

The Place of Environmental Laws in Checking Oil Spillage in the Niger Delta Region of Nigeria

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Abstract

Following the industrial revolution and the subsequent expansion in the exploration of natural resources, the human environment has been impacted greatly. In Nigeria, the activities of the oil industry in the Niger Delta Region have compromised the ability of the environment to provide many of its services. Although environmental laws such as the “polluter pay principle” have been adapted to checkmate oil spillage, it should be noted that these laws evolved over the years and will continue to evolve with different approaches. In Nigeria, most of the laws until recently were left without reform, thus they no longer protect the environment any more. Moreover, enforcing these laws in developing countries has been challenging. The economic exploitation of the environment has grossly undermined the inviolability of a healthy environment and the sanctity of human rights in Nigeria. Therefore, this study elicits several lacunas in the existing environmental laws in Nigeria and also addresses the challenges of reforming and enforcing environmental laws in achieving environmental sustainability. The study reviewed and referenced journal articles, technical reports, online archives, textbooks and the constitution of the Federal Republic of Nigeria. This study affirms that, environmental degradation as a result of oil exploration in the Niger Delta region has continued to cause negative effects on the wellbeing of the people as it renders a large portion of the environment unsafe with toxic waste proliferating at an alarming rate. In an attempt to immunize the environment against environmental degradation, the study suggests that environmental laws should undergo frequent review and enforced without any iota of compromise in Nigeria, integrating and engaging every stakeholder most especially, those in the oil-producing communities in the Niger Delta region.

Keywords

Environmental Pollution, Environmental Laws, Oil Spillage, Niger Delta, Nigeria

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1. Introduction

The protection of the environment from the impact of human activities, especially those that have an adverse effect can be said to have become of urgent concern among the global community. This is evident in the collective global efforts for environmental protection through multilateral environmental treaties such as the Kyoto Protocol, as well as the Sustainable Development Goal. In Nigeria, the growth and development

of the oil industry can be traced back to 1956 when the Shell British Petroleum discovered crude oil in commercial quantity at Oloibiri, a town in Ogbia Local Government Area of Bayelsa State in Nigeria [1]. The Niger Delta region of the country comprises of nine (9) oil-producing States, with the majority occupying the South-South Geopolitical Zone of Nigeria. Fortunately, during the past six decades, Nigeria has built one of the largest oil sector industries in Africa. However, the handling of its environmental regulations and international standards has received a lot of criticisms across

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the globe. Though the exploration of the crude in Nigeria has improved the economic activities in the oil-producing areas and the country at large, yet, the exploration activities have indirectly led to the pollution of farmlands and fishing waters to mention a few [2]. To reduce these negative effects of oil exploration and protect the inhabitants of local oil-producing communities, the Nigerian government had enacted legislation and also participated in regional treaties as well as international protocols and conventions to regulate the downstream sector of the oil and gas industry. However, the enacted legislations have been grossly undermined by the oil companies operating in these areas, with the implication on reoccurring oil spillage events, which are rarely correctively addressed. Consequently, these areas are characterized by pollution, environmental degradation, and loss of aquatic lives abetted by weak regulations. Remarkably, the environment is a significant source of life support, and the quality of human lives is largely dependent on the quality of their environment. Hence, the need for revisiting environmental laws in Nigeria. This study assesses the existing laws and regulations guiding the exploration of oil, and environmental protection in Nigeria based on information sourced from peer-reviewed journal articles, technical reports, online archives, textbooks and the constitution of the Federal Republic of Nigeria. Also, the study identified several gaps in the existing environmental laws and the challenges in the enforcement and implementation of these laws, as well as the way forward in protecting the residents of the oil-producing regions of Nigeria from exploitation activities, human rights abuses, and environmental pollution.

2. Globalization and Oil Spillage in the Niger Delta

Globalization is "the rise of super territoriality" [3]. This implies free trade movement across the world. On the other hand, globalization is said to bring about the creation of a world with a wide range of human interaction and development across boundaries to form a single entity [4]. However, studies have revealed that globalization has had both positive and negative sides. The negative effect can be attributed to environmental degradation, with oil exploration contributing massively to the decay. Moreover, the activities of Transnational Incorporation (TNCs), or multinational companies, as they are popularly called in the Niger Delta region of Nigeria have demonstrated that globalization is perhaps the gravest threat to human rights, environmental and climate justice. Moreover, the operations of the TNCs in Nigeria, with Italian-Eni, Royal Dutch Shell and Anglo-Dutch as the leading companies, contributed to several cases

of environmental degradation which has encountered local resistance due to the increased impact of mineral and environmental exploitation against human rights [5]. For several decades the issue of oil spillage, which means a leakage or release of crude oil into the environment has been frequent in the Niger Delta region. The data presented from 1981-2015 by the Department of Petroleum Resources [6], shows that the volume or quantity of oil spillage per barrel picked between 2001 and 2003 at 250,000 barrels (Figure 1). However, the quantity of oil spills has reduced drastically since 2003, but then the number of oil spills occurrence continues to increase (Figure 2) therefore showing no significant improvement.

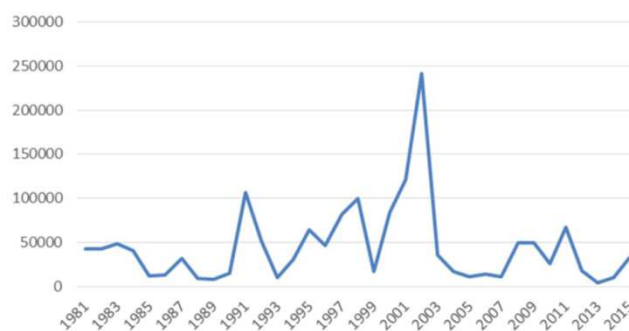


Figure 1. Volume of Oil Spills in Barrels (1981-2015).

Source: Osuagwu and Olaifa, (2018)

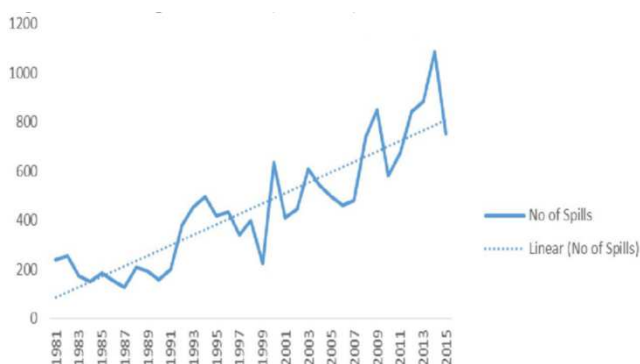


Figure 2. Trend of Oil Spills in Barrels (1981-2015).

Source: Osuagwu and Olaifa, (2018)

According to Amnesty International 2018 [7], Shell recorded about 1,010 spills along their pipelines between 2011 and 2017, while Eni records an estimated 820 spills between 2014 and 2017, which is an average of 5 spills per week for 7 years (Figure 3). Although Eni has reported a reduction in the number oil spill recorded from 2014 (351) to 2017 (108). Notwithstanding, these figures are still high, and of course, do not include spills that occurred prior to the era of public reporting of spills. The impact of oil spills on the lives and livelihoods of the inhabitants of the oil-producing areas has been devastating. According to the report submitted to Amnesty International, Eni attributed

the decline in spills along its pipeline since 2014 to the strict measures put in place to curb the menace. These include the deployment of technologies to prevent and detect spills as well as improvement in surveillance. However, the NOSDRA has reported that the reduction in oil spills to a large extent can be attributed to the “Amnesty Programme” which started since 2009, where the government pays the militant groups for laying down their weapons.

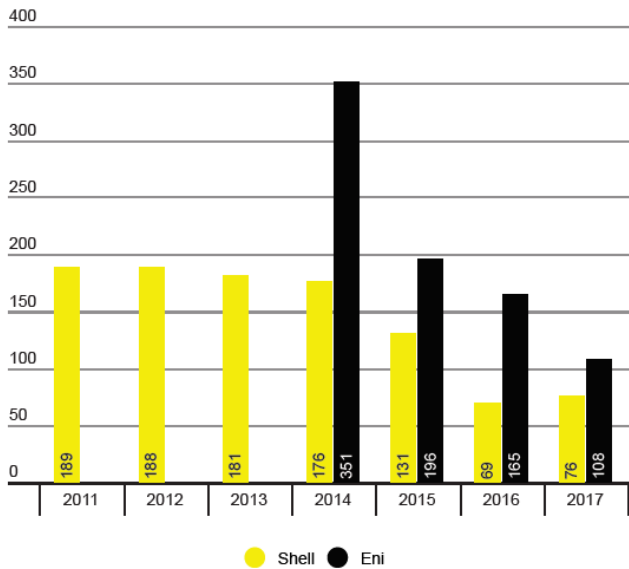


Figure 3. Oil spills per company per year in the case of Shell and Eni.

Source: Amnesty International (2018)

Noteworthy is the volume of oil spills, as the number of spills represents only a part of the problem. Shell reported that it lost about 110,535 barrels (17.5 million liters) between 2001 and 2011 across its pipelines and Oil wells. While Eni reported that it lost approximately 26,286 barrels (4.1 million liters) between 2014 and 2017 (Figure 4). Spills from both companies summed up to about 21.7 million liters [7], which is huge. Although reports from both companies deduce that the volume of the oil spill has dropped since 2014. But then,

these figures are only estimates. Moreover, the methodology used in carrying out the assessment has been questioned by CEHRD and Amnesty international. Shell and Eni attributed only 18.7% and 10.98% to operational faults respectively, blaming the rest on vandals.

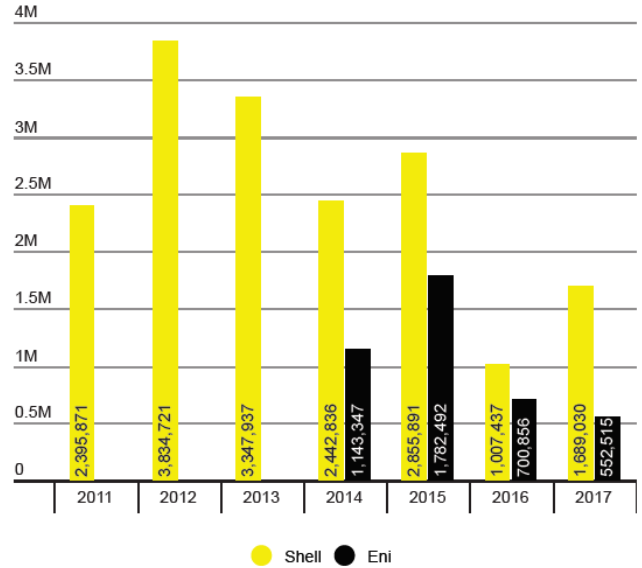


Figure 4. Volume of Oil spills in the case of Shell and Eni.

Amnesty International (2018)

Oil spillage is often blamed on theft and, pipeline vandalism by militant groups e.g. Movement for the Emancipation of the Niger Delta (MEND) demanding several incentives such as jobs and social amenities [8], while others results from operational faults, human error and an act of negligence on the part of the TNCs are underestimated [9], such as using old and degraded pipelines coupled with slow response to oil spills. Although, the oil companies have always claimed that the majority (75%) of oil spills occur due to sabotage and oil thieves. A major impact of oil spill is environmental pollution which has adverse effects on human health (causing cancer, infertility, irritation, birth defects, etc.) due to the contamination of land, water and air [11] (Figure 5).



Figure 5. Polluted River and Stream in Ogoniland.

Source: Kadafa, 2012

Over the years, there have been series of oil spills in the Niger Delta, with the Ogoniland and Bodo community at the centre of environmental injustice, poverty, and the incessant activities of militancy, which led to the kidnapping of oil workers, fighting and several extra-judicial killings [12].

3. International Environmental Law and Ratification in Nigeria

Environmental law is the body of law used to control environmental problems emanating from anthropogenic activities; it protects natural resources, e.g. land and water, in order to keep up a healthy environment [13]. It also comprises of environmental justice and climate change resilience [14]. Therefore, the place of environmental law in protecting the Niger Delta region of Nigeria cannot be overemphasized. Accordingly, the best international practices among the oil-producing nation demand that all the environmental laws and conventions must not be compromised in order to protect lives and the hemisphere for future generations. Interestingly, Nigeria as an oil-producing nation and a signatory to so many international environmental conventions and protocols and has also enacted national legislation to safeguard the environment. The principle of polluter pays has been a major international environmental law for ensuring conformity to environmental protection worldwide. Nevertheless, developing countries such as Nigeria where technology and monitoring/enforcement agencies are not working optimally are faced with the challenge of identifying the polluter to make them pay.

4. Review of the Existing Oil Exploration Regulations in Nigeria

The Petroleum Act

The Petroleum Act [15] was enacted in 1969 to regulate the exploration of crude oil and other activities associated with the oil and gas industry with the aim of keeping the waterways and the environment safe from pollution. Section (9) of the Petroleum Act empowers the Minister of Petroleum to grant licenses and to regulate the actions of different oil producing company [16].

However, the Act does not have a clear definition of a 'good oil field practice' and what should be observed in protecting the environment [1]. The gap highlighted above has become an avenue for abuse and exploitation by TNCs in the oil

sector by cutting cost and maximizing profit at the detriment of the environment as opposed to a 'good oil field practice'. An example of the regulation made is "The petroleum (Drilling and production)" and "Petroleum Refining Regulations".

The Petroleum (Drilling and Production) Regulation

This regulation authorizes all license/permit holders to abide and adapt every precautionary measure to avoid land and water pollution in Nigeria as contained in "Section 37" of the Act [17]. Furthermore, it also mandates the license holders to clean up and control the mess to avert the effect of pollution [18]. However, the enforcement of this provision has been subjected to contradicting interpretations, as the practices and sanctions referred to in this provision are ambiguous. This has led to a lot of confusion in judicial decisions. Moreover, under paragraph 37 of the Petroleum Act, it authorizes the holder of the mining/exploration license to compensate the victim who suffers a loss due to the activities of the oil company. Yet, the TNCs in the oil industries do not show concern in most cases. They make failed promises, and sometimes delay payment until the people are provoked. This result in series of protests, riots and pipeline vandalization. At this stage, TNCs in the oil industries will involve the government and try to hide under the crisis which led to the destruction of companies' installations to avoid paying the initial compensation [19].

Petroleum Refining Regulation

This legislation stipulates that, in disposing oil wastes, rusts, sludge, containing petroleum products, oil companies must conform to 'good refining practices' and such disposal should only be done in designated places that the Director of Petroleum Resources (DPR) has approved [20, 21]. Hence, defaulters will be liable to pay a fine of ₦100, approximately (USD 0.3) [22] or six months imprisonment [23]. The penalties for flouting the said regulation aren't stringent enough to caution the oil companies from polluting the environment. In most cases, the oil companies do not comply with this regulation, thereby making nonsense of the best international standards, as their focal point is on how to maximize profits at the expense of human rights, environmental justice, and climate change.

The Oil Pipeline Act

The oil pipelines are considered the least expensive methods of transporting crude oil over long distances, for example, from the oil wells to the refinery. In October 1996, the oil pipeline act [24] was enacted to checkmate the activities of oil companies while issuing oil exploration licenses and to ensure the oil pipeline is effectively maintained to prevent land and water pollution [25]. In a case where land and water

pollution are experienced due to the activities of the company in possession of the permit, then the inhabitant of the land would be compensated. This means that whenever the pollution is as a result of vandalism by a third party then no compensation is required. In this manner, the provision shields the holder of an oil pipeline permit from taking responsibility under section 11 (5) (d) of the Act. The side effect and inadequacies of this provision have been evidenced in a plethora of cases. For instance, in *Atubin v Shell Petroleum Development Company (SPDC)* [26], a case of oil spillage where the court dismissed the case filed by the plaintiff on the ground that the oil spillage was due to an act of vandalism by third parties which isn't under the company's control. Similarly, in *SPDC v Amachree* [27] the plaintiff requested a 10 million Naira fee for the damage caused by the appellant's oil pipelines. The case was also dismissed by the court of appeal, claiming the oil lines were sabotaged. Thus, section 11 (5)(d) of the Act is seen to protect the license holder from paying for the damage they didn't cause, as there is every possibility that the plaintiff went ahead to vandalize the oil lines before heading to court to get compensation. However, studies have shown that most cases of oil spillage in the Niger Delta region have been initiated by defective and outdated oil exploration facilities [28]. Hence, the inhabitants have been left alone to bear the consequences associated with environmental degradation and health hazard which are as a result of the activities of the TNCs in most cases.

National Oil Spill Detection and Response Agency (Establishment) Act

In 2006, NOSDRA was created to operate under the Federal Ministry of Environment, Housing, and Urban Development [29]. Saddled with the responsibility of implementing strategies that mitigate the oil spill as well as responding to oil-related pollution in the Nation. Under this Act, an oil company is mandated to report an oil spill event to the agency within 24 hours, else it attracts N500, 000 (\$1388.89) fine per day after the occurrence. Furthermore, if the oil spiller fails to clean up the area affected, this will further attract N1,000,000 (\$2777.78) only [22]. Generally, a million-naira fine is seen to be way lower compare to the cost of remediation and clean up. Thus, oil companies might choose to pay the fine instead of clean up. At that, there have been a series of oil spillage since the establishment of the Agency.

4.1. Constitutional Recognition of Environmental Rights in Nigeria

Chapter II of the Nigerian Constitution provides for environmental rights [30]. However, the rights to a healthy and safe environment are non-justifiable; in other words, it is

not subject to be claimed as a matter of rights but can only be implemented at the instance of the State. Consequently, the above, the Nigerian Constitution provides: *The State shall protect and improve the environment and safeguard the water, air, and land, forest, and wildlife of Nigeria*'[31].

However, the above provision of the constitution is non-justiciable, which was confirmed in the case of *Okogie v. Lagos State Government (1981)* and in that of *Attorney-General of Ondo State v. Attorney-general of the Federation (2002)*[32]. The import of a non-justifiable provision is that this provision of the law cannot be subjected to judicial interpretation or litigation in any court of law in Nigeria. Except it is included in the right to environment in the National Policy on Environment, launched in 1989 [33]. Similarly, the right to a healthy environment, provided in the African Chapter on Human and Peoples Right Act [34] which detailed "people's right" has not been taken seriously in Nigeria, this provision has been violated in diverse court cases. This lackadaisical attitude of the Nigerian government towards protecting the environment for healthy living intensified environmental degradation as we see in the Niger Delta today, such as water, air, and land pollution affecting fishermen, farmers, and the community as a whole, leading to several court cases where the oil companies claim they have compensated the inhabitants for the damage caused. This implies that the right to a healthy and decent environment has been hijacked.

4.2. The Challenges of Enforcing Environmental Law in Nigeria

Environmental laws become useless if they aren't adequately enforced. Moreover, corruption in all levels of government and regulatory institutions makes it difficult to enforce the law. The local Kings or Clan heads in those affected areas have compromised their position for monetary gain while the enforcement agencies lack adequate funding to procure the necessary tools required for monitoring and management of the environment [35]. Also, inadequate experts working in the agencies to ensure effective monitoring of the oil sector in Nigeria also caused set back. Unfortunately, the National Environmental Standards and Regulations Enforcement Agency (NESREA) [36] established in 2007 which replaced The Federal Environmental Protection Agency Act (FEPA), in charge of environmental protection in Nigeria aren't saddled with the responsibility of enforcing the law in the oil and gas sector. Accordingly, conflicting roles and communication gap is another major challenge amongst the existing agencies, as their functions and jurisdictions are not clearly mapped out [37]. Besides, Public awareness of the environmental laws and the bodies in charge is very low across the country. Thus, the oil companies aren't compelled

to provide adequate information for effective monitoring. Moreover, the judiciary arm dwells more on legal technicalities such as “*locus standi*” [38] which declines people’s interest in environmental issues and discourages the concerned individual from filing suit to enforce the law. This lacuna is also found in the Environmental Impact Assessment Act [39], coupled with the cost of litigation and the complexity of court processes.

5. Conclusion

This study assessed the existing laws and regulations guiding the exploration of oil and environmental protection; using the Niger Delta region of Nigeria as a case study. It went further to explore the notion of environmental pollution, and the damming effect of the unregulated activities of the TNCs operating in the Nigerian upstream sector on the lives of the people living in the Niger Delta region, as well as its consequences. Also, the study identified several gaps in the existing environmental laws and the challenges in the enforcement and implementation of these laws, as well as the way forward in protecting the minorities in the oil-producing regions of Nigeria from exploitation activities, human rights abuses, and environmental pollution. It is safe to conclude that environmental pollution as a result of oil spillage in the Niger Delta has numerous disruptive implications for the promotion of a healthy environment, prosperity, peace and the protection of human rights of the people of the region.

6. Recommendations

If Nigeria must make headway for a better society devoid of exploitation and the impoverishment of the Niger Delta region, the Federal Government of Nigeria must be courageous enough to enforce her environmental laws and sanction the erring. The Economic and Financial Crimes Commission (EFCC) needs to be strengthened and allowed to run as an independent organization, to effectively curb corruption within the oil sector. Besides, the Nigerian judiciary and the executive arm of government must be liberal, proactive and resourceful, to ensure that the extant laws on the environment are strictly enforced. Although the principle of polluter pays is crafted solely to reduce the environmental impact of the multinational companies. Sadly, the partial or non-enforcement of this principle in Nigeria has led the Friends of the Earth into proposing the need for an “Environmental Court of international Jurisdiction” to seek justice. Nevertheless, it is of utmost importance that global treaties incorporate all parts of human rights, including the privilege to fundamental necessities such as food, water, and general wellbeing in the agreements, at the same time, taking adequate steps to curb the excesses of TNCs and militancy

while reducing impacts on the environment via a binding environmental treaty backed by a standard global enforcement agency. The activities of TNCs must be curtailed to the best international practices and standards in line with environmental laws and international treaties to reduce oil spillage and other associated pollution arising from oil exploration.

The role of good governance in the implementation of environmental policies cannot be overemphasized. Hence, the Nigerian government is also expected to facilitate sustained negotiation with the Niger Deltans, by adopting the Bottom-Up approach and community participation method, to reach a consensus on the budgetary allocation for the region among other issues. Affected communities should follow the path of peace and dialogue rather than conflict, militancy, and violence. At that, it is imperative to ensure public awareness of the laws protecting the environment, train experts and fund agencies for effective monitoring and surveillance of oil platforms using improved technology such as drones, helicopters, among others. Also, enacting stiffer penalties for violators, and mandating a regular disclosure of multinational companies’ activities without bias is highly essential. These will compel the companies to adopt the best practices and technology available while following the UN guiding principles on business and human rights. Moreover, the use of activism to push for the actualization of favourable environmental protection laws would be more logical and sustainable. Again, the government’s commitment to the social well-being of the people of the Niger Delta must be paramount and the desire to protect, promote and safeguard the human rights of all Nigerian citizens irrespective of which regions they come from must be preferred above personal aggrandizement of the ruling oligarchy. In the same vein, national interest must be placed above the indiscreet accumulation of mammoth wealth. In this way, the Nigerian oil industry will be a source of prosperity, national development and economic growth for the nation.

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