



OIL AND GAS POLLUTION IN NIGERIA: AN ANALYSIS

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Abstract

The importance of Oil and Gas in Nigeria and globally cannot be over emphasized. In Nigeria, Oil and Gas is of great economic importance, as it's the main stay of Nigerian economy. The multination oil co-operations in Nigeria, particularly in the Niger Delta part of the country are actively involved in several prospecting exploration and exploitation activities on oil and gas, which have led to astronomical increase in environmental pollution, with dire or deleterious consequences to human health and ecosystem. Apart from oil thefts, there are acts of sabotage, pipeline ruptures and vandalism, etc., resulting in oil spillages and consequently environmental pollution and degradation. However, in order to tackle the myriads of issues or menace of environmental pollution, the Federal Government of Nigeria has enacted several laws, such as the NESREA Act of 2007, the Criminal code Act, etc. There are also multifaceted international laws on environmental pollution to which Nigeria is a party. Unfortunately, despite these laws on oil and gas pollution, environmental pollution by oil and gas seems to be endless in Nigeria. With the view to ascertaining the reasons behind the continues pollution of the environment through oil and gas activities, irrespective of the laws, and proffering solution thereto, this research was undertaken. It was found inter-alia that laws on environmental protection no matter the deficiencies in some of them do not constitute the major problem, but lack of will in enforcement and commitments by the Government. Upon conclusion, it was recommended inter alia that section 6 (6) (c) of the Constitution of Nigeria 1999 be expunged; that laws on Oil and Gas pollution in Nigeria should move enforced and certain provisions therein be amended; and that Nigeria should go beyond legal tools and resort to technological approach in addressing environmental pollution challenges in Nigeria.

Keywords: Oil, Gas, Pollution, Environment, Causes, Laws

1.0 Introduction

Oil amongst the myriads of natural resources endowed in the planet earth constitutes the mainstay of the economics of several nations of the world, including Nigeria. Oil is found not only in the offshore but also, in the onshore, with oil companies deeply involved in its prospecting, exploratory and production activities. These activities are richly dominant in the Niger Delta region of Nigeria, where there has been unimaginable magnitude of environmental pollution and degradation resulting from the said activities, a scenario that has left the indigenous people and communities of the Niger Delta in a sorry state, as their environment is no longer safe for a healthy living and economic sustenance. These activities also include the after math or consequences of carriage of oil either by land or by sea. Note that, other human activities such as pipeline vandalisation and oil thefts have resulted in astronomical increase in environmental oil pollution.



Furthermore, the Nigerian National Petroleum Corporation, (NNPC) founded in 1977¹ is the major partner in the upstream joint ventures with the ‘seven sisters’ or major multinational petroleum exploration and production companies. These are the largest and oldest in Nigeria-Shell Petroleum Development Company – SPDC or better known as ‘shell’ while others are: Mobile Producing Nigeria Unlimited, Chevron Nigeria, ELF Petroleum Nigeria and the Nigeria Agip Oil Company (NAOC) & Affiliate, Agip Energy and Natural Resources (AENR)

Gas production in Nigeria, has also become a source of worry, as it flares into the environment of the Niger Delta with harmful consequences on the environment and the people of Niger Delta. Most of Nigeria current natural Gas production of about Hundred Million (100,000,000.00) standard cubic feet/day occurs as associated Gas, ie produced along with crude Oil. Since the 1960s², and until recently, all of this associated natural gas was flared. Hence, laws and regulations are being made in response to the activities of these oil corporations with the view to solving the challenges posed by these human activities. Unfortunately, there seems to be no end to environmental pollution resulting from Oil and Gas activities in Nigeria, particularly in the Niger Delta part of the country, despite the avalanche of laws legislated to stem the tide. Consequently, this paper will analyse the numerous national and legislations international laws on Oil and Gas related environmental pollution, with the view aim to discovering the reasons behind the continuous pollution and degradation of the environment despite the existence of laws, and proffering solutions to the challenges.

2.0 Conceptual Clarification

2.1 What is Environment?

The term environment to the layman may just be defined loosely as the location or place where he is at any given point in time³. It consists of the atmosphere, hydrosphere, lithosphere and biosphere. Its chief components are soil, water, air, organism and solar energy. It provides mankind with the resources for living a comfortable life⁴.

The chambers concise dictionary⁵, define environment as surroundings, external conditions influencing development or growth of people, animals or plants; living or working conditions.

Environment refers to the components of the earth and includes; lands, water and air, including all layers of the atmosphere; all organic and inorganic matter and living organism; the social, economic,

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¹ The Nigeria Crude Oil & Gas Industry Nigeria. <<https://businessinfo.com>> accessed 22/2/2022.

² The Nigeria Crude Oil and Gas Industry (n1)

³ I Ehiguelua, *Environmental Protection Law* (New Pages Law Publishing Co, 2007) 1.

⁴ Didactic *Encyclopedia*, ‘what is the meaning of Environment’? Concept definition of environment (2013) <<https://lledukalife.blog-spot.com/2013/01/>> definition of environment. htnv?m=1> accessed 7th March, 2022

⁵ C Schwaiz et al, (ed), *Chambers Concise Dictionary*, (Chambers Harraps Publishers Ltd, 1999) 344

recreational, cultural spiritual, aesthetic conditions and factors that influence the life of human and communities; and a part or combination of these things referred to above and the interrelationship between two or more of them⁶.

In the words of John G. Rau and David C Woosten, environment may be defined as. The whole complex of physical, social, cultural, economic and aesthetic factors which affect individuals and communities and ultimately determine their form, character, relationship and survival⁷. According to them, there are four dimensions highlighted by the above definition. The first dimension is the physical environment, which includes land and climate, vegetation, wildlife, the surrounding land uses and the physical character of an area, infrastructure/public services, air, noise and water pollution. The second dimension, is the social environment, and this includes community facilities and services and the character of community facilities and services. The third dimension is the aesthetic environment comprising of scenic area, vistas, and views, including architectural character of buildings. The fourth dimension is the economic environment, which includes issues relating to employment, land ownership patterns and land values⁸. On the other hand, NESREA Act⁹ 2007 defines environment as including water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.¹⁰ The inclusion of man in the definition of environment by the NESREA Act is key because human beings derive their existence from the environment like the air, land, water etc., a definition we consider articulating and salutary in so far as the four basic components of the environment are duly represented therein.

2.2 What is Pollution?

NESREA Act¹¹ defines pollution as man-made or man-aided alteration or chemical, physical or biological quality of the environment beyond acceptable limits and ‘pollutant’ shall be construed accordingly.

Black’s Law Dictionary¹² defines the term ‘pollutions’ as to corrupt or defile, especially to contaminate the soil, air, or water with noxious substances. Pollution therefore could be inferred from the term pollute as defined by the Black’s Law Dictionary, as the corruption, defilement and contamination of the environment with noxious substances.

2.3 What is Oil?

According to the Dictionary of Geology¹³, oil is simply described as Petroleum oil. The term ‘Oil’ in geological term means Petroleum oil and not any other form of oil. Petroleum is described as an organic

⁶ MS Aibor and JO Olorunda, A technical Handbook of Environmental Health in the 21st Century (His Mercy Publishers) 357

⁷ J. G Rau and DC Woosten Environmental Impact Analysis Handbook 1980, in CO Ajuzie, our common environment: Understanding the Environment Law and Policy (University of Lagos Press, 2012) 9

⁸ CO AJuzie (n7)

⁹ National environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

¹⁰ *Ibid*, s 39

¹¹ NESREA Act 2007 Cap NI64, LFN 2007 (na)

¹² BA Garner, *Black’s Law Dictionary* (8thedn, West a Thomas Business, 2004) 1197

¹³ A Kurniawan, *Dictionary of Geology* (Academic Publisher, 2006) 24



material which occurs naturally in green to black coloured mixtures of hydrocarbon oil found beneath the earth crust and which could be obtained by boring into the earth crust¹⁴.

Yinka Omorogbe¹⁵ defined petroleum as compound composed of hydrogen and carbon, and commonly called hydrocarbon. It exists in gaseous, liquid or solid form. When found as solid, it is coal, shale, tar sands or bitumen. In liquid, it is referred to as crude oil. Hydrocarbons in gaseous form are known as natural gas. The commonest of them is crude oil.

2.4 What is Gas?

Gas has been defined as a combustible fluid from fuel or lighting¹⁶. It is also defined as ‘a mixture of the low molecular weight paraffin series of hydrocarbons, methane, propane, and butane, with small amount of higher hydrocarbons that often contain small or large amount of nitrogen, carbon dioxide and hydrogen sulphide, and sometimes small proportions of helium¹⁷.

3.0 The Evolution of Oil Exploration Nigeria

The legal framework for oil exploration in Nigeria was laid down by the mineral oil ordinance of 1914¹⁸, which vested the right to search for, win and work minerals oils exclusively in British subjects or companies controlled by them. But this is a paradox as in 1980, the first company ever to undertake oil exploration in Nigeria was the German Bitumen Company, whose activities were truncated by the First World War¹⁹. However, in 1937 a consortium of Royal Dutch and shell petroleum, known as the shell D’ Arcy Company, emerged and began oil exploration from a base in Owerri, the present Imo State. Their operations were similarly interrupted by the Second World War, but resumed in 1946. This time they were joined by British Petroleum (the British then state-owned oil company), thus establishing what was generally known as shell-BP²⁰. The concession granted to shell-BP covered the entire mainland of Nigeria, which comprised 357,000 square miles²¹. It drilled its first well in 1951 but came out dry. However, in 1956 the company struck oil at Oloibiri, in the present Bayelsa State, and by 1958, when the first shipment of 5,100 barrels of crude oil was made to Europe, Nigeria had joined the league of world oil producers²².

Geological and geophysical investigations showed that the most favourable oil-yielding structures lay in the Niger Delta in the Southern part of Nigeria²³. Unaffected by competition until 1962, shell was

¹⁴ MPM Walker (ed) Chambers Dictionary of Science and Technology (Chambers Harraps Publishers Ltd., 2002) 806

¹⁵ Y Omorogbe, *Oil and Gas in Nigeria* (Malthouse Press Ltd, 2001) 143

¹⁶ MPM Walker (ed) (n14) 49

¹⁷ Amaka, G. Eze and TC Eze, A Survey of the Legal Framework for the Control of Oil and Gas Pollution from some Selected Countries (2014) JLPG <<http://www.iiste.org>> access 2nd March 2022

¹⁸ Moo then found in Cap. 120 LFN 1958

¹⁹ Y Omorogbe, the Legal Framework for the Production of Petroleum in Nigeria (1987) 15 *Journal of Energy and Natural Resources Law* 273

²⁰ P D Okonmah, Right to a Clean Environment: The Case for the People of Oil-Producing Communities in the Nigeria Delta (1997) Vol. 41, No. 1 *Journal of African Law* 44

²¹ Okonmah (n20)

²² Okonmah (n20)

²³ Okonmah (n20)



able to explore and select at its leisure 15,000 square miles in the Niger Delta²⁴, which it converted into oil mining leases. According to Schatzl²⁵ in his book *Petroleum in Nigeria 1969* quoted in PD Okonmah.

The opportunity of exercising an automaton strategy throughout two decades in the realm of concession politics brought about the result that this company today possess, the optimal concession site in the country. Its monopolistic position in the past with respect to licence selection affords Shell-BP both now and in the future a position of dominance in the development of the Nigeria mineral oil industry.

It should be noted that, although the sole concessionary rights granted by the 1914 mineral ordinance, were repealed in 1958²⁶, Shell produces over half Nigeria's oil exports. The break in Shell's monopoly by the 1958 Act brought other international oil companies (IOCs) into the picture and engendered a healthy competition among them, as well as ensuring that the country was not over-dependent on one company²⁷. Gulf, Mobil, Texaco, Sunray-Tenneco, Occidental, Agip, Satrap, (which later became ELF), all sought and obtained exploration licenses. In 1964, Gulf Oil was the first to make off-shore discovery in Okan, in the present Delta State²⁸.

Environmental Pollution, according to a 1965 definition by the science Advisory Committee of the United States means: The unfavourable alteration of our surroundings, wholly or largely as a by-product of man's actions, through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical constituents and abundances of organisms. These changes may effect man directly or through his supplies of water and of agricultural and other biological products, his physical objects or possession, or his opportunities for recreation and appreciation of nature²⁹.

Oil and Gas Pollution is specie of environmental pollution resulting from numerous oil and gas prospecting and production activities of the oil companies earlier mentioned in this paper. Unarguably, oil is the world's economy being the principal energy source, for power generation, automobile energy, aviation propeller and industrial live source, etc. However, the generation of waste is almost unavoidable in the production of oil³⁰. Petroleum operation which consists of upstream and downstream activities produce a lot of wastes that diversely effect the environment. This is seen by the grounding of the ocean tanker, the Torrey Canyon, off the coast of England on 18th March 1967, the Santa Babara spill incident in January 1969, the Exxon Valdez disaster in Alaska, the Burning of Kuwait oil wells during the gulf war and the most recent Deep water Horizon oil rig explosion of 20th April, 2010, in the United States of America, which spill lasted for 87 days spilling an estimated 210 Million gallons of oil into the gulf of Mexico³¹, etc.

²⁴ Okonmah (n20)

²⁵ Okonmah (n20)

²⁶ Mineral Oils (Amendment) Act, 1958, s.2

²⁷ <<https://about.jstor.org/terms>> accessed 3rd March, 2022

²⁸ (A26)

²⁹ Quoted in L. Hodges, *Environmental Pollution* (New York 1973) 1

³⁰ A Omaka, *Municipal and International Environment Law* (LUC Publishers, 2012) 291

³¹ Omaka (n30) 291-292

Here in Nigeria, there are high incidence of oil spills, for example, DPR had estimated that 1.89 Million barrels of petroleum were spilled into the Niger Delta between 1976 and 1996 out of a total of 2.4 Million barrels spilled in 4,834 incidents (approximately Two Hundred and Twenty Thousand (220) Cubic meters). Again, by the UNDP report, there have been a total of 6,817 oil spills between 1976 and 2001, which account for loss of three Million barrels of oil, of which more than 70% was recovered. 69% of these spills occurred off-shore, a greater was in swamps and 6% on land³². On the 1st day of May 2010, an Exxon Mobil Pipeline ruptured in Akwa Ibom State, spilling more than a million gallons into the Delta for about seven (7) days before the leak stopped. Consequently, there was demonstration by the Local people against the oil company where the community leaders demanded for \$One Billion (1,000,000,000.00) as compensation for the illnesses and loss of livelihood suffered³³.

In-fact, oil spills in Nigeria have become a recurrent decimal and very disturbing, a scenario that propelled a spokesman for the National Oil spill detection and Response Agency (NOSDRA) to say that between 1976 and 1996, more than 2.4m barrels contaminated the environment³⁴. Today in Nigeria, there are still high incidences of oil spills across the Niger Delta part of the country.

4.0 Effect of Oil and Gas Pollution

There are myriads of dire consequences of oil pollution to man and his environment according to Uchegbu:

Oil pollution has a deleterious effect on human beings and marine life. It constitutes a hazard to organisms, as the oil producing states are mostly reverie, oil spills contaminate their water, which is their main source of survival, and makes unfertile the land they have³⁵.

The effect of pollution on the environment is that once the environment is polluted, the quality of the environment air, land and water changes from its original state. The health implications of pollution in society are very obvious, because environmental pollution destroys that physical, mental and social well being of man. Lung diseases are contracted from inhaled dust; skin disease from allergic material and toxic wastes released into the atmosphere. Apart from the direct effect on man, environmental pollution has several direct consequences on humanity, by destroying ecological balances³⁶, for example, in minimata Japan, 1953-1960, people were eating fish polluted by mercury which resulted in 120 dead and numerous injuries. The Gulf of Maxico Oil spill, April, 2010 is the biggest environmental disaster in America. It occurred in the Gulf of Maxico on an offshore facility owned by British Petroleum. About 4.9 Million barrels oil was spilled for about three months, British Petroleum struggled to cap the underground drilling facility. This spill cost over two billion dollars to clean up and the environmental damage may not be easily quantified³⁷.

³² Environmental issues in the Niger Delta <<http://www.en.m.wikipedia.org>>accessed 11th Janaury,2018

³³ Nigeria Agony Dwarfs the Gulf Oil spill. The US and Europe ignore it <<https://www.theguardian.com/world/2010/may/30/01/-spills-nigeria-niger-delta-shell>> accessed 11thJanuary, 2018

³⁴ (n33)

³⁵ A Uchegbu, Legal Frame Work for Oil Spill and Clean Up Liability and Compensation in Nigeria in the Petroleum Industry and the Nigeria Environmental Proceeding of 1983, International Seminar, NNPC, Lagos (1984) 33

³⁶ L Atsegbua et al, *Environmental Law in Nigeria: Theory and Practice* (New edn., Ambik Press, 2009) 119

³⁷ Ategbua et al (n36) 119-120



The environmental consequences of oil pollution cannot be over emphasized. Oil has been identified as the single largest Pollutant of water on Nigeria. One study has noted as follows:

When used motor oil or poured on the ground, it can seep down to the ground water and contaminate drinking water supplies. A single squirt of oil can pollute 250,000 gallons of drinking water. Also, pouring oil into the sewer or on the street where it will eventually wash into a sewer is like pouring it directly into a stream or river, and just one quart of used motor oil can produce a poisonous slick an acre in diameter³⁸.

The threat which oil poses to the environment has been the subject of comment by many commentators both between political and academic circles Professor Ambrose Alli, a former governor of the defunct Bendel State once noted.

As a result of oil losses vast tracts of agricultural land have been laid waste, thus becoming unproductive, surface water and river courses are invariably contaminated and polluted, rendering the water undrinkable and the aquatic life is destroyed. The result is great hardship for the inhabitants who become impoverished and deprived. These unfortunate citizens are therefore compelled to migrate to other towns and villages in search of decent life³⁹.

Also, the burning of oil and gas flaring may produce sulphur (iv) oxide, which this is the primary source of acid rain and acidification of the environment which occurs when sulphur dioxide and nitrogen oxide emissions meet and react with other environmental agents in the sky and air and precipitate as rain, snow and moist which in turn affect the soil, causing damage to vegetation and buildings⁴⁰. It can also cause the depletion of the ozone layer. The depletion of the ozone layer results from the increase of Chloro-fluro carbons (CFC) into the atmosphere with the consequent result of increased radiation from an unusual penetration of the sun through atmosphere to the earth crust. This can result into Climate change which is the major environmental challenge the world is being faced with today.

From the data from the Nigeria Oil spill monitor (10) the Nigerian Demographic and Health Survey (DHS) 2013 (11) it was gathered that nearby oil spills that occur before conception increase neonatal mortality by 38.3 death per 1,000 live births, which corresponds to an increase of around 100% on the sample mean. Hence exposure to hydrocarbons can pose risks to fetal development. The effects of oil spills on neonatal mortality persist for several years after the occurrence of an oil spill⁴¹.

Furthermore, the UNEP's study of Ogoni land is a good example. Ogoni land is an area in rivers State, that suffered massive environmental damage in the early years of oil exploitation before the growth of

³⁸ Environmental Network Vol.1 No.2, (1994)

³⁹ Ehighelua (n3) 36 – 37

⁴⁰ Ehihgelua (n3) 38

⁴¹ A Bruederic and R Hodler, effect of oil spills on infant Mortality in Nigeria
<www.pnas.org/cgi/doi/10.1073/pnas.18183.03116> accessed 2nd March, 2022



artisanal refining. The UNEP has reported significant health effect leading to a low life expectancy of 50 years⁴². In-fact, oil spill in the Niger Delta, particularly in Ogoni has escalated into political quagmire in which the Nigerian government, shell Petroleum and Ogoni are pitched against each other.⁴³

Also, oil pollution gives rise to black soot. Black soot is currently all over the environment of Rivers State as a result of the activities of illegal oil refiners in the state. Black soot has been associated with upper respiratory infections such as asthma, pneumonia, coronary heart diseases, bronchitis, heart diseases and some other respiratory illnesses⁴⁴. The black soot has a severe level of toxicity that is capable of causing cancer, which may lead to premature death. Research has also shown that many premature deaths are directly related to soot in the environment⁴⁵. An Environmentalist has also posited that soot has been found to contain sulphur dioxide and nitrogen dioxide, which cause acid rain when combined with moisture⁴⁶. In-fact, the Agency France-Press (AFP) reports that Doctors in Port Harcourt said they are seeing the health effects of the soot already with an increase in consultations for breathing difficulties, including asthma, and that the settling of black soot on water bodies causes turbidity and also affects the health status of the water body⁴⁷. This can destroy aquatic lives.

Environmental degradation as a result oil spills has thrown people, especially the people of Niger-Delta into abject poverty. For people of Niger Delta, survival is a miracle.

The situation leads to loss of economically viable land due to oil spills. The socio-economic impacts of the situation include infrastructural decay, massive unemployment, youth restiveness, violent anti-social behaviours, high crime rate, like kidnapping, killing and armed robbery, inter-ethnic conflicts amongst others⁴⁸. Although a victim of oil spills may approach the court for compensation against the company that caused the spills, most times, compensation will never be enough if compared with long term effects of the degradation. For example, the case of *Otuku & Ors V. Shell BP*⁴⁹ it was alleged that large quantities of oil that escaped from the defendants well polluted the plaintiffs' drinking water, killed their fishes and marine life and desecrated their 'juju' shrines which is the only medium the villagers Communicate with their gods and ancestors. In the same vein, in *Anthony Alubin V. Shell BP*⁵⁰, the chemical from the defendant's pipelines escaped and destroyed fishes in the ponds and farmlands belonging to the plaintiff. In *Deeyor & Ors V. Shell-BP*⁵¹, the plaintiff recovered damages for the escape of oil wastes which damaged the plaintiff's drinking well and killed fishes in the fish pond.

⁴² UNEP Report 1972

⁴³ Okonmah (n20) 45

⁴⁴ I A Kalagbo, Exposure to Heavy Metals in Soot Samples and Cancer Assessment in Rivers Nigeria (2019) J H P <<https://www.mdpi.com>>accessed 12th February, 2022

⁴⁵ Nigerian National Health, National Strategy Health Development plan framework (2015) <<https://www.epa.gov>>accessed 12 February, 2022.

⁴⁶ NNH & NSHDPF (N44)

⁴⁷ Agency France Press, Health Effects of Soot in Nigeria <<https://guardian.ng/news-strange-black-soot>> accessed 3/08/2023

⁴⁸ I O Igwe, The Effects of Environmental Degradation on Humanity being a paper presented at the PhD class of Faculty of Law, Nnamdi Azikwe University, Awka on April 2015,P4

⁴⁹ (Unreported) Suit No BHC/83, a Bori High Court Judgment of 15/1/85

⁵⁰ (Unreported) Suit No UTTC/48/74, Ugheli High Court Judgment of 12/11/74

⁵¹ (Unreported) Suit No PHC/160/72, a Port Harcourt High Court Judgment of 16/4/72



Finally, it is unarguable that between 1976 and 1980, about 1,336,875 barrels of crude oil were reportedly spilled in 784 incidents⁵². At that time, Nigeria produced less than one Million barrels of oil per day. Commenting on the frequent oil spillage in Nigeria, a writer observed that pollution incidents in say the United States, which has been prospecting and exploring for oil for close to a century is noticeably less than in Nigeria whose active oil production history may be said to effectively have begun in the early 1960s⁵³. Although various reasons may be given for the high incidence of oil spills in Nigeria, the most obvious is that the standards adopted by the oil companies in their Nigerian operations are not among the highest in the industry. According to Ibidapo-Obe: 'Nigeria is about the only country where oil companies operate without making adequate provisions for anti-pollution and oil spillage measures'⁵⁴. In fact, studies have shown that equipment failure is responsible for over 92 percent of oil spill cases in Nigeria⁵⁵.

5.0 Environmental Laws Regulating the Oil and Gas Pollution in Nigeria

There are varieties of laws regulating the Oil and pollution in Nigeria.

5.1 The Constitution of Nigeria 1999, as amended 2011: The 1999 Constitution⁵⁶ of the Federal Republic of Nigeria made a direct provision on the environment. The Constitution requires the state to protect and improve the environmental quality of the nation and to exploit its natural resources for the good of the community, and to ensure healthy and sustainable development of the country's natural resources⁵⁷. In recognizing the need for improving and protecting the environment, the Constitution makes it an objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria⁵⁸. Section 12 provides that international treaties (including environmental treaties) ratified by the National Assembly be implemented as laws in Nigeria⁵⁹. Nigeria is a signatory to several international treaties whose provision are now parts of our laws.

Sections 33 and 34 of the Constitution which guarantee fundamental human rights to life and human dignity have been argued to be linked to the need for a healthy and safe environment, to give these right effect⁶⁰, as the right to a healthy environment is implicit in the right to life. Unfortunately, section 6(6)(C) of the same Constitution provides: 'The Judicial powers vested in accordance with the foregoing provisions of this Constitution, shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter 11 of this Constitution'⁶¹. The non-justifiable clause in section 6(6)(C) of the Nigerian Constitution is a complete, denial of the right of Nigerians to a safe and healthy environment despite the provision of Article 24 of African Charter on Human and Peoples' Right to the

⁵² A E Ogbuigwe, Compensation and Liability for Oil Pollution in Nigeria (1985) *Journal of Private & Property Law* 23

⁵³ Okonmah (n20)46

⁵⁴ Okonah (n20)

⁵⁵ Ogbuigwe (n52)

⁵⁶ Cap C23 LFN, 2004

⁵⁷ Cap C23 LFN, 2004 (n56) SS. 17 and 21

⁵⁸ Cap C23 LFN, 2004 (n56)S. 20

⁵⁹ Cap C23 LFN, 2004 (n56) Ss. 12

⁶⁰ Cap C23 LFN, 2004 (n56) Ss. 33 and 34

⁶¹ C O Ajuzie (n7)



effect that All peoples shall have the right to a general satisfactory environmental favourable to their development⁶². Nigeria is a signatory to this treaty, which has also been ratified and domesticated as part of our Corpus Juris (our Laws)⁶³. It is therefore our humble submission that Nigerian citizens who have been denied their rights to a healthy environment by the non justiciable provision of section 6(6)(C) can now rely on the provisions of the African Charter, to redress the infractions of their rights on environmental issues, in courts.

5.2 The Criminal Code⁶⁴

The criminal Code Act contains provisions for environmental protection and prevention of public health Hazards. S. 234(e) of the criminal code makes it an offence for any person to deliberately divert or obstruct the course of any navigable water so as to diminish its convenience for purpose of navigation. It is a misdemeanor and the offender is liable to imprisonment for two years:

S. 245 of the code provides as follows: “Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir or place so as to render it less fit for the purpose for which it is ordinarily used is guilty of a misdemeanor and is liable to imprisonment for Six months⁶⁵.”

5.3 Harmful waste (special Criminal Provisions) Act⁶⁶.

The harmful waste (Special Criminal Provisions) Act, is a fall out of the Koko incident of 1988, in the Delta State, Nigeria, where the Federal Government of Nigeria, in response to challenges posed by the toxic waste saga in Delta State enacted the above mentioned Act, to deal with hazardous and toxic wastes. Oil pollution constitutes hazardous and toxic wastes that are dire and deleterious to human environment and public health. Section 1 provides that, it is unlawful to purchase, sell offer for sale, import, transport, transit, deposit or store any harmful waste⁶⁷. The Act prohibits any person without lawful authority from carrying, dumping or depositing harmful waste in the air, land or waters of Nigeria and matters relating to harmful waste ⁶⁸and other related activities. A person commits an offence if he does the act, or omits to do the act for the purpose of enabling, aiding, counseling, procuring, abetting a person to committing the offence. Section 6 provides that offenders shall be sentenced to life imprisonment and also, will forfeit land or anything used to commit the offence. Section 7 provides punishment for any conniving, consenting or negligent offer where the offence is committed by a company. Section 12 on the other hand, provides that the offender would be liable to person who has suffered injury as a result of his offending act.

5.4 Petroleum Act⁶⁹ 1969

This Act and regulations made there under are the primary legislations against oil and gas pollution in Nigeria, It provides for public safety. The petroleum Act gives the minister in charge of petroleum

⁶² ACHPR 1981, Art 24, Note that the Charter on Human and Peoples’ rights (Ratification and Enforcement) Act, is now Cap A9 LFN 2004.

⁶³ CO Ajuzie (n7)

⁶⁴ Cap C 38 LFN, 2004

⁶⁵ Cap C38 LFN, 2004, (n64) S. 245

⁶⁶ Cap HI LFN, 2004

⁶⁷ Cap HI LFN, 2004 (n66) S.I

⁶⁸ Section 15 of the Act defines what constitutes ‘harmful waste’ within the meaning of the Act

⁶⁹ Cap 10 LFN, 2004

resources power to make regulations for the prevention of water courses⁷⁰ and the atmosphere. The said minister may also make regulations on the importation, handling, storage, loading, unloading, transport within a port, lending, transshipment of petroleum products and other flammable oils and liquids, defining dangerous petroleum and dangerous petroleum products, and prescribing conditions and restrictions to be imposed upon vessels arriving at a port after having carried petroleum, petroleum products dangerous petroleum or dangerous petroleum products and prescribing conditions and restrictions to be imposed upon vessel arriving at a port after having carried petroleum, Petroleum products⁷¹, etc.

5.5 Petroleum (Drilling and Production) Regulation (PDPR)⁷²

Under these regulations, the licensee or lessee is expected to adopt all practicable precautions, including the provision of up to date equipment to prevent the pollution of inland waters, rivers, water courses, territorial waters of Nigeria or the High seas by oil, mud or other fluid or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life, and where such a pollution has occurred, the licenced or lessee shall take prompt and adequate steps to control and if possible end the effect of the pollution⁷³. Regulation 40 seeks to prevent oil pollution, it specifically provides that all waste oil, brine and sludge from the operator should be carefully and neatly drained into receptacles constructed in compliance with safety regulation and shall dispose them in a manner approved by any other applicable regulations⁷⁴. The licensee or lessee shall inter-alia take steps practicable to prevent the escape of petroleum into any water well spring, stream, river, lake, reservoir, estuary or harbour⁷⁵

The above provisions are worded in very general terms so much so that its enforceability is ‘clearly dependent on the interpretation of terms such as practicable; up-to-date equipment, and prompt steps’ none of which is defined in the petroleum Act or Regulations. According to Omorogbe.

It should already be apparent that existing environmental laws are of negligible effect. One major reason is the imprecise wording of so many sections coupled with the use of phrases that lack legal definition...obviously there is the need for a clear comprehensive statute regulating oil pollution within the oil industry⁷⁶.

5.6 Oil in Navigable Water Act⁷⁷

This Act prohibits the discharge of oil from ships into the sea area and navigable water⁷⁸. The Act was actually enacted for the prevention of oil pollution in Nigeria. The oils covered by the Act include;

⁷⁰ Cap 10 LFN, 2004 (n69) S.9 (1) (e) (iii)(iv) and (vi)

⁷¹ Cap 10 LFN, 2004 (n69) S.9 (1) (iii) (iv) and (vi)

⁷² Cap 10 LFN, 2004 (n69) Petroleum (Drilling and Production) Regulation

⁷³ Cap 10 LFN, 2004 (n69) Reg.25

⁷⁴ Cap 10 LFN, 2004 (n69) Reg.40

⁷⁵ Cap 10 LFN, 2004 (n69) Reg.36 (d)

⁷⁶ Y Omorogbe, *The Growth of Environmental Law in Developing Countries: Problems and Prospects*, in L Atsegbua, et al (n15) 123

⁷⁷ Cap 06, LFN, 2004

⁷⁸ Cap 06, LFN, 2004 (n77) S. 1



crude oil, fuel oil, lubricating oil and heavy diesel oil. By S.I(2) (a) and (b) of the Act, sea areas' was defined to include all sea areas within 50miles from land and outside the waters of Nigeria⁷⁹. The Act created the first schedule to the Act and specifically extended the provisions of the Act to cover those areas mentioned in the schedule⁸⁰

Under the Act, it is an offence for any person to discharge oil or a mixture containing oil into water from any vessel or from any place on or any vessel⁸¹. This offence is committed when oil is discharged into the navigable waters of Nigeria which stands at 30 nautical miles⁸².

Broad as these provisions may seem, the law also creates defences to the offences created under the Act. Where a person is charged with an offence under the Act, it shall be a defence under S.4 of the Act to show that the oil or mixture of oil and water was discharged for the purpose of securing the safety of the vessel or cargo or of saving life, it is also a defence to show that the oil was contained in an effluent produced by any operation for the refining of oil or that it was not reasonably practicable to dispose of the effluent otherwise than by discharging into the waters⁸³

Under the Act, the Minister is given powers to make regulations regulating Nigerian ships to be fitted with equipment that prevent or reduce the discharge of oil and moistures containing oil into the sea. When a person is found guilty of an offence under the Act, he is liable to a fine of Two Thousand Naira (N2,000)⁸⁴, and record of occasions of oil discharges are necessary for the purpose of penalty⁸⁵. However, section 3(3) provides *inter-alia* an exception regarding the discharge of dangerous Petroleum only, as it authorizes the harbour authority to appoint a place within its jurisdiction where the ballast water of vessels in which a cargo of dangerous petroleum has been carried may be discharged into the waters of the harbour, at such times, and subject to such conditions as the authority may determine...⁸⁶ Hence, by this exception, the ballast water vessels in which dangerous petroleum had been carried (which might have a mixture of oil) can be discharged legally into the waters of the harbour. Under S.12 of the Act, any charge relating to contravention of the Act can only be initiated with the consent of the Attorney-General of the Federation. From the above, it is observed that the Act did not provide for the clean up or funding of such clean up in cases of spillages, whether by discharge, escape or leakages either in the form of associated gas or non-associated gas.

5.7 National Oil Spill Detection and Response Agency (Establishment) Act 2006 NOSDRA⁸⁷

The National Oil Spill Detection and Response Agency Act (NOSDRA) provides for the establishment of the National Oil Spill Detection and Response to all oil spillages in Nigeria⁸⁸.

⁷⁹ Cap 06, LFN, 2004 (n77) S. I (2) (a) and (b)

⁸⁰ Cap 06, LFN, 2004 (n77) S. I (2)

⁸¹ Cap 06, LFN, 2004 (n77) Preamble to the Act

⁸² Ehiguelua (n3) 40

⁸³ Ehiguelua (n3)

⁸⁴ Cap 06, LFN, 2004 (n76)S.6

⁸⁵ Cap 06, LFN, 2004 (n76)S.7

⁸⁶ Petroleum (Refining/Regulation) L. N45 of 174

⁸⁷ NOSDRA 2006

⁸⁸ NOSDRA 2006 (n87)S.I (1)



The National Oil Spill Contingency plan (NOSCP) was established in accordance with the international convention on oil pollution preparedness, response and co-operation (OPRC) 1990⁸⁹, which Nigeria has ratified⁹⁰. The objectives of NOSDRA was to Co-ordinate and implement the National Oil spill contingency plan for Nigeria; identify high risk area for protection and cleanup; establish mechanism to protect threatened environment, and cleanup; using the available facilities of co-operation with the international Maritime Organization and other national, regional and international organizations in the promotion and enhancement of research results on oil pollution, etc⁹¹.

From the above, therefore, the main objective of NOSDRA was to address the environmental degradation in the oil producing areas, co-ordinate oil spill management and to ensure the implementation of the National Oil Spill contingency plan (NOSCP) in Nigeria⁹²

Furthermore, the agency will ensure that polluters reports oil spill incidents within 24 hours and that impacted sites are cleaned up to all practicable extent⁹³. Failure to report any oil spill incident attracts a fine of N500,000 for each day⁹⁴.

Although the Agency is funded by the government, however, it can obtain loan and aids from other organizations⁹⁵, unfortunately, as good as the processions of the Act may appear, the Act did not define what constitutes practicable extent under section 6, a scenario that has made the remediation level required from the IOCs impossible to be determined. Hence, frequent oil spill incidents.

Environmental Guidelines and Standards for the Petroleum Industry (ECAPSIN)

These are guidelines and standards set out to monitor programmes and schedules to ensure environmental quality control for the oil and gas industry. In 1991, the Department of Petroleum Resources (DPR) which is the department responsible for regulating the Nigerian oil industry expanded its requirement⁹⁶ by promulgating the environmental guidelines and standards for the petroleum industry,⁹⁷ which was revised and updated again in 2002⁹⁸. EGAPSIN confirms that oil and gas operations are governed by the Nigeria petroleum Act and subsequent federal legislations (NG-EGAPSIN 200)⁹⁹. It also provides inter alia that clean up shall commence within 24 hours of occurrence of spill and that it shall not contaminate or cause additional damages to impacted environment¹⁰⁰ while applying internationally recognized standards¹⁰¹.

⁸⁹ Adopted 30 November 1990; entry into force 13 May 1995 30ILM 747 final

⁹⁰ Nigeria became a member of the International Maritime Organization (IMO) in 1962, hence ratified the Convention

⁹¹ NOSDRA 2006(N87) S.5

⁹² Federal Ministry of environment, NOSDRA <http://environment.gov.ng/about-moe/departments-agencies/agenciesparastatals/national-oil-spill-detection-andresponse-agancynosdra?> accessed 22 February, 2022

⁹³ NOSDRA 2006 (n87) S.6 (2) (ii)

⁹⁴ NOSDRA 2006 (n87) First and Second Schedule to the Act

⁹⁵ NOSDRA (n87) S. II

⁹⁶ MOE Nsirim and C. Ihua- Maduenyi, An Appraisal of the Legal Framework on Oil Pollution and Issues of Compensation in Nigeria (2018) Vol. 8 No.1 *The Journal of property law and contemporary issues* 238

⁹⁷ Nsirim and Ihua-Maduenyi (n96)

⁹⁸ Nsirim and Ihua-Maduenyi (n96)

⁹⁹ B R Konne, Inadequate Monitoring and Enforcement in the Nigeria Oil Industry; The Case of Shell and Ogoni Land (2014) 47 *Cornal International Law Journal*, 181-204

¹⁰⁰ Konne (n99)

¹⁰¹ Nsirim and Ihua-Maduenyi (n96)



5.8 Environmental Impact Assessment (EIA) Act¹⁰²

Environmental impact assessment is relevant and necessary in the Oil and Gas sector. It precedes any project to be undertaken by the oil and gas industry, in order to avoid negative consequences that may be dire to the environment as a result of non application of measures in the form of EIA. The EIA measure will ensure a safe environment, after carrying out a project by an oil and gas company.

Impact Assessment may be defined as the process of appraising the likely adverse effects of a given human activity on the environment. These effects may be on any or all of the dimensions of the environment such as the physical, the biological, the social or the aesthetic environment¹⁰³. The EIA Act deals with the consideration of environmental impact in respect of public and private projects. The purpose of Environmental Impact Assessment is that, after the likely effects of a given activity on the environment has been assessed, steps would be taken to eliminate or at least minimize such effects on the environment¹⁰⁴. The Environmental Impact Assessment Act in Nigeria is the law that established environmental impact Assessment as a tool of Environmental Protection providing the preventive measures.

5.9 Relevant Sections Include:

Section 2(1) requires an assessment of public or private projects likely to have a significant (negative) impact on the environment. Section 2(4) requires an application in writing to the Agency before embarking on projects for their environmental assessment to determine approval. Section 13(2) provides the Agency with power to give certain conditions before the carrying out of the project the conditions shall be fulfilled before any person or authority shall embark on the project, Section 13(1) establishes the mandatory impact assessment regime. While S. 13(1) being read alongside S.2(1),(2),(3),(4) creates the impression that EIA is compulsory for all projects not necessarily those under the mandatory list. Section 16 goes to the other extreme of suggesting that environmental impact assessment will only be required when the Agency deems it necessary¹⁰⁵. The incoherence and inconsistency created by these provisions are deemed to be inimical to the realization of the purpose of the EIA Act in Nigeria. The express provision of section 16 connotes that no EIA will apply in the event where the Agency does not consider necessary before a project is embarked upon, a scenario that is antithetic to the mandatory provision. Hence, it is our submission that the mandatory provisions and Section 16 are misleading and confusing, when juxtaposed.

5.10 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, ¹⁰⁶(NESREA) 2007

The National Environmental Standards and Regulations Enforcement Agency (NESREA) is presently the major federal body charged with the protection of Nigeria's environment. Though NESREA

¹⁰² Cap E 12, LFN, 2004

¹⁰³ Simpson and Fagbohan, *Environmental Law and Policy* (1stedn. Law Centre, Faculty of Law, 1998) 14

¹⁰⁴ AK Usman, *Environmental Protection Laws and Practice* (Ababa Press, 2012) 60-61

¹⁰⁵ Usman (n 104) 61

¹⁰⁶ Cap N164 LFN, 2007 (n9)



objectives were similar to FEPA.¹⁰⁷ It repealed the defunct FEPA Act.¹⁰⁸ Section 7 provides the agency with the power to enforce compliance with laws, guidelines, policies, and standards on environmental matters local and international, environment sanitation, pollution prevention and control through monitoring and regulatory measures. Section 8 (1) (k) empowers the agency to make and review regulations on air and water quality, effluent limitation, control of harmful substances and other forms of environmental pollutions and sanitation. Section 27 provides that the discharge of hazardous substances into the environment without lawful authority is prohibited. The violation of section 27 is punishable under sub-section (2) and (3) of section 27, with a fine not exceeding N100, 000 (One Million Naira) and an imprisonment term of 5 years. For a company, there is an additional fine of N50,000 for everyday the offence persists. The question to be posed in respect of section 27 is: Whether oil and gas pollution does not qualify as hazardous substances discarded into the environment, even if this pollution does not mention oil and gas specifically? It is our submission that they do qualify within the meaning of hazardous substances under this provision which is considered omnibus. Section 7 (c), empowers the agency to enforce compliances with the provision of international agreements, protocols, conventions and treaties on the environments including oil and gas.

Despite the provisions oil and gas here above cited in this Act, unfortunately, under Sections 7 (g), 8 (m) (n) and (s), oil and gas and /or pollution provided under S. 7 (c), Section 7 (g) empowers the agency to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sales, use, handle and disposal of hazardous chemical and wastes other than in the oil and gas. Section 8(m) (n) and (s) give the agency (NESREA) the powers to undertake, co-ordinate, utilize, enter into agreement and contracts with private organizations and individual, even the elimination of pollution and others, such other matters related to environmental protection and such other things other than in the oil and gas. From the above, it is our submission that though NESREA Act is the major legislature on environmental protection in Nigeria, however, it's regrettable that the Act did not pay keen attention to oil and gas matters, a sector that is a key player in environmental pollution and degradation in Nigeria. This is shocking and unthinkable.

5.11 Petroleum industry Act 2021¹⁰⁹

The Petroleum Industry Act though did not make provision for oil and gas pollution in Nigeria, except under its Gas (Prevention of waste and pollution) however, it makes provision for environmental protection in Nigeria. The Act,¹¹⁰ repealed some of the hitherto existing laws, such as Associated Gas Reinjection Act, 1979 CAP A 25 Law of the Federation of Nigeria 2004, and its amendments; Hydrocarbon Oil Refineries Act No. 17 of 1965, CAPH5 Laws of the Federation of Nigeria as amended, Nigerian National Petroleum Corporation Act No. 33 of 1977 Cap N 123 LFN, 2004 as amended. when NNPC cease to exist pursuant to section 54(3) of this Act, Petroleum Profit Tax Act, Cap P13, LFN 2004 upon the completion of the conversion process under section 92; Deep Offshore and Inland Basin

¹⁰⁷ O Fagbohan, Environmental Law and Policy: Missing Links, The Nation Newspaper 5 November, 2017,

¹⁰⁸ Cap N164 LFN, 2007 (n106). S. 36 Paper 5 November, 2017 (n10). S.36

¹⁰⁹ Cap A2 LFN, 2004

¹¹⁰ Cap A2 LFN, 2004 (n109)



Production Sharing Contract Act, 2019 as amended upon the completion of the conversion process under section 92.¹¹¹

It should be noted that this Act has not absolutely repealed the Petroleum Act, A, Cap P10 laws of the federation of Nigeria 2004; Petroleum Profit TAX Act, CAP P13 laws of the federation of Nigeria, 2004; Oil Pipelines Act, CAP 07 laws of the federation of Nigeria 2004; Deep Offshore and Inland Basin Production Sharing Contracts Act (2019) and its Amendment; and any other laws or Regulations that are consistent with the principles of section 92(6) of the Act¹¹². These laws shall continue to exist until the termination or exploration of all oil prospecting licenses and oil mining leases pursuant to subsection (2)(b) of S.311 of the Act.¹¹³

The Act,¹¹⁴ as part of its administrative objectives makes provisions for sustainable development of the petroleum industry, and safety of persons, property and the environment. The holder of a gas processing license shall be obligated to construct, operate and maintain its gas processing equipment and facilities in an economical, safe, reliable and environmentally sustainable manner¹¹⁵. More so, Nigerian midstream and downstream Petroleum Regulatory Authority is empowered to make regulations whereby the licenses as shall be obligated to ensure environmental protection, health and safety¹¹⁶ in their activities or operations. The same crude oil refiner under this Act¹¹⁷ shall under the activities contemplated by the license to, as a matter of obligation procure, construct, install, operate and maintain its refinery and associated facilities in an economical, safe, reliable and environmentally friendly manner. Note also that the Act¹¹⁸ makes it a condition that the holder of a bulk petroleum liquids storage license shall conduct its licensed activities safely and reliably in compliance with any law in force and prescribed health and safety related regulations, and have regard to the effect of its licensed activities on the environment and complying with the requirements for environmental protection, management and restoration.

The host communities of Oil companies under this Act enjoy what is referred to as the host community development trust; which is for the purpose of supporting local initiatives within the host communities, which seek to enhance protection of the environment *inter-alia* by virtue of section 239 (3) (F).

One of the basic landmark achievements of this Act is that it also provides for environmental management plan in respect of projects which require environmental impact assessment by virtue of its section 10 2 (1) (b)(2)(3)(4)(5) and (6). There is a provision for environmental remediation fund, for the rehabilitation or management of negative environmental impacts which a licensee or lessee is mandatorily required to pay to the Nigerian upstream Regulatory Commission or to the Nigerian

¹¹¹ Cap A2 LFN 2004 (n 109) S. 310 (1) (a-j)

¹¹² Cap A2 LFN 2004 (N109) S. 311 (9) (a-e)

¹¹³ Cap A2 LFN, 2004 (n109) S. 66 (I) (b)

¹¹⁴ Cap A2 LFN 2004 (n109) S. 130 (a)

¹¹⁵ Cap A2 LFN 2004 (n109) S. 171

¹¹⁶ Cap A2 LFN 2004 (n109) S. 184 (a)

¹¹⁷ Cap A2 LFN 2004 (n109) S.189 (b) (c)

¹¹⁸ Cap A2 LFN 2004 (n109) S.107 (a) (b)

midstream and downstream Regulatory authority as a condition for the grant of a license or lease under section 103 (1) (3) (4).

By virtue of section 104 (1) (a) (b) (c) (4) licensee, lessee or operator that flares or vents natural gas, except in the case of an emergency or pursuant to an exemption granted by the commission or as an acceptable safety practice under established regulations, commits an offence and shall be liable to a fine as may be prescribed by the commission under regulations in this law, and such money shall be used by the commission for the purpose of environmental remediation.

Furthermore, Sections 105, 106, 107 and 108 provide for the prohibition of flaring or venting of natural gas, measurement of natural gas and elimination of natural gas. Under S.106 (1), (2) a licensee of lessee is required to install material equipment on every facility from which natural gas may be flared or vented. Failure to do so, the licensee or lessee commits an offence and is liable to a fine as the commission or the authority may prescribe under a regulation. The commission or the Authority also exercises the power to grant a permit to a licensee or lessee for the flaring or venting of natural gas for facility start-up or for strategic operational reasons, including testing. A licensee or lessee producing natural gas is obligated to submit a natural gas flare elimination and monetization plan to the commission within 12 months of the effective date which shall be prepared in accordance with regulations made by the commission under this Act¹¹⁹.

From the above, it appears regulations under this is Gas (Prevention of Waste and Pollution) Regulations¹²⁰ which gives the commission or the Authority powers to act with respect to a licensee's or lessee's obligations and activities relating to gas flaring, and other regulations the commission or Authority may make pursuant to this Act.

6.0 International law and convention on oil and gas pollution control.

Apart from laws which exist locally in Nigeria, on pollution, there are international laws and conventions which deal with the problem of oil and gas pollution. Nigeria is a signatory to some of these conventions. The first international conference convened to deal with the problem of oil pollution was held in Washington D.C.1926, it was attended by thirteen countries.¹²¹

6.1 International Convention for the Prevention of the Pollution of the Sea by Oil

This convention came into being in London in May, 1954; subsequently amended on 11th April, 1962 and 21st October 1969.¹²² The original convention was adopted 12th May, 1954 and it came into force on 26th July, 1958.¹²³ Nigeria accepted the convention on 22nd April, 1968, but refused to accept the amendments of the convention of 1962 and 1969, respectively¹²⁴

The convention which was a follow up to the deliberation of the inter-governmental maritime consultative organization (IMCO) was aimed at tackling the problem of oil pollution at sea within fifty miles from land. The convention prohibits tankers from discharging oil or oily mixtures anywhere save

¹¹⁹ Cap A2 LFN 2004 (n109)S.108

¹²⁰ Cap A2 LFN 204 (n109)S.105 (1)

¹²¹ Ehiguelua (n3) 49

¹²² Ehiguelua (n3)

¹²³ Ehiguelua (n3)

¹²⁴ Ehiguelua (n3) 49-50



when? (a)(i) proceeding en route and (ii) more than fifty (50) to when the nearest land (iii) the rate of discharging from cargo carrying space is not in excess of sixty (60) liters per mile, and (iv) the total discharged on a ballast is in excess of 1/15,500 part of total cargo carrying capacity .

(b) The discharge consists of ballast from a tank which has been effectively cleared since cargo was last carried therein; or (c) oil or oil mixture is discharging from machinery space by conditions stated in (b) above .¹²⁵

The convention makes provision for the maintenance of an oil record book. The implementation of this convention in Nigeria led to the promulgation of the Oil in Navigable Waters Act in 1968, which makes provisions similar to the convention.

6.2 International Convention on Civil Liability for Oil Pollution Damage 1969

The International Convention on Civil Liability for Oil Pollution on Damage was adopted in Brussels, on 29th November 1969; it came into force on 19th June, 1975 and was accepted by Nigerian on 5th August, 1981.¹²⁶ The convention underwent amendments in 1976 and 1984, respectively in London. The aim of the convention is to ensure that adequate compensation is paid to persons who suffer damage caused by pollution arising from the escape or discharge of oil from ships and to create a standard for international rules and procedure for the determination of the question of liability and adequate compensation. The liability regime is similar to those under the rule in *Ryland v. Fletcher*,¹²⁷ and it strict providing on escape route to maneuver or defenses on the part of the operators of marine environment.¹²⁸ This is regardless of fault as victims of oil pollution can claim compensation from the ship owners whose ship caused oil pollution damage.¹²⁹ Article 3 of the convention excludes liability of the owner of a ship if the incident which leads to the leakage of oil is caused by an act of war, natural disaster or phenomenon, negligence of a government or other authority in maintaining navigational aids and malicious acts of a third party.¹³⁰ The Convention imposes strict liability on ships, it also makes provision for compulsory insurance and the highest liability that is insurable and the establishment of a compensation fund to the tune of thirty million dollars.¹³¹ The Convention excludes expressly, oil pollution caused by exploration or exploitation of the sea-bed, sewage operation, industrial operation, as well as oil storage tanks situate at sea and does not cover ships which have oil in their bunkers.¹³²

The convention applies to pollution damage in the territory or territorial sea of a contracting state or in its Exclusive Economic Zone¹³³ and to preventive measures wherever taken. Article 7 is very instructive in that it requires the owner of a ship registered in a contracting state and carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance or other financial security such as the guarantee of a bank

¹²⁵ Ehigheula (n3)

¹²⁶ Ehigheula (n3) 54

¹²⁷ (1868) L.R.34.L.30

¹²⁸ S.C Dike, Oil Pollution and the Environment: Decoupling the Triangle in Nigeria through some International and Domestic Perspectives [2020] Vol 13 no.1 *The Journal of Jurisprudence, International Law and Contemporary Issues* 13

¹²⁹ Dike (n128) 13-14

¹³⁰ CLC 1969, 5.3 Art.5(3)

¹³¹ CLC 1969 (n129)

¹³² Ehigheula (n3)

¹³³ Where the contracting state has not established such a zone, the convention applies to pollution damages caused up to 200 nautical miles from the baselines from which that state's territorial sea is measured (Article 1(a) (ii).



or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Articles paragraph 1 to cover his liability for pollution damage under the convention.¹³⁴

6.3 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992¹³⁵

It was viewed by the international maritime community that the regime of compensation created by the CLC 1961 does not afford full compensation for victims of oil pollution damage in all cases and that the said convention imposes an additional financial burden on ship owners. It also considered that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests.¹³⁶

This convention was therefore signed to ensure compensation and indemnification system supplementary to the CLC 1969, with a view to ensuring that full compensation will be available to victim of oil pollution incidents and that the ship-owners bear burdens imposed on them by the CLC 1969.¹³⁷

Article 2 establishes an international fund for pollution damage.¹³⁸ Annual contributions are made to the fund in respect of each other contracting state by any person who, in the preceding calendar year,¹³⁹ has received total quantities of contributing oil exceeding 150,000 tons discharged in the ports or terminal installations in that State after carriage by sea or in the ports or terminal installations of a non-contracting State and afterwards received in a contracting State.¹⁴⁰

The maximum liability of the fund in respect of any one incident is limited to 135 million S.D.R's, including whatever sum is payable by the ship-owner or his insurer under C.L.C 1969. The maximum could increase to 20 million S.D.R's if the quantity of the contributing oil' received by persons in the contracting states equaled or exceeded 600 million tons during the calendar year preceding the

¹³⁴ CLC 1969 (n130) Article 7

¹³⁵ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted at Brussels, December 18, 1971 and in force October 16, 1978 as amended by the protocol to the international convention on the establishment of an international fund for compensation for oil pollution damage 1976, adopted at London, November 19, 1976 and in force November 22, 1994, and by the protocol to the international convention on the establishment of an international fund for compensation for oil pollution damage 1992, adopted at London, November 27, 1992 and in force May 30, 1996. The 1971 fund convention, article 1-36 as amended by the protocol, is referred to as article 27(2) of the 1992 protocol as the international convention on the establishment of an international fund for compensation for oil pollution Damage, 1992 (1992 fund convention). By Article 27(1) of the 1992 protocol the 1971 fund convention and the 1992 protocol shall, as between the parties to the protocol, be read and interpreted together as one single instrument.

¹³⁶ K. Nwaiwu, The Legal Regime of Carriage of Oil and Gas by Sea, Seminar Paper Presented to the LL.M Class Faculty of Law OAU Ile-Ife October 2007, 27-28.

¹³⁷ ICEF 1992 (n135) preamble to the fund Convention

¹³⁸ ICEF 1992 (n135) Art .2

¹³⁹ ICEF 1992 (n135) Art .12(2)(a) or (b)

¹⁴⁰ ICEF 1992 (n135) Art .10



incident.¹⁴¹ Unfortunately, Nigeria is not a signatory to the 1992 protocol to CLC 1969, but only a signatory to the CLC 1969. Hence Nigeria or her citizens cannot access the convention fund of 1992.

7.0 How Adequate is this Compensation Regime?

There are views as to whether the compensation regime is adequate or not. It has been viewed¹⁴² by the international community that the total amount of available compensation per incident under these two Conventions is grossly inadequate and as a result of the increasing concern within the I.M.O about the adequacy of compensation levels provided under the CLC 1992 and fund Convention 1992 consideration is being given to a protocol to establish a supplementary compensation fund to be financed by contributions of receivers of oil in states that would become parties to that protocol. This proposed fund would, in fact, provided an optional third tier of oil pollution compensation additional to that provided by the ship-owner under CLC 1967 and the fund convention 1992.¹⁴³

7.1 The International Convention for the Prevention of Pollution by Ships (MARPOL 73/78)

The International Convention for the Prevention of Pollution by Ships (MARPOL 73/78)¹⁴⁴ includes regulations regarding subdivision and stability which are designed to ensure that in any loading conditions, the ship can survive after being involved in a collision or stranding. The 1978 MARPOL protocol produced the concept known as protective location of segregated ballast tanks.¹⁴⁵ This means that the ballast tanks (which are empty on the cargo carrying leg of the voyage and only loaded with water ballast for the return leg) area positioned where the impact of a collision or grounding is likely to be greatest. In this way, the amount of cargo spilled after such incident will be greatly reduced. The protocol to amend MARPOL 73 entered into force on 2 October 1983.¹⁴⁶ The 1983 MARPOL amendments barred the carriage of oil in the forepeak tank –the ships most vulnerable point in the event of a collision. In 1992 MARPOL was also amended to make it mandatory for tankers of 5,000 dwt and more ordered after 6 July 1993, to be filled with double hulls, or an alternative design approved by IMO (Regulation 13 Fin Annex 1 of MARPOL 73/78).¹⁴⁷ The requirement for double hulls that applies to new tankers has also been applied to existing ship under a programme that began in 1995 (Regulations 13G in Annex 1 of MARPOL 73/78. All tankers have to be converted (or taken out of service) when they reach a certain age (up to 30 years old). This measure is being phased in over a number of years because shipyard capacity is limited and it would not be possible to convert all single hulled tankers to double hulls without causing Immense disruption to world trade and industry.¹⁴⁸

¹⁴¹ ICEF1992 (n135) Art .4(4)(a)(b) and(c)

¹⁴² G. Etikerentse, *Nigeria Petroleum Law* (2nd edn Dredew Publication 2004.) 145

¹⁴³ W. Tetley, *International Maritime and Admiralty Law* (International Shipping Publication, 2002) 454

¹⁴⁴ Adopted at London, November 2, 1973 and its 1978 Protocol adopted at London, February 17, 1978 (together known as MARPOL 1973/78), Annex 1 of which (Prevention of Pollution by Oil) came into force October 2, 1983, with other Annexes and Protocol coming into force at later dates.

¹⁴⁵ Nwaiwu (n136) 19

¹⁴⁶ MARPOL (n144) Annexes III, IV and V have come into force.

¹⁴⁷ Nwaiwu (n136)

¹⁴⁸ Oil Tankers <<http://www.oceansatlas.org/unatlas/uses/transportation/telecomm/maritime/trans/shipworld/tankerpus/oil>> accessed 25 August, 2008.



Although the double hull requirement was adopted in 1992, following the Erika incident off the coast of France in December 1999, IMO¹⁴⁹ member states discussed proposals for accelerating the phase – out of single hull tankers. As a result, in April 2001, IMO adopted a revised phase-out schedule for single hull tankers, which entered into force on 1st September 2003 (the 2001 amendments to MARPOL73/8). The new revised MARPOL regulation 13G set out a stricter timetable for the phasing-out of single hull tankers.¹⁵⁰

In December 2003, further revisions to 13G were made, accelerating further the phase-out schedule. These amendments entered into force on 5 April 2005. A new regulation on the prevention of oil pollution from oil tankers when carrying heavy grade oil (HGO) bans the carriage of HGO in single-hull tankers of 5,000 tons dwt and above after the date of entry into force of the regulation (5th April 2005), and in single-hull oil tankers 600 tons dwt and above but less than 5,000 tons dwt, not later than the anniversary of their delivery date in 2008. Under the revised regulation 13G of Annex 1 of MARPOL, the final phasing-out date for category 1 ¹⁵¹tanker (Pre- MARPOL tankers) was 2005. The final phasing-out date for category 2 and 3 tankers (MARPOL tankers and smaller tankers) is brought forward to 2010, from 2015.

Nigeria ratified MARPOL 73/78 in May 2002, and has since domesticated the provision of MARPOL.¹⁵² The Act which domesticated MARPOL 73/78 is International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act.¹⁵³ The Act states in its preamble: An Act to enable effect to be given in the Federal Republic of Nigeria, to the International Convention for the prevention of pollution from ships, 1973 and the 1978 Protocol; And for related matters. The Act then attaches to its schedule MARPOL 73 and its protocol of 1978. The Act further provides that MARPOL 73/78 shall have the force of law in Nigeria and shall be given full recognition and effect, and be applied by all authorities and persons exercising legislative, executive and judicial powers.¹⁵⁴ The major criticism of MARPOL 73/78 is that it lacks a self – enforcing mechanism. This is because the primary responsibility for the effective application of vessel safety and environmental standards laid down in international instruments rests with flag states.¹⁵⁵ Flag states have an obligation to ensure that their flag vessels comply with the applicable international rules and standards relating to vessel safety and pollution control.¹⁵⁶ Hence if the flag state does not take actions against any offending ship, wanton environmental pollution will become unavailable.

¹⁴⁹ The International Maritime Organization is an International Organization which has the role of providing the machinery for cooperation among governments in the field of government regulations and practices relating to technical matters of all kinds affecting shipping engaged in international trade and to encourage the general adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation; Article as IMO 1948 convention.

¹⁵⁰ Nwaiwu (n 136) 20

¹⁵¹ Nwaiwu (n136) 21

¹⁵² International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act No. 15, 2007 which came into force on 11 April 2007.

¹⁵³ Act No. 15, 2007 (n152).

¹⁵⁴ Dike (n128) 12 – 13

¹⁵⁵ Dike (n128) 13

¹⁵⁶ Dike (n128)



7.2 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC) 1990

The convention (OPPRC) mandates state parties thereto, to establish a national system for prompt and effective response to oil pollution incidents. The convention further requires the establishment of a competent national contingency plan designed to respond to oil disaster and also provides requirements for pollution emergency that vessel offshore and onshore facilities must have.¹⁵⁷

The three main objectives of OPRC are as follows:

1. To prevent marine pollution incidents by oil, in accordance with the precautionary principle, in particular by strict application of the international convention for safety of life at sea (SOLAS) and MARPOL 73/78;
2. To advance the adoption of adequate response measures in the event that an oil pollution incident does occur.
3. To provide for mutual assistance and co-operation between states for these aims.¹⁵⁸

The convention has established a reporting procedure on oil pollution incidents. Under this procedure, all persons having charge shall be required to report such incidents to the competent national authority, which must assess the incidents and inform other states and/or IMO. Parties shall establish national and as well as possible regional systems for preparedness and responses. They shall co-operate in pollution responses, research, and technical matters.¹⁵⁹ Nigeria has incorporated the provisions of OPRC into the National oil Spill Detection and Response Agency Act.

7.3 United Nation Convention on the Law of the Sea UNCLOS 1982

The 1982 Convention represents the first major undertaking among states to protect the world's oceans against all potentially polluting maritime activities as opposed to the largely piece meal, regional and specific activities –related International Law processes which had previously characterized developments in this field of international environmental law. This general legal obligation of states to protect and preserve the marine environment extends throughout all maritime zones, from internal waters and coasted ports to the high seas¹⁶⁰. Part xii of the convention which is devoted to the protection and preservation of the marine environment, is an important advance on other conventions relating to various aspects of marine pollution since it formulates the obligation to protect the environment in terms which cover all sources of marine pollution: pollution from ships, land-based sources, sea-bed operations, dumping and the atmosphere. It also provides the framework for the series of treaties, both global and regional¹⁶¹. At its most basic, bilateral level, the 1982 Convention provides coastal states with a formal recognition of their right, and indeed duty under international law to protect the marine environment in the large areas of sea-bed and superjacent waters that are now within their sovereign and jurisdictional scope, if not actual territorial domain. These are the Territorial Sea (Article 3),

¹⁵⁷ OPRC 1990, Art.3

¹⁵⁸ <<http://www.imo.org>> accessed 20 february,2020

¹⁵⁹ (n158)

¹⁶⁰ Broadus and Vartanov (eds), *The Oceans and Environmental Security: Shared US and Russia perspectives*, (Island Press, 1994) 226

¹⁶¹ P. Birnie and A Boyle, *International Law and the Environment*, (Claredon, 1992) 255



Contiguous zone (Article 24), continental shelf (Article 76) and the Exclusive Economic zone (EEZ) (Article 57)¹⁶².

For example, while the convention provides the coastal state with sovereign rights over the continental shelf, for the purpose of exploring and exploiting its natural resources (Article 77), nevertheless, the coastal state is obliged to adopt laws and regulations to prevent, reduce, and control pollution of the marine environment arising from or in connection with sea-bed activities subject to its jurisdiction (Article 208.1). Furthermore, the coastal state has to ensure that such laws and regulations shall be no less effective than international rules, standards and recommended practices and procedures (Article 208.3).

Generally, UNCLOS seeks to protect the entire marine environment against environmental pollution, which may not only result from oil activities but from other sources. However, by far the greatest pollution hazard comes from oil drilling. International pollution is not very common because any loss of oil and gas goes against the commercial interests of the operator but there is still plenty of room for accidental pollution from blowouts¹⁶³ or tanker spillage and collisions when ships are docking the platforms. Oil and gas usually give off a flammable vapor which can be easily ignited. Oil and other marine pollutants, often emanating from offshore installation have a devastating effect on fish populations, especially on younger life forms in case of accidental pollution.

Although the 1982 UNCLOS provides a comprehensive mechanism to prevent, reduce and control maritime pollution, but its wording has been criticized as being ambiguous and generalized¹⁶⁴. For example, the standard setting Articles dealing with operational and accidental vessel source pollution, as well as dumping, were especially controversial during their negotiation and are extremely complex. The UNCLOS has been ratified by 168 countries, and Nigeria is a party to the UNCLOS¹⁶⁵.

8.0 Conclusion

Oil and gas pollution is a recurrent decimal in Nigeria, particularly in the Niger Delta part of the country, where activities of oil multinationals have astronomically led to the pollution of the area, with deleterious consequences on both man and the ecosystems. Nigeria has avalanche of laws regulating the oil and gas industry against pollution, which includes the NOSDRA, Oil in Navigable Waters, etc, unfortunately, the NESREA Act of 2007 which is deemed the major legislation on environmental protection in Nigeria, does not contain substantial provisions on oil and gas pollution. Second, the Petroleum Industry Act did not provide for Environmental pollution, however, it did provide for Environmental protection.

¹⁶² These Different Maritime Jurisdictions are delimited according to the Respective Distances in Nautical miles (nm) from a state coastline. The Territorial sea limit is 12nm; the contiguous zone limit is 24nm; and the EEZ limit is 200nm. The continental shelf limit is at least 200nm and potentially up to 350nm

¹⁶³ Mackie, et al, 35J of Fisheries Research Board of Canada 1978, 544 - 551

¹⁶⁴ E J Ellis, International Law and Oily Waters: A Critical Analysis [1995] 6(1) *Colorado Journal of International Environmental Law Policy* 31 – 60

¹⁶⁵ Nigeria ratified UNCLOS in December 10, 1982.

Section 6(6) (c) of the 1999 Constitution, though whittles down the environmental protection provision of section 20, however, the ACHPR, which Nigeria has ratified could be seen as a pathway to achieving a safe and healthy environment in Nigeria. There are still International Laws and conventions on oil and gas pollution, which Nigeria is a party to such as the UNCLOS, etc. These laws aim at achieving environmental protection against oil and gas pollution at global level.

Despite these laws, however, oil and gas pollution resulting not only from the multinational oil and gas activities but from the oil theft, pipeline vandalization, and other illegal activities, is still unabated. Gas flaring is still raging as the minister is by law empowered to issue licenses to oil companies for purposes of continuous gas flaring.

9.0 Recommendations

From the above, the following are recommended:

1. Laws and regulation on oil and gas pollution should be strictly enforced to discourage polluters and the oil multinational co-operations from deliberately or inadvertently engaging in activities that would likely pollute the environment. Polluter pay principles should always be invoked.
2. Section 6(6) (c) of the 1999 Constitution should be amended, in order to give effect to the environmental protection provision of section 20 of the same Constitution.
3. International conventions Nigeria is a party to, should be respected and strictly enforced in Nigeria.
4. NESREA Act should be amended, to create spaces for provisions on oil and gas related pollution and stiffer penalties be provided for in our laws to deter polluters.
5. Government should engage the illegal oil refiners whose activities are causing atmospheric pollution, particularly the black soot, with its dire health consequences, instead of using the security apparatus against them. Hence, Modular refineries are suggested, to showcase their skills and technical know – how under standards and best practices that can engender pollution control, or better still, their activities should be legalized and/or regulated as that is one of the means through which petroleum products, such as kerosene, diesel, fuel could be currently accessed. It is therefore, our humble view that the use of force against the illegal be eschewed. Synergy with the refiners is key.
6. The Federal Government of Nigeria should engage experts on oil and gas facilities and/or equipment for the purposes of going into voyages of findings with respect to facilities that are no longer in tune with modern realities and consequently reporting to any appropriate agency for necessary action, if there is any found. This is germane because pipeline ruptures and oil spills have severally resulted from lack of attention in this regard. Actions taken against any oil operator or company found wanting in this respect will definitely propel others to use environment- friendly facilities. Oil and gas companies must adopt world's best practices and standards in all their activities.



7. Technological base approach should be devised to tackle oil and gas pollution in Nigeria, apart from law. Nigeria must rise up to holistically face the challenges of the 21st century, as other parts of the world, in terms of technology. It's shameful and embarrassing that a country that prides itself the giant of Africa can't rebuild its refineries, to suit modern trends. Our refineries should therefore be rebuilt for the refining of our petroleum in a manner that would be environment friendly.