LEGAL APPRAISAL OF NNPC LIMITED UNDER THE PETROLEUM INDUSTRY ACT: ISSUES AND CHALLENGES

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ABSTRACT

Among the key changes in the Petroleum Act 1969 is the transformation of the Nigerian National Petroleum Corporation (NNPC) into a limited liability company. While this move is seen as a positive step towards reforming the NNPC, it presents several legal issues and challenges that must be addressed in order for the company to meet up with local and global expectations. This author provided a comprehensive legal appraisal of the NNPC Limited under the PIA. It adopted the doctrinal research methodology and reviewed the primary sources of law such as statutes and case law as well as secondary sources such as textbooks, journal articles and internet sources. It found that the transition from NNPC to NNPC limited is not without some inherent challenges. However,the author argued that the enactment of the Petroleum Industry Act (PIA) in 2021 has brought significant changes to the Nigerian Petroleum Industry though with some fundamental implications. One of such is the conversion into a commercial entity comparable to private companies engaged in similar activities in the petroleum industry. The author concluded that the transition is yet to show any significant improvement in the Nigerian petroleum industry due to some issues such as lack of transparency, government interference, weak regulatory enforcement and poor compliance with the extant law. The author finally recommended that the PIA should be reviewed to address the problems facing the NNPC Limited taking useful lessons from the Saudi ARAMCO

Introduction

The migration to a limited liability company followed the enactment of the Petroleum Industry Act 2021 (PIA). Given the many obstacles clogging the defunct Nigerian National Petroleum Corporation (NNPC), stakeholders clamoured for reforms to induce profitability, transparency and overall development. The government responded to this public outcry by enacting the PIA. This law requires the Minister of Petroleum Resources to cause the incorporation of the NNPC Limited within six months of the enactment of the PIA in consultation with the Minister of Finance on the nominal shares of the company.1In September 2021, the Corporate Affairs Commission (CAC) completed the incorporation of the NNPC Limited.2By virtue of this incorporation, NNPC Limited shall now be regulation by the PIA, Companies and Allied Matters Act 2020, its articles of association and other laws that apply to limited liability companies in Nigeria. 1.1Brief Historical Background of NNPC LimitedThe discovery of crude oil in Nigeria in 1956 marked a significant turning point in the country's economic history. With vast oil reserves, Nigeria became a major exporter of crude oil, earning significant foreign exchange and contributing significantly to its Gross Domestic Product (GDP). However, following the vesting of the ownership of oil and gas in the federal government3and the acquisition of a participatory interest in the concession held by the International Oil Companies (IOCs), there was an urgent need to establish a body to manage and regulate the oil and gas industry. This birthed the Nigerian National Oil Corporation (NNOC) in 1971.4However, due to the lack of adequate resources and capacity of the NNOC, there was a need to restructure the NNOC for optimum delivery. In 1977, it was merged with the Federal Ministry of Petroleum and Energy Resources to form the Nigerian National Petroleum Corporation (NNPC). This legally dissolved and repealed the NNOC.5The NNPC was established under the NNPC Act 1977 and statutorily empowered to engage in all commercial activities relating to the petroleum industry and to enforce all regulatory measures relating to the general control of the petroleum sector through its Petroleum Inspectorate department.6However, as a state-owned enterprise, one major problem facing the NNPC was excessive dependence on the government. Also, there have been allegations of corruption,mismanagement and illicit accounting practices, which have undermined public trust in the corporation. This lack of transparency and accountability has also affected the ability of NNPC to attract investment and partnerships with foreign investors. Historically, NNPC has been treated as a source of revenue for the Nigerian government. Its profits are transferred to the government's treasury and distributed through the Federation Accounts Allocation Committee (FAAC) to state governments on a monthly basis.Over time, mismanagement and corruption led to increased greed and a decline in NNPC's ability to contribute meaningfully to the national purse.7Finally, concerns rose over the dual function of the NNPC as both regulatory and Commercial Corporation. These challenges led to the agitation for the restructuring of the NNPC and the overall administration of the Nigerian petroleum industry. As a result, the PIA generally overhauled the regulatory compliance of the oil and gas industry in Nigeria and put in place a new framework for the 1Petroleum Industry Act 2021, s. 53(1).2S C Dike and E Ehie, ‘Appraising the Layers of Governance under the Petroleum Industry Act 2021’ [2022](6) Journal of International Energy and Environmental Law:160-170.3Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004, s.44(3); UN General Assembly Resolution 1803 on the Permanent Sovereignty over Natural Resources 1962.4S C Dike, Energy Security: The Case of Nigeria and Lessons from Brazil, Norway and the UK (Pearl Publishers 2015) 67.5Nigerian National Petroleum Corporation Act 1977 Cap N123 LFN 2004, preamble (now defunct).6Ibid..7R Abati, 'Nigeria and the New NNPC' <https://www.premiumtimesng.com/opinion/543652-nigeria-and-the-new-nnpc-by-reuben-abati.html?tztc=1> accessed 30 March 2023.

African Journal Vol.7 76governance, regulation and operation of the NNPC.8This transition transformed the NNPC into a limited liability company thus making it a profit-making, independent and commercial venture comparable to private companies in Nigeria engaged in the petroleum industry.9The restructuring and commercialization of the NNPC are expected to create new job opportunities and provide various commercial and economic benefits that will have a positive impact on the economy. 10These activities will enhance the financial performance of institutions and improve household income.11However, as shall be seen in this paper, the reality is far from the expectations

1.2Ownership and Shareholding in NNPC Limited

Upon incorporation of the NNPC Limited by the Minister in pursuance of section 53(1) of the PIA, the ownership of all shares in the company including oil blocs and refineries shall be vested in the government, and the Ministry of Finance Incorporated and Ministry of Petroleum Incorporated shall hold those shares in equal proportion on behalf of the federation.12The use of the word ‘federation’ here includes all the states of the federation and all Nigerian citizens, not just the Federal Government (FG). This line of construction was affirmed in the case of NCP v National Assembly, FRN13where the Court of Appeal interpreted federation to mean the Federal Republic of Nigeria.14In 2018, the Supreme Court in AG Federation v AG Anambra State15further affirmed this position relying on section 2 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).16This implies that techniocally, all Nigerians are shareholders in the NNPC Limited, but represented by the ministries of petroleum and finance.17

The shares held by these ministries on behalf of the federation shall notbe transferred by way of sale, assignment, mortgage or pledge unless same is approved or authorized by the government and further endorsed by the National Economic Council on behalf of the federation.18Where such transfer is to be made, however, it must be done at a fair market value and subject to an open, transparent and competitive bidding process.19The aim of these conditions is to ensure that the transfer of shares is done in a fair and equitable manner that does not compromise the interests of the government or the people of Nigeria.

However, the Nigerian Governors Forum (NGF) has expressed serious concerns about the ownership structure of the company.20The NGF supports the commercialization of the NNPC but disagrees with the provision that vests ownership of all shares in the NNPC Limited in the government with the Ministries of Finance and Petroleum holding the shares on behalf of the government. The NGF has maintained that the NNPC Limited should be owned by the Nigeria Sovereign Investment Authority (NSIA) which is a vehicle that holds the interest of the three tiers of government. This would ensure that the interests of all levels of government are represented in the new entity. It remains to be seen whether the government will consider the NGF's recommendation and make changes to the ownership structure of the NNPC Limited.

8K Nwuke, 'Nigeria’s Petroleum Industry Act: Addressing old problems, creating new ones' <https://www.brookings.edu/blog/africa-in-focus/2021/11/24/nigerias-petroleum-industry-act-addressing-old-problems-creating-new-ones/> accessed 3 March 2023.9Ibid..10Business Day, 'New NNPC, ownership structure and board appointments' <https://businessday.ng/editorial/article/new-nnpc-ownership-structure-and-board-appointments/> accessed 3 March 2023.11Ibid..12PIA (n 1), s.53(3).13(2016) 1 NWLR (Pt. 1492) 1 19, 14Ibid.., para. G.15(2018) 6 NWLR (Pt. 1615) 31416Cap C23 LFN 2004.17A Jala, 'All Nigerians Are Shareholders In New NNPC –Mele Kyari' (Daily Trust: Thursday 21 July 2022) <https://dailytrust.com/all-nigerians-are-shareholders-in-new-nnpc-mele-kyari> accessed 15 March 2023.18PIA (n 1), s.53(5)19Ibid.., s.53(6).20Q E Iroanusi, 'PIB: Governors fault NNPC’s ownership structure' <https://www.premiumtimesng.com/news/top-news/473735-pib-governors-fault-nnpcs-ownership-structure.html> accessed 2 April 2023.

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1.3Objectives of the NNPC Limited

There are several objectives of the NNPC Limited encapsulated in section 64 of the PIA. Some of these objectives include the following:

i.To carry out petroleum operations on a commercial basis, comparable to private companies in Nigeria carrying out similar activities.

ii.To engage in the business of renewables and other energy investments

iii.Topromote the domestic use of natural gas through development and operation of large-scale gas utilization industries

iv.To lift and sell royalty oil and tax oil on behalf of the Upstream Petroleum Regulatory Commission for an agreed fee

v.Maintain the role ofNNPC, etc.

These and other objectives stated in the PIA can also serve as the functions and powers of the NNPC Limited in the petroleum value chain. These objectives are provided in furtherance of the central objectives of the PIA, one of which is to promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria.21However, the objectives of the NNPC Limited are drafted in such a vague and repetitive way that can cause difficulty and confusion of construing and streamlining the exact aim of the company.

2.Anatomy of the NNPC Limited

2.1Board of the NNPC Limited

The day-to-day operation of the NNPC Limited is to be managed by the Board of NNPC Limited established under section 58 of the PIA. Its duties are to be performed in accordance with the provisions the PIA, the Companies and Allied Matters Act 2020 and the articles of association of NNPC Limited. By virtue of its responsibilities and duties under the foregoing laws, it can be argued that the board is the engine house of the company. It is responsible for the strategic guidance and determining the business structure of the company;22it is also responsible for the approval of the annual budget of the company23and further oversees major capitalexpenditure, acquisitions and divestitures of the company.24It can select, compensate, monitor and replace management executives of the company25and perform many other duties under the PIA.

By virtue of section 59(2) of the PIA, the board of the company is to be composed of a non-executive chairman, the Chief Executive of the company, the Chief Finance Officer of the company, a representative of the Ministry of Petroleum and another representative of the Ministry of Finance, both representatives not below the rank of a Director and finally, six non-executive members with requisite qualifications, particularly cognate experience in the petroleum sector or any relevant sector of the economy. This is to ensure competence and transparency of the board to promote corporate governance. Also, the qualification of the six non-executive members is to ensure that professionals and experts in the oil and gas sector constitute the board. These six members are to also reflect the six geopolitical zones to maintain thefederal character.

However, the appointment of each of the foregoing members of the board shall be done by the President.26This is a serious setback owing to the corrupt nature of the political system in Nigeria. Recall that the first objective of the company, as stated in the PIA, is to carry out petroleum operation of as would a private company in Nigeria. The essence of this is to remove government control of the company. However, making it the responsibility of the President to appoint all members ofcompany’s board, fundamentally defeats this objective. First, the board of a company is its engine house that takes

21PIA (n 1), s. 2(c).22Ibid.., s.63(1)(a).23Ibid.., s.63(1)(b).24PIA (n 1), s.63(1)(j).25Ibid.., s.63(1)(l).26PIA, s.59(2).

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charge of decision making and management of the company. Second, he who calls or pays the piper apparently dictates the tone. The system ofappointment within the political space in Nigeria is rarely fair and often tilts towards political, personal and tribal interests. Therefore, those appointed by the President are most likely to put personal and party interests ahead of the general public and the overall objective of the PIA. However, this applies where the company is wholly-owned by the government. Where it is not wholly owned by the government, then the composition of the board will be determined by the shareholders in accordance with thelaw.

2.1.1

Responsibilities of the Board of NNPC Limited

The responsibilities of NNPC Limited are set out in section 63 of the PIA and they include the following;

i.Strategic guidance and determining of the business structure of NNPC Limited

ii.Approval of the budget of NNPC Limited

iii.Act in good faith and exercise due diligence and care in the best interest of NNPC Limited, the shareholders and the sustainable development of Nigeria

iv.Apply the highest ethical standards in performing its duties, taking into account the interest of its stakeholders and the fiduciary duty of the directors.

v.Make decisions guided by commercial and technical considerations that represent good international petroleum industry practices

vi.Oversee major capital expenditure, acquisitions and divestiture

vii.Ensure the integrity of NNPC Limited’s accounting and financial reporting systems, including audit of NNPC Limited’s account by independent third party.

viii.Ensure that appropriate system of control is in place for risk management,financial and operational control and compliance with applicable law and relevant standards.

ix.Determine the dividend policy of NNPC Limited, ensure sustained growth and a sound financial base for NNPC Limited, etc.

2.1.2 Committees of the Board of NNPC Limited

The creation of committees within NNPC Limited is essential to the smooth running of the company, promoting transparency and effective decision-making. The PIA mandates the formation of committees by the board upon the incorporation of the company.27The PIA permits three-layer committees including a committee for ensuring the integrity of financial and non-financial reporting of the company, a committee for the nomination of board members and key executives and a committee for remuneration of membersof the board of the company. There is also an omnibus committee which may be set up by the board when they consider it appropriate.28

2.2Transfer of Assets and Liabilities

Section 54 of the PIA provides that all assets and liabilities of the NNPC will be transferred to NNPC Limited within the first 18 months of the PIA coming into effect. Further to that, section 54(2) states that any assets, interests, or liabilities not transferred shall remain that of the NNPC until extinguished or transferred to the government. This means that some toxic assets may be excluded. With this transition taking effect, existing contracts and Joint Operating Agreements (JOAs) with NNPC will be evaluated and transferred in line with agreed principles to ensure business continuity.

2.3Transfer of Employees and Conditions of Service

The emergence of the NNPC Limited does not terminate the employment of workers and other staff members of the defunct NNPC. There is a transfer of employees. Transfer of employees simply 27Ibid.., s.60(1).28Ibid.., s.60(4)(d).

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implies that all employees of the former NNPC automatically become employees of the NNPC Limited. By the provision of section 57(1) of the PIA, all employees of the former NNPC and its subsidiaries are deemed to be employees of the NNPC Limited upon its incorporation. Thus, there are deemed or transferred employees and actual or subsequent employees, which include employees whose employment contract was entered into upon the incorporation of NNPC Limited. On the other hand, transfer of condition of services simply implies that the terms and conditions of employment under the former NNPC are also transfer upon incorporation of the NNPC. This however does not mean that those terms of employment are static and unchangeable. They can be changed or varied only that terms and conditions under the NNPC Limited shall not be less favourable than those enjoyed prior to the transfer of service, but they can be more favourable.29Finally, with respect to financial benefits to retired employees of the former NNPC otherwise known the pension scheme, section 57(2) of the PIA mandates the NNPC Limited to continue to fulfill the statutory obligation of the defunct NNPC in relation to the pension scheme of employees of the NNPC and its subsidiaries. 2.4Appointment of NNPC Limited as Agent of NNPCIn law, an agency relationship arises where one, known as an agent, is legally authorized by another known as the principal to do an act that will affect the legal relationship of the person giving the authorization. It is encapsulated in the Latin maxim, qui facit per alium facit per se meaning that he who does an act through another does it himself. In the case of NNPC Limited and NNPC, the PIA under section 55(1) of the PIA makes NNPC Limited an agent of the NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC. In other words, NNPC is statutorily in charge of the process through its agent, NNPC Limited. Therefore, in furtherance of this statutory agency, NNPC Limited can validly enter intocontracts with third parties and deal with the assets of liabilities of NNPC as it if it is that is NNPC doing it. However, one peculiar nature of the nature of agency created under section 55(1) of the PIA is that, unlike the general notion of agency inlaw where the principal is not legally restricted in dealing with the subject matter under agency, the PIA has barred NNPC from dealing with the applicable assets, interest and liabilities subject to the winding down process.30Also, NNPC is to pay an administrative charge of $1USD as a nominal fee for the applicable assets, interests and liabilities and further bear the cost of winding them down.31Section 55(6) of the PIA has further tied the hands of NNPC with a barb wire preventing it from maintaining an action against NNPC Limited arising out of and in the course of winding down the applicable assets, interests and liabilities. 2.5Corporate Governance in NNPC LimitedGood corporate governance has been recognized as a veritable tool for socio-economicdevelopment in Nigeria and the world over.32According to Asogwa,33the term ‘Corporate Governance’ generally refers to the system of governance, rules, ethical standards, mechanisms, and processes in which a corporation is being directed and controlled. It is built on accountability, transparency, openness, fairness and responsibility in the management and control of a company. Section 61 of the PIA provides for the application of these principles of corporate governance in the management and control of the company. Thus, a member of the NNPC Limited holding not less than 10% of the voting interest in the company has the right, under the framework of corporate governance, to request a comprehensive written explanation of any action or decision taken by the board of the company.34This is to ensure 29PIA (n 1), s.57(1).30PIA (n 1)., s.55(2(a).31Ibid.., s.55(2)(c) and (4)32L C Opara, 'The Legal Regime of Corporate Governance in Nigeria: A Critical Analysis' [2014](26) Journal of Law, Policy and Globalization:38-43, 3833I E Asogwa, 'Corporate Governance in Nigerian Banks: a Theoretical Review' [2016](2)(7) International Journal of Management Science and Business Administration:7-1534PIA (n 1), s.61(2)

African Journal Vol.7 80accountability and transparency of the members of the board who are statutorily required to discharge their responsibilities in accordance with the highest standards and practices of corporate governance. However, the duty to furnish a comprehensive written explanation of the action or decision taken by the board is made subject to the rule of confidentiality owed to any third party.352.6Annual Audit of the NNPC LimitedAuditing is essential in every company to ensure transparency in the company’s financial and accounting system. The essence of auditing is to ensure that financial reports and statements of the company are true and correct and in accordance with the standard principles of accounting. Toensure transparency in the NNPC Limited, section 62(1) of the PIA requires an independent, competent, experienced and qualified auditor to audit the company’s financial records. The goal of the auditor is to assure the board and shareholders of NNPC Limited that the financial statement of the company fairly represents the financial position and performance of the company.36However, where he is unable to do so, the board shall convene an extraordinary general meeting (EGM) to consider the necessary action.The PIA is silent as to the manner of selection and appointment of the independent, qualified, competent and experienced auditor. An auditor may be hired and paid off to manipulate the financial statements to suits the whims and caprices of the board members. Although the procedure for appointment of auditors is clearly enshrined in the CAMA 2020, there is no adequate measure provided to prevent manipulation. The PIA would have filled this gap considering the recent reports of financial fraud and dishonesty that were going on in the defunct NNPC. 2.7NNPC Limited and the Frontier BasinsThe frontier basin refers to the basins where hydrocarbon exploration activities have not been carried out or where previous commercial discovery of oil and gas have not been made or an area that is undeveloped and includes Anambra, Dahomey, Bida, Chad and Benue trough.37Section 9(1) of the PIA makes it the function of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) to develop exploration strategies and identify opportunities for the development of the frontier basins. Thus, section 9(4) of the PIA established the Frontier Exploration Fund (FEF) to finance the exploration and development of the frontier basins.NNPC Limited shall transfer 30% of its profit oil and profit gas to the FEF escrow account and such fund shall be used to develop the frontier acreages and fund exploration and development operations in the frontier acreages subject to the appropriation of the National Assembly.38Where data acquired and interpreted under a petroleum exploration licence, in the judgment of the Commission, requires testing and drilling of identifiable prospects and leads, and no commercial entity has publicly expressed an intention of testing or drilling such prospects, the commission shall request the NNPC Limited to drill or test such prospects and leads on a service fee basis to be charged to the Frontier Exploration Fun. Where commercial discovery is made, NNPC Limited shall have the first right of refusal in the award of the acreages for subsequent development and other petroleum operations in such frontier acreages under this Act. In cases where data is acquired and interpreted under a petroleum exploration license and NUPRC determines that such data requires testing and drilling of identifiable prospects and leads and no commercial entity has publicly expressed an intention to undertake such testing or drilling, the NUPRC is authorized to request that NNPC Limited perform such activities on a service fee basis.39The service fees shall be charged to the FEF.40In the event that commercial discovery is made, NNPC 35Ibid..36Ibid.., s,62(2).37PIA (n 1), s.318.38Ibid.., s.9(5).39Ibid.., ss.9(2) and 64(k).40Ibid..

African Journal Vol.7 81Limited shall be accorded the first right of refusal for the award of the acreages in question for subsequent development and other petroleum operations.41The first right of refusal implies that NNPC Limited shall have the option to be the first entity to decide whether to accept or decline the opportunity to be awarded the acreages for subsequent development. In other words, if NNPC Limited decides to accept, it shall be given priority to carry out further development and other petroleum-related activities in that area.2.8Contracts Negotiated by NNPC under the Petroleum Act 1969The enactment of the PIA did not automatically extinguish the petroleum licenses and leases granted pursuant to the Petroleum Act 1969 (PA).42These leases and licenses were saved by the PIA. By the provision of section 311(2) of the PIA, any oil prospecting licence or oil mining lease granted under the PA that is subsisting as of 16thAugust 2021 shall continue to have effect. However, with respect to renewed leases or contracts renegotiated under the PA which are subsisting as of the above-stated date and were signed by NNPC, the leases shall be assigned to NNPC Limited without prior approval of the contractor.43This means that the contractor who signed the original contracts with NNPC will not need to approve the transfer or assignment of the lease to NNPC Limited Upon such assignment, NNPC Limited shall continue its role as a concessionaire under such leases and shall give written notice of the assignment to the contractor.442.9The Implications of the Emergence of NNPC LimitedThere are various implications of the emergence of the NNPC Limited and the system of the ownership of its shares in Nigeria. The first is that it enables the company and any of its subsidiaries to conduct their affairs on a commercial basis in a profitable and efficient manner without recourse to government funds.45This implies that NNPC Limited is commercialized and still in the public sector. By this, it is expected to operate in a more transparent and accountable manner with a focus on generating profits and contributing to the national economy. Also, it will be expected to comply with the same standards and regulations as private companies in Nigeria. Second, like other limited liability companies, NNPC Limited is empowered to declare dividends to its shareholders and return 20% of profits as retained earnings to grow its business.46This implies that NNPC Limited is to operate like a typical private company with greater financial autonomy and potential for growth and expansion. Third, where NNPC Limited has a participating interest or 100% interest in a lease or license, it is required to pay its share of all fees, rents, royalties, profit oil shares and taxes to the government as would any company in Nigeria.47In other words, if NNPC Limited is a partner in a joint venture or has complete ownership of an oil block or field, it is obligated to pay its share of all financial obligations to the government. This provision ensures that NNPC Limited is subject to the same financial and regulatory requirements as other companies operating in the Nigerian oil and gas industry, promoting fairness and accountability in the sector.Fourth, the provision of section 64(a) of the PIA allows for the exemption of NNPC Limited from the Public Procurement Act, Fiscal Responsibility Act and Treasury Single Account. The exemption from these laws is intended to allow NNPC Limited to operate more efficiently without unnecessary bureaucratic processes that may hinder productivity. For instance, the exemption from the Public Procurement Act may enable NNPC Limited to make purchases more quickly and efficiently while the exemption from the Treasury Single Account may allow the company to access funds faster without undue delay.41PIA (n 1), s.9(3).42Cap P10 LFN 2004.43Ibid.., s.311(2)(a)(ii).44Ibid..45Ibid.., s.53(7).46PIA (n 1) s.53(7)..47Ibid.., s.53(8).

African Journal Vol.7 82Finally, by the provisions of section 205, 206 and 207 of the PIA, the NNPC Limited would no longer determine the prices of petroleum products as prices would be determined by market forces subject to government policies/regulations.Such regulations are within the regulatory powers of the Midstream and Downstream Petroleum Regulatory Authority (MDPRA) which is mandated to allow the sellers of petroleum products to recover reasonably and prudently incurred costs, including a reasonable return on the capital invested in the business.482.10The Role of NNPC Limited in Environmental ProtectionAs an operator in the oil and gas sector, NNPC Limited is subject to environmental laws and standards, and it shall conduct its affairs and activities having due regard to environmental protection and sustainability. In NNPC v. Sele,49the plaintiffs sued the former NNPC for massive spillage of crude oil from the corporation’s pipeline, which polluted and ravaged economic trees and crops, fishing ponds, fishing contrivances, local gin distilleries, and freshwater wells over a very wide area. They claimed N20,000,000.00 as fair and adequate compensation for their losses. At the conclusion of the trial, the trial court entered judgment for the respondents and awarded N15,329,350.00 as special damages and N3,000,000.00 as general damages. Furthermore, in the case of Gbemre v Shell and NNPC,50the court declared that the actions of the respondents (Shell and NNPC) in continuing to flare gas in the course of their oil exploration and production activities in the applicant’s community are a violation of their fundamental rights guaranteed by sections 33 and 34(1) of the CFRN. Furthermore, the court ruled that the failure of the companies to carry out an Environmental Impact Assessment (EIA) in the said community concerning the effects of their gas flaring activities is a clear violation of the EIA Act and has contributed to a further violation of the said environmental rights.The Supreme Court has affirmed the foregoing position in the case of Centre for Oil Pollution Watch v NNPC51where NNPC was also held liable for oil spillage caused by the failure of its oil pipeline equipment. In this case, the Supreme Court liberalized the doctrine of locus standi to allow NGOs to institute environmental actions against a statutory body (NNPC) and other entities for polluting the environment. In the exact words of the Supreme Court:[the law] imposes a duty on the owners or operators of oil pipelines to maintain and repair their oil pipelines and ensure that the crude oil or hydrocarbon oil being transported through the pipelines, a dangerous substance, do not escape and cause havoc to human lives and the environment. This duty of care is not only statutory, it is also on the authority of Rylands v. Fletcher(1868) LR 3 HR 330, a common law duty of care.52In other words, NNPC Limited has the duty or role to maintain and repair its facilities and ensure that its activities do not cause environmental damage. Where it fails in this duty and pollution results, it will give rise to environmental action by either the victim of the pollution or any organization under public interest litigation.532.11NNPC Limited and Renewable EnergyThe motto of NNPC Limited goes ‘Energy for Today, Energy for Tomorrow.” This demonstrates in principle a commitment of the company in meeting the current energy needs in Nigeria while also ensuring that there is sufficient energy available for future generations. This embraces the concept of 48Ibid.., s.207.493 (2004) ALL FWLR (pt. 223) 1859 CA.50(2005) Suit No. FHC/B/CS/53/05.51(2019) 5 NWLR (Pt. 1666) 51852Ibid.., 574-575, paras. H-C.53Centre for Oil Pollution (n 51)., 591, paras. C-E

African Journal Vol.7 83sustainable energy which can be achieved by increasing the share of renewable energy in Nigeria’s energy mix. Thus, section 64(h) of the PIA empowers NNPC Limited to engage in the business of renewables and other energyinvestments. In furtherance of this provision, the board of NNPC Limited is charged with the responsibility of making decisions guided by commercial considerations that represent good international petroleum industry practices.54In recent times, international practices have been evolving drastically to transition towards renewable energy and reduced reliance on fossil fuels. The International Energy Agency (IEA) and International Renewable Energy Agency (IRENA) have developed roadmaps and blueprints to help countries transition. Despite several government policies on renewable energy, Nigeria’s carbon dependency keeps rising. Although the PIA has empowered NNPC Limited to engage in the business of renewables, this provision is too terse and inadequate to drive significant actions. Also, the entire provisions of the PIA revolve around the fossil fuel industry (crude oil and natural gas) with very little provision for renewable energy. This can weaken the willingness of NNPC Limited and other private companies in the industry to engage in such business and investments. Also, with poor legal framework on renewable energy coupled with a high capital requirement, low technology and technical incapacity, investing in renewables has not been adequate since the incorporation of NNPC Limited2.12Comparative Analysis between Nigeria and Saudi ArabiaUpon the incorporation of the NNPC Limited, the company would be run like most state-owned international oil companies like the Saudi ARAMCO, among others, as the leadership structure of the NNPC Limited is quite similar to that of Saudi ARAMCO.55ARAMCO is one of the largest national oil companies in the world. It operates on good corporate governance and is involved in all aspects of the oil and gas industry in Saudi Arabia, including exploration and production, refining, and marketing.56ARAMCO is reputed for effective management, profitability, innovation and technology, which enhance the efficiency and productivity of Suadi Arabian’s petroleum sector.57Additionally, ARAMCO is globally recognized for its commercial viability and ability to meet global demands. Thus, to attain long-term profitability and contribute more to sustainable development in Nigeria, there is a need to reform NNPC Limited by boosting commercial viability and profitability.58Also, there is a need to limit government interference in the management of NNPC Limited In Saudi Arabia, it is the Nomination Committee that oversees the selection, appointment and assessment of the Board members and further ensures that both the Board and its individual Directors perform their duties effectively.59With this system, ARAMCO operates with a high degree of autonomy from the Saudi government, which allows it to make strategic decisions and investments for long-term development. This is unlike the Nigerian system where the President unilaterally appoints the board of NNPC Limited thereby attracting government interference in the operations and management of the company.Furthermore, while NNPC Limited is wholly owned by the Nigerian government, ARAMCO’s majority shareholder is the government while private investors own the minority shares. In December 2019, ARAMCO conducted an Initial Public Offering (IPO) where 1.5% of its shares were offered to the public, and it raised $25.6 billion, making it the largest IPO globally.60NNPC Limited is yet to go public as of today. In the modern business world, the significance of a national oil company going 54PIA (n 1),s.63(1)(e).55C Unini, 'A Comprehensive Analysis Of The Commercialisation OfNNPC' <https://www.thenigerialawyer.com/a-comprehensive-analysis-of-the-commercialisation-of-nnpc/> accessed 1 December 2022.56ARAMCO 'Corporate Governance' <https://www.aramco.com/en/investors/environmental-social-and-governance/corporate-governance> accessed 2 April 2023.57H. Edeh, 'Saudi Aramco, Petrobras, offer lessons for Nigeria’s oil reform quest' <https://businessday.ng/news/article/saudi-aramco-petrobras-offer-lessons-for-nigerias-oil-reform-quest/> accessed 18 March 2023.58Ibid..59Ibid..60J Horowitz and J Defterios, 'Saudi Aramco raises $25.6 billion in the world’s biggest IPO' <https://edition.cnn.com/2019/12/05/investing/saudi-aramco-ipo-price/index.html> accessed 3 April 2023.