



RENEGOTIATING FOR SUSTAINABILITY: ALIGNING NIGERIAN PETROLEUM CONTRACTS WITH ENVIRONMENTAL GOALS & INVESTOR INTERESTS

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The global energy sector is undergoing a profound transformation, driven by the need to mitigate climate change, and nations are working to transition to sustainable energy systems. Nigeria, a signatory to the 2015 Paris Agreement, has committed to reducing greenhouse gas emissions and achieving net zero by 2050–2070. However, the dual challenge of balancing Nigeria's economic reliance on oil with its environmental obligations is increasingly urgent. The petroleum industry is essential to Nigeria's economy, comprising nearly 90% of export earnings and 60% of government revenue. Meanwhile, the industry has caused substantial environmental harm, particularly in the Niger Delta, where decades of oil extraction have degraded ecosystems through oil spills, gas flaring, and deforestation. This environmental degradation is not only an ecological crisis but also a socio-economic issue, impacting the livelihoods of local communities dependent on agriculture and fishing and posing severe health risks due to contaminated water sources. This paper critically examines the structure of Nigerian petroleum contracts, particularly the role of stabilisation clauses that “freeze” contract terms, thereby protecting investors from regulatory changes, including new environmental standards. Although stabilisation clauses play a critical role in attracting foreign investment, they often prevent the incorporation of modern environmental regulations, hindering Nigeria's ability to align with its climate goals. This study investigates the potential of renegotiation as a tool for embedding environmental provisions into petroleum contracts, given the need to align investor interests with national environmental commitments. This paper adopts a comparative analysis of contractual practices from other oil-producing nations and, drawing from international best practices, presents strategies for transitioning to a more sustainable petroleum industry in Nigeria. The review of case studies reveals that a shift towards renegotiation and adaptation in contractual terms is both possible and beneficial. This paper concludes by proposing policy reforms that encourage a balanced approach, integrating economic and sustainable environmental goals. Through a comprehensive structure that comprises the roles of the Nigerian government, international oil companies, and local communities, this study offers a comprehensive framework for aligning Nigeria's petroleum sector with environmental sustainability, contributing insights to resource management in oil-dependent economies while safeguarding investor interests and community well-being.

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1. INTRODUCTION

In recent years, the global energy landscape has been undergoing a profound transformation, driven by the urgent need to combat climate change and transition towards sustainable development. At the heart of this shift is the 2015 Paris Agreement, an international accord that sets ambitious targets to limit global warming to well below 2 degrees Celsius, with efforts to cap it at 1.5 degrees. As a signatory to this agreement, Nigeria has committed to reducing its greenhouse gas emissions and achieving net-zero carbon emissions by 2050-2070,¹ utilising gas as a transitional fuel.² This act sets the framework for emission reduction and is aimed at ensuring that climate change considerations are integrated into Nigeria's national development priorities.³ As the world moves toward a low-carbon future, countries heavily reliant on fossil fuels, like Nigeria, face unique challenges in balancing their economic dependence on oil with their environmental obligations. The oil sector, which is central to Nigeria's economy, is increasingly under scrutiny for its environmental impact, particularly in regions like the Niger Delta, where oil exploration has led to significant ecological degradation.

Nigeria is endowed with vast oil reserves, ranking as Africa's largest producer and one of the world's top ten crude oil exporters. Oil revenue constitutes a substantial part of Nigeria's economy, accounting for approximately 90% of its export earnings and 60% of government revenue.⁴ Over the past several decades, the petroleum industry has been the backbone of the country's economy, driving growth and development and contributing significantly to its GDP. However, this reliance on oil presents both economic opportunities and significant environmental challenges, particularly in Nigeria's main oil-producing region, the Niger Delta. Spanning approximately 75,000 km², the Niger Delta is estimated to be the world's largest wetland, featuring vast freshwater swamps inhabited by numerous communities.⁵ The region is rich in biodiversity, mainly marine life, which local communities rely on for food and sustenance. However, the region has endured decades of environmental pollution caused by oil spills, gas flaring, acid rain, and deforestation.

The environmental degradation in the Niger Delta is not only an ecological disaster but also a significant socio-economic issue. According to the United Nations Environment Programme (UNEP), over 6,800 spills have occurred in the Niger Delta since the 1970s,

¹ (Nigeria) Climate Change Act (CCA) 2021, s.1(f)

² Nigeria Energy Transition Plan

³ CCA 2021 (n.2)

⁴ Habeeb Adedayo et al., 'Energy Research in Nigeria: A Bibliometric Analysis' (2021) 34 *Energy Strategy Reviews* 100629; Nnaemeka V Emodi and Kyung-Jin Boo, 'Sustainable Energy Development in Nigeria: Current Status and Policy Options' (2015) 51 *Renewable and Sustainable Energy Reviews* 356

⁵ Ikenna Ignatius George et al., 'Environmental Effects from Petroleum Product Transportation Spillage in Nigeria: A Critical Review' (2023) 31(2) *Environmental Science and Pollution Research* 1; Okechukwu Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) 21(3) *African Journal of International and Comparative Law* 421.

severely damaging the ecosystem and impacting local communities' economic mainstay of farming and fishing, rendering vast areas of agricultural land rendered infertile.⁶ These oil spills have also contaminated water sources with harmful substances like benzene, at levels reportedly 1800 times above safe thresholds, occasioning serious health risks, including respiratory issues and cancer.⁷ Long-term exposure to heavy metals like lead and mercury from these spills has further compounded health problems, contributing to chronic illnesses and undermining the well-being of the local populations.⁸ These devastating effects have led to widespread concerns over the environmental sustainability of Nigeria's petroleum industry. The underlying tension between the country's need for economic growth and the urgent imperative for environmental protection highlights the necessity for a more sustainable approach that incorporates more robust environmental safeguards to ensure long-term ecological and economic sustainability.

The tension between economic growth and environmental protection is exacerbated by petroleum contractual frameworks prioritising short-term profitability over long-term sustainability. Traditionally, petroleum contracts in Nigeria, like in many other oil-producing countries, have been structured to prioritise investor protection, particularly through the use of stabilisation clauses. These clauses are designed to provide foreign investors with a stable regulatory environment by "freezing" the legal terms of the contract, thereby protecting them from regulatory changes that might affect their profits, including environmental regulations.⁹ While stabilisation clauses have been instrumental in attracting foreign investment, the attendant legal rigidity has created significant barriers to implementing new environmental standards.¹⁰ However, in light of global climate change goals, renegotiating petroleum contracts to better incorporate environmental provisions becomes not only desirable but essential with Nigeria being a signatory to global environmental agreements, including the 2015 Paris Agreement.¹¹ As noted by Nalule, the traditional business-as-usual models of these contracts hinder the global energy transition efforts.¹² Consequently, the urgency of aligning these contracts with environmental goals has become more apparent.

This paper provides a detailed critique of Nigerian petroleum contracts' stabilisation clauses, examining the intricate dynamics of stabilisation and renegotiation clauses. It

⁶ Niger Delta Human Development Report (United Nations Development Programme 2006) pp. 78–120.

⁷ George et al

⁸ *ibid*

⁹ Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi, *Energy Transitions and Extractive Contracts* (Palgrave Macmillan 2023) 51

¹⁰ Damilola S Olawuyi, 'Legal Strategies and Tools for Mitigating Legal Risks Associated with Oil and Gas Investments in Africa' (2015) 39(3) OPEC Energy Review 247

¹¹ UNFCCC, 'Adoption of the Paris Agreement' (Twenty-first session of the Conference of the Parties, UN Doc FCCC/CP/2015/L9/Rev.1, 2015)

<https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed 16/10/2024

¹² Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi, *Energy Transitions and Extractive Contracts* (Palgrave Macmillan 2023)

explores the role of renegotiation in fostering a more sustainable approach that aligns investor interests with the country's environmental goals. Drawing on case studies from other oil-producing states and international best practices, the paper outlines actionable policy recommendations for Nigeria to transition to a more sustainable petroleum industry. In doing so, it will trace the evolution of petroleum contracts in Nigeria, assess the environmental challenges facing the oil and gas sector, and propose strategies for renegotiating contracts to accommodate sustainability. By examining the roles of stakeholders, including the government, international oil companies, and local communities, this paper aims to provide a comprehensive framework for aligning Nigeria's petroleum sector with environmental sustainability while safeguarding investor interests.

2. PETROLEUM CONTRACTS IN THE NIGERIAN CONTEXT

Following the introductory discussion of the importance of balancing Nigeria's economic dependence on oil with its environmental commitments, this section delves into the various types of petroleum contracts that have governed Nigeria's oil sector. These contracts define the legal and financial relationships between Nigeria and international oil companies (IOCs), shaping how oil exploration and production are conducted. The evolution of these contracts reflects Nigeria's shifting priorities over time—from prioritising foreign investment to asserting greater control over its resources.

2.1. Types of Petroleum Contracts

There are several petroleum agreements that a government must choose from. These include a concession or licence agreement, a production-sharing agreement (PSA), a joint venture (JV) or a service agreement.

The earliest petroleum contracts in Nigeria were Concession or Licence Agreements, granting International Oil Companies (IOCs) exclusive rights over designated large tracts of land to explore, develop, produce, and export oil over a specified period.¹³ In return, the company pays royalties to the host state. These contracts, often lasting for 40-75 years, gave IOCs significant control over Nigeria's petroleum resources, leaving the government with limited oversight and modest financial gains. Modern concession agreements often include additional provisions for profit and corporate income taxes, ensuring that the state receives a share of the financial gains from oil production.¹⁴

¹³ Temitayo Atere, 'Oil and Gas Exploration and Production Contracts in Nigeria: Creating a Balance Between National Oil Companies and Private International Partners' (2018) 16(1) *Oil, Gas & Energy Law*

¹⁴ Zuhair Jibril and James A Fishim, 'A Critical Examination of Key Issues and Challenges in Stabilization and Renegotiation Clauses in Exploration and Production Agreement in Nigeria' (2021) 9 *Global Journal of Politics and Law Research* 11

In response to the unfavourable terms of concession agreements, production-sharing agreements (PSAs) emerged as an alternative that allowed Nigeria to retain more control over its resources. Under a PSA, the host government, as the owner of the natural resources, contracts an international oil company (IOC) to provide technical and financial services for exploration and development activities.¹⁵ In exchange for assuming the risks, the IOC is entitled to a specified share of the oil produced if a commercial discovery is made.

Risk Service Agreements differ from PSAs in that the IOCs assume all the financial and technical risks of oil exploration and production. In return, they are compensated with a fixed service fee, typically paid in cash, as opposed to a share of the oil.¹⁶ Less commonly used in Nigeria, this model minimises the financial exposure of the host government and is typically used where the government wants complete ownership of its oil while still benefitting from foreign technical expertise.

Finally, Joint Venture Contracts (JVCs), commonly used in Nigeria, are a more collaborative model where two or more parties decide to collaborate on a joint undertaking. These agreements form a partnership-based structure where both parties share decision-making responsibilities and jointly manage the extractive operations.¹⁷ JVCs became a dominant model in the 1970s after Nigeria nationalised its oil sector, giving the government more control over its oil resources while leveraging the expertise and financial capacity of IOCs.

2.2 Historical Account and Current Regime of Nigerian Petroleum Contracts

Over the decades, Nigerian petroleum contracts have evolved significantly, beginning in the 1950s in the wake of the industry with early concession agreements designed to favour foreign oil companies. These contracts have since developed to include production-sharing agreements (PSAs) and joint ventures, each with varying levels of state involvement and investor protection.¹⁸ Over time, the legal framework governing these agreements has become more sophisticated, with the Petroleum Industry Act (PIA) representing the latest effort to modernise the sector.¹⁹

The PIA grants the Minister of Petroleum general supervisory powers over petroleum operations.²⁰ The Minister is responsible for policy formulation, monitoring, and administration. Additionally, the Minister advises the government on matters related to the petroleum industry to ensure alignment with national policies. This supervisory function involves guiding the industry's strategic direction to ensure its activities serve

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ Temitayo Atere, 'Oil and Gas Exploration and Production Contracts in Nigeria: Creating a Balance Between National Oil Companies and Private International Partners' (2018) 16(1) *Oil, Gas & Energy Law*

¹⁸ *Ibid*

¹⁹ (PIA) 2021

²⁰ *Ibid*, s.3

the national interest.²¹ The Minister's authority also includes granting, assigning and revoking interest in Petroleum Prospecting Licenses and Petroleum Mining Leases. However, these powers are not absolute. They are subject to the recommendation of the Nigerian Upstream Regulatory Commission (the Commission), which serves as the regulator for all upstream petroleum operations, including technical, operational, and commercial aspects of upstream petroleum operations.²² The Commission may, with the approval of the Minister, renew and suspend licenses and leases and issue guidelines pursuant to the PIA or regulations made thereunder regarding upstream petroleum operations.²³

The Act also establishes the Nigerian Midstream and Downstream Regulatory Authority (the Authority), which regulates all midstream and downstream operations, including the issuance, suspension, revocation, and renewal of licenses, permits, and authorisations.²⁴ The Authority can impose conditions on the transfer or extension of licenses in the midstream and downstream sectors. The regulatory powers across the upstream, midstream, and downstream sectors are delegated to the Commission and the Authority, respectively, including implementing environmental laws, regulations and policies for the upstream, ensuring that each regulatory body governs its specific sphere of operations.²⁵

Initial contracts in the 1960s were primarily concession or licence agreements that granted International Oil Companies (IOCs) exclusive rights over petroleum resources to explore, develop, produce, and export oil from a designated area for long periods. These early agreements were largely one-sided, offering limited revenue and control to the Nigerian government. In the 1970s, Nigeria nationalised its oil sector, which led to the creation of joint venture agreements (JVAs) between the Nigerian National Petroleum Corporation (NNPC), now known as the Nigerian National Petroleum Corporation Limited (NNPC Ltd) and IOCs.²⁶ This shift aimed to give the government greater control over its oil resources while maintaining foreign investment. Following the sector's development, production-sharing agreements (PSAs) and JVAs became the dominant legal frameworks for managing the government's relationship with international oil companies.²⁷ These contracts included stabilisation clauses that guaranteed the terms of the agreement would remain unchanged. As aforementioned, stabilisation clauses were introduced mainly to protect investors from legislative changes that might increase operational costs or reduce profitability, meaning that the terms of the agreement would remain unchanged even in the face of new environmental

²¹ *ibid*

²² *Ibid*, s.3 and 4

²³ *Ibid*, s.10

²⁴ *Ibid*, s.29-31

²⁵ *Ibid*, parts III and IV

²⁶ Temitayo Atere, 'Oil and Gas Exploration and Production Contracts in Nigeria: Creating a Balance Between National Oil Companies and Private International Partners' (2018) 16(1) *Oil, Gas & Energy Law*

²⁷ *ibid*

laws or regulations.²⁸ These agreements were focused on economic objectives, designed to maximise oil production and attract foreign direct investment, with little regard for environmental concerns. However, the rigidity of these clauses has become problematic. They prevent the government from enacting new environmental regulations that could mitigate the ecological impact of oil extraction even as Nigeria faces growing environmental challenges. Nalule emphasises the need to reform these provisions, advocating for the inclusion of clauses that mandate the adoption of cleaner, low-carbon technologies.²⁹

Regrettably, even in recent times, Nigerian petroleum contracts (PSAs and JVAs) have prioritised economic objectives over environmental sustainability. Chandler notes that the primary goal of offshore petroleum licensing systems in countries like Nigeria is to ensure a steady pipeline of developments that generate revenue and create employment.³⁰ While this approach has been economically beneficial, it has often come at a high environmental cost, particularly in oil-producing regions such as the Niger Delta, where environmental degradation continues to be a pressing issue.

2.3 Legal Framework Governing Environmental Provisions for Oil Operations

Recall that the regulatory powers across the upstream, midstream, and downstream sectors are delegated to the Commission and the Authority, respectively, including implementing environmental laws, regulations and policies. Each regulatory body governs its specific sphere of operations and ensures strict implementation of environmental policies, laws and regulations for petroleum operations for its sphere of specific operations. Additionally, the PIA provides for mandatory submission of an Environmental Management Plan (EMP) by licensees or lessees engaged in upstream and midstream petroleum operations to the Commission or Authority responsible for oversight for approval within one year of the effective date of their operations or six months after being granted the applicable license or lease.³¹

The EMP is mandatory for projects requiring an Environmental Impact Assessment (EIA) and must comply with relevant environmental acts such as the Environmental Impact Assessment Act.³² The Commission or Authority responsible for oversight will approve the EMP if it adheres to environmental regulations and demonstrates that the licensee has the capacity to rehabilitate and manage any adverse environmental impacts. The approval process also considers the government's environmental protection policies for the industry.³³ Furthermore, the Commission or Authority can request

²⁸ Victoria R Nalule, Raphael J. Heffron and Damilola S. Olawuyi, *Energy Transitions and the Future of the African Energy Sector: Law, Policy and Governance* (Palgrave Macmillan 2021)

²⁹ *ibid*

³⁰ Chandler, 2020

³¹ PIA 2021 (n.20) s. 102

³² *Ibid*, s.102(1-2)

³³ *Ibid*, s.102(4)

additional information or adjustments to the EMP as necessary.³⁴ After initial approval, the EMP may be amended based on further engagement between the Commission or Authority and the licensee. It provides for the Environmental Remediation Fund, into which Licensees or lessees are required to make a financial contribution before the approval of the EMP.³⁵ This fund is intended to rehabilitate or manage negative environmental impacts arising from the projects.

Financial contribution to the remediation fund will be determined based on the scale of operations and the level of environmental risk involved.³⁶ This contribution is subject to audit, and the Commission or Authority provides guidelines. If the licensee fails or cannot manage environmental damage, the Commission or Authority can use the fund to address the negative impacts.³⁷ More so, it provides that licensees must assess their environmental liabilities annually and increase their financial contribution to the remediation fund as necessary.³⁸ Where the Commission or Authority is dissatisfied with the assessment, they can appoint an independent assessor to determine the appropriate financial contribution.³⁹

The relevant laws governing Nigeria's environmental regulatory framework were primarily governed by the Environmental Impact Assessment (EIA) Act of 1992 and various guidelines issued by the former Department of Petroleum Resources (DPR), whose function is now the prerogative of the Commission and the Authority. However, enforcement has historically been weak due to underfunding, lack of capacity, and corruption within regulatory agencies.⁴⁰ The environmental provisions in petroleum contracts are often vague, and enforcement mechanisms, such as penalties for environmental violations, are insufficient to deter IOCs from prioritising profits over sustainability.⁴¹ The 2021 Petroleum Industry Act (PIA) represents a significant shift in Nigeria's legal framework insofar as it introduces provisions aimed at ensuring better environmental practices and greater accountability from IOCs. However, the Act does not address the challenge of stabilisation clauses in hindering regulatory reforms. For instance, while the PIA encourages environmental compliance, strong stabilisation clauses in existing contracts make it difficult for Nigeria to enforce new environmental regulations retroactively without the threat of arbitration.⁴²

³⁴ Ibid, s.102(5)

³⁵ Ibid, s. 103

³⁶ Ibid, s.103(2)

³⁷ Ibid, s.103(4)

³⁸ Ibid, s.103(5)

³⁹ Ibid, s. 103(6)

⁴⁰ Damilola S. Olawuyi and Eduardo G. Pereira, *The Palgrave Handbook of Natural Gas and Global Energy Transitions* (Palgrave Macmillan 2022)

⁴¹ Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi, *Renegotiating Contracts for the Energy Transition in the Extractives Industry* (Palgrave Macmillan 2023)

⁴² Solomon N. Obulor, 'Stabilisation Clauses as an Impediment to Energy Transition in Petroleum-Producing Sub-Saharan African Countries in Post-Covid-19' (2021) OGEI; Nathaniel Woodroffe, 'Tying

Accordingly, the introduction of environmental clauses in newer contracts under the Petroleum Industry Act (PIA) marks some progress; however, not all recent agreements have incorporated these crucial provisions. For instance, the Production Sharing Contract between the Nigerian National Petroleum Corporation (NNPC) and Shell Nigeria Ultra Deep Limited, covering Block 245 Offshore Nigeria and dated 22nd December 2003, lacks a specific article dedicated to environmental protection.⁴³ More concerning is the enduring influence of stabilisation clauses in older contracts, which continue to pose significant barriers. These clauses allow companies to circumvent stricter environmental regulations introduced after the contract's signing. For instance, despite the environmental provisions introduced under the Petroleum Industry Act (PIA), existing contract stabilisation clauses continue to limit the government's ability to enforce these regulations effectively.⁴⁴ This has led to a growing recognition that renegotiation is essential if Nigeria is to meet its [inter]national environmental obligations, such as those under the Paris Agreement.⁴⁵ For instance, Nigeria is a signatory to the Paris Agreement call for reducing carbon emissions and emphasis on the transition to cleaner energy, prompting the shift toward more sustainable practices in the oil and gas industry. Being a key player in the global oil industry, Nigeria's efforts under the Paris Agreement in its Nationally Determined Contributions (NDC) include both mitigation and adaptation strategies aimed at reducing carbon emissions while addressing the environmental impacts of fossil fuel extraction. Additionally, Nigeria is a signatory to the international instruments addressing environmental protection from oil spills, the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), which obliges countries and operators to implement measures to prevent and respond to oil spills. Nigeria has incorporated instruments like the United Nations' Sustainable Development Goals (SDGs)—SDG 13 (Climate Action) and SDG 14 (Life Below Water) in its national development agenda, aligning these goals with its broader environmental policies that seek to address the impacts of oil spills, gas flaring, and other forms of environmental degradation caused by petroleum activities. Emphasising the urgent need to address the environmental impacts of fossil fuel extraction and usage, including oil spills and disused assets. Moreover, Nigeria has endorsed regional initiatives instruments such as the Abuja Declaration on sustainable

Their Hands? How Petroleum Contract Terms May Limit Governments' Climate Policy Flexibility' (*Natural Resources Governance Institute*, 2021) < <https://resourcegovernance.org/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-governments-climate-policy> > accessed 16 October 2024.

⁴³ Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi, 'Case Studies: Has the Energy Transition Impacted Extractive Contracts?' In Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi (eds), *Renegotiating Contracts for the Energy Transition in the Extractives Industry* (Palgrave Macmillan 2023)

⁴⁴ Lorenzo Cotula, 'Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses' (2008) 1(2) *The Journal of World Energy Law and Business* 158

⁴⁵ Aditya Arun Bordoloi, 'The Investor-State Contract Making Case for Renegotiation of the Original Contract' (2023) 20 *Indonesian Journal of Investment Law*
< <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1613&context=ijil> > accessed 16 October 2024.

development and the African Union Agenda 2063 which also stress the need for responsible resource management in Africa's petroleum sector, emphasising the importance of minimising environmental damage at the regional level. In addition to global and African frameworks, at the Economic Community of West African States (ECOWAS) level, Nigeria has also adopted key instruments focusing on environmental protection within the oil and gas industry, such as the ECOWAS Environmental Policy (ECOWEP), which promotes the sustainable management of natural resources, including oil and gas, within the West African region. ECOWEP emphasises the need for regional collaboration to prevent environmental degradation, particularly from oil spills and the management of disused assets. Additionally, the ECOWAS Supplementary Act on the Harmonisation of Environmental Regulations in the Mining and Petroleum Sectors. This act encourages member states to adopt stringent environmental standards to minimise the negative impacts of oil extraction, including oil spills. It obliges the ECOWAS Member states to implement robust policies for environmental impact assessments (EIAs), oil spill response plans, and proper decommissioning of oil and gas infrastructure.

These international instruments complement Nigeria's domestic frameworks, which the country is obligated to comply with. Nigeria has made a commitment to these global environmental standards and should ensure that national practices adhere to international best practices for sustainability, environmental protection, and responsible resource management of the oil and gas sector.

In view of this, some experts suggest replacing these strict stabilisation clauses with more flexible mechanisms, such as economic equilibrium clauses that allow adjustments to contracts when new laws are introduced.⁴⁶ Indeed, a more holistic and sustainable approach is needed to address these issues, one that fully considers the country's growing environmental challenges. Regulatory bodies may also need to enforce stricter compliance measures, even in more recent contracts, to ensure environmental protections are adequately upheld.⁴⁷

3. STABILISATION, RENEGOTIATION, AND ENVIRONMENTAL SUSTAINABILITY

In recent times, environmental sustainability in the petroleum industry has been increasingly emphasised, especially in light of global frameworks aimed at mitigating climate change and promoting responsible resource management. Both international, regional and national domestic frameworks stress that beyond reducing carbon

⁴⁶ Victoria R. Nalule, 'What is the Problem with Stabilization Clauses in Petroleum Agreements?' (2022) 13(1) *Journal of Sustainable Development Law & Policy* 85

⁴⁷ Lorenzo Cotula, 'Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses' (2008) 1(2) *The Journal of World Energy Law and Business* 158

emissions, there is an increasing responsibility on the industry to manage its environmental footprint, prevent oil spills, and responsibly decommission disused oil assets to protect ecosystems and local communities. Consequently, IOCs are now expected to adopt more stringent measures to prevent spills, improve safety standards, and remediate damaged environments as part of their environmental and social obligations.

As a concept, environmental sustainability emphasises the need to balance economic development with the protection of ecological systems, ensuring that current and future generations can meet their needs without depleting natural resources.⁴⁸ In the context of petroleum contracts, this means incorporating provisions that not only protect the economic interests of investors but also ensure that oil extraction activities do not lead to long-term environmental degradation.⁴⁹ Sustainable development frameworks, such as those advocated by the United Nations Conference on Trade and Development (UNCTAD), stress the importance of integrating environmental protection into investment agreements, especially in industries like oil and gas prone to ecological risks.⁵⁰

3.1 The Classic Stabilisation Clauses

As discussed, the dual role of stabilisation clauses in petroleum contracts presents both opportunities and challenges for countries like Nigeria. On the one hand, these clauses provide legal certainty for investors, ensuring that their financial interests are protected against unforeseen changes in the regulatory environment. On the other hand, stabilisation clauses often constrain the government's ability to introduce new regulations, particularly those that address environmental concerns. As a result, Nigeria's regulatory framework has historically prioritised investor protection over environmental sustainability, limiting the government's flexibility to adapt to evolving environmental standards.

Stabilisation clauses are legal provisions commonly found in investment contracts between states and foreign investors. These clauses aim to protect investors by "freezing" the regulatory framework in place at the time of contract signing, preventing future legislative changes from negatively affecting the contract's terms.⁵¹ While these clauses offer certainty to investors, they can also limit a state's ability to introduce new environmental regulations. In Nigeria, stabilisation clauses have had the effect of

⁴⁸ Marie-Claire C. Segger, Markus W Gehring and Andrew Newcombe, *Sustainable Development in World Investment Law* (Kluwer Law International 2011)

⁴⁹ Kelly B O Ejumudo, 'Sustainable Development in Nigeria: The Policy Gap and Action Dilemma' (2015) 6(23) *Journal of Economics and Sustainable Development* 78

⁵⁰ United Nations Conference on Trade and Development, *UNCTAD Annual Report 2008* (United Nations, Geneva 2008) < https://unctad.org/system/files/official-document/dom20091_en.pdf > accessed 16th October 2024

⁵¹ Jola Gjuzi, *Stabilization Clauses in International Investment Law: A Sustainable Development Approach* (Springer 2018); Reg Fowler et al., 'Stability' In Eduardo G Pereira, Thomas L Muinzer, and Patrick R Baker (eds), *Energy Law and the Sustainable Development Goals: Host Government Instruments for Sustainability in Oil and Gas Operations* (Routledge 1st edn, 2024)

locking in outdated regulatory frameworks that are not aligned with current environmental realities or international obligations, such as those under the Paris Agreement.⁵²

The classic stabilisation clause, as seen in earlier petroleum contracts, sought to protect the economic equilibrium of the contract by ensuring that any future changes in the law would not affect the agreement's profitability for the investor.⁵³

However, as Nalule explains, stabilisation clauses have become controversial, particularly in the context of environmental sustainability.⁵⁴ Their rigidity often hampers governments from implementing laws to mitigate climate change, as these new regulations may be perceived as violating the stabilisation clause, thereby triggering investor claims for compensation.⁵⁵ Hence, stabilisation clauses can be described as a "double-edged sword" because while they encourage foreign investment, they obstruct progress toward sustainable development goals.

3.2 Renegotiation Clauses

In contrast to stabilisation clauses, renegotiation clauses offer a more flexible approach to balancing investor interests with environmental sustainability. Renegotiation clauses, particularly in the extractive sector, are designed to provide flexibility by allowing parties to revisit and modify the terms of an agreement when significant changes occur, such as shifts in market conditions or legal frameworks.⁵⁶ In the context of Nigerian petroleum contracts, renegotiation clauses can serve as a mechanism to adapt agreements to evolving environmental standards. For example, in Ghana's 2004 agreement with Kosmos Energy, renegotiation clauses were included to allow for adjustments in case of significant changes in the economic balance of the contract.⁵⁷ These clauses provide a framework for rebalancing the state's and investors' contractual relationship when external conditions change.

⁵² Solomon N Obulor, 'Stabilisation Clauses as an Impediment to Energy Transition in Petroleum-Producing Sub-Saharan African Countries in Post-Covid-19' (2021) OGEL.

⁵³ Peter Cameron, 'Stabilization Clauses: Do They Have a Future?' (2020) 7 BCDR International Arbitration Review 109; Hamid Reza Younesi, 'The Pursuit of Stability in International Petroleum Contracts: The Role of Stabilisation Clauses in the Minimisation of Disputes' (2021) International Journal of Energy Law.

⁵⁴ Victoria R Nalule, 'What is the Problem with Stabilization Clauses in Petroleum Agreements?' (2022) 13(1) Journal of Sustainable Development Law & Policy 85.

⁵⁵ *ibid*.

⁵⁶ Hamid R Younesi, 'Renegotiation of International Energy Investment Transactions: The Necessity of Contractual Flexibility' (2022) 3 OGEL; Aditya Arun Bordoloi, 'The Investor-State Contract Making Case for Renegotiation of the Original Contract' (2023) 20 Indonesian Journal of Investment Law < <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1613&context=ijil> > accessed 16 October 2024.

⁵⁷ Damilola S Olawuyi, 'Legal Strategies and Tools for Mitigating Legal Risks Associated with Oil and Gas Investments in Africa' (2015) 39(3) OPEC Energy Review 247; Younesi (*ibid*); Mohsin Shareef Salih and Akram Yamulki, 'Stabilisation and Renegotiation Clauses in Iraqi Kurdistan Oil and Gas Contracts: A Comparative Study' (2020) 100 Journal of Law, Policy and Globalization 100.

Rather than stabilisation clauses, renegotiation clauses offer a potential solution to this dilemma. Therefore, Nigeria's challenge is renegotiating existing contracts to include flexible stabilisation clauses that allow for environmental reforms without discouraging foreign investment. By allowing for periodic reviews of environmental standards, Nigeria can ensure that its petroleum contracts remain aligned with national and global environmental goals. Per Bos and Gupta, the inclusion of specific environmental performance indicators can provide a framework for monitoring compliance with sustainability targets.⁵⁸

Furthermore, international best practices suggest that renegotiation efforts should also focus on integrating environmental provisions into the core structure of petroleum contracts. As Nalule observes, environmental provisions in existing petroleum agreements, such as those in the UK and Guyana, encourage best practices to minimise environmental harm but often lack specific measures to address climate-related goals.⁵⁹

4. RENEGOTIATION STRATEGIES AND BEST PRACTICES

In the previous section, we examined how stabilisation clauses in petroleum contracts have historically limited the government's ability to enforce new environmental regulations, making the case for renegotiation clauses as a tool to ensure sustainability. This section explores approaches to renegotiations, drawing on international best practices and the experiences of other oil-producing nations.

4.1 Balancing Investor Interests and Sustainability

The challenge of aligning Nigeria's petroleum contracts with environmental sustainability while safeguarding investor interests necessitates a careful examination of renegotiation strategies and best practices. As discussed in the preceding sections, renegotiation offers a pathway to adapt existing contractual frameworks to accommodate evolving environmental standards and international commitments without undermining the economic incentives that attract foreign investment.⁶⁰

Renegotiation in the context of petroleum contracts involves revisiting the terms of existing agreements to reflect new realities, such as changes in environmental

⁵⁸ Kyra Bos and Joyeeta Gupta, 'Stranded assets and stranded resources: Implications for climate change mitigation and global sustainable development' (2019) 56 *Energy Research & Social Science* 101215

⁵⁹ Victoria R Nalul, *Energy Transitions and the Future of the African Energy Sector: Law, Policy and Governance* (Palgrave Macmillan 2021)

⁶⁰ Tolulope O'Taiwo, 'An Evaluation of Contractual Clauses Used to Mitigate Risks in Long Term Oil and Gas Agreements' (2019) <<https://core.ac.uk/download/481487806.pdf>> accessed 16th October 2024

regulations, technological advancements, or shifts in market conditions.⁶¹ This is typically limited to specified trigger events or unforeseeable circumstances.⁶² Notably, renegotiation can be undertaken with or without explicitly including a renegotiation clause within the petroleum contract; however, this would rely simply on the goodwill of the parties, as opposed to being a strict legal contractual requirement.⁶³ Additionally, some tribunals have noted that a contract cannot be breached by failing to reach an agreement as 'an obligation to negotiate is not an obligation to agree'.⁶⁴ Nonetheless, renegotiation clauses provide the contracting parties (or an invited third party) with the flexibility to reason their interests and modify the contracts in good faith in the event of a change in circumstances, as opposed to simply terminating the contractual relationship or resorting to arbitration.⁶⁵ In Nigeria, the rigidity imposed by traditional stabilisation clauses has often hindered the government's ability to implement stricter environmental standards, as these clauses protect investors from any legislative or regulatory changes that could adversely affect their economic interests. Therefore, as environmental regulations tighten globally, incorporating flexibility into these contracts is essential to balancing environmental goals with investor confidence.

There are a few clauses that can facilitate renegotiation in response to changing conditions, each of them offering varying levels of flexibility. As iterated, renegotiation clauses provide a broader mechanism to allow parties to review and modify contractual terms when significant changes occur, like shifts in legal, environmental or economic conditions, and are typically triggered by external factors. Economic equilibrium clauses also facilitate the renegotiation of contractual terms when significant changes occur in the legal or regulatory environment; however, they are more specific in focus.⁶⁶ They are aimed at ensuring that if external changes, e.g. new laws or taxes, impact the economic viability of the contracted project, the parties can negotiate adjustments to the contract's financial terms so as to restore equilibrium; regulatory changes can occur

⁶¹ Abdullah Al Faruque, 'Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability' (2008) 9(2) *Journal of World Investment & Trade* 113

⁶² Hamid R Younesi, 'Renegotiation of International Energy Investment Transactions: The Necessity of Contractual Flexibility' (2022) 3 *OGEI*; Mohsin Shareef Salih and Akram Yamulki, 'Stabilisation and Renegotiation Clauses in Iraqi Kurdistan Oil and Gas Contracts: A Comparative Study' (2020) 100 *Journal of Law, Policy and Globalization* 100; 1

⁶³ Abdullah Al Faruque, 'Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability' (2008) 9(2) *Journal of World Investment & Trade* 113

⁶⁴ Zuhair Jibril and James A Fishim, 'A Critical Examination of Key Issues and Challenges in Stabilization and Renegotiation Clauses in Exploration and Production Agreement in Nigeria' (2021) 9 *Global Journal of Politics and Law Research* 11; Chukwubikem Azoro and Chinedu Onah, 'Permanent Sovereignty over Natural Resources and Contract Stability in Transnational Petroleum Investment Contracts' (2021) 111 *Journal of Law, Policy and Globalization* 81

⁶⁵ Azoro (ibid)

⁶⁶ Lorenzo Cotula, 'Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses' (2008) 1(2) *The Journal of World Energy Law and Business* 158; Victoria R Nalule, 'What is the Problem with Stabilization Clauses in Petroleum Agreements?' (2022) 13(1) *Journal of Sustainable Development Law & Policy* 85

as long as economic equilibrium is maintained. This approach provides a mechanism for the government to enact necessary environmental legislation while offering investors a means to maintain the economic viability of their projects. By contrast, periodic review clauses mandate scheduled assessments of the contract terms at predetermined intervals or upon the occurrence of specific events, such as significant environmental incidents, international treaty obligations or a change in environmental regulations.⁶⁷ Unlike economic equilibrium clauses, which are reactive, periodic review clauses are more proactive in allowing for the adaptation of contracts to current circumstances, ensuring that environmental standards remain relevant and effective.⁶⁸ These clauses, whether renegotiation, economic equilibrium or periodic review clauses, provide the flexibility needed to ensure petroleum contracts can adapt to environmental and also economic changes without compromising the long-term viability of projects.

4.2 International Best Practices

Several oil-producing countries have successfully renegotiated petroleum contracts to enhance environmental sustainability while maintaining investor confidence. In many cases, these renegotiations were forced by state policies rather than the instrumentalization of renegotiation clauses. However, they provide valuable insights into balancing economic interests with environmental protection.

In the early 2000s, as part of a broader government policy to restructure its oil sector, Venezuela forced massive contract renegotiation of its operating service agreements under the Organic Hydrocarbons Law 2001. The Venezuelan government migrated the agreements into joint ventures with its state-owned oil company, PDVSA, which retained a minimum of 60% ownership.⁶⁹ These renegotiations were not driven by pre-existing clauses but by a government mandate to reclaim control over natural resources and impose stricter fiscal obligations on foreign investors.⁷⁰ Similarly, Bolivia undertook renegotiations in response to new government policies, particularly the introduction of the Hydrocarbons Law in 2005, which significantly increased the state's share of production and taxes on gas production.⁷¹ This was a direct result of Bolivia's

⁶⁷ Abdullah Al Faruque, 'Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability' (2008) 9(2) *Journal of World Investment & Trade* 113

⁶⁸ Stephens

⁶⁹ Georges Kahale, *The Uproar Surrounding Petroleum Contract Renegotiations* (Oxford Energy Forum August 2010) <<https://ora.ox.ac.uk/objects/uuid:c810ce68-8000-4e61-bfea-c5552e6550c2/files/m95ab0db901896d0d1ac6d71582cfe757>> accessed 16 October 2024;

Abdullah Al Faruque, 'Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability' (2008) 9(2) *Journal of World Investment & Trade* 113

⁷⁰ *ibid*

⁷¹ Thomas Wälde and Abba Kolo, 'Renegotiation and Contract Adaptation in the International Investment Projects: Applicable Legal Principles & Industry Practices' (2003) 2 *OGEI*

nationalisation agenda aimed at reclaiming control over its natural resources.⁷² In Kazakhstan, renegotiating the Production Sharing Agreement (PSA) for the Kashagan oil field was also driven by state policies rather than renegotiation clauses.⁷³ Kazakhstan sought to secure a larger share of the profits from its natural resources by renegotiating the cost recovery and profit-sharing mechanisms in the PSA. This renegotiation was a deliberate action the government took to maximise the economic benefits of its resource wealth.

Ghana's experience differs from these examples in that it involved the inclusion of renegotiation clauses in its contracts rather than active contract renegotiation. In the production agreement between Ghana and Shell Exploration and Production Company of Ghana Ltd in 1974, a renegotiation clause was included to allow for contract adjustments in the event of significant changes in the financial or economic conditions within the petroleum industry.⁷⁴ However, this clause is yet to be actively invoked to trigger a renegotiation and is currently serving instead as a safeguard to provide flexibility in case of future changes.

Norway emphasises the proactive integration of stringent environmental standards directly into its petroleum contracts rather than relying on renegotiation or economic equilibrium clauses. Norwegian petroleum contracts include comprehensive environmental provisions from the outset, mandating that companies operate in a manner that minimises environmental harm and complies with both national and international environmental laws.⁷⁵

These case studies illustrate the potential of renegotiation clauses as a tool to align petroleum contracts with broader national interests, including environmental sustainability.

⁷² *ibid*

⁷³ Aditya Arun Bordoloi, 'The Investor-State Contract Making Case for Renegotiation of the Original Contract' (2023) 20 Indonesian Journal of Investment Law < <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1613&context=ijil> > accessed 16 October 2024.

⁷⁴ Mohsin Shareef Salih and Akram Yamulki, 'Stabilisation and Renegotiation Clauses in Iraqi Kurdistan Oil and Gas Contracts: A Comparative Study' (2020) 100 Journal of Law, Policy and Globalization 100

⁷⁵ Diderik Lund, 'State participation and taxation in Norwegian petroleum: Lessons for others?' (2014) 3 Energy Strategy Reviews 49; Tina Hunter, 'The Role of Regulatory Frameworks and State Regulation in Optimising the Extraction of Petroleum Resources: A Study of Australia and Norway' (2014) 1(1) Extractive Industries and Society 48; Martin Lockman et al., 'Decommissioning Liability at the End of Offshore Oil and Gas: A Review of International Obligations, National Laws, and Contractual Approaches in Ten Jurisdictions' (2023) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4605550 > accessed 16th October 2024

4.3 Role of Stakeholders in the Renegotiation Process

Effective renegotiation requires the involvement of all relevant stakeholders, including government agencies, international oil companies (IOCs), local communities, and civil society organisations. Within the process, transparency and accountability help build trust among stakeholders to ensure that the outcomes are equitable and sustainable.

Government agencies, particularly the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), play a central role in renegotiating contracts and enforcing environmental standards. These agencies are responsible for ensuring compliance with environmental laws, deriving economic benefits, and aligning contract terms with Nigeria's broader sustainability goals.⁷⁶ Their oversight is crucial in maintaining regulatory compliance and prioritising environmental concerns during renegotiations. On their part, International oil companies (IOCs), while primarily concerned with stability and profitability, are increasingly aware of the importance of environmental sustainability in maintaining their global reputation.⁷⁷ By engaging IOCs early in the renegotiation process and ensuring transparency, the Nigerian government can help foster mutually beneficial terms that support both investment and environmental objectives.⁷⁸

Local communities, particularly those in oil-producing regions like the Niger Delta, must be actively involved in the renegotiation process. The environmental impact of oil extraction disproportionately affects these communities, and their participation is essential in ensuring that environmental safeguards are effectively implemented. Impact Benefit Agreements (IBAs) or Community Development Agreements (CDAs) should include provisions that ensure local communities benefit from oil revenues and have a voice in managing environmental risks. In Nigeria, the Host Communities Development Trusts (HCDTs) established by the Petroleum Industry Act (PIA) play a central role in this process. The Act required that the settlor make an annual contribution equal to 3% of its annual operating expense of the preceding financial year into the application trust fund.⁷⁹ The primary objective of the trust is to fund the implementation of the 'host community development plan', which is to be developed by the settlor based on the 'Host Community Needs Assessment' conducted to

⁷⁶ Ngozi Chinwa Ole and Etti Best Herbert, 'The Nigerian Offshore Oil Risk Governance Regime: Does the Petroleum Industry Act 2021 Address the Existing Gaps?' (2022) 31(3) *Studia Iuridica Lublinsensia* 143

⁷⁷ Krista Halttunen, Raphael Slade and Iain Staffell, "'We Don't Want to Be the Bad Guys': Oil Industry's Sensemaking of the Sustainability Transition Paradox' (2022) 92 *Energy Research & Social Science* 102800

⁷⁸ Zuhair Jibril and James A Fishim, 'Key Issues and Challenges in Stabilization and Renegotiation Clauses in Exploration and Production Agreement in Nigeria' (2023) *Journal of Nigerian Law*

⁷⁹ Uche Val Obi San, 'Mainstreaming Distributive Justice into Resources Management in Nigeria: The Extent of the Petroleum Industry Act 2021' (2024) 15(1) *Journal of Sustainable Development, Law and Policy* 1

ascertain the specific needs of each affected community and how petroleum operation may impact the particular community.⁸⁰ Accordingly, the HCDTs can be said to share a similar purpose with IBAs seen in other jurisdictions, i.e. ensuring that local communities benefit from resource extraction while managing the associated environmental risks.⁸¹ However, the HCDT can be married to an IBA to ensure that local communities have a voice, are actively consulted and participate throughout the lifecycle of petroleum operations, including contract renegotiations, rather than passively having things done to and for them as currently envisaged by the HCDT which centres provisions. Civil society organisations (CSOs) also play a vital role by ensuring the renegotiation process remains transparent and accountable. These organisations provide a voice for affected communities and ensure that environmental and social protections are prioritised in the renegotiated contracts. By holding both the government and oil companies accountable, CSOs can contribute to building trust and ensuring that the renegotiation process aligns with broader societal interests.⁸²

Ultimately, renegotiating Nigeria's petroleum contracts presents an opportunity to create a more sustainable and flexible oil sector. By incorporating renegotiation clauses, economic equilibrium clauses, and periodic review mechanisms, Nigeria can ensure that its petroleum contracts remain adaptable to both economic and environmental changes.⁸³ In particular, economic equilibrium clauses can be used to maintain the profitability of petroleum contracts when the government introduces new carbon pricing mechanisms or emission limits, ensuring that both environmental standards and investor interests are preserved. At the same time, renegotiation clauses offer a broader pathway for integrating sustainability goals into petroleum contracts by allowing for the periodic review and adjustment of environmental provisions.⁸⁴

5. POLICY RECOMMENDATIONS FOR SUSTAINABLE PETROLEUM CONTRACTS

From previous discussions, it is clear that renegotiating Nigeria's petroleum contracts provides an opportunity to impose more robust environmental provisions while maintaining investor confidence. Accordingly, this section outlines actionable recommendations for the Nigerian government to consider when renegotiating

⁸⁰ Petroleum Industry Act 2021, s.249

⁸¹ Thomas Gunton, Eric Werker and Sean Markey, 'Community Benefit Agreements and Natural Resource Development: Achieving Better Outcomes' (2021)73 Resources Policy 102155

⁸² Mohsin Shareef Salih and Akram Yamulki, 'Stabilisation and Renegotiation Clauses in Iraqi Kurdistan Oil and Gas Contracts: A Comparative Study' (2020) 100 Journal of Law, Policy and Globalization 100

⁸³ Abdullah Al Faruque, 'Renegotiation and Adaptation of Petroleum Contracts: The Quest for Equilibrium and Stability' (2008) 9(2) Journal of World Investment & Trade 113

⁸⁴ *ibid*

petroleum contracts. By drawing from international best practices, these recommendations address the petroleum industry's legal, institutional, and operational aspects, ensuring that sustainability becomes an integral part of the sector's framework.

5.1 Specific and Actionable Recommendations

To effectively align Nigeria's petroleum contracts with environmental goals while safeguarding investor interests, the first priority is to strengthen existing environmental standards. To achieve this, petroleum contracts should include clear and enforceable environmental standards that are aligned with Nigeria's national environmental laws, such as the Environmental Impact Assessment Act⁸⁵ and Climate Change Act⁸⁶, as well as international environmental commitments, such as the Paris Agreement.⁸⁷ This includes addressing emissions limits, waste management, and biodiversity protection. For example, contracts can mandate the use of the best available technologies to reduce environmental impact, adherence to emission reduction targets, and obligations for environmental remediation and restoration. Additionally, specific provisions such as Environmental Impact Assessments (EIAs) and Environmental Management Plans (EMPs) should be incorporated into petroleum contracts to ensure proactive environmental management throughout the project lifecycle.⁸⁸ Carbon pricing mechanisms, such as carbon taxes or cap-and-trade systems, could also be introduced to provide economic incentives for oil companies to reduce their environmental impact.⁸⁹ Compliance with these environmental obligations can be measured by including specific environmental performance indicators within petroleum contracts, in turn allowing host governments to hold IOCs accountable for their environmental responsibilities.⁹⁰

Additionally, Community Development Agreements (or Impact Benefit Agreements) should be mandatory in all petroleum contracts to ensure that host communities benefit

⁸⁵ 1992

⁸⁶ 2021

⁸⁷ UNFCCC, 'Adoption of the Paris Agreement' (Twenty-first session of the Conference of the Parties, UN Doc FCCC/CP/2015/L9/Rev.1, 2015) <https://unfccc.int/sites/default/files/english_paris_agreement.pdf> accessed 16/10/2024

⁸⁸ Okechukwu Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) 21(3) African Journal of International and Comparative Law 421.

⁸⁹ Nathaniel Woodroffe, 'Tying Their Hands? How Petroleum Contract Terms May Limit Governments' Climate Policy Flexibility' (Natural Resources Governance Institute 2021) <<https://resourcegovernance.org/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-governments-climate-policy>> accessed 16 October 2024.

⁹⁰ Ola Alokalaro et al., 'Utilising Local Content Requirements in the Extractive Industries to Achieve Sustainable Development Goals' In Eduardo G Pereira, Thomas L Muinzer, and Patrick R Baker (eds), *Energy Law and the Sustainable Development Goals: Host Government Instruments for Sustainability in Oil and Gas Operations* (Routledge 1st edn, 2024); Paterson

directly from oil revenues.⁹¹ These agreements should provide for developing infrastructure, education, healthcare, job creation, consultation, impact assessments and community-led environmental monitoring, among others, to ensure local communities and stakeholders are actively involved in the decision-making processes.⁹² As discussed, Nigeria's Host Communities Development Trusts (HCDTs) provide a legal mechanism for ensuring host communities a portion of project revenue is invested in community development projects.⁹³

To ensure these provisions are enforced, contracts should impose effective penalties for non-compliance, such as fines, suspension of operations, or license revocation where IOCs violate environmental laws. These penalties must be proportionate to the severity of environmental damage and the financial capacity of the breacher so as to serve as a deterrent and ensure operators take environmental obligations seriously.⁹⁴

Notably, the challenge of adapting to changing environmental regulations can be resolved by replacing rigid stabilisation clauses with economic equilibrium clauses that allow for adjustments in contractual terms in response to significant changes in environmental laws and regulations.⁹⁵ This approach provides flexibility for the government to implement new environmental policies without breaching contractual commitments whilst ensuring investors can maintain the economic viability of their projects. Contracts can equally incorporate renegotiation or periodic review clauses stipulating the review of contractual terms to align with evolving standards and innovation, at any additional costs arising from new environmental regulations will be assessed and shared equitably between IOC and the host government.⁹⁶ Regular

⁹¹ Okechukwu Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) 21(3) *African Journal of International and Comparative Law* 421.

⁹² Lily O'Neill et al., 'Renewable Energy Development on the Indigenous Estate: Free, Prior and Informed Consent and Best Practice in Agreement-Making in Australia' (2021) 81 *Energy Research & Social Science* 102252

⁹³ Uche Val Obi San, 'Mainstreaming Distributive Justice into Resources Management in Nigeria: The Extent of the Petroleum Industry Act 2021' (2024) 15(1) *Journal of Sustainable Development, Law and Policy* 1

⁹⁴ Anthony Ogus and Carolyn Abbot, 'Sanctions for Pollution: Do We Have the Right Regime?' (2002) 14(3) *Journal of Environmental Law* 283, Paul Subai, *Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's Petroleum Industry Reform* (2014)

<<https://theses.ncl.ac.uk/jspui/handle/10443/2672>> accessed 16th October 2024

⁹⁵ Zuhair Jibril and James A Fishim, 'A Critical Examination of Key Issues and Challenges in Stabilization and Renegotiation Clauses in Exploration and Production Agreement in Nigeria' (2021) 9 *Global Journal of Politics and Law Research* 11; Lorenzo Cotula, 'Reconciling Regulatory Stability and Evolution of Environmental Standards in Investment Contracts: Towards a Rethink of Stabilization Clauses' (2008) 1(2) *The Journal of World Energy Law and Business* 158

⁹⁶ 'Negotiation Tools and Strategies to Address Transition Risks in Extractive Contracts.' In Victoria R. Nahule, Raphael J. Heffron and Damilola S. Olawuyi (eds), *Energy Transitions and Extractive Contracts* (Palgrave Macmillan 2023); Eze Emem Chioma 'Examining the Crucial Impact of a Well-Drafted

reviews enable the contracts to stay relevant and responsive to changes in environmental policies, technological advancements, and global climate change objectives. For example, the United Kingdom's petroleum contracts include provisions for periodic reviews, enabling the government to update environmental and safety regulations in line with technological advancements and international.⁹⁷

Finally, it is recommended that host governments build their capacity for environmental monitoring via investments in real-time monitoring and surveillance technologies to track environmental indicators like emissions, flaring, and pollution levels. This real-time data would enable regulators to respond promptly to environmental incidents and enforce compliance more effectively.⁹⁸

5.2 Legal and Institutional Reforms

Comprehensive legal and institutional reforms are undoubtedly needed to enhance Nigeria's regulatory framework and ensure the effective enforcement of these recommendations. Regulatory bodies like the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Regulatory Authority (NMDRA) must be empowered to effectively enforce environmental regulations, monitor compliance, and hold operators accountable. This requires investing in technical expertise, funding and resources, as well as ensuring their independence to prevent undue influence from vested interests.

Additionally, in order to ensure that contracts reflect the best interests of Nigerians, there must be enhanced transparency in the negotiation and renegotiation of petroleum contracts. The Nigerian government and party IOCs should adopt open contracting principles by disclosing petroleum contracts and making information about revenues, environmental compliance and regulatory actions publicly available, in line with national transparency objectives like the Nigeria Energy Industries Transparency Initiative.⁹⁹ This will serve to deter corruption and elite rent-seeking behaviour, build

Stabilisation and Renegotiation Clause on Production-Sharing Agreements' (2015) 5 International Energy Law Review 212

⁹⁷ Nathaniel Woodroffe, 'Tying Their Hands? How Petroleum Contract Terms May Limit Governments' Climate Policy Flexibility' (Natural Resources Governance Institute 2021) <<https://resourcegovernance.org/publications/tying-their-hands-how-petroleum-contract-terms-may-limit-governments-climate-policy>> accessed 16 October 2024.

⁹⁸ Abdelkader Baaziz and Luc Quoniam, 'How to Use Big Data Technologies to Optimize Operations in Upstream Petroleum Industry' (2013) 1(1) International Journal of Innovation 19

⁹⁹ Rob Pitman and Anne Chinweze, *The Case for Publishing Petroleum Contracts in Nigeria* (Natural Resource Governance Institute 2018) <<https://resourcegovernance.org/sites/default/files/documents/the-case-for-publishing-petroleum-contracts-in-nigeria.pdf>> accessed 16 October 2024

public trust, and allow civil society to monitor environmental performance.¹⁰⁰ They can also establish specialised environmental courts to expedite the resolution of disputes related to environmental violations in the oil and gas sector.¹⁰¹

5.3 Long-Term Plan for Nigeria's Oil and Gas Sector

The long-term sustainability of Nigeria's oil and gas sector necessitates the adoption of a forward-looking plan that prioritises environmental sustainability and intergenerational equity and aligns her petroleum contracts with global sustainability goals, such as those outlined in the United Nations' Sustainable Development Goals (SDGs) and the Paris Agreement.¹⁰² So doing will ultimately prove beneficial in various ways in the long run. For instance, by integrating robust environmental standards into petroleum contracts, Nigeria can attract responsible investors who prioritise sustainability.¹⁰³ Given that IOCs are increasingly adopting Environmental, Social, and Governance (ESG) criteria, Nigeria's petroleum sector needs to align with these global trends to remain competitive. Additionally, facilitating investments in renewable and low-carbon energy technologies like CCUS will ensure that Nigeria remains a key player in the global energy market even as the world transitions from oil and gas. This transition is essential not just to maintain the viability and competitiveness of Nigeria's economy but also to ensure that the benefits of her oil resources are not exhausted by the current generation at the expense of future generations. In essence, renegotiating Nigeria's petroleum contract is an opportunity to incorporate environmental sustainability into the sector. By implementing the policy recommendations outlined above, Nigeria can create a petroleum industry that supports both economic growth and environmental stewardship, securing a prosperous and sustainable future for all.

6. CONCLUSION

This paper has examined the complex interplay between Nigeria's petroleum contracts, environmental sustainability, and investor interests on the premise that while stabilisation clauses in traditional petroleum contracts have historically provided economic security for investors, they have also restricted the Nigerian government's ability to implement essential environmental regulations. This legal rigidity has created tension between the need for environmental protection and the economic interests of

¹⁰⁰ Paul Subai, *Towards a Functional Petroleum Industry in Nigeria: A Critical Analysis of Nigeria's Petroleum Industry Reform* (2014) <<https://theses.ncl.ac.uk/jspui/handle/10443/2672>> accessed 16th October 2024; Alex Gboyega, et al., 'Political Economy of the Petroleum Sector in Nigeria' (2011) WPS5779 Policy Research Working Paper 5779 <<https://openknowledge.worldbank.org/handle/10986/3548>> accessed 16th October 2024

¹⁰¹ Ibid

¹⁰² Victoria R. Nalule, Raphael J. Heffron and Damilola S. Olawuyi, *Energy Transitions and Extractive Contracts* (Palgrave Macmillan 2023)

¹⁰³ Samuel C Nwokolo, Edson L Meyer and Chinedu C Ahia, 'Credible Pathways to Catching Up with Climate Goals in Nigeria' (2023) 11(9) *Climate* 196.

both the state and investors. Addressing this tension necessitates a fundamental shift in how petroleum contracts are structured to better integrate sustainability into the sector.

The environmental consequences of oil production, especially in the Niger Delta, underscore the urgency of this reform. The Niger Delta has long been a region deeply affected by oil spills, gas flaring, and deforestation, leading to significant environmental degradation. These activities have disrupted ecosystems and had profound social and economic impacts on local communities that rely on agriculture, fishing, and clean water supplies for their livelihoods, as well as the health outcomes of residents. In order to address these challenges, the Nigerian petroleum sector must align more closely with national environmental regulations and international environmental commitments, such as the Paris Agreement and her Climate Change Act.

Renegotiation offers a practical solution for bridging the gap between investor protection and environmental sustainability. By incorporating mechanisms like economic equilibrium clauses and periodic review provisions, Nigeria can create a more adaptive contractual framework that allows for adjustments to be made in response to evolving environmental standards without undermining investor confidence. For instance, economic equilibrium clauses allow for the financial terms of contracts to be renegotiated when new environmental regulations increase operational costs for investors, whereas periodic review provisions ensure that contracts remain relevant and can be revisited regularly to account for new environmental policies and technological developments.

Accordingly, this paper emphasises the need for comprehensive legal and institutional reforms, such as integrating explicit environmental obligations into contracts to ensure that oil companies adhere to the highest standards of environmental stewardship. At the same time, strengthening regulatory bodies like the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and enhancing transparency in contract negotiations are key steps toward improving governance in the sector. Additionally, fostering community participation through mechanisms like Host Communities Development Trusts (HCDDTs) will ensure that not only are the voices of local communities—those most affected by oil extraction—heard and that they benefit from oil revenues but also their environment is protected from the adverse impacts of oil and gas development.

In essence, renegotiating Nigeria's petroleum contracts is both a legal necessity and a strategic imperative for the country's future. By embracing flexibility, sustainability, and stakeholder engagement, Nigeria can ensure its petroleum sector drives sustainable development. This will not only help Nigeria meet its national and international environmental obligations but also ensure that the wealth generated by its natural resources is contributing to long-term prosperity for all Nigerians, current and future generations.