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A REVIEW OF LAWS FOR SUSTAINABLE ENVIRONMENTAL MANAGEMENT IN THE NIGERIAN OIL AND GAS SECTOR

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Abstract
This paper analyses the laws that aim to control the use of the environment by the stake holders in the oil and gas sector of Nigeria, with a view to ensuring that the goals of sustainable development are achieved in the use of the environment. It analytically examines the constitution and various legislation and some regulations that provide for the protection of the environment from oil pollution directly or by implication. It adopts the method of indepth content analysis of the relevant laws on oil and gas in Nigeria. The paper is in five parts starting with the introduction, followed by the second part on concept clarification. The third part of the paper is the fulcrum, analyzing the laws while part four discusses the importance of enforcement being the link between the law and reality. The paper concludes in part five and recommends law reform, better enforcement, and stiffer penalties for violators and exploitation of technology for better environmental management.

1.0 Introduction

Environmental concerns have occupied the front burners of international and national laws and policies since the last half of a century. This is as a result of the gradual but eventual realization that the earth was in danger and was also being stretched beyond its natural carrying capacity as a result of unwholesome practices and policies that were geared towards international economic development. In Nigeria, the discovery of crude oil in commercial quantities, exploration, exploitation, refining, transportation and distribution of fossil fuel is a major contributor to environmental degradation. Hydrocarbons, which are emitted in the oil and gas industry, as observed by Omorogbe, have the capacity to pollute the land, seas and atmosphere greatly, as well as making

the industry a major culprit in the occurrence of ozone layer depletion[1]. This necessitates taking into account the full environmental implications and costs of all activities in the sector.

Generally, economic and other forms of developments pursued to the detriment of the environment are not sustainable and will ultimately prove to be short sighted. According to Ivbijaro, even though short-term economic gains could be achieved, the long-term well-being of the people is sacrificed at the expense of enhanced consumption of natural resources and an improved quality of life[2]. Thus, a mean had to be struck between development and environmental protection. That middle course became embodied in the principle of Sustainable Development. States where therefore encouraged to initiate and implement developmental laws and policies that took the safety of the environment into consideration; and Nigeria was no exception.[3] It is therefore obvious that development plans, processes and activities in the oil and gas sector of Nigeria must be made sustainable, being the major source of revenue for the country. Consequently, environmental legislations in Nigeria ultimately aim to achieve the sustainable development of the Nigerian environment, including the oil and gas industry.

Amokaye has identified Nigeria's enormous and diverse environmental problems to include:

1. Excessive pressure on available resources, infrastructure and space due to unabated rural-urban migration in the past three decades; this stress has been reinforced by industrial and urban development that has caused a rising rate of pollution.
2. The high rate of soil degradation, sheet, gully and coastal erosion and flooding through non-judicious land use practices;

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[1]Omorogbe, Y., 2001. *Oil and Gas Law in Nigeria*, Lagos, Malthouse Law Books simplified series, 127.
[2]Ivbijaro, M.F.A. 2006. Sustainable Development in Nigeria.*Sustainable Environmental Management in Nigeria.* M.F.A Ivbijaro, F. Akintola, R.U. Okechukwu. Eds. Ibadan: College Press & Publishers Ltd. 23.
[3]World Commission on Environment and Development (WCED). 1987. *Our Common Future.* New York: Oxford University Press, 11.

3. The depletion of natural forest resources through uncontrolled logging, tree felling and over-grazing;
4. Unfettered bush burning and the risk of exterminating wildlife species as well as uncontrolled fishing and related activities which endanger the species in Nigeria waters;
5. Pollution of surface and underground water systems through indiscriminate disposal of solid and liquid wastes;
6. Destruction of valuable agricultural land through bad mining practices;
7. Permanent dangers posed by the encroachment of the desert on vast agricultural lands along northern borders; and
8. Oil pollution and related environmental consequences, particularly in the Niger Delta area of Nigeria[4].

Each of the above listed are linkable to environmental degradation in the oil and gas sector to some degree, but the second, fifth and eighth are the most implicated. Many reasons have been adduced for the environmental issues facing Nigeria, including the heavy reliance on natural capital, the monolithic nature of Nigeria's economy that depends mainly on the income derived from the sale of fossil fuels, deforestation and overgrazing, poverty, inadequacy of physical infrastructure and services, unhealthy consequences of overcrowding and increased exposure to concentrated wastes, unsustainable resources consumptions and heavy settlement on environmentally fragile lands and the overall improper institutional mechanisms to deal with these complex and crosscutting issues[5].

2.0 Conceptual Clarification

2.1 The concept of the Environment

The environment is the "totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property and which also affects the quality of people's lives".[6] Although Atsegbua considers this definition to be abstract, he opines that the definition finds support in the

[4]Amokaye, G.O. 2004.*Environmental Law and Practice in Nigeria*. Lagos: University of Lagos Press 20.
[5] Ibid
[6] Black's Law Dictionary, 6th ed.

Cambridge Encyclopedia which defines the environment as the conditions and influences of the place in which an organism lives.[7] According to Amokaye, the scientific definition of the environment classifies it into two categories, namely physical and cultural.[8] The physical environment is the natural environment, which consists of the biosphere, atmosphere, hydrosphere and lithosphere and their inherent resources. The cultural environment generally encompasses the way of life of a set of people in a specific location including human settlements, cultural, historical and religious aspects of human activities[9]. The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA) defines the environment as "water, air, land and all plants and human beings or animals living therein and the relationships which exist among these or any of them"[10]. From these definitions, the concept of the environment encompasses the entirety of man's natural habitat, including man-made habitat, and the inter-relationship between man and the habitats.

2.2 Environmental Management

A proper understanding of the term 'management' is necessary to adequately understand the concept of environmental management. Management according to Subedi, is that field of human behavior in which managers plan, organize, staff, direct, and control human, financial resources in an organized group effort in order to achieve desired individual and group objectives with optimum efficiency and effectiveness[11]. According to Henri Fayol, "To manage is to forecast and to plan, to organise, to command, to co-ordinate and to control."[12] In the words of Harold Koontz, "Management is the art of getting things done through and with people in formally

[7] Atsegbua, L. et al. 2004. *Environmental Law in Nigeria Theory and Practice*. Benin City: Ababa Press Ltd. 3

[8] Amokhaye, G.O. 2004.*Environmental Law and Practice in Nigeria*. Lagos: University of Lagos Press. 4

[9] Ibid.

[10] Section 37, NESREA Act, Cap 10 LFN, 2004.

[11] Krishna KumariSubedi. "Modern concept of Management" Retrieved on 28 September, 2012 from http://www.sgnhc.org.np/anual_report_2007/MODERN%20CONCEPT%20OF%20MANAGEMENT.pdf

[12] Anon. "What is management: Definitions, meanings and features". Retrieved on 28 September, 2012 from http://kalyan-city.blogspot.com/2011/04/what-is-management-definitions-meaning.html

organised groups".[13] To manage (from which the word management derives) is to organize, regulate, be in charge of a business, household, etc[14], implying control. It is clear that the concept of management includes and entails some kind of control, co-ordination and responsible utilization of certain facilities and resources. In order to achieve this, effective management must include some sort of laid down principles, rules and procedures. These principles are laid down in the laws and regulations that seek to protect the environment in this context.

Consequently, it can be adequately surmised that environmental management entails the co-ordination, control and responsible utilization of the resources in the environment, and also the control of processes and activities that directly affect the environment and its resources, following laid down rules, regulations and procedures and laws. In other words, environmental management encapsulates the principle of sustainable development.

2.3 Sustainable Development

The principle of sustainable development was popularized in 1987 by the World Commission on Environment and Development initiated by the General Assembly of the United Nations in 1982. Its report, *Our Common Future*, was published in 1987.[15] The commission was chaired by the then Prime Minister of Norway, Gro Harlem Brundtland, thus earning the name its name, "Brundtland Commission." The commission's membership was split between developed and developing countries. Its roots were in the 1972 Stockholm Conference on the Human Environment, where the conflicts between environment and development were first acknowledged and in the 1980 World Conservation Strategy of the International Union for the Conservation of Nature, which argued for conservation as a means to assist development and specifically for the sustainable development and utilization of species, ecosystems, and

[13] Harold Kootnz. "Industrial and General Administration" Retrieved on 28 September, 2012 from http://kalyan-city.blogspot.com/2011/04/what-is-management-definitions-meaning.html

[14] Illustrated Oxford Dictionary, Great Britain, OrlingKinderley Limited and Oxford University Press, 1998, 495

[15]Robert W. K, Thomas. M, and Anthony A. L. 2005. "What is Sustainable Development? Goals.Indicators, Values, and Practice". Volume 47, Number 3, *Environment: Science and Policy for Sustainable Development*. 10.

resources.[16] Therefore, the report of the Brundtland Commission defined sustainable development as "development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs".

The report was followed by major international meetings. The United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992, known as the "Earth Summit", where there was agreement for there to be a synergy between developmental policies and environmental protection. At the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa in 2002, the commitment to sustainable development was solidly reaffirmed. This same resolve was reiterated recently at the World Summit on Sustainable Development held in Rio de Janiero, Brazil in June 2012.

It is pertinent to determine the import of a marriage between Development and Sustainability concepts. According to Amokaye, development is traditionally recognized as the process by which a country provides for its entire population, all the basic needs of life such as health, nutrition and housing, and provides everyone with opportunities to contribute to the very process through gainful employment as well as scientific and technical innovations coupled with the construction and maintenance of the infrastructure and mechanisms which diversify and perpetuate the productive base of the country such as agriculture, industries and natural resources[17].

The United Nations Declaration on the Right to Development describes development as a comprehensive process that involves political freedom and equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.[18]

Sustainability on the other hand, according to the Brundtland Commission, has to do with the conservation of the ecosystem as a long lasting source of natural resources for man. It involves a deliberate process whereby the essential ecological processes and life

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[16]Adams, W. M. 1990. *Green Development: Environment and Sustainability in the Third World.* London: Routledge. 4

[17]Amokaye, G.O., 2004. *Environmental Law and Practice in Nigeria.* Lagos: University of Lagos Press. 15

[18]*Ibid.*

support systems are maintained including the preservation of genetic diversity and sustainable utilization of species and ecosystems for the present and future generations of mankind. Consequently, sustainable development consists of conservation and recovery where necessary, of the adequate natural capital to support a qualitative development policy; the inclusion of environmental, cultural, social and economic criteria in planning and implementation developmental policies in both public and private sectors[19].

Technically, Sustainable Development is an increase in a country's wealth production which does not entail a parallel reduction or degradation of its natural capital. This definition ensures that there is justice between generations because it requires that a country's natural resources be passed on to future generations intact. Again, sustainable development requires that environmental criteria must be incorporated into the planning and implementation of public policies. It also allows the values of environmental and developmental concerns at all levels of decision-making.[20]

3.0 Major Laws on Environmental Management in the oil and gas sector in Nigeria

Prior to the commercial discovery of fossil oil (before the 1970s), agriculture was the economic mainstay of Nigeria. With financial resources available from oil and no development policy, unguided urbanization and industrialization took place. Uncontrolled population growth, desertification, and deforestation led to degradation and devastation of the environment. As desirable and necessary as development is, it became an albatross not of itself but because of the lack of appropriate policies to guide it. Economic considerations and fundamental lack of knowledge of interdependent linkages among development processes and environmental factors, as well as human and natural resources, resulted in an unmitigated assault on the environment. However, the environment and the need for its preservation (in spite of all efforts by United Nations Environment Program (UNEP) and International Conventions which Nigeria ratified), took centre stage after the momentous and singular event of the secret dumping of toxic waste in Koko Port, Bendel State (now Delta State) in May 1988 by foreign parties. This was followed by the promulgation of the Harmful Wastes (Special

[19] *Ibid.*
[20] *Ibid.*

Criminal Provisions) Act 1990.[21] In its wake, international seminars and workshops were held in Abuja and Lagos and the consensus was in the view of UNEP, appropriate environmental legislation to discourage short-term plans and 'fire brigade' approaches to environmental issues[22]. Laws became active instruments for environmental protection as would be examined in this article, beginning from the constitution.

3.1 The Constitution of the Federal Republic of Nigeria 1999

The first time in Nigeria's constitutional history when there was a mention of environment in the constitution, was 1999 and the only positive provision in the constitution that dealt with the protection and management of the Nigerian environment is section 20 of the constitution which provides that: "The state shall protect and improve the environment and safeguard the water, air, land and forest and wildlife of Nigeria". However, this section of the Constitution is one of the Fundamental Objectives and Directive Principles of State Policy and is generally considered as non-justiciable, meaning that the government of Nigeria cannot ordinarily be compelled to provide the items in the chapter, including to protect the Nigerian environment.

In the light of this constitutional handicap, other avenues have been explored and alternative routes to the enforceability of the duty of the state to protect the Nigerian environment have been sought. For example, in the case of *A.G Ondo State v. A.G Federation*[23], the Supreme Court held inter alia, that the Constitution, being the organic law or *Grundnorm*, must be given a broad and not a narrow interpretation which will fail to achieve its goals, unless there is something in the Constitution to show that the narrower interpretation will best carry out the objects and purposes of the Constitution. It was further held by the court that the National Assembly could legislate on any of the matters under Chapter II of the 1999 Constitution dealing with Fundamental Objectives and Directive Principles of State Policy in order to make it enforceable. Uwaifo JSC opined thus:

[21] Now, Cap H1 Laws of the Federation of Nigeria, 2004

[22] Echefu, N and Akpofure, E. "Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework" retrieved on September 20, 2012 from http://www.unep.ch/etu/publications/14)%2063%20to%2074.pdf

[23] (2002) 9 NWLR (Pt 772) 222.

> As to the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of our Constitution, Section 6 (c) says so... but the Directive Principles... can be made justiciable by legislation. We do not need to seek uncertain ways of giving effect to the Directive principles... the Constitution itself has placed the entire Chapter II under the Exclusive Legislative List. By this, it simply means that all...need not remain mere or pious declarations. It is for the Executive and the National Assembly, working together to give expression to any one of them through appropriate enactments as occasion may demand.

By virtue of the foregoing, the duty of the state to effectively manage the environment and protect it can be enforced. However, the onus lies on the National Assembly to Legislate on the part of Chapter II of the Constitution that concerns the environment.

Similarly, the Supreme Court also held in the case of *Abacha v. Fawehinmi*[24] that the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[25] brings the Charter into operation in Nigeria. Section 1 of the Act provides that the Charter shall have the force of law in Nigeria, and the Charter provides in Article 24 that all peoples shall have the right to a generally satisfactory environment favourable to their development. Other approaches to the enforcement of environmental rights include the synergy of the right to a healthy environment and the right to life[26].

It is however unfortunate that the Constitution of the Federal Republic of Nigeria does not provide for a direct and positive right to a clean and healthy environment, against the background of the recent international trends in policy-making, that are gravitating towards a positive recognition of the need to protect the environment for future generations. In the light of this, it is suggested that the Constitution should be amended to include elaborate, direct and positive provisions concerning the protection of the

[24](2000) 6 NWLR (Pt 660) 228.
[25] Cap A9 LFN 2004.
[26] As is the case in India, Bangladesh, and the Philippines, to mention a few, where the right to a healthy environment is attached to the right to life in the constitutions of these countries, therefore making the right to a clean and healthy environment a positive right in these jurisdictions.

Nigerian environment, and a direct means of enforcing same; and not merely placing very salient issues such as environmental rights and protection, to the island of Fundamental Objectives and Directive Principles of State Policy.

3.2 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act. (NESREA) 2007

The NESREA Act is the flagship legislation for environmental protection in Nigeria[27]. The NESREA Act[28] repealed the old flagship legislation, the Federal Environmental Protection Agency Act and its agency on the protection of the Nigerian environment.[29]The NESREA Act created the National Environmental Standards and Regulations Enforcement Agency (hereinafter referred to as The Agency).The Agency is currently the major federal body charged with the protection of Nigeria's environment. The Federal Government, in line with Section 20 of the 1999 Constitution, as amended, established the Agency as a parastatal of the Federal Ministry of Environment, Housing and Urban Development[30].

In terms of its establishment and powers, the National Environmental Standards and Regulations Enforcement Agency[31] (NESREA) was established by theNESREA Act as a corporate entity. The Act charged the Agency with the enforcement of environmental standards, regulations, rules, laws, policies and guidelines[32]. As a corporate entity[33], the Agency is endowed with perpetual succession and a common seal. Pursuant to its responsibilities, it may sue and be sued in its corporate name[34]. Section 2 of the NESREA Act effectively highlights the objectives of the Agency as follows:

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[27]On 17 May, 2007 and 30 May, 2007, the Nigerian Senate and the House of Representatives, respectively, passed the National Environmental Standards and Regulations Enforcement Agency (Establishment) Bill, 2007. On 30 July, 2007, the then Nigerian President, Umaru Musa Yaradua, assented to the Bill, thus heralding the new law on environmental protection.

[28] Cap 10 LFN, 2004

[29]Federal Environmental Protection Agency Act (FEPA Act), Cap F10, LFN 2004, was expressly repealed by Section 36 of the. NESREA Act

[30]Section 33, NESREA Act.

[31] Section 1 (1) NESREA act

[32] Section 2 (a)

[33] Section 2 (b)

[34] Section 2 (c)

> The agency shall, subject to the provisions of this Act, have responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

The provisions of this section are very clear and unambiguous on the fact that the powers of the agency, in performing its functions, cut across all sectors of the Nigerian environment.

Ironically and surprisingly, it is notable that the same piece of legislation excludes its powers from the reach of the oil and gas industry[35]. In other words, the functions and powers of NESREA do not extend to the all-important oil and gas sector of the Nigerian Economy[36]. The question here is: of what use is a piece of legislation that boasts of being responsible for the protection of the environment and sustainable development in Nigeria, when it excludes itself from exercising powers over environmental issues in the oil and gas sector? This is accentuated by the fact that the very major environmental degradation issues in the country are mainly found in the oil and gas sectors. More so, the negative effects of environmental issues in the oil and gas sector, do not stay limited to that sector alone, but invariably affect other sectors such as the economic and health sectors. Should the powers of NESREA be excluded from control over the oil and gas sector, especially when the environmental pollutions in question originate from the oil and gas mining activities? This is one of the major criticisms of the NESREA Act.

Section 8 of the Act sets out the powers of the Agency which include the power to prohibit processes and use of equipment or technology that undermine environmental

[35]Sections 7 and 8 of the NESREA Act, 2007.

[36] Section 8 (g) (k), (n), (s) of the NESREA Act specifically excludes oversight over the oil and gas related environmental damage. Such environmental damage is regulated under the EIA Act and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002, issued by the Department of Petroleum Resources DPR.

quality; power to establish mobile courts to expeditiously dispense with cases of violations of environmental regulations; the development of an environmental monitoring network, power to enter into agreement and contracts with private or public organizations or individuals to develop, utilize, coordinate and share environmental monitoring programmes, research effects, and basic data on chemical, physical and biological effects of various activities on the environment and other environmental related activities.

It is observed that in spite of the wide powers available to the agency for the protection of the environment, positive steps such as the establishment of mobile courts are yet to impact on environmental protection in the oil and gas industry. It is also observed that very little or no environmental field work is done because of the daily evidence of environmentally deleterious equipment and technology that are frequently in use. Similarly, the rate of unabated flouting of environmental regulations is a pointer to the fact that the Agency may not be fully exercising its broad powers on the development of effective environmental monitoring networks. As it is often the case with Nigerian laws, the root of these inadequacies ultimately are traceable to the problem of lack of or inadequate enforcement.

3.3 The National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006

It is notable that the Niger Delta area of Nigeria is presently the hub of oil exploration and production in Nigeria. The exploration and production, as well as storage and transportation of oil in the Niger Delta all have negative impacts on the fragile ecosystem of the area, notwithstanding its revenue generation[37]. In a bid to check the adverse impact of oil mining and other human and natural activities on the environment, the defunct Federal Environmental Protection Agency (FEPA)was upgraded to the Federal Ministry of Environment in 1999[38]. The Ministry swung into action immediately by inaugurating a National Action Co-ordinating Committee of the Forum for Cleaning the Niger Delta. Membership of the Committee comprised all relevant Government Ministries, Agencies, Oil companies, the Academia, and Non-

[37]http://www.nosdra.org/history.html, accessed on April 3rd 2012.

[38] This is the initiative of the former President OlusegunObasanjo Administration.

Governmental Organisations (NGOs)[39]. The National Oil Spill Contingency Plan, which is a blueprint/manual for checking oil spill through, containment, recovery, and remediation/restoration, is a proactive strategy for preventing loss of lives, assets and natural resources[40]. The Federal Government of Nigeria established the National Oil Spill Detection and Response Agency (NOSDRA) as an institutional framework to implement the National Oil Spill Contingency Plan, which was initiated in 2006. The National Oil Spill Contingency Plan is a blueprint/manual for checking oil spill through, containment, recovery, and remediation/restoration. It is a strategy for preventing loss of lives, assets and natural resources. These initiatives are positive and welcome developments which can only be impactful if effectively implemented.

3.3.1 Highlights of the National Oil Spill Detection and Response Agency (NOSDRA) Act: The NOSDRA Act is important to the oil and gas industry and was enacted specifically for the sector. It has a total of 28 sections under eight parts. Part one provides for the establishment of the National Oil Spill Detection and Response Agency. Sub-section (1) provides that the agency shall have the responsibility for preparedness, detection and response to all oil spillages in Nigeria. Section 5 of the Act states that the objectives of the Agency shall be to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria as follows:

a) Establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;

b) Identify high risk areas as well as priority areas for protection and clean up;

c) Establish the mechanism to monitor and assist or where expedient, direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site.

[39] The Committee had four (4) sub-committees namely:- State of the Environment; Community and Public Affairs; Oil and Gas Waste Management and the Oil Spill Response.

[40] The sub-committee on Oil Spill Response considered and finally reviewed in year 2000 the National Oil Spill Contingency Plan (NOSCP) which was drafted in 1981 and first reviewed in 1997. The National Oil Spill Contingency Plan itself is mandatory for all parties to the International Convention on Oil Pollution Preparedness and Response Co-operation (OPRC 90) to which Nigeria is a signatory. See op.cit. (note 37) above.

d) Maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is Clean Nigeria Associates (CNA) in implementing appropriate spill response;

e) Ensure funding and appropriate and sufficient pre-positioned pollution combating equipment and materials, as well as functional communication network system required for an effective response to major oil pollution;

f) Provide a programme of activation, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management of operational personnel;

g) Co-operate and advisory services, technical support and equipment for purposes of responding to major oil pollution incidents in West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian Territory may be threatened;

h) Provide support for research and development in the local development of methods, materials and equipment for oil spill detection and response;

i) Co-operate with International Maritime Organization and other national, regional and international organizations in the promotion and exchange of results of research and development programmes relating to the enhancement of the state-of-the-art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal, and clean up to the best practical extent;

j) Establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill activities;

k) Determine and preposition some vital combat equipment at the most strategic areas for rapid response;

l) Establish procedures by which the Nigerian Customs Service and Nigeria Immigration Service shall ensure rapid importation of extra support response equipment and personnel;

m) Develop and implement an appropriate audit system for the entire plan;

Carry out such other activities as are necessary or expedient for the full discharge of its functions and the execution of the Plan under this Act. Section 6 (1) of the NOSDRA Act provides the responsibilities of the Agency[41] and put the responsibility on an oil spiller to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of an oil spill, a default of which shall attract a penalty in the sum of Five Hundred Thousand Naira (N500,000) for each day of failure to report.[42] Similarly, failure to clean up the impacted site, to all practical extent including remediation, shall attract a further fine of One Million Naira (1,000,000.00).[43]

Section 7 of the Act provides for the special functions of the agency which includes a) Ensuring the co-ordination and implementation of the Plan within Nigeria including within 200 nautical miles from the baseline from which the breadth of the territorial waters of Nigeria is measured; b) Undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages; c) Encourage regional co-operation among member states of the West African sub-region and in the Gulf of Guinea for combating oil spillage pollution in our contiguous waters; d) Strengthen the national capacity and regional action to prevent, control, combat and mitigate marine pollution; e) Promote technical co-operation between Nigeria and member states of the West African sub-region; etc.

From the foregoing, it is apt to state that the agency is to act as the lead agency for all matters relating to oil spill response management and liaise with other agencies for the implementation of the Plan[44]. it is clear that NOSDRA has been charged by its enabling statute with the primary responsibility of detecting, responding to, and generally preventing various forms of environmental degradation that may be caused by, or be the

[41] Be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector; Receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria; Co-ordinate the implementation of the Plan as may be formulated from time to time, by the Federal Government; Co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government; Perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any Plan as may be formulated by the Federal Government.

[42] Section 6 (2) NOSDRA Act.

[43] Section 6(3) NOSDRA Act.

[44] Section 19 (2) NOSDRA Act

consequences of mineral resource extraction, handling and transportation, thereby ensuring sustainability of the environment in which these resources are located, namely the Niger-Delta, which is the main area where these activities and incidences that NOSDRA seeks to regulate, abound.

Despite some laudable provisions and the lofty goals, ideals and objectives aimed at the sustainable exploitation of natural resources and ensuring environmental friendly practices, there are some matters in the Act that demand closer attention. For instance, Section 6(2) of the Act, states that an oil spiller is to report an oil spill to the Agency in writing not later than 24 hours after the occurrence, and goes on to stipulate penalties for failure to do same. The problem with this provision lies in the fact that it is very unlikely that an individual or oil company involved in an oil spill occurrence will actually report it and face the risk of monetary penalties and clean up costs. The Act therefore places undue reliance on the integrity of operatives of the oil exploitation sector. This provision makes it very easy for spillers to feign ignorance or existence of such spill. If an agency tasked with such responsibility as is stated in its enabling statute is to realise its goals, it is assumed that such an Agency will actually have patrol teams and surveillance staff who will readily inform the Agency of such a spill. In that case, there will be no need for the above sub-section that seeks to place the duty of providing notice of spills in the hands of the spiller.

A United Nations Environmental Programme (UNEP) report[45] has stated that the Nigerian Government agencies concerned with oil spills, lack qualified technical experts and resources. The report also stated that after five years since NOSDRA was established, so few resources had been allocated to the agency that it has no proactive capacity for oil-spill detection. In planning their inspection visits to some oil spill sites, the regulatory authority is wholly reliant on the oil industry for logistical support.

Section 15 of the Act, gives the Agency the power to accept gifts of land, money or other property *on such terms and conditions, if any, as may be specified* by the person or organization making the gift. This section makes members of the Agency more vulnerable to accept bribes in the discharge of their duties. The situation is compounded by the fact that the section makes the giving and acceptance of the gifts to be at the

[45] UNEP Environmental Assessment of Ogoniland. 2011. Retrieved on April 3rd, 2012, from http://www.nosdra.org

instance of the persons or organization making the gift. There are many other criticisms of the Act and capabilities of the Agency including its inadequate penalties and sluggishness in the performance of the activities of the Agency, even leading some critics to call the Agency a toothless bulldog[46], and therefore calling for an amendment to the Act[47].

It has also been suggested that despite its enormous responsibilities of restoring and preserving the environment from oil spills and promoting best practices toward reducing the adverse impact of oil exploration, especially in the Niger Delta part of Nigeria, NOSDRA is little known by most of the oil communities, who are largely not even aware of its existence[48]. According to the Environment Rights Action, Friends of the Earth (ERA, FoE), NOSDRA has not lived up to expectation nor has it carried out its constitutional duties of checkmating oil spills by oil corporations[49]. ERA also

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[46]Tina A. Hassan. April, 2011. "Is NOSDRA a Toothless Bulldog?" *The Daily Trust Newspaper*. Retrieved on April 4th 2012 from http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=16249:is-nosdra-a-toothless-bulldog&catid=10:environment&Itemid=11

[47]Senator AbubakarBukolaSaraki (Kwara Central) the Senate Committee Chairman on Environment and Ecology has said that the National Oil Spill Detection and Response Agency (NOSDRA) Enabling Act (2006) needs to be reviewed and touched up to conform with International standards. According to the statement from his Media office, the Senator representing Kwara Central feels bad and concerned following newspaper reports that NOSDRA a Federal Agency charged with the responsibility for preparedness, detention and response to oil spillages in Nigeria asked Nigeria Agip company limited to pay the paltry sum of one million Naira as fine over its failure to immediately contain, recover and clean up oil spill at its OB/OB Gas plant in Obrikom, Omoku, Rivers State.The Senator lamented that the fine imposed is not deterrent enough for such offence that has the potential to cause degradation of the environment and inflict long lasting damage to the health of the people living in the community.
He said that his committee in the Senate will review the enabling act establishing the agency to conform and strengthen its ability to deter bad behaviours and protect the environment while living up to world best practises on prevention of oil spillage in the country. The Senator from Kwara said "Imposing more stiffer penalty on oil spillage will serve as a needed check to curb oil spillage in the country, as the One Million Naira fine is not commensurate with and can't curb oil spillage in the country. Retrieved on April 4th, 2012 from http://www.abubakarbukolasaraki.com /index.php?option=com_content&view=article&id=278:nosdra-law-needs-to-be-reviewed&catid=67:press-releases&Itemid=344

[48] Tina. A. Hassan, ibid

[49] Speaking through its Head of Media, Philip Jakpor, ERA stated that other government agencies such as the National Environment Standards Regulatory Agency (NESREA), Department of Petroleum Resources (DPR) among others that have functions similar to those of NOSDRA, this may create confusion.

identified the unavailability of NOSDRA field officers to monitor oil spills and impose appropriate sanctions on erring oil corporations, as the factor largely responsible for the ineffectiveness of the agency, noting that oil spills occur all the time in Nigeria[50]. The body explained that the lack of helicopters for overhead surveillance by NOSDRA means that the oil corporations have to transport government officials to discharge their duties in those areas[51]. The negative implications of such an arrangement are far reaching but outside the scope of this article.

3.4 Environmental Impact Assessment Act (EIA)[52]

Environmental impact assessment is a systematic process involving the identification, predicted evaluation and presentation of the probable as well as possible consequences (positive or negative) of a proposed project, policy or programme, at a stage in the decision-making process where serious environmental damage can either be avoided or reduced[53]. Environmental Impact Assessment has also been stated to refer to the process by which changes in the environment as a result of development are assessed to measure how beneficial or deleterious these changes might be[54]. The primary aim of the EIA is to ensure that as far as possible, negative impacts of development projects are predicted and addressed before the project is commenced[55].

The Federal Government of Nigeria enacted the Environmental Impact Assessment (EIA) Act No. 86 of 1992 as a demonstration of her commitment to the Rio Declaration. Prior to the enactment of the EIA Act in Nigeria, project appraisals were limited predominantly to feasibility studies and economic-cost-benefit analysis. Most of these appraisals did not take environmental costs, public opinion, and social and

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[50] Ibid, UNEP Environmental Assessment of Ogoniland. 2011. Pg 6

[51] RotimiAjayi, October, 2011. "Environmental Degradation: Review of NOSDRA Act Now" *The Vanguard Newspaper*. Retrieved on April 4, 2012, from http://www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/
It is notable that between January 2006 and July 2010, the Agency has on record spills totaling about 3,725 times. Out of this, 495 spills occurred between January and July of 2010 alone. Shell, Agip and PPMC are the worst culprits in terms of number of spills. It was learnt that since July 2010, the volume and frequency of spills have increased dramatically and interestingly within the period, NOSDRA only imposed fines two times on three organizations, Shell, PPMC and Agip

[52] Cap E12 LFN 2004

[53] Okon, E.E. 2001. "The Legal Framework of Environmental Impact Assessment in Nigeria". *Modern Practice Journal of Finance and Investment"*.Vol.5, No. 2. 213

[54] Atsegbua, et al. 2003.*Environmental Law in Nigeria, Theory and Practice.* Benin City: Ababa. 167

[55] Ibid. 170

environmental impacts of development projects into consideration[56]. The EIA Act gave the Federal Ministry of Environment the implementing mandate and requires that the process of EIA be mandatorily applied in all major development projects right from the planning stage, to ensure that likely environmental problems, including appropriate mitigation measures to address the inevitable consequences of development, are anticipated, prior to project implementation and addressed throughout the project cycle.

Section 1 of the EIA states its goals and objectives to include the establishment before a decision is taken by any person, authority, corporate body or unincorporated body including the government of the federation, state or local government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have an environmental effect on those activities which shall first be taken into account.

The aims and goals of the EIA have been summarized by Ivbijaro as follows:

a. To ensure that the possible negative impacts of development projects are predicted and addressed prior to the project take-off;

b. To ensure that development projects are environmentally sound and sustainable;

c. The EIA, like feasibility studies, is a planning and management tool for officials and managers who formulate policies and make important decisions about development.[57]

Consequently, it is clear that the EIA law requires that before the commencement of any new project, its environmental impact must be assessed or evaluated with a view to mitigating its effects on the environment. Accordingly, section 2(1) of the Act, states that: *The public or private sector of the economy shall not undertake, embark or*

[56]Ameyan, O. 2008. "Environmental Impact Assessment: Insight into the Environmental Impact Regulatory Process and Implementation for Qualifying Projects". Being a paper presented at a one day seminar: Preparing Business in Nigeria for environmental Challenges and Opportunities; organised by the Manufacturing Association of Nigeria, (MAN), MAN House, Ikeja, Lagos. Retrieved on 21st September 2012 from http://www.man-greencourses.com/papers/paper6b.pdf

57Ivbijaro, M.F. 1994. Environmental Impact Assessment/Environmental Audit Report in Nigeria: An Overview. Environmental Law & Sustainable Development in Nigeria.Ajomo, M.A & O. Adewale. Eds. Lagos: NIALS. 149

authorize projects or activities without prior consideration, at an early stage, of their environmental effects.

Section 1 (2) of the EIA Act equally provides that: "*Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provision of this*

Act."The "minimum content of environmental impact assessment" was described[58]by Ibaban[59].

The author went further to note that the establishments in the private sector (manufacturing companies, etc.) hardly undertake EIA studies for their activities, even though such activities impact on the environment. Also, in his opinion, Oil companies, which embark on EIA studies, violate the rules[60]. There are instances where they have commenced the project before the EIA study is done, citing the example of the Shell Petroleum Development Company (SPDC) which commenced a multi-billion dollars project, the Estuary Amatu (E.A.) project (which cut across communities in Bayelsa and Delta States), before EIA commenced[61].

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58 According to Ibaban, minimum contents of an EIA Report should include: A description of the proposed activities;
A description of the potentially affected environment including specific information necessary to identify and assess the environmental effect of the proposed activities; A description of the practical activities, as appropriate;
An assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect cumulative, short term effects; An identification and description of measures to mitigate adverse environmental impacts of proposed activity and assessment of those measures
An indication of gaps in knowledge and uncertainty which may be encountered in computing the required information
An indication of whether the environment of any other state or local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives.

[59]Ibaban, S. I. 2010. "Environmental Protection Laws and Sustainable Development in the Niger Delta". Retrieved on April 6, 2012 from http://www.africanajournal.org/PDF/vol4no1/vol4no1_2_Ibaba%20S.%20Ibaba.pdf
See also, Section 4 EIA

[60]*Ibid.*

[61]*Ibid*

Also, some EIA studies are not properly done, which creates problems for communities[62]. It is pertinent to note that the penalties imposed on individuals and corporate bodies by the EIA, are inadequate in the light of modern day realities[63].

On community participation, to Adibe and Essaghah have observed that the local communities of the Niger Delta who are the hosts to projects for which EIA studies are undertaken, are either not consulted, or not involved effectively in such studies. Thus, the benefit of involving the people, including the immense knowledge on the ecological process that can be integrated to enrich project design; the team spirit that would elicit the commitment of stakeholders; and also cooperation, are all lost. Grass root participation will enhance the quality of the EIA reports.

3.5 The Associated Gas Re-Injection Act[64]

The gas flaring regime in Nigeria spans back to 1979 when the Associated Gas Reinjection Act of 1979, was enacted by the Government of Nigeria to control gas flaring. Section 3 thereof, made it illegal for any person or organization to engage in gas flaring practices. Section 3 (1) of the Act provides that *"Subject to sub-section (2) of this section, no company engaged in the production of oil and gas shall after 1st January 1984 flare gas produced in association with oil without the permission in writing of the Minister"*. The Act has been amended several times with the common feature in the various amendments being the date to put an end to gas flaring in Nigeria.

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[62] *Ibid,* For example, the construction of the Gbarain link road (in Bayelsa State) by the SPDC without a proper EIA study has created environmental problems and socio-economic difficulties for the host communities (Opolo, Obunugha, Onopa, Gbarantoru and others). The identified problems include: severe or excessive flooding of forest and farmlands which lead to the destruction of food crops, economic trees; a reduction in available farmland, thus creating land fragmentation in the affected locality; permanent flooding of fishponds, lakes and creeks, preventing the owners from harvesting them; a reduction of games and wildlife populations in the forest; and the blockage of communication/access routes among the neighboring communities

[63] For instance, section 62 of the Act which deals with offence and penalty provides One Hundred Thousand Naira (N100, 000) fine or five years imprisonment for an individual offender, and a minimum of N1m for corporate offenders. Clearly, One Million Naira (N1,000,000) is too small a sum to compel corporate bodies (particularly the oil companies and governments) to obey the law. A more realistic penalty will be Two Million Naira fine or ten years imprisonment for an individual offender, and a minimum of N1b (one billion naira) for corporate bodies, oil companies and governments.

[64] Cap 20 LFN 2004

The Act set January 1, 1984 as the deadline to put an end to gas flaring. However the January 1, 1984 date was reviewed a couple of times by subsequent amendments[65].

Highlights of the Gas Flaring (Prohibition and Punishment) Bill, 2009 are as follow:

The Gas Flaring Prohibition Bill amongst others, provides for the grant of temporary gas flaring permits to operators and also imposes penalties for gas flaring[66]. The major highlights of the Bill are discussed below.

1. December 2012 Deadline: The Bill prohibits companies engaged in the production of oil and gas from flaring gas after December 31, 2012 beyond the permitted minimum[67].
2. Temporary Gas Flaring Permit: Section 3(2) (b) of the Bill permits the Minister to grant a temporary gas flaring permit to any company which seeks to continue to flare gas in particular field or fields[68].

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[65] The January 1, 1984 deadline was amended by the Associated Gas Re-Injection (Continued Flaring of Gas Regulations) 1984 and the Associated Gas Re-Injection (Amendment) Decree No. 7 of 1985. The Decree introduced permits by the Minister for continuation of gas flaring to Exploration & Production (E&P) companies with a proviso for the payment of paltry fines as penalty, which to all effects was simply nominal. Further amendments were introduced up until the Associated Gas Re-Injection (Amendment) Bill, 2008 which fixed the deadline for December 31, 2008. Subsequently, the Gas Flaring (Prohibition and Punishment) Bill 2009 further pegged December 31, 2010 as the date to end the practice. However, in January 2010, the Nigerian House of Representatives considered the report of its committees on Gas Resources and Justice on a Bill for an Act to amend the Associated Gas Re-injection Act, and accepted a new deadline pitched for December 31, 2012 which has long passed and gas flaring has persisted while the Petroleum Industry Bill continues to wait to take effect.
See also, Power and Energy Group. 2011. "Gas Flaring in Nigeria: An overview of the Associated Gas Re-Injection (Amendment) Bill 2010 (the "Bill"). AinaBlankson, LP: *Power and Energy Group.* Retrieved on April 4, 2012 fromhttp://www.ainablankson.com/pdftemp/April%202011%20%20%20An%20Overview%20of%20the%20Associated%20Gas%20Re-injection%20Bill%202010.pdf

[66] "Regulation of Associated Gas Flaring and Venting: A Global Overview and Lessons from International Experience". October, 2004. *The World Bank Report*, No 3

[67] S.3(1) of the Bill provides that "No company engaged in the production of oil and gas shall after December 31, 2012 flare gas produced in association with oil, other than such minimum allowed by the Minister by regulation".

[68] Subject to the payment of the sum of $5.00 per 1,000 standard cubic feet of gas flared with a processing fee of $1,000. However, a temporary gas penalty is payable for any gas flared in excess of approved gas volumes during pre-commissioning and commissioning operations, equipment maintenance and operation upset.

3. Gas Utilization plan: While the 1979 Act required all companies involved in oil and Gas productions to prepare programs for gas utilization or reinjection and strictly limited the grounds upon which flaring could be permitted, the Bill provides that no company without facilities for associated gas utilization shall be permitted to engage in oil production.
4. Penalty for Gas Flaring: Similar to the provisions of the 1979 Act, the Bill prohibits all companies from engaging in gas flaring whether routine or continuous. Any company so involved shall be liable to a fine to be determined at the prevailing international gas market price and the applicable fine shall not be regarded as part of Production Sharing Contracts ("PSCs") or Joint Ventures ("JVs) obligations.[69]
5. Reporting Gas Flaring: Companies are required to report all emergency gas flaring within 24hours of occurrence, failure of which will attract a fine of US$500,000.[70]

By section 3(1) of the bill, oil producing companies in Nigeria have been granted yet another extension on the period within which to end the flaring of the excess hydro-carbons gathered in the course of oil and gas production flow.

Also, the amendment proposed by the bill has been described as a welcome development and perhaps also as a step in the right direction when compared to the 1979 Act which allowed the Minister to permit gas flaring for a period of 30days in the cases of start-up, equipment failure or shut down without having to pay for such gas flared. Furthermore, this is a departure from the Associated Gas Re-Injection (Amendment) Decree of 1985 which fixed a paltry fine of 2 Kobo (equivalent to US$0.0009 in 1985) against the oil companies for each 1000 standard cubic feet (SCF) of gas flared.[71]

By its Gas utilization plan, the Bill seems to reaffirm the commitment of the Federal Government of Nigeria to ensure that the hitherto flared gas is put to productive use. This is a giant step towards ensuring the utilization of gas by International Oil Companies (IOCs) which had previously cited the high cost of implementing gas

[69] Section 4 of The Bill
[70] Section 4(4) of The Bill
[71] Power and Energy Group. 2011. Op cit. 134

utilization facilities as the reason for not complying with the set deadlines. Thus, enforcing the availability of gas utilization facilities by IOCs despite its huge cost, would further assure the government of its utilization.

Presently, however, notwithstanding the laudable provisions of the Associated Gas Re-injection Act that seek to manage the problem of gas flaring in the oil and gas industry, a visit to the sites of these industries will show how these regulation and laws are observed in their breach. Gas is flared all year long without any form of control from the enforcement authorities. This flies in the face of the provisions of the Act, not to talk of the proven environmentally deleterious effects of gas flaring.

Also, it is puzzling that the Act and all its amendments provide for permits to be applied for and issued to the companies that are responsible for the flaring of gas in the country. Such permits for the flaring of gas should not be issued in the first place. Rather, a well mapped-out plan for the harnessing of the excess gas generated from oil-mining and refining activities should be demanded from the companies and made a prerequisite for the issuance of operating licenses in the country. This seems to be one of the goals of the Gas Flaring (Prohibition and Punishment) Bill, 2009. Unfortunately, the bill has not been passed to date.

3.6 Harmful Wastes (Special Criminal Provision, etc) Act[72]

This Act was enacted in 1988, in the wake of the dumping of hazardous waste in Koko village in Delta state. In 1987, an Italian businessman based in Nigeria and acting on behalf of an Italian waste disposal company, shipped to the Port of Koko, Four Thousand (4,000) tons of industrial and nuclear waste over an eighteen month period[73]. When this became known to the entire world, it was elaborately condemned and the Nigerian government responded immediately by enacting this legislation following year. The aim was to prevent such occurrences in the future and to generally protect the Nigerian environment from the harmful effects of wastes and effluents dumping, with the ultimate goal of sustainable development of the country. The Act expressly prohibits the carrying, depositing and dumping of harmful waste on any land or

[72] Cap H1 LFN 2004

[73] Koko is a coastal community located in Delta state, Nigeria. See Atsegbua, L. et al. *op cit*, 49.

territorial waters of Nigeria.[74] Accordingly, the Act makes it a crime punishable upon conviction, with life imprisonment,[75] for any person to do certain acts without lawful authority[76].

To demonstrate the seriousness of the Act, an attempt to commit any of the crimes in question, attracts life imprisonment on conviction.[77] Also, diplomats are not exempted from liability under the Act. It provides that the immunity from prosecution conferred on certain persons by the Diplomatic Immunities and Privileges Act[78], shall not extend to any crime committed under the Harmful Waste (Special Criminal Provisions, etc) Act.[79]

Notwithstanding the existence of this law, it was reported that twenty four years after the first ever toxic waste dump in Koko, Delta State, another consignment of the deadly cargo has been deposited in Ellu, in Isoko North Local Government Area of Delta State,[80] with Agip, (a multinational oil company, which has its offices in nearby Kwale, Delta State), as the alleged culprits.

However, in spite of the impressively harsh tone of the Act, the provision of Section 6 of the Act deserves a second look. It states that "... any person that carries, transports, imports or sells toxic wastes, *without lawful authority*, shall be guilty of a crime. The phrase "without lawful authority", implies the possibility of importing or carrying

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[74] Preamble to the Act

[75] Section 6

[76] Punishment is to be meted to anyone who:

a) Carries, deposits, dumps or causes to be carried. Deposited or dumped, or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways; or

b) Transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or

c) Imports or causes to be imported or negotiates for the purpose of transporting any harmful waste; or

d) Sells, offers for sale, buys or otherwise deals in any harmful waste.

[77] Section 8(1)

[78] Cap D9 LFN 2004

[79] Section 9.

[80] Oghenerhaboke, A. March 2011. *Another Toxic Waste Saga.* TheNewswatch. Retrieved on April 10, 2012 from http://www.newswatchngr.com/index.php?option=com_content&task=view&id=2894&Itemid=4

harmful waste into the country if the so-called lawful authority gives such authority or endorses same. The question that arises is: under what circumstances or conditions will such lawful authority grant or deny permission for the introduction of these harmful wastes into the shores of the country? The Act seems to be silent on this. The importation, carrying, selling, or transportation of toxic wastes should not be allowed under any circumstance. The implications of allowing such harmful wastes into the shores of this country are far-reaching. It is suggested that this phrase be expunged from section 6 of the Act and the transportation, importation, carrying, depositing or selling of harmful wastes, *simpli citer*, be made a strict liability offences.

3.7 Oil in Navigable Waters Act[81]

TheOil in Navigable Waters Act was enacted for the purpose of implementing the terms of the International Conventions for the Prevention of Pollution of the Sea by Oil (1954 to 1962) and it also provides for such prevention in the navigable waters of Nigeria[82]. The Act became operative on April 22 1968 and it contains 21 sections, with the primary aim of reducing the incidence of pollution of the world's high seas generally and of the Nigerian waters in particular.

In keeping with its purpose, section 1 of the Act makes it an offence to discharge oil in prohibited sea areas from any ship. This section covers the definition of oil to include crude oil, fuel or lubrication oil and heavy diesel oil, including any other description of oil which may be prescribed under this section, or by order made by the Minister, having regard to the provisions of any subsequent Convention in so far as it relates to the prevention of pollution of the sea by oil, or having regard to the persistent character of oil of that description and the likelihood that it would cause pollution if discharged from a ship into a prohibited sea area. The prohibited sea areas are enumerated in the Schedule to the Act and it includes all sea areas within 50 miles from land and outside the territorial water of Nigeria.

Section 3 stipulates the persons who shall be guilty of an offence for prohibited discharges, and they include the owner or master of a vessel, if he discharge is from

[81] Cap 06 LFN 2004

[82] Etikrerntise, G. (1985) cited in Akintayo, J.O.A. and Akinbola B.R. 2006. Legal and Regulatory Reforms to enhance the Nigeria Environment in *Sustainable Environmental Management in Nigeria*. M.F.A Ivbijaro, F. Akintola, R.U. Okechukwu. Eds. Ibadan: College Press & Publishers Ltd. 390-391.

such a vessel; the occupier, if the discharge is from a place on land; and the person in charge of the apparatus, if the discharge is from an apparatus on a vessel.

Section 5 of the Act provides that for the purpose of preventing or reducing discharges of oil and mixtures containing oil into the sea, the Minister may make regulations requiring Nigerian ships to be fitted with such equipment, and to comply with such other requirements, as may be prescribed by the Minister. It is assumed that the purpose of this provision is to make sure that all vessels are equipped to deal with cases of spill, discharges and leakages of oil from such vessels. Special defenses to Sections 1 and 3 of the Act are provided in Section 4[83]. Section 15 grants the Minister discretionary powers to exempt any vessels or class of vessels from any of the provisions of the Act. However, section 16 specifically exempts vessels of the Nigerian Navy and Government ships employed by the Nigerian Navy from the general effects of the Act.

Generally, the idea behind the Act is lofty and most of the provisions are commendable, such as the provisions of Section 6 which gives wide discretion to the courts that convict persons guilty of prohibited discharges, to stipulates such fines as it deems fit depending on the circumstances of the case, but such fine must not be less than Ten Thousand Naira. Similarly, the provision for special defenses under the Act is reasonable because due to the human factors in the operations of vessels, there might be situations or circumstances that require certain items, which may include oil, to be discharged from such vessels for the general safety of the vessel, and to prevent loss of life; although, such circumstances must be proved.

However, the Minister's power and the powers of the Council of Ministers (now the Federal Executive Council) to grant exceptions are rather too wide. For example, section 1 (3) provides that the Minister may, by regulations made under this subsection, make exceptions from the operation of subsection (1) of this section, either absolutely or subject to any prescribed conditions, and either generally or as respects particular classes of ships, or in relation to particular descriptions of oil or mixtures in prescribed

[83]These defenses include discharge of oil for the purpose of securing the safety of the vessel, for preventing damage to it, or for saving life. However, persons found guilty of offences under Sections 1, 3 and 5 of the Act shall be liable to pay a fine exceeding N2,000 (two thousand Naira).

circumstances, or in relation to particular areas of the sea. This exception grants to the Minister, powers that are too wide and has the potential to be abused depending on the idiosyncrasies of such a Minister. The same goes for the provisions of Section 15 which provides that the Minister may exempt any vessels or classes of vessels from any of the provisions of this Act or of any regulations made there under, either absolutely or subject to such conditions *as s/he thinks fit* (emphasis added).

The above defenses and wide powers in the hands of the Minister and other authorities to grant exemptions, coupled with the overall inadequate enforcement, are some of the factors that impinge on the effectiveness of some of the legislations that seek to protect the environment.

3.8 Oil Pipelines Act[84]

The Oil Pipelines Act and its Regulations guide the flow and transmission of oil through pipelines in Nigeria. The following sections are pertinent;

- Section 11 (5)creates a civil liability on the person who owns or is in charge of an oil pipeline. He would be liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.
- Section 17 (4)establishes that grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution.

Under the Regulations to the Oil Pipeline Act, Section 9 (1) (b) of the Regulationsestablishes the requirement of environmental emergency plans, while Section 26makes punishable any contravention with a fine of N500,000 and/or an imprisonment term of six months.

3.9 Petroleum Act[85]

The Petroleum Act and its Regulations remain the primary legislation on oil and gas activities in Nigeria. It promotes public safety and environmental protection. Section 9(1)(b) provides authority to make regulations on operations for the prevention of air and water pollution.

[84]Cap 07, LFN 2004
[85] Cap 10 LFN 2004

3.10.1 Regulations under the Petroleum Act

PetroleumDrilling and Production Regulations: Section 17(1) (b)of the Regulationplaces restrictions on licensees from using land within fifty yards of any building, dam, reservoir, public road; Section 23 and 27prohibit, without lawful permission, the cut down of trees in forest reserves, while Section 25establishes that reasonable measures be taken to prevent water pollution and to end it, if it occurs.

Petroleum Refining Regulations: Section 43 (3)requires the Manager of a refinery to take measures to prevent and control pollution of the environment. Section 45makes any contravention punishable with a fine of N100 or an imprisonment term of six months.

3.10.2 Petroleum Products and Distribution Act[86]

Under this Act, the offence of sabotage which could result in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years. Compared to the inadequacies in the laws earlier examined, the penalty section of the Petroleum Products and Distribution Act is laudable. The offence of Sabotage that results in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding two years. This kind of measure should be sufficient to discourage potential violators from contravening the provisions of the Act.

4.0 Enforcement

Enforcement is a critical factor in the effective realization of the goals of any law, however well meaning it may be. Generally, lack of proper enforcement is a problem that is identifiable with many of the laws that are applicable to the oil and gas sector of Nigeria. According to Salu:

> *It can be seen from the laws... that even though most of these laws exist in our statute books, they do not adequately protect the environment. Some of these laws are archaic, especially the penalty sections which makes a mockery of the law itself... The greatest obstacle however to the problem of protecting the environment through our laws, is that of enforcement. A lot of things go on and nobody raises an eyebrow. We don't need new environmental laws in*

[86] Cap P12 LFN 2004

this country. All we need is to tighten up the existing laws and ensure their strict compliance and enforcement[87].

Enforcement is a major problem in environmental protection laws in Nigeria and it will not be farfetched to assert that Nigeria has adequate legislations on environmental protection, but the gap or missing link between the laws and the realization of their clearly set out goals, is non or inadequate enforcement. More vigorous enforcement of existing environmental laws will bring standardization to the Oil and Gas aspects of the environment through prevention, precaution and punishment of defaulters who use the environment, whether individuals or corporate bodies. It is recommended that the foregoing laws should be accorded more stringent enforcement to translate them from paper tigers to biting ones.

Therefore, Nigerian environmental law enforcement agencies have to increase their effectiveness to reverse the trend of environmental laws being observed in their breach because contraveners believe that such violations might not be detected, and even if they are, chances are high that the contraventions will either be ignored, or minimal punishment will be applied. It is submitted that no matter how much reform is made to the laws, if the enforcement agencies are not adequately effective, the laws themselves will be rendered otiose due to lack of enforcement.

5.0 Conclusion and Recommendations

This article has discussed the environmental laws that are relevant for the control of oil pollution in Nigeria and their attendant enforcement issues. Inadequacy of penalties and sanctions prescribed in cases of violations, lack of effectiveness of Nigerian environmental law enforcement, and the need for law reform are some of the issues discussed.

It recommends that the environmental laws in Nigeria should undergo reforms to keep them adequate for the principle of sustainable development to become a reality. The laws need to be brought in line with international standards and the realities of the socio-economic milieu. More stringent sanctions and penalties are needed to achieve

[87]Salu, A.O. 1998. "Can Laws Protect the Environment in Nigeria?" *Modern Practice Journal of Finance and Investment.* 8

deterrence. It is submitted that the Law Reform Commission[88] has an important role to play in this regard.

Also, Nigerian environmental law enforcement agencies have to increase their effectiveness to reverse the trend of environmental laws being observed in their breach. Law reform without proper, adequate and effective enforcement will render the laws otiose.

Furthermore, in view of the transboundary nature of the environment and to take advantage of the developments in technology, it is recommended that space technology, the exploitation of the North and South poles, are areas that Nigeria needs to explore for the potentials they offer in tackling the problems of global warming and the rising sea level, the dumping of nuclear materials in space and acid rain (might appear remote, yet capable of doing grievous harm to mankind) and Nigeria.

Furthermore, Nigeria should not only domesticate international laws for pollution control, but apply them strictly. The country must also through its environmental authorities continuously seek ways of developing bilateral and multi-lateral co-operation with other nations, with a view to updating its implementation strategies for the use of the law facilitating suitable development in environmental policies.

[88] As provided for in the Nigerian Law Reform Commission Act Cap N118 LFN 2004.