ANALYSIS OF ENVIRONMENTAL LAWS IN NIGERIA

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Executive Summary

Nigeria possesses a comprehensive body of environmental laws, including the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, the Environmental Impact Assessment (EIA) Act, and specific legislation addressing areas such as oil spills, hazardous waste, and pollution. These laws, often influenced by international treaties and conventions, are designed to protect the country's diverse ecosystems and promote sustainable development. However, despite this robust legal framework, the effectiveness of these laws remains limited. This analysis reveals that while the existence of these laws is a positive step, their implementation and enforcement are severely hampered by a combination of systemic issues. These challenges include weak institutional frameworks, inadequate funding, corruption, and a lack of political will; thus, these gaps or legal loopholes enable polluters to escape accountability. Consequently, environmental degradation, particularly in resource-rich regions like the Niger Delta, persists unabated. This paper examines these issues in detail, highlighting the apathetic gaps in these laws, including enforcement, inadequate penalties, and judicial limitations that contribute to the current state of affairs. It concludes with a forward-looking perspective, outlining a series of recommendations and prospects for reform that could transform Nigeria's environmental governance and foster genuine sustainable development.

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Introduction

1.1 Background of Environmental Laws in Nigeria

The environmental history of Nigeria, unfortunately, is not a story filled with the rich, biodiverse tropical rainforests of the Niger Delta or the cascading vegetation of the Sahel Savanna but rather one marred by bloodshed, exploitation, pollution, death, destruction, and devastation. No agency in Nigeria was saddled with the task of policing the environment; environmental concerns were not a priority until after the discovery in 1988 of toxic wastes that were dumped in Koko, a town in Delta State, Nigeria, following an incident where an Italian ship illegally dumped hazardous waste in a small port town in Delta State. The public outcry and international attention that this incident generated forced the Nigerian government to take decisive action. Before then, Nigeria responded to most environmental problems on an ad hoc basis, with citizens largely bearing the weight of impacts and responses. The Koko incident awakened the nation to the need for planned and coordinated action and led to the promulgation of the Harmful Waste (Special Criminal Provisions) Decree No. 42 of 1988 and, more significantly, the creation of the Federal Environmental Protection Agency (FEPA) through Decree No. 58 of 1988. The agency was charged with the administration and enforcement of environmental laws.

FEPA marked the first time a national agency was specifically established to protect the environment. It was given the power to formulate and enforce environmental standards, and its creation is considered the beginning of modern environmental regulation in Nigeria.

In 1999, with the return to democratic rule, FEPA was transformed into the Federal Ministry of Environment (FMENV) to provide a more holistic approach to environmental policy. The ministry serves as the apex body for environmental matters in the country. In 2007, the National Environmental Standards and Regulations Enforcement Agency (NESREA) was established to replace FEPA's regulatory functions. NESREA is now the primary agency responsible for enforcing environmental laws, standards, and regulations across Nigeria.

Over the years, from 1988 to the present day, as Nigeria has grown in population, economy, and politically, it has developed different environmental laws suitable for different sectors, including the Constitution of the Federal Republic of Nigeria (1999). While not a dedicated environmental law, it provides a foundational framework, with provisions that can be interpreted to support environmental protection, such as the right to a clean and healthy environment. Also, the Environmental Impact Assessment (EIA) Act (1992), which makes it mandatory for both public and private projects that may have a significant impact on the environment to undergo a detailed environmental impact assessment before commencement. The Harmful Waste (Special Criminal Provisions) Act (1988) prohibits the illegal transportation, deposit, and dumping of hazardous waste in Nigeria and prescribes severe penalties for offenders. The Petroleum Industry Act regulates the oil and gas sector, including provisions related to environmental protection and pollution control. The Climate Change Act (2021) provides a legal framework for Nigeria's climate change response, setting targets for reducing greenhouse gas emissions and promoting a low-carbon economy.

Despite all these laws, it, however, seems that our environmental problems and challenges have grown as well. Indeed, you will find as many environmental problems and challenges as you care to name. Some of these challenges include deforestation, illegal logging, bush burning, overgrasing, desertification, industrial pollution, chemical pollution, oil pollution—including oil spills, toxic wastes, and gas flaring, environmental degradation due to laxly regulated mining activities, solid waste management, medical wastes, electronic wastes, plastics, erosion—gully, coastal, etc., floods, and droughts as most of our cities lack drainage plans and rural communities are at the mercy of the elements.

1.2 Problem Statement

Environmental degradation caused by industrial activities and the unhealthy habits of individuals is evidenced in water, air, and noise pollution, as well as the misuse of land and other natural resources. Specifically, some of these environmental problems include climate change, improper waste disposal, especially into water bodies, depletion of natural forest resources, oil pollution, and the rapid growth of unplanned urbanisation in coastal areas, among others. These problems pose significant harm to the ecosystem and,

more directly, affect human health and well-being. For years now, Nigeria has enacted various environmental laws, like the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, the Oil in Navigable Waters Act, and the Environmental Impact Assessment Act, to regulate activities contributing to environmental degradation and to mitigate its impact on the Nigerian environment. This is due to the non-justifiable right to a healthy or sustainable environment under the Nigerian Constitution. The Federal Ministry of Environment, together with other agencies like the National Environmental Standards and Regulations Enforcement Agency (NESREA) and the National Oil Spillage Detection and Response Agency (NOSDRA), has also been established to enforce environmental laws and ensure environmental protection. The current state of the Nigerian environment, however, does not reflect the potency of these laws and institutions. It is on this basis that this essay seeks to evaluate the contributions of these laws in fostering a sustainable environment in Nigeria, examining their shortcomings and suggesting solutions that can improve their productivity, helping to achieve a sustainable environment.

1.3 Objective of the study

The main purpose of this work is to analyse various environmental laws in achieving a sustainable environment in Nigeria. The objectives are to:

i. Examine Nigerian environmental laws
ii. Review the shortcomings of these laws in protecting the environment
iii. Propose viable remedies that address the inefficiencies of the current legal frameworks and foster sustainable development in Nigeria.

1.4 Scope of the Study

The scope of the study is to analyse the main environmental legislation, including but not limited to: The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007; The Environmental Impact Assessment (EIA) Act, 1992; The National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006; The Harmful Waste (Special Criminal Provisions, etc.) Act, and relevant provisions of the 1999 Constitution of the

Federal Republic of Nigeria. The study will investigate the laws while analysing their mandates, gaps, and challenges that affect the efficiency and efficacy of these laws.

1.5 Methodology

A doctrinal research approach for legal analysis involving a systematic review of primary legal sources (statutes, regulations, case law) and secondary sources (academic articles, reports, books).

1.6 Clarification of Key Concepts

a. **Environment:** While the term 'environment' is not a legal concept, it shares a common feature of legal concepts by not having a definite definition. The exact definition of the environment is not contained in any of the major treaties, declarations and statutes, which has made it necessary for many scholars to attempt defining the term. According to *Black's Law Dictionary*,[1] the environment is

> "our surroundings, especially material and spiritual influences which affect the growth, development and existence of a living being".

This definition is emphasised in the preamble of the Report of the UN Conference on Human Development and Environment, Stockholm, 1972[2] , which asserts that man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Bell[3] , however, criticises this definition of the environment as too wide and subjective because it takes into account any object present in a particular surrounding.

According to various scientists, the environment is deemed a product of a complex ecological system in which human beings and other living and non-living organisms

[1] Minnesota: Thomson West Co., New York, 2004, 8th ed.
[2] A/CONF,48/Rev.1 (New York; 1972) 3.
[3] Stuart Bell (ed) *Bell and Ball on Environmental Law* (Black Stone Press Ltd, London 2nd edn 1991) p. 4.

coexist. John G. Rau and David C. Wooten, in their handbook *'Environmental Impact Analysis' (1980)*, also defined the environment as the whole complex of physical, social, cultural, economic and aesthetic factors which affect individuals and ultimately, determine their form, character, relationship and survival.

Far and wide, in defining the concept 'environment', one cannot turn a blind eye to the interwoven relationship between man and the natural environment, and the quest to secure a harmonious relationship between them.

b. **Environmental Laws:** According to Amokaye Oludayo G,[4] environmental laws are a body of rules, both from the national and international perspectives, for the sustainable utilisation of resources for the social and economic development of society. This definition encompasses both national laws and policies and International laws[5] , which are primarily created to protect and conserve the environment, and to regulate the sustainable use of its resources. Environmental laws are also described as a network of regulations and customary laws that address the effects of human activity on the natural environment. They are also referred to as 'Environmental and Natural Resource Laws and Centre on the Idea of Pollution'. They also work to manage specific natural resources and environmental impact assessment.[6] These laws essentially have to be created via legal processes, binding and enforceable through institutions such as regulatory agencies and the court systems, to ensure their effectiveness.

[4] Amokaye Oludayo G., *Environmental Law and Practice in Nigeria* (University of Lagos Press, Akoka, Lagos, 2004) p. 5

[5] as gotten from their various sources enshrined in Article 38(1) of the Statute of the International Court of Justice

[6] https://unity.edu/environmental-careers/what-is-the-importance-of-environmental-law/> accessed 6 May, 2021.

Challenges/Gaps in Nigeria's Environmental Legislation

Things can be done in excess where there are no rules and regulations; that is why environmental laws are put in place to alleviate the threatening environmental problems that ensue from human activities in the pursuit of economic growth and development. The environmental laws in Nigeria crucially safeguard the country's environment, promote sustainable development, and ensure responsible development practices. These laws provide frameworks for waste management, pollution control, conservation efforts, and environmental impact assessments. These regulations are vital because they protect ecosystems, safeguard public health, and promote responsible resource management. Effective advocacy and rigorous enforcement are essential in upholding these laws. However, environmental protection has been at the forefront of legislative and administrative measures in Nigeria, and notable among these statutory laws that try to comply with international treaty obligations are:

1. The Constitution of the Federal Republic of Nigeria, 1999, as amended
2. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,
3. The National Environmental Protection (Pollution and Abatement in Industries and Facilities Generating Wastes) Regulations,
4. The Endangered Species Act.[7]
5. The Nigeria Radioactive Waste Management Regulation,
6. the National Oil Spill Detection and Response Agency (NOSDRA) Act,
7. The Nigerian Maritime Administration and Safety Agency (NIMASA) Act,
8. The National Biosafety Management Agency (NBMA) Act, 2015
9. Sea Fisheries Act,[8]
10. Territorial Waters Act.
11. Environmental Impact Assessment Act (EIA)[9],

[7] Laws of the Federation of Nigeria 2004, Cap. E9

[8] Ibid, Cap. S4

[9] Ibid, Cap. E12

12. Nuclear Safety and Radiation Protection Act,[10]
13. the Petroleum Act,[11]
14. The Climate Change Act, 2021[12].
15. Nigeria Minerals and Mining Act, 2007, which repealed the Minerals and Mining Act No. 34 of 1999
16. The Urban and Regional Planning Act
17. The Land Use Act, 1978 (now Cap. 202 L.F.N. 2004)
18. River Basins Development Authority Act, 1987 (now Cap R9 L.F.N 2004).
19. Harmful Waste (Special Criminal Provisions) Act, 1988 (cap. H1 L.F.N 2004)
20. Exclusive Economic Zone Act. Cap. E11 L.F.N. 2004
21. National Parks Service Act of 1999, as amended in 2006.
22. Factories Act, 1987 (now F1 L.F.N 2004)
23. Nigeria-Delta Development Commission (Est etc) NDDC, Act, 2000 (now cap N86, L.F.N. 2004)
24. Quarantine Act, 1926 (now Cap Q2 L.F.N. 2004)
25. Pest Control of Produce (Special Powers) Act, 1987, now cap P9 L.F.N
26. Agricultural (Control of Importation) Act, Cap A132, L.F.N 2004
27. Civil Aviation Act, 2006.
28. Animal Disease(control) Act, 1988 (now Cap A17. L.F.N. 2004)

2.1 The Constitution of the Federal Republic of Nigeria, 1999, as amended

The Constitution is the basic law, the supreme law of the nation; upon it every other legislation is based. Any legislation enacted by any legislative authority in the land, be it federal, state or local government, that is inconsistent with any provision of the Constitution shall be null and void to the extent of that inconsistency, and the provisions of the Constitution shall prevail.[13]

[10] Ibid, Cap. 142

[11] Ibid, Cap. P10

12 file:///C:/Users/DELL/AppData/Local/Temp/MicrosoftEdgeDownloads/da2be108-fd2c-429d-8320-987f148ea58e/Climate%20Change%20Act,%202021.pdf

[13] Section 1(3), CFRN, 1999 (as amended)

The Constitution could be rightly regarded as a primary environmental protection law. This is because it provides for environmental protection and sustainability in some of its sections. For instance, *Section 20* is the principal environmental provision. It mandates that

> "The State shall protect and improve the environment and safeguard the water, air, land, forest, and wildlife of Nigeria."

However, it is placed within Chapter 2 under the Fundamental Objectives and Directive Principles of State Policy, which, traditionally, the chapter is non-justiciable, meaning that these provisions guide government policy but cannot be enforced directly by the courts against the government. Regardless of this constitutional provision, Nigerian courts, notably in the Supreme Court case of *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* (2019), have interpreted Section 20 along with Section 33, which guarantees the right to life, to mean that environmental rights are fundamental to the exercise of the right to life. This means environmental degradation that threatens people's health and lives violates constitutional rights.

The Constitution divides legislative powers between the Federal Government and the States under the Exclusive and Concurrent Legislative Lists, but "environment" as a subject is not explicitly listed. The Federal Government holds dominant legislative power over many environmental matters, often leaving States with limited powers. This has created tension and challenges in decentralised environmental governance.

Challenges/Gaps in the Constitutional Provisions on Environmental Law

The 1999 Constitution of Nigeria has several key challenges and gaps regarding environmental protection and governance, which hinder environmental sustainability and the Nigerian environment as a whole. These include:

1. **Non-Justiciability of Environmental Provisions:** Section 20 of the Constitution, which imposes a duty on the state to protect and improve the environment, is found under the Fundamental Objectives and Directive Principles of State Policy.

These provisions are non-justiciable, meaning they cannot be enforced by courts through direct legal action. Citizens cannot sue the government for failing to protect the environment based solely on this constitutional obligation. Environmental harm must instead be linked to direct personal injury or property damage for legal redress, limiting broad public interest environmental litigation.

2. **Non-Explicit Constitutional Mention of 'Environment':** The Constitution does not explicitly list 'environment' in the Exclusive or Concurrent Legislative Lists, creating ambiguity about which level of government has the authority to legislate comprehensively on environmental matters. The result is a dominance of the Federal Government in environmental legislation, with states having limited autonomous powers to regulate environmental issues within their territories, even though most environmental problems are local or regional in nature.
3. **Imbalanced Federalism on Environmental Matters:** The Constitution vests exclusive legislative powers in the National Assembly over many subjects, including those related to environmental protection, indirectly through jurisdiction over resources and natural regulation. States' environmental law-making powers are circumscribed by federal laws due to the supremacy clause, where federal laws override inconsistent state laws. This centralisation limits the efficacy of environmental federalism and reduces responsiveness to environmental issues that are specific to particular states or localities.
4. **Enforcement and Institutional Weaknesses:** The Constitution's structural provisions do not robustly support effective enforcement mechanisms for environmental protection. Overlapping mandates and poor coordination between federal and state agencies weaken the enforcement of environmental laws. There is no clear constitutional directive to empower local governments on environmental management, resulting in a governance gap at the grassroots level.
5. **Restricted Rights and Access to Environmental Justice**: The constitutional framework restricts public legal standing to sue for environmental protection unless personal or property interests are directly affected. This limits the ability of communities or environmental organisations to hold governments or polluters accountable for environmental degradation affecting broader public health and welfare.

2.2 National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act, 2006[14]

Nigeria's economic lifeblood, which is its petroleum industry, has also been the source of its most persistent and devastating environmental crises. Decades of oil exploration and exploitation, primarily in the Niger Delta, have led to widespread oil spills, gas flaring, and ecosystem degradation. To address this, the Nigerian government, in line with its international obligations under the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC, 1990), established the National Oil Spill Detection and Response Agency (NOSDRA) through the NOSDRA Act of 2006.

The control of crude oil pollution in Nigeria is entrusted to the National Oil Spill Detection and Response Agency (NOSDRA). NOSDRA is an agency set up by law, and one of its duties is to prevent and quickly respond to oil spills and reduce their impacts on the environment. Despite this clear mandate, oil spills and their impacts on the Nigerian environment are on the increase.

Section 1 of the Act established NOSDRA, which refers to the agency. Some of the relevant sections of the NOSDRA Act for the protection of the environment are set out in sections 5, 6, and 7.[15] These sections place an obligation on NOSDRA as an agency to prevent and respond to oil pollution in Nigeria.[16]

Aside from Section 5 of the NOSDRA Act, which gives power to the Agency to respond to oil spills, the establishing Act of NOSDRA goes further to assign another function to the Agency. Section 1(1) states that the Agency should prepare for and detect oil spills. Section 1(1) is further reinforced by Section 6(1)(a), which states that the Agency shall be responsible for surveillance and ensuring compliance with all existing environmental

14 https://nosdra.gov.ng/wp-content/uploads/2021/03/NOSDRA-ACT.pdf

15 See the New Amended NOSDRA Act available at A 407 (fao.org)> accessed 14 November 2020

16 Onwuteaka, J., 2016. Hydrocarbon oil spill clean-up and remediation in the Niger Delta. forest, 3(2) at p13

legislation in the petroleum sector, including those relating to prevention, detection, and general management of oil spills.

Response and Coordination are NOSDRA's primary functions. The Agency is the "lead Agency for oil spill management in Nigeria" and is tasked with coordinating the implementation of the NOSCP. This involves mobilising resources, directing cleanup operations, and ensuring a "safe, timely, effective, and appropriate response" to all oil spills. In the event of a major disaster, it has the power to collaborate with other agencies and co-opt resources. NOSDRA has the power to enforce regulations, set standards, and approve technologies related to oil spill management. The Act imposes a penalty of ₦2,000,000 per day on any oil spiller who fails to report an oil spill within 24 hours. The Agency can also direct companies to undertake specific cleanup actions and approve remediation plans. NOSDRA is expected to support research and development (R&D) in the local development of methods, materials, and equipment for oil spill detection and response. This function is intended to build indigenous capacity and reduce reliance on foreign technology.

Furthermore, the Act empowers NOSDRA to investigate the causes of oil spills and assess their impact. This includes the crucial Joint Investigative Visit (JIV) process, where NOSDRA representatives of the oil company and community members are supposed to collectively determine the cause, quantity, and extent of the spill. The Agency is also responsible for conducting Post-Impact Assessments (PIAs) to evaluate the effectiveness of the cleanup and the long-term damage. Nevertheless, Section 19(b) is specific when it clearly states that the Agency shall inspect oil and gas facilities with a view to ensuring full compliance with existing environmental legislation on oil pollution. This means NOSDRA is also obligated to carry out detection and prevention functions by inspecting oil facilities to stop oil spills in the environment. This prevention duty is in line with what NOSDRA stands for, that is, the National Oil Spill Detection and Response Agency (NOSDRA). This signifies that NOSDRA is required to carry out surveillance activities to prevent an oil spill; should prevention fail, and an oil spill occurs, NOSDRA is required to respond timely and effectively to reduce damage and impacts of crude oil pollution in the environment.

In this sense, therefore, NOSDRA's key functions are summarised into prevention and response to oil spills. While the Act marked a significant step forward from a prior era of limited regulation, its practical application has revealed numerous deficiencies. This detailed analysis will dissect the roles and functions prescribed by the Act and critically examine the gaps that have hindered NOSDRA's effectiveness, ultimately contributing to the continued environmental suffering of affected communities.

Challenges/Gaps in the NOSDRA Act

Despite its seemingly robust mandate, a critical examination of the NOSDRA Act reveals several fundamental flaws that have hampered its effectiveness. These gaps are not merely administrative; they are deeply rooted in the legal and institutional design of the agency.

1. **No Penalties in the NOSDRA Act for Individual Spillers:** The Act provides that an oil spiller is required by this Act to report an oil spill to the Agency in writing no later than 24 hours after the occurrence of an oil spill, in default of which the failure to report shall attract a penalty of five hundred thousand Naira for each day of failure to report the occurrence. The failure to clean up the impacted site shall also attract a fine of one million Naira. The foregoing is the only penalty provided in the NOSDRA Act concerning environmental pollution related to oil spillage. From the wording of the Act, it appears that this penalty is intended to include the corporate or oil-producing company or tanker owner and not the individual spiller, who, for example, perforates an oil pipeline and leaves it open, thereby causing oil spillage.
2. **Community Involvement and Transparency:** The legislation does not sufficiently mandate mechanisms for community engagement, transparent operations, or oversight in spill response and compensation processes, thus leading to mistrust and disputes.
3. **Absence of a Strict Liability Clause in the Act:** Just as is obtainable in the USA, pollution in the oil and gas sector should be made a strict liability offence in Nigeria, so that it will be easier for victims of oil pollution to recover damages and compel cleanup. The NOSDRA Act does not explicitly establish a principle of strict liability for oil spills. This means that a company can escape liability for compensation and

cleanup if it can prove that a spill was caused by an 'Act of God,' 'act of war,' or 'sabotage' by a third party. While sabotage is a real issue in the Niger Delta, this provision is often exploited by oil companies to avoid responsibility, placing the burden of proof on the impoverished and technologically disadvantaged affected communities. The absence of strict liability is a major legal gap that undermines environmental justice.

4. **Delivery Gap:** NOSDRA maintains its head office in Abuja, which is far away from the oil production fields, platforms, and pipelines of the oil-producing region, where oil spills occur. Additionally, states like Bayelsa, which records the highest oil spills, have no presence of a NOSDRA office. This gap between the administrative headquarters and the field sites, along with the unnecessary bureaucracies in between, clearly affects the efficiency of NOSDRA operations. Also, the lack of NOSDRA presence in Bayelsa results in constant oil spills, therefore affecting the delivery of the task it was created to tackle.
5. **Lack of a Clear and Harmonised Compensation Framework:** The legislation and existing regulations show confusion and the absence of harmonised standards regarding oil spill compensation rates and procedures. This legislative gap has resulted in overlapping authorities, inconsistent compensation mechanisms, and issues with transparency and conflict of interest in claims assessments. The Act empowers NOSDRA to create regulations on compensation, but these remain underdeveloped, requiring amendment and clearer legislative guidance.
6. **Insufficient Funding and Operational Capacity Provision:** The Act calls for NOSDRA to have sufficient resources for spill detection and response, but it lacks explicit provisions ensuring adequate funding, equipment, and qualified personnel. This legislative gap undermines NOSDRA's ability to fulfil its mandate and makes it reliant on oil companies for key support functions. 7. Limited Staff Capacity and Training Mandates: While Sections 5(f) and 5(h) encourage staff training and research to improve spill response methods, the legislation does not robustly enforce these provisions nor ensure that NOSDRA can maintain and utilise its staff effectively

2.3 National Environmental Standards and Regulations Enforcement Agency Act, 2007.[17]

Nigeria as a nation was unable to manage serious environmental crises before the Koko incident in Delta State in 1987 because there were no institutional arrangements or mechanisms in place for environmental protection and enforcement of environmental laws and regulations in the country. In direct response to the illegal dumping incident at Koko, the Federal Government issued the Harmful Waste Decree 42 of 1988, which paved the way for the establishment of the Federal Environmental Protection Agency through Decrees 58 of 1988 and 59 (amended) of 1992. The Agency was given overall responsibilities for environmental management and protection.

The Federal Environmental Protection Agency and relevant departments from other ministries were merged into a single Federal Ministry of Environment in 1999, which was a wise decision. However, the new Ministry of Environment lacked the necessary legislation to ensure enforcement. Leaving a gap in the country's effective oversight of environmental laws, standards, and regulations.

To close this gap, the Federal Government established the National Environmental Standards and Regulations Enforcement Agency, a parastatal of the Federal Ministry of Environment, in accordance with Section 20 of the 1999 Constitution of the Federal Republic of Nigeria. The Federal Environmental Protection Agency Act, Cap F10 LFN 2004, was repealed by the National Environmental Standards and Regulations Enforcement Agency Act 2007. The National Environmental Standards and Regulations Enforcement Agency Act is the major federal legislation on the environment. The Act addresses the dominance of obsolete environmental regulations, standards and enforcement mechanisms that had previously resulted in high rates of non-compliance with environmental laws.

[17] NESREA Act No. 25 of 2007, CAP N164 LFN, 2010.

Section 1 of the Act establishes the NESREA itself. Part II of the Act contains the functions of the agency, which include enforcing compliance with laws, guidelines, policies and standards on environmental matters.[18] These environmental matters include water quality, air quality, noise control and atmospheric protection[19] and the discharge of hazardous chemicals and wastes.[20]

Section 7(c) of the Act also mandates the agency to enforce compliance with the provisions of existing and subsequent international agreements and protocols on the environment that Nigeria has ratified.

Section 8(1) (k) empowers the agency to make and review regulations on air and water quality, effluent limitations, control of harmful substances and other forms of environmental pollution and sanitation.

Section 34 of the Act empowers the Minister of Environment to make regulations that give full effect to the functions of NESREA. Various regulations, such as the National Environmental (Wetlands, River Banks and Lake Shores) Regulations, 2009,[21] the National Environmental (Sanitation and Wastes Control) Regulations, 2009[22] and the National Environmental (Ozone Layer Protection) Regulations, 2009,[23] have been created.

Challenges/Gaps in the NESREA ACT

No doubt the Act represents a major step in the right direction. However, oil pollution is specially excluded from the provisions of the Act.

[18] Section 7(a) NESREA Act.

[19] Ibid. Section 8(k).

[20] Ibid. Section 27.

[21] FRN, Abuja, Regulations No. 26 of 2009, Official Gazette, Vol. 96, No. 58 dated 2nd October, 2009.

[22] Regulations No. 28 of 2009, Vol. 96, No. 60.

[23] FRN, Abuja, Regulations No. 32 of 2009, Official Gazette, Vol. 96, No. 64 dated 13th October, 2009.

1. **Exclusion of the oil and gas sector:** The exclusion of the oil and gas sector from the functions of the Agency is uncalled for because the oil industry accounts for about 70 per cent of environmental pollution in Nigeria. The NESREA Act explicitly excludes regulatory authority over environmental issues related to the oil and gas industry, including the investigation of oil spillages. This exclusion was clarified in a 2018 amendment to avoid overlap with the National Oil Spill Detection and Response Agency (NOSDRA). However, this exclusion is a legislative gap because it limits NESREA's comprehensive environmental regulatory capacity, especially given the significant environmental harm caused by oil and gas activities in Nigeria.
2. **Enforcement Scope over International Environmental Treaties:** NESREA, the major agency for the enforcement of environmental laws, does not have enforcement powers over the oil and gas sector. As a result, NESREA does not have the power to enforce laws on matters of pollution, exploration, and exploitation of petroleum and natural gas. This hinders environmental justice. Additionally, NESREA's enforcement powers are limited to international environmental agreements that have been domesticated into Nigerian law by the National Assembly. This limits the ability of NESREA to act on international protocols or treaties that Nigeria has signed but not yet formally incorporated into national legislation.
3. **Lack of Clear Definition of Liability and Thresholds for Environmental Violations:** The Act does not specify the threshold of lawful versus unlawful environmental activities or clarify the element of mens rea (guilty mind) in environmental offences. This lack of clear legal definitions and standards makes prosecutions difficult, as many activities might be initially permitted but later exceed allowable levels of harm without clear legal recourse. There is a gap in defining criminal liability strictly on the act (actus reus) without requiring proof of mens rea for environmental violations.
4. **Limited Remedial Provisions and Focus on Prevention and Compliance:** The NESREA Act focuses more on enforcement and prevention but has less emphasis on remedial actions after environmental harm has occurred. This limits the legislative tools available for environmental restoration and compensation.

5. **Potential Legislative Duplication and Ambiguity:** The establishment of NOSDRA to handle oil spill response is seen as a duplication of functions that could be consolidated under NESREA. This creates legislative overlap and inefficiencies in environmental governance.
6. **Access to Environmental Justice Mechanisms:** The law does not provide administrative or accessible dispute-resolution processes for contesting environmental issues. It is no news that the Nigerian courts tasked with the function of interpreting the laws and resolving disputes are crowded with endless litigations, bearing on disputes that have been ongoing for several years and countless appeals to the superior courts. Needless to say, the poor condition of some courtrooms and the unhidden sighs of exhaustion of judicial officers in response to a new action being instituted by a litigant. Considering the evolutionary nature of the environment and the pace at which the environment deteriorates, the current judicial system is not capable of providing the quick responses and independent expert decisions required for environmental issues. For as long as the existing courts remain the sole body for interpreting environmental laws and adjudicating on environmental disputes, they will inevitably continue to serve as a barrier to environmental sustainability.

2.4 Environmental Impact Assessment Act[24]

The Environmental Impact Assessment Act of 1992 was promulgated to enable the prior consideration of the impact of private and public sector projects on the environment.[25] This Act thus aims at infusing environmental considerations into developing project planning and execution.[26] It is also a practical demonstration of the precautionary principle in environmental management in Nigeria.[27]

[24] CAP E12, LFN 2004.
[25] Section 2(1) of the EIA Act.
[26] Muhammed Tawfiq Ladan, "Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria", 8/1 *Law, Environment and Development Journal* (2012), p. 116, available at http://www.lead-journal.org/content/12116.pdf. Accessed 18 June, 2021.
[27] Amokaye Oludayo G., *Environmental Law and Practice in Nigeria* (University of Lagos Press, Akoka, Lagos, 2004) p. 72.

The Act requires that any entity planning a project/activity which may have an impact on the environment must prepare an environmental impact assessment report, which would set out the potential impact of the activity on the environment.

Section 2 of the EIA provides that, (1) The public or private sector of the economy shall not undertake or embark on or authorise projects or activities without prior consideration, at an early stage, of their environmental effects; (2) Where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act; (3) The criterion and procedure under this Act shall be used to determine whether an activity is likely to significantly affect the environment and is therefore subject to an environmental impact assessment; (4) All agencies, institutions (whether public or private), except if exempted pursuant to this Act, shall, before embarking on the proposed project, apply in writing to the Agency, so that subject activities can be quickly and surely identified and an environmental assessment applied as the activities are being planned. The assessment is also to include plans to prevent or mitigate the impact, as well as clean-up plans.[28] All such reports must be approved by the Federal Minister of Environment.

However, *Section 60* of the Act also provides for penalties for breach of its provisions. There are however inherent shortcomings in the provisions of the Act and in the procedures for filing an EIA report which in fact limits the effectiveness of EIA in Nigeria, thus leaving empirical evidence on the negative impacts of such shortcomings; ranging from shortage of clean water, oil pollution (as in the Niger Delta area) and a vast range of atmospheric, water and land pollution.

Challenges/Gaps in the EIA Act

The legislative gaps in Nigeria's Environmental Impact Assessment (EIA) Act, that had hindered the efficiency and efficacy of the Act, include the following:

[28] Section 4 of the EIA Act.

1. **Outdated and Weak Penalties:** The Act's enforcement provisions, notably *Section 60*, prescribe fines and imprisonment terms considered inconsequential and outdated. These penalties lack sufficient deterrence to ensure compliance and require legislative updating to impose stricter punishments for violations.
2. **Reactive and Limited Scope:** The legislation requires EIA only after a project is proposed, lacking proactive frameworks such as regional or urban development plans that evaluate alternatives or broader environmental contexts early in planning. This limits its preventive environmental protection.
3. **Poorly Drafted and Ambiguous Provisions:** Some sections of the Act are criticised for unclear or illogical language, such as requiring an assessment "on the activity" rather than "of the environment," which complicates legal interpretation and enforcement.
4. **Inadequate Public Participation Mandates:** Although public involvement is mentioned, the law lacks strong, explicit provisions to guarantee meaningful participation, timely access to environmental information, and sufficient consultation periods, undermining community engagement. Public opinion must be considered at all times, and only highly qualified arguments may serve as grounds for its refusal. However, the major drawback is that the general public in Nigeria is comparatively indifferent and poorly informed about the potential negative environmental effects, and especially the long-term impact. The training of personnel, the guidelines, and the discussions on EIA are usually in English. Quite often, the affected public is not adequately informed of the issues at hand or able to interpret the EIA reports.
5. **Weak Integration with Other Laws and Policies: The** Act lacks provisions to harmonise its application with other sectoral laws and environmental policies, resulting in potential overlaps, conflicts, and fragmentation in governance.
6. **Omission of Emerging Environmental Issues:** The legislation does not explicitly address contemporary concerns like climate change mitigation, biodiversity conservation, and ecosystem management, which are critical to modern environmental governance.
7. **No Clear Administrative Review or Access to Justice Mechanisms:** The law does not provide administrative or accessible dispute-resolution processes for

contesting EIA decisions, forcing affected parties to rely on lengthy and costly court actions.

2.5 Harmful Wastes (Special Criminal Provisions etc.) Act (Cap. H1 LFN 2004)

This law prohibits the carrying, depositing and dumping of harmful wastes on land and in territorial waters. This law was originally enacted in the aftermath of the infamous Koko toxic dump waste in 1988 by an Italian company. Before the incident, there was no such legislation in Nigeria. It thus awakened the Nigerian government to the need to be proactive in providing environmental legislation.

By *Section 1*(2) of the Act, it is a crime for any person who, without lawful authority, carries, deposits, dumps or causes to be carried, deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways; or transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or imports or causes to be imported or negotiates for the purpose of importing an harmful waste; or sells, offers for sale, buys or otherwise deals in any harmful waste. This section is the omnibus definition section of the Act.

The Act also categorised offenders under the Act. By *Section* 2, a principal offender may be the person who actually did the act or makes the omission, did or omits to do any act for the purpose of enabling or aiding another person to commit the crime, aided another person in committing the crime, or who counseled or procures any other person to commit the crime[29]of which he will be liable to the same punishment as if he had himself carried out the act or omission.[30]

Section 6 of the Act provides for a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used to commit the offence. One relevant provision of this Act is *section* 9, which provides that the immunity from prosecution conferred on

[29] S. 2(1) of Harmful Waste (Special Criminal Provisions) Act

[30] 33 S. 2(2) of Harmful Waste (Special Criminal Provisions) Act

certain persons by or under the Diplomatic Immunities and Privileges Act shall not extend to any crime committed under this Act by any of those persons. *Section 7* makes provision for the punishment accordingly of any conniving, consenting or negligent officer where the offence is committed by a company. *Section 12* defines the civil liability of any offender. As he would be liable to persons who have suffered injury as a result of his act. However, irrespective of the strict prohibition of dumping of waste and removing any immunity covering any individual who violates the act, it is difficult to find anyone or a multi-national oil company (most especially in the Niger-Delta Region) that has been convicted for the dumping of hazardous substances in the Nigerian environment.

Challenges/Gaps in the Harmful Wastes Act

Despite the strict provisions, the Act faces several practical and legal challenges:

1. **Weak Enforcement:** There have been few, if any, successful prosecutions or convictions under the Act, especially against multinational oil companies known for environmental infractions. This lack of enforcement is widely acknowledged as a serious weakness.
2. **Outdated Provisions:** Some of the Act's provisions are no longer adequate given advancements in environmental and hazardous waste management, as well as the appearance of new types of hazardous waste not explicitly covered when the law was drafted.
3. **Limited Scope:** The focus is largely on criminal sanctions rather than prevention, environmental remediation, or compensation for affected communities.
4. **Ambiguities:** Some definitions (e.g., what exactly constitutes "harmful waste") can be open to interpretation, which complicates prosecution efforts.
5. **Institutional Overlap:** Multiple agencies are involved in environmental protection in Nigeria, causing confusion over enforcement responsibilities and leading to regulatory gaps.
6. **Lack of Public Participation and Transparency:** The Act does not provide for meaningful community participation or public oversight mechanisms in enforcement proceedings.

7. **Insufficient Civil Remedies:** While the Act is strong on criminal penalties, it is weaker on civil remedies like compensating victims of harmful waste dumping and restoring polluted environments

2.6 Endangered Species (Control of International Trade and Traffic) Act (Cap. E9 LFN 2004)[31]

This Act focuses on the protection and management of Nigeria's wildlife and some of their species in danger of extinction as a result of overexploitation. Section 1 prohibits, except under a valid license, the hunting, capture or trade in animal species, either presently or likely to be in danger of extinction. Section 5 defines the liability of any offence under the Act, and Section 7 provides for regulations to be made necessary for environmental prevention and control as regards the purpose of the Act.

The Act categorises species into schedules based on their conservation status. The First Schedule lists species facing extinction, for which all hunting, capture, and trade are absolutely prohibited. The Second Schedule lists species that could become endangered if trade isn't controlled, requiring permits for their export and import. The Act establishes a system for issuing permits and certificates for the legal trade of species listed in the Second Schedule. This is overseen by the relevant government agencies, such as the National Environmental Standards and Regulations Enforcement Agency (NESREA). It expressly prohibits the hunting, capture, or trade of listed species without a valid license, making these activities punishable offences. The Act also serves as the domestic legal instrument to implement Nigeria's obligations under international conventions, particularly CITES, thereby contributing to global wildlife conservation efforts.

Challenges/Gaps in the Endangered Species Act

While the Endangered Species Act LFN 2004 is a significant legal tool for combating wildlife exploitation and supporting international obligations, it faces several significant gaps that hinder effective conservation. It includes;

[31] Cap E9,L.F.N 2004

1. **Species Listing:** The process for listing new endangered species is not scientifically robust or detailed compared to best global practices; determination can be ambiguous and is not always responsive to emerging threats.
2. **Weak Enforcement:** Implementation and enforcement are often weak due to low funding, inadequate resources, and limited capacity or training for border and environmental officers.
3. **Public Awareness:** Public knowledge and local stakeholder involvement are minimal, which undermines effective compliance.
4. **Penal Provisions:** While the 2016 amendment increased fines, some critics argue that the penalties may still not be proportional to the profit from illegal wildlife trade or offer sufficient deterrence for large-scale traffickers.
5. **Outdated Framework:** The Act is relatively old (based on a 1985 law with 2004 codification), and although partially amended, some provisions may not reflect the current realities of wildlife crime or threats such as climate change.
6. **Lack of Conservation Mechanisms:** The focus is heavy on trade and traffic rather than habitat/biodiversity protection, sustainable resource use, or ecosystem restoration.

2.7 The Nigerian Urban and Regional Planning Act[32]

The Urban and Regional Planning Acts are aimed at overseeing a realistic, purposeful planning of the country to avoid overcrowding and poor environmental conditions. Section 30 (3) requires a building plan to be drawn by a registered architect or town planner. Section 39(7) establishes that an application for land development would be rejected if such development would harm the environment or constitute a nuisance to the community. Section 59 makes it an offence to disobey a stop-work order. Which attracts punishment under this section, a fine not exceeding N10,000 (Ten Thousand Naira), and in the case of a company, a fine not exceeding 50,000. Section 72 provides for the preservation and planting of trees for Environmental Conservation.

Challenges/Gaps in the Nigerian Urban and Regional Planning Act

[32] Cap N138, L.F.N 2004

1. **Lack of Institutional Framework and Autonomy:** Planning authorities and development control departments, which are key to implementing the Act, are often not fully established or operational in many states. This leads to weak enforcement of planning regulations.
2. **Implementation vs. Legislative Provisions Gap:** There is a wide gulf between the Act's provisions and the reality of urban growth, with poor adherence to planning and development controls. Urban development remains fragmented and uncontrolled despite the legal framework.
3. **Inadequate Funding and Resources:** Planning authorities suffer from insufficient financial and human resources. This limits their ability to effectively prepare plans, monitor developments, and enforce compliance.
4. **Corruption and Bureaucratic Inefficiencies:** Corruption manifests as bribery and favouritism in permit approvals, undermining the planning system. Bureaucratic delays hinder the timely processing of planning applications.
5. **Lack of Competence and Capacity Issues:** Many states lack competent personnel to manage and implement urban and regional planning effectively. Capacity building is inadequate despite the Act's emphasis on education and training.
6. **Poor Public Participation and Awareness**: Though the Act mandates public involvement, in practice, community engagement is often limited, reducing the responsiveness of plans to local needs. Ensuring meaningful public participation in the planning process can be challenging, particularly in areas with low levels of awareness and civic engagement
7. **Separation of Planning Policy and Development Control:** The Act does not sufficiently separate broad policy formulation from detailed development control standards, leading to administrative challenges.

2.8 Land Use Act[33]

The Land Use Act was established in response to historical issues surrounding land ownership, where land tenure systems varied widely across ethnic groups and regions. Before the Act, land ownership was typically governed by customary law, which often led

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to ambiguities, disputes, and restricted access to land for investment and development purposes. The Act sought to streamline land ownership by vesting all land in each state in the hands of the state governor, theoretically making land accessible to all Nigerians and preventing land speculation. Under the Act, all land within a state is vested in the governor, who holds it in trust for the people and allocates land rights through certificates of occupancy. The Act distinguishes between statutory rights of occupancy for urban lands and customary rights for rural lands. Transfers, mortgages, and leases of land require the governor's consent, a process intended to control land transactions. The Act allows for the revocation of occupancy rights in the public interest, with a provision for compensation based on land improvements, not land value. According to the Act, Landowners cannot sell, mortgage, or lease land without the governor's consent.

The Act established a unified system of land administration, eliminating discrepancies between customary and statutory land tenure systems. By limiting individual ownership and speculative practices, it aimed to make land accessible for development. Centralised control was meant to ensure that land allocation serves public interest, promoting equitable access and preventing exploitation. By facilitating access to land for industrial, agricultural, and infrastructural development, the Act sought to boost economic growth.

Challenges/Gaps in the Land Use Act

Despite its intentions, the Land Use Act has faced widespread criticism, with many pointing to structural and practical challenges that have limited its effectiveness.

1. **Over-Concentration of Power**: The Act vests enormous powers in state governors, leading to bureaucratic inefficiencies and abuse of power. Obtaining the governor's consent for land transactions has become a bottleneck for land users.
2. **Bureaucratic Hurdles and Governor's Consent Requirement**: The requirement of obtaining the governor's consent for nearly all land transactions has introduced significant bureaucratic hurdles. This process is often slow, costly, and subject to corruption, leading to delays and discouraging investments, particularly in the real estate and agricultural sectors. For individual landowners, the consent process has been a barrier to accessing loans, as land cannot be easily used as collateral.

3. **Limitations on Land Ownership and Security of Tenure:** By centralising land control in the hands of the governor, the Act essentially stripped individuals of absolute ownership rights. This has raised concerns about the security of land tenure, especially in rural areas where traditional land systems continue to hold sway. The lack of absolute ownership also means that landholders have limited incentives to invest in long-term development projects, as their tenure can theoretically be revoked by the state. The "trusteeship" nature of landholding under the Act undermines the security of tenure for land users. Since individuals cannot outrightly own land but only hold occupancy rights, long-term investments are often discouraged.
4. **Inadequate Compensation for Expropriated Land:** Under the Act, the government has the authority to revoke rights of occupancy for public use, but compensation is limited to improvements made on the land, excluding the intrinsic land value. This has been a contentious point, as individuals and communities have often felt inadequately compensated, particularly in cases where ancestral land is taken for public projects. This approach disregards the traditional and emotional value of land, especially in agrarian communities. Further, compensation under the Act is based on the "unexhausted improvements" rather than the actual market value of the land. This has led to grievances among landowners who feel inadequately compensated for land acquired by the government.
5. **Duality of Customary and Statutory Land Rights:** While the Act was intended to unify land ownership under a single framework, the reality is that customary and statutory systems continue to coexist, often in conflict. In many rural areas, land is still managed according to customary practices, which are not formally recognised under statutory law. This duality has created uncertainty and led to frequent disputes, as traditional landholders and formal land title holders have competing claims to the same land. Despite its attempt to harmonise tenure systems, the Act has not effectively bridged the gap between customary land rights and statutory provisions. Many rural communities still operate under traditional practices, creating legal ambiguities.
6. **Inequitable Access and Elite Capture:** Rather than democratising access to land, the Act has often facilitated land access for political elites and well-connected

individuals, while ordinary citizens struggle to secure land rights. In urban areas, land allocation has been marked by allegations of favouritism and corruption, where valuable plots are often granted to influential figures, undermining the Act's original intention of equitable access. Economic Impediments and Stifled Land Markets. The lack of secure land tenure and the complexity of transferring land rights have stifled the development of a dynamic land market. Insecurity around land ownership discourages investment in land and limits its potential as collateral for loans. This has hindered both rural and urban economic development, as land—a fundamental asset—remains underutilised. The inability to use land as collateral without the governor's consent restricts access to credit for many small and medium-scale enterprises. This stifles entrepreneurial growth and development

2.9 Petroleum Industry Act, 2021

The PIA 2021 was enacted to provide for the legal, governance, regulatory, and fiscal framework for the Nigerian Petroleum Industry. The Petroleum Industry Act ("PIA") is a long-awaited Act that seeks to regulate and change the entire petroleum industry. The Act is divided into five (5) chapters and three hundred and nineteen (319) sections.

Chapter 1 deals with Governance and Institutions, Chapter 2 provides for the administration of the industry, Chapter 3 is focused on the development of host communities, Chapter 4 changes the fiscal framework of the industry while Chapter 5 deals with miscellaneous provisions such as the transitional provisions and the transfer of assets and liabilities to the newly created the Nigerian Upstream Regulatory Commission ("Commission") and the Nigerian Midstream and Downstream Petroleum Regulatory Authority ("Authority').

The PIA repeals the following legislation:[34]

i. Associated Gas Reinjections Act 1979, CAP A.25 LFN 2004 and its
ii. Amendments;
iii. Hydrocarbon Oil Refineries Act No. 17 of 1965, CAP H5 LFN 2004;

[34] Section 310 of the PIA

iv. Motor Spirits Act (Returns) Act CAP M20 LFN 2004;

v. Nigerian National Petroleum Corporation (Projects) Act, No. 94 of 1993, CAP N124 LFN 2004;

vi. Nigerian National Petroleum Corporation Act (NNPC),1977 No. 33 CAPN123 LFN 2004 as amended. Note that the repeal will only take effect after NNPC ceases to exist under section 54(3) of the PIA.

vii. Petroleum Products Pricing Regulatory Agency (Establishment) Act No.8 of 2003;

viii. Petroleum Equalisation Fund (Management Board, etc.) Act, 1975;

ix. Petroleum Profit Tax Act ("PPTA")- The PPTA would not be repealed until the completion of the conversion process (to be discussed in the latter part of this work)2. The repeal, however, will apply to a new acreage, and

x. Deep Offshore and Inland Basin Production Sharing Contract Act (as amended) ("DOIBPSCA").[35] The DOIBPSCA would not be repealed until the completion of the conversion process.[36] The repeal, however, will apply to a new acreage.

Furthermore, the PIA saves any Act, subsidiary legislation or regulation, guideline, directive and order made under any principal legislation repealed or amended by the PIA insofar as it is not inconsistent with the PIA, and they shall be deemed to have been made under the PIA by the Commission or Authority until revoked or replaced by an amendment to the PIA or by subsidiary legislation.[37]

The effect of the above is that, except for the regulations, guidelines, and directives expressly repealed under the PIA, all regulations, guidelines and directives currently in force in the industry shall continue to be in force as if made under the PIA until the appropriate authority under the PIA revokes or makes new regulations.

In addition to the above, the PIA does not repeal the Oil Pipelines Act CAP07 LFN 2004 ("OPA") and its subsidiary legislations. In respect of this, the PIA provides that the OPA

[35] Section .310(1) PIA
[36] Section 92 DOIBPSCA
[37] Section 311 of the PIA

and its subsidiary legislations shall remain in force until repealed or revoked insofar as they are consistent with the PIA.[38]

Notwithstanding the above, the PIA provides that, subject to the 1999 Constitution, where the provisions of any other law or enactment, except the Nigerian Oil and Gas Industry Content Development Act, are inconsistent with the PIA, the PIA shall prevail and the content of such other law shall, to the extent of its inconsistency, be void in relation to the matter provided for in the PIA.[39] It also provides the establishment of the host communities fund and other related matters in the upstream, midstream and downstream sectors of the petroleum industry. The PIA also created specific institutions to drive the operations of Nigeria's petroleum sector through the formation of the Nigerian National Petroleum Company (NNPC) Limited, Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).

The PIA 2021 embodies 5 Chapters, 319 Sections, and 8 Schedules, with an array of provisions and innovations that will affect the private, public sector and stakeholders in the oil and gas industry. It ushers in a new dawn for Nigeria's Oil & Gas Industry and opens a new page of prosperity for Nigerians.

Chapter 1: Governance and Institutions: This chapter focuses on creating a new institutional and regulatory framework for the Nigerian petroleum industry. It aims to introduce transparency, efficiency, and clear separation of roles. With the following Provisions:

a. **Unbundling of the NNPC:** The Act transforms the Nigerian National Petroleum Corporation (NNPC) into a commercial, profit-driven entity known as NNPC Limited. This is a significant move away from its previous role as a state-owned enterprise, to make it more efficient and accountable. The government holds all the shares of NNPC Limited on behalf of the Nigerian people.

[38] Section 311(9)(c) of the PIA
[39] Section 309 of the PIA

b. **Creation of New Regulators:** The Act establishes two new regulatory bodies: the Nigerian Upstream Petroleum Regulatory Commission (NUPRC). This commission is responsible for the technical and commercial regulation of the upstream sector (exploration and production). Its functions include the administration of licenses and leases, the enforcement of environmental regulations, and the collection of royalties and rents. Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA): This authority oversees the technical and commercial regulation of the midstream and downstream sectors (processing, transportation, storage, and marketing of crude oil and petroleum products). It is also responsible for issuing licenses and permits in these areas.
c. **Reduced Ministerial Powers:** The Act curtails the extensive powers previously vested in the Minister of Petroleum Resources, making the role more about policy formulation and less about direct regulatory and commercial operations.
d. **Separation of Powers:** The creation of distinct regulatory bodies for different segments of the industry (upstream vs. midstream/downstream) is intended to reduce the concentration of power and potential for conflict of interest that existed under the old framework.
e. **Commercialisation of NNPC:** The incorporation of NNPC as a limited liability company under the Companies and Allied Matters Act (CAMA) has significant implications for its operations and accountability, as it is now required to operate like a business, with a focus on maximising profit for its shareholders.

Chapter 2: Administration: This chapter delves into the practical management and administration of petroleum resources, licenses, and leases.

a. **Licensing and Acreage Management:** The Act introduces new types of licenses and leases, including a Petroleum Exploration License (PEL), a Petroleum Prospecting License (PPL), and a Petroleum Mining Lease (PML). It also sets out a clear process for the grant, renewal, and relinquishment of these licenses, which is more structured than the previous system. Environmental Management: The Act mandates strict environmental standards for all petroleum operations and

requires licensees to have an environmental management plan. It also establishes an environmental remediation fund and imposes penalties for gas flaring.

b. **Clarity and Certainty:** This chapter provides a more predictable legal framework for investors, particularly regarding the duration and terms of licenses and leases.
c. **Environmental Accountability:** By introducing specific funds for remediation and imposing penalties for gas flaring, the Act strengthens legal recourse against environmental degradation and creates a more robust mechanism for holding operators accountable.

Chapter 3: Host Communities Development: This chapter is a direct response to the long-standing agitations and conflicts in the oil-producing communities of the Niger Delta. It aims to foster a more inclusive and peaceful relationship between oil companies and their host communities.

a. **Host Communities Development Trust:** The Act mandates the establishment of a "Host Communities Development Trust" by oil and gas companies (settlors) in their areas of operation.
b. **Funding:** Settlors are required to contribute 3% of their actual annual operating expenditure to this trust fund. This is a significant departure from the previous informal and often inconsistent funding arrangements.
c. **Trust Management:** The trust is to be managed by a board of trustees and a management committee, with representation from the host communities, the oil company, and other stakeholders.
d. **Formalisation of Responsibility:** The Act legally obligates oil companies to contribute to the development of their host communities, moving away from ad-hoc Corporate Social Responsibility (CSR) initiatives.
e. **Community Empowerment:** The structured framework for the trust fund gives host communities a formal role in project identification, planning, and execution, potentially reducing community-related disruptions and conflicts. However, there are ongoing debates about the adequacy of the 3% contribution and the potential for misuse of funds.

Chapter 4: Petroleum Industry Fiscal Framework: This is arguably one of the most significant and complex chapters of the PIA, as it overhauls the fiscal regime for the industry.

a. **New Tax Regimes:** The Act introduces new tax structures, including a "Hydrocarbon Tax" on the profits of crude oil and condensate production, and a "Companies Income Tax" for other petroleum-related activities.
b. **Royalties:** It modifies the royalty rates based on location (onshore, shallow water, deep offshore) and production volume, aiming to attract investment while ensuring a fair share of revenue for the government
c. **Gas Development Incentives:** To promote the development of Nigeria's vast gas resources, the Act provides significant tax incentives for gas projects, including a gas flare penalty and a framework for gas-based industries.
d. **Frontier Basins Exploration:** The Act allocates 30% of NNPC Limited's profit from production sharing contracts to a "Frontier Exploration Fund" for the purpose of exploring for hydrocarbons in new, unproven basins.
e. **Investment Certainty:** By creating a more transparent and predictable fiscal framework, the Act seeks to attract foreign investment that had been deterred by decades of regulatory and fiscal uncertainty.
f. **Revenue Generation:** The new fiscal terms are designed to balance government revenue with the need to offer a competitive investment climate. The allocation for frontier basins is a strategic move to diversify Nigeria's oil and gas exploration beyond the Niger Delta.

Chapter 5: Miscellaneous Provisions: This final chapter contains a variety of important provisions that tie the entire Act together.

a. **Transitional Arrangements:** It provides a legal framework for the transition from the old Petroleum Act to the new PIA, including the conversion of existing licenses and leases.
b. **Repeal of Old Laws:** The Act repeals and replaces several old laws and decrees, such as the Petroleum Act of 1969 and the Petroleum Equalisation Fund (Management) Act.

c. **Dispute Resolution:** It establishes provisions for legal proceedings, arbitration, and dispute resolution.
d. **Unified Legal Framework:** This chapter consolidates a fragmented body of law into a single, comprehensive Act, reducing legal and regulatory inconsistencies.
e. **Continuity:** The provisions for a smooth transition from old to new licenses are crucial for ensuring the continuity of operations and minimising disruption for existing players in the industry.

The challenges of Nigeria's PIA 2021

The act introduces and specifies the regulations, procedures, and institutions that will ensure good governance, transparency, and accountability in the petroleum industry. However, there can never be perfect legislation. Certain provisions of Nigeria's PIA have been deemed contentious, while others have been deemed potentially problematic and require legislative amendments to promote international best practices in the industry.

1. **Ownership of natural resources:** Section 1 of Nigeria's PIA, which deals with the ownership of petroleum by the Federal Government of Nigeria, should have been drafted to include the states, local governments, and the host communities in addition to the Federal Government as owners of the petroleum in the country. The three tiers of government and the host communities need to be included in the vesting rights to reduce incessant agitation for resource control, pipeline vandalism, crude oil theft, and other oil-related crimes. This aims to reduce the Federal Government's exclusive rights and total sovereignty over petroleum resources as practised in the United States and Canada.
2. **North and South Division:** In an effort to address the industry's long-standing issues, Nigeria's PIA 2021 created unintentional divisions or factions between the northern and southern legislatures in the National Assembly. The bill was opposed by lawmakers and prominent leaders from the oil-rich Niger Delta states, and many southern legislators believe it favours northern interests at the expense of southern interests. According to the southern legislators, the law has been modified to benefit the northern part of the country. The southern lawmakers now believe that they are being cheated by the northern legislators. The host

communities are also dissatisfied since they requested 10%, but the lawmakers rejected it. The Pan-Niger Delta Forum (PANDEF), on the other hand, has also urged the lawmakers to immediately reverse the 3% allocated to the host communities.

3. **Double taxation:** Oil companies are required to pay a Hydrocarbon Tax (HCT) under Section 260 of Nigeria's PIA. The same companies must also pay the Company Income Tax (CIT) under Section 302 of the Act. These taxes may be seen as double taxation by the companies, and investors may also be discouraged from investing in Nigeria's petroleum industry due to such taxation requirements.
4. **Ambiguous wording and imprecise language:** The difficulty in interpretation and legal ambiguities associated with the law are one of the biggest challenges of the act. For instance, it is not apparent if the duties of the host community development trust are separate from or in addition to current community levies, such as the Niger Delta development levy. Similarly, the act is silent regarding the definitions of "frontier basin" and "host community," referring to the NUPRC for a definition of the former and settlers or license holders for the definition of the latter. Frontier Basin Exploration does not have a proper definition under Nigeria's PIA. These definitions affect revenue; they are not revenue-neutral. This ambiguity breeds controversy and even the possibility of litigation, especially where stakeholders define them differently.
5. **Tensions over oil revenue sharing:** Nigeria's PIA has significant effects on the federation's revenue as well as those of the states and local governments. First, the three tiers of government may see a significant drop in revenue accrued to them as a result of the reduction in taxes and royalties. Any revenue-generating entity owned by the federation must deposit its profits in a fund called the Federation Account so that the three arms of government can share them. More than 80% of the funds received by the states and local governments come from the Federation Account. Therefore, NNPC Ltd's contribution to the Federation Account may be significant.
6. **Lack of Partnership between Host Communities and Petroleum Corporations:** The success of operations in Nigeria's petroleum industry depends significantly on the host communities. A partnership may be the key to achieving profitable returns from the most capital-intensive ventures. However, throughout time, there has not

been a friendly relationship between host communities and petroleum corporations. Petroleum operations have often been interrupted by hostility and conflict. Significant theft of crude oil, destruction of pipelines, and the ongoing suspension of large oil fields may also have been caused in part by these conflicts. The government's inability to satisfy its Organisation of the Petroleum Exporting Countries (OPEC) crude oil output quota of around 1.8 million barrels per day in production has recently averaged 1.3 million to 1.4 million barrels per day, which indicates the severity of the issue. The tense relationship may in part be ascribed to the sluggish rate of growth in these regions.

The government has attempted to solve this issue on several occasions with efforts that have varied in their degrees of effectiveness. Among these programs is the establishment of the Derivation Fund, which is financed with 13% of oil revenues from the Federation Account and distributed to oil-producing regions; the establishment of the Niger Delta Development Commission (NDDC) in 2000, with an NDDC Levy of 3% of the overall annual budget of oil-producing firms (Niger Delta Development Commission [Establishment etc.] Act 2000 Act No 6 LFN). The establishment of the Ministry of Niger Delta Affairs in 2008, with a total budget allocation of NGN 584.6 billion between 2008 and 2022, and several other initiatives. In another effort to remedy the strained relationship between host communities and petroleum corporations, Nigeria's PIA mandated that petroleum industry operators create an HCDT, as previously mentioned.

The HCDT is a fund that will be established for the benefit of communities in the areas of operation of the petroleum corporation's activities. The fund will support host communities' infrastructure development and economic development, and empowerment. Nigeria's PIA allows operators to use their discretion when determining which host communities to include, such as additional communities that may have an indirect effect on the HCDT's success, although these other communities are not 'appurtenant' to the operator's area of operations. Nigeria's PIA lays forth the formation of petroleum corporations' development of host community activities with regard to host communities, including the establishment of trusts for the domicile of companies' contributions to community development. The host communities, on the other hand, are still disgruntled with Nigeria's PIA

requirement that petroleum corporations allocate 3% of their annual operational expenditure in the immediately preceding calendar year to the HCDTF, when they had requested at least 10%.

Moreover, because indigenous oil firms hold the majority of onshore oil wells, host communities are unsure if this contribution will be given at all. The prior owners of the oil wells were foreign corporations, which meant that there were two sets of laws to ensure legal compliance: Nigerian and those of the home country. With internal ownership of the majority of onshore oil wells, the risk of non-compliance with the host community contributions is high, particularly in Nigeria, where the judiciary is seen as weak and court judgments are rarely upheld.

Political control of the industry is pertinent because indigenous corporations dominate the onshore oil industry; there are legitimate concerns that the HCDTF will likely not receive any funding, which would leave the host communities underdeveloped. Lacunas in the HCDT provisions: A few provisions have been discovered to be omitted from the HCDT under Nigeria's PIA. Some of these include: The midstream operators' required contribution to the HCDT is not addressed by Nigeria's PIA. ii. A procedure for resolving disputes between the host communities and the operators does not exist under Nigeria's PIA. iii. There is no apparent framework for cooperation between the operators who may cover the same host community to avoid duplication of projects and achieve synergy.

7. **Corruption:** It's widely understood that corruption has plagued Nigeria ever since the country gained its independence in 1960. Corruption persists now in every sector of the country's economy, and unless it is addressed and eliminated at all levels, it will continue to hinder progress. Since corruption hampers transparency and deprives Nigerians of the benefits of their abundant resources, it leads to a decline in their standard of living, social stability, energy security, and sustainability, thereby promoting mass poverty. Hence, there is a need for stringent overhauling and enforcement of the provisions of the Nigerian Extractive Industry Transparency Initiative 2007 to promote transparency and accountability in the industry. Corruption is an ever-present problem in the petroleum industry, from the initial stages of exploration and drilling through the latter stages of refining and distribution. When a country is mainly dependent on a single product or resource,

like petroleum, for its social and economic growth and development, corruption in that industry has a cumulative effect on the rest of the country's economy and other industries.

2.10 Oil in Navigable Waters Act[40]

Another law worth considering is the Oil in Navigable Waters Act, which is Nigeria's domestication of the International Convention for the Prevention of Pollution of the Sea by Oil 1954-1962. This Act has a more direct impact on environmental protection by prohibiting the discharge or dumping of oil by ships into Nigeria's territorial waters or shorelines. It imposes an obligation on ship owners to install anti-pollution equipment and prescribes penalties for violations.[41] The enforcement of this Act is by the Minister of Transport, and while the provisions are wholesome, the penalties attached to a breach of these provisions are too minute compared to the degree of pollution the offenders will cause. The ONWA's primary mandates are to prevent and control oil pollution from vessels, land-based facilities, and oil transfer apparatus.

Section 1 of the Act makes it an offence to discharge oil or oily mixtures into Nigerian navigable waters. This applies to both Nigerian ships and vessels in a "prohibited sea area." The law specifies that a mixture containing more than 100 parts of oil is considered an offence.

Section 3 of the law outlines that the owner or master of a vessel, or the occupier of a place on land, is guilty of an offence if a discharge occurs. It provides for penalties, which can include fines and/or imprisonment. By *Section 6* A person guilty of an offence under section I, 3 or 5 of this Act shall, on conviction by a High Court or a superior court or on summary conviction by any court of inferior jurisdiction, be liable to a fine: Provided that an offence shall not by virtue of this section be punishable on summary conviction by a court having jurisdiction inferior to that of a High Court by a fine exceeding N2,000.

[40] CAP O6, LFN 2004.

[41] Sections 1, 3, 5 and 6 of the Act

Section 4 of the Act provides certain defences for those charged with an offence. These include discharges made for the purpose of securing the safety of a vessel or preventing damage, as well as discharges resulting from accidental damage, provided all reasonable steps were taken to prevent or stop the escape of oil. The law mandates that certain ships, particularly those of 80 gross tonnage or more, be fitted with oil-water separators and other equipment to prevent pollution. It requires vessels to maintain records of oil discharge and transfer operations.

Challenges/Gaps in the Oil in Navigable Waters Act

Despite its importance as a foundational law, the ONWA has several significant gaps that have limited its effectiveness. These include:

1. **Weak Penalties:** The fines stipulated in the Act are now largely outdated and disproportionately low, failing to serve as a sufficient deterrent for large corporations. This makes it more economically viable for companies to pay the fine than to invest in preventative measures.
2. **Lack of a Comprehensive Compensation Framework:** The ONWA does not provide a robust framework for compensating victims of oil spills. It focuses on punishing the polluter but does not adequately address the damages suffered by affected communities, such as loss of livelihood, health issues, or property damage.
3. **Exclusion of Certain Sources:** The Act primarily targets pollution from vessels and land-based facilities but does not adequately cover all sources of oil spills, particularly those from pipelines, offshore platforms, and other fixed installations. Subsequent laws like the Petroleum Act and the National Oil Spill Detection and Response Agency (NOSDRA) Act have attempted to fill this void, but the ONWA itself remains narrow in scope.
4. **Weak Enforcement:** ONWA is often criticised for a lack of effective enforcement. The responsible agencies often face challenges related to funding, corruption, and a lack of political will to prosecute powerful oil companies.
5. **Outdated Standards:** The Act was created before the adoption of more stringent international standards, such as those set by the International Convention for the Prevention of Pollution from Ships (MARPOL). While Nigeria has ratified MARPOL,

the ONWA's internal standards and definitions may not be fully aligned with current best practices

2.11 Nigerian Minerals and Mining Act, 2007

Nigeria, endowed with a rich array of mineral resources, boasts of not less than 44 valuable mineral deposits, including clay, gold, coal, iron ore, limestone, lead and zinc, phosphate, and tin. These minerals are spread across more than 500 locations, which cut across the 6 geopolitical zones of the Country.

The Nigerian Minerals and Mining Act of 2007 (NMMA) is the principal legislation governing the country's solid minerals sector. It aims to create a more transparent, secure, and attractive environment for private investment while ensuring sustainable development and community benefits. The Act firmly establishes that the entire property and control of all minerals in Nigeria are vested in the Federal Government. This means that land ownership does not automatically grant mineral rights. NMMA outlines a clear "first-come, first-served" and non-discretionary system for granting mineral titles, including Reconnaissance Permits, Exploration Licenses, Small-Scale Mining Leases, and Mining Leases. This was designed to reduce administrative discretion and promote a predictable investment climate. A significant provision is the requirement for all mining lease holders to enter into a Community Development Agreement (CDA) with their host communities before commencing operations. The CDA is meant to outline commitments to local development in areas like education, healthcare, and infrastructure. The Act mandates that mining companies take precautions against pollution and environmental degradation. It requires the submission of an Environmental Impact Assessment (EIA) before a mining lease can be granted, and an Environmental Protection and Rehabilitation Fund must be established. To attract investors, the Act provides a range of fiscal incentives, including a tax relief period, exemption from customs and import duties on mining equipment, and the right to repatriate foreign capital. However, the Act replaced the outdated law and introduced significant reforms, yet it still contains notable gaps.

Challenges/Gaps in the Nigerian Minerals and Mining Act

Despite its strengths, the NMMA has several legislative and implementation gaps that have hindered its effectiveness.

1. **Weak Community Rights and Compensation**: While the Act mandates a CDA, it doesn't provide a robust framework for its enforcement. The agreements are often not legally binding, and there's no clear mechanism for conflict resolution. Furthermore, the Act's provisions for land access and compensation for communities are often inadequate and lack a uniform method for calculation, leaving victims of mining activities vulnerable.
2. **Lack of a Comprehensive Critical Minerals Framework**: The Act does not differentiate between "critical" minerals (like lithium and cobalt) and other solid minerals. The lack of a specific legal and policy framework for these strategic materials means Nigeria is not fully leveraging its value chain development and is missing out on potential investment in processing and value addition.
3. **Overlap of Regulatory Functions**: The Ministry of Mines and Steel Development holds both administrative and regulatory powers, which can create a conflict of interest. Critics have argued for a separation of these roles, with an independent body handling regulatory and enforcement duties to ensure more transparent oversight.
4. **Weak Enforcement and Illegal Mining**: The Act's provisions are often not effectively enforced due to a lack of institutional capacity, funding, and political will. This has led to widespread illegal mining, which contributes to environmental degradation, loss of revenue for the government, and social conflicts. The penalties for offences are also often not a strong enough deterrent.
5. **Limited Geological Data**: The Act aims to promote exploration, but the government's geological data is incomplete and often not up to date. This data gap is a major barrier to attracting serious, large-scale foreign investment, as companies require reliable information to de-risk their investments.

2.12 Nuclear Safety and Regulation Protection Act, 1995

The Nigerian Nuclear Regulatory Authority (NNRA) is established by the Nuclear Safety and Radiation Protection Act 19 of 1995 (the Act; Cap N142 LFN 2004) establishes the framework for the regulation and control of the use of radioactive substances, nuclear materials, and ionising radiation in Nigeria. *Section 4* provides authority to make regulations for the protection of the environment from the harmful effects of ionising radiation. *Sections 15 and 16* make registration of premises and registration of ionising radiation sources to those premises mandatory. *Section 37 (1)(b)* allows an inspector to verify records of activities that pertain to the environment. *Section 40* clarifies that the same regulations guiding the transportation of dangerous goods by air, land, or water should also apply to the transportation of radioactive substances.

Challenges/Gaps in the Nigerian Nuclear Safety and Radiation Protection Act (1995)

1. The original Act predates Nigeria's accession to important international nuclear safety treaties and conventions. As a result, it lacks explicit provisions for domesticating and enforcing many of these recent international obligations. The Act has been recognised as needing updates to accommodate licensing procedures specifically for nuclear installations more comprehensively. Also, there is a need for clearer, expanded regulatory frameworks that reflect evolving standards in nuclear safety, security, and safeguards.
2. Institutional and functional independence of regulatory bodies and clear delineation of roles among governing boards and administrative bodies require reinforcement. The enforcement provisions, penalties, and operational safeguards could be improved to better prevent unauthorised access, theft, or loss of control over radioactive sources. There is a necessitate to update legal provisions to ensure regulatory adequacy in addressing emerging technologies and new applications of nuclear science, such as Climate of evolving global nuclear safety expectations demand that Nigerian legislation integrate current best practices and new safety, security, and environmental standards.
3. However, the Nuclear Safety, Security, and Safeguards Bill (NSSS Bill), currently before the National Assembly, is aimed at addressing many of these gaps by

updating the Act to reflect Nigeria's international commitments and improve the regulatory framework. In essence, while the Nuclear Safety and Radiation Protection Act established the foundational regulatory authority, significant legislative enhancements are underway or required to ensure the law meets modern nuclear safety, security, and safeguards expectations fully.

2.13 Quarantine Act, CAP Q2, LFN 2004

The Quarantine Act provides authority to make regulations for preventing the introduction, spread and transmission of infectious diseases such as cholera, yellow fever, typhus, etc. The Act describes a "dangerous infectious disease" as including cholera, plague, yellow fever, smallpox, sleeping sickness and typhus. A "dangerous infectious disease" under the Act may also be designated so by notice by the President for a disease of an infectious or contagious nature under *section 2.* The Act gives the President power to declare any place, by notice, as an infected local area as provided in *Section 3*. This area may be within Nigeria or outside Nigeria. However, the place must be a specific area such as a local government area, an island, a community, a town, a quarter of a town, a village, a port, etc.

The Act gives the President power to make Regulations in various circumstances, such as in preventing the introduction of a dangerous infectious disease into Nigeria or any part thereof from any place outside Nigeria, whether such place is an infected local area or not. In addition, the President has powers to make Regulations preventing the transmission of any dangerous infectious disease from Nigeria or from any place within Nigeria, whether from an infected local area or its spread to any other place within Nigeria under Section 4 of the Act. Other areas within the ambit of the President in making Regulations under this Act, include the powers to prescribe the powers and duties of Officers that may be charged with carrying out the regulations, fixing the charges to be paid for any matter or thing to be done under the Regulations, prescribing the persons by whom such charges shall be paid, prescribing the persons whom the expenses of carrying out any such Regulations shall be borne, and the persons from whom any such expenses incurred by the Government may be recovered among others.

The President also has general powers to make Regulations that are intended to carry out the objectives and provisions of this Act.

Challenges/Gaps in the Quarantine Act, L.F.N 2004

The Quarantine Act L.F.N 2004, which was originally enacted in 1926 and amended later, aims to prevent the spread and transmission of dangerous infectious diseases in Nigeria. It empowers the President to declare infected local areas and make regulations to prevent the introduction and transmission of such diseases. However, the Act has several gaps and limitations, which include:

1. **Outdated Legislation**: The Act was enacted long ago and is grossly outdated for managing contemporary public health emergencies, including COVID-19 and other modern diseases or threats like bioterrorism or chemical hazards.
2. **Limited Disease List**: The Act specifically lists certain dangerous infectious diseases such as cholera, plague, yellow fever, smallpox, sleeping sickness, and typhus. While it allows the President to declare other infectious diseases as dangerous by notice, it lacks clarity in defining what constitutes such notice.
3. **Inadequate Penalties**: Penalties for breach of the Act's Regulations are minimal and insufficient to enforce compliance effectively. For instance, the penalty of N200 is considered too low, and attempts to increase penalties via amendment bills have not succeeded.
4. **Undefined Powers and Procedures:** The Act does not clearly define several important areas, such as the process and nature of presidential notice, the role and powers of officers enforcing regulations, funding mechanisms, or guarantee mechanisms for civil liberties during public health interventions.
5. **Lack of Provisions for Broader Public Health Issues:** The Act does not address important modern public health needs such as coordinated emergency response systems, surveillance, notifications to international bodies like the WHO, or sustainable funding for outbreak preparedness.

6. **Insufficient Coverage for Employment and Social Protection:** The Act does not address social and economic impacts of quarantine measures, such as worker protections, income security for vulnerable groups, or safety provisions for workplaces during pandemics.
7. **Overlap and Need for Modernisation:** There is overlap and some legislative gaps relative to newer laws like the Nigeria Centre for Disease Control (NCDC) Act. The Quarantine Act lacks empowerment for proactive disease control measures that the NCDC Act seeks to provide, such as mandatory reporting by medical practitioners, epidemiological investigations, or expanded enforcement powers.
8. **Need for Comprehensive Review:** Several commentators and proposals suggest that the Quarantine Act should be comprehensively reviewed or repealed and replaced with modern legislation to empower the NCDC and include clearer provisions on public health surveillance, enforcement, penalties, social protection, and civil liberties.

2.14 River Basins Development Authority Act, CAP R9, LFN 2004

The River Basins Development Authority is concerned with the development of water resources for domestic, industrial and other uses, and the control of floods and erosion. The River Basins Development Authority Act, L.F.N 2004, establishes River Basin Development Authorities (RBDAs) in Nigeria to manage and develop the nation's water resources comprehensively. The Act repealed earlier legislation and legally established RBDAs as corporate bodies responsible for river basin management. The Authorities are tasked with developing both surface and underground water resources for multipurpose use with emphasis on: Provision of irrigation infrastructure, Flood and erosion control, Watershed management, Construction, operation, and maintenance of dams, dykes, wells, boreholes, irrigation, and drainage systems, Developing and maintaining comprehensive water resources master plans They also provide water from completed storage schemes to users for a fee and develop infrastructure like roads and bridges that support their projects. Additionally, the Authorities' work supports agriculture, rural development, water supply, power generation, fisheries, environmental protection, seed production, reforestation, and rural electrification. The first two RBDAs in Nigeria are the Chad Basin and Sokoto-Rima Basin Development Authorities, which were established in

1973. The RBDAs in the country became eleven in 1976 when General Olusegun Obasanjo's regime added another nine to cover the whole country. During the General Muhammad Buhari regime, the basin authorities were split into eighteen in 1984 and renamed as the River Basin and Rural Development Authorities. However, in 1986, during Gen Babangida's regime, the new nomenclature was invalidated and the status quo of eleven RBDAs maintained.

Today, there are twelve RBDAs in Nigeria as a result of the splitting of the Niger basin development authority into upper and lower Niger, as shown in the table below:

Table 1. River Basin Development Authorities (RBDAs) in Nigeria

Sokoto-Rima	Sokoto
Hadejia-Jamaera	Kano
Upper Benue Upper	Benue
Lower Benue	Markudi
Cross river	Calabar
Anambra-Imo	Owerri
Upper Niger	Minna
Lower Niger	Ilorin
The Niger Delta	Port Harcourt
The Benin-Owena	Benin-City
Ogun-Oshun	Abeokuta
Lake Chad	Maiduguri

Challenges/Gaps in the River Basins Development Authority Act, CAP R9, LFN, 2004

Despite their extensive mandates, the RBDAs have had limited impact in significantly advancing agricultural productivity and rural development. Below are the legal gaps identified in the River Basins Development Authorities Act, Laws of the Federation of Nigeria (LFN).

1. **Overlapping and Conflicting Mandates**: The Act gives RBDAs a wide range of responsibilities, including water development, irrigation, and agricultural support. This has led to an overlap of functions with other government agencies, such as the National Water Resources Institute (NWRI) and the Nigeria Hydrological Services Agency (NIHSA). The lack of a clear, single line of authority and responsibility creates confusion, inefficiency, and a lack of accountability.
2. **Lack of Clear Enforcement and Sanction**: The Act does not provide clear provisions for the enforcement of its regulations or sanctions against polluters or those who violate water use policies. This makes it difficult for RBDAs to effectively regulate and manage water resources, leading to environmental degradation and unsustainable practices.
3. **Inadequate Provisions for Inter-Sectoral Coordination**: Water management is a complex issue that requires coordination across various sectors, including agriculture, power, environment, and urban planning. The Act lacks proper provisions and mechanisms for inter-sectoral coordination and conflict resolution, which often results in a fragmented and uncoordinated approach to water management.
4. **Absence of Provisions for Tariff Setting and "Polluter Pays" Principle**: The Act does not adequately address the economic aspects of water resource management, such as the "user pays" and "polluter pays" principles. The lack of provisions for tariff setting makes it difficult to recover costs and ensure the financial sustainability of water projects, while the absence of a "polluter pays" mechanism hinders efforts to hold industries and individuals accountable for water pollution.
5. **Deficiencies in the Institutional Framework**: Critics argue that the institutional framework established by the Act is weak. The Act has been criticised for creating a system where RBDAs act as both suppliers and regulators of water, which creates a conflict of interest. Additionally, the politicisation of appointments to the Boards of the RBDAs and frequent policy reversals have undermined the stability and effectiveness of these institutions.

6. **Failure to Address Basin-Wide Considerations**: While the Act is named after "river basins," the establishment and operation of the RBDAs have not always taken a holistic, basin-wide approach to water resource management. Decisions regarding the location of dams and other infrastructure have often been made without proper environmental and socio-economic appraisals of the entire basin, leading to negative downstream impacts like flooding and reduced water supply.

2.15 Factories Act, CAP F1, LFN 2004

Nigeria is a populous country with a large workforce; in every workplace, some factors must be considered in a bid to facilitate the safety, health, and welfare of workers and conditions that guarantee a good working environment. The relationship between an employer and an employee entails a reciprocal set of responsibilities and obligations. While employees are present to provide their services, employers also have certain obligations towards their employees. Unfortunately, these duties are occasionally disregarded, necessitating legislative measures to ensure their enforcement. One of the legislations enacted to safeguard persons so employed is the Factories Act, 2004. The Factories Act imposes several obligations on employers/occupiers of factories for the health, safety and welfare of workers employed in the factory.

The Factories Act promotes the safety of workers and professionals exposed to occupational hazards. Under this Act, it is an offence to use unregistered premises for factory purposes. *Section 13* allows an inspector to take emergency measures or request that emergency measures be taken by a person qualified to do so in cases of pollution or any nuisance. *Section 17 (3) (b*), it is mandates that the working conditions provided to employees should be fair, considerate, and respectful. These conditions should prioritise the health, safety, and overall well-being of all individuals in employment. It is crucial to ensure that employees are not subjected to unjust or inhumane working environments. Safeguarding their welfare should be a paramount concern.

Employers have the responsibility to ensure that machinery and equipment used in the workplace are safe and free from any risks that could potentially harm the health of

employees.[42] This requirement has become an obligation on employers or occupiers so as not to make them liable in cases of breach. The desire to regulate the activities of employees and employers in factories around the country as well as in a bid to safeguard the welfare and health of workmen, the legislative arm of the Federal government of Nigeria enacted laws aimed at ensuring the protection of the rights of workers starting with *section 17 (3) (b) (c) of the 1999 Constitution* which stipulates that an employer is expected to provide an environment that is safe for work, equipment and procedure that is devoid of risk to the employees" wellbeing.

Challenges/Gaps in the Factories Act 2004

The Factories Act, 2024,[43] are faced with numerous inadequacies and challenges, including the following:

1. **Lack of Expertise and Standard Regulation:** *Section 3* of the Act provides for the registration of new factories where the minister is satisfied that such premises are suitable for the said purposes. It is worrisome to note that the Act does not make the registration of new factories subject to adherence to certain general guidelines or industry-specific regulations. It can be right to state that the requirements for the registration of a new factory lie in the hands of the Minister of Labour and Productivity, who may exercise his discretion whenever he deems fit.
2. **Non-Deterrent Fines and Punishment:** The occupation of a factory without approval is punishable by a fine of N2000 or 12months imprisonment or both. False entries, false declarations and forgery are subject to a fine of N2000. Other crimes not expressly provided in the Act are punishable by a fine of N500. The fine for the obstruction of an inspector attracted a fine of N1,000. Where accidents occur and are not reported, a fine of N1000 is payable. These fines are too paltry and have no

[42] C P Adaeze, „Safety, Health and Welfare of Nigerian Workers as Entrenched under the Factories Act of 2004" <www.files.eric.ed.gov >last accessed on 25 July 2023.

[43] I E Chinonyerem, „The Factories Act: Its Constitutional Relevance as an Occupational Health and Safety Regulation in the 21st Century and the Challenges of the Covid-19 Pandemic" < www.papers.ssrn.com> last accessed on the 26 March 2023

real deterrent effect in the 21st century. These fines can be easily paid over and over again as such defeating their purpose in the first place.

3. **Lack of Expertise:** The appointment of members of the Factories Appeal Board is based on the Minister's discretion. Such an appointment is not specified to be an expert in any of the fields incidental to the issues of occupational health and safety. It is unclear what vital input members of an Appeal Board with no special expertise would have to offer when matters come before them. This provision appears to be a tool for the political class to compensate their loyalists. Furthermore, it is unclear how this board, without the membership of a trade union, will serve the interests of workers and not the Minister who is their "employer."
4. **Skilled Manpower:** Under the Act, inexperienced workers are allowed to work under supervision. This provision may have been rationalised by the lack of adequately skilled manpower in the days following the colonial dispensation. Today, this isn't the case as the number of skilled persons has grown considerably, therefore, allowing inexperienced workers to work at factories, which places other workers at great risk.
5. **Environmental Protection:** The exhaustion of dangerous fumes in factories appears to be without regard to the effect of such on the environment. The concern of the Factories Act seems to be with the factory workers; hence, it stipulates that the workers wear the apparatus necessary to protect them from dangerous fumes. This is in disregard of the glaring fact that these workers still form part of a larger society that is affected by these fumes. These provisions run contrary to modern-day environmental standards. They pose risks to the environment and the people living in it. The exhaustion of fumes without any attempt to ensure their purification or reduction in toxic levels goes contrary to the Sustainable Development Goals.
6. **Health and Safety Education:** The Act, in an attempt to protect the workers, specifically states that protective clothing should be worn where the work area demands so. The mere protection of workers with clothes or apparatus without provisions for medical checks appears to be inadequate. The act also makes provision for first aid boxes without provision for medical personnel. One might wonder what the effectiveness of first aid boxes would be to factory workers who

have no formal training in safety. It is therefore inadequate to ensure the provision of first aid boxes with no one with the required knowledge to handle emergencies, because some factories are in remote areas far from civilisation.

7. **Power of Inquiry/ Definition of Factory:** Where there are large-scale deaths or accidents, a Commission of Inquiry may inquire into such occurrences. It is troubling to note that the purpose of such inquiry is for recommendations to ensure such actions would prevent any such accident in the future. The commission does not possess the authority to issue enforceable recommendations. It is also to be noted that the interpretation section of the Act excludes construction sites from the ambit of the concept of "factory", hence another leeway for the lack of accountability.

2.16 Climate Change Act,2021[44]

Climate is sometimes mistaken for weather. But climate is different from weather because it is measured over a long period of time, whereas weather can change from day to day, or from year to year. The climate of an area includes seasonal temperature and rainfall averages, and wind patterns. Different places have different climates. A desert, for example, is referred to as an arid climate because little water falls, as rain or snow, during the year. Other types of climates include tropical climates, which are hot and humid, and temperate climates, which have warm summers and cooler winters.

The cause of current climate change is largely human activity, like burning fossil fuels, like natural gas, oil, and coal. Burning these materials releases what are called greenhouse gases into Earth's atmosphere. There, these gases trap heat from the sun's rays inside the atmosphere, causing Earth's average temperature to rise. This rise in the planet's temperature is called global warming. The warming of the planet impacts local and regional climates. Throughout Earth's history, the climate has continually changed. When occurring naturally, this is a slow process that has taken place over hundreds and thousands of years. The human-influenced climate change that is happening now is occurring at a much faster rate.

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The Nigeria Climate Change Act 2021 **provides a legal framework for the country to achieve its climate goals, including net-zero emissions by 2050-2070** Nigeria Climate Change Act 2021 provides a legal framework for the country to achieve its climate goals, including net-zero emissions by 2050-2070. The Climate Change Act, 2021, is made up of 36 sections arranged under eight (8) parts.

Part I contains sections 1 and 2. Section 1 provides for the objectives of the Act. It states that the Act provides a framework for achieving low greenhouse gas emissions (GHG), inclusive green growth and sustainable economic development by: (a) ensuring that Nigeria formulates programmes for achieving its long-term goals on climate change mitigation and adaptation; (b) facilitating the coordination of climate change action needed to achieve long-term climate objectives; (c) mainstreaming climate change actions in line with national development priorities; (d) facilitating the mobilisation of finance and other resources necessary to ensure effective action on climate change; (e) ensuring that climate change policies and actions are integrated with other related policies for promoting socio-economic development and environmental integrity; (f) setting a target for the year 2050 – 2070 for the attainment of a net zero GHG emission, in line with Nigeria's international climate change obligations; (g) identifying risks and vulnerabilities, building resilience and strengthening existing adaptive capacities to the impacts of climate change; (h) implementing mitigation measures that promote low low-carbon economy and sustainable livelihood; and (i) ensuring that private and public entities comply with stated climate change strategies, targets and the National climate change action plan.

Section 2 makes provision for the application of the Act. Accordingly, the Act applies to the Ministries, Departments and Agencies (MDAs) of the Federal Government of Nigeria, and to public and private entities within the territorial boundaries of Nigeria for the development and implementation of mechanisms geared towards fostering low low-carbon emission, environmentally sustainable and climate resilient society.

Part II of the Act consists of sections 3, 4, 5, and 6 that deal with the establishment of the National Council on climate change, functions and powers of the Council, membership of the Council and cessation of membership. *By section 3(1)* there is established the National Council on Climate Change which shall be vested with the powers to make policies and

decisions on all matters concerning climate change in Nigeria. The Council shall be a body corporate with perpetual succession and a common seal; and may sue and be sued in its corporate name. The affixing of the seal of the Council shall be authenticated by the Chairman of the Council. The Council shall pay to its members such allowances as may be determined by the Salaries and Wages Commission.

Section 4 of the Act provides for the functions and powers of the Council. Accordingly, the Council shall: (a) Coordinate the implementation of sectoral targets and guidelines for the regulation of GHG emissions and other anthropogenic causes of climate change; (b) approve and oversee the implementation of the Action Plan; (c) administer the Climate Change Fund established under the Act; (d) ensure the mainstreaming of climate change into the national development plans and programmes; (e) formulate policies and programmes on climate change to serve as the basis for climate change planning, research, monitoring, and development; (f) formulate guidelines for determining vulnerability to climate change impact and adaptation assessment, and facilitate the provision of technical assistance for their implementation and monitoring; (g) recommend legislative, policy, appropriation, and other measures for climate change adaptation, mitigation, and other related activities; (h) mobilise financial resources to support climate change actions; (i) collaborate with the Federal Inland Revenue Service to develop a mechanism for carbon tax in Nigeria; (j) collaborate with the Federal Ministry responsible for Environment and the Federal Ministry responsible for Trade to develop and implement a mechanism for carbon emission trading; (k) review international agreements related to climate change and make the necessary recommendation for ratification and compliance by the government on matters pertaining thereto; (I) disseminate information on climate change, local vulnerabilities and risk, relevant laws and protocols, and adaptation and mitigation measures; (m) advice and recommend on technical, scientific, and legal matters relating to climate change, in accordance with the provisions of this Act; (n) acquire, hold, or dispose of any property, whether movable or immovable, for the purposes of performing its functions; (o) supervise the activities of and recommendations by the Secretariat of the National Council on Climate Change with the aim of attaining the objectives of the Act; (p) collaborate with the Nigeria Sovereign Green Bond in meeting

Nigeria's Nationally Determined Contributions (NDCs); and (q) perform such other functions necessary for the fulfilment of the objectives of this Act.

Section 5 provides for the composition of the council, the section specifies the members of the National Council on Climate Change. It is designed to be a high-level body with a mix of public officials and representatives from various sectors of society. The Leadership Act mandates that the Council shall be chaired by the President of the Federal Republic of Nigeria, with the Vice-President serving as the Vice Chairman. This highlights the importance and political will attached to climate action by the government. Membership, in addition to the President and Vice-President, the Council includes a broad range of members to ensure diverse perspectives and expertise. These typically include: The Minister responsible for the Environment. Ministers from other key ministries like Finance, Budget and National Planning, Agriculture, Water Resources, Petroleum, and Power. Representatives from the private sector, civil society organisations (CSOs), women, youth, and persons with disabilities. The Director-General of the Council, who serves as the secretary.

By section 6(1) of the Act, a member may cease to hold office where the member: (a) resigns from the appointment by giving a one-month notice addressed to the Council; (b) is of unsound mind; (c) becomes bankrupt; (d) is convicted of a criminal offence or found guilty of sabotaging Nigeria's efforts to meet her climate change mitigation and adaptation obligations; or (e) dies. Note that where a vacancy occurs in the membership of the Council, in respect of a member referred to under section 5(1) paragraphs (r)-(t) of the Act, it shall be filled with the appointment of a successive representative to complete the remainder of the term of office of the predecessor.

Part III of the Act on the administration and control of the National Council on climate change consists of sections 7 to 14. *Section 7(1)* is on the establishment of the secretariat of the Council. It states that there is established for the Council a secretariat, which shall be the administrative (including secretarial and clerical), scientific and technical arm of the Council and shall perform the functions and discharge the duties assigned to it under the Act. The Council shall have powers to establish for the secretariat offices, including zonal

and state offices, committees, and such other administrative apparatus as it may deem necessary to facilitate the proper implementation of the Act.

Section 8 provides for the functions of the secretariat. It states that the secretariat shall: (a) advise and assist the Council in the performance of the Council's functions and discharge of its duties in accordance with the objectives set under the Act.

Section 9 of the Act. According to that section, in performing its functions under the Act, the secretariat shall have powers, subject to the approval of the council to: (a) request reports, data, document or any information necessary for the performance of its functions under the Act; (b) establish and manage a national registry for capturing mitigation and adaptation actions by public and private entities; (c) mobilise financial resources to support climate change actions; (d) visit the premises of MDAs, and private and public entities for monitoring, verifying and reporting of emission profile or the collection of any other data necessary to undertake the functions and duties prescribed in the Act; and (e) do other things, as may be approved by the Council. On the appointment, qualifications and tenure of the Director-General, the Act provides that there shall be for the secretariat a Director-General who shall be appointed by the President on the recommendation of the Council to see to the administration of the Council.

By section 10(2), the Director-General shall (a) hold a minimum of a Master's Degree in any Environmental related field; (b) have at least 10 years cognate experience in climate change policy development and implementation, and have an understanding of the international climate policy landscape; (c) have experience in developing, implementing and managing projects on climate change at national and international level. The Director-General (a) shall hold office (i) for a term of four years, and may be re-appointed for another term of four years and no more; and (ii) on such terms and conditions as may be specified in the letter of appointment; and (b) may resign from office by giving a one-month notice addressed to the President. The President shall, without notice, terminate the appointment of the Director-General, where the Director-General: (a) fails to meet the functions stipulated in the Act, or (b) on other grounds specified under section 6(1) (b) – (d) of the Act.

Section 11(1) provided for a Zonal Coordinator or State Director of the Act shall (a) be appointed by the Council on the recommendation of the Minister responsible for Environment; (b) hold a degree in any Environmental related field; (c) have at least five years cognate experience in climate change policy design and implementation; (d) hold office for a term of four years without any option of renewal; and (e) resign from office by giving a one-month notice addressed to the Council. The Council shall, without notice, terminate the appointment of a Zonal Coordinator or State Director, in the event of (a) failure to discharge the duties prescribed by the Council or the provisions of the Act; or (b) on other grounds specified under section 6(1) (b) – (d) of the Act.

Where a vacancy occurs under section 11(2) (d) or (3) of the Act, or in the event of death, the Council shall, in respect of filling the office of: (a) a Zonal Coordinator, appoint a qualified person from the same state as the deceased to complete the remainder of the term; or (b) a State Director appoint a qualified person from the same senatorial district as the deceased, to complete the remainder of the term.28 The Council shall ensure that in respect of appointments made under section 11(1) of the Act: (a) each state of a geographical zone shall produce a Zonal Coordinator; and (b) each senatorial district shall produce a State Director on a rotational basis.

Section 12 provides for the remuneration of the Director-General and principal officers of the Council. It states that, notwithstanding the provision of any Act, the Director-General and principal officers referred to in section 11 of the Act shall be paid such remuneration and allowances as may be determined by the Salaries and Wages Commission.

Section 13 of the Act provides for the appointment of staff and the conditions of service of the staff of the Council. Thus, by section 13(1), the secretariat may, with the approval of the Council, appoint such staff and employees as it deems necessary and expedient. Subject to the Pension Reform Act, the terms and conditions of service, including the remuneration, allowances, benefits, and pensions of staff and employees, shall be determined by the Secretariat on the approval of the Council. And without prejudice to the provisions of section 13(2) of the Act, nothing in the Act shall prevent the appointment of a person to any office on condition which preclude the grant of pension and other

retirement benefits in respect of that office, and the provisions of the Public Service Rules on retirement from service shall apply to staff of the Council.

Part IV on financial provisions consists of sections 15, 16, 17 and 18 respectively. *Section 15(1)* provides for the climate change fund. It states that there is established a climate change fund to be maintained by the Council, into which shall be paid: (a) sums appropriated by the National Assembly for the running of the Council; (b) subventions, grants and donations, charges for services rendered or publications made by the Council; (c) funding from International Organisations and funds due to Nigeria for meeting her NDCs; (d) fines and charges from private and public entities for flouting their climate change mitigation and adaptation obligations; (e) carbon tax and emissions trading; and (f) such other funds as the Council may prescribe from time to time. *By section 15(2) of the Act,* the fund of the Council shall be applied towards: (a) he cost of administration of the Council and offices established under the Council; (b) the payment of emoluments, allowances and benefits of members of the Council, reimbursing members of the Council or any committee set up by it, and for such expenses incurred while implementing activities expressly authorised by the Council; (c) the payment of salaries, other remunerations or allowances and other retirement benefits payable to the staff of the Council; (d) the development and maintenance of any property vested in or owned by the Council; (e) climate change advocacy and information dissemination; (f) funding innovative climate change mitigation and adaption projects, subject to the approval of the Council; (g) supporting climate change advocacy and information dissemination; (h) defraying the fees of auditors and other expenses incurred from auditing the Council; (i) conducting assessment of climate change impact on vulnerable communities and population; (j) incentivising private and public entities for their efforts towards transiting to clean energy and sustaining a reduction in GHG emissions; and (k) any other expenditure in connection with any function of the Council under the Act. *Section 15(3)* allows the Council to review the source of the fund and its application.

Accounts, audit and estimate are provided for in *section 16*. Thus, by *section 16(1),* the secretariat shall (a) keep proper accounts and records of the Council's income and expenditure; (b) prepare and submit to the Council a comprehensive report of all the

activities of the secretariat; and (c) prepare a statement of account in respect of each financial year. The secretariat shall, as soon as directed by the Council or within six months after the end of the financial year to which the accounts relate, cause the accounts to be audited in accordance with the guidelines supplied by the Auditor-General for the Federation. [45]

The Secretariat shall, not later than six months before the end of every financial year, prepare and submit through the Council to the National Assembly, the estimates of revenue and expenditure of the Council for the following financial year.[46]

The power to borrow is given to the Council under *section 17* of the Act. It states that the Council may borrow money from financial organisations or other institutions for the purpose of executing its mandate under the Act. Furthermore, the Council may accept gifts of land, money or other property on such terms and conditions as may be specified by the person or organisation making the gift, provided that these conditions are not inconsistent with the functions of the Council under the Act.

Part V contains provisions on the carbon budget and national climate change Action plan and consists of sections 19, 20 and 21, respectively. *Section19(1)* provided for carbon budget that the Federal Ministry responsible for Environment shall, in consultation with the Federal Ministry responsible for National Planning: (a) set carbon budget for Nigeria, to keep average increases in global temperature within 20C and pursue efforts to limit the temperature increase to 1.50C above pre-industrial levels; and (b) by an order (i) set the carbon budget and budgetary period; and (ii) periodically revise the carbon budget, in line with the Nigeria's NDCs and with a view to complying with Nigeria's international obligations.

Also, before setting the pilot carbon budget in line with the provisions of section 19(1) of the Act, the carbon budget shall be presented through the Council to the Federal Executive Council for approval not later than 12 months from the date that the Climate Change Act,

[45] . Ibid, section 16(2) 36

[46] Ibid, Section 16(3)

2021, was assented to by the President of the Federal Republic of Nigeria. Also by virtue of the same section, the Federal Ministry responsible for Environment shall, not later than 12 months before the end of the carbon budget cycle, set and submit through the Council to the Federal Executive Council for approval, a new carbon budget for the next carbon budget cycle.[47]

Where there is a need to review the carbon budget within a carbon budget cycle, the Federal Ministry responsible for the Environment shall, within three months of the revision of the carbon budget, submit it through the Council to the Federal Executive Council for approval.[48] By section 19(5) Federal Ministry of Environment; (a) shall publish detailed national, regional and sectoral climate vulnerability and risk assessments that will serve as the basis for the adaptation components of the Action plan; and (b) may by an order publish guidelines for measurement; reporting and verification of national emissions that will serve as the basis for the setting and annual review of the carbon budget. The National Climate Change Action Plan is provided for in section 20 of the Act.

Thus, by *section 20(1),* the secretariat, in consultation with the Federal Ministries responsible for Environment, and Budget and National Planning, respectively, shall formulate an Action Plan in every five-year cycle. The Pilot Action Plan shall be produced, not later than 12 months from the commencement of the Climate Change Act, 2021.[49] By section 20(3) of the Act, before the presentation of the Action Plan to the Council and Federal Executive Council, respectively, for approval, it shall first be published to the general public for consultation for a period of not less than eight weeks ending 14 days before its presentation to the Council. By section 20(4) of the Act, the Action Plan shall: (a) serve as a basis for (i) identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget goals; and (ii) establishing national goals, objectives and priorities on climate adaptation; (b) prescribe measures and mechanisms (i) for identifying and assessing risks, vulnerabilities and extremes of impact of climate change on vulnerable communities and population, and ecosystems; (ii) for

[47] Ibid, Section 19(3) 40

[48] Ibid, Section 19(4)
[49] Ibid, section 20(2)

setting out actions for mainstreaming climate change response into sector functions; (iii) for identifying action for adaptation and mitigation against climate change; (iv) geared towards mainstreaming climate change disaster risk reduction actions in development programmes; (v) for setting out a structure for public awareness and engagement in climate change actions; (vi) for identifying strategic areas of national infrastructure requiring climate proofing; (vii) to enhance energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses; (viii) for reviewing levels and trends of greenhouse gas emissions; and (ix) for achieving Nigeria's climate change goals; (c) make provision for research, planning and action on climate change mitigation and adaptation; and (d) contain a projection of fiscal and budgetary needs, for the execution of climate change projects and related activities. The components of the Action Plan as stated in section 20(5) include: (a) an articulated carbon budget for the five-year cycle, consistent with the carbon budget; (b) an articulated annual carbon budget for each of the years that make up the five-year cycle; (c) past, current and projected GHG emission profile of GHG emission sectors of the economy; (d) details of past, current and proposed climate mitigation and adaptation actions across the sectors of the economy including the rationale, costs, funding source and benefit of such action; (e) details on the level of compliance with international climate commitments, and (f) proposed incentives for private and public entities which achieve GHG emission reduction.

By *section 21(1),* the Director-General shall, within one year of formulating the Action Plan for the first five-year cycle and for subsequent other cycles, submit to the council and National Assembly Committees on Climate change, a detailed report on the state of the nation with regard to climate change. The report shall include: (a) progress on the implementation of the Action Plan; (b) the extent to which GHG emission profile is consistent with annual carbon budget; (c) identification of the vulnerable areas to the impacts of climate change; (d) the identification of differential impacts of climate change on men, women and children, (e) the assessment and management of risks and vulnerability; (f) the identification of GHG mitigation and adaptation potential; (g) the identification of options, prioritisation of appropriate mitigation and adaptation measures for joint projects of national, state, local governments and the private sector; (h) identification of the efforts being made by public and private entities in attaining the

carbon budget; (i) incentives granted private and public entities for their efforts towards transiting to clean energy and sustaining a reduction in GHG emissions; and (j) fines issued against private and public entities for noncompliance with the provisions of the climate change Act, 2021.[50] The Director-General shall, within three months after the end of every financial year, publish publicly and submit to the National Assembly an evaluation report on the performance of climate change duties by private and public entities.[51]

Part VI of the Climate Change Act, 2021, concerns obligations relating to climate change. The part consists of sections 22, 23, 24, 25 and 26. *Section 22 (1)* places an obligation on the MDAs with regard to climate change. It states that MDAs shall establish a climate change desk to be supervised by an officer not below the Directorate cadre, who shall be responsible for ensuring integration of climate change activities into their core mandate. The Desk officer shall ensure adequate planning and budgeting for all climate change programmes, projects and activities.

By section 22(3), the ministry responsible for Finance, Budget, and National planning shall ensure that all budget proposals submitted by MDAs have been properly vetted and costed for climate change considerations, and that adequate allocation is provided for them under appropriate sub-heads in the annual budget. It is important to note that MDAs shall adhere to the annual carbon emission reduction targets, in line with the Action Plan and carbon budget made under the Act. Thus, any MDA that fails to meet its carbon emission reduction target shall be subjected to a review and its principal officer, upon being found liable, sanctioned and, where appropriate, fined as determined by the Council. Where an evaluation report from an MDA discloses unsatisfactory performance: (a) the secretariat shall undertake investigations and report its findings to the Council; and (b) the Council, acting on that report, may recommend appropriate measures and sanctions.[52]

Section 23 of the Act made provision for climate change obligations of public entities. It states that the Council may make regulations (a) imposing obligations relating to climate

[50] Ibid, section 21(2) 43

[51] Ibid, section 21(3)
[52] Ibid, Section 22(6)

change on any public entity; and (b) varying or revoking any such obligations, where necessary.

Section 24 of the Act made provisions for climate change obligations of private entities with employees numbering 50 and above shall (a) put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan; and (b) designate a climate change officer or an Environmental Sustainability officer, who shall submit to the secretariat, through the State Director, annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan. The private entity that fails to meet its target, as specified under this section of the Act, shall be liable to a fine to be determined by the Council, relying on a system of Environmental Economic Accounting with attention to the health impacts, impacts on climate variation, and total damage to ecosystem services.[53]

Notwithstanding the provisions in the climate change Act, 2021, the Council may be notice in the Federal Government Gazette, require a private entity under the Act: (a) to prepare reports on the status of its performance of its climate change obligations, and prescribe the period for reporting; or (b) who fails to comply with its climate change obligations, to prepare a report within a specified time, on its past and current actions, and future action to be taken to secure future performance with those obligations.[54] The Climate Change Act, 2021, made provision for the Council to partner with civil society organisations within the country in the performance of its functions.

Thus, *section 25(1)* of the Act is to the effect that the secretariat, with the approval of the Council, shall work in partnership with the Federal Ministry of Environment, civil society organisations (CSOs), women, youths, and others, to monitor plans, programmes, projects, and engage in climate advocacy and related activities. In pursuance of the partnership, the secretariat shall, upon request and in line with the Freedom of Information Act, 2021, furnish the CSOs, women, youth, and others with data and such

[53] Ibid, Section 24 (2)
[54] Section 24(3) (a) & (b)

other information relevant to Nigeria's drive for climate change mitigation and adaptation.[55]

Climate change education is provided for in *section 26(1)* of the Act. It states that the secretariat shall, with the approval of the Council, advise the MDAs responsible for regulating educational curriculum in Nigeria on the integration of climate change into the various disciplines and subjects across all educational levels. In doing that, the secretariat, with the approval of the Council, may (a) partner with such MDAs or (b) support scientific research and other similar projects, relevant to the formulation and development of educational curricula and programmes geared towards adaptation and risk mitigation.[56]

Part VII on nature-based solutions consists of sections 27, 28 and 29. *Section 27* states that the Council shall promote and adopt nature-based solutions to reduce GHG emissions and mitigate climate change issues in Nigeria. By *section 28(1),* the Federal Ministry responsible for the Environment shall set up a registry with sub-national codes for capturing REDD+ activities in Nigeria, including updates on Forest Reference Emission Level (FREL). The Council may, in fulfilment of Nigeria's climate change obligations, provide fiscal support for REDD+ activities.[57]

Section 29 of the Act made provision for the Natural Capital Account and the National Development Plans. The Council shall collaborate with and equip the national Bureau of Statistics for developing Nigeria's Natural Capital Accounts. The data from the National Capital Accounts shall be made available to MDAs and used in policy formulation and development of the Action Plan in line with the carbon budget.[58] In the same vein, the Ministry responsible for Finance, Budget, and National Planning shall ensure that the data referred to in section 29(2) is captured in the National Development Plan and expenditure

[55] See section 25(2) of the Act

[56] See section 26(2

[57] Ibid, section 28(3)
[58] Ibid, section 29(3)

framework as a means of measuring the impact of climate change on sustainable development.[59]

Part VIII is one of the miscellaneous provisions and consists of sections 30, 31, 32, 33, 34 and 35, respectively. Section 30 is on the public engagement strategy. By *section 30(1),* therefore, the secretariat shall, not later than six months before the end of every year, prepare and publish its public engagement strategy for the following year. The public engagement strategy shall set out the modalities to be adopted towards achieving the Objectives under the Act, such as (a) informing the public about the Action Plan; and (b) identifying actions and encouraging the public to contribute to the achievement of the Objectives of the Action Plan and the Act.[60]

Section 31 talks about conflicts of interest. A member of the Council, staff or employee of the Council who has an interest in any matter before the Council for consideration shall disclose in writing the nature of such interest. Such member, staff or employee shall be disqualified from participating in any deliberation in respect of the matter and the disclosure of interest so made shall be recorded in the minutes of the meeting., a person who contravenes the provision of section 31(1) commits an offence and is liable on conviction to (a) a fine not more than 1,000,000 or to imprisonment for a term not more than one year; and (b) forfeit any benefit derived from the non-disclosure. No member, staff or employee of the Council shall transact any business or trade with the Council.[61]

Section 32 of the Act empowered the Council to make regulations. (a) requiring private and public entities to report annually on GHG reductions and reduction measures, and have corporate climate change responsibilities; (b) on sectoral and cross-sectoral GHG emission reductions; (c) to supervise market-based mechanisms and instruments relating to climate change; (d) to provide fiscal incentives for the (i) promotion of GHG emission reduction, and (ii) encouragement of private sector participation in climate actions; (e) creating further offences, derived from non-compliance with the provisions of any

[59] Ibid, section 29(3)
[60] See section 30(2)

[61] Ibid, section 31(5)

regulation made under the Act, and penalties for such offences; and (f) as is necessary for the carrying into effect of the provisions of the Act.

The provisions of the Public Officers Protection Act, 2004, shall apply in relation to any suit instituted against any staff or employee of the Council. No suit shall be instituted against the Council, member of the Council, or staff or employee of the Council for any act done in pursuance or execution of the Act or any other law, provided the suit is commenced (a) within three months after the act, neglect, or default complained of; or (b) in the case of a continuation of damage or injury, within six months after the ceasing of such damage or injury.59

Section 34 (1) makes provision for offences. It states that a person, or private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made under the Act commits an offence and is liable to a penalty to be determined by the Council. A Court, before which a suit regarding climate change or environmental matters is instituted, may make an order (a) to protect, stop or discontinue the performance of any act that is harmful to the environment; (b) compelling any public official to act to prevent or stop the performance of any act that is harmful to the environment; (c) of compensation to the victim directly affected by the acts that are harmful to the environment.

Challenges/Gaps in the Climate Change Act, 2021

Nigeria's Climate Change Act is a welcome step forward in the fight against climate change. The Act's main elements are based on environmental values, including sustainable development and citizen engagement. The Act may be strengthened in the following areas:

1. **Non-specification of Targets:** The Act does not provide specific targets for reaching net-zero emissions of greenhouse gases. The Act specifies a target of net-zero emissions by 2050-2070, but it makes no mention of interim targets of sector-specific targets. These goals are not ambitious enough and will not be enough to keep global warming to 1.5 degrees Celsius.

2. **Funding Constraints:** The Act makes no mention of the funding sources necessary to carry out its implementations. This will make it possible to gather the necessary funding to carry out the Act's objectives. Inadequate financial resources in implementing and promoting environmental and climate policies at all levels of government are a major challenge to the enforcement of environmental policies and regulations on the part of agencies. In some cases, the budgetary allocations for environmental protection and enforcement of environmental policies and regulations are either inadequate /or not released to the agencies, thus hindering enforcement mechanisms.
3. **Ineffective enforcement of provisions:** The Act fails to set up effective or precise enforcement procedures for its provisions. This will make it difficult to guarantee the Act's successful implementation.
4. **Public Awareness and Participation:** While public participation is mandated in the CCA 2021, achieving meaningful engagement and widespread awareness remains challenging. Cultural, educational, and socio-economic barriers often limit public/ community involvement and support. Thus, by effectively working with representative groups, civil society organisations/groups, the Government can ensure that there is widespread acceptance of the Climate Change Policies and adequate sensitisation of the populace to adopt the same. There is, therefore, a need to educate citizens about the consequences of their indifference to environmental issues. It is important to sensitise the people to the effect that it is their environment which is at risk, and that if they do not speak out or take responsibility to protect it, nobody will, and the consequences of their inaction will be grave.
5. **Excessive emphasis on appointment-making:** The Act placed too much emphasis on appointment-making and not enough on establishing precise, aggressive targets and enforcement mechanisms.

2.17 Civil Aviation Act CAP C13, LFN 2004

The Civil Aviation Act promotes public safety by providing regulations to secure the safety of persons and property on the aircraft and others who may be endangered by it, while ensuring compliance with international standards and obligations. The Act established the Nigerian Civil Aviation Authority (NCAA) and confirms it with the powers and functions to:

The Act has now empowered the NCAA to act as the sole regulator of the civil aviation industry.[62] Thus, the regulatory functions vested in the Nigerian Airspace Management Agency ("**NAMA**") and the Federal Airports Authority of Nigeria ("**FAAN**") before the enactment of the Act appear to have been taken from them and vested solely in the NCAA. Hence, to the extent that the powers conferred on NAMA and FAAN under the extant Nigerian Airspace Management Act, 1999 (the "**NAMA Act**") and the new Federal Airports Authority of Nigeria Act, 2022 (the "**FAAN Act 2022**"), respectively, conflict with the regulatory and supervisory mandate of the NCAA as expressly provided under the Act, NAMA and FAAN can no longer exercise jurisdiction over those matters.

The Act has now conferred additional powers on the NCAA to: (a) expropriate property to be used in aeronautical search and rescue exercises in any emergency where necessary, (b) ensure coordinated aeronautical search and rescue operations within Nigeria, and (c) allow aircraft owners or authorities of the State of registry of the aircraft to provide required measures of assistance to aircraft in distress.5 With this provision, the NCAA will be expected to put in place appropriate technological and operational infrastructure to effectively coordinate search and rescue operations.

The NCAA is now empowered by the Act to make orders, rules, regulations or directives as it deems necessary to resolve an emergency, where it is of the opinion that an emergency concerning safety and security in civil aviation exists. The emergency must demand immediate action, whether upon complaint by any person or on its own initiative.8 The practical effect is that the Act enables the NCAA to make swift decisions according to the

[62] S. 8(3) of the Act. Note that under s. 30(1)(c) of the Repealed Act, the NCAA was empowered to make such regulation as it deems expedient generally for the purpose of regulating air navigation. S. 8(3) of the Act provides that "*notwithstanding anything contained in any other law, the NCAA shall be **solely** responsible for the regulation of civil aviation in Nigeria*" (Emphasis supplied).

peculiarity of each set of circumstances. That is to say, the NCAA does not need to wait for any declaration, permission or approval by a Minister or another agency before making decisions which affect national safety.

Although the NCAA has always assumed the power to prevent flight, the Repealed Act made no express provision for the prevention of flights under any circumstances. The Act now expressly permits the NCAA to direct an operator of or airman on a civil aircraft not to operate in any situation where (a) the aircraft may not be airworthy, (b) the airman may be unqualified or physically or mentally incapable for the flight, or (c) the flight would cause imminent danger to any person or property on the ground. This provision is laudable as it is consistent with both the safety objective of the Act and international standards.

The Repealed Act merely provides for the power of the NCAA to make regulations for the registration of aircraft in Nigeria. In contrast, the Act specifically provides for the registration of any interest in civil aircraft in Nigeria. The Act mandates the NCAA to record in the national civil aircraft register any title to or interest in any civil aircraft or aircraft engine, propeller, or appliance registered in Nigeria. This record-keeping provision will no doubt make for more efficiency and certainty in the regulation of civil aviation in Nigeria. Furthermore, we hope that this will be a mandatory obligation for the owners and operators of aircraft in Nigeria. If the national civil aircraft register is regularly updated, members of the public should have access to it, particularly to reliably verify whether there has been any registration of title or interest in relation to an aircraft. This will be similar to what is done at the Corporate Affairs Commissions and the State land registries.

The Act empowers the NCAA to issue rules and regulations specifically on aviation environmental protection. This will help in tackling the challenge of toxic emissions from both local and international flights and ensuring safe, habitable, and unpolluted air. This provision is consistent with ICAO's emission reduction scheme.[63]According to the Act, the

[63] This scheme is also known as Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). It is the first global market- based measure for any sector and represents a cooperative approach as against national or regional regulatory initiatives. It offers a harmonised way to reduce emissions from international aviation and minimise market distortion, while also respecting the special circumstances and respective capabilities of ICAO Member States. Nigeria is a member state of ICAO. See https://www.icao.int/environmental-protection/CORSIA/Pages/default.aspx last accessed January 26, 2023.

FAAN he shall be responsible for (a) the registration of any aircraft in Nigeria and issuance to the owner thereof, of a certificate of registration; (b) the establishment and maintenance of a system or register for recording the title to or any interest in any aircraft registered in Nigeria; (c) The prohibition of any Nigerian or foreign-registered aircraft from operating within the Nigerian airspace, unless a certificate of airworthiness in respect thereof is issued or validated under the regulations in force with respect to the aircraft: Provided that the foregoing prohibition shall not apply to aircraft undergoing test flights or flights to places where prescribed maintenance or repairs are to be carried out; (d) the inspection and regulation of aerodromes, inspection of aircraft factories and the prohibition or regulation of the use of aerodromes which are not licensed in pursuance of the regulations; (e) the prohibition of any person from engaging in air navigation in any capacity whatsoever, unless the Authority determines that such a person satisfies the requirements of this Act and the regulations made they're under; (f) ensuring the efficiency and regularity of air navigation and the safety of aircraft, persons, and property carried in aircraft and for preventing aircraft from endangering persons and property; (g) the prohibition of aircraft from flying over such areas in Nigeria as may be prescribed; (h) the issue, validation, renewal, extension or variation of any certificate, license or other document required by the regulations (including the examinations and tests to be undergone) and custody, and production, cancellation, suspension, endorsement and surrender of any such document; (i) the registration of births and deaths occurring in aircraft and of particulars of persons missing from aircraft; and (j) collation and maintenance of a data bank of aviation and aircraft incidents, and occurrence and prompt accident prevention programmes.

Challenges/Gaps in Civil Aviation Act CAP C13, LFN 2004

The Act presents a robust, overhauling, and ambitious legislative framework needed for an essential sector like the aviation industry, which requires strict regulation. The Act equally re-establishes the NCAA as an independent and exclusive regulatory body charged with the responsibility to revolutionise the aviation industry. Generally, the Act aims to address safety and security concerns characterising the aviation sector by the introduction of innovative provisions on safety and security measures, as well as remittances to support

security infrastructure. Indeed, the Act promises to revamp the civil aviation industry and give it a facelift towards ensuring that Nigeria complies with international best practice in its aviation sector.

However, various issues may hinder the effectiveness and efficiency of the Act and the civil aviation industry in Nigeria generally. These range from the planned exit from Nigeria of some foreign airlines due to trapped funds, to the issue of outstanding debts to be paid to the NCAA by some airlines, and the financial mismanagement among some airlines, resulting in their inability to meet their financial obligations and to conduct safe flight operations. Additionally, it is expected that the Act will make provisions to regulate modern aviation innovations such as drone operations, modernisation needs of airport facilities, such as advanced navigable systems, runway lighting, and terminal upgrades, leading to uneven compliance with international safety management standards. The Act is expected to address some of these issues and give Nigeria a more efficient and productive aviation industry. It is also expected that compliance with its provisions will restore confidence of international actors and investors in the sector.

Furthermore, unfortunately, the Act makes no detailed provisions as to how the NCAA may actualise its mandate. The Act is also silent on the payment of compensation to a person whose property is expropriated for search and rescue purposes. The likely effect of this, without more, is exposure of the NCAA to claims and litigation from aggrieved persons whose properties are expropriated without adequate compensation, but this is not necessarily problematic. The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that there must be adequate compensation paid. If the NCAA in practice develops regulations reflecting prevailing international practice on compensation in such contexts, the concerns of property owners are likely to be addressed and managed fairly and efficiently.

To achieve these lofty objectives, there is a need to roll out machinery for the implementation and enforcement of some of the provisions of the Act. For instance, we need detailed regulations (a) in the implementation of the API and PNR standards in Nigeria, (b) making provisions for penalty for default in making advance payments in the event of aircraft accidents by way of regulations, and (c) for implementing and enforcing

a one-sise-fits-all or common approach for remitting to the NCAA 5% of the charge on air ticket, charter and cargo sales. The NCAA should therefore enact a regulation to address the lacunae in the Act already identified in this article.

2.18 Water Resources ACT, CAP W2, LFN 2004

The Water Resources Act is targeted at developing and improving the quantity and quality of water resources. The following sections are pertinent. Sections 5 and 6 provide authority to make pollution prevention plans and regulations for the protection of fisheries, flora and fauna.

Section 5 provides that the Minister shall, in the discharge of his duties under this Act, have regard to the need to make proper provision for (a) adequate supplies of suitable water for the watering of animals, irrigation, agricultural purposes, domestic, and non-domestic use and the generation of hydro-electric energy for navigation, fisheries and recreation; (b) the supply of water for the drainage, the safe disposal of sewage, effluent, and water-borne wastes and the control and prevention of pollution; (c) the control and prevention of flooding, soil erosion and damage to the watershed areas; (d) the reclamation of land; (e) the protection of inland and estuarine fisheries, flora and fauna; (f) ensuring that the possible consequences of particular development proposals on the environment are properly investigated and considered before each proposal is approved; (g) the procedures to facilitate and (i) ensure the coordination of all detailed planning for the investigation, use, control, protection, management and administration of water resources; (ii) direct the coordinated execution of approved plans and projects by public authorities; and *(h)*the procedures for technical assistance and rehabilitation, and improvement of support to public authorities having responsibility for public water supply.

Section 6 provides that it shall be the duty of the Minister to draw up from time to time an up-to-date comprehensive master plan for the development, use, control, protection, management, and administration of all water resources and to periodically review in the light of prevailing economic, financial or technological conditions, activities, plans and proposals of public authorities exercising powers relating to water resources.

Section 18 makes offenders liable, under this Act, to be punished with a fine not exceeding N2000 or an imprisonment term of six months. He would also pay an additional fine of N100 for every day the offence continues; (1) Any person who contravenes or fails to comply with any provisions of this Act, or any regulation made thereunder commits an offence and is liable upon conviction to a fine not exceeding N2,000 or to a term of imprisonment not exceeding six months or to both such fine and imprisonment, and, in the case of a continuing offence, to an additional fine not exceeding N 100 for every day or part of a day that the offence continues; (2) Where an offence under this Act has been committed by a body corporate or firm or other association of individuals, a person who, at the time of the commission of the offence was any officer thereof or was purporting to act in such capacity, is severally liable or guilty of that offence and liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.

Challenges/Gaps in Water Resources ACT, CAP W2, LFN 2004

The Constitution of the Federal Republic of Nigeria provides that water from such sources as may be declared by the National Assembly affecting more than one state is under the Exclusive Legislative List. The constitution empowers the states to legislate with regard to water supplies, irrigation, canals, drainage, embankments, water storage and waterpower, subject to the provisions of the Exclusive legislative list. The specific challenges for effective coordination found in this study are:

1. **No provision for conflict resolution:** The WRA 2004 and the Minerals Act, Cap 226 LFN under S.5 of 1993 Decree charged the Minister with the responsibility for matters relating to water resources, with the power to issue a water license, order the removal of hydraulic work, impose a license fee, impose pollution control, and impose other fees, rates and charges. The same powers are also conferred on the minister responsible for Mines. There is no provision for conflict resolution in case of such a dispute or disagreement arising from the exercise of powers granted to both Ministers. However, there has never been a conflict that warrants seeking

cooperation or a Federal High Court interpretation of the Acts. This is an indication that the policy provisions have not been implemented.

2. **Overlapping Statutory Authority:** In the NIWA Decree No. 13 of 1997, the Authority has the power to grant permits and licenses for water intake. This power extends over all federal navigable waterways. They are the same watercourses over which the Minister of Water Resources has the power to grant intake licenses. It is observed that under S.9 (o) of the NIWA Decree, the Authority has the power to provide hydraulic structures for rivers and dams, bed and bank stabilisation. Similar power is also vested in the RBDAs under S.4 of the RBDA Act. Besides, under S.13(b) of WRA 2004, the Minister of Water Resources is empowered to impose a fee on any person or public authority seeking to construct, operate, maintain, repair or alter any hydraulic works in or adjacent to any water source. These are conflicting statutory authorities that need to be addressed.
3. **Global policy directive and national reality:** Nigeria's water policies were always framed in response to global policy directives and pressures, such as MDGs and Dublin Principles, among others. Nigeria in 2011 voted a resolution in favour of making water and sanitation a human right, but never passed legislation to enshrine this right. The successive governments always attempt to satisfy the international policy framework advocates and frame policies that do not reflect the developmental realities in the country. Most policy practices and implementations often narrow down to a technical solution at the expense of appropriate and locally-led intervention, important factors such as citizen-led initiatives, as well as changing the behaviours of the citizens.

2.19 The Federal National Parks Act, CAP N65, LFN 2004

The National Parks Act is concerned with the establishment of protected areas used for resource conservation, water catchment protection, wildlife conservation and maintenance of the national ecosystem balance. The national parks include: Gashaka Gumti National Park, Kainji Lake National Park, Cross River National Park, Old Oyo National Park, Chad Basin National Park, Yankari National Park and Kamuku and Okomu National Parks.

The Nigerian National Park Service has the statutory responsibilities that include preserving, enhancing, protecting, and managing vegetation and wild animals in national parks. This includes advising the federal government on development and preservation policies for national parks and conserving wildlife throughout Nigeria to maintain species abundance and diversity.

Challenges/Gaps in Federal National Parks Act, CAP N65, LFN 2004

1. **Outdated Laws**: The existing legal framework is often considered outdated and does not fully address the complexities of modern wildlife crime, which is increasingly transnational and organised. For instance, the Endangered Species (Control of International Trade and Traffic) Act of 1985 has been criticised for lacking comprehensive provisions for wildlife protection.
2. **Lenient Penalties**: Penalties for wildlife offences, such as poaching and illegal trade, are often too lenient to act as a deterrent. The option for offenders to pay small fines instead of facing prosecution ("compounding") creates a major loophole that is exploited by criminals.
3. **Inadequate Coverage:** The legal framework may not adequately cover all aspects of conservation, such as the full recognition of animal sentience for wild animals, and it lacks specific legislation for the welfare of animals in captivity, like in zoos.
4. **Under-resourced and Understaffed**: The National Park Service and other relevant enforcement agencies suffer from inadequate funding, which results in a shortage of trained personnel, a lack of modern equipment (such as patrol vehicles, GPS, and camera traps), and poor infrastructure. This severely limits their capacity to effectively monitor and patrol the vast areas of the national parks.
5. **Corruption**: Pervasive corruption within the system is a major challenge. Wildlife traffickers and illegal loggers can often bribe law enforcement officials to avoid arrest or prosecution, which undermines the rule of law and emboldens criminals.
6. **Poor Coordination:** There's a weak institutional framework with fragmented responsibilities among various government agencies, leading to overlapping mandates and a lack of a unified approach to conservation and enforcement.

7. **Lack of Community Involvement**: The communities living around the national parks are often not involved in conservation efforts. Many depend on the park's resources for their livelihoods, which can lead to conflicts and illegal activities like poaching, grazing, and logging. The Act does not adequately address how to provide alternative livelihood options or compensation for communities whose resources are restricted due to the establishment of a park.
8. **Poverty and Pressure on Land:** Increased population and poverty in adjacent communities drive people to encroach on protected lands for farming, grazing, and settlement. This puts immense pressure on the parks' ecosystems and leads to habitat destruction.

2.20 Niger-Delta Development Commission (NDDC) ACT, CAP N68, LFN 2004

The Niger Delta Development Commission (NDDC) Act, 2000, is a pivotal piece of Nigerian legislation that established the Niger Delta Development Commission. The Act was enacted to address the long-standing issues of environmental degradation, poverty, and underdevelopment in the oil-rich Niger Delta region. It repealed the previous Oil Mineral Producing Areas Development Commission (OMPADEC) Decree of 1998, to create a more effective and better-structured body. Section 7 (1) (b) empowers the Commission to plan and implement projects for the sustainable development of the Delta in the field of transportation, health, agriculture, fisheries, urban and housing development, etc. The Commission, under this Act, has a duty to liaise with oil and gas companies and advise stakeholders on the control of oil spillages, gas flaring and other related forms of environmental pollution.

Challenges/Gaps in the NDDC Act

Despite the well-intentioned goals, the NDDC Act has faced significant challenges in implementation, and several gaps and weaknesses have been identified in the framework. These gaps are often cited as reasons for the commission's limited success in transforming the Niger Delta. They include:

1. **Inadequate Funding and Lack of Enforcement:** The Act provides for funding from various sources, including contributions from the Federal Government and oil and

gas companies. However, a major gap is the lack of strict enforcement and penalties for contributors who fail to remit funds. This has led to huge debts owed to the commission, hindering its ability to execute projects effectively. Proposed amendments have sought to address this by suggesting direct deductions from the Federation Account Allocation Committee (FAAC) to ensure timely payments.

2. **Lack of Autonomy and Political Interference:** The Act, while establishing the NDDC as a corporate body, does not fully insulate it from political interference. The appointment of the Governing Board is a political process, and this has often led to the selection of individuals based on political patronage rather than merit and expertise. This interference undermines the commission's independence and its ability to make sound, non-partisan decisions for the benefit of the region.
3. **Overlap of Responsibilities and Lack of Coordination:** The NDDC Act exists alongside other environmental and developmental legal frameworks in Nigeria, such as the Nigerian Content Development Monitoring Board Act and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act. This can lead to overlapping responsibilities and a lack of coordination among agencies, resulting in fragmented efforts and inefficient use of resources.
4. **Weak Accountability Provisions:** Although the Act outlines the powers and functions of the commission, it has been criticised for weak accountability and transparency provisions. Reports indicate that violations of the Act, such as the award of contracts without due process, have been a significant problem. This has led to the shoddy execution or outright abandonment of projects, undermining the commission's mandate and fostering corruption.
5. **Issues associated with Nigerian federalism and Master Plan Implementation:** The Act mandated the creation of a Niger Delta Regional Development Master Plan. However, a legal gap arises from the conflict with Nigeria's federal system, where state governments have autonomy over certain planning matters. Judicial pronouncements have highlighted the need for the NDDC to secure approvals from state governments in line with their respective planning laws, creating a dilemma for the effective implementation of a unified regional master plan.
6. **Non-Justiciability of Key Provisions:** Some analysts argue that certain environmental protection provisions in the Nigerian Constitution are non-

justiciable. While the NDDC Act gives the commission the mandate to address ecological problems, the inability of an injured party to rely on constitutional provisions in a court of law can weaken the legal framework for environmental protection against issues like gas flaring and oil spills.

Summary

Challenges to the enforcement of environmental laws in Nigeria can be traced to lapses and gaps in environmental legislation. The need to update and review the contents of the National Policy on Environment in response to advancements and developments in science and technology, as well as the necessity to integrate environmental concerns into the activities of all sectors of the economy, cannot be overemphasised. Several factors can be identified as characteristic of Nigerian environmental problems; these include the consequences of rapid urbanisation and industrialisation, which have led to increased demand for a variety of goods and services, including the construction of roads, houses, and industrial buildings, resulting in environmental problems. In addition, inadequate coordination and monitoring of policies affect environmental management and sustainable development, leading to poor enforcement of environmental protection legislation.

Some specific challenges to enforcement include:

1. **Legal challenges:** Legal challenges are one of the issues confronting the enforcement of existing environmental legislation, poor enforcement policies, and the lacklustre attitude of the staff of the agencies responsible for implementation and enforcement. A good example in this regard is the policymakers' neglect of the negative impacts of oil pollution on the environment, especially pollution through oil spillage and gas flaring as consequences of oil exploration. There is, therefore, a need for the government to ensure that environmental policies transition from mere control and management of environmental health hazards to policies that emphasise the prevention of environmental pollution through adequate sanctions or penalties for all forms of violations.
2. **Administrative Challenges:** Administratively, government agencies are reluctant to engage in vigorous pollution-control programs. One factor is that policymakers in government simply do not believe that the benefits of pollution-control policies outweigh the costs, and thus, they refuse to accept the evidence presented to them until a disaster occurs.

3. **Climate literacy:** There is a lack of serious or popular pressure on the government regarding the need to enforce pollution-control policies. There is, therefore, a need to educate citizens about the consequences of their indifference to environmental issues. It is important to sensitise people to the fact that it is their environment at risk, and if they do not speak out or take responsibility to protect it, nobody will, and the consequences of their inaction will be grave.
4. **Lack of Proper Funding:** Inadequate financial resources for implementing and promoting environmental and climate policies at all levels of government are major challenges for the enforcement of environmental policies and regulations by agencies. In some cases, the budgetary allocations for environmental protection and the enforcement of environmental policies and regulations are either inadequate or not released to the agencies, thereby hindering enforcement mechanisms.
5. **Corruption:** The abuse of public office for private gain occurs when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes or to gain a competitive advantage and profit. Public office can also be abused for personal benefit, even in the absence of bribery, through patronage and nepotism, the theft of state assets, or the diversion of state revenues. When the officials of the agencies responsible for enforcing environmental regulations are deeply entrenched in corruption, it becomes practically impossible for them to enforce policies and regulations as they are supposed to do.
6. **Ignorance and the Problem of Proof of Evidence:** Ignorance of environmental and climatic harm, as well as the anthropogenic effects of such harm on human health and the environment, inhibits environmental litigation and poses a challenge to the enforcement of policies and regulations in Nigeria. In other words, the institution of cases for environmental damage arises from the awareness of the victims regarding the harm. Where there is no awareness of environmental damage, no action can be taken to address it. A related issue is that environmental harm takes time to manifest. Thus, an act causing environmental harm may be committed today, but the resulting damage from the act may not manifest for several years. Proving such harm when the suit is filed immediately after the act is committed

becomes problematic. Moreover, if litigation is delayed until the manifestation of the harm, then proving causation for the purpose of attributing liability becomes difficult due to the proximity rule.

7. **Lack of Environmental Judicial Personnel:** Environmental law is perhaps the most challenging area facing the world's judiciary today. Yet, it is one of the areas of the administration of justice with which the judiciary is least familiar and least equipped to handle, whether regarding conceptions, procedures, background information, or access to relevant materials. The reason is that most of the judicial personnel in our courts today had no opportunity to study environmental law during their training to become lawyers. Thus, they have limited knowledge of the law and its application to environmental disputes. Even the judicial process for environmental matters is often slow, cumbersome, and expensive. The Federal High Court is the court of first instance for environmental cases, but its limited presence across all states can restrict access to justice for victims. The technicalities of environmental law can also be a barrier, leading to undue delays and, in some cases, victims opting for out-of-court settlements rather than protracted legal battles.
8. **Poverty:** Poverty is also one of the inhibiting factors militating against the enforcement of environmental legislation in Nigeria. Poverty, as one of the inhibiting factors, is rooted in the nature of environmental litigation, which requires scientific evidence. Proving scientific evidence necessitates expert witnesses knowledgeable in the area. These experts can be prohibitively expensive and often beyond the reach of the ordinary victim of environmental harm. Relatedly, the destruction of forests by poor settlers who invade virgin forests each planting season for farming and timber resources is an issue. Because of their level of poverty, they cannot afford to buy expensive fertilisers to improve their crop yields. The only alternative is to continue clearing forests for farming, with the attendant consequences for climate change.
9. **Inadequate Penalties:** The existing laws often prescribe penalties that are not stringent enough to deter large-scale environmental crimes. The fines, sometimes as low as a few thousand naira, are insignificant to multinational corporations and are seen as a cost of doing business rather than a deterrent. This creates a situation

in which it is often cheaper for a company to pay a fine than to invest in environmentally friendly practices.

10. **Non-justiciability of Environmental Laws:** While Section 20 of the 1999 Constitution mandates environmental protection, as enshrined in Chapter II (Fundamental Objectives and Directive Principles of State Policy), it is non-justiciable. This means that citizens cannot directly sue the government for failing to protect the environment. This lack of legal standing significantly weakens the right to a clean and healthy environment.
11. **No Specialised Environmental Courts to Handle Environmental Issues:** The absence of specialised courts that handle environmental issues may often lead to judicial delays and procedural hurdles. While courts have shown a willingness to uphold environmental rights in landmark cases, issues like 'inadequate expertise,' 'delays in litigation,' and the strict application of the principle of locus standi (standing to sue) often limit access to justice for affected communities. The lack of specialised environmental courts is also a significant barrier.

Conclusion

The assertion that the environment is an integral part of our existence significantly implies that we are all children of the universe. The sun plays a key role as the source of energy for all creatures. For the survival of living creatures, the water cycle must be maintained. Disrupting the fundamental cycles of nature has severe and dire consequences for every life form on the planet. In defending the Nigerian environment, we are at the same time defending the global environment because we have only one Earth. This shared responsibility and knowing that we have one Earth make it imperative to report environmental violations and crimes as soon as they occur. We must proactively work to ensure that these incidents do not occur. Where they do arise, it is essential to have systems in place that act as a guide to monitoring and enforcing legal action against environmental issues or crimes, including ecocide. Thus, Nigeria's environmental laws represent a genuine and comprehensive effort to address the country's pressing environmental challenges. However, the analysis of the laws shows a stark contrast between the legal framework's ambition and its practical outcomes. The effectiveness of these laws is profoundly undermined by systemic weaknesses in enforcement, institutional conflicts, corruption, and a non-justiciable constitutional provision for environmental rights. As a result, environmental degradation continues to plague the nation, hindering the path to sustainable development.

Nevertheless, the prospect for change, however, is not lost. By addressing the identified loopholes and implementing strategic reforms, Nigeria can transform its environmental governance. Strengthening enforcement, promoting transparency, empowering citizens through a justiciable right to a clean environment, and fostering inter-agency cooperation are not just recommendations; they are essential prerequisites for a future where economic growth and environmental protection are mutually reinforcing, ensuring a healthier and more sustainable Nigeria for generations to come. The environmental laws in Nigeria are vital to safeguard the country’s environment, promote sustainable development, and ensure responsible development practices.

Recommendations

Considering the evolutionary nature of the environment and the pace at which the environment deteriorates, the current environmental legislation is not capable of providing the quick responses and independent expert decisions required for environmental issues. As long as the existing courts remain the sole body for interpreting environmental laws and adjudicating on environmental disputes, they will inevitably continue to serve as a barrier to environmental sustainability. Consequently, this work proposes the following recommendations:

1. The provisions of Section 20 of the 1999 Constitution, which impose a duty on the state to protect and improve the environment and safeguard the water, air, land, forests, and wildlife of Nigeria, need to be transferred to Chapter IV of the Constitution to make them justiciable in light of Section 6(6)(c).
2. The amendment of Section 6(3) of the NOSDRA Act 2006, in particular, and some other environmental laws such as EIA, the Oil in Navigable Act, the Harmful Waste Act, and so on, which imposes a fine not exceeding #5,000,000 or imprisonment for a term not exceeding 2 years, or both, in the event of any failure to clean up oil-impacted sites within two weeks of the occurrence of the spill, needs to be amended to provide a more stringent penalty that will serve as a deterrent as in the case of other developed and developing countries.
3. The regulatory agencies and institutions for the enforcement and implementation of environmental standards in Nigeria need to be restructured and strengthened by legislation to enjoy full independence, financial viability, and transparency.
4. It is useless to have laws that cannot be effectively enforced or implemented. The regulatory agencies and institutions for the enforcement and implementation of laws addressing environmental issues in Nigeria need to be technologically equipped to detect environmental issues, such as what constitutes chemical substances or toxic wastes under the Harmful Waste (Special Criminal Provisions) Act 1988, before they enter Nigeria. This will aid forensic examination and data and waste management technologies in Nigeria.

5. The Nigerian judiciary must be ready to rise above reliance on technicalities in favour of multinational oil companies and award substantial damages against persons who pollute the environment. This way, the judgments will serve as a deterrent to operators.
6. A Special Environmental Court or Tribunal should be established, and judges who are experts in the enforcement and implementation of environmental matters should be appointed to administer all environmental laws. This way, the delays associated with traditional court litigation will be effectively addressed and environmental justice achieved.