

Pollution Resulting From Oil Exploration in the Niger-Delta Region of Nigeria: A Need to Re-Evaluate the Legal Sanctions Contained in Nigerian Environmental Laws

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Abstract:-Environmental pollution is commonly associated with oil spillage in the Niger-Delta Region of Nigeria. To address the menace posed by pollution resulting from oil exploitation activities, the government has through legislations sought to outlaw acts capable of endangering the environment. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), Environmental Impact Assessment Act and Harmful Waste Act (both contained in Laws of Federation of Nigeria 2004) are some of the legislations through which the government seeks to make the Niger-Delta environment pollution free. Sanctions like fines, imprisonments and revocation of licences have been used to discourage oil companies from polluting the environment, yet the problem lingers on. It is therefore the aim of this paper to interrogate the potency of these environmental protection laws most especially the legal sanctions contained therein. It is a fact that the legal sanctions in the petroleum industry were out-dated and ineffective in making polluters comply in Nigeria. The loopholes in the laws have allowed polluters to escape without sanctions. It is also a fact that pollution is prevalent in the Niger-Delta communities and from findings, the regulators usually issued warnings without prosecuting the offenders. The government needs a transformation from making ineffectual laws to making laws that are effective so that any erring environmental polluter would immediately be made to face the music stemming from their misdemeanours and prosecuted accordingly while high fines and imprisonment terms should be imposed where they are found guilty. The Nigerian courts must also rise to the occasion by ensuring that environmental cases are treated with the seriousness they deserve. Justice and not technicality of laws should be the order when adjudicating on cases of environmental pollution.

Keywords: Environmental pollution, Legal sanctions, Oil producing communities, Niger Delta, Nigeria.

I. INTRODUCTION

Resources-inflicted problems have become reality in Africa¹ and so is African mineral resources development²

¹The uniform characteristics of the areas that produce oil in Nigeria is that of poverty, squalor, underdevelopment and hunger. They are mostly hit by the phenomenon of environmental justice as they suffer environmental imbalances despite the fact that they produce resources for other parts of the country to survive. This, is a lamentable situation as it is opined that the

exposing the continent to run afoul of the principle of environmental justice³ as reflected in the life of the people living in areas where minerals are produced. Despite Nigeria's vast resource blessings, it remains poor and difficult to manage as it contends with various social unrest and development issues which are directly linked to the careless methods employed in the oil exploitation processes, hence, the gravity of pollution in the Niger-Delta region of Nigeria⁴.

Before the discovery of oil in the Niger-Delta region in 1957; the human environment was very pure and friendly. However, after discovery of oil and the commencement of their exploitation, the air is polluted, the soil has been endangered due to oil spillage and the water is now contaminated and no more suitable for drinking which evidently led to wanton pollution of the environment and enormous organic disproportion which is constituting serious danger for the Niger-Delta people⁵.

Life has become harsh and unbearable due to carelessness in the way resources are exploited. Soil is being disrupted in its ecosystems and the air is grossly polluted. The inability of the people to exercise due diligence and their desperate bid to harness the endowed resources push them to engage in mindless disruption of the environment with far-fetched impacts on the life of the people. The only option

availability of mineral resources in their domain should rather be a blessing and not a curse on them.

²This is particular typical of the communities hosting the mineral resources.

³The concept of environmental justice is later discussed under conceptual framework of this thesis which basically is the existence of the prevalence of imbalance in the distribution of ecological pollution. Environmental justice was used to show that there is inequality in the risks various communities are exposed to.

⁴ The Niger-Delta region is the region of Nigeria where oil and gas are domiciled and it is the region of Nigeria where environmental injustice is said to reside.

⁵Chijioko, Basil Onuoha, Ebong, ItoroBassey& Henry Ufomba University of Uyo (2018) 'The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in Akwalbom State' Global Journal of HUMAN-SOCIAL SCIENCE: F Political Science. Volume 18 Issue 3 Version 1.0.

⁶Ibid at 6 above

which could guarantee better living for the Niger-Delta people amidst the resources in their domains is for the government to ensure that efforts are made to reconsider her measures and approaches towards tackling environmental pollution which has resulted from exploitation activities. This requires a well-coordinated balance which has to be achieved and sustained and this is exactly what this paper seeks to achieve, particularly as it concerns the cases of pollution which accompanies exploration. A balance must be struck on the need to meeting up with economic and developmental needs, that is, the need for survival alongside the obligation for safeguarding life. In order to crave for the future generation in the face of the reckless exploitation of the resources. It is worth mentioning here that whenever there is a shown conflict between the resources base and the ways and manners in which the resources are being harnessed, the obstacle obstructing smooth harvesting of the resources necessarily gives way. This is the only point where sustainability can be said to be invoked.⁶

The negative impacts which the discovery of oil has fostered on the Niger-Delta include various ecological violence,⁷ the agricultural sector is largely dependent on rainfall, pollution that follows oil exploitation has damaged the environment so that chemical acids, air pollution and oil spills have vitiated the environment so much that there is a low agricultural output. Effectively, the anomalies lead to hike in food prices with attendant effect on the economy⁸. Fishing businesses in the oil producing communities is also affected by both air and water pollution as oil spillage have continued to pollute subversive and surface water thereby making it hazardous for living organisms. This practice of mindless exploration and unorganised abstraction of mineral resources will bring about pollution of the environment and make life miserable to the people beyond what it was before the resources was earlier discovered⁹. In many countries in Africa, there is massive fall in crop production compared to the consumption requirement. Hence, endangering marine life, and most times this gross destruction is great and the consequences are generally worse. In similar instance, loss of fertile land brings about low agricultural output. This further makes the people poorer. Even the animals and plants suffer this, hence the causes for strange illnesses and sudden deaths among the Niger-Delta people¹⁰.

There has been violence and agitations in the Niger-Delta¹¹ over the years due to the ways the multinational

corporations carry out their oil exploration activities¹² and perhaps the neglect the people of the areas suffer. In the past five decades, more than 3000 people have been reported killed in pipeline linked bursts and similar accidents. Despite the wealth generated from their land, the Niger Delta people are reported to be living in squalor without tangible infrastructural facilities¹³.

To avert this ugly development and stem the tide of ranging violence in the region, environmental laws were enacted with the sole aim of protecting the environment. These laws come with different forms of sanctions so as to enforce compliance to the laws by oil companies. Regrettably, the reverse is the case thus making such problems of ecological pollution unabated even in the face of the legal sanctions. Unfortunately, rather than handling the problem of environmental pollution as a fundamental moral issue, the problem is not given desired attention, rather it is being politicised. This totally negates the norms which are now being regarded as the best practices in the oil industry. Observably, in its desires to finding lasting solutions to the complications presented with the glitches of oil misuse, the Nigerian environmental laws provided for various legal sanctions which includes; fines, detainments and denial of licenses. However, in spite of all these efforts, there has not been any way out of the issues of environmental depletions in the oil exploration domains. It is therefore the intention of this paper to seek ways through which the legal sanctions contained in the various environmental laws could be re-evaluated to meeting the overall objectives of encouraging compliance to environmental protection laws so that the misfortunes brought by oil discovery to the Niger-Delta people would be changed to that of fortunes.

⁶ibid at 6 above.

⁷Watts, Michael. (2001) "Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity" in *Violent Environments*, edited by Nancy Lee Peluso and Michael Watts, Pp. 189-212. Ithaca: Cornell University Press.

⁸ibid at 6 above

⁹Nwagbara, E. Abia, R. Inyang, F & Eleje, J. (2012). "Poverty, Environmental Degradation and Sustainable Development: A discourse". *Global Journal of Human social science, sociology, economics and Political science*.

¹⁰ibid

¹¹It includes the states in the south-south regions of Nigeria.

¹²Ibid at 10 above.

¹³ Ibid

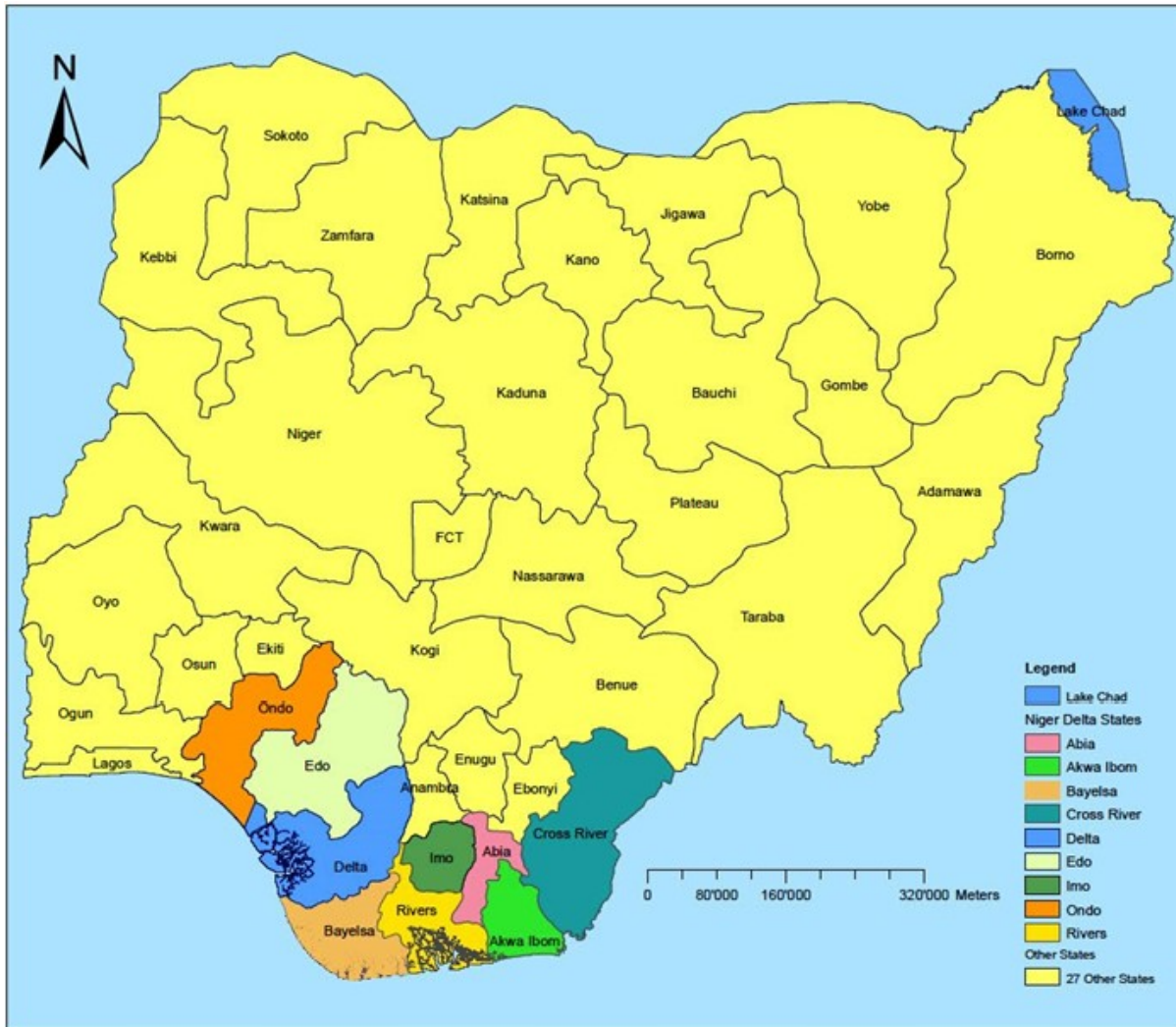


Fig. 1: Showing a mapped layout of the Niger-Delta states

Source: NASRDA

II. PROBLEM STATEMENT

Nigeria is 193,392,517 in population¹⁴ with a landmass of 983,213 sq. kilometres. 133,717 sq. kilometers of this is in the forest zone¹⁵. With this great landmass, its population size, activities and interactions of its people, Nigeria is very likely to have a huge pressure and impacts on the landscape and the resources it is blessed with¹⁶.

These impacts include; expansion, desertification, high population and fluctuating degrees and manners of pollution¹⁷. The influences both positively and negatively affects humans and topography, careless exploration practices

due to sloppiness, damage, inexperience, insufficiency, overpopulation and insatiability etc. have equally contributed to the pollution of the environment. Pollution occurs when people seek for their economic needs occasioned by search for infrastructural development and mineral resources available in their areas¹⁸. It is undeniably that land use activities contribute and enriches a nation but it at the same time negatively destroys the environment. The negative influences caused by uncaring or unethical exploitation of oil is what is termed environmental pollution, simply means the misuse of the environment owing to indecorous resources managing practices. Although merely inconsequential pollution happens through mineral exploration, more penetrating pollution happens during the exploitation stages.

No doubt, consecutive governments have created legal and administrative frameworks, coupled with legal sanctions to discourage polluters in order to curb

¹⁴ www.gov.ng.pp. accessed on 20/09/18.

¹⁵ Ibid

¹⁶ MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions for Environmental Pollution in Oil Producing Areas Of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

¹⁷ www.gov.ng.pp.

¹⁸ CSD, 1992 annual report.

unprofessional exploitation practices with a view to curtailing the negative influence. In spite of these efforts however, findings reveal that the pollution has not abated significantly, thereby raising a question on whether the legal sanctions contained in the many environmental laws have or have not achieved desired objectives; hence the need to investigate. In this paper therefore, attempt is made to examine the environmental legal regimes against the background of the sanctions contained therein as a response to the environmental challenges against the backdrop of identifying the extent of effectiveness.

Table 2.1: Pattern Oil spill incidence across the oil producing states (January 2017 - September, 2018)

| | Status | | | Total |
|----------|-----------|---------|----------|-------|
| | Confirmed | Invalid | Reviewed | |
| Offshore | 38 | 8 | 28 | 74 |
| Abia | 10 | 2 | 2 | 14 |
| Akwalbom | 16 | 3 | 2 | 21 |
| Bayelsa | 95 | 7 | 9 | 111 |
| Delta | 144 | 5 | 17 | 166 |
| Edo | 14 | 0 | 0 | 14 |
| Imo | 16 | 0 | 8 | 24 |
| Kogi | 1 | 0 | 0 | 1 |
| Lagos | 2 | 0 | 0 | 2 |
| Ogun | 1 | 0 | 1 | 2 |
| Rivers | 275 | 11 | 48 | 334 |
| Total | 612 | 36 | 115 | 763 |

Compiled by the author (2018)

Source: NOSRDIA (2018)

Rivers state was shown to have the highest incident rate of oil spill followed by Delta state, Bayelsa state, Imo and Akwa-Ibom states. Also, significant spill incidents occurred in off shore locations in Akwa-Ibom continental shelf.

Table 2.1: Total Oil spill (January 2018 - September, 2018)

| | Confirmed | Invalid | Reviewed | Total |
|------------|-----------|---------|----------|-------|
| 2018 | | | | |
| CHEVRON | 3 | 0 | 1 | 4 |
| ERL | 6 | 0 | 0 | 6 |
| Eroton E&P | 8 | 1 | 2 | 11 |
| Heritage | 33 | 2 | 4 | 39 |
| Midwestern | 1 | 0 | 0 | 1 |
| MPN | 7 | 1 | 0 | 8 |
| NAOC | 66 | 8 | 18 | 92 |
| NDPR | 1 | 0 | 0 | 1 |
| NPDC | 12 | 0 | 1 | 13 |
| SEPLAT | 1 | 0 | 1 | 2 |

| | | | | |
|---------------|-----|----|----|-----|
| SPDC | 52 | 1 | 8 | 61 |
| TOTAL | 1 | 0 | 0 | 1 |
| Overall Total | 191 | 13 | 35 | 239 |

Compiled by the author (2018)

Source: NOSRDIA (2018)

In 2018, NAOC has the highest spillage closely followed by SPDC, NPDC, and heritage the total confirm spillage was 191 while the overall spillage reported was 239 by the oil producing companies. This was the report and it shows an increase in pollution incidences from the previous year in spite of the extant legal regimes and the legal sanctions contained therein.

III. EXTANT LEGISLATIVE FRAMEWORKS AGAINST ENVIRONMENTAL POLLUTION AND THE SANCTIONS CONTAINED THEREIN

The role of laws and regulation in making the environment safe, neat and conducive for habitation cannot be downplayed as through it, Nigeria has shown a positive response to the needs and imperativeness of safeguarding its people through the instrument of legislations. Once the laws spell out acts which are criminal because they have adverse effects on the people, it then backs it up with corresponding sanctions so that the commission of such acts would become unattractive to those who may want to commit them. The whole essence of the many environmental laws is to protect the environment and to achieving that, certain behaviours connecting with the land were criminalised and in order to have players in the industry comply with the laws, legal sanctions were attached to each of the criminalised behaviour so that players in the industry for fear of the legal sanctions may find such behaviours unattractive, reprehensible and no go areas.

The laws which are enacted over the years and which still guide the Nigerian environment up till date include:

- The 1999 Nigerian Constitution (as amended);
- The Environment Impacts Assessments Acts;
- The Harmful Wastes Acts
- Oil in Navigable Waters Act
- Territorial Waters Act;
- Associated Gas Re Injections Act;
- Exclusive Economic Zone Act;
- Minerals Act;
- Petroleum Act;
- Petroleum Production and Distribution Anti Sabotage Act
- Niger Delta Development Commission Act. and
- Nigerian Local Content Act.

They have in their supports for ease of enforcement, an array of supplementary guidelines and rules.

3.1 The Constitution of Nigeria, 1999

This is the authoritative legal order of the country and it is the commanding document which gives other laws their validity¹⁹, hence, it is referred to as the *grundnorm* and national legal order of all the laws in Nigeria. The constitution gives great premium to the need for the people to be protected where they live. The constitution makes various requirements for the defence of the environment in that regard. The relevant sections of the *grundnorm* which seek to ensure this are highlighted below:

- **Section 20** of the constitution provides to the effect that it shall be the responsibility of the government of Nigeria to protect and to ensure adequate improvement of all parts of the county including the land, the air, the water and the forest of the country.

The effect of this elegant section of the constitution is to ensure that the government of the country is responsible to protect and safeguard the air, land, water, forest of Nigeria and to guarantee that they are sufficiently sheltered for the enjoyment of the people of Nigeria. The provision seeks to restrict any act by anybody or a group of people which portend any danger for the good living of Nigerians. By extension, this provision makes it unacceptable for any exploration act to in any way affect the air, water, land, forest and wildlife. By these, any exploration activities which cause spills, environmental pollution and gas flaring run contrary to the section 20 of the Constitution.

- **Section 12** of the constitution is to the effect that Nigeria is bound to apply as laws, all the international treaties adopted by an act of legislature of the Senate and the House of Representatives of Nigeria.

With the clear and unambiguous dictates of the provisions afore-stated, all global treaties and agreements which Nigeria is a party to and which has the ratification of the National Assembly of Nigeria are to be implemented same way local legislations are to be implemented. As a member of the international community, Nigeria has ratified so many international treaties including those with primary focus on the environmental protection. The Kyoto Convention is an example of these international treaties. By these provisions, the government is duty bound to ensure that provisions of these international treaties are implemented in Nigeria. Each country is expected to ensure a drastic cut down in its gas emission as provided for in the Kyoto Protocol, being a Country that ratified the Protocol, by the provision of section 12 of the constitution, Nigeria must live up to its obligations under the Protocol.

¹⁹Constitution is the body of law which regulates the affairs of the country and according to the provisions of section 1(3) of the constitution, any other law or laws that is not consistent with the constitution shall be null and void to the extent of its inconsistency with the constitution..

- Guaranteed and assured to Nigerians in the sections 33 and 34 of the constitution are the inalienable human rights to life and to human dignity.

Sections 33 and 34 of the Constitution are directly linked to the essential need for everyone to live healthily under a very safe and conducive environment. The sections do not only seek to prevent acts which could result in ecological pollution, it also frowns against any act that could in one way or the other infringe on a person's right to life and human dignity. From the exposition made above in this paper, various acts ranging from gas flaring, oil spill and so on have a lot of negative impacts on people's life and such acts in a way infringe on the right to life.

The effectiveness of these constitutional provisions is however questionable in view of the many acts of pollution being witnessed in the Niger-Delta areas of Nigeria. As expressive as this provision is, we still find that the land on which the people carry out their agricultural activities is being ravaged and destroyed while the waters which is meant for consumption is often polluted through undifferentiating acts deployed while carrying out oil exploration activities, hence, shortening the life-span of the people and by extension directly breaching the right to life guaranteed under section 33 of the constitution.

It is worthy of note that despite these elegant constitutional provisions safeguarding the rights of the citizenry against any act capable of affecting their life, people still flare gas while oil is also being spilled in Nigeria. The efficacy of these provisions was put to test in the celebrated case of *Gbemre v. S.P.D.C*²⁰ where the Plaintiff sued the defendant's MNOG against acts of gas flaring which according to the plaintiff runs contrary to the protection of his rights and that of other members of the community to life and human dignity as guaranteed under the provisions of sections 33 and 34 of the constitution of Nigeria as well as under the African Charter which also promotes the rights to life. The Court held in favour of the Plaintiff, however, the Defendant thereafter would not desist from continuous acts of gas flaring.

3.2 Environmental Impacts Assessments (EIA) Act

The EIA Act seeks to ascertain the holistic valuation, calculation and assessment of the likely effects of a new undertakings or projects intended to be established on the environment. The intendment of the legislation is to ensure that the impact of any proposed project do not violate or negatively harm the environment including the life of the people adjoining such projects. The Act is a forward looking legal intervention of forestalling a likely case of a project which could end up endangering the environment and subjecting its people to untold ecological hardships. The fulcrum of the Act is not to allow the execution of any project which could end up compromising the wellbeing of the environment.

²⁰AHRLR 151, 2005.

The following sections of the Act are important for consideration: -

- In its **section 2 (1)**, the Act requires that there must be carried out an evaluation of any given project before commencing such a project. This is because such a proposed project may have negative impacts or effects on the society or environment.
- By virtue of **section 2 (4)** of the Act, it is a compulsory requirement that a promoter of an undertaking must first cause to be written to the Agency a letter seeking an evaluation of his project before embarking on same. The Agency thereafter gives an approval if satisfied that it is in the interest of the environment to so do.
- EIA may not be required in all situations, but **section 13** of the Act clearly spells out the situations where it is required. and
- In cases of contravention of the EIA Act, **section 60** of the Act highlights the corresponding sanctions and liabilities on the part of anyone who defaults.

The provisions of the EIA highlighted above are no doubt viable and with a perfect implementation are capable of nipping in the bud the incessant agitations against environmental pollution from the activities of the MNOCs but how far the relevant agencies are living up to their biddings remain unclear. The overall essence of the Act which is to forestall any project which implementation could cause negative impact on the people is captured in its section 2(1).

Application should be made before the start of any project so as to determine whether the impact of such projects would make or mar the community wherein the project is to be undertaken. Section 60 spells out the penalty for contravention of the provisions of section 2 (4) which require such an application to be made.

In spite of these provisions, projects are still being executed with far-reaching effect on the people. The Agency has failed to stand by its mandate while it is not on record that any MNOC has been made to face the consequence of not complying with its responsibility under the EIA.

The greatest shortcoming of the EIA is the capability to transmute the requirements of the EIA Act into uncertainty. Even though certain sections of the EIA are potent enough to address the question of environmental pollution,²¹ they have not effectively been put into operation, hence, they only serve cosmetic purposes.

In few situations where they are conducted, it was a mere formal process, as no verifiable evidences to show for them. And, some are even conducted after the commencement of operation which contravenes the clear provisions of the

Act. In this situation, both the operators and regulators are accomplices. It is generally found that projects are approved within the compulsory study activities even without any impact assessment being done²².

On the other hand, the Amnesty International, in its Report reveals that a lot of corporations do consciously sabotage efforts at evaluating the effects of oil corporations on the people and in their settlement where they live. They deliberately withhold information vital for such valuation and they also give misleading facts to the Agencies.²³

In conclusion,²⁴ an examination of the EIA Act shows the absence of any sanction; therefore, one can say safely that the EIA regulations do not even offer itself to enforcement, most especially in view of the compromising nature of those placed at the position of regulating the industry.

3.3 Harmful Wastes Act

The Harmful Waste Act copiously forbids, the acts of carrying, dropping, abandoning or depositing of dangerous or hazardous objects or things without a lawful order into the waters, air or land of the country.

- **Section 6** of the Act makes it a capital offence to engage in such actions which could endanger the life of the people in immeasurable dimensions and gives a life imprisonment sanction for anyone who engages in such act and at the same time, he shall forfeit the land or anything whatsoever he may have used in committing the offence.
- **Section 7** of the Act makes similar sanction applicable to anyone found as accomplice to the person who committed the offence and it also takes care of situations where the act was committed by a company.
- **Section 12** of the Act defines the civil liability of any offender as he would be liable to persons who have suffered injury as a result of his offending act.

Gas flaring is no doubt an act of dropping, throwing away, dumping, discarding and depositing harmful waste in the air just as oil spill is an act of depositing dangerous left-over of oil in the land and water. In the spirit of sections 12, 20 and 33 of the Constitution of the country, the Harmful Wastes Act imposes punishment for any such acts of polluting the environment whether by an individual or a company. The Act makes the polluter accountable to the victim(s) of the pollution in term of compensations. Even though, the provisions of this Act were not in issue before the court in the case of *Gbemre v. S.P.D.C*²⁵, it appears the court was guided by it at arriving at its findings on compensation for the gas

²¹Wifa Eddy Lenusira, "THE ROLE OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE NIGERIAN OIL AND GAS INDUSTRY". Online at http://www.academia.edu/5713635/THE_ROLE_OF_ENVIRONMENTAL_IMPACT_ASSESSMENT_IN_THE_NIGERIAN_OIL_AND_GAS_INDUSTRY (accessed on 15 October 2018).

²²Anago "Environmental Impact Assessment as a tool for Sustainable Development: The Nigerian Experience." Online at http://www.fig.net/pub/fig_2002/Ts10-3/TS10_3_anago.pdf, accessed on 14 July, 2013.

²³Amnesty international report on Nigeria 2009.

²⁴Ibid

²⁵ibid note 20

flaring victims. Regrettably, however, in spite of these clear provisions, cases where the full sanctions of life imprisonment for anyone found liable and the penalization in term of forfeit of land or whatever thing used to commit the offence is yet to be seen in Nigeria, yet there is malevolent abuse of the environment by the oil corporations.

3.4 Oil in Navigable Water Act.

The Act is a potent environmental law which seeks to address the nagging issue of release of oil from ships into the Nigerian territorial waters. The Act provides in some of its provisions thus:

- **Section 1 (1)** of the Act provides that, it shall be unlawful to release or discharge oil from a ship into the country's seashores.
- Under its **section 3**, it states that, it shall be a crime for anyone who operates a ship to discharge or spill oil into Nigerian waters. The section also makes it mandatory for every vessel plying the Nigerian waters to have installed an anti-pollution equipment.
- Punitive measures for discharge as outlawed under sections 1 and 3 of the Act is contained in section 6. The sanction is set at a fine of N2, 000 (Two thousand naira).
- All records of occasions of oil discharge are to be kept according to the **section 7** of the Act.

The Act seeks to outlaw the release, dropping and release of oil into Nigeria territorial water as the effect of such discharge is being felt by the people whose daily undertakings such as fishing are affected by such discharge.

The shortcoming of this Act however is in its provisions for sanction as only a fine of N2, 000.00 is imposed on any one who discharges oil to the Nigerian shorelines, yet the damaging effects of such a discharge could be imagined.

3.5 Associated Gas Re Injection Act

This Act speaks about the act of flaring of gas by Companies. Some of its provisions are herein-under enumerated:

- **Section 3 (1)** of the Act forbids, an MNOC from gas flaring in Nigeria without any lawful permission.
- **Section 4** of the Act spells out the sanctions and penalties for flaring of gas without requisite permits.

The Act was the first effort at addressing the scourge and the many ills associated with gas flaring in the country. The Act barred gas burning and demanded from oil corporations to submit a definite plan on the uses of their gas and their reinjection.

- The whole purport of section 2 (1) of the Act is to the effect that:

On or before the 1st October, 1980, all companies in the oil business shall cause to

be submitted to the minister, either, programmes and plans for;

(a) the application of platforms concerning the re-injection of all manufactured associated gas; or

(b) the plans or systems for feasible use of all manufactured associated gas.

It became mandatory and compulsory for all companies to comply with the provisions of the Act and no single company was allowed to flare gas, except if the Minister so permits, after the deadline set for 1984.

For a defaulter who, contrary to the Act, flares gas without authorisation, he was liable to a fine of 0.50 Naira per million cubic feet (mcf). This changed in 1988, January to 10 Naira per mcf, with exchange rates at US\$0.076 per mcf as at 2003, November.²⁶

The deadlines kept extended until President Mohammed Buhari by the Flare Gas Regulations, 2018 issued a guideline for the prevention of gas flaring which now takes precedent over other regulations made before it. The Regulations prohibits gas flaring and venting and as sanctions aimed at encouraging compliances, imposes the following fees:

- a. \$2.00 per 28.317 standard cubic metres (1,000 standard cubic feet) of gas flaring shall be charged as payment to the Federal Government for gas flaring by a producer from any OML area MF which produces a minimum of 10,000 barrels of oil in a day.
- b. \$0.05 per 28.317 standard cubic metres (1,000 standard cubic feet) of gas flared shall be charged as payment to the Federal Government for gas flaring by a producer from any OML area MF which produces not more than 10,000 barrels of oil per day²⁷.

In another approach, towards effective tackling of the scourge of gas flaring, the Act *provides for a penalty of seizure of business and the concealment of all or part of any privileges of any offending person*.²⁸ Regrettably, as good as the provisions of the Act were, there is no single record where these sanctions were found imposed, yet, the offence continues unabated. The provisions of the laws have not been applied because it was popularly said not practicable as regards the time limit set.

To address the problems of its unrealistic deadline, several amendments were made to the Act.²⁹ To some, the

²⁶Global Gas (2004) No. 3

²⁷ Sec. 13, 2018 Regulations *ibid*

²⁸Section 4 (1) *Ass Gas Act*

²⁹N. Ogbara, —" Why the Extant Legal Framework Prohibiting Gas Flare in Nigeria did not Work?". A Paper

Presented at a Social Action Organised Forum on Gas Flaring Prohibiting and Sustainable Energy Future for Nigeria, 30 September 2009 at Bolton White Hotels Ltd, Abuja. p.6

extension was not necessary as it only shows the non-readiness of the N.N.P.C. to address the nagging problem headlong.

3.6 The Oil Pipelines Act

The Act deals with oil pipelines and the activities surrounding it. The Act is supported with its many regulations made theretoto monitor oil activities.

- The Act in its **section 11 (5)** makes the person, holder of an oil channel or a person who for one reason or the other is saddled with the control of an oil channel to be answerable in civil tort. Hence, he would be made accountable to compensate and reimburse any person who is hurt from such act of pipelines breakages or leakages.
- In its **section 17(4)**, the Act provides that an award of licenses shall be depended on regulations and directives that create theaward of licenses which is dependent on guidelines regarding public protection and avoidance of land and water pollution.
- **Section 25** of the Act criminalises an act aimed at hindering officials of the agencies from inflowing or taking custody or control of any land in fulfilment of the provisions of this Act. A sanction of 50 naira fine or imprisonment for three months follows the commission of this crime.

The Act levies civil responsibility on any person who causes oil spill through its pipelines. The objective of this Act is to forestall any act of negligence in the management of oil pipeline by the oil companies and it provides for compensation in case of such pipeline spills.

The noticeable shortcomings of this Act from our findings is that despite these provisions, compensations payments remain haphazard while in so many cases, only the privileged members of the communities take the compensation to the total exclusion of the commoners who suffer the brunt of the environmental pollution.

More so, the imposed sanctions are ridiculous in term of fine and imprisonment. These need a total reform.

3.7 Petroleum Act

This Act and its subsidiary guidelines are the main rules on oil and gas businesses in Nigeria. The Act is directed at addressing the many problems associated with the oil producing communities, encourages public security and ecological protection. Emphasis needs be placed on the following sections of the Act:

- In its **section 9(1) (b)**, the Act makes provision demanding from those placed in the exercises of its powers to make rules and guidelines on procedures for the stoppage of air and water pollution.

It was based on the above provisions that the authority, subject to the Act, came out with various regulations, including:

3.7.1 Petroleum Drilling and Production Regulations:

- This regulation, in its **section 17 (1) (b)** places limitations on lessees from making use of land that falls within fifty yards of any building, dam, reservoir, public road, etc.
- **Section 23 and 27** proscribes, except with lawful permission, the falling of trees in forest reserves.
- **Section 25** of the Act requires for reasonable measures to be taken to prevent water pollution and to put an end to it, if such occurs.

3.7.2 Petroleum Refining Regulation

- **Section 43 (3)** foists responsibilities on the Administrator of a processing plant to take foreseeable steps to prevent, avert and control pollution of the environment.
- **Section 45** makes any violation, breaking and disobeying of the Act punishable with a fine of N100 or a term of detention of six months.

The problem with the provisions of this regulation is embedded in its sanctions. The N100 fine imposed on anyone who contravenes the provisions is ridiculously low and it on its own encourages further commission of the crimes daily, most especially, when there seems no any checkmate from the authorities' concern.

3.7.3 Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations.

The two Regulations here are safety measures and in their provisions, recommendations were made for measures which could bring about safety in the area of production, stocking, transference and storage of petroleum products to avert ecological pollution.

These Regulations sees the safety of the people to be more paramount than the profit motive for oil movement.

3.8 Petroleum Products and Distribution Anti-Sabotage Act

The Act provides for the sanctions of death or 21 years imprisonment term for anyone who involves in any act of sabotage that causes pollution in the environment. This provision is normally supposed to be touching enough to address the problem of pollution arising from oil exploitation but its application is yet to see the light of the day just as the crime is being committed unabated.

3.9 Territorial Water Act

The Act outlaws and forbid every action or oversight which are committed within Nigerian territorial waters and which would ordinarily be a crime under any other existing law.

3.10 Niger Delta Development Commission (NDDC) ACT

This is an interventionist Act which is mainly concerned with utilisation of funds that are allocated to it to challenge all manners of problems caused by oil assessment activities in the region.

Section 7 (1) (b) of the Act gives powers to the commission to on its own conceive and execute any such projects which may enhance the supportable growth of the areas in term of commerce, agriculture, trade, fishing, housing and municipal developments.

The Act bestows on the Commission the responsibility to interface with any such corporation which has interest in oil and gas business and to liaise with relevant stakeholders in the business on the control and management of spillages, gas flaring, including other matters that have to do with pollution.

Looking at the commission closely vis-a-vis its statutory mandate with a view to seeing how well it has fared at addressing the anxieties of the region, it is our view that the only pronounced activity of the commission is in term of management of its budgetary provisions and execution of few projects here and there while it is doubtful that it is living up to its bidding in term of liaising with corporations dealing in oil and gas in the control and management of spillages, gas flaring, including other matters that have to do with pollution.

3.11 Petroleum Production and Distribution Anti Sabotage Act

The Petroleum Production and Distribution Anti Sabotage Act is an Act enacted to address the unnecessary and unwarranted reactions that sometimes trails the agitations which are sometimes hijacked by miscreants and unscrupulous elements all in the name of fighting environmental pollution and abandonment of the people of the oil producing areas of Nigeria.

It is on record that several oil companies in Nigeria have alleged several pollutions from their facilities to pipeline sabotage and vandalism³⁰. Whereas we agree that mindless pollution of the oil producing areas may bring about various forms of reactions by the people of the areas, we however find and we agree with the opinions of scholars that there might be events of sabotage of oil pipelines by local indigenes in the Niger Delta, hence, aggravating the environmental problems facing the people.

The findings by notable scholars have underpinned the technological prowess involved in oil production and distribution³¹ to include the fact that crude oil is tapped from pipelines and terminals of the oil producing companies with advanced technological equipment in the waterways, creeks, swamps and high seas. Plastic pipes are fixed to manifold points and intersection of several pipelines and crude oil is

then pumped into barges. In some cases, ships are hooked to hoses that siphon crude from Multi National Oil Companies' facilities that may be several hundred meters away.

There has always been accusations by the residents of the oil producing areas and counter-accusations by the MNOC anytime cases of pollution occurs in the oil producing areas. Shell Producing Development Company (SPDC) of Nigeria, for instance, have repeatedly alleged illegal refining and third-party interference as a main source of pollution in the Niger Delta³².

The Petroleum Production and Distribution Anti Sabotage Act is a statutory intervention meant to address cases where sabotage is established to be the cause of a reported pollution and at the same time spells out sanctions for such a sabotage.

The Act defines sabotage as a person who:

- a. wilfully does anything with intent to obstruct or prevent the production or distribution of petroleum products in any part of Nigeria;
- b. wilfully does anything with intent to obstruct or prevent the procurement of petroleum products for distribution in any part of Nigeria;
- c. wilfully does anything in respect of any vehicle or any public highway with intent to obstruct or prevent the use of that vehicle or that public highway for the distribution of petroleum product.

And, in term of legal sanction, the Act stipulates the **death penalty or an imprisonment term of 21 years as punishment** for an offender under the Act. This punishment seems more than sufficient to sanction an environmental crime of its sort. However, there is yet any known official case against oil sabotage³³.

3.12 Nigerian Local Contents Act

The Act is not strictly environmental law but it is a law which was explicitly passed to proffer solutions to some of the yearnings of the people of the areas that produce oil resources for the country. The Act which was passed in 2010 seeks to encourage, promote and foster local and indigenous involvement in the Nigerian oil and gas industry by recommending slightest thresholds in relation to the operation of local services and goods.

The Act emphasises on the improvement of value addition to the Nigeria economy through the operation of local raw materials, products, and services in order to ensure growth of indigenous capacity and local industry. The Local Content Act gives firm privileges and special treatment to companies that meet the requirements as Nigerian companies

³² Shell BP, 2017 et al.

³³ MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions for Environmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

³⁰ Frynas, 2002 et al.

³¹ Ikelegbe, A. 2005. 'The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria.' Nordic Journal of African Studies, 14 (2): 208-234.

pursuant to the Act, including special treatment in the award of contracts for projects in the industry. To meet the requirements as a Nigerian company under the provisions of the Act, a minimum of fifty one percent of the issued shares must be held under the control of Nigerian shareholder(s); whilst the remaining forty-nine percent of its issued shares can be held by foreigners.

To give full effect and to realise the purposes of the Act, the Nigerian Content Development Monitoring Board was established.

IV. SALIENT LAPSES IN THE LEGAL FRAMEWORKS/LEGAL SANCTIONS

In this paper, we found that the problems confronting the effectiveness of the present legal sanctions against pollution in the Niger-Delta are in terms of enforcement, slow-pace of judicial processes, procedural loopholes in the laws and in some cases obsolescence of some of the environmental laws, hence, the meagre of monetary sanctions contained in them. The vacuum to be filled towards making the legal sanctions contained in Nigerian environmental laws potent in bringing about effectiveness are summarised as follows³⁴:

1. The inflexible persistence of the courts on *locus standi* from the plaintiff/victim of environmental pollution who is required by the courts to specifically prove that he suffers personally and specially far above the other members of the public before he can successfully succeed in instituting his environmental rights action;
2. The complexities involved in a case of negligence against oil companies requiring the heavy burden of having to prove a *prima-facie* case placed on the plaintiff/victim of environmental pollution, who may not have the financial wherewithal to withstand the expertise costs to hire the experts required in proving his case discourages the victims of environmental pollution to approach the courts to seek redress in situations where their rights are trampled upon;
3. Lack of an independent watchdog body to monitor the performances of the various regulatory agencies towards ensuring optimum performances from them;
4. A lot of the fine's stipulations in the environmental laws are obsolete and no longer potent enough to serve as deterrent to the multinational corporations who prefer to pollute and pay the inconsequential fines;
5. The extant legal sanctions are inadequate and some other legal sanctions are required to fill in the lacuna.

6. The lacklustre attitudes of the various regulatory agencies in carrying out their mandates of overseeing and ensuring compliances with the dictates of the extant environmental laws and their unwholesome compromising attitudes with the multinational corporations over whom they cannot impose extant legal sanctions;
7. The too much strict adherence of the courts to *legalism* rather than the justice demands of environmental cases;
8. The overload of the dockets of the regular courts with various cases, hence, the delay in dispensation of environmental related cases;
9. The contempt of court's decision by the oil companies through time wasting applications in the court processes and their persistent abuses of the processes of the courts to frustrate victims of environmental rights abuse.

4.1 Objectives of This Paper

1. Since Niger Delta serves as the revenue hub of the Federal Republic of Nigeria, in terms of the oil produce from it there is the dire need to ensure that all machineries are put in place to ensure that the region is peaceful to enable the government to realise its full economic potentials.
2. To ensure that the overall objectives of the environmental laws are realised in ensuring an environmental pollution free for the people.
3. To combat the inadequacies in the legal sanctions contained in the Nigerian environmental laws with a view to ensuring their re-evaluation.
4. To develop a working legal sanction regime against defaulters of environmental protection laws in the oil industry that can be adopted to discourage oil pollution in the Niger Delta.

4.2 Methodology

1. Research and gathering of data from existing literature and enabling statutes on oil pollution in the Niger Delta
2. Field survey through sampling and analysis of effects of pollution on the people in the studied areas.
3. Social survey will be done through interview of some residents of the studied areas as well as officials of the regulatory agencies.

V. CONCLUSION

There is a major awareness of environmental challenges triggering aggressions and environmental pollution in the Niger delta. This is due to lack of responsive legal regimes channelled towards addressing the problem headlong and coupled with the absence of policy directions that could bring about a well enforced statutory sanctions that could discourage violation of environmental protection laws. This lack of responsibility ranged from the provision of obsolete

³⁴MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions for Environmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

laws and poor regulation such as inadequate policy formulation, selective policy administration and non-enforcement of environmental laws and more importantly, the refusal of the relevant agencies to administer the legal sanctions to discourage violation of the environmental protection laws. A close scrutiny shows that the laws and regulations evolved by the Nigerian state to address and control oil exploration and production, export of oil and gas products in the last sixty years did not meet up with international best practices compared to what exist in countries with comparable features like Nigeria.

This paper has brought to forefront that developing laws and regulation may not assist the rudimentary resolve for which they are created as it was not established on the right note and the instrument of enforcement is based on political will and not fundamental human right. Laws that place its implementation agencies on superstructure that is far from area of jurisdiction and local actors is most likely to be rendered useless due to corruption and poor monitoring. The pattern and time line of the various environmental laws put in place to protect the Nigerian environment and the Niger delta in particular were shown to have developed from being mono-centric and protective of the abusers and perpetrators while exasperating the ability of the victims to get justice which is the fundamental factor aggravating unrest in the Niger delta. Therefore, leading to lack of enforcement, delayed justice and failed persecution of offenders. Regulations and laws against environmental pollution in the Niger delta are not adequate and irritates the ability of the victims to justice. These makes the victims and host communities more likely to disrespect them and result to self-help which further worsen the environment condition and output of petroleum mining in the region. Lack of justice is a major factor hampering development and sustainable environment, most especially in the management of Nigerian mineral resources.

We hereby by way of recommendations call for a consideration of the followings as a way forward towards re-evaluation of the legal sanctions contained in the Nigerian Environmental laws as measures at addressing the pollution that characterise the Oil-Producing Niger-Delta communities³⁵:

1. There should be holistic reform of some of the statutes embedded the Nigerian environmental laws as the quantum of fines contained in some of the environmental laws are old, obsolete, unreasonable and rather than deterring oil companies from carrying on acts which are inimical to the sustainability of the environment would rather encourage them as the oil companies are rich enough to pay the current rates

³⁵ MUSAH Abdulwasi (2019), A Comparative Assessment of Legal Sanctions for Environmental Pollution in Oil Producing Areas Of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.

2. The laws need a reform on the placement of liability on the company for a total and timeous clean-up whether a spill is caused by the company's negligence or caused through act of vandalism.
3. The environmental laws should be reformed to lessen the heavy reliance on *locus standi* as the license to get justice in the law courts so as to make for easy litigations on the part of affected individuals, most especially on environmental rights actions. Under the present arrangement, a plaintiff would have *locus standi* to institute an action on fundamental rights to life and dignity to live when a pollution occurs in his society only when he is able to show through abundant material facts that he suffers specially and far above others in the community. Hence, many litigants are discouraged to institute their environmental rights actions.
4. Nigerian environmental laws need a reform to accommodate and legally recognize the introduction of *environmental ombudsman* so as to monitor performance, compliance and enforcement of environmental laws. This environmental ombudsman which will be answerable to the President would serve the roles of public complaint commission between the oil host communities and the presidency. Through this, the ineffectiveness of the various regulatory agencies would be exposed and necessary measures to put them on their toes would be unveiled.
5. There is a holistic need for general review and a streamline of the many Acts constituting the Nigerian environmental laws to put an end to the issue of periodic clash of interests and overlapping of government agencies in carrying out their mandates.
6. As a sanctioning option, Nigerian environmental laws need to incorporate 'Reputational Sanctions' as a sanctioning option. Reputational sanction is a veritable form of sanction which no Multi National Oil Company would want to suffer, since they know it will hinder their global acceptability and business interests, hence, Nigerian Environmental laws should be reformed to provide for this form of sanction.

REFERENCES

- [1]. Amnesty international report on Nigeria 2009.
- [2]. AnagoI(2013) "Environmental Impact Assessment as a tool for Sustainable Development: The Nigerian Experience." Online at http://www.fig.net/pub/fig_2002/Ts10-3/TS10_3_anago.pdf, accessed on 14 July, 2013.
- [3]. Ayansina A, (2015). *Assessing wetland pollution and loss of ecosystem services in the Niger Delta, Nigeria*. Marine & Freshwater Research <http://dx.doi.org/10.1071/MF15066>.
- [4]. Chijioke, B, Onuoha E, Itoro B & Henry U(2018) 'The Impact of Oil Exploration and Environmental Degradation in the Niger Delta Region of Nigeria: A Study of Oil Producing Communities in AkwaIbomState' Global Journal of HUMAN-SOCIAL SCIENCE: F Political Science. Volume 18 Issue 3 Version 1.0.

- [5]. Ikelegbe, A. (2005). 'The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria.' *Nordic Journal of African Studies*, 14 (2): 208-234.
- [6]. MUSAH A (2019), Comparative Assessment of Legal Sanctions for Environmental Pollution in Oil Producing Areas of Nigeria and Other Selected Countries, University of Ibadan Postgraduate School, (PhD Thesis) Unpublished.
- [7]. Nwagbara, E. Abia, R. Inyang, F & Eleje, J. (2012). "Poverty, Environmental Degradation and Sustainable Development: A discourse". *Global Journal of Human social science, sociology, economics and Political science*.
- [8]. Ogbara, N (2009) —" Why the Extant Legal Framework Prohibiting Gas Flare in Nigeria did not Work". A Paper. Presented at a Social Action Organised Forum on Gas Flaring Prohibiting and Sustainable Energy Future for Nigeria, 30 September 2009 at Bolton White Hotels ltd, Abuja. p.6
- [9]. SPDC (2016). *Shell Petroleum Development Company, People and the Environment. Annual Report, 1995*. The Guardian Newspaper, 13th June, 2016.
- [10]. Watts, M (2001) "Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity" in *Violent Environments*, edited by Nancy Lee Peluso and Michael Watts, Pp. 189-212. Ithaca: Cornell University Press.
- [11]. Wifa E.L (2018), "THE ROLE OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE NIGERIAN OIL AND GAS INDUSTRY". Online at http://www.academia.edu/5713635/THE_ROLE_OF_ENVIRONMENTAL_IMPACT_ASSESSMENT_IN_THE_NIGERIAN_OIL_AND_GAS_INDUSTRY (accessed on 15 October 2018).