

Black Gold In The Niger Delta: Reasons For The Lack Of Enforcement Of Nigerian Laws In The Niger Delta Environment.

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Abstract: Crude oil has had profound impact on the world civilization than any single natural resource in recorded history. Oil has become a very decisive element in defining the politics, rhetoric and diplomacy of states. This fact is adumbrated in a public lecture entitled "Oil in World Politics" delivered by a former secretary of the Organization of the Petroleum Exporting Countries (OPEC), the late Chief M.O.Feyide, when he asserted that "All over the world, the lives of people are affected and the destiny of nations are determined by the result of oil explorations.

Keywords:Crude Oil, Enforcement, Environment, Environmental Degradation, Exploration,Nigeria, Niger Delta, Underdevelopment.

1. INTRODUCTION

Oil exploration and exploitation has been on going for several decades in the Niger Delta. It has had disastrous impacts on the environment in the region and has adversely affected people inhabiting that region. Yet behind this deification of oil, nothing is said about its impact on the Niger Delta environment. Nothing is said about the lack of implementation of environmental laws and even more sadly, nobody is claiming responsibility.

As oil was struck in commercial quantities in Nigeria, it also signaled the beginning of a profound transformation of Nigeria's political and economic landscape. Since the 1970s, oil has accounted for 80% of the Nigerian government's revenue and 95% of the country's export earnings. Interestingly, all of Nigeria's oil and gas resources come from its Niger delta region occupied by a mosaic of indigenous nationalities.

The Niger delta sustains the largest wetland in Africa and one of the largest wetlands in the world¹. It consists of a total landmass of approximately 70,000 square kilometers with the third largest mangrove forest in the world, a most extensive fresh water swamp, coastal ridges, fertile dry land forest and tropical rainforest characterized by great biological diversity. The immeasurable creeks and streams have in the past, provided habitat for an abundance of fish and marine wildlife. Today, the region is characterized by a prevalence of both old and new oil spills, over 9,343 incidents in the last 10 years, according to official records. This translates to an average of nearly a thousand spills yearly, the highest rate of spills globally.²This paper therefore takes a critical assessment of these laws and the challenges facing the effective enforcement of these environmental standards especially as it relates to the impact of exploration activities on the Niger Delta environment.

2. CORRELATION BETWEEN OIL AND GAS EXPLORATION AND UNDERDEVELOPMENT OF THE NIGER DELTA.

The Niger delta region is endowed with natural and human resources, including the majority of Nigeria's oil and gas deposits, good arable land, rich forest and water systems, filled with different species of aquatic life. Prior to the discovery of its oil and gas resources, the primary occupation of the people consisted of fishing and farming. Fishing which took place in land waters near shore and offshore encouraged thriving markets that sprang up along river banks where several species of fishes were either traded or simply bartered from other farm produce, like Cassava, Cocoa-yam.³The exploration and exploitation of crude oil and natural gas beneath the lands of the Niger Delta over the past fifty years has caused irredeemable ecological devastation to the Niger Delta. It has had disastrous impacts on the environment in the region and has adversely affected people inhabiting that region. This affects the livelihood of the indigenous people who depend on the ecosystem services for survival leading to increased poverty and displacement of people. The oil industry located within this region has contributed immensely to the growth and development of the country which is a fact that cannot be disputed but unsustainable oil exploration activities has rendered the Niger Delta region one of the five most severely petroleum damaged ecosystems in the world. Studies have shown that the quantity of oil spilled over 50 years was at least 9-13 million barrels, which is equivalent ⁴to 50 Exxon Valdez spills.

¹See Human Right Watch: "The Price of Oil"; 1999; at 53

² See Nigeria records 9,343 oil spill incidents in 10 years (Nov. 25, 2:20(pm)<http://sweetcrudereports.com/2015/09/02/nigeria-records-9343-oil-spill-incidents-in-10-years/>

³See Ekpu R. The Dilema of Niger Delta News watch, August 2007, at 10-30



"Fig" 1. DEVASTATED IMAGE OF A FARM LAND AFFECTED BY OIL SPILL.

Official records from the National Oil Spill Detection and Response Agency, (NOSDRA), covering the period, 2006 and 2015, indicate that there were over 5,000 spillage sites from the over 9,000 spills. Environmental degradation occasioned by oil spillage and gas flaring has made life extremely difficult for the local people. In certain areas, the toxicity is so horrific that the residents are not even aware of when the sun rises and sets as their traditions of fishing and farming have been laid to waste by multi-national oil companies such as Shell, Chevron and Total in their quest for oil profits. Nigeria flares more than 70 million cubic metres of gas per day, resulting to an estimated 70 million tonnes of carbon dioxide into the Niger Delta environment per day. Consequently, the oil firms in Nigeria account for more greenhouse gas emissions than all other sources in sub-Saharan Africa combined.⁵ According to recent statistics, an estimated 2 billion standard feet of gas is flared in Nigeria per day, which is enough to provide electricity for the whole of Africa.⁶

3. CRITICAL EXAMINATION OF SOME NIGERIAN LAWS AND REGULATIONS IN THE OIL AND GAS SECTOR.

Nigeria environmental laws can favorably compare to standards and regulations obtainable in the advance western world. It is the lack of enforcement of these environmental laws in Nigeria that has been seen by many environmental experts as one major reason why the Niger Delta environment has continually face massive degradation.⁷ Environmental standards and regulations is one of the surest ways governments can use to checkmate the negative impacts of multinational corporations' activities on the environment and on the lives of inhabitants of host communities. Without an effective environmental enforcement culture, one that is capable of ensuring compliance by big corporations, it is expected that the quality of the environment will be drastically reduced. Although there exists, some Nigerian laws meant to tackle the problem of environmental degradation, it is very sad that the laws are more in breach than as an effective instrument to check unwholesome practices. A good example is The National Environmental Standards and Regulatory Enforcement Agency (NESREA), charged with

⁵ See UNDP and World Bank. (2009). "Strategic gas plan for Nigeria, Joint UNDP/World Bank Energy Sector Management Assistance Programme" (ESMAP). (Nov 25, 2017 3:00pm) <http://www.bayelsa.org.uk/bayelsa-state-environment.html>

⁶ Orubu, C.O. "Gas flaring and associated carbon dioxide emissions in the Niger Delta: the need for a pragmatic approach to flare reduction policies", in A.S Akpotor et al (ed) sustainable environmental peace and security in the Niger Delta, Abraka, Delta State University Press. 2010.

⁷ Natufe, O.I, "The problematic of sustainable development and corporate social responsibility: policy implication for the Niger Delta". Being a Paper Presented on the Second Annual Conference and General Meeting of the Rockaway River Country Club. Denville, New Jersey, U.S.A. 2001

protection and development of the environment in Nigeria and for related matters⁸. Among some of its flaws are the insignificant fines that multinational corporations are asked to pay for any violation of the provisions of the law. These fines are ridiculous, and with the depreciation of the Nigerian currency (Naira) mean absolutely a non-deterrent measure. Another example is the Environmental Impact Assessment Act (EIA). The main purpose of this Act is to establish an effective uniform monitoring and control program against environmental pollution, and to ensure compliance with sound and efficient environmental management by all operators⁹. There is not much in terms of its enforcement. The operators that make profit from involvement in activities likely to cause harm to the environment should be strictly liable for any damage caused. It is immaterial whether what led to the damage is natural or artificial.

With so much loopholes in the Nigerian laws, and a lack of political will by the government to correct these loopholes, oil finds in Nigeria has become a curse rather than a blessing, a situation that I would like to see reversed. It saddens me that the law as it stands today is antiquated, redundant and ineffective in the face of these polluting and environmental challenges.

4. THE EXTENT OF APPLICATION OF INTERNATIONAL LAW OF THE ENVIRONMENT IN THE NIGERIAN ENVIRONMENT.

The legal framework for environmental regulation of the petroleum sector is a combination of both national legislations and international laws, with national legislations being the dominant component of the system. As such, there are several national statutory laws/regulations and international environmental laws, which should regulate petroleum pollution of the environment in the Niger Delta region of Nigeria. Although there are several reported cases of environmental pollution associated with the operations of multinational oil companies in the Niger Delta, there have been few known cases of enforcement of the statutes and regulations against the culprits in Nigeria. This failure is attributed to contradictions and inconsistencies in the Nigerian Constitution, which the oil companies are taking advantage of.

Nigeria has domesticated some international treaties on the environment, such as, the International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act, 2006, signed on December 22, 2006, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 as Amended (Ratification and Enforcement) Act, 2006, signed on

December 22, 2006, but early legislations were not environmental-oriented and the Federal Government of Nigeria did not have any legislations or legal instruments, either general or specific, on the petroleum sector for much of the first half of the century. According to Ite et al.¹⁰, some of the most important and essential petroleum-related environmental laws and principal regulations governing the oil and gas sector in Nigeria include the following:

- Mineral Oils (Safety) Regulations, 1963;
- Oil Pipelines Act 1956 (amended in 1965);
- Oil in Navigable Waters Acts, 1968;
- Petroleum (Drilling and Production) Regulations, 1969;
- Petroleum Decree (Acts), 1969;
- Petroleum (Drilling & Production Amendment) Regulations, 1973;
- Petroleum Refining Regulation, 1974;
- Associated Gas Re-injection Act, 1979;

The Federal Government of Nigeria responded to most environmental problems on an ad hoc basis. The Constitution of the Federal Republic of Nigeria, which is the supreme law, contains the fundamental principles that comprehensively describe the organizational framework of the state, the limitations on the exercise of state authority and it also defines the relationship among different kinds of laws that have binding force on the authorities and persons throughout the country. Over the past decades, Nigeria has had nine constitutions, the most-recent being the 1999 Constitution (as amended). However, the 1999 Constitution of the Federal Republic of Nigeria lacked a specific provision on environmental protection and Nigeria operates a dualist system wherein other regional or international environmental laws cannot be enforced unless incorporated into domestic legislation through ratification by the National Assembly¹¹.

The Nigerian environmental objectives are enshrined in Chapter 2 of the 1999 operative Constitution of the Federal Republic of Nigeria and section 20 implicates the 'right' to a healthy environment. Pursuant to the Constitution of the Federal Republic of Nigeria, the State has obligation to protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria¹². However, this afore-stated provision has one serious defect with regards to the very broad wording of the section and the relevant provision falls under Chapter 2 of the 1999 Nigerian Constitution, which is non-justiciable and as such, the provision lacks judicial enforcement in Nigeria. The provision under the Nigerian environmental objectives attempts to justify a possible agreement between two extreme positions formulated by a system that is not ready to initiate any serious environmental change the

¹⁰See Research and Development Unit, Akwa Ibom State University, P.M.B. 1167, Uyo, Akwa Ibom State, Nigeria

¹¹ See Fagbohun, O., "Reappraising The Nigerian Constitution for Environmental Management," *Ambrose All University Law Journal*, 2002 Vol 1 at 24-47

¹²See Constitution of the Federal Republic of Nigeria, 1999 Section 20

⁸ See Section 7 National Environmental Standards and Regulatory Enforcement Agency (Establishment) Act.

⁹See Section 27(4) NESREA.

thrust of which may affect its economic direction and long-term development goals.¹

5. FACTORS LIMITING THE EFFECTIVENESS OF THESE LEGISLATIONS.

There are inadequate policies operative in Nigeria for coordinating and monitoring the relationship between environmental management and sustainable development. This leads to poor enforcement of the environmental protection legislation in Nigeria. An ineffective enforcement strategy is one of the environmental law enforcement challenges. For instance, the mechanism for collection and management of environmental statistics of facilities and service providers including waste transporters, waste vendors, landfills areas, companies effluent emission data, carbon footprints, sewage treatment plants and other recycling companies are neither developed nor implemented¹³.

The focus and target of environmental law enforcement is also a problem in Nigeria. It is ridiculous to have the Agency arresting goats instead of human beings for violating environmental laws. On the 9th of January 2013, five goats were arrested in Osun State, Nigeria by police officers for violating environmental protection law by roaming around the residential area of Oshogbo instead of being caged by their owners¹⁴.

Fund is also another challenge. To meet their obligations and be able to perform their functions effectively, the agencies must be financially viable.¹⁵ Local Governments are devoid of the requisite human and material resources to undertake environmental management as a result of inadequate funding. This however affects effective environmental law enforcement¹⁶.

Corruption and bad governance prevalent in the country also affect the enforcement of environmental laws. Some owners and operators of the facilities fight back NESREA using blackmail and/or intimidation. Some pose as officers of the Agency to harass and threaten owners/operators of facilities with the aim of exhorting money from them in exchange of lenient sanctions or waiver of penalties¹⁷. Another major challenge of enforcement of environmental laws is lack of modern technology. Till date, officers monitoring the environment do not have the effective modern equipment to enhance monitoring of some of the environmental problems.

Low-level constitutional provision for environmental protection is a deficiency¹⁸. The provision for and the emphasis laid on environmental protection and management by the Nigerian constitution¹⁹ are deficient compared to the rate and stage of environmental degradation in the country. The 1999 constitution contains very few provisions enabling citizens to enforce their fundamental rights to a clean environment except that such right might not be justifiable. This has led to the non-challant attitude of most citizens towards the preservation and the protection of the environment.

Another issue that poses a challenge is undue adherence to legalism by the courts. One of the major problems of enforcement of environmental laws in Nigeria is the issue of locus standi. Individuals don't have environmental rights (locus standi) to pursue their environmental related problems in the court of law. In order to claim the infringement of a particular environmental right or law, the litigant must be competent to commence an action and must show that he has suffered great loss or harm from the actions of the defendant. However, in Nigeria, matters relating to environmental civil litigation are far from being liberalized by our courts and this hinders private individuals from participation in the enforcement of environmental protection legislations.²⁰

Poor communication among the internal departments of Federal Ministry of Environment is also another factor. The lack of communication is so bad to the extent that the department may be unaware of what other departments are doing.

6. SUGGESTED REFORMS FOR THE ENFORCEMENT OF ENVIRONMENTAL LAWS IN NIGERIA.

The challenges of enforcement of environmental law are universal. Several countries have attempted in their own ways to make and review laws to promote an effective enforcement of environmental laws²¹. For instance, China had just amended its environmental protection law enacted in 1989. Some of the problems of the environmental laws are superficial enforcement of environmental mechanisms, the lacuna in the provision of rules that effectively ensure implementation, low fines to deter polluters, lax investigation and delayed punishment of illegal activities, unavailability of adequate compensation for pollution victims, lack of authority within relevant environmental protection administrations amongst others. There are also many environmental management mechanisms within

¹³ See "Addressing the Many Challenges of NESREA" (Nov 25, 2017:20 pm) <<http://www.nigerdeltaheartbeat.wix.com>>

¹⁴ See "Five Goats Arrested in Osun" The Sun Newspaper (Nigeria 12 January 2013) (Nov. 25, 2017 4:25 pm) <<http://www.sunnewsonline.com>>

¹⁵ See Okorodudu-Fubara, M. T. Law of Environmental Protection. Caltop Publications Nigeria Limited 1998

¹⁶ See Ogbuigwe, A. Report on the Review of Environmental Protection Agency in Enugu State. Anpez Environmental Law Centre Port Harcourt for Enugu State Environmental Protection Agency, Enugu. 1996

¹⁷ See Ladan, M. T. Law of Environmental Protection. Caltop Publications Nigeria Limited. 1998

¹⁸ See Nwafor, J. C. Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective. EDPCA Publishers 2006 1 (ed) at 15-30

¹⁹ See Sections 20 and 6(6) (c) of the 1999 Constitution of the Federal Republic of Nigeria

²⁰ See Nwafor, J. C. Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective (1st ed.), EDPCA Publishers 2006

²¹ See For instance, Chinese legislators amended the country's environmental protection law. Greater powers to environmental authorities and harsher punishments for polluters. (Nov 25 2017 5:00 pm) See <<http://www.nytimes.com/.../china-legislature-toughens-environmental-law.html>>

China²² but they have not been fully implemented. The agencies responsible for drafting reports tend to falsify them in order to satisfy the construction entities. For instance in a report, the real distance between a proposed plant and a residential district was 20 meters while the Environmental Impact Assessment report stated the distance at 400 meters; the construction was approved and later caused severe pollution.²³

Consequently, lax enforcement is one reason small enterprises responsible for environmental harm remain active and perpetuate new pollution emissions. However with the amendment, stricter punishments for polluters are provided for and also greater powers for environmental authorities. Some of the major limitations are lack of political will, inefficient legal frameworks that do not address environmental issues in an appropriate manner, failure to include environmental issues in National policy plans and planning processes; and lack of financial and human resources.

Positive aspects of the environmental law enforcement of developed countries like China and America can be emulated and embedded into our laws. China's environmental law gives the local government responsibility for environmental quality and also gives awards to units and individuals that have made outstanding achievements in protecting the environment; this could be used as a model for local governments in Nigeria.

Awareness needs to be made all around the country, in every state and local government areas about the dangers and the effects of the pollution of the environment. The Government and the various environmental agencies should educate people on the importance of keeping a sane environment and the positive effects on the development of the Nigerian economy.

Punishments need to be stricter. The punishments for violating the laws are too lenient. For example, under the Petroleum Refining Regulation²⁴ whoever pollutes the environment will pay a fine of One Hundred Naira Only or imprisoned for six months. As a result of this, people are not subjected to obey the regulations and guidelines of the environmental laws. NESREA; the major environmental law enforcement agency in Nigeria should be restructured giving it more authority on all environmental law enforcement efforts including the environmental permitting and monitoring of all new and existing projects including

the approval of strategic environmental impact assessment.²⁵

7. CONCLUSION

There is perhaps no area of reform in Nigerian statutes that more desperately needs immediate reform than laws guiding the exploitation of energy and natural resources in the Niger Delta. Just a cursory look at the situation in the Niger-Delta area of Nigeria reveals how a once vast land of rich and abundant natural resources has been degraded and desecrated—now resembling a barren landscape, following many years of oil pollution. Many villagers are now exposed to health risks resulting from over 50 years of heavy gas flaring and pipeline leakages. While environmental laws and enforcement agencies have been created to tackle the issue of environment degradation, little has been achieved so far. In fact, as this paper shows, the problem is not so much that environmental enforcement has failed as that it was never really on the agenda in the first place.

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8. REFERENCES

²² See These include various precautionary approaches to prevent pollution, regulations governing the operation of various facilities, environmental recovery institutions and enforcement obligations of environmental protection supervisors.

²³ See "Center for Legal Assistance to Pollution Victims" (Nov 25, 5:15 pm) <<http://www.clapv.org/new/show.php?id=1111>> where the construction violations of a coke plant were described. See also Wang C., Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms" <<http://www.vjcl.vermontlaw.edu/files/.../Chinese-environmental-law-enforcement.pdf>>

²⁴ See Section 45 of the Petroleum Act, Cap P10 Laws of the Federation of Nigeria, 2004

²⁵ See Addressing the Many Challenges of NESREA" (November 25, 2017 6:44 pm) <<http://www.nigerdeltaheartbeat.wix.com>>

- [1] UNDP and World Bank. (2009). *“Strategic gas plan for Nigeria, Joint UNDP/World Bank Energy Sector Management Assistance Programme”* (ESMAP). (Nov 25, 2017 3:00pm) <http://www.bayelsa.org.uk/bayelsa-state-environment.html>
- [2] Orubu, C.O. *“Gas flaring and associated carbon dioxide emissions in the Niger Delta: the need for a pragmatic approach to flare reduction policies”*, in A.S Akpotor et al (ed) *sustainable environmental peace and security in the Niger Delta*, Abraka, Delta State University Press. 2010.
- [3] Fagbohun, O., *“Reappraising The Nigerian Constitution for Environmental Management,”* Ambrose All University Law Journal, 2002 Vol. 1 at 24-47
- [4] Natufe, O.I, *“The problematic of sustainable development and corporate social responsibility: policy implication for the Niger Delta”*. Being a Paper Presented on the Second Annual Conference and General Meeting of the Rockaway River Country Club. Denville, New Jersey, U.S.A. 2001
- [5] Fagbohun, O., *“Reappraising The Nigerian Constitution for Environmental Management,”* Ambrose All University Law Journal, 2002 Vol 1 at 24-47
- [6] Nwafor, J. C. *Environmental Impact Assessment for Sustainable Development: The Nigerian Perspective*. EDPCA Publishers 2006 1 (ed) at 15-30
- [7] *Constitution of the Federal Republic of Nigeria, 1999* Section 20
- [8] *The Petroleum Act, Cap P10 Laws of the Federation of Nigeria, 2004*
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