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ASSESSING THE IMPACT OF INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS ON PETROLEUM ASSETS DECOMMISSIONING LEGISLATION IN NIGERIA

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The increasing global efforts at enhancing sustainable energy and best oilfield practices in the petroleum sector have made decommissioning of petroleum assets a subject of constant environmental and legal deliberations at international, regional and national forums. In Nigeria, the legal framework for decommissioning is developing and partly shaped by worldwide and regional regimes that stipulate vital guidelines and standards for ecological preservation, obligations and industry best practices. The article, which adopts a doctrinal research methodology, investigates the scope to which international framework, like the 1958 Geneva Convention, United Nations Convention on the Law of the Sea (UNCLOS), the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention), the International Maritime Organisation (IMO) guidelines, in addition to African regional framework, such as the Abidjan Convention and its protocol, etc have influenced Nigeria's municipal decommissioning laws. The article examines pre-2021 decommissioning laws and the Petroleum Industry Act (PIA), 2021 plus its incidental regulations, with a view to ascertaining how international decommissioning obligations are mirrored in the national laws and guidelines. The article also evaluates some of the challenges confronting Nigeria's effective implementation of these laws, including legal uncertainties, enforcement constraints, and fiscal obligations for decommissioning expenses. The findings of the research disclosed that although evidently, global and regional instruments have a bearing on local decommissioning laws, yet considerable gaps still exist in aligning Nigerian legislation with the requisite global prospects. Thus, the article recommends that the identified constraints should be addressed in order to ensure that decommissioning operations in Nigeria are consistent with excellent global petroleum industry practice.

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1. INTRODUCTION

The decommissioning of petroleum assets has become a critical issue within the international energy landscape, chiefly as many petroleum-producing countries are switching to renewable energy transition (RET) and ecological sustainability enhancement. In relation to the petroleum sector, decommissioning refers to the concluding phase of a petroleum project and entails the removal or reusing of structures following petroleum drilling cessation and reinstating the environment to its pristine condition.[1]Though the exact number of petroleum wells that have been drilled globally is uncertain, it is estimated that worldwide, there is in existence over 29 million abandoned and orphaned petroleum wells[2] out of which 3.2 million are found in the USA with a possibility that the figures will keep increasing.[3]

The reason for a prospective increase in the number of abandoned or orphaned wells is partly because the procedure for discovering old wells is often flawed by ambivalence and opaqueness as the new drilled wells may eventually face similar problems.[4] This also means that a rise in the number of such wells will result in increase in decommissioning costs and concerns for operators' commitments towards fulfilling their

[1] S van Elden and others, 'Offshore Oil and Gas Platforms as Novel Ecosystems: A Global Perspective' (2019) 6 Frontiers in Marine Science 1, 2 https://doi.org/10.3389/fmars.2019.00548; J Melbourne-Thomas and others, 'Decommissioning Research Needs for Offshore Oil and Gas Infrastructure in Australia' (2021) Frontiers in Marine Science 1 <https://doi.org/10.3389/fmars.2021.711151>.

[2] T Partridge and others, 'Decommissioning: Another Critical Challenges for Energy Transitions' (2023) 2 Global Social Challenges Journal 188, 189 <https://doi.org/10.1332/NNBM7966> ; N Groom, 'Special Report: Mullions of Abandoned Oil Wells are Leaking Methane, a Climate Menace' *Reuters* (18 June 2020) <https://www/reuters.com/article/business/special-report-millions-of-abandoned-oil-wells-are-leaking-methane-a-climate-m-idUSKBN23N1P3/>, accessed 12 April 2025.

[3] WS Cox, JA Collura and DL Beier, 'Abandoned and Orphaned Wells: How to Reduce Risks and Minimise Environmental Impacts,' *Bradley Environmental Update: Client Alert* (21 June 2023) https://www.bradley.com/insights/publications/2023/06/anandoned-and-orphaned-wells-how-to-reduce-risks-and-minimize-environmental accessed 12 April 2025.

[4] M Joselow, 'With Money on the Table, States Identify 120,000 Leak-prone Oil Wells,' *The Washington Post* (2 December 2022) <https://www.washingtonpost.com/climate-environment/2022/12/02/orphaned-wells-infrastructure-law/>, accessed 12 April 2025.

decommissioning obligations. Besides the absence of an accurate number of abandoned petroleum wells globally, another significant challenge in dealing with decommissioning of petroleum facilities is the fact that the term, 'decommissioning' itself lacks a universally accepted legal definition. Actually, the term is not found in key global and regional legal instruments regulating decommissioning of oil and gas infrastructures.[5]For instance, the terminology is absent from the 1958 Geneva Convention; likewise, it is neither adopted in UNCLOS nor in the IMO guidelines.[6]

Notwithstanding the obvious lack of global consensus on the meaning of decommissioning, the Nigerian PIA 2021 provides guidance on the subject of 'decommissioning and abandonment' (D & A). In the context of the statute, D & A involves the authorised method for winding up petroleum activities, which incorporates closing down wells and associated infrastructure's operations, fully or partly taking away facilities, securely controlling hazardous waste and effectively conducting environmental restoration of the impacted region.[7] It could therefore, be inferred that decommissioning is a multifaceted and expensive procedure involving the retirement of petroleum assets at the end of their operational lifecycles, including the safe deconstructing, scrapping and disposing of onshore/offshore assets in addition to restoring the affected area to an acceptable limit.[8]

But in Nigeria, like in most other oil-rich producing nations, decommissioning is often ignored, resulting in several abandoned and orphaned facilities[9] that constitute grave environmental challenge to host

[5] PI Azubuike and FA Anyogu, 'An Appraisal of Sustainable Decommissioning of Petroleum Installations and Environmental Protection in Nigeria' (2022) 4(3) International Review of Law and Jurisprudence 140, 142.
[6] BA Hamzah, 'International Rules on Decommissioning of Offshore Installations: Some Observation' (2003) 27(4) Marine Policy 339-348 <https://doi.org/10.1016/S0308-597X(03)00040-X>.
[7] PIA 2021, section 318, Item 43.
[8] EG Pereira and others, 'Decommissioning Offshore Oil and Gas Platforms: Is the Rigs-to-Reefs Program a more Sustainable Alternative?' (2023) 14(1) The Journal of Sustainable Development Law and Policy 1, 4-5, <https://doi.org/10.4314/jsdlp.v14i1.2s>.
[9]Orphaned facilities or wells are non-producing petroleum wells that have not been plugged and has no known operator or owner who is answerable for restoring the well site or the

communities, danger to health and security,[10]as well as ground and underwater pollutions, public nuisance and greenhouse gas (GHG) emissions to the atmosphere[11] that also aggravates global warming and climate change. Such continued activities further undermine SDGs relating to health (SDG 3), climate condition (SDG 13), ecosystems/biodiversity (SDGs 14 and 15) and communities/stakeholders cooperation (SDG17). In light of this, an effective decommissioning goes beyond mere removal of obsolete petroleum assets as it also addresses environmental and social issues pertaining to broader energy transition and decarbonisation efforts by ensuring a sustainable and low-carbon future.[12]

Since the discovery of petroleum in 1956, Nigeria has remained a foremost petroleum exporting country in the African region with petroleum resources as the pillar of her economy, contributing noticeably to Nigeria's

operator is bankrupt and thus, indirectly transfers the burden of plugging, reinstating, remediating or reclaiming the impacted environment to the government, and sometimes, the landowner and non-governmental organisations (NGOs)- see NJ Gianoutsos, KB Haase, and JE Birdwell, 'Geologic Sources and Well Integrity Impact Methane Emissions from Orphaned and Abandoned Wells' (2024) 912 Science of the Total Environment 169584 <https://doi.org/10.1016/j.scitotenv.2023.169584>

[10]United Nations Environmental Programme, *Environmental Assessment of Ogoniland* (Nairobi, Kenya, United Nations Environmental Programme 2011) 100, <https://ejcj.orfaleacenter.ucsb.edu/wp-content/uploads/2018/03/2011.-UNEP-Report.Environmental-Assessment-of-Ogoniland-2011.pdf>, accessed 13 February 2025.

[11] WS Cox, JA Collura, and DL Beier (n.6); U. S. Environmental Protection Agency, 'Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2020,'<https://www.epa.govc/ghgemmissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020>,accessed 12 April 2025; R Doble and others, 'A Multi-Stage Screening Approach to Evaluate Risks from Inter-Aquifer Leakage Associated with Gas Well and Water Bore Integrity Failure' (2023) 618 Journal of Hydrology 129244<https://doi.org/10.1016/j.jhydrol.2023.129244>.

[12] M Kang and others, 'Identification and Characterisation of High Methane-Emitting Abandoned Oil and Gas Wells' (2016) 113(48) Proceedings of the National Academy of Sciences (PNAS) 13636<https://doi.org/10.1073/pnas.1605913113>, Y Yang and others, 'Energy Transition: Connotations, Mechanisms and Effects' (2024) 52 Energy Strategy Reviews 101320 <https://doi.org/10.1016/j.esr.2024.101320>.

GDP,[13] budget revenues, and earnings from foreign exchange.[14]Currently, according to a press release issued by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), Nigeria's crude oil reserve stood at 37.28 billion barrels, while the natural gas reserve was 210.54 trillion cubic feet (TCF) as at January 2025.[15]In realistic expressions, about 80% of Nigeria's income comes from petroleum resources while above 90% of the country's entire export can be traced to the petroleum sector.[16]This explains why it is speculated that the recent Trump-tariff on Nigerian exports would adversely affect Nigeria's economy because over 90% of Nigeria's exports to the United States of America (USA) consist of 'crude petroleum, mineral fuels, oils, and gas products.'[17]Unfortunately, regardless of maintaining more than 175 petroleum installations in the Niger Delta area, with projection of having more given new findings,[18]

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[13] The Nigerian petroleum sector contributes about 5.5% of the country's GDP- DD Sasu, 'Oil Industry in Nigeria- Statistics & Facts' Statista (5 November 2024) <https://www.statista.com/topics/6914/oil-industry-in-nigeria/#topicOverview>, accessed 12 April 2025.

[14] Joint UNDP/World Bank Energy Sector Management Assistance Programme (ESMAP), *Taxation and State Participation in Nigeria's Oil and Gas Sector* (The International Bank for Reconstruction and Development/The World Bank, August 2004) 1<https://openknowledge.worldbank.org/entities/publication/4b3fa51e-50c0-5c85-9e11-da6651748871>, accessed 5 February 2025; SSS Sami and M Taiwo, 'Effect of Crude Oil Prices and Production on the Performance of Nigerian Gross Domestic Product: A Conceptual Framework' (2023) 11 Journal of Human Resources and Sustainability Studies 698, 698-699.

[15] D Aina, 'JUST IN: Crude Oil Reserves Hit 37bn Barrels, Gas Soars to 210.54TCF- NUPRC' *Punch* (Lagos, 11 April 2025) <https://punchng-com/just-in-crude-oil-reserves-hit-37bn-barrels-gas-soars-to-210-54tcgf-nuprc/>, accessed 11 April 2025.

[16]NC Ole and EB Herbert, 'The Nigerian Offshore Oil Risk Governance Regime: Does the Petroleum Industry Act 2021 Address the Existing Gaps?' (2022) 31(3) Studia Iuridica Lublinensia 143,144, <https://doi.org/ 10.17951/sil.2022.31.3.143-163>; EO Okumagba, 'Decommissioning of Oil and Gas Installations in Nigeria: A Critical Appraisal of the Impacts of the Petroleum Act 2021' (2022) 15(7) Baltic Journal of Law & Politics 1370, 1371 <https://doi.org/10.2478/bjlp-2022-007103>.

[17] D Aina, 'Why Trump Tariff is Bad for Nigerian Exports- FG' *Punch* (Lagos, 7 April 2025), <https://punchng.com/why-trump-tariff-is-bad-for-nigerian-exports-fg/?amp>, accessed 8 April 2025.

[18] EG Pereira, TO Taiwo, and NC Ole, 'Addressing Residual Liability and Insolvency in Disused Oil and Gas Infrastructure Left in Place: The Cases of Brazil, Nigeria, and Trinidad and Tobago'(2020) 11(2) The Journal of Sustainable Development Law and Policy 326, 345-346, <https://dx.doi.org/10.4314/jsdlp.v11i2.3>; EU Azaino, 'International

Nigeria has yet to begin onshore/offshore decommissioning.[19]Research findings indicate that more than 170 installations are approaching their operational lifetime with several of them becoming outdated.[20]

The 2011 UNEP report on Ogoniland also revealed that several oil facilities were abandoned before the 1993 shut-down date by Shell Petroleum Development Company (SPDC). Reporting on the 'decommissioning and abandonment', the report stated thus:

> While the SPDC database shows a number of pipelines and assets referenced as 'abandoned' or 'decommissioned', the way in which some facilities were left does not seem to have adhered to SPDC's own standards. UNEP's reconnaissance routinely came across oilfield resources which had evidently been abandoned in an uncontrolled fashion....The bottom line is that the current state of the abandoned facilities of oil field structure in Ogoniland do not meet international best practices.[21]

Though the report related specifically to oil operations by SPDC in Ogoniland, a community in the Niger Delta region of Nigeria, it is submitted that the report reflects the general situation of most oil and gas facilities in the region. There is no assurance that SPDC has fully complied with the independent assessors' recommendations concerning

Decommissioning Obligations: Are There Lessons Nigeria Can Acquire from UK's Legal and Regulatory Framework?' <https://www.academic.edu/3834331/International_Decommissioing-Obligation_Are_there_lessons_Nigeria_can_acquire_from_the_UK_s_legal_and_regulatory_framework>, accessed 5 February 2025.

[19] EG Pereira, TO Taiwo, and NC Ole (n 21) at 346; T Afonja, R Payne, and R Oye, 'Nigeria' in EG Pereira and others (eds) *The Regulations of Decommissioning, Abandonment and Reuse Initiatives in the Oil and Gas Industry: From Obligation to Opportunities* (Kluwer Law International 2020), 525.

[20] EO Okumagba (n 19) at 1372.

[21]United Nations Environmental Programme (n 13) at 99.

decommissioning operations in the area long after the report was released as admitted by the oil company itself.[22]

Given the importance of decommissioning of petroleum installations, either onshore or offshore, the critical need of putting in place an effective regulatory framework cannot be overemphasised. Internationally and regionally, several legal regimes and guidelines have been developed to regulate excellent global petroleum sector practices as reflected in such instruments like UNCLOS, IMO guidelines, OSPAR Convention/OSPAR Decision 98/3 and the Abidjan Convention and its Protocol. These instruments have a decisive impact on steering or shaping the growth of decommissioning laws in most countries, including Nigeria.Though the pre-2021 Nigerian laws did not effectively address issues pertaining to decommissioning, the recent enactment of the PIA 2021 and its regulations marked a vital turning point as explicit provisions for decommissioning are stipulated. The extent to which these global and regional instruments have influenced the state of decommissioning laws in Nigeria and the possible challenges, if any, which have hindered the examined national laws from fully aligning with global practices are the focal points of this article.

The article adopted doctrinal legal research method (DLRM) or library-based approach (L-BRA). This entailed a crucial examination of primary and secondary legal sources which included case laws, global and regional treaties like the 1958 Geneva Convention, UNCLOS, IMO guidelines and the Abidjan Convention in addition to scrutinising municipal laws, especially the recently enacted PIA 2021 and its supplementary regulations. Based on the evaluations and synthesis of these sources, the authors were able to draw up inferences in order to provide the recommendations made in the work.The paper is structured into seven parts. It starts with the introductory section; in section two, the authors examined some global and regional instruments on decommissioning of

[22]See, Shell Petroleum Development Company of Nigeria Limited, 'Frequently Asked Questions: What Actions Have Been Taken by SPDC?' <https://www.shell.com.ng/sustainability/environment/unep-environmental-assessmen-of-ogoniland/unep-faq.html>, accessed 13 February 2025.

petroleum installations. Part three considered Nigeria's regulatory instruments on decommissioning of petroleum facilities. The fourth segment discussed the influence of global and regional laws on Nigeria's decommissioning laws, while the challenges to effective implementation of the laws in Nigeria are examined in part five. The work ended in section six with concluding remarks.

2. GLOBAL AND REGIONAL LEGAL FRAMEWORK ON DECOMMISSIONING

International and regional conventions have contributed substantially to the growth of legally enforceable decommissioning regulatory regimes and obligations in most oil and gas producing countries.[23] Such frameworks, apart from navigating the application of domestic decommissioning laws, also stipulate responsibilities concerning the protection of the marine environment from contaminations emanating from offshore petroleum exploration and production operations.[24] In this section, attempts would be made to examine some critical international and regional conventions and guidelines on decommissioning practices relevant to Nigeria.

2.1 United Nations Convention on the Continental Shelf, 1958 (the Geneva Convention 1958)[25]

The continental shelf (CS) has been recognised as a possible area of the sea for the exploration and exploitation of petroleum resources and other

[23] T Martin, 'Decommissioning of International Petroleum Facilities Evolving Standards & Key Issues,' <https://timmartins.ca/wp-content/uploads/2016/02/Decommissioing-of-Int-Petroleum-Facilities-Martin2004.pdf>, accessed 12 February 2025.

[24] EO Okumagba (n 19) at 1376; AO Wifa and P Achor, 'Decommissioning, Safety and Africa's Blue Energy Economy: Analysis of the African Integrated Maritime Strategy (AIMS) 2050' (2023) 14(1) The Journal of Sustainable Development Law and Policy 27, 33 <https://doi.org/10.4314/jsdlp.v14i1.3s>.

[25] 499 UNTS 311; adopted on 29 April 1958 and entered into force on 10 June 1964. Nigeria is a party to the Convention; <https://treaties.un.org.pages/viewdetails.aspx?src=treaty&mtdsg_no=xxi-4&chapter=21&clang=_en>, accessed 12 February 2025.

natural resources over the years.[26]The adoption of the convention was perhaps, the first recognised attempt by the global community to provide a legal framework that regulates decommissioning of offshore petroleum installations.[27]The convention, though with some modifications, had its root from the draft clauses on the CS which was fashioned out by the International Law Commission (ILC) regarding the law of the sea.[28]As a matter of fact, the interest of the ILC to embark upon the research on the CS was sparked by Harry Truman's declaration of 1945 that the United States of America (USA) considered the natural resources at the seabed and the subsoil of the CS under the high seas (HS), although adjoining to her coast, as belonging to the USA and therefore, was under its authority and management.[29]

Even though the ILC draft document did not contain a clause relating to the removal of 'abandoned' or 'disused' facilities on the CS, the 1958 CS convention nonetheless contained a provision requiring that any installation that was either abandoned or disused must be removed totally.[30]It is possible that at the time the convention was drafted and

[26] L Lund, 'Residual Liabilities are Imposed to an Owner of Offshore Oil and Gas Installations Regardless of its Decommissioning Obligations: Expanding the Concept of Residual Liability' (LL.M Thesis, Orebro Universitet 2021) 1, 15<https://www.diva-portal.org/smash/get/diva2:1651966/FULLTEXT01.pdf>, accessed 23 March 2025.

[27] J Woodliffe, 'Decommissioning of Offshore Oil and Gas Installations in European Waters: The End of a Decade of Indecision?' (1999) 14(1) The International Journal of Marine and Coastal Law 101, 102, <https://doi.org/10.1163/157180899X00048>.

[28] R Beckman, 'Global Legal Regime on the Decommissioning of Offshore Installations and Structure' in MH Nordquist and others (eds), *The Regulation of Continental Shelf Development: Rethinking International Standards* (MartinusNijhoff Publishers 2013) 259, 260-261.

[29] Ibid, at 260; HS Truman, 'Proclamation 2667- Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf,'<https://www.presidency-uscb.edu/documents/proclamation-2667-policy-the-united-states-with-respect-the-national-resources-the-subsoil>, accessed 23 March 2025.

[30] Geneva Convention 1958, Article 5(5); IH Anchustegui and others, *Understanding Decommissioning of Offshore Infrastructures: A Legal and Economic Appetizer* (Energiomstilling Vest 2021) 36-37, <https://dx.doi.org/10.2139/ssrn.3882821>.

adopted, the potential benefits or necessities that might validate fractional removal of facilities were not taken into consideration.[31]

In tune with the Truman's claim, the CS convention acknowledged that while asserting its exclusive rights towards the exploration and exploitation of natural resources of the seabed region contiguous to its coast, coastal states are authorised to construct structures and facilities on its CS;[32] but such construction must not interrupt navigation, fishing and preservation of marine living resources or other scientific studies that are required for general dissemination.[33]Besides the issuance of appropriate notice of such constructed facilities to serve as warning signals,[34] the installations and safety areas surrounding them should be created where it is evident that the obstruction would affect global navigational safety.[35]It is argued that due to the advancement in global law pertaining to decommissioning, the CS convention is of less operational significance and hence, must be construed alongside state practice and newer conventions relating to decommissioning that prescribe entire removal of facilities only to the degree required so as to ensure safe navigational passage.[36]

2.2 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (LC) 1972[37] and the 1996 Protocol (LCP)[38]

The London Convention (LC) is one of the primary worldwide treaties that offer protection to the marine environment from anthropogenic

[31]Z Gao, 'Current Issues of International Law on Offshore Abandonment, with Special Reference to the United Kingdom' (1997) 28(1) Ocean Development and International Law 59, 60 <https://doi.org/10.1080/00908329709546095>.
[32] Geneva Convention 1958, Article 5(2).
[33] Ibid, Article 5(1).
[34] Ibid, Article 5(5). Compare with article 71(4) of the ILC draft document. See , the Report of the International Law Commission to the General Assembly, Document A/3159, Supplement No. 9, (1956) 2 Yearbook of International Law Commission 253, 264, <https://legal.un.org/ilc/publications/yearbooks/english/ilc_1956_v2.pdf>
[35] Geneva Convention 1958, Article 5(6).
[36]IH Anchustegui and others (n 33) at 37.
[37] Adopted in London on 29 December 1972; entered into force on 30 August 1975, 1046 UNTS 138.
[38] Adopted in London 7 November 1996; entered into force on 24 March 2006, (2006) ATS 11.

pollution. The convention's crucial objective is the promotion of efficient management of every source of maritime degradation and to adopt all practicable measures to avert contamination of the ocean by dumping of wastes and other harmful substances. It is feared that if the marine environment is not adequately protected from human-induced contamination, it could result in endangering human health and security, injury to living resources, destruction of facilities or disruption of legitimate maritime activities.[39]

It is pertinent to point out that even though the convention adopted the term, 'dumping,' instead of 'decommissioning,' there is an intersection between the terminologies albeit they are not transposable.[40]While decommissioning comprises of multifaceted methods of varied phases like preparation, authorisation and implementations, dumping on the other hand, entails an intentional disposal of the facility or structure at sea which is globally outlawed unless due permission has been obtained upon fulfillment of some fundamental requirements.[41] The scope of the definition of dumping has been expanded under the 1996 LCP to cover seabed storage and the intentional abandonment or dismantling of structures with the aim of disposal.[42]All categories of dumping is banned unless those approved in Annex 1;[43] the authorised substances include dredged material, sewage sludge, fish waste, vessels and platforms or artificial structures at ocean, inert, inorganic material, organic material of natural source, large items such as iron and steel, and carbon dioxide streams.[44]

The 1996 LCP broad-spectrum obligations accentuate inter alia, the precautionary approach to protection of the environment from disposal of wastes by requiring that suitable preventive steps should be undertaken

[39] London Convention 1972, Article I.
[40] IH Anchustegui and others (n 33) at 38.
[41] A Wawryk, 'International Regulation of Decommissioning' in EG Pereira and others (eds) *The Regulation of Decommissioning, Abandonment and Reuse Initiatives in the Oil and Gas Industry: From Obligation to Opportunities* (Wolter Kluwer Law International 2020) 27-28.
[42] LCP 1996, Article I (4)(1).
[43] Ibid, Annex I.
[44] Ibid, para. 1.

where there is a likelihood that waste substances that are launched into the sea environment would possibly result in causing damage, even when there is no cogent evidence to establish a connecting nexus between inputs and their consequences. It goes further to enjoin that the polluter should be made to bear the financial costs of fulfilling the pollution prevention and management stipulations for the permitted operations, having appropriate consideration to the interest of the public.[45]

2.2 United Nations Convention on the Law of the Sea (UNCLOS) 1982[46]

The convention asserts that coastal states are entitled to construct and operate man-made islands, facilities, and formations, including other incidental rights and commitments specified in the convention.[47] But as it pertains to the CS, the assertion of such rights must not unlawfully disrupt the safety of navigation or compromise with the rights and liberties of other countries as required under the convention.[48]Appropriate notices for constructing structures are requisite as cautionary signals of their presence to alert other users of the maritime environment. Where such facilities are abandoned or disused, they are to be completely taken away in order to avert navigational casualties. The removal of the facilities must have regards to typically acknowledged worldwide criteria established by relevant global regulators.[49]

It therefore, becomes crucial that in managing the removal of their derelict or desuetude petroleum facilities, countries must ensure that the decommissioning processes conform to the IMO standards and

[45] LCP 1996, Article 3 (1) and (2).
[46] 21 ILM 1261 (1982); adopted on 10 December 1982 and entered into force 16 November 1994. Nigeria has ratified the Convention and is a party to it. As at July 2024, about 170 parties have ratified the convention, while 14 UN member states have signed but not ratified the convention- see United Nations, 'Chronological Lists of Ratifications of Accessions and Successions to the Convention and the Related Agreements' <https://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm>, accessed 23 March 2025.
[47] Ibid, Article 56(1).
[48] Ibid, Article 78(2).
[49] Ibid, Article 60(3).

guidelines.[50]Notably, unlike the 1958 Geneva Convention which prescribed absolute removal regime, UNCLOS permits partial removal of facilities or the same could be left in situ.[51]However, Article 60(3) of UNCLOS lacks an overt provision concerning the terminal discarding of offshore facilities or their dismounted components at sea in spite the possibility that 'dumping' will be a preferred alternative in desertion programmes.[52]It may be recalled that in the Brent Spar incident of 1995, Shell had contended that deep sea disposal of the facility was environmentally a better approach as opposed to dismantling the platform onshore, which the giant oil firm considered would be more complex than dumping at sea. Public condemnations eventually forced the oil company and its partners to jettison the plan.[53]

It is apparent from the provisions of UNCLOS that for nations, like Nigeria, that are parties to both the 1958 Geneva Convention and UNCLOS, the latter has a prevailing status; although for state parties who are not parties to UNCLOS but are only parties to the 1958 Geneva Convention, it becomes imperative for them to comply with the total removal regime prescribed under the 1958 Geneva Convention.[54]Generally, UNCLOS has been recognised as customary

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[50] R Beckman, 'Global Legal Regime on the Decommissioning of Offshore Installations and Structure' in MH Nordquist and others (eds), *The Regulation of Continental Shelf Development: Rethinking International Standards* (MartinusNijhoff Publishers 2013) 259, 279-280.

[51]S Trevisanut, 'Decommissioning of Offshore Installations: A Fragmented and Ineffective International Regulatory Framework' in Catherine Banet (ed) *The Law of the Seabed: Access, Uses, and Protection of Seabed Resources* (Brill/Nijhoff 2020) 431, 435-436 <https://doi.org/10.1163/9789004391567_02>.

[52] PV McDade, 'The Removal of Offshore Installations and Conflicting Treaty Obligations as a Result of the Emergence of the New Law of the Sea: A Case Study' (1987) 24 San Diego Law Review 645, 651.

[53] T Hunter, 'Shell Decommissioning of the Brent Platform-Haven't We Been Here Before?' <https://www.abdn.ac.uk/law/blog/shell-decommissioining-of-the-brent-platform--havent-we-been-here-before/>, 23 March 2025; Ashley M. Fowler and others, 'Environmental Benefits of Leaving Offshore Infrastructure in the Ocean' (2018) 16(10) Frontiers in Ecology and the Environment 571.

[54] This is especially the situation with countries like Colombia, Israel, the United States of America, and Venezuela- see, UNCLOS, Article 311(1); T Treves, '1958 Geneva Convention on the Law of the Sea' (2008) United Nations Audiovisual Library of International Law <https://legal.un,org/avl/pdf/ha/gclos/gclos_e.pdf>, accessed 23 March 2025; see T

global law, implying that its principles may still have influence on states that may not be parties to it but are parties to regional or bilateral conventions that have incorporated UNCLOS-based decommissioning practices into its provisions.[55]

2.4 International Maritime Organisation (IMO) Guidelines and Standards for the Removal of Offshore Installations and Structures on the CS and in the Exclusive Economic Zone (EEZ) 1989[56]

The IMO is the competent global body recognised under UNCLOS to regulate activities in the world's ocean[57] and it has correspondingly stipulated minimum guidelines for decommissioning of offshore facilities on the CS and EEZ.[58] The guidelines permits several acceptable exclusions to the common responsibility of removal, but such derogations are only granted on individual cases, taking into consideration a number of evaluating factors such as navigational safety, technical practicability, environmental concerns, natural state, cost implications, novel likely uses, and possible future risk of the structure, among others.[59]

Absolute elimination is approved for derelict facilities and formations below 75m deep and 4000 tonnes in addition to those fixed after 1st January 1998 standing lower than 100m and 4000 tonnes.[60] But the guidelines

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Treves,'15 UNCLOS and Non-Party States before the International Court of Justice' in C Esposito and others (eds) *Ocean Law and Policy: 20 Years under UNCLOS* (Brill/Nijhoff Publishers 2017) 367.

[55] UNCLOS does not stop parties from entering into agreements that are consistent with the provisions of the convention- see UNCLOS 311(2).

[56] UNGA Resolution A 16/Res.672; adopted on 19 October 1989.

[57] UNCLOS, Articles 2, Annex VIII; International Maritime Organisation, 'The United Nations Convention on the Law of the Sea (UNCLOS) and the International Maritime Organisation' <https://www.imo.org/en/MediaCentre/SecretaryGeneral/Pages/itlos.aspx>, 23 March 2025.

[58] GC Kasoulides, 'Removal of Offshore Platforms and the Development of International Standards' (1989) 13(3) Marine Policy 249 <https://doi.org/10.1016/0308-597X(89)90058-4>.

[59] IMO Guidelines 1989, para. 2.1(1)-(6); T Balogun, M Davar & R Chicco, 'Decommissioning Disputes- The Sustainability Gap' (2023) 14(1) The Journal of Sustainable Development Law and Policy 56, 64, <https://doi.org/10.4314/jsdlp.v14i1.4>.

[60] IMO Guidelines 1989, paras. 3.1 and 3.2.

mandate that in any situation where entire removal becomes technically impossible or would involve unusual cost or unwarranted risks to workers or the sea environment, the coastal state may forgo the complete removal.[61]Some authors have opined that this provision is ambiguous and gives room to subjectivity, making it easier for coastal states or operators who may desire to evade entire removal of the facilities to simply rely on the clause to save decommissioning costs at the expense of the environment.[62]Although the guidelines may be regarded as a soft law document, it has comparatively influenced decommissioning implementations as it has been integrated into a number of regional and national legal frameworks regulating petroleum decommissioning applications.[63]Regardless of its achievements, one of the criticisms against the IMO standards is its failure to provide direction on the procedures to be employed towards total removal of facilities and installations as it emphasised more on providing guidelines on incomplete or non-removal of installations.[64]

[61] Ibid, paras. 3.5; see also paras. 3.4 and 3.11 for the prescribed guidelines relating to handling of residual liability by coastal states. Pereira, Taiwo, and Ole have posited that the guidelines failed to show how coastal states should share the residual liability and thus, only coastal states can legislate on that issue- see, EG Pereira, TO Taiwo, and NC Ole (n 21) at 332.

[62] MO Igiehon, 'The Abandonment Controversy: From the International Law to the Brent Spar Incident- 'Economy' Overshadowing Environmental Protection?' (1996) 7 OGLTR 298, 300; N Ole and HP Faga, 'Assessing the Impact of the Brent Spar Incident on the Decommissioning Regime in the North East Atlantic' (2017) 3(2) Hasanuddin Law Review 141`, 143 <https://doi.org/10.20956/halrev.v3i2.1075>.

[63] IH Anchustegui and others (n 33) at 43; F Maes and A Cliquet, 'Marine Spatial Planning: Global and Regional Conventions and Organisations' in D Hassan, T Kuokkanen, and N Soininen (eds) *Transboundary Marine Spatial Planning and International Law* (Routledge 2015) 86; D Testa, 'Dealing with Decommissioning Costs of Offshore Oil and Gas Field Installations: An Appraisal of Existing Regimes' (2014) 12(1) Oil, Gas & Energy Law Intelligence 1, 7.

[64] GC Kasoulides, 'Removal of Offshore Platforms and the Development of International Standards' (1989) 13(3) Marine Policy 249, 262 <https://doi.org/10.1016/0308-597X(89)90058-4>.

2.5 Convention for Co-operation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of West, Central and Southern African Region 1981 (Abidjan Convention)[65]and the Malabo Protocol 2019[66]

The convention was an African regional reaction towards the elimination, reduction, protection and control of the sea environment in the West, Central and Southern African area from all identified multifaceted sources of pollution.[67] Although there is no direct provision on decommissioning of petroleum installations in the convention,[68] Article 8 of the convention enjoins state parties to utilise all suitable steps to address pollution challenges from operations pertaining to exploration and exploitation of seabed caused by man-made islands, installations and facilities within the scope of their respective competence. The United Nations Environmental Programme (UNEP) is recognised as the administrative agency of the convention and is assigned with pivotal roles.[69]Each contracting party is saddled with the general obligation of enacting relevant municipal laws/regulations for effective performance of the convention's requirements[70] and to designate an appropriate national agency to coordinate its national efforts for implementing the convention and its protocol.[71]

The Protocol to the convention provides for decommissioning of offshore oil and gas facilities.[72] In this regard, 'decommissioning' requires the closing and sealing of a well, removing facilities and performing clean up exercise of hazardous substances from the infrastructure plus restoration

[65] Adopted on 23 March 1981 and entered into forces 5 August 1984. Nigeria has ratified the treaty.
[66] The Malabo Protocol 2019 was adopted at the Abidjan Convention's Second Conference of Plenipotentiaries of Parties to the Convention held in Abidjan in July 2019.
[67] The Abidjan Convention 1981, Articles 5-11.
[68] T Martin (n 26).
[69] Abidjan Convention 1981, Article 16.
[70] Ibid, Article 4, para. 3.
[71] Ibid, Article 16, para. 8.
[72] See Malabo Protocol 2019, Article 1(x) for the definition of 'facility' within the contemplation of the Protocol.

of impacted sites in compliance with national laws and global standards.[73] In order to eliminate and avert pollution created from associated exploration and exploitation operations, contracting parties are mandated to adopt the precautionary, polluter-pays, and the public participation principles.[74]There is no compulsion to use total removal regime since the Protocol recognises the regime of partial removal of facilities, provided that regularly endorsed worldwide standards, such as those prescribed under the IMO guidelines, are followed in the decommissioning activities.[75]

2.6 OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic 1992[76] and the OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations[77]

Although Nigeria is not a party to this regional multilateral convention and its incidental OSPAR Decision 98/3, their relevance to this work is because their robust decommissioning framework can positively impact on the Nigerian decommissioning practices as they align with global environmental standards and best practices concerning removal and disposal of offshore hydrocarbons facilities. Additionally, many of the multinational oil companies (MNOCs) operating in Nigeria like Shell,

[73] Malabo Protocol 2019, Article 1(vii).
[74] Ibid Article 4(2).
[75] Ibid, Article 22.
[76] Basically, the regional parties to the convention are: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. See, OSPAR Commission, 'OSPAR Convention,' <https://water.europa.eu/marine/countries-and-regional-seas/regional-conventions/ospar-convention>, accessed 1 February 2025.
[77] Adopted on 22-23 July 1998. It is noteworthy that on 24 June 2024, during its 27th Session/Meeting, the OSPAR Commission adopted OSPAR Decision 2024/01 to amend OSPAR Decision 98/3. See, European Commission, 'Proposal for a Council Decision on the Position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) on Decision amending OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations,' Brussels, 8.4.2024 Com (2024) 2153 final 2024/0084 (NLE) at paragraph 2.3 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024PC0153> ,accessed 1 February 2025.

ExxonMobil[78] and TotalEnergies,[79] also operate in the North Sea region where the OSPAR convention and OSPAR Decision 98/3 regimes operate. Hence, these MNOCs may possibly favour the use of the OSPAR-best practices to the Nigerian offshore operations, although such may not be a legal requirement in Nigeria.

The convention is committed to protecting the environment of the North-East Atlantic Ocean from anthropogenic contamination, and where possible, restore the maritime environment that has been negatively impacted.[80]It is required that no derelict offshore assets shall be dumped or partially or entirely left in situ without due authorisation from the competent authority of applicable contracting party based on individual circumstances;[81]such consent shall also be brought to the attention of other contracting parties.[82]

The new rules under OSPAR Decision 98/3 became necessary after the Brent Spar incident in the North Sea.[83]Article 2 thereof similarly banned dumping and leaving in place either entirely or partially obsolete or deserted offshore facilities within the marine environment. But this rule is inapplicable to pipelines, cables or any asset that is situated beneath the

[78] R Bousso, 'Shell, Exxon Near deal to Sell North Sea Assets to Viaro, Sources Say' *Reuters* (29 May 2024) <https://www.reuters.com/markets/deals/shell-exxon-near-deal-sell-north-sea-assets-viaro-sources-say-2024-05-29/>, accessed 23 March 2025; R Stewart, 'Shell and ExxonMobil Hand off North Sea Gas Fields to UK Operator' Upstream Energy (30 July 2024) <https://www.upstreamonline.com/finance/shell-and-exxonmobil-hand-off-north-sea-gas-fields-to-uk-operator/2-1-1684854>, accessed 23 March 2025.

[79] After acquiring Maersek Oil in 2018, TotalEnergies became the operator of Culzean offshore gas field that has its presence in East Central Graben region of the central North Sea- see TotalEnergies, 'Culzean: A Leading Offshore Gas Facility in the United Kingdom ' <https://totalenergies.com/energy-expertise/projects/oil-gas/culzean-a-large-gas-project-north-sea>, accessed 23 March 2025.

[80] OSPAR Convention 1992, Article 2.

[81] Ibid, Annex III, Article 5(1).

[82] Ibid, Annex III, Article 5(3); S Trevisanut (n 54) at 449-450.

[83] P Osmundsen and R Tveteras, 'Decommissioning of Petroleum Installations-Major Policy Issues' (2003) 13(15) Energy Policy 1581-1588 at 1581 <https://doi.org/10.1016.S0301-4215(02)00224-0>.

seabed's surface.[84]The OSPAR Decision 98/3 goes further to specify three permissible derogations from the general rule as clearly spelt out in Article 3 but mandates that all permissions issued in compliance with that provision must satisfy the requirements stipulated in Annex 4 to the OSPAR Decision 98/3.

3. NIGERIAN DECOMMISSIONING LAWS AND REGULATIONS

In this section, some relevant legislation governing decommissioning operations in Nigeria would be examined to ascertain if they are compatible with global and regional instruments' requirements.

3.1 Harmful Waste (Special Criminal Provisions, Etc) Act (HWSCPA) 1988[85]

This national law outlaws and punishes the conveying, depositing and disposal of injurious waste substances (whether in the form of solid, semi-solid or liquid) in the absence of any legitimate authorisation on any land, territorial waters, contiguous zone, EEZ or internal waterways of Nigeria.[86]There is no express mention of petroleum decommissioning but it is a known fact that decommissioning operations in the petroleum sector can produce several kinds of harmful waste materials, including polluted soil, sludge and other dangerous substances.[87] Actually, the statute construed 'harmful waste' as 'injurious, poisonous, toxic or noxious' materials, including nuclear waste that discharges any radioactive substances;[88] these hazardous substances can similarly be found in non-

[84] OSPAR Decision 98/3, Article 1(c). In fact, some classes of derelict structures are also qualified to be left partly in situ by reason of specified environmental and operational evaluations- see OSPAR Decision 98/3, Annex 2. See generally, WE Hughes, *Fundamentals of International Oil & Gas Law* (PennWell Corporation 2016) 399.
[85] Act No. 42 of 1988 (now Cap. H1, Laws of the Federation of Nigeria, 2004).
[86] Ibid, section 1.
[87]AM Adedayo, 'Environmental Risk and Decommissioning of Offshore Oil Platforms in Nigeria' (2011) 1 NIALS Journal of Environmental Law 1, 13.
[88] HWSCPA 1988, section 15.

operational petroleum facilities.[89] However, contrary to the recognised diplomatic norms backed by international conventions[90] and legislative provisions enshrined under the Diplomatic Immunities and Privileges Act 1962,[91]HWSCPA's attempt at depriving foreign envoys protection from criminal prosecution is seriously questioned[92] in view of judicial pronouncements.[93]

3.2 Environmental Impact Assessment Act 1992[94]

The law requires that any industrial plan, development or operation, including those relating to the petroleum sector, with potential substantial environmental effects must undertake a prior environmental impact appraisal.[95] The importance and obligation of conducting environmental and social impact examination in decommissioning operations is further emphasised under the extant Petroleum Industry Act 2021.[96]

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[89]AM Adedayo (n 90) at 13.

[90] Vienna Convention on Diplomatic Relations 1962 and the Vienna Convention on Consular Relations 1963, to which Nigeria is a party.

[91] Act No. 42 of 1962 Cap. D9, Laws of the Federation of Nigeria, 2004), sections 1 and 3.

[92] EM Akpambang, 'Legal Framework for Environmental Protection against Petroleum Pollution in Nigeria' (2010) 3(2) Kogi State University Bi-Annual of Public Law 175, 193.

[93]*Alhaji Ishola-Noah v. His Excellency, the British High Commissioner to Nigeria* (2002) FWLR (Pt. 86) 634, 636. See also *Oluwalogbon v. Govt., U. K.* (2005) 14 NWLR (Pt. 946) 760 at 784; *Zabusky v. Israeli Aircraft Industries* (2007) All FWLR (Pt. 352) 1759 at 1787-1788; *Siewe v. Cocoa Industries* (2013) LPELR- 22033 (CA) *President of the Commission of ECOWAS v. Ndiaye* (2021) LPELR-53523 (CA). In all these cases, the Nigerian courts held that any action brought against a foreign envoy in Nigeria was incompetent, null and void. Hence, no national court has jurisdiction to adjudicate on any matter against a foreigner who enjoys diplomatic immunity in Nigeria.

[94] Act No. 86 of 1992 (now Cap. E12, Laws of the Federation of Nigeria, 2004).

[95] Ibid, sections 1(a) & 2(2) and the Schedule to the Act for a list of projects requiring environmental impact evaluation. See also N Echefu and E Akpofure, 'Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework' in UNEP EIA Training Resource Manual: Law, Policy and Institutional Arrangements, <https://www.iaia.org/pdf/case-studies/EIANigeria.pdf>, accessed 23 March 2025; A Ingelon and C Nwapi, 'Environmental Impact Assessment Process for Oil, Gas and Mining Projects in Nigeria: A Critical Analysis' (2014) Law, Environment and Development Journal 35, 45.

[96] Petroleum Industry Act 2021, section 232(6)(e).

3.3 Oil and Gas Pipelines Regulations 1995[97]

A licensee who is desirous of discontinuing the operation of oil pipeline installation is mandated to furnish the Department of Petroleum Resources (DPR-now NUPRC or NMDPRA, as the case may be) with a three months' notice of such intention setting out among other things the reason for the discontinuation and the planned method to be adopted for the discontinuation operation.[98] The regulator may give the requisite approval for the discontinuation or endorse and recommend a different technique to be used in the operation.[99] On the other hand, if the abandoned pipeline requires removal, the licence holder shall furnish the DPR (now NUPRC or NMDPRA, as the case may be) with the intended work plan for the appropriate endorsement.[100] After the removal of the abandoned pipeline, the licensee is required to restore the area to a perfect state.[101]

3.4 National Oil Spill Detection and Response Agency (Establishment) Act (NOSDRA Act) 2006[102]

The legislation lacks a precise provision on decommissioning of oil and gas facilities as it was enacted with explicit responsibility for awareness, detection and response to oil spillages in Nigeria,[103] including the management and implementation of the national oil spill contingency plan (NOSCP).[104]Part of the agency's goal is to collaborate with IMO and other national, regional and global bodies to support advancement programmes and share research findings regarding inter alia, methods for surveillance, containment, recovery, disposal, clean up[105] and removal of hazardous

[97] Statutory Instrument 14 of 1995 (now Cap. O7, Laws of the Federation of Nigeria, 2004).
[98] Ibid, regulation 23(1) and (2).
[99] Ibid, regulation 23(3).
[100] Ibid, regulation 24(3)(a).
[101] Ibid, regulation 24(3)(b).
[102] Act No. 15 of 2006 (now Cap N157 Laws of the Federation of Nigeria, 2004, updated up to 2007- Issue 3).
[103] Ibid, section 5.
[104] NOSCP has incorporated the national oil spill contingency system (NOSCS) in alignment with the requirement under the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990- Article 3; Nigeria is a signatory to the Convention on OPRC.
[105] NOSDRA Act 2006, section 5(i).

substances,[106]as far as may be feasible. At the regional level, NOSDRA has a working connection with the Global Initiative for West, Central and Southern Africa (GI-WACAF)[107] as it is recognised as the designated national authority of GI-WACAF in Nigeria based on the Abidjan Convention.[108]The agency's central task in the implementation of the NOSCP also covers facility inspection, environmental restoration monitoring and decommissioning supervision, among others.[109]

Violators of the provisions of the Act can be penalised by the agency through the imposition of a fine or jail term (or both).[110]However, the power of the agency to unilaterally impose a fine has been challenged in the court.[111] While in some of the litigations the authority to impose fineby the agency without recourse to court has been judicially recognised and upheld,[112] in others, it has been denied as the court reasoned that

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[106] Ibid, section 6(1)(e).

[107] GI-WACAF is a project that was introduced in 2006 and sponsored by IMO and other international petroleum industry organisations to enhance domestic oil spill response ability in 22 countries of West, Central and Southern Africa by creating local affiliation between oil companies and national agencies charged with the responsibility for oil spill readiness and response at national levels- see A Rhodes and R Chancerel, 'Oil Spill Preparedness and Response Capability in West, Central and Southern Africa: Sustainability Momentum in a Changing World of Oil Spill Risks' (2014) 1 International Oil Spill Conference Proceedings 1364-1374 at 1364 <https://doi.org/10.7901/2169-3358-2014.1.1364>.

[108] Abidjan Convention 1981, Article 16, para. 8; NOSDRA, 'About Us' <https://nosdra.gov.ng/about-us-2>, accessed 23 March 2025.

[109] NOSDRA, 'What we are doing' <https://nosdra.gov.ng/services>, accessed 23 March 2025.

[110] NOSDRA Act 2006, section 6(2)-(3).

[111]CT Brown and NS Okogbule, 'Redressing Harmful Environmental Practices in the Nigerian Petroleum Industry through the Criminal Justice Approach' (2020) 11(1) Journal of Sustainable Development Law and Policy 18, 37-39.

[112] For instance, *NOSDRA v. PPMC*, Suit No. FHC/ASB/18/105/2010 (Unreported) decided on 22 March 2012 by Hon Justice I. N. Buba of Federal High Court, Asaba Judicial Division, Delta State; E Arubi, 'NOSDRA drags PPMC to Court over Oil Spill, *Vanguard* (Lagos, 8 February 2011)<https://www.vanguardngr.com/2011/02/nosdra-drags-ppmc-to-court-over-oil-spill/amp/>, accessed 23 March 2025; N Ezeah, 'Oil Spill: Court Imposes N62.5m fine on PPMC' *Vanguard* (Lagos, 10 April 2012) <https://www.vanguard.com/2012/04/oil-spill-court-imposes-n62-5m-fine-on-ppmc/amp/>, accessed 23 March 2025. Also the case of SNEPCO Ltd v. NOSDRA, decided in May 2018 by the Federal High Court, Lagos, cited in GU Ukwuoma , 'Shell Nigeria Exploration and Production Company Nigeria Limited (Shell) v. National Oil Spill

imposition of a penalty presupposes the commission of crime and that only a court of law can adjudicate and make a pronouncement on itbefore the agency could exercise its said powers.[113]

3.5 Petroleum Industry Act (PIA) 2021[114]

Prior to the enactment of the PIA, the Petroleum Act 1969,[115] which laid the groundwork for regulating the Nigerian oil and gas industry, lacked provisions on decommissioning. Its attendant regulations[116] were similarly unhelpful as it contained provisions that were either vague or permitted substantial implementation of regulatory discretionary powers without corresponding explicit blueprints or benchmark for such exercise and could therefore, be open to abuse.[117] This legislation has been repealed by the extant PIA, though some of its provisions have been saved until the expiration or termination of relevant licence or lease.[118] Another significant guidelines that regulated decommissioning operations in Nigeria before the enactment of PIA was the Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN) 2018.[119] The guidelines recognised inter alia, that decommissioning programme required adequate planning and preparation right from the

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Detection and Response Agency (NOSDRA)' *Advocaat* (Lagos, June 2018) <https://advocaat-law.com/wp-content/uploads/2021/11/341e6a14b167a82e12df3ff9e6c4e3b.pdf>, accessed 23 March 2025; 'NOSCRA to SNEPCO: Obey Court Order on Bonga Oil Spill' *The Nation* (Lagos: 19 July 2018) <https://thenationonlineeng.net/nosdra-to-snepco-obey-court-order-on-bonga-oil-spill/amp/>, accessed 23 March 2025.

[113] For instance, *NOSDRA v. Mobil Producing Nigeria U'ltd (ExxonMobil)* 2018 LPELR-44210 (CA).

[114] Act No. 6 of 2021.

[115] Act No. 51 of 1969 (now Cap. P. 10, Laws of the Federation of Nigeria, 2004).

[116] Legal Notice 69 of 1969 (now Cap. P. 10, Laws of the Federation of Nigeria, 2004).

[117] DS Olawuyi and Z Tubodenyefa, *Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)* (OGEES Institute, Afe Babalola University 2018) 1; Raphael J. Heffron and others, 'A Treatise for Energy Law' (2018) 11 Journal of World Energy Law and Business 34-48 <https://doi.org/10.1093/jwelb/jwx039>.

[118] PIA 2021, section 311 (1) and (9).

[119] It was first issued in 1991 by the DPR; but have been subjected to revision in 2002, 2016, and 2018 respectively.

commencement and designing stage of the project, including the plans for remediation and restoration of affected sites.[120]

However, the PIA 2021 serves as the extant primary law regulating the Nigerian petroleum industry. Unlike the position under the Petroleum Act 1969 where decommissioning was not explicitly mentioned, the PIA has made more elaborate provisions to regulate decommissioning and disposal of onshore and offshore petroleum facilities, wells and pipelines.[121] The Act mandates that decommissioning operations should be carried out in compliance with global petroleum sector practice and the IMO guidelines.[122]Every decommissioning operation must be authorised by the appropriate regulatory body.[123] But before issuing such authorisation, the applicable regulator must ensure that all possible decommissioning choices are considered after making a comparative appraisal and that any total removal or partial removal of infrastructures is to be carried out in a pattern that safeguards sustainable environmental advancement.[124]Any proposal to leave a facility or structure in situ must take into account its potential deterioration, environmental effects, both presently and in the future; offshore structures must be compatible with global best practices.[125]

The PIA equally mandates that petroleum contractual agreements pertaining to decommissioning obligations and accountability shall have application to licensees/lessees as contractors.[126]Model licences/leases are required to contain detailed obligations concerning relinquishments, decommissioning and abandonment.[127]It is pertinent to point out that most petroleum joint operating agreements (JOA) predating the PIA did not overtly in a specific way address decommissioning and abandonment operations. The few references contained in such agreements dealt with

[120] EGASPIN 2018, Part VIII-H, section 1, para. 1.1.
[121]Ibid, section 232(1).
[122]Ibid, section 232(1)(a)-(b).
[123]Ibid, section 232(2).
[124]Ibid, section 232(10)(c) and (d).
[125]Ibid, section 232(10)(e).
[126]Ibid, section 232(4).
[127]Ibid, section 76(e).

obligations pertaining to the operating committee's general functions towards the 'determination of the selection, scope, timing and locations, testing, completion, plugging and abandonment of all wells and facilities for joint operations' and to 'seek binding decision on urgent matters relating to plugging and abandoning of wells.'[128]

In addition to the requirements for preparation of decommissioning and abandonment plan (DAP), operators are required to maintain a decommissioning and abandonment fund (DAF),[129] to be financed by applicable licensee/lessee[130] and held in a Nigerian financial institution (NFI) that is not a partner of the licensee/lessee, but to be kept as an escrow account accessible by the appropriate regulator (NUPRC/NMDPRA).[131]The DAF is to be applied solely for the purposes of settling decommissioning expenses incurred[132] and any excess amount after conclusion of the decommissioning activities shall be returned to the license/lease holder in a manner prescribed in the PIA.[133]Default by an operator to comply with the decommissioning requirements of the statute attracts sanctions, which if persistent, may additionally lead to the revocation of the licenced or leased area.[134]

3.5.1 Nigeria Upstream Petroleum Decommissioning and Abandonment Regulations (NUPDAR)2023[135]

The regulations were made pursuant to the powers vested in the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) under PIA

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[128]G Etikerentse, *Nigerian Petroleum Law* (2nd edn, Dredew Publishers 2004) 37.
[129] PIA 2021, section 233(1).
[130] Ibid, section 233(8).
[131] Ibid, section 233(1).
[132] Ibid, section 233(2).
[133]Ibid, section 233(12).
[134] Ibid, sections 96 and 120(d) and (h); MDDAR 2023, regulation 30(2)(3) and (6); NUPDAR 2023, regulations 24(1) - (6).
[135] Government Notice No. 94, S. I. No. 50 of 2023, *Federal Republic of Nigeria Official Gazette* No. 129, Vol. 110, pp. B1321-1342 of 18 July 2023 (Lagos); came into force on 24 May 2023. In July 2024, the NUPRC released an exposure draft of the amendments introduced to the 2023 regulations titled, 'Amendment to the Nigerian Upstream Petroleum Decommissioning and Abandonment Regulations, 2023' (hereafter referred to as the 'Draft Amendment Regulations 2024'), <https://www.nuprc.gov.ng/wp-content/uploads/2024/06/AMENDMENT-TO-DECOMMISSIONING-AND-ABANDONMENT.pdf>, accessed 23 March 2025.

2021[136] and apply to decommissioning and abandonment operations relating to facilities in the upstream petroleum sector.[137] A licensee or lessee operating in the sector is required to submit to NUPRC a detailed decommissioning programme within a year from the beginning date of the regulations.[138]In the case of a new licensed or leased area, the decommissioning and abandonment plan (DAP) is to be submitted as part of the field development plan after a commercial discovery has been made.[139] Before granting approval to the DAP, the NUPRC must ensure that the DAP satisfies (i) excellent global petroleum practices; (ii) guidelines stipulated by IMO concerning offshore petroleum installations and structures; (iii) standards issued by the NUPRC and requirements stipulated under section 232(6)(a)-(e) of the PIA.[140] The opportunity for updating the DAP, which also requires approval, is recognised under the regulations.[141]

With respect to decommissioning of facilities on offshore fields, an application in the prescribed format must be submitted to the NUPRC not less than 60 months (5 years) before the intended starting date of the decommissioning operations.[142]With such an extended duration, operators are given sufficient time to engage in strategically preparing for decommissioning operations and to ensure that all pivotal technical, ecological and financial implications are adequately taken care of before commencement of the decommissioning operations. Prior to the approval of the request for decommissioning, the NUPRC, in partnership with the licensee/lessee, must carry out public consultations with all pertinent stakeholders, including affected host communities and other public agencies concerning the intended decommissioning operations. Ostensibly, it is through such meetings that relevant information concerning the likely hazards, effects and planned mitigation measures of the decommissioning operations would be discussed with the people in a

[136] PIA 2021, section 10(a)(f), 232 and 233.
[137] NUPDAR 2023, regulation 2.
[138] Ibid, regulation 3(1).
[139] Ibid, regulation 3(5); PIA 2021, section 79(2)(i).
[140] Ibid, NUPDAR 2023, regulation 3(9).
[141] Ibid, regulations 4(1).
[142] Ibid, regulations 6.

'timely, understandable, accessible and appropriate' way.[143]This is also consistent with global excellent practice that environmental issues should best be determined through inputs from host communities' stakeholders on behalf of the people who would be affected by such contemplated decision.[144]

In line with the requirements of PIA 2021, the regulations mandate operators to create a decommissioning and abandonment fund (DAF) pertaining to petroleum activities under a licenced/leased area within 180 days after the endorsement of the DAP.[145] Where a licensee/lessee enjoys multiple licenses/leases, he may apply to NUPRC for permission to make yearly contributions regarding each licence/lease into a single fund account.[146]Under the NUPDAR 2023, the DAF was to be deposited in an interest yielding escrow account to be held by the Central Bank of Nigeria (CBN). But under the Draft Amended Regulations 2024, the placement of the DAF is to be held in any of the stipulated financial institutions (FIs) either in Nigeria or overseas, namely: any Nigerian FI that satisfy the national rating of A+ or A; or any foreign FI that fulfils the minimum credit rating of A+ or its equivalent published by either Standard and Poor 500, Fitch Ratings Inc; or Moody's Investors Service Inc.[147]

Ordinarily, the Draft Amended Regulations 2024 mandate that all DAF shall be 100% held in Nigerian FI, but where the licensee/lessee is an international oil company (IOC) in a joint venture agreement with the Nigerian National Petroleum Company Limited (NNPCL) or under a production sharing contract (PSC), at least 15% of the IOC's yearly contribution should be paid into a Nigerian FI while the balance of the contribution is to be maintained with any foreign FI that satisfy the credit

[143] Ibid, regulations 13; see also PIA 2021, section 232(8).
[144] A Jordan and T Jeppesen, 'EU Environmental Policy: Adapting to the Principle of Subsidiarity?'(2000) 10(2) European Environment 64, 69-71 <https://doi.org/10.1002/(SICI)1099-0976(200003/04)10:2,64::AID-EET219.3.0.CO;2Z>.
[145] Draft Amendment Regulations 2024, para. 3. Under the NUPDAR 2023, regulation 19(2) the timeline for creation of the DAF was stated as being not later than 90 days from the starting of production while existing producers were mandated to establish the fund within 90 days from the beginning of the regulations.
[146] NUPDAR 2023, regulation 3(7).
[147] Ibid, regulations 19(2); Draft Amendment Regulations 2024, para. 6(a)(i)-(ii).

rating stipulated in the regulations.[148]It is noteworthy that like the principal statute, the regulations mandate that the DAF must be applied solely for decommissioning purposes.[149] Where the fund remains after end of decommissioning operations and there is no post-completion work to be done, the surplus money is to be regarded as income for production sharing or tax purposes and the amount following the withholding of profit oil and any tax shall be refunded to the licensee/lessee.[150]

Where the DAF is insufficient to cover the decommissioning costs, the operator would be required to provide the difference and such additional expenses shall be recoverable and subtracted from tax;[151] but exhaustion of fund will not exonerate an operator from fulfilling its obligation towards decommissioning operation.[152] Failure of the licensee or lessee to comply with its decommissioning responsibility entitles the NUPRC to access the DAF and mandate a third party to access the fund in order to execute the obligation, after requisite notice had been given to the operator and he neglected to fulfill the responsibility. However, the operator shall still remain accountable for the absolute decommissioning of the petroleum activities in the area.[153]In the event of insolvency or bankruptcy of the operator, the DAF becomes accessible to NUPRC for ease of payment to a third party for conducting the operator's decommissioning operations.[154]

3.5.2 **Midstream and Downstream Decommissioning and Abandonment Regulations 2023**[155]

The regulations provide for the requirements and procedures for performing decommissioning of oil and gas installations, facilities and

[148] Ibid, Draft Amendment Regulations 2024, para. 6(b); compare with NUPDAR 2023, regulation 19(4) which prescribed that 15% of the IOC's counterpart yearly contribution was to be placed in CBN.
[149] NUPDAR 2023, regulation 21(1).
[150] Ibid regulation 21(4).
[151] Ibid, regulation 21(5).
[152] Ibid, regulation 21(6).
[153] Ibid, regulation 21(7) and (8).
[154] Ibid, regulation 21(10).
[155] Government Notice No. 73, S. I. No. 35 of 2023, *Federal Republic of Nigeria Official Gazette* No. 109, Vol. 110, pp. B829-844 of 16 June 2023 (Lagos); came into force on 10 May 2023. The regulations were made pursuant to the powers granted to the NMDPRA under section 33(y) of the PIA 2021.

structures in the Nigerian midstream and downstream petroleum sector.[156]Every DAP requires the consent of the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) and must contain the decommissioning ideology which replicates economic, social and ecological sustainability.[157]Where the decommissioning relates to facilities, pipelines or infrastructures on land or offshore, the licensee's request for approval shall be made not less than 24 months (2 years) prior to the start date of the programme.[158]In support of the application is a plan in the prescribed manner comprising of inter alia, removal and disposal procedures describing details of any cleaning or disposal of waste materials, including the disposal of residues, radioactive materials (such as low specific activity- LSA and naturally occurring radioactive material-NORM); total removal of the facilities and restoration of the impacted site; an environmental assessment study report which justifies the preferred decommissioning option as well as a comparison evaluation of other decommissioning disposal choices.[159]

The regulations give some conditions before NMDPRA can approve the request for DAP. For example, it mandates that any removal or incomplete removal of installations, structures and facilities must be conducted in a way that safeguards sustainable environmental development and is consistent with relevant global petroleum sector excellent practices.[160]NMDPRA is equally mandated to maintain a database of all midstream and downstream petroleum assets that is accessible to the public, including publication on its website and subject to yearly reviewing and updating.[161]

The requirement for creation of database is a welcome development as it will aid transparency and will make it easier for the regulators and operators to locate the pipelines for decommissioning purposes. Additionally it would help the regulators know the operators or owners

[156] Ibid, regulation 2.
[157] Ibid, regulations 3, 5 and 9.
[158] Ibid, regulations 12(2) and (4).
[159] Ibid, regulations 12(3)(f)-(h).
[160] Ibid, regulations 13(1)(e)-(f).
[161] Ibid, regulations 23; PIA 2021, section 232(12) and (14).

of petroleum facilities so that they could be held accountable whereas in cases of orphaned wells, the owners are unknown and responsibilities of decommissioning them would fall back on the government through taxpayers money.[162]Reminiscent of position in the upstream petroleum sector, the regulations provide for public consultations with relevant stakeholders, including public agencies and affected host communities[163] as well as the creation of DAF.

With respect to the creation of DAF, operators are required to create the fund within 120 days (3 months) from the start of activities for new licensees or within a year for existing licensees.[164]The DAF is to be supported financially through yearly contributions to be determined on the basis of estimated costs of decommissioning and abandonment over the life of the facilities.[165]The DAF is to be held in an interest yielding escrow account in a Nigerian FI that is not an associate of the operator but a Tier 1 commercial bank licensed by the CBN,[166]and must be utilised absolutely for the decommissioning purposes.[167] Failure of the operator to submit DAP, create a DAF, make mandatory contributions into the fund or otherwise violates the provisions of the regulations attracts stipulated administrative sanctions.[168]

4. INFLUENCE OF INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK ON DECOMMISSIONING LAWS IN NIGERIA

Decommissioning operation in the petroleum industry occurs both onshore and offshore. Apparently, there are no direct global and regional conventions regulating onshore decommissioning except national laws and contractual arrangements executed by the national government and

[162] WS Cox, JA Collura, and DL Beier (n 6).
[163] Government Notice No. 73, S. I. No. 35 of 2023, regulations 15 and 16.
[164] Ibid, regulations 24(1).
[165] Ibid, regulations 25(1) and (2).
[166] Ibid, regulations 24(4)-(8).
[167] Ibid, regulations 26.
[168] Ibid, regulations 30.

operating oil firms, as may be applicable to the activity of the infrastructure. On the other hand, offshore decommissioning, which could be more complicated and costlier, is often regulated by global and regional treaties in addition to municipal laws and contractual agreements with operators.[169]

Indubitably, relevant global and regional decommissioning conventions have contributed considerably in fashioning and giving national laws and practice direction on how to regulate decommissioning of petroleum infrastructure in Nigeria.[170]Perhaps, the lack of express provisions on decommissioning under the PA 1969 and its attendant regulations may have been influenced by the minimal provisions contained in the 1958 Geneva Convention. As a matter of fact, that convention neither recognised pipelines as part of the facilities that required complete removal nor specifically enjoined the preservation of offshore environment.[171]

The structural 'removal regime' recognised under Nigerian laws has footprints of global and regional conventions. It bears repeating that under the 1958 Geneva Convention, disused or abandoned infrastructures were to be wholly removed.[172]In contrast, the PIA accepts total removal regime as the established practice with partial and full abandonment as an alternative choices; this is similar to the position under UNCLOS and OSPAR Convention. The IMO guidelines prescribe total removal of offshore facilities in water depths beneath 100 meters but allow incomplete removal in deeper waters where safety in navigation and environmental concerns are considered.[173]However, it is notable that even though UNCLOS, Abidjan and OSPAR Conventions are mute regarding residual liability, the PIA 2021, as required under the IMO Guidelines,[174]has made robust provisions concerning who should be saddled with residual liabilities for disused or abandoned facilities. The PIA unambiguously mandates that the licence/lease holder would be held accountable for

[169] T Martin (n 26).
[170] EO Okumagba (n 19) at 1376.
[171] Geneva Convention 1958, Article 5(2).
[172]Ibid, Article 5(5).
[173]Compare with the provisions of EGASPIN, Part VIII-H, section 2.
[174] IMO Guidelines, Article 3(11).

residual liability arising from the disused facilities or pipelines that has not been removed or is partly removed.[175]

Aside from the failure of the PIA to expressly define the phrase, 'residual liability', the Act equally neglected to categorically provide for the responsibility-bearer regarding residual liability of any infrastructure that is left in position post-decommissioning era. It merely mandates operators to implement surveillance plans post-decommissioning. This is a serious oversight because by implications, it means that where the facility's operator becomes insolvent, bankrupt or the well is orphaned, the decommissioning obligation would fall back on the government through taxpayers' money.[176]

Another noticeable area where international and regional instruments have impacted on Nigerian decommissioning practice is in relation to the requirement for submission and approval of decommissioning programme. The IMO guidelines generally mandate the submission of a comprehensive decommissioning plan and prescribed early decommissioning preparation.[177]The OSPAR Convention enjoins prior endorsement of decommissioning plans and goes further, like the Abidjan Convention, to require that decommissioning programme must incorporate[178] environmental impact assessment. Consistent with these requirements, the PIA 2021 expressly stipulates that any guidelines issued by NUPRC or NMDPRA must align with the standard prescribed by the IMO guidelines and that no decommissioning operation shall be commenced without the requisite previous written authorisation of the appropriate regulatory body sanctioning the decommissioning plan, incorporating the approximate timeframe, costs, technical procedure to be adopted, environmental safeguards and social effects of the decommissioning measures.[179]

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[175] PIA 2021, section 232(6)(d).
[176]F Torabi and SMT Nejad, 'Legal Regime of Residual Liability in Decommissioning: The Importance of Role of States' (2021) 133 Marine Policy 104727 <https://doi.org/10.1016/j.104727>; EG Pereira, TO Taiwo, and NC Ole (n 21) at 326.
[177] See for instance, IMO Guidelines, Article 3(9).
[178] OSPAR Convention, Articles 2(3) and 6.
[179] PIA 2021, section 232(1)(b)(2)(5) and (6).

An additional aspect that the provisions of global and regional instruments have been integrated into Nigeria's decommissioning regime pertains to the area of holding licensee/lessee responsible for their activities that may adversely impact on the environment. For instance, OSPAR Convention,[180]OSPAR Decision 98/3 and the Malabo Protocol[181] robustly advocate for polluter pays principle, which entails that operators must bear the expenses for their decommissioning operations. In this regard, the PIA enjoins the establishment of DAF by licensee/lessee, which fund must be held in an escrow account, kept in a NFI and financed annually through contributions by operators.[182]

In the case of a licensee/lessee who is a party to a farm-out agreement[183] with one or multiple parties, liability for the DAP or DAF financed entirely or partly by the relevant third parties shall be incorporated into the agreement;[184]decommissioning obligations and liabilities are applicable to a licence/lease holder as contractor in other related petroleum contractual arrangements.[185]The requirement of the PIA and its regulations for operators to engage stakeholders and host communities during decommissioning similarly reflects the position under OSPAR Decision 98/3. Thus, it could be said that Nigeria's legislative framework on decommissioning has largely been influenced by global and regional conventions and guidelines.

5. CHALLENGES TO EFFECTIVE DECOMMISSIONING IN NIGERIA

Admittedly, Nigeria has made significant progress in developing laws regulating decommissioning of oil and gas installations, with the latest

[180] Article 2(2)(b).
[181] Malabo Protocol, Article 4(2).
[182]PIA 2021, section 233 and the relevant subsidiary regulations.
[183] The PIA in its section 94(8)(b) defines a farm-out as an agreement between the holder of a petroleum mining lease (PML) or petroleum prospecting license (PPL) and a third party, which allows the third party to conduct exploration, prospection, winning, working and carrying away petroleum found in a licenced or leased area during the validity of the licence/lease.
[184] Ibid, section 233(10).
[185]Ibid, section 232(4).

legislative innovations introduced in the PIA and its incidental regulations. However, regardless the laudable improvements initiated, there are still several challenges confronting effective decommissioning practice in the country, some of which are mentioned in this section of the work.

5.1 Non-Domestication of Regional and Global Treaties

Nigeria operates a dualistic legal system whereby global and regional instruments signed or ratified by the country must of necessity be domesticated by parliament before its enforceability in Nigeria.[186] A number of worldwide or regional instruments relating to decommissioning of which Nigeria is a party have not been domesticated in the country and are problematic for implementations at the national level.[187]

5.2 Lack of Decommissioning Experience

Unlike countries such as the UK, Norway, and the USA with robust decommissioning laws and practice, Nigeria lacks practical decommissioning experience. The absence of requisite technical competence and limited exposure to scientific advancement in decommissioning technologies will result in unsatisfactory decommissioning practices, ecological contaminations and waste of time and resources in decommissioning project execution.[188] Dearth of

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[186] Constitution of the Federal Republic of Nigeria 1999 (as amended), section 12; EO Okebukola, 'The Application of International Law in Nigeria and the Facade of Dualism' (2020) 11 (1) Nnamdi Azikiwe University Journal of International Law and Jurisprudence15, 17-18; EO Ekhator and G Agbaitoro, 'Energy Law and Policy in Nigeria with Reflection on the International Energy Charter and Domestication of the African Charter' in R Adeola & AO Jegede (eds), *Governance in Nigeria Post-1999: Revisiting the Democratic 'New Dawn' of the Fourth Republic* (Pretoria University Law Press 2019) 113, 126-127.

[187] For example, Nigeria has not yet domesticated the 1958 Geneva Convention on the Continental Shelf, even though it is a party to the convention since June 1961 as well as several other instruments discussed in the paper- see, K Balarabe, 'Africa and the Domestic Implementation of the Geneva Conventions and Additional Protocols: Problems and Solutions' (2022) 66 (2) Journal of African Law 175, 181.

[188] O Agu and others, 'Complexities of Decommissioning and Abandonment on Nigeria's Oil and Gas Sector: Strategic Insights and Management for Indigenous Companies and IOCs'<https://strenandblan.com/wp-content/uploads/2025/01/ENERGY-SECTOR-ARTICLE-ON-DECOMMISSIONING-AND-ABANDONMENT.pdf>, accessed 17 April 2025.

operational skills and capacity will definitely cause operators to rely on foreign contractors thereby further increasing costs of decommissioning execution and reducing local capacity growth contrary to the worthy intendment of the Nigerian Oil and Gas Content Development Act (NOGCDA) 2010.[189]

5.3 Regulatory Lacunae

The PIA 2021 established two regulatory bodies for the Nigerian petroleum industry. While the NUPRC is charged with the responsibility of managing the upstream operations, including the implementation of environmental laws and policies in the upstream sector,[190] the NMDPRA regulates the midstream and downstream petroleum operations.[191] However, despite the optimistic provisions made in the PIA regarding these regulatory bodies, the fact remains that most Nigerian regulatory agencies are noted for poor funding, lack of equipment and dearth of qualified technical experts, among others. Where such challenges persist, the regulatory bodies may not possess the pre-emptive capacity to effectively monitor and evaluate decommissioning operations. The inability to adopt an initiative-drawn approach due to lack of resources may cause the agencies to entirely depend on operators for possible operational assistance which may intrinsically be unsuitable.[192] It is a welcome development, however, that the PIA has made provisions for the funding of the two regulatory agencies,[193] which if properly implemented, would go a long way in assisting the regulators to discharge their statutory functions effectively.

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[189] NOGCDA, section 2 and PIA 2021, section 309.
[190] PIA 2021, section 6.
[191] Ibid, section 31.
[192] SC Dike, 'Decommissioning and Abandonment of Oil and Gas Facilities Legal Regime in Nigeria: Any Lesson from Norway, the UK and Brazilian Legal Framework?' (2017) 9(1) Journal of Property La and Contemporary Issues 169, 193-195; UNEP Report on Ogoniland (n 13) at 12, 139-140.
[193] PIA 2021, sections 24 and 47.

5.4 Petroleum Infrastructures and Orphaned Wells without Decommissioning Programmes

Several obsolete petroleum installations, especially the facilities that existed before EGASPIN and PIA 2021, lacked adequate and updated DAP and DAF, thereby complicating decommissioning liability evaluation and obligations.[194]Without proper DAP and creation of DAF as mandated under the extant PIA 2021 and its incidental decommissioning regulations, the possibility of having orphaned wells scattered over the hosts communities' environments and the government bearing the decommissioning costs or obligations is certain. This problem is further compounded following recent reports of transfer of onshore assets to local oil firms by the IOCs.[195] Thus, in such situations, issues concerning decommissioning liabilities are critical and must be fully addressed before finalising assignment of interest. Actually, section 232(13) of the PIA authorised the applicable regulator (NUPRC/NMDPRA) to hold earlier licensee/lessee answerable for decommissioning obligations despite divestments of their interests.

Nevertheless, where the new owner has taken over all the responsibilities upon divestment, with the authorisation of the relevant regulatory body, the former operator will no longer be held accountable.[196] But in cases pertaining to orphaned wells, the problem is more complicated and so far, it is uncertain if the regulatory bodies have put in place a dedicated fund

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[194] Stakeholder Democracy Network, 'White Paper on Sustainable Closure and Decommissioning of Oil and Gas Assets in Nigeria' <https://www.stakeholderdemocracy.org/wp-content/uploads/2016/06/Sustainable-Closure-and-Decommissioing-of-Oil-and-Gas-Assets-in-Nigeria.pdf>, accessed 17 April 2025.

[195]For example, ExxonMobil and SPDC have been mentioned in such divestment transactions- C Mitchell, 'Nigeria's Seplat Completes Acquisition of ExxonMobil Oil Assets,'<https://www.spglobal.com/commodity-insights/en/news-research/latest-news/crude-oil/121224-nigerias-seplat-completes-acquisition-of-exxonmobil-oil-assets>, accessed 17 April 2025; T Adebayo, 'Nigeria Moves to Restart Oil Production in Vulnerable Region after Shell Sells Much of its Businesses,' *AP News* (Lagos, 3 February 2025),<https://apnews.com/article/nigeria-shell-divestment-niger-delta-ogoni-4ceb760d5d84e8d58b04d24d220893a>, accessed 17 April 2025.

[196] Compare with NUPDAR 2023, regulations 23 which provides for the deemed liability of an assignee.

or system to tackle issues pertaining to legacy sites.[197]The financial implications for plugging and reclaiming the surface area of an impacted petroleum site is often expensive with an average cost estimated at USD 76,000 (equivalent of over ₦ 122 million)or more depending on the age of the well, the size of the area and other related factors.[198]

5.5Weak Enforcement Mechanism

Although significant strides have been made under the PIA and the regulations regarding decommissioning operations unlike previous fragmented laws, there is still need to ensure strict adherence to the implementation of the PIA's provisions since effectual decommissioning regulatory framework depends not merely on formulation of unambiguous regulations for decommissioning but critically on its enforcement mechanism.[199]There have been worries concerning operators totally complying with environmental restoration of impacted sites and decommissioning obligations outlined in the PIA though with questions regarding whether the operators are sufficiently motivated and monitored to perform these obligations.[200] In fact, most Nigerian petroleum industry regulatory frameworks have been known to suffer from weak regulatory capacity and enforcements.[201]

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[197] S Dunmade, I Adeyemo and J Uka-Ofor, 'Decommissioning and Abandonment: Nigeria's Experience in a Global Context' <https://dx.doi.org/10.2139/ssrn.4649437>, accessed 17 April 2025.

[198] Resources for the Future, 'New Study Reveals Key Factors for Estimating Costs to Plug Abandoned Oil and Gas Wells'<https://www.rff.org/news/press-releases/new-study-reveals-key-factors-for-estimating-costs-to-plug-abandoned-oil-and-gas-wells/->, accessed 12 April 2025; D Raimi and others, 'Decommissioning Orphaned and Abandoned Oil and Gas Wells: New Estimates and Cost Drivers' (2021) 55(15) Environmental Science & Technology 10224 <https://doi.org/10.1021/acs.est.1c02234>.

[199] OY Omotuyi, 'A Critical Assessment of the Regulatory Framework for Oil and Gas Decommissioning in Nigeria' (2023) 14(1) The Journal of Sustainable Development Law and Policy 140, 146, <https://doi.org/10.4314/jsdlp.v14i1.7s>.

[200] A Ajayi, 'Petroleum Industry Act (PIA) 2021- A Game Changer?' <https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/petroleum-industry-act-(pia)-2021-a-game-changer.pdf>, accessed 17 April 2025.

[201]P Uzoho, 'Report: Inconsistent Policy and Weak Regulation Undermine Investor Confidence in Nigeria's Oil Sector,' *Arise News* (Lagos, 22 April 2025)<https://www.arise.tv/report-inconsistent-policy-and-weak-regulation-undermine-investor-confidence-in-nigerias-oil-sector/>, accessed 24 April 2025; OJ Olujobi, 'Deregulation of the Downstream Petroleum Industry: An Overview of the Legal

5.6 Clarification between 'Abandonment' and 'Decommissioning'

Under the PIA, the two terminologies are not distinguished but are jointly defined and perceived as being mutually interchangeable. Similarly, under the NUPDAR 2023, section 25 separately defines 'abandonment' to mean the 'plugging and abandonment of a well'; while the term, 'decommission,' is accorded the same interpretation as obtainable under the PIA. It is argued that allowing the definitional uncertainty to continue may result in defeating the statute's worthy objectives for decommissioning of petroleum assets, which is inter alia, to ensure that petroleum operations are performed in a way that protects the health and safety of individuals, chattels and the environment.[202]The reason is that the two expressions are distinguishable and distinct processes; whilst decommissioning entails the removal and discarding of ageing petroleum assets at the end of their operational lifecycle and the restoration or remediation of the environment, abandonment involves the stoppage of utilisation of the assets without necessarily removing or disposing them.[203]In other words, abandonment focuses on perpetually shutting down and sealing oil facilities and leaving some of the infrastructures in situ; or removing some surface facilities while leaving some assets like pipelines in position.[204] There is need therefore, to differentiate between the two terms in the statute to avoid confusion.

6. CONCLUSION AND RECOMMENDATIONS

In the article, we have examined several relevant global, regional and national legal regimes on decommissioning of petroleum assets. The

Quandaries and Proposal for Improvement in Nigeria' (2021) 7(4) Heliyon e06848<https://doi.org/10.1016/j.heliyon.2021.e06848>.

[202] PIA, section 66(1)(m).

[203]OY Omotuyi (n 1) 162; A Raji and S Ogiriki, 'Decommissioning of Oil and Gas Facilities in Nigeria: Challenges and Opportunities,' (Paper presented at the SPE Nigeria Annual International Conference and Exhibition, Lagos, August 2022) SPE-211920-MS https://doi.org/10.2118/211920-MS.

[204]ML Fam, and others, 'A Review of Offshore Decommissioning Regulations in Five Countries-Strengths and Weaknesses' (2018) 160 Ocean Engineering 244-263 <https://doi.org/10.1016/j.oceaneng.2018.04.001>; DM Schroeder and MS Love, 'Ecological and Political Issues Surrounding Decommissioning of Offshore Oil Facilities in the Southern California Bight' (2004) 47(1-2) Ocean & Coastal Management 21-48 <https://doi.org/10.1016/j.oceanman.2004.03.002>.

impact of global and regional conventions on Nigeria's decommissioning laws is both significant and apparent. The examined global and regional instruments have no doubt guided in formulating Nigeria's legislative reforms as patently reflected in the provisions of the PIA and its subsidiary regulations through the incorporation of requirements such as need for submission of DAP, creation of DAF, public consultation with host communities and relevant stakeholders, environmental impact evaluations, residual liability regime, and formally endorsing the IMO guidelines, among others. Notwithstanding the laudable provisions contained in the PIA, the landscape of Nigeria's decommissioning practice is still critically confronted with a number of challenges, some of which have been discussed in the paper.

Thus, to address the gaps identified in the paper and to enhance effective implementation of excellent decommissioning practice in Nigeria, there is need to domesticate relevant decommissioning-allied conventions and guidelines to ensure their enforceability in Nigeria. The PIA should also be amended or supplemented with regulations that evidently differentiates between 'abandonment' and 'decommissioning' to prevent legal ambiguities and implementation inconsistencies. Also, proper monitoring by the regulators is essential; extant assets without DAPs and DAFs should be enjoined to develop and create funds, especially during assets transfer. While collaboration with relevant global and regional bodies to enhance Nigeria's lack of decommissioning experience may be necessary, such should not be executed in a manner that would constantly cause Nigeria to depend largely on foreign contractors for its decommissioning operations.

There is also need to create a dedicated orphaned fund to cater for liabilities which emanates from legacy facilities and orphaned wells. As a matter of fact, in an attempt to address the problems associated with abandoned and orphaned wells, the U. S. Senate[205]and the House of

[205]The Revive Economic Growth and Reclaim Orphaned Wells (REGROW) Act 2021, which was part of the Senate's cross-party infrastructure compromise, approved $4.275 billon concerning orphaned well cleanup on state and private lands; $ 400 million for the same purpose regarding public and tribal lands; and $32 million for applicable research, development, and implementation- K Cramer, 'Senate Passes REGROW Act' (11 August

Representatives[206] respectively in 2021passed two laws which sought to amend the Energy Policy Act 2005by authorising the Secretary of Interior to create a programme to plug, remediate and reclaim orphaned petroleum wells and adjoining lands and to provide funds to the federal, state and tribal governments for the purpose. This legislative proactive approach contributed significantly to the identification and plugging of several abandoned wells in the United States. Moreover, like the situation in the United States, there should also be a right of action in torts whereby a private individual who may likely suffer damage as a result of the neglect of an owner or operator to plug the oil wells could institute an action against the operator. This should also cover cases where a private citizen spends money in plugging abandoned wells; then he should be able to recover the allied costs against the owner/operator.[207]

If these recommendations, along with others made in the article, are implemented, they will assist Nigeria in building a better robust, environmental friendly and economically effective decommissioning regime that is consistent with global principles and excellent oilfield practice. This will further enable Nigeria to align its decommissioning operations with the SDGs as the petroleum sector's activities conceivably play key role in positively and/or negatively impacting on various areas covered by the SGDs such as, climate action (SGD 13), the marine and land ecosystems/biodiversity (SGDs 14 and 15), and collaborations with relevant stakeholders, global bodies and local communities (SGD 17) to safeguard green and accountable decommissioning practices.

2021) <https://www.cramer.senate.gov/news/press-releases/senate-passes-sen-cramers-bipartisan-bill-to-plug-and-remediate-nations-orphaned-wells>, accessed 23 April 2025.

[206] The version of the legislation passed by the House was captioned, 'Orphaned Well Cleanup and Job Act 2021' <https://www.govinfo.gov/content/pkg/CRPT-117hrpt645/html/CRPT-117hrpt645.htm>,accessed 23 April 2025.

[207] N Saint-Paul, *Summers Oil and Gas* (3rdedn, Vol. 1, Thomson West 2022), chapter 4. 44; see also para. 4.43- dealing with plugging of abandoned petroleum wells- government actions for infraction.