



A LEGAL ANALYSIS OF SELECTED NIGERIAN ENVIRONMENTAL LAWS: OIL AND GAS INDUSTRY IN FOCUS

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Abstract: While it can be argued that exploration and exploitation activities have relatively improved the lot of the nation, it can be equally argued that it has made worse the living conditions of Nigerians particularly the people in the oil-producing states. Given that the development of oil and gas resources is bound to bring with it associated environmental problems, the need for stiffer enforcement of existing laws is required to ensure a safer environment for Nigerians. This article embarks on a legal analysis of selected extant environmental laws and highlights the ludicrous provisions of these laws which contribute to its weakness.

Keywords: LEGAL ANALYSIS, SELECTED, NIGERIAN ENVIRONMENTAL LAWS, OIL INDUSTRY, GAS INDUSTRY

1. INTRODUCTION

Oil spills in Nigeria has been an environmental issue for over fifty years. It was recorded that a total of over two million barrels of oil polluted ogoniland between 1976 and 1991. Nigeria also recorded over 28 thousand barrels of oil spewed into the environment between 2020 and 2021; these spews have negatively impacted the livelihoods of farmers and fishermen as well as the health of people living in the environment where these oil spillage occur. This paper undertakes a review of selected laws regulating the oil and gas industry in Nigeria. Specifically, consideration is given to the key provisions of the statutes that deal with the regulation of oil spills.

The roles of legal regimes in regulating oil spillage and other environmental challenges in Nigeria for achieving sustainable development cannot be overemphasized. Law as an effective tool to control and manage social problems and economic growth and exigencies should not be

sacrificed on the altar of healthy environmental protection to promote environmental sustainability.

It can be shown that the exploration and exploitation activities in Nigeria have relatively improved the lot of the nation. However, it has also worsened the living conditions of the people in the oil-producing states. Given that the development of oil and gas resources is bound to bring with its associated environmental problems, the need for stiffer enforcement of existing laws is required to ensure a safer environment for Nigerians. The current regime is to be examined as to its efficacy in combating the enormous environmental challenge associated with oil spills¹.

To this end, an examination of some specific laws regulating the Nigerian oil and gas industry will be the focal point for discussions in this part. Provisions that adequately deal with oil spill infractions and the possible ways in which these infractions are dealt with will be considered.

2. NATIONAL ENVIRONMENTAL LEGISLATION IN NIGERIA

Prior to the dumping of toxic waste in Koko village, in Delta State, in 1987, there were no institutional arrangements or mechanisms for environmental protection and enforcement of environmental laws and regulations in the country. Now, following the Koko toxic waste episode, the Federal Government promulgated the Harmful Waste Decree 42 of 1988, which facilitated the establishment of the Federal Environmental Protection Agency (FEPA) (Federal Republic of Nigeria, 1988). This has been followed by the promulgation of other laws. Some of these laws are discussed below:

2.1 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 CAP C20 LFN, 2004

The 1999 constitution of the Federal Republic of Nigeria (as amended) is the ground norm of the country. It is the principal law regulating the enactment and enforcement of all laws in Nigeria. It constitutes the lens through which all other laws are examined.

¹ Ugbaja, F. (2016). Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach (Unpublished master's thesis). University of Calgary, Calgary,

Some sections regarding oil pollution and its resultant effect on the environment are:

Section 20 of the Constitution makes it a fundamental objective of the Nigerian State to improve and protect the air, land, water, forest and wildlife of Nigeria. It reads “The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria”.

Section 17(2) (d) ii of the Constitution complements the afore-stated provision by stating that: “Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented”.

Section 12 also provides that international treaties (including environmental treaties) ratified by the National Assembly be implemented as law in Nigeria. Furthermore, Section 33 and Section 34 of the Constitution guarantee the fundamental human rights to life and human dignity respectively and they are inextricably linked with the protection and preservation of the environment from harm, degradation, or destruction.

2.1.1 WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

Despite the provisions of specific sections which are relevant to environmental issues, the Constitution of the Federal Republic of Nigeria 1999 does not specifically deal with environmental concerns. Going further, sections 17 and 20 which specifically deal with the environment are under chapter two of the constitution titled "Fundamental Objectives and Directive Principles of State Policy" which are non-justiciable².

So as heart-warming as the above provision above may appear, it has been described as having serious defects. In fact, it has been said that it may be the single most important factor limiting the full implementation of the environmental protection laws and compensatory prescriptions is the CFRN 1999³.

And although for the first time in the history of Nigeria, the Constitution reflected environmental concerns⁴, those concerns are grossly inadequate to provide a remedy for victims of

² See section 13 CFRN 1999 as amended

³ Ibid.

⁴ See S.20 of the CFRN 1999 Constitution.

environmental pollution and degradation, especially those resulting from the exploitation of natural resources in the oil-rich Niger Delta⁵.

i. FEDERAL V STATE LEGISLATION

This CFRN 1999 creates a list of matters exclusively reserved for the Federal Government, upon which the component states and local governments cannot legislate⁶. Although the component states and local governments are not prohibited from setting up state environmental protection agencies, the reality is that the powers of these other tiers of government are quite limited, as it is expressly declared in Section 4 (5) of the CFRN 1999 that any provision of a law of a State House of Assembly that is inconsistent with federal law shall to the extent of its inconsistency be null and void. Some of such matters upon which the component states cannot legislate include matters relating to mines and minerals (including oil fields, oil mining, geological surveys and natural gas.

The legal implication of this is that only the Federal Government of Nigeria has authority to dictate the use of land and environmental management where such use relates to mining activities, since the ownership of minerals, such as oil, the grant of oil exploration and mining licences and the management of oil activities, are matters reserved for the federal government by virtue of the Exclusive Legislative List⁷. But unfortunately, the negative environmental fallouts of activities touching the use of oil as a natural resource take place in the states and localities such as the Niger Delta. And so, this is a clash in the law that needs to be adjusted.

2.2 THE PETROLEUM ACT, 2004.

This law specifically deals with matters of oil spillage prevention and control and provides the requisite guidelines for both public and private interests. The act prohibits the destruction of economic trees and unauthorized interference with water and fishing rights. In essence, it seeks

⁵ Ugbaja, F. (2016). Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach (Unpublished master's thesis). University of Calgary, Calgary.

⁶ See the Second schedule of the constitution.

⁷ 94 See Second Schedule to the CFRN 1999.

to safeguard the lifestyles and socio-economic well-being of community members which further amplifies the significance of the oil spillage debate.

Section 9 (1) (b) (iii) of the Act provides for the preclusion of pollution of water. Similarly, the petroleum drilling and production regulations, regulation 25 provide for deterrence of contamination of internal waters, waterways by oil, mud other fluid materials which may pollute or trigger harm to freshwater.

2.2.1: WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

The above provision imposes vague legal duties even as all operators in the oil sector are to required take urgent measures to stop effluence. This provision has majorly been criticized for its vagueness and the lack of legal duty it imposes upon the operator, as all the operator is required to do is to take steps to control the pollution arising from its activities⁸. It does not in any way impose a mandatory obligation on the licensee and neither does it clearly define what needs to be done in ensuring this pollution control.

The Act also fails to stipulate penal sanctions for environmental control and preservation of petroleum industries' operations. This affirms the importance of closing the gap among industries, policymakers and communities affected in varying respects by oil spillage.⁹

2.3 ENVIRONMENTAL IMPACT ASSESSMENT ACT, 1992.

This is the core legislation that governs Environmental Impact Assessment (EIA) in respect of proposed projects in Nigeria and flows directly from the provision of Principle 17 of the Rio Declaration which is to the effect that "environmental impact assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."¹⁰ The EIA Act is a very important piece of legislation in the environmental law framework of Nigeria. It primarily deals with considerations of the environmental impact (both positive and negative) of

⁸ 6 Section 1 (1) of the Petroleum Act. The state here means Nigeria

⁹ Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks

¹⁰ Item 21 of Part I, Schedule II, of the CFRN, 1999 (as amended)

major public and private projects on the environment. The EIA process has been described as a “formal process by which a proposed activity with potentially significant environmental, social and economic costs is studied with a view to evaluating its impacts, examining alternative approaches and developing measures to prevent or mitigate the negative impacts”¹¹

The Act principally provides for compulsory impact assessment of all public and private projects at the commencement stage. Section 2(1) provides that no project within the private and the public sector shall be undertaken without prior consideration of their effects on the environment at an early stage. Subsection 2 further provides that where the “extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provisions of this Act.”

Also, subsection 4 requires a proponent of a project to apply in writing to the EIA agency before embarking on the proposed project. This is to ensure that the proposed activity is subjected to an EIA at the planning stage of the project.

2.3.1 WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

Although the set out provisions require that the assessment of a project in the energy sector be adequately considered to determine its impact on the environment before the required "go-ahead" is given for the project, one question that recurs is whether or not a comprehensive impact assessment of projects is usually carried out in light of the continued devastating effects of oil and gas projects in the Niger Delta. If the answer to this question is "yes", why then do the regulatory authorities give approvals to projects that eventually produce catastrophic consequences on the Nigerian environment? The answer to this question may not be found in the law or existing legislation but in governmental agencies¹².

¹¹ 2 Allan Ingelson and Chilenye Nwapi, “Environmental Impact Assessment Process for Oil, Gas and Mining Projects in Nigeria: A Critical Analysis” (2014) 10:1 Law, Environment and Development Journal 1 at 3, online: <http://www.lead-journal.org>; see also section 1 (a) of the EIA Act.

¹² Ugbaja, F. (2016). Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach (Unpublished master's thesis). University of Calgary, Calgary.

Also, disregard for ethical standards, poor data collation, unsophisticated monitoring practices, and corrupt tendencies have been major challenges to the practical assessment of various categories of projects. The Ministry of Environment is culpable in this regard for not leveraging on the spread of its state counterparts to aggregate, deploy and reappraise environmental impact assessment undertakings¹³.

2.4 OIL IN NAVIGABLE WATER ACT (1968)

The legislation contains provisions for the prevention of pollution of the sea relative to the oil product. The Act is in fact the first law that deals specifically and solely with the industrial waste generated by oil production. It is concerned with the discharge of oil from ships.

2.4.1 WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

Specifically, the punitive measures imposed by the oil in navigable waters act are completely insufficient because the fines imposed are exceedingly low and do not reflect the widespread and long-term cost implications associated with oil spillage.

The Oil in Navigable Waters Act, a replica of the 1968 compilation, is relatively behind the times and does not mirror modern trends geared at reducing the incidence of oil spillage. There are evident gaps in terms of provisions; compelling the liable party for oil spillage to clean up the water after the spill or to provide funds to clean up the affected areas.

2.5 NATIONAL ENFORCEMENT STANDARDS AND REGULATION ENFORCEMENT AGENCY ACT (NESREA)

The Act establishes the National Environmental Standards and Regulation Enforcement Agency and it is currently the major federal body charged with the protection of Nigeria's environment.

¹³ Olujobi, et al.: Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Frameworks

NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA)¹⁴.

The established NESREA is charged with the following responsibility¹⁵:

“ ...protection and the development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies, and guidelines¹⁶.”

The Act establishes a statutory body saddled with the obligations of enforcing environmental laws and regulations. Section 7(a) states that the Agency is authorized to enforce compliance with laws, guidelines, policies, and standards of environmental matters. Its authority extends to the enforcement of environmental guidelines and policies, such as the National Policy on the Environment, 1999.

2.5.1 WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

It is instructive to state at this juncture that the NESREA Act 2007 provisions do not apply to the oil and gas industry in Nigeria. This Act, which can be described as rather general in nature, makes provisions for how other environmental infractions are to be dealt with while specifically excluding infractions arising from the development of energy resources in the country¹⁷.

Secondly, despite its lofty goals, the enforcement of environmental laws and regulations in the upstream petroleum sector is totally outside the scope of the authority of the agency. This constitutes an operational lacuna in the act, as it diminishes the potential for capacity deployment

¹⁴ See Mohammed T Ladan, “Review of NESREA Act 2007 and Regulations 2009-2011: A New Dawn in Environmental Compliance and Enforcement in Nigeria”, (2012) *Law, Environment and Development Journal* 116 at 120 online:

¹⁵ See section 2 of the *NESREA Act* 2007.

¹⁶ See section 2c *NESREA ACT*

¹⁷ The National Oil Spill Detection and Response Agency (Establishment) Act 2006 is primarily dedicated to enforcing oil and gas related infractions. Section 7 (h) and 8 (g) of the *NESREA Act* 2007.

which comes at a high premium in the upstream sector. Hence, requisite amendments must be made to increase the scope of the agency in this significant aspect¹⁸.

2.6 NATIONAL OIL SPILLAGE DETECTION AND RESPONSE AGENCY (NOSDREA):

NOSDREA was established in 2004 as an initiative of the Ministry of Environment. Its main aim is to administer the National Oil Spill Contingency Plan (NOSCP) in compliance with the International Convention on Oil Pollution Preparedness, Response, and Cooperation, of which Nigeria is a signatory. The agency at the forefront of response to oil spill incidents is the National Oil Spill Detection and Response Agency (NOSDRA).

Section 1 (1) states that NOSDRA is the federal agency with the statutory responsibility for preparedness, detection, and response to all oil spillages in Nigeria.

NOSDRA seeks to achieve zero tolerance for oil spill incidences in Nigeria, while advocating for the restoration and preservation of the environment by ensuring good practices in oil exploration, storage, and production, with the aim of achieving sustainable development. In line with this goal, section 6(1), discusses the functions of NOSDRA. And Section 6(2)(3) provides as follows: “(2) An oil spiller is by this Act to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of an oil spill, in default of which the failure to report shall attract a penalty in the sum of five hundred thousand naira (N500, 000.00) for each day of failure to report the occurrence. (3) The failure to clean up the impacted site, to all practical extent including remediation, shall attract a further fine of one million naira.”

Thus, the Act stipulates procedures for recovery of oil spills, clean up and restoration of impacted areas to their original status. Also, the enabling agency administers the procedure for assessment of damage for settling compensation claims.

Section 39 of the Act also requires the owners of oil production facilities to comply with specific statutory obligations such as; carrying out the necessary clean-up operations and furnishing reports to the environmental agency.

¹⁸ Olujobi, et al.: Oil Spillage in Nigeria’s Upstream Petroleum Sector: Beyond the Legal Frameworks

2.6.1 WEAKNESSES OF THE LAW IN ADDRESSING OIL POLLUTION

The provision of Section 6 empowers the agency to impose penalties upon an oil spiller for failure to report an oil spill incident and clean up an impacted site to a reasonable extent. There is no other provision in the Act that specifically imposes fines for an oil spill incident; only failure to report an incident is punishable. Violations will therefore occur when the perceived benefits of noncompliance exceed the anticipated cost of sanctions¹⁹. A clear example of this position was seen in a recent oil spill incident in Nigeria where a fine of one million naira was imposed on Nigeria Agip Company Limited over its failure to immediately contain, recover and clean up oil spill-impacted sites at its gas plant in Rivers State²⁰.

It is indeed concerning that despite the huge mandate given to the NOSDRA to effectively respond to oil spill incidents in Nigeria, it is not empowered to impose fines or other penalties on companies for their disastrous acts of oil spillage save for the provisions regarding reporting of an oil spill incidence and the clean-up exercise. One begins to wonder if indeed the statute is "worth its teeth" given the enormous challenges of oil spill incidents and the resultant environmental degradation facing Nigeria.²¹

Also, in many cases, it is observed that oil spill investigations are usually led by oil companies' personnel and NOSDRA does not initiate oil spill investigations. The agency is thus seen to be dependent on the company involved in an oil spill incident, whether it involves conveying NOSDRA staff to oil spill sites or supplying technical data about spills. Furthermore, the process of joint investigation is heavily reliant on the oil companies²².

¹⁹ Ugbaja, F. (2016). Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach (Unpublished master's thesis). University of Calgary, Calgary.

²⁰ See Rotimi Ajayi, "Environmental Degradation: Review of NOSDRA Act Now" online: <<http://www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/>>.

²¹ Ibid.

²² Bello, T. (2017). Oil pollution and bio-diversity conservation in Nigeria: an assessment of legal framework. Available at SSRN 3072168; <https://www.scirp.org/journal/paperinformation.aspx?paperid=94694>

3. GENERAL DEFECTS OF THE ENFORCEMENT AND COMPLIANCE REGIME

The Nigerian economy is largely reliant on oil and gas resources. Nigeria can be described as a country that has in place enough environmental protection laws which should ordinarily achieve effective compliance. However, there are defects in the enforcement and compliance regime in this regards.

The lack of comprehensive information to effectively measure and access the extent of damage of oil pollution within the energy sector and the fact that agencies and agents charged with the responsibility of monitoring environmental compliance either lack the technical know-how or are starved of funds to effectively carry out their mandate due to existing bureaucracies within the respective agencies are equally responsible for the current state of environmental enforcement in Nigeria²³.

Furthermore, the lack of clarity in most of these laws and the disjointed mode of ensuring compliance makes it almost impossible to achieve compliance with existing environmental laws, especially within the oil and gas industry²⁴ Goats have been reported to have been arrested by the Osun State Waste Management Agency for violating environmental laws.²⁵ One would expect that focus should be directed at persons (humans and regulated entities) responsible for environmental violations rather than animals.

Corruption and bad governance in Nigeria cannot be divorced from the continued lack of adequate enforcement of environmental laws. Given that the menace of corruption has eaten deep into the fabric of the nation, enforcement of environmental laws is sometimes based mostly on rewards to be obtained by agencies/agents for turning a blind eye to some major environmental infractions.

²³Oludayo Amokaye, "Environmental Pollution and Challenges of Environmental Governance in Nigeria" (2012) British Journal of Arts and Social Science 26 at 35-36, online: <http://www.bjournal.co.uk/paper/BJASS_10_1/BJASS_10_01_03.pdf>.

²⁴ Ugbaja, F. (2016). Regulation of Environmental Pollution in the Nigerian Oil and Gas Industry: The Need for an Alternative Approach (Unpublished master's thesis). University of Calgary, Calgary, <http://hdl.handle.net/11023/3139>

²⁵ For more on the EIA process, see the provisions of section 15 of the *EIA Act*. This section will also not discuss the review and mediation process. For more on that, please see the provision of sections 33-37 of the *EIA Act*.



The poor state of the environment of an oil-producing region is a good indicator that there still exists a wide margin between the laws enacted and the enforcement of these laws.

4. CONCLUSION

While it is argued that oil exploration and exploitation activities have improved the lot of the nation, it is equally argued that these activities have made worse the living conditions of Nigerians particularly people living in the oil producing states. And even though there are laws that should help control and manage these social problems and economic growth, the provisions of these laws contribute to its weakness. The review of selected environmental laws is not an exhaustive review but rather a general overview of the laws in place in Nigeria for the specific purpose of regulating oil and gas-related infractions, specifically, oil spill pollution. These national laws have various problems associated with them and as such there is a need for adequate review.