

THE PETROLEUM INDUSTRY ACT 2021 AND SDGs: PROSPECTS FOR A GREENER PETROLRUM INDUSTRY IN POST-COVID NIGERIA

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Abstract

The petroleum industries of most developing countries, especially petro-states like Nigeria and have been gravely impacted by COVID-19 pandemic. The industry wrestles with a dual-clefted and unprecedented dilemma, that of an oil price war and a devastatingly acute Covid-19 impact. Moreover, other underlying issues, such as an abrupt decline in oil prices, OPEC/Russia divergent views on oil prices and cuts as OPEC and allied countries, often in the quest for stabilised oil prices, moved to cut down combined output by 9.7 million bpd. This was inevitable due to the fact of oil demand/supply imbalance occurring simultaneously with the declination and rapid drop in biochemicals, chemicals and fossil fuels use. This was necessitated by global lockdowns, industrial bottlenecks or slowdowns, travel bans, including other restrictions and interruptions accruing from COVID-19 implementation protocols. Likewise, the industry is undeniably confronted with irrefutable challenges traversing: environmental, economic, political, or technological demands to tailor oil exploration and production activities in accordance with wide-ranging issues tied to the sustainable development paradigm. Moreover, the core of these demands includes environmental protection, (expressed via biodiversity preservation, GHG and CO₂ mitigations), energy security, typified by reliability of products supplies, their affordability and economic growth. Post the Paris Agreement in 2015, which reiterates the imperative of the transition into a low carbon economy, the industry is placed in the peculiar position of bracing up to current signals regarding divestments of funds from the sector and tackling the relentless plunge in oil prices. Due to these daunting challenges, creating a nexus between oil exploitation and sustainable development becomes an inescapable exigency for a petro-state like Nigeria. The paper delineates the points of commonality and divergence between the SDGs and the Nigerian petroleum industry regulations by assessing their competence to deliver on the goal targets across the sustainable development paradigm. Moreover, it examines Nigeria's recent omnibus petroleum legislation, the Petroleum Industry Act (PIA) 2021. The paper conducts an appraisal of this statute to determine its utility in ensuring a green economy in Nigeria via the forging of synergies across the SDGs whilst eliminating potential tensions and trade-offs across divergent goals to achieve a greener oil industry in a post-Covid Nigeria.

Keywords: *The PIA 2021, International Law, Environment, Sustainable development, SDGs, Petroleum, Green Economy*

1. Introduction

This article essentially targets or addresses the relevance and utility of the Petroleum Industry Act (PIA) 2021 to secure the crucial aims of sustainable development in achieving a greener oil industry despite the overwhelming impacts of the Covid-19 pandemic. It considers the peculiarities of Nigeria as a petro-reliant state, including how it can navigate the contemporary challenges confronting the oil industry in a post-covid era and still achieve a sustainable petroleum industry devoid of acute environmental costs. It is clarified that most petro-reliant

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countries like Nigeria are confronted by a progressively steep or unmanageable debt profile, unsustainable economic governance/fiscal structure, with an escalating tendency to draw-on and cash-in on their non-renewable resources like hydrocarbons or fossil fuels for economic survival. This is however not critical, but when scant or inadequate environmental regulations govern the exploitation process, ultimately, there will be resultant and cumulative effects on the environment.

Moreover, it is a notorious fact that petroleum resources if indiscriminately exploited results in huge environmental costs and insurmountable environmental deficits. This scenario is further exacerbated for a petro-reliant country like Nigeria, which has considerably procrastinated on effective economic diversification and is far from optimising a transition to cleaner energies. Such a situation remains a huge disadvantage and creates considerable exposure to the multi-varied impacts of an unprecedented global economic downturn and market contraction triggered by the COVID-19 pandemic. Similarly, deteriorating oil revenues and the paucity of technological innovation in cleaner or alternative energy can only compound an already gloomy economic scenario. Effectively, the short, medium-term projections remain considerable down-sizing, re-organisation, and drastic cost-cutting measures even for high-cost oil producers, smaller oil industry operators, and corporations with high debt profile which are already confronted with a bleak and steeply challenging future as the threats of loss of business and liquidation has become too real.

In a distinct similarity or congruence of effects of the Covid-19 pandemic, the global oil industry is still grappling with core matters bordering on the security of assets such as oil fields, plants, refineries, et cetera. They need to secure and maintain operations optimally whilst navigating the Covid-19 precautionary measures. Also, the oil industry because of its multi-state and globalised character still needs to upgrade or bolster up to country demands in mitigating supply challenges across the petroleum industry value-chain which traverses multi-state and multi-lateral actors. The industry is thus confronted with a talent retention crisis, investment retention dilemmas and the need to tenaciously cling to FDI sources as well as revenue lifelines to guarantee business sustainability amidst crushing oil price gluts and impending threats of further divestments of essential funds by extremely cautious and wary investors. Moreover, the global economic downturn which gravely impacted the industry often necessitated the deferment of key investment decisions, the adoption of highly precipitous cost-saving measures, budget reviews, including severe debt-servicing contractual arrangements. Due to the substantial number of government interventions as pandemic control directives, which often triggered force-majeure in many instances, a large number of oil and gas industry contracts were rendered nugatory and exacerbated an already unpredictable or precarious situation.

For petro-reliant countries like Nigeria, despite the dire need to achieve optimal recovery from the pandemic and expedite effective response strategies they must also consider and simultaneously balance competing needs and development interests by securing all 3 pillars of the sustainable development paradigm. This can mostly be achieved through ensuring a sustainable and green petroleum industry which is possible by means of law, policy, and regulatory measures to ensure synergies across environmental protection goals and economic development objectives. This can serve to eliminate opportunities that engender trade-offs amongst competing interests towards the achievement of the sustainable development goals.

This paper therefore examines the newly enacted PIA 2021 to appraise its capacity to achieve the above stated aims.

The paper is divided into 5 functional sections. The initial sections portray a conceptual background of sustainable development which evolves into the sustainable development goals (SDGs). The second section addresses the Nigerian oil industry regulatory framework and highlights relevant environmental protection guidelines for the oil industry. The third section introduces and expatiates on the Petroleum Industry Act (PIA) 2021, it further elaborates on the advent, trajectory, and the various refurbishments over time to expedite its competence in tackling the Nigerian oil industry. The fourth section engages on the utility of the PIA in relation to the sustainable development discourse in a Nigerian oil industry context. It considers and predicts the ability of the PIA to deliver on the projected aims of a green oil industry in Nigeria especially within the 3-pillar paradigmatic context of oil industry sustainability and thereafter ends with a realistic conclusion, having regard to preceding debates and canvassed arguments.

2. The Concept of Sustainable Development

Sustainable development is a recognized concept of international law and a principle of international environmental law. It has even been further argued to be a principle of international law with significant normative value. However, it has been trailed by controversy mostly because of the inherent difficulties in the integration of two fundamentally divergent goals, environmental protection and economic development.¹ Indeed, Principle 4 of the Rio declaration provides; “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it”.² This entrenches the concept of sustainable development as an incorporation of development goals and environmental protection. This view was expanded by the World Summit on Sustainable Development (WSSD) into the 3-pillar paradigm comprised of environmental protection, economic growth, and social development.³

Sustainable development remains a dynamic and broad-based concept with potential to engender viable synergies or trigger trade-offs, due to its innately integrative element. The paper nonetheless considers the trade-offs that interlinks the sustainability discourse in conjunction with fossil fuels use, whether they are avoidable and if not, the extent to which sustainable development concepts imbedded in regulatory mechanisms can mitigate their impacts in the oil industry. Furthermore, the concept of sustainable development has advanced to accommodate the current notions of sustainability which incorporate the idea of a “green economy”⁴ in the context of sustainable development and poverty eradication.⁵ Notions of a green economy indicate significant emphasis on the need to promote social and economic development within the carrying capacity of the environment and delink⁶ economic growth and environmental degradation via improved efficiency and sustainability.⁷ This explains the

¹ G. Carvalho, ‘Sustainable development: Is it Achievable Within the Existing International Political Economy Context?’ (2001) 9 *Sustainable Development* 61–73; H. E Daly, *Beyond Growth: The Economics of Sustainable Development* (Beacon Press: Boston, 1997).

² Principle 4 of the Rio Declaration on Environment and Development, 1992, 31 ILM 874.

³ UN Doc A/CONF.199/20.

⁴ In, Pearce, Markandya and Barbier’s, “Blueprint for a Green Economy” (1989). The term “green economy” was first adopted in their pioneering report in 1989 for the Government of the United Kingdom.

⁵ A/CONF.216/PC/6 and A/CONF.216/PC/1, See also, Principle 4 (Rio+20).

⁶ Entails dissociating the achievement of economic growth through wanton environmental exploitation.

⁷ P.K. Rao, *International Environmental Law, and Economics* (Oxford Blackwell Publishers Inc. 2002).

rationale for the expansion of the concept or its evolution into the 17 sustainable development goals and 169 targets articulated in “Transforming Our World: The 2030 Agenda for Sustainable Development”.⁸

3. Overview of The Sustainable Development Goals (SDGs)

The Sustainable Development Goals (SDGs), largely embody a more expansive and quantitative framework of goals, targets, and indicators, albeit with some goals considered by some as tenuous and capable of triggering tensions or complications that undermine environmental sustainability.⁹ Consequently, the SDGs were adopted by 193 states of the UN in 2015 as a means of articulating a global consensus spanning 15 years, to advance the aims of sustainable development. The UN essentially targets pervasive, global, environmental, economic, and social challenges by these SDGs to dissociate growth and development aspirations of states and private actors from deleterious environmental and social impacts. These 17 goals and accompanying 169 targets and 230 indicators serve to incorporate the substantive and procedural elements of sustainable development articulated in the Rio declaration and Agenda 21, albeit with modifications, by expanding the concept to accommodate the dynamics of change in environmental protection or economic and social considerations over time. Arguably, the SDGs more or less strive to articulate greater detail without obfuscating the purpose of sustainable development ingrained in Agenda 21, the Rio declaration and accompanying principles.

A summation of the SDGs include:

1. Ending poverty in all its forms everywhere.
2. Ending hunger, achieving food security, improved nutrition, and sustainable agriculture.
3. Ensuring healthy lives and well-being.
4. Inclusive, equitable, quality education and lifelong learning opportunities.
5. Gender equality and women empowerment.
6. Sustainable management of water and sanitation.
7. Affordable, reliable, sustainable, and modern energy.
8. Sustained, inclusive, and sustainable economic growth, Productive employment and decent work.
9. Building resilient infrastructure, sustainable industrialization and fostering innovation.
10. Reducing inequality within and among countries.
11. Sustainable cities and human settlements.
12. Sustainable consumption and production patterns.
13. Combating climate change and its impacts.
14. Sustainable use of the oceans, seas, and marine resources for sustainable development.
15. Sustainable use of terrestrial ecosystems, forests management, halt biodiversity loss.
16. Promote peaceful and inclusive societies for sustainable development, access to justice, effective, accountable, and inclusive institutions at all levels, and
17. Strengthen the means of implementation and revitalize the global partnership for

⁸ See, United Nations Docs. A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. Available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld> Accessed on 03 March 2021.

⁹ See, Louis J. Kotze, “The Sustainable Development Goals: An Existential Critique Alongside Three New-Millennial Analytical Paradigms” in *Sustainable Development Goals: Law, Theory, and Implementation*, edited by Duncan French, and Louis J. Kotzé, Edward Elgar, (2018).

sustainable development.¹⁰

Thus, UN member states are prompted to collaborate in applying the 2030 Agenda, to development plans to achieve holistic sustainable development.

As evident from the preceding stated goals and targets, the 17 SDGs thus mirror the core principles of sustainable development encompassing: The Integration principle, preventive/precautionary principle, sustainable use and consumption of resources, the polluter pays principle as well as equity.¹¹ These SDGs are closely interconnected with the intent that they potentially impact on each other. Thus, positive contributions and progress in a sphere or set of goals improves on other goals. Hence, efforts to achieve goals 1-6, comprising: poverty eradication, sustainable agriculture, food security, sanitation, sustainable cities, including sustainable industrialization and energy are those that ultimately trigger sustainable economic growth.

4. Sustainable Development Goals and Oil Exploitation in Nigeria: A Case of Multiple Trade-Offs and Elusive Synergies?

Ultimately, the SDGs are designed to enhance synchronisation between development goals and environmental protection. In the petroleum industry context, it is further stressed that the integration of the 17 goals articulated in the 2030 Agenda for Sustainable development remains integral for achieving a green and sustainable petroleum industry. One however acknowledges that synergies across all 17 goals though ideal, may not always be feasible and the likelihood of trade-offs remain realistic considerations in the administration of an industry as global, complex and dynamic as the petroleum industry.

Notwithstanding this limitation, global and planetary sustainability remains dependent on goals harmonization across the SDGs especially as it affects the oil industry and its ability to impair the environment via unsustainable exploitation processes. To decipher the level of congruence of Nigerian petroleum laws with SD concepts, a perusal via sustainability tinted lenses serves to ascertain their suitability for conveying the objectives of a green economy. Thus, it becomes pertinent to lay a contextual backdrop of the Nigerian oil industry scenario post 60 years of oil exploration in the Niger-Delta.

Oil exploration in Nigeria started in 1907 when the Nigerian Bitumen Corporation conducted the earliest exploratory activity.¹² Actual drilling only commenced in 1951 resulting in the discovery of non-commercial quantities of oil in 1953. Shell-BP discovered oil in commercial quantities at Oloibiri in the Niger-delta in 1956 and the first export of 847,000 tonnes of crude oil eventually occurred in 1960.¹³ More recently, the Niger-delta which has been playing host to the Nigerian petroleum industry for over 6 decades appears quite overcome by its culturally diverse and dense population, residing amidst 7,000 km of pipelines, 5,000 oil wells, over 300 oil fields, 275 flow stations, ten export terminals, 22 petroleum storage depots, numerous gas plants, petro-chemical plants and four state-owned refineries.¹⁴ Unsurprisingly, the people of

See also, SDG Indicators: Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, Report of the Inter-Agency, and Expert Group on Sustainable Development Goal Indicators (E/CN.3/2017/2).

¹¹ See, Patricia Birnie, Alan. Boyle and Catherine. Redgwel, *International law and the environment* (3rd ed. edn, Oxford: Oxford University Press 2009). Ulrich. Beyerlin and T. Marauhn, *International environmental law*, Oxford: Hart. (2011).

¹² See, J.G. Frynas, *Oil in Nigeria: Conflict and litigation between oil companies and village communities*. (2000) Vol. 1. LIT Verlag Münster.

¹³ Ibid

¹⁴ Freedom Onuoha, "Poverty, pipeline vandalization/explosion and human security. Integrating disaster management into poverty education in Nigeria (2010). See also, Freedom Onuoha, "Why the poor pay with their lives: Oil pipeline vandalization, fires and human Security in Nigeria, (2009) (3):369-389. 17.

the region are frustrated with the extensive level of environmental damage, bio-diversity loss and decades of degradation arising from oil exploitation.

Consequently, the extreme level of environmental contamination has engendered social instability, human rights violations, weak institutions which foment corruption, economic relapse, paucity of resources and is accountable for the excruciating poverty and incessant civil unrests in the region.¹⁵ In addition, whole communities have been annihilated due to fire disasters resulting from oil spills. Ultimately, the resounding clamour for urgent environmental restorative actions has become inevitable because of the deplorable living conditions prevalent in the region. Despite the existence of a few urban communities with affluent residents, a considerable fraction of the local population remains confronted with the undeniable and unattractive side-effects of crude oil exploitation. This catalogue of issues effectively constitutes collateral damage resulting from 6 decades of unsustainable patterns of oil and gas exploitation in the Niger-Delta.

Due to the foregoing supervening problems plaguing the region, the Nigerian government however sought effective measures to sustainably develop petroleum resources and address oil exploitation induced challenges in the Niger-delta by proposing oil and gas industry reforms.¹⁶ More importantly, the government's quest to mitigate the situation via comprehensive petroleum regulations and the initiation of an omnibus Petroleum Industry Act (PIA) appeared to be logical steps to achieve these reforms.¹⁷ Nevertheless, the government's sincerity or commitment to the proposed reforms have been called into question as the Petroleum Industry Bill (PIB) which was first introduced a decade ago in 2007, materialized in August 2021, as a harmonised, petroleum regulation of the Nigerian government.¹⁸ This invariably leads us to the crucial questions raised by this paper regarding the possibilities for environmental sustainability and prospects of a green petroleum industry in Nigeria via the advent of the PIA 2021.

4.1. *The Nigerian Oil and Gas Regulatory Framework: A Concise Overview*

A proper overview of the Nigerian oil and gas regulatory framework entails an acknowledgement of its jurisdictional background. The jurisdictional background is often an embodiment of the overarching rationale for the adoption of specific legal regimes and the regulatory framework for oil exploitation is no different. The Nigerian petroleum regulations are patterned after the United Kingdom (UK) regulations by virtue of the British colonial influence prevalent at the commencement of oil and gas exploratory activity in Nigeria.¹⁹ Some erstwhile regulations like the Mineral Oils Ordinance evolved into the Nigerian Petroleum Act (PA) its amendments and subsidiary legislation.²⁰ These include the Petroleum Drilling

¹⁵ Snapps, Oboreh, and Donald I. Hamilton. "Youth restiveness and industrial disruption in the Niger Delta." *American Review of Political Economy* 9, no. 1 (2011): 18.

¹⁶ Iledare, Wumi. "An appraisal of oil and gas industry reform and institutional restructuring in Nigeria." *International Association of Energy Economics*, Fourth Quarter (2008): 23-26.

¹⁷ Oyewunmi, Olabode, and Olusola J. Olujobi. "Transparency in Nigeria's Oil and Gas Industry: Is Policy Re-Engineering the Way Out?" *International Journal of Energy Economics and Policy* 6, no. 3 (2016).

¹⁸ See, <http://thenationonline.net/nigeria-loses-200b-non-passage-pib/> Accessed at 07 Jun.2021 See also, <https://dailytrust.com/nnpc-commercialised-as-senate-passes-pib> accessed 1st July 2021.

¹⁹ The Nigerian Legal System is a transplant of the UK regulations and is comprised of the Statutes of General Application, Common Law and Doctrines of Equity, statutes made before October 1, 1960, including unrepealed regulations extending to Nigeria. Laws made by the local colonial legislature also form part of Nigerian legislation. E.g. The Petroleum Ordinance of 1889. This legislation had existed before commencement of exploration, the Mineral Regulation (Oil) Ordinance of 1907 entitled only British subjects to prospect for oil. The Mineral Oils Act of 1959 thereafter repealed the Mineral Oils Ordinance of 1914. See also, J.G. Frynas, "Oil in Nigeria: Conflict and litigation between oil companies and village communities" (1999)

²⁰ See, The Nigerian Petroleum Act (PA) (1969).

Regulations for monitoring petroleum drilling operations and the Petroleum Refining Regulations which constitute the regulatory parameters for petroleum refining operations in the oil industry).²¹

The Nigerian Petroleum Act, though reminiscent of the UK Petroleum Act was unfortunately deficit in the commensurate network of extensive environmental guidelines associated thereunder. Prior to the passing and signing of the PIA,²² it constituted the primary legislation overseeing petroleum activities in Nigeria. The Associated Gas Reinjection Act (1979) likewise provided statutory basis for the control of gas flaring in Nigeria before the PIA. Each law is accountable for different but significant roles in the administration and regulation of the petroleum industry. Moreover, they establish the regulatory agencies for implementing government policies whilst optimizing compliance mechanisms towards corresponding statutes. However, the passage of the PIA 2021 renders these regulations redundant.²³

4.2. Sustainable Development Goals and the Nigerian Petroleum Regulatory Framework

A scrutiny of the Nigerian oil and gas rules now is thus relevant to determine the track record of Nigeria's oil regulations, whether adequate consideration and application of the SDGs in relation to oil exploitation are evident. In other words, the questions regarding Nigerian oil and gas regulations remain: Are there apparent synergies across the 17 SDGs and the Nigerian petroleum laws? More importantly, are the Nigerian petroleum regulations and policy compliant with specific environmental goals represented in the SDGs? For instance, do Nigerian petroleum regulations effectively engender: goal 13 affecting climate action, goal 14 (aquatic system protection), as well as goal 15 (terrestrial ecosystems / bio-diversity protection) including their associated targets? Are the rules realistic and capable of optimizing the social development pillar as well as ensuring green economic growth or is the current Nigerian scenario a case of zero synergies and excessive trade-offs? In view of these foregoing issues, Nigeria's efforts at securing all three pillars of the sustainable development paradigm are thus considered in the proceeding sections, commencing with the environmental protection pillar, followed by the economic growth and social development pillars.

4.3. Environmental Protection Guidelines in Nigerian Petroleum laws

In addressing the preceding issues, a state's cognisance, adoption, and implementation of international environmental treaties as policy instruments to optimize SDGs during oil exploitation becomes relevant. Apparently, Nigeria's willingness to commit to environmental goals may be inferred from the considerable number of international legal instruments to which it is party. Pertinent treaties or instruments from the oil industry context include: The 1992 United Nations Framework Convention on Climate Change (UNFCCC) and its accompanying Protocols, the 1995 Amendment to the Montreal Protocol on Substances that deplete the Ozone Layer²⁴, International Convention on Oil Pollution Preparedness, Response and Cooperation of 1992²⁵, Convention on Biological Diversity²⁶ and a host of others that foster the aims of sustainable development in the petroleum industry.²⁷ This section thus considers the extent to

²¹ The Petroleum Drilling and Petroleum Refining Regulations were also enacted in 1969 as subsidiary legislation to the Petroleum Act of 1969.

²² See, Wole Obayomi "President signs the Petroleum Industry Bill, 2021 into law KPMG NG Tax Alert: Issue No. 8.2 | August 2021"

²³ Discussed in greater detail in the proceeding sections.

²⁴ Nigeria signed this Protocol on the 10th of April 1996

²⁵ Nigeria became a signatory on the 27th of November 1994

²⁶ See UNCED (1992), Nigeria also signed this Convention in November 1994

²⁷ Other Environmentally protective treaties which Nigeria is signatory to include, the UN Convention on the Law of the Sea the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) the Protocol on Substances that deplete the Ozone Layer (Montreal Protocol) the Convention for the Protection of the Ozone

which these international environmental treaties have influenced oil exploitation in Nigeria. Further attention is given to the successes or failings of the Nigerian attempts at inter-linking the SDGs, achieving sustainable development and a green petroleum industry via environmental regulations.

It is further clarified that the underlying foundation of environmental law and policy in Nigeria is traceable to Section 20 of the Nigerian Constitution which stipulates the provisions for: environmental protection, preservation of water, air, land, forests and wildlife in Nigeria.²⁸ The associated regulations also impact on oil industry operations in the areas relating to habitat protection and waste management comprising: the Environmental Impact Assessment Act of 1992 (EIA Act), the National Oil Spills Detection and Response Agency Act, (NOSDRA),²⁹ which provides statutory backing for the agency of the Federal Ministry of Environment to optimize oil pollution controls. The Agency is empowered to tackle preparedness, detection, and response to all oil spillages in Nigeria.³⁰ Similarly, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)³¹ as codified by the DPR, pursuant to the Petroleum Act of 1969 crucially provides regulatory and compliance guidelines to secure performance of environmental objectives during petroleum exploitation. In the same vein, the Petroleum Act's environmentally relevant aspect is hinged on the fact that it provides a nominal framework for the observation of safety procedures, health guidelines and pollution prevention during petroleum operations.³² Indeed, S.9. (1) of the PA stipulates that.

“The Minister may make regulations prescribing anything requiring to be prescribed for the purposes of this Act; by providing generally for matters relating to ..., the safe working, the conservation of petroleum resources, the prevention of pollution of water courses and the atmosphere....”³³

Although these provisions seem to lend environmental support during oil exploration, they are however vague, prone to subjective interpretation and difficult to enforce. A further perusal of S.9 of the PA indicates a recommendation for the Minister to make regulations for oil pollution prevention.³⁴ Though well-meaning provisions, they lack specific guidelines for effective implementation or enforcement. This is because it relies heavily on excessive discretion of the minister who is not obliged to make specific regulations that would guarantee environmental protection. This has resulted in the claims that the PA has been partly responsible for the poor environmental state of the Niger-delta, as the regulations lacked clear or comprehensive environmental guidelines and proffer minimal standards.³⁵

Furthermore, the provisions relating to the grant of oil prospecting license and oil mining leases under the Act, wherein license holders must relinquish portions of the lease after ten years, exacerbate this issue of inadequate and unclear environmental guidelines conferred by the

Layer (Vienna Convention) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage the Convention on the Conservation of Migratory Species of Wild Animals, etc

²⁸ See S.20 Federal Republican Constitution of Nigerian 1999.

²⁹ See Section 5, 6 & 7 National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act, CAP 157 LFN 2006

³⁰ Section 1, NOSDRA (Establishment) Act, CAP N157, LFN 2006.

³¹ EGASPIN (1991) as amended in 2002

³² See, S.9, Petroleum Act 1969.

³³ Ibid

³⁴ See, Section 9 (1)(b)(iii)

³⁵ Lawrence Atsegbua, “Acquisition of Oil Rights under Contractual Joint Ventures in Nigeria.” (1993) Journal of African Law, 37, pp 10-29. doi:10.1017/S0021855300011086.

PA.³⁶ S.12 of the PA inadvertently served to attenuate environmental goals by engendering trade-offs which expedite the exploitation process for economic growth, but impinge on environmental protection and sustainable production goals as the oil companies are less keen to remediate oil-impacted sites before decommissioning. This is obviously in a bid to exploit the utmost gains from their leases and investments, thereby culminating in a severely degraded Niger-delta.

Apparently, the PA mostly reproduced the provisions of the colonial legislation albeit in a different title and did little to improve on the limitations of the erstwhile regulation. This substantiates why the PA was criticised as an environmentally lacking legislation, having scant provisions against water, atmosphere and land pollution and fails to optimize goals and targets across goals 6, 13, 14 and 15. The PA was further constrained in its scope of enforcement and failed to provide comprehensive environmentally protective guidelines regarding habitats or species preservation during petroleum exploitation. Ultimately, the now repealed PA was considerably weak and incapable of triggering or driving synergies across the SDGs to engender a green oil industry in Nigeria, it required reforms to guarantee its relevance as a tool of environmental sustainability in the Nigerian petroleum industry. These gaps eventually triggered the call for reforms that finally birthed the PIA in 2021.

5. The Petroleum Industry Act (PIA) 2021

The PIA is a new statute in the corpus of Nigerian laws, which has indeed for 2 decades, been a strongly contested, topical issue in contemporary Nigerian oil industry discourse. It is expedient to accord this statute some attention as it could hopefully become a game-changer in the quest towards environmental and oil industry sustainability in Nigeria. It is necessary to assess the sustainability quotient of the legislation and determine its capacity to deliver on the target indicators of the SDGs. Further attention is accorded to the extent to which this PIA compares to international standards and SDGs inclination towards a greener petroleum industry. This section therefore clarifies the degree to which this new framework can improve on the previous petroleum regulations for a possible rescue of the Nigerian petroleum industry, including the Niger-Delta which forms the epicentre of oil production, from further collapse. The question whether the PIA can hopefully provoke a rejuvenation and greening of the oil industry in line with the aims and norms of sustainable development, is also considered.

5.1. *The Petroleum Industry Act (PIA) 2021: Advent, Evolution and Trajectory*

The PIA journey commenced at the 6th National Assembly in April of 2000 when the President Olusegun Obasanjo administration authorised and established the Oil and Gas Committee (OGIC) to conduct and undertake oil industry reforms. The outcome of that endeavour was a National Oil and Gas Policy Report which was submitted in 2004. The Report was subsequently approved by the President Musa Y'ardua administration in 2007, presented to the Senate in 2008 but not much was achieved. The 7th National Assembly thereafter proceeded to tackle the nagging issue of oil industry reforms but also prevaricated and stalled until the last minute, unfortunately the laudable mission of oil industry reforms remained unaccomplished. The 8th National Assembly did not fare much better as controversies over varied or multiple versions of the bill including fierce politicking marred and truncated the process.

Moreover, based on a recommendation for the splitting of the PIA³⁷ into 4 major areas, by the Minister of State for Petroleum at the time, Dr. Ibe Kachikwu, all that could be achieved was

³⁶ See, S. 12. (1) Of the Petroleum Act which provides; "Ten years after the grant of an oil mining lease, one half of the area of the lease shall be relinquished. (2) Paragraph 18 of this Schedule shall apply to the relinquished area".

³⁷ David Thomas, "What You Need to Know About Nigeria's Petroleum Industry Bill" African Business, 7th July 2021.

Available at: <https://african.business/2021/07/energy-resources/what-you-need-to-know-about-nigerias-petroleum-industry-bill/>

a nomenclature change and the passage of a section of the Bill denoted as Petroleum Industry Governance Bill (PIGB), in 2018. The PIA was thus subdivided into 4 tranches by the 8th National Assembly to expedite the passage process by negotiating contentious areas whilst accelerating uncontroversial aspects of the bill. The Bill was thus successfully compartmentalized into 4 major sections comprising of: Governance, Petroleum Industry Governance Bill (PIGB), Administration, Petroleum Industry Administration Bill (PIAB), Fiscal, Petroleum Industry Fiscal Bill (PIFB) and Host communities, Petroleum Industry Host Communities Bill (PIHCB).³⁸ The 9th National Assembly submitted the PIGB to the President Buhari administration in July 2018 and after an interval it was re-modelled and reappeared as an executive bill which was harmonized and passed by the National Assembly in July 2021.

The PIA journey eventually culminated in the President signing the legislation as Petroleum Industry Act on the 16th of August 2021.³⁹ Ultimately, the PIA from varied observations and struggles over the years appears to have consistently failed to surmount challenges bordering on vacuous or vague ownership status, perceived lack of consensus between the legislative and executive arms, considered uncompetitive by investor stakeholders, contentions between the International Oil Companies (IOCs) and government over fiscal terms, frontier exploration, host communities' settlements, minister's powers and a perceived whittling down of presidential powers.⁴⁰

5.2. Overview of the Petroleum Industry Act 2021

The PIA is an omnibus regulation expected to optimize oil and gas exploration and production via a framework that tackles all relevant aspects of oil and gas production in accordance with the sustainable development paradigm. It is thus expected to repeal extant oil and gas legislation such as the Associated Gas Reinjection Act, 2004, Hydrocarbon Oil Refineries Act, etc.⁴¹ The PIA purports to establish efficient and effective governing institutions, with clear and separate roles for the petroleum industry; create a framework for a commercially oriented and profit-driven national petroleum company which can promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria; and to foster a business environment conducive for petroleum operations.

A cursory glance at the Act as perceivable from the long title, reveals a failure to signify any allusion to the environmental protection pillar of the sustainable development paradigm, whereas both fiscal/host communities which are suggestive of the economic growth and social pillars are prima facie acknowledged. The long title of the Act reads:

“...AN ACT TO PROVIDE LEGAL, GOVERNANCE, REGULATORY AND FISCAL FRAMEWORK FOR THE NIGERIAN PETROLEUM INDUSTRY, THE DEVELOPMENT OF HOST COMMUNITIES AND FOR

³⁸ See, Ola Victor & Azubuike Amadi, Review of Nigeria's Petroleum Industry Bill (PIB), February 2021 European Journal of Engineering Research and Science 5(9):1081DOI: 10.24018/ejers.2020.5.9.2109

³⁹ See, Cable News, “Buhari Signs Petroleum Industry Bill into Law” 16th August 2021. Available at: <https://www.thecable.ng/breaking-buhari-signs-petroleum-industry-bill-into-law> Accessed at 20/08/2021

⁴⁰ See, “Giving Life to the PIA” Headlines captioned in This Day Newspapers, 4th July 2021. Available at: <https://www.thisdaylive.com/index.php/2021/07/04/giving-life-to-PIA/>

⁴¹ Other affected Regulations include No. 17 of 1965, Nigerian National Petroleum Corporation (Projects) Act No. 94 of 1993, Nigerian National Petroleum Corporation Act (NNPC) 1977 No. 33 CAP N123 Laws of the Federation of Nigeria as amended, Petroleum Products Pricing Regulatory Agency (Establishment) Act 2003; Petroleum Profit Tax Act Cap P13 LFN 2004, and Deep Offshore and Inland Basin Production Sharing Contract Act 2019, as amended.

RELATED MATTERS ENACTED BY THE National Assembly of the Federal Republic of Nigeria as follows”-

This omission of the “environment” ironically forms the crux of issues on any discourse relating to the Niger-Delta in a petroleum industry context on most global spheres or platforms. Also, as evident from the notoriously oil-polluted Niger-delta region, the most negatively impacted aspect of the Nigerian oil industry appears to be the environmental pillar. It remains the weakest and most neglected link of the SD paradigm in Nigeria. Regrettably, this situation may likely persist going by the title of the PIA 2021. At the risk of being rather precipitous, this long title already portends a potential subjugation of environmental objectives in favour of economic gains as has been the case for over 60 years of oil exploitation in Nigeria and more specifically the Niger-Delta. Ultimately, an issue as crucial as environmental protection appears trivialized and subsumed under the “related matters” category.

Notably, the PIA is divided into 5 chapters, 319 sections and 8 schedules. The Act essentially redefines ministerial powers, appoints two corporate regulators, namely, “the Commission”⁴² and “the Authority”⁴³ including creation of NNPC Limited to take over the assets and liabilities of the NNPC.⁴⁴ The PIA also proposes voluntary migration to IJV’s,⁴⁵ acreage management, competitive bid prices, decommissioning and environmental remediation funds. It further redefines government participation, 3rd party access to facilities and pipelines, frontier exploration incentives, significant gas discoveries, abolition of gas flaring,⁴⁶ conduction of a needs assessment and community development plans,⁴⁷ petroleum host communities fund (with the expansion of host community to include areas traversed by pipelines),⁴⁸ regulators are also appointed for upstream, midstream, and downstream oil sectors amongst others.

The PIA authorizes a wide variety of petroleum contracts arrangements including Concession Agreements, Production Sharing Contracts (PSC),⁴⁹ Profit Sharing Contract, Risk Service Contract, or any accepted International Petroleum Arrangement to be signed directly with the Commission. The NNPC will no longer play the role of concessionaire under the PSC scheme. Fiscal regimes are also modified and are replaced by a Dual Tax Structure - National Hydrocarbon Tax (NHT)⁵⁰ and Companies Income Tax (CIT), there is also Dual Royalty, with the aim of reduced fiscal burden on Frontier and Inland Basins, marginal and small fields.

Furthermore, the PIA in S. 1. Part 1 of Cap 1 vests ownership of petroleum within Nigeria and its territorial waters, continental shelf, and Exclusive Economic Zone in the federal government of Nigeria. This is likewise a retention of the provisions of the Petroleum Act.⁵¹ S.2 provides for the objectives of the act to: (a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry; (b) establish a framework for the creation of a commercially oriented and profit-driven national petroleum company; (c) promote transparency, good governance and accountability in the administration of the petroleum

⁴² See Chapter 1, Part III, Petroleum Industry Act. Designates the Commission as a Corporate body and Regulator of Upstream Oil and Gas operations.

⁴³ See Chapter 1, Part IV of the Petroleum Industry Act which designates the “Authority” as a corporate body and Regulator of midstream and downstream oil and gas activities.

⁴⁴ See, Chapter 1, Part V of the PIA which defines the roles and functions of NNPC Ltd.

⁴⁵ See Chapter 2, Part II, of the Petroleum Industry Act, SS 68,69 on Acreages and Grid System.

⁴⁶ See, Chapter II, Part II, Ss. 104-107, Petroleum Industry Act (PIA).

⁴⁷ See Chapter 3, ss. 234-257, providing for Host Communities Development.

⁴⁸ Ibid.

⁴⁹ See Chapter 4, Part II, Ss. 260-266 of the Petroleum Industry Act. Addressing the Petroleum Industry Fiscal Framework.

⁵⁰ Ibid

⁵¹ S.1, Petroleum Act, (Chapter 350 LFN 1990) Laws of the Federation of Nigeria

resources of Nigeria; and (d) foster a business environment conducive for petroleum operations.

The PIA in S. 3. provides an outline of the powers of the petroleum minister, to

- 1(a) formulate, monitor, and administer government policy in the petroleum industry;
- 1(b) exercise general supervision over the affairs and operations of the petroleum industry in accordance with the provisions of this Act;
- (c) report developments in the petroleum industry to the government;
- (d) represent Nigeria at international organisations on petroleum matters;
- (e) promote an enabling environment for investment in the Nigerian petroleum industry;
- (f) negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the Government; including to grant and award petroleum licences on recommendations of the commission.

The PIA thus retains the expansive powers of the petroleum minister as deducible in comparison with prior petroleum regulations. However, it is reiterated that the core problems of unrestrained executive fiat and abuse of powers, which institutionalize maladministration that results in poor environmental governance and underdevelopment in the petroleum industry can in the long run, only be forestalled by efficient oversight and vigilant monitoring by other arms of government as well as a citizenry that holds their government accountable.

6. The PIA and all 3 Pillars of the Sustainable Development Paradigm.

As earlier canvassed, sustainable development of the petroleum industry and a green economy is only possible when the strategic targets and indicators of sustainable development as encapsulated in the sustainable development goals (SDGs) are aggressively complied with. Thus, a precautionary approach targeting environmental protection, economic development and social development are the pathways for any oil producing state, especially petro-reliant states to emerge from the mire of underdevelopment and petro-curse limitations to achieve a green economy in the context of sustainable development. It is hereby reiterated that good governance underscores the crucial relevance of law and regulatory enforcement to expedite oil industry reforms in driving the sustainable development agenda forward. This of course forms the backdrop for the consideration of the PIA, to decipher the palpable strengths or weaknesses evident in its formulation that could be a boost or antithetical to sustainable development in the Nigerian petroleum industry.

6.1. *The PIA and the Environmental Protection Pillar*

The PIA hopes to tackle environmental protection via its provisions made in Chapter 2, Part II, S.102 of the Act. S.102 provides for environmental management. It comprises of 7 sub-sections, targeting the submission for approvals, an environmental management plan in respect of projects which require environmental impact. assessment to the Commission. The applicant for a petroleum lease or license is thus required to show capacity or has provided for the capacity to rehabilitate and manage negative impacts on the environment. An also important, the Act in S.102 (7) prohibits the use of chemicals in upstream petroleum operations, except via a permits and approvals process. However, a similar protection is unfortunately not extended to the midstream and downstream operations.

Furthermore, S.103 (1-6) of the PIA provides for Financial Contributions towards an Environmental Fund, while S.104 (1-3) tackles Gas Flaring Penalties, with S.105 granting exceptions to the ban on gas flaring and venting. It is pointed out that, commendable aspects of the environmental provisions include this creation of a fund for environmental remediation.

This could be immensely helpful in the event of pollution arising out of oil and gas production activities, as it aims to expedite prompt rehabilitation efforts. It is however herein clarified that this is not a sufficiently anticipatory or precautionary enviro-protective measure as it does not aim to forestall pollution from arising in the first instance. It is ultimately a reactive or responsive measure, indicating considerable tolerance for oil pollution damage, and thus falls short of global best standards.

Moreover, the PIA, apart from replicating the problematic Associated Gas Reinjection Act and its obsolete provisions, goes a step further to mandate the setting up of metering equipment to ascertain the amount of discharged gas for fiscal penalties. The obvious intent is therefore tilted towards economic gains rather than environmental protection. In the same vein, S.101 of the PIA which provides for environmental damage, is completely oblivious of the need for biodiversity protection as an essential aspect of the environmental protection pillar of sustainable development. The PIA unfortunately replicates the antiquated provisions of compensation for removal or disruption of only sacred or venerated objects, economic trees, private property, or public spaces such as markets and cemeteries.⁵² This harmonised PIA of July 2021, is indeed still a long way off global acceptable standards where eco-system preservation is concerned. Evidently, the challenges of a paucity and glaring inadequacy of environmental protection guidelines and provisions, as previously stressed remains a sad reality in the PIA. As a result, the possibility of a greener oil producing environment cannot be guaranteed, as earlier limitations of prior regulations appear not to have been surmounted.

6.2. The PIA and the Economic Growth Pillar

Regarding a green economy in the context of sustainable development of the Nigerian oil industry, we examine the PIA and the extent of its capacity to deliver on the economic growth objectives of the SD paradigm. It is worth noting that the PIA provisions affecting economic and fiscal targets appear to be the most expansive set of rules, unlike the environmental protection regulations. The PIA by virtue of Chapter IV, articulates rules denoted as the Petroleum Industry Fiscal Framework. The Chapter comprises of 11 parts, (Parts I-IX). Part 1, S. 258 defines the objectives while, S.259 outlines its administration. Part II, Ss. 260-262, maps out the tax and fiscal modalities designated as Hydrocarbon tax, while 263-268 clarifies Assessable profits and chargeable tax under the Act. Part VI, Ss.277-287, provides for Accounting, Records, Tax computations, call for records, etc. Part IX tackles offences and penalties under the Act, while Part X, S.302 imposes a requirement for oil industry operators to pay companies income tax. Finally, Part XI, SS. 304-306, provides for, regulations, rules, forms, fiscal stabilization, and royalties.

The fiscal framework is proposed to set a backdrop for a stable economic environment to boost investment in the Nigerian petroleum industry, by affording clarity of objectives. The essence is to secure and enhance petroleum resource revenues for economic growth whilst creating platforms for fair returns on petroleum investments. Thus, the Federal Inland Revenue Service (FIRS), targets a Hydrocarbon Tax of 15% - 30% on profits from crude oil production, while the Company's income tax (CIT) aims at 30% tax and a projected Education Tax of 2%. The Commission is likewise entitled to collect rents, royalties, and production shares as relevant, while the Authority imposes a gas flare penalty from midstream operations. Delayed tax returns will incur fines accruing to N10m on the first day and N2m for each subsequent day the failure persists. A N20m fine applies to offenses, in cases where no penalty is prescribed.

Moreover, a cost price ratio restriction, pegged at 65% of the gross revenues is mandated for hydrocarbon tax deduction purposes. Further or surplus costs incurred may be carried forward.

⁵² See S.101(2) of the Petroleum Industry Act (2021)

Prescribed royalties are payable at the rates of 15% for onshore areas, 12.5% for shallow water, and 7.5% for deep offshore and frontier basins, 2.5% - 5% for natural gas. Also, a price-based royalty ranging from 0% - 10% is accruable and made payable to the Nigerian Sovereign Investment Authority. Gas utilisation incentive applies to midstream petroleum operations and large-scale gas consumption industries. An additional 5-years tax holiday will be granted to investors in gas pipelines.

6.3. *The PIA and the Social Development Pillar*

This section considers the PIA and its capacity to optimize the social development pillar of the sustainable development paradigm. The PIA in Chapter 3 provides for Host Communities Development. S.234 clarifies the Objectives, S.235 incorporates the Host Communities Development Trust. Ss. 239-244 indicates the objectives of the fund, the sources of funding, the Fund's allocation, while S.251 which appears to be a crucial social development strategy, simulating the essence of a human or social impact assessment, mandates a Host Communities Needs Assessment. In the same vein, S.252, stipulates a Host Communities Development Plan to be provided by petroleum industry operators before commencement of petroleum activities.

Thus, oil companies granted oil leases or Joint venture (JV) operators are required to contribute 3% to 5% for (upstream Companies) and 2% (other relevant companies) of their operating expenditure to the Host Communities Development Trust Fund. This is in addition to the existing contribution of 3% to the NDDC. The Fund is tax exempt, and any contributions payable is tax deductible. The designated funds are earmarked as 75% for capital projects, 20% as reserve and 5% for administrative expenses. However, a community stands to forfeit the cost of repairs in the event of vandalism, sabotage, and other civil unrest with resultant damage to petroleum facilities or disruption of production activities.

The above provisions are apparently more progressive than previous oil and gas regulations, in terms of social development and inclusion for oil producing host communities. Although earlier issues relating to provisions that undermine access to justice still persist. For instance, S101(3) retains the vacuous provision of the highly subjective "fair and adequate" compensation clause. Even though it is hoped that the slim possibility of independent assessors for claims assessment may ameliorate the problem, the fact that the Commission reserves the right to determine the amount of compensation payable, already raises doubts.

Moreover, S.101(2) again vests jurisdiction for environmental damage and ensuing social disruption from petroleum exploitation activities on the Federal High Court. Having also earlier clarified the grave challenges and dismal impact oil devastated environments can cause to the poor and largely indigent folk who often suffer loss of livelihoods and habitats as a result, the protracted nature of the Federal High Court judicial processes would appear counter-productive to social development and empowerment of the host communities. This is because the cost and time implications of such judicial procedures prove exhausting. All too often, some of these claimants eventually do not outlive the judicial process for compensation and rehabilitation.

Nevertheless, the PIA does allow provisions for entry of third parties for facilities inspections. Also, the establishment of the Host Communities Development Fund remains a laudable provision. This is because it deliberately acknowledges the need for contributions to the sources of petro-wealth for necessary restoration and reintegration. It is however clarified that, instituting safeguards to secure community interests, proper management and dispensing of the Fund for community development efforts, is ultimately what can translate into viable launchpads for sustainable development of the petroleum industry, oil producing areas and indeed the Niger-Delta, which is at the core of the Nigerian oil industry discourse.

7. Conclusion

This paper has scrutinized the SDGs to determine their efficacy for operationalizing the sustainable development agenda in a petro-rich state like Nigeria. In this vein, the paper identifies how well the Nigerian petroleum regulations as embodied by the new Petroleum Industry Act 2021 has struck a suitable balance between legitimate interests affecting the sustainable development (SD) paradigm and petroleum production to engender synergies and SD goals optimization.

Whilst considering that Nigeria is inexorably caught in the race towards development and poverty eradication amidst looming threats of a carbon redundant future, especially after the pervasive effects of the Covid-19 pandemic, the PIA 2021 as the Nigerian response to environmental protection and the Niger-Delta eco-dilemma leaves a lot to be desired. This is because, ineffectual, vacuous, and nebulous environmental regulations or absent compliance rules and mechanisms as deducible from the PIA can only attenuate environmental sustainability goals in oil industry regulations. Regrettably, this newly passed statute, (PIA) 2021 still has a considerable distance to cover in terms of securing the environmental protection pillar of the SD paradigm.