Innovations of the Petroleum Industry Act That is Different From Petroleum Act 2021

Without doubt, the PIA's adoption or passage marks a fresh beginning for the Nigerian oil and gas sector's institutional, fiscal, and legal frameworks. The PIA introduces certain laudable improvements, including the institutionalization of efficient corporate governance, the creation of

2021highlights/#:~:text=The%20Petroleum%20Industry%20Act%20repeals,and%20Inland%20Basin%20PSC%20Act. Accessed on January 10th, 2023

[893] Benka-Coker, M. O., and J. A. Ekundayo, "Effects of an oil spill on soil physico-chemical properties of a spill site in the Niger Delta Area of Nigeria," Environmental Monitoring and Assessment, (1995), 36 (2). 93-104

[894] Osuji, L. C., and C. M. Onojake, "Trace heavy metals associated with crude oil: A case study of Ebocha-8 oil-spillpolluted site in Niger Delta, Nigeria," Chemistry & Biodiversity, (2004), 1 (11). 1708-1715.

a robust regulatory framework, the commercialization of the NNPC, and the growth of host communities, to name a few. Below are some of the key innovations discussed.

a. **Institutionalization of Effective Corporate Governance**:

Undoubtedly, the PIA is in a position to support good corporate governance and appropriate accountability in the oil and gas sector in Nigeria. The provision for the Nigerian National Petroleum Corporation Limited (NNPC Ltd) is therefore primarily focused on fostering an environment that is favorable for petroleum operations in Nigeria. It is also geared towards the creation of an Incorporated National Petroleum Company that is commercially oriented. This is the case because, before to 2021, the NNPC, as it was originally created under the NNPC Act 1997, which is now abolished, operated as a corporation rather than as an incorporated personality as it has done thus far. In light of this, the NNPC and certain other institutions are currently in a situation where its accountability, probity, and commercial viability are somewhat guaranteed.[895]

b. **Streamlining and Strengthening the Institutional Framework for the Regulation of the Oil and Gas Industry in Nigeria**:

Before the PIA was passed, there were numerous institutional frameworks governing various facets of the oil and gas business in Nigeria, each with intertwined, disorganized, vague, and ineffective responsibilities. The Nigerian National Petroleum Corporation, the Federal Ministry of Petroleum Resources, the Federal Ministry of the Environment, among other organizations, ministries, and parastatals, were in charge of these institutions. Accordingly, with the coming on board of the PIA, the erstwhile duplicated institutions like the Department of Petroleum Resources (DPR),[15] The Nigerian National Petroleum Corporation (NNPC), the Petroleum Product Price Regulation Agency (PPPRA) and Petroleum Equalization Fund among others were abrogated,[16] in other to provide a strong institutional framework for the oil and gas industry, the PIA established only two (2) well-streamlined and role-defined institutions *viz*:

i. The Nigerian Upstream Regulatory Commission is referred to as 'The Commission'.[896] Statutorily, the Commission is charged with the responsibility of providing technical and commercial regulation for Upstream Petroleum Operations including the implementation of environmental laws and policies for the

ii. Upstream Operations in the Nigerian Oil and Gas Industry.[897]

iii. The Nigerian Midstream and Downstream Petroleum Regulatory Authority is referred to as 'The Authority'. [898] The Authority is charged with the responsibility of providing technical and commercial regulation for the midstream and downstream petroleum operations in Nigeria as well as licensing the players in those subsectors.

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[895] Nweke P.,'Innovation, Prospect and Shortfall of the Petroleum Industry Act (PIA) 2021' *African Law Journal, v. 6* [15] s. 10 of the repealed NNPC Act. [16] PIA 2021 (as Amended), s. 310.
[896] PIA 2021 (as Amended), s. 4.
[897] Ss. 5, 6, 7, of PIA, 2021
[898] s. 29. Of PIA, 2021

It is noteworthy that under the erstwhile Petroleum Act,[899] the Minister of Petroleum Resources was empowered to grant to willing individuals or legal persons Oil Exploration Licence, Oil Prospecting Licence or Oil Mining Lease.[21] However, under the PIA, this enormous power vested in the Minister has been institutionalized as the same is now exercisable by the 'Commission' and the 'Authority' in line with the provisions of the PIA.

a. Incorporation and Commercial Viability of NNPC Ltd:

Contrary to how NNPC was rigidly run as a corporation under the Petroleum Act and the NNPC Act, the PIA now allows for the incorporation of a commercial, profit-oriented, or business-focused NNPC Ltd. The Businesses and Allied Matters Act (CAMA) clause relating to the incorporation of companies is being complied with by the incorporation of NNPC Ltd. Importantly, the PIA stipulated that the NNPC Ltd. must be floated within six (6) months, counting from the date the PIA began, and that requirement has been met. It's interesting to note that the PIA gave the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated the right to hold governmentowned shares of NNPC Ltd. on behalf of the Federation. Also, NNPC Ltd is statutorily empowered to take over the assets, interests and liabilities of the NNPC.[22] The incorporation of NNPC Ltd and its commercial orientation/viability are indeed worthy of commendation. However, whether or not the alter ego would effectively manage the newly incorporated NNPC Ltd to achieve its economic yearning and aspiration is a topic for another day. [900]

b. Establishment of the Nigerian National Petroleum Company Limited

The creation of the Nigerian National Petroleum Company Limited (NNPC Limited) in accordance with Section 53 of the Act is another innovation brought about by the Act. The Nigerian National Petroleum Corporation (NNPC) established the NNPC Limited to act as an agent for the NNPC in order to manage the winding down of the NNPC's assets, interests, and liabilities. According to Section 53 of the Act, "the Minister shall cause to be registered under the Companies and Allied Matters Act, a limited liability company, which shall be known as the Nigerian National Petroleum Company Limited, within six months of the commencement of this Act."[901]

According to Section 53(3) of the Act, the Federal Government acquired ownership of NNPC Limited at the time of incorporation, and equal shares are now held by the Minister of Finance and the Ministry of Petroleum on behalf of the Federation and the Ministry of Petroleum. Under Section 65 of the Act, incorporated joint businesses are also created. These limitations must be stated in the NNPC Limited's memorandum and articles of organization in order for it to operate on a lucrative commercial basis without using any government funds. According to Section 53(7) of the

[899] Cap P. 10 Laws of the Federation of Nigeria 2004, s.
2 [21] s. 70, 71 and 72 of the PIA, 2021 [22] PIA 2021 (as
Amended), s. 53.

[900] Osuji, Leo C., and A. Ozioma, "Environmental Degradation of Polluting Aromatic and Aliphatic Hydrocarbons: A Case Study," Chemistry & Biodiversity, (2007), 4 (3). 424-430

[901] Dispute Resolution Law Firm, op.cit
PIA 2021 (as Amended), s. 258.

Petroleum Industry Act, the NNPC is also required to pay dividends to its shareholders and set aside 20% of its earnings as retained earnings in order to expand its operations, just like any other entity that has been incorporated under the Companies and Allied Matters Act.

c. Provision for Development of Host Communities:

One of PIA's most encouraging innovations is its goal of fostering prosperity and sustainable development within the host communities. The PIA included provisions to ensure that those who hold mining or petroleum exploration permits can live in peace with their host communities and receive direct social and economic benefits. [9025] Accordingly, companies holding or to whom Petroleum Prospecting Licences, Mining Leases or any company operating on behalf of a Joint Venture Partners[26]are required to contribute three per cent (3%) of its actual operating expenditure in the immediate proceeding calendar year to the 'Host Community's Development Trust Fund.' Interestingly, the Fund is tax exempted and any contribution by a Settlor is tax deductible.

Importantly, Settlors are mandated to incorporate Host Communities Development Trust,[22] though communities will forfeit the cost of repairs in the event of sabotage, vandalism and other restiveness or civil unrest precipitating or causing damage to petroleum facilities, equipment or disturbance of petroleum activities.[903] This is stipulated in section 234 of the Act's chapter 3 introducing the Petroleum Host Community Development (PHCD). The PHCD's goals include promoting long-term prosperity within host communities, giving those communities immediate social and economic benefits from petroleum activities, developing a framework to aid in those communities' development, among other things.

According to section 235 of the Act, host communities development trusts may also be incorporated. The settler is required to do so for the benefit of the host communities for which they are accountable, and the Act specifies the timeframe for incorporation. In accordance with Sections 240 and 244 of the Act, the sources and distribution of the development trust for the host communities are also specified. The Board of Trustees will distribute the monies to host communities based on a matrix that the settler will supply.[904]

d. *Effective and Realizable Fiscal Framework*:

In accordance with section 260 of the Act, a hydrocarbon tax will be imposed on the profits of businesses engaged in upstream petroleum operations in onshore, shallow water, and deep offshore. This tax will be due and payable for each accounting period. The value of any chargeable oil, as adjusted to the measuring points based on the proceeds of the chargeable oil sold by the company and the value of all chargeable oil disposed of by the company, must be the company's crude oil revenue, subject to Section 260 of the Act.[905]

[902] PIA 2021 (as Amended) Ss. 235, 236, 237 and 238.
[903] Section 240 and 244.
[904] Dispute Resolution Law Firm, op.cit
[905] Ibid

In contrast to the time before the PIA, when problems with the fiscal framework of the petroleum industry were common or were not statutorily clarified in terms of percentages accruable to/to be collected by the Federal Inland Revenue and its like, leaving a gap for all kinds of administrative fraud in the collection of hydrocarbon taxes as well as institutional conflicts regarding who collects what and, more importantly, uncertainty regarding what is collected and/or not.[906]

In that regard, it is now well established that the Federal Inland Revenue Service is authorized to levy hydrocarbon taxes ranging from 15% to 30% on profits from crude oil production or exploration, as well as company income taxes of 30% and 2% education taxes that are no longer deductible from taxes. Similar to this, the Authority will now be in charge of collecting gas flare penalties from the midstream operations, while the Commission will be in charge of collecting rents, royalties, and production sharing.[907] Once more, this clear-cut fiscal arrangement is also worthy of commendation as it has the propensity to circumvent any form of institutional conflicts of uncertainty over fiscal arrangements.

e. *Decommissioning Considerations*:

Decommissioning is a general term used to describe the process of returning an oil production site to its pre-lease condition at the end of the useful life of that oil asset. Prior to the enactment of the PIA, companies typically recognised provisions for decommissioning costs in their books in accordance with the provisions of the International Accounting Standard (IAS) 37 "Provisions, Contingent Liabilities and Contingent Assets". Such provisions were typically not funded by industry operators. However, the PIA requires lessees and licensees to establish a decommissioning or abandonment fund and make periodic contributions to the fund, which will be utilised for abandonment and decommissioning purposes. Based on the PIA, a licensee or lessee is required to inform the NUPRC of the establishment of its decommissioning and abandonment fund not more than three months from the date of commencement of production for upstream petroleum operations. This implies that Companies that commenced production before the enactment of the PIA should have set-up the funds immediately the PIA was signed by the President.

Furthermore, the PIA requires operators to prepare a decommissioning and abandonment plan and submit same to the NUPRC within 12 months of the effective date of the PIA. In effect, the plan should be submitted by 15 August 2022. The details of the content of the plan will be determined by regulations to be issued by NUPRC. However, the plan will establish the yearly amount to be contributed to the abandonment fund, which will be the projected decommissioning and abandonment costs divided by the estimated life of the facilities/field.[908]

f. *Environmental Management Plan*:

[906] Nweke P. , op.cit

[907] PIA 2021 (as Amended), Ss. 259, 267 and 297.

[908] Lanre Afuye & Damilare Abdula, ' Petroleum Industry Act 2021 : The Road To Compliance For Upstream Companies' *Mondaq available at https://www.mondaq.com/nigeria/oil-gas--electricity/1191336/petroleumindustry-act-2021-the-road-to-compliance-for-upstream-companies accessed on January 5th, 2023*

The Petroleum Industry is considered to have a high risk of negative environmental impacts and as such, there is a need to have a plan to manage such impacts should they occur. Based on the provisions of the PIA, operators will be required to submit for approval, an environmental management plan in respect of projects which require environmental impact assessment. The plan should be submitted within 12 months from the effective date of the PIA (i.e., 15 August 2022) or six months after the grant of the applicable licence or lease. Prior to the approval of the environmental management plan by the NUPRC, such licensees or lessees will be required to pay a prescribed financial contribution to an environmental remediation fund established by the NUPRC for the rehabilitation or management of negative environmental impacts with respect to the licence or lease.[909]

g. ***Natural Gas Flare Elimination and Monetisation Plan:***

The PIA provides that the holder of a license or lease shall within 12 months of the effective date of the Act, submit a natural gas flare elimination and monetisation plan to which would be prepared in accordance with regulations made by under the Act. In effect, the plan must be submitted by 15 August 2021. [910]

h. ***Conglomeration and Harmonization of the Legal Framework in the Nigerian Oil and Gas Industry***:

It is undeniable that the Nigerian oil and gas industry was subject to numerous laws and regulations prior to the creation of PIA. These Up until this point, the PIA has brought together several areas governed by the aforementioned laws that were previously fragmented. The PIA consolidates the areas covered by the aforementioned legislation, making it a huge accomplishment deserving of praise. This step is essentially a one-stop shop for oil and gas experts, academics, practitioners, and members of the public who can now quickly access information that was previously only available in more than eleven (11) distinct pieces of legislation in one piece of legislation.

Shortfalls of the Petroleum Industry Act (PIA).

In examining the PIA's shortcomings, we wish to say that there are many potential risk aspects of the Nigerian oil and gas industry that have not received comprehensive statutory attention in years but the PIA failed to close the gap despite its recentness. Some of these areas are highlighted below:

I. **Lack of Straight-Cut Provision for Prevention, Management and Compensation of Oil Spillages in Nigeria**:

Although the PIA is modern and attempted to cover a wide range of ground in terms of deregulating the oil and gas industry or the extractive industry in Nigeria, it made little to no provisions for the prevention and management of oil spillages, compensation for victims of oil spillages, principles of assessment, and the amount of compensation that victims of oil spillages are entitled to. The terms "oil" and "petroleum" are used synonymously in this article for the benefit of readers who are not lawyers and who may come into contact with it. They refer to hydrocarbons or substances

[909] Ibid
[910] Ibid

related to them that are found in strata in their natural state. These substances, with the exception of coal and bitumen, include crude oil, natural gas, condensate, or any combination of them.[911] Thus, whenever the aforementioned chemicals are permitted or made to flow out, run out, tumble out, or escape uncontrollably from their place of existence, storage, or accommodation to an undesirable area, an oil leakage occurs.[912]

In fact, spillages can have a variety of detrimental impacts. To that extent, the effects of oil spillages are incalculable, devastating, and catastrophic, ranging from loss of national income to environmental degradation, including air pollution, water pollution, the extinction of plants and animals, and health catastrophes like respiratory conditions, skin rashes, tumors, gastrointestinal problems, cancer, and malnourishment to name a few. [913] Given the aforementioned, it is astonishing and unexpected that the PIA failed miserably to address spillage-related concerns, environmental restoration and cleanup, and specifically, the compensation of spillage victims in Nigeria.

Though it can be argued that there exists a National Oil Spill Detection and Response Agency (NOSDRA) Act[37] and ancillary to that is the existence of the National Oil Spill Detection and Response Agency established under the NOSDRA Act to tackle issues of oil spillages, however, such an argument is not tenable as the PIA which is the most contemporary legislation in the Oil and Gas Industry ought to have incorporated in it, the provisions of NOSDRA Act as was the case with the other multiple pieces of legislation numbering over eleven (11), repealed under the PIA.[914]

Be that as it may, NOSDRA Act and the two (2) Regulations[915] made under s.26 of the NOSDRA Act, does not in itself make any express provision for compensation of victims of oil spillages in Nigeria, rather, the Agency,[916] created under the NOSDRA Act is among others charged with the responsibility of surveillance, ensuring compliance with all existing legislation, detection of oil spillages in the petroleum sector, receiving report of oil spillages, and coordinating oil spill response activities across Nigeria, to mention but a few.[917]

In essence, the PIA which ought to have provided the legal framework for the management, prevention and other issues about cases of oil spillages and compensation of its victims therein, failed woefully in that regard as it limited itself to compensation for 'Acquisition of Land' and 'Venerated Objects'. Now, the question is, on which legal framework will NOSDRA as an Agency

[911] PIA 2021 (as Amended), s. 318.

[912] A.E. Ogbuigwe 'Compensation and Liability for Oil Pollution in Nigeria: Need for Positive Approach' (1985) (3) Journal of Private and Property Law (JPPLL) 21

[913] S.I Omofunwan and L.O. Odia 'Oil Exploration and Conflict in the Niger Delta Region of Nigeria' (2009) *Kamlaray Journal of Human Encology* 25-30. [37] NOSDRA Act 2006

[914] PIA 2021 (as amended) s. 310.

[915] Oil Spill and Oil Waste Management Regulation 2011 and Oil Spill Recovery, Clean-Up, Remediation and Damage Assessment Regulations 2011.

[916] NOSDRA

[917] NOSDRA Act s. 6 (1) – (7).

ride on since most of the pieces of legislation in the oil and gas industry have been repealed and the most contemporary legislation being the PIA did not make robust provisions to take care of cases of oil spillages in Nigeria? This is no doubt also a question for another day. However, at this juncture, it suffices to say that out of the 319 Sections of the PIA, only two (2) sections expressly referred to compensation, [918] and these sections made provisions for compensation for the acquisition of land to be used for oil and gas purposes and payment of compensation for venerated objects. Accordingly, with respect to Compensation for the acquisition of land, the PIA provides viz: s. 115

Compensation for Acquisition of Land

> (1) *A licence or permit shall be issued subject to compliance by the applicant with the provisions of the Land Use Act Cap L5 Laws of the Federation of Nigeria 2004 in respect of compensation for acquisition of land for midstream and downstream petroleum operations.*
>
> (2) *The Governor of a State of which land is required for carrying out operations or activities subject to a licence or permit may issue a certificate of occupancy under the Land Use Act in respect of the land and in accordance with existing state law*.

From the above, it is indubitable that the section under consideration is not one providing for compensation of victims of oil spillages in Nigeria, rather, the section is enshrined or made to ensure compensation of owners or occupiers of land by holders of Petroleum Prospecting Licensees, Petroleum Mining Lessees or persons holding any form of license or permit to operate in the downstream, midstream or upstream sub-sectors of the oil and gas industry in Nigeria. Admittedly, it may be argued that the provision of this section is more of an advantage than a loophole but it cannot be said to be an innovation as the right for compensation over the compulsory acquisition of land is, before the enactment of the PIA, constitutionally guaranteed.[919]

II. The PIA Encourages Litigation

The PIA, rather than being proactive, coined or enacted in a manner to circumvent litigation which is capable of depriving victims who have suffered some form of deprivation, damage, injury, etc. the benefit of prompt compensation expressly encouraged that disputes emanating from issues about whether an area is held sacred or not should be adjudicated by the customary court in the area.[920] By this, it has *ab initio* encouraged litigation which any of the aggrieved litigants can ventilate from the Customary Court (which is one of the lowest courts in the land) to the Supreme Court and this can last for years, in which case, most of the poor litigants may capitulate when faced with the technical know-how, financial muscle and intimidating capacity of the licence or leaseholders. Also, in the course of litigation, some of the litigants would have died out of frustration before the matter travels to the Supreme Court. Painfully, many of the litigants will even wave their rights to litigate when counselled that the cost of litigation is not even at per or

[918] That is s. 101 and 115 of the PIA.
[919] CFRN 1999 (as amended) s. 44.
[920] PIA 2021 (as Amended) s. 101 (1) (a).

commensurate with what may be eventually paid to them as compensation at the end of the legal marathon.

III. Delay in Payment of the Available Compensation

It is also provided under the PIA that whenever there arises a dispute as to who is in lawful occupation of an area of land covered by a licence/lease or who is the owner of such land vis-à-vis disputes as to the amount payable as compensation, the licensees or lessees, pending the determination of the issue of ownership and the amount payable as compensation, such an amount as may be determined by the Federal High Court to be reasonable and fair compensation to the rightful owner and occupiers of land having regard to the inherent regulatory framework should be deposited with the Federal High Court with the jurisdiction over the matter.[921] By this provision, the Federal High Court has been vested with the power to deal with issues arising from the determination of the ownership of land, rightful occupant(s) of land as well as the amount payable as compensation for injury or disturbance occasioned on the surface of the land or to the right of the owner/occupant on the land covered by a licence or lease which does not align with the exclusive jurisdiction of the Federal High Court as enshrined in the Constitution of the Federal Republic of Nigeria.[922]Accordingly, it is worrisome that litigation or resort to a Court was proffered by s. 101 of the PIA as a panacea to resolving issues as to ownership of land/rightful occupation of land covered by a licence or lease as well as determination of the quantum of compensation payable to those who suffered injury as a result of petroleum operations by the holders of licence or lease.

At this juncture, it is pertinent to point out the fact that the PIA rightly subjected itself to the constitution which is an undisputable jurisprudential principle of the Nigerian Legal System,[923] but unfortunately, the PIA equally arrogated to the Federal High Court a jurisdiction it lacks under the Constitution and this conspicuously goes to show that an incurable pitfall exists therein. This is because any law that is inconsistent with the provisions of the Constitution shall be void to the extent of its inconsistency.[924] Little wonder, it is opined that the PIA is a statute which addresses old problems and creates new ones.[49] In the circumstance, it would have been better that the Customary Courts were vested with such jurisdiction concerning rural lands as it has unlimited jurisdiction over rural lands in its district[925] the same way the State High Courts would rightly be vested with such jurisdiction as in exception to the exclusive jurisdiction of the Federal High Court, the State High Court has what is often referred to as an unlimited jurisdiction over matters brought before it.[926]

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[921] Ibid s. 101 (1) (d).
[922] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 251.
[923] The Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 1 (3) and PIA s. 309.
[924] Ibid. [49] See Kasirim Nwuke 'Nigerian Petroleum Industry Act: Addressing Old Problems, Creating New Ones'. Available at https://www.brookings.edu/bog/africa-in-focus/2021/ii/24/nigerias-petroleum-industry-act-addressing-oldproblems-creating-new-ones. Accessed January 10th,2023
[925] See the Rivers State Customary Court Laws N0. 3 of 2014 s. 6 of the first schedule.
[926] The Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 272 (1)

More worrisome is the fact that the beneficiaries of the compensation payable by holders of licences or leases often than none lack the qualitative or quantitative orientation or zeal to approach the court due to impecuniousness, intimidation, the meagre amount of compensation involved, etc. with all these put together, it is opined that the reference to court in s. 101 of the PIA rather than the mediatory process does more harm than good for those entitled to be compensated and inevitably will occasion delays in compensating victims entitled to be compensated.

IV. The Problem of Effective Implementation of the Act

The problem in Nigeria is not laws. The problem is the effective implementation of the laws. If the 2021 Petroleum Industry Act is properly implemented, it can become a good standard for the Petroleum Industry. The law naming the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to govern and regulate oil and gas activities upstream is a welcomed development. In the same vein, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) will now be responsible for petroleum operations in the midstream and downstream. Thus, the law overhauls the governance and the proper regulation of the petroleum industry in Nigeria. The challenge here is how these bodies will manage their sectors. How will they be able to tackle the problems the law has now posed in their various sectors?[927]

V. The Creation of New Problems

The Petroleum Industry Act 2021, in an attempt to solve the old problems of the petroleum industry, created new serious ones. The law has created a clear dichotomy between the northern lawmakers and the southern lawmakers. Thus, the law has only succeeded in dividing Nigeria into two segments. To the southern lawmakers, the law is twisted to favour the northern part of the country. The southern lawmakers now see the northern lawmakers as cheating them. Furthermore, the host communities who demanded 10%, which the lawmakers turned down, are not happy. On the other hand, the Pan Niger Delta Forum (PANDEF) is calling for the immediate reversal of the 3% the lawmakers have granted to the host communities. The law must address these new problems before it will see the light of the day.[928]

VI. Looking Backward Instead of Forwarding

The passage of this law reveals that Nigerian lawmakers and the executive are not foreseeing what the whole world is seeing. Now that the whole world is crying about climate change, many countries are drifting away from petroleum exploration. How to Transfer Airtel Airtime to another SIM with Easy Steps. If the federal government were to look forward, it would have seen that what Nigeria needs now is science and technology innovation. Nigeria now needs to develop other energy

[927] Info Guide Nigeria, '10 Problems and Challenges of Petroleum Industry Act Implementation in Nigeria' available at https://infoguidenigeria.com/problems-and-challenges-of-petroleum-industry-act-implementation/ accessed January 14th, 2023
[928] Ibid

sources. Climate change will not allow Nigeria to pursue its oil exploration vision. This is a backwards-looking vision.[929]

VII. Unmerited Favour of the North[930]

If you put little sand in a blind man's soup, he will overlook it. However, if you pack sand into the soup, he will react, feeling that you insulted him because you know him to be a blind man. The federal government grants 30% fund for Frontier Basin Oil Exploration is granting the north a favour they do not merit. The truth is that God did not deposit petroleum all over the earth. The same thing goes for gold. We do not find gold in all places. In Nigeria, oil and gas are special blessings to the south, especially in the Niger Delta Basin. This is God's doing. No man can take it away. The problem now is that man is turning the blessing into a curse. The federal government is denying them the benefit of the blessing. It is trying to transfer the blessing to those who do not merit it. This is unfair

VIII. Stipulation of Unrealisable Time Frame for Payment of Available Compensation

It is irreconcilable and indeed a big pitfall that whereas no Regulation hitherto made under the PIA exists, the PIA provides that the amount of compensation payable to persons in lawful occupation of land or owners of the land by a holder of a licence/lease is to be determined by Regulation made under the PIA. It is equally unpardonable that the PIA provides that where a licensee or lessee fails to pay compensation as prescribed under the PIA within 30 days,[931] the Commission will apply sanctions per the hitherto non-existing Regulations made under the PIA.[932] Accordingly, it is therefore unrealizable that Holders of Licence/Lease are required to pay fair, adequate and prompt compensations in respect of the wrongs covered under s. 101 of the PIA within 30 days when no clear-cut legal or institutional framework is put in place to actualize the prescribed time frame of 30 days. More disturbing is the fact that references are made to Courts as enumerated above for the determination of certain issues ancillary to payment of compensation concerning the wrongs covered by s. 101 of the PIA and one is left to ask, whether any cause of action, no matter how little, referred to any Court of competent jurisdiction in Nigeria can be comprehensively litigated within 30 days when the right of appeal up to the Supreme Court exists in favour of the loser at the lower Courts and the time within which to file an appeal in respect of final judgment ranges from 30 days and above? The answer is negative. For instance, in Rivers State appeals from Customary Court to the High Court is to be lodged within thirty (30) days.[933] Similarly, Appeals from the High Court of a State to the Court of Appeal are to be lodged within ninety (90) days or three (3) months[934] depending on whether it is a civil or criminal appeal while an appeal from the Court of

[929] Ibid
[930] Ibid
[931] PIA 2021 (as Amended) s. 101 (4)
[932] PIA 2021 (as Amended) s. 101 (4) & (5)
[933] High Court of Rivers State (Civil Procedure) Rules, 2010, Order 40 Rule 16.
[934] Court of Appeal Act 2004 s.24 (2).

Appeal to the Supreme Court is to be filed within three (3) months or thirty (30) days in civil and criminal cases as the case may be.[935]

Further, whereas the PIA provides for compensation to be paid to deserving victims of the wrong contemplated under s. 101 of the PIA within 30 days, it nevertheless saved the Petroleum (Drilling and Production) Regulation,[71] made under the Petroleum Act to continue to remain in force until any other Regulation is made under the PIA,[61] unfortunately, the said Petroleum (Drilling and Production) Regulation made pursuant to the Petroleum Act does not stipulate the time within which compensation of any kind is to be paid to victims of oil spillage and this goes to show that a lacuna still exists in the legal and institutional framework for compensation of the victims whose kind of wrong suffered is covered under s. 101 of the PIA. More can be said on the pitfalls of the PIA with respect to prompt, fair and adequate compensation of victims whose nature of wrong suffered is covered by s. 101 of the PIA, however, for want of space, it cannot all be ventilated in this article, hence, this article confined itself to some of the pitfalls militating against timeous compensation of victims whose kind of wrong suffered are covered by the PIA.

Now returning to whether or not s. 101 of the PIA provides for compensation of victims of oil spillages, close content analysis of the PIA reveals that of all the Sections of the PIA[62], only s.101 (2) (c) and (3) made provisions relating to compensation for the disturbance or damage caused to the surface of the land or disturbances/damages injurious to the rights of persons in lawful occupation or owners of land covered by a Petroleum Prospecting Licence or Petroleum Mining Lease. For proper analysis and adumbration, the said s. 101 (2) (c) & (3) is reproduced viz: *s.101 (2)*

> *A person shall not in the course of Petroleum operation-*
> *(c) Disturb or damage the surface of the land or any other right to any person who owns or is in lawful occupation of the surface area covered by the licence or lease.*
>
> *(3) A licensee or lessee who causes damage under sub-section (2) shall pay fair and adequate compensation to the persons or communities directly affected by the damage or injury.*

Without hesitation, it is worthy and important to state that the above provision of the PIA is in *parimateria* with the provisions of paragraph 36 of the First Schedule to the erstwhile Petroleum Act[63] which provides thus: *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 subjected under the provisions of this Act, be liable to pay for adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licenced/leased land.*

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[935] Supreme Court Act 2004 s. 27 (2). [61] PIA 2021 (as Amended) s. 311 [62] That is Ss.1-319 of the PIA.
[63] Cap. P10 LFN 2004.

Before analysing the PIA's provisions as they are reproduced above, it is imperative to once more and succinctly state that the Petroleum Act has not yet been entirely revoked or repealed; rather, it has been saved, and any of its provisions or subsidiary legislation or Regulations not in conflict with the PIA shall continue to be in effect mutantis mutandis as if it had been issued by the Commission or Authority under the PIA until expressly revoked. Also, provisions of the Petroleum Act not inconsistent with the PIA shall continue to be in force until the termination or expiration of all the Petroleum Prospecting Licences and Petroleum Mining Leases concessions under it.[936]

Therefore, it is unnecessary to state that there is still no express provision for compensating oil spill victims based on the provisions of s. 101 (2) (c) & (3) of the PIA reproduced above. In a similar vein, it is sufficient to state that ancillary issues to compensation for victims of oil spills, such as who qualifies as a victim of an oil spill, the amount of damage payable to victims of an oil spill, evaluation of damages payable to victims of an oil spill, a cure for health issues caused by or related to oil spills, precautions to take to prevent spills, remediation and clean-up of the spilt environment, and guidelines for calculating compensation/damage, are also addressed

Conclusion

The PIA does a good job of establishing a legal, institutional, and financial framework for the regulation of Nigeria's oil and gas industry. Regarding the fast, just, and equitable recompense of oil disaster victims, it is not very far-reaching. As a result, the PIA contains numerous hazards that shouldn't exist given that it is an Act or Statute that is as current as 2021, in addition to the excessive number of desirable advancements that have already been listed above.

Recommendations

1. In lieu of the fact that the PIA made little or no provision for cases of oil spillages and compensation of victims of oil spillages in Nigeria, it is recommended that, rather than continuing to save the Regulations, guidelines and/or directives made under some of the repealed legislation, there should be a new Regulation made pursuant to the PIA wherein cases of oil spillages to wit: prevention, control and management of oil spillage, the effect of oil spillage, environmental remediation and clean-up upon spillage, principles of assessment of compensation, the quantum of compensation and compensation of victims of oil spillage can be provided for or properly regulated.
2. Secondly, in the contemplated regulation in 1 above, provisions for alternative dispute resolution rather than litigation should be provided for in respect of compensation of victims whose kind of wrong suffered emanated from or are related or connected to operations in the downstream, midstream and upstream sectors of the Nigerian oil and gas.

[936] PIA 2021 (as Amended)
311 (1), (2) & (9). [76] Ibid.