

Evaluation of the Statutory Regime of Corporate Environmental Liability in the Oil and Gas Sector in Nigeria

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ABSTRACT: It was not long after the discovery of oil in the small town of oloibri Bayelsa state in 1956, that commercial exploration started in 1958. Nigeria is Africa's biggest producer of crude, with production capacity estimated at 2 million barrels per day (bbl. /d) in 2018. Judging from the large reserves and with a right atmosphere, Nigeria could produce up to 3 million bbl. /d per day. Nigeria is estimated to have about 37.2 billion barrels of proven oil reserves, largely concentrated in the Niger Delta Region and over 95 per cent export and 75 per cent earnings Nigeria is dependent on the Oil and Gas sector.

Cases of pipeline leakages have become rampant in Niger Delta; this has influenced negatively the social, economic, and ecological life in the region. Oil spills occurrences stood at 6,744 spills with 2,369,470 barrels between 1976-2000, of this number, an estimated 1,820,410.5 barrels 77% was deposited into the environment, though a cumulative figure of 549,060 barrels of oil, signifying 23.17 per cent of the whole was however recovered. Painfully, this unprecedented number of oil spill accidents has witnessed only a negligible clean-up effort by multinational oil corporations (MNCs) from whose facilities the oil escaped.

This article critically examines the liability regime of corporate operators in the oil and gas sector in Nigeria. The inadequacies in the major laws within the sector and proffer suggestions for a stronger legal framework. Nigeria is not lacking in regulatory laws within the oil and gas sector, but these laws are weak and lack the efficacy to make the polluter liable.

KEY WORDS: LEGISLATION, CORPORATE ENVIROMENTAL LIABILITY, OIL AND GAS

National Legislation on Corporate Environmental Liability in Nigerian oil and gas law

I. INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999

The Constitution of the Federal Republic of Nigeria 1999 sets out in section 20,¹ as part of the Fundamental Objectives and Directive Principles of State Policy, the role of government in protecting the environment, (air, land, water, biodiversity and wild life). This section among other sections under chapter 2 are nonbinding and non-justiciable obligations on government. This obligation is within the ambit of economic and social cultural rights of the people. The view is that; government will progressively realise these environmental goals. The mandate of government according to this section,² is exponential in enacting laws, regulations and formulation of policies aimed at protecting the environment from harmful activities of oil companies. The Constitution confer legislative powers of the Federal Government on the National Assembly,³ to makes laws for good government and by extension, protection of the environment with regards to the oil and gas sector. With this power, the government can enact any law to stop activities it considers to be environmentally harmful. This role in itself is not difficult, but the dilemma is, these environmentally harmful activities that characterise oil

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¹ Constitution of the Federal Republic of Nigeria 1999, Cap N24, LFN 2004

² Ibid section 20

³ Ibid section 4 (1) (2)

exploration, are economically beneficial to the government.⁴ For the most part, the government remained helpless as it faces the dilemma of balancing development from the environmentally harmful activities of crude oil exploration and preservation of the ecosystem. This is one of the key reasons for weak legal and institutional failure. The government is under obligation to give effect to all international treaties which Nigeria is signatory to.⁵ The powers to make laws to regulate the oil and gas sector and to enter into and implement any international convention, to further protect the environment rest with the federal government.⁶ Thus, the federal government, through the National Assembly enacted the following laws.

National Oil Spill, Detection and Response Agency Act⁷

This legislation created the National Oil Spill Detection and Response Agency (NOSDRA) for the co-ordination and implementation of oil spill liability in Nigeria. The functions⁸ of NOSDRA includes the surveillance of oil companies and NOSDRA ensures that oil companies comply with all existing environmental laws in the oil and gas sector. NOSDRA is to undertake such other functions as may be directed by the Federal Government from time to time.⁹ The Act requires oil companies to report incidences of oil spill within reasonable time of 24 hours, after the occurrence or risk a daily fine of ₦500,000.00 until the Agency receives the report.¹⁰ The Company responsible for the oil spill is expected to facilitate the clean-up and remediation of the affected sites. The Act stipulated an additional penalty of one million naira (₦1,000,000.00)¹¹ for failure to conduct clean-up to practical extent, including remediation.¹² This provision manifested in the test case of Sterling Oil Company see details below.

In *NOSDRA vs. Sterling Oil Exploration and Energy Production Company Ltd* (SEEPCO),¹³ the Federal High Court Benin division ordered the defendant to pay the sum of N68million to the NOSDRA over its failure to report the oil spill incident that happened at the Okwuibome, location C (OPL 280) on 5th March 2011. The court upheld the submissions of NOSDRA that SEEPCO was in breach of Section 6 (2) of the Agency's Act, when SEEPCO failed to report in writing the oil spill incident. The low side of this narrative is, NOSDRA commenced the legal action against SEEPCO on February 17, 2012 almost a year after the incident took place. This case explains how poorly the Act is implemented. The fine imposed by the Court as claimed by NOSDRA is a paltry sum compare to the damage. Besides, it was not deterrent enough to forestall similar future occurrences.

The requirements of the Act in relation to corporate environmental liability are notionally laudable. The response and management of oil spill occurrences since after the Act and Agency created under it came into force, have been irredeemably poor. UNEP¹⁴ report indicates that some spills spanning four decades had not been cleaned up or remediated. It is sad to say that the first major remediation exercise in the sector was launched in June 2016 and it is estimated to last for thirty years, despite the long history of oil exploration and the plethora of oil spill locations.¹⁵ There have been about 3,725 occurrences of oil spills in its first four years of being in force and over 495 spills struck between January and July of 2010. The numbers have soared since.¹⁶ The demand that oil companies report in writing about any spill has been the bane of this Act. many companies prefer to deal with the situation without the knowledge of the public. This demonstrates the Agency's lacks manpower and technical expertise to discover the spills by itself. The Act needs to improve beyond the meagre

⁴ Eddy Wifa, C. K. Amaeze, E. and E. Chioma, 'Potential conflict of interest in the dual function of the Nigeria department of petroleum resource as both Economic and Environmental Regulator' (2016) 7 I.E.L.R 306-312

⁵ See section 12 CFRN 1999, if the National Assembly re-enact the Treaty by virtue of the combined provisions of Sections 4 and 12 of the Constitution.

⁶ Gabriel Amokaye Oludayo, *Environmental Law and practice in Nigeria* (1st edn Environmental Law Research Institute 2012)

⁷ National Oil Spill, Detection and Response Agency NOSDRA (Establishment) Act, CAP N157, LFN 2006 (NGR)

⁸ Ibid section 6

⁹ Ibid part III, section 6 (1) (a)(b) (c) (d)

¹⁰ Ibid part III section 6 (2)

¹¹ Kingsley Edu, 'A review of the Existing Legal Regime on Exploitation of Oil and the Protection of the Environment in Nigeria' (2011) 37(2) Commonwealth Law Bulletin 307

¹² NOSDRA (n7) part III section 6 (3)

¹³ 'Oil Spill: Court orders firm to pay N68m fine' <www.vanguardngr.com/2015/11/oil-spill-court-orders-firm-to-pay-n68m-fine/> accessed 7 July 2017

¹⁴ Nigeria Launches \$1 Billion Ogoniland Clean-up and Restoration Programme, <<http://web.unep.org/disastersandconflicts/where-we-work/nigeria#sthash.vxngYv2w.dpuf>> accessed 7 October 2017

¹⁵ Ibid

finances as we have seen above. Sanctions such as withdrawal or suspension of exploration licenses should be incorporated in the Act. People have called for a review of the Act but no one ever calls for the withdrawal of operational license, there is need to hike fines against oil companies in default, as many have advocated.¹⁷

Oil in Navigable Waters Act¹⁸ (ONWA)

This Act and all Regulations¹⁹ made under it seek to prevent the pollution in navigable waters by ships and such substances originating from oil and gas activities in Nigeria. The Act was enacted as a response to the transposition of the International Convention for the Prevention of Pollution of the Sea (OILPOL) 1954²⁰ and the International Convention for the Prevention of Pollution from Ships (MARPOL),²¹ and pursuant to section 12(1) of the 1999 Constitution of Nigeria.²² Sections 1,3,5,6, 7 and 10 of the Act create several criminal liability offences for a Nigerian ship that discharges oil into the prohibited part of the sea. The Act prohibits Nigerian ships and masters from discharging oil into the Navigable waters. A violation of this provision is punishable either by a fine of not exceeding N2, 000 on summary trial with seizure and sale of the vessel, as the High court might direct. Regrettably, the Oil in Navigable Waters Act has weak mechanisms that give the potential offenders wide latitude to escape liability in several ways.

Firstly, the perpetrator is not liable once he can prove that the discharge was because of securing the vessel from wreck and for reason of saving lives. Secondly, the liability contemplated by the Act excluded accidental discharge or leakage of oil as a result of damage to the vessel. It is therefore uncertain who bears the cost of clean-up, for instance, in the event that the ship collides or smashes on a rock and causing oil spillage or oil leaks. Thirdly, the Act did not provide for the injured victims of such discharges or oil spills in terms of compensation. The Act is too flexible, though it created several pollution offences under section 3,²³ it added special defences under section 4. This provision appears to be in favour of the offender.²⁴ These provisions in the law defeat the essence of creating the liability in the first place, knowing any company found culpable may rely on this provision to escape liability. The punishment for violation is a fine not exceeding two thousand naira (N2, 000). This fine is too low if one takes into account the damage often associated with oil discharge. The illogicality inherent in this law calls for an urgent review of this law. Indeed, most of these laws were enacted more than four decades ago, and its provisions can no longer deter a polluter. The Act should be revised with increased liability, financial security and take into account the PPP while assessing the liability.

Petroleum Act 1969 and Petroleum (Drilling and Production) Regulations²⁵

The Petroleum Act and its regulation is the principal legislation in the oil and gas sector in Nigeria. The Act bestows ownership of petroleum resources,²⁶ control and revenue derivable therefrom on the government.²⁷ The regulation provides for pollution prevention, reinstatement of the environment in the event of oil spill, sanctions for non-compliance and the compensation for victims of oil spills is also encapsulated in the Act. The Act vests on the Minister of Petroleum Resources powers to make such regulations to prevent pollution of watercourses and the atmosphere.²⁸ The Petroleum Act Regulation 25,²⁹ implore oil companies doing business in the country need to adopt precautions by providing an up to date equipment in their operations, and prevent pollution. If pollution occurred, the companies shall take prompt steps to control it, and if possible, end it. Similarly, Regulation 15(1) (f) call for the oil companies to reinstate the damaged environment to a workable state, whereas Regulation 23 highlights the basis for oil companies to pay compensation to oil pollution victims, especially if their fishing activities have been affected by oil spill.

¹⁷ Rotimi Ajayi 'Environmental Degradation; Review NOSDRA Act Now' (Vanguard 24th October 2011) <www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/> accessed 10th June 2017

¹⁸ Oil in Navigable Waters Act 1968 Cap 05; Laws of the Federation of Nigeria 2004 (NGR)

¹⁹ Oil in Navigable Waters Regulations L.N. 101 [1968]

²⁰ See the preamble to the Oil in Navigable Waters Act

²¹ International Convention for the Prevention of Pollution from Ships 1973/78

²² Adopted in compliance with the relevant provisions of the 1963 Republican Constitution, which is *imperio materia* with the provisions of sections 12(1) of the 1999 Constitution of Nigeria as Amended.

²³ Offences under section 3 include deliberate or negligent discharge of oil into Nigerian waters, failure to install oil pollution apparatuses on ship, failure to keep record of oil matters, failure by port authorities to provide oil reception facilities etc.,

²⁴ Ibid

²⁵ Petroleum Act 1969 Cap P.10 LFN 2004 (NGR)

²⁶ Ibid section 1

²⁷ Ibid sections 1, 2, 8

²⁸ Ibid section 9 (1) (b) (iii)

²⁹ This regulation made in 1990 pursuant to the petroleum Act 1969

The Act further grants powers to the minister to revoke oil-mining leases granted to any oil company.³⁰ If the minister is convinced that the lessee's operating standards are far below standard practice in oil exploration,³¹ the operator is expected to engage in exploration activities consistent with basic oil field practices approved in the work programme for the licensee.³² The Act however, fails to define what constitutes 'Good Oil Field Practice'.³³ This lack of clarity gives the oil companies and the minister or anybody designated to weigh the powers of the minister, the latitude to determine what constitutes good practice. More often than not, these officials are guided by pecuniary interest to define the term in different forms. Edu³⁴ noted, the oil companies have interpreted the term to mean, 'Minimising economic cost of production without recourse to protection and environmental wellbeing'. This has accounted for the unabated gas flaring in the Niger Delta. Such latitude or wide range of construal powers ascribed to the term, has opened the floodgate for corporations to evade environmental liability. For instance, the persistent flaring of gas within the region is one of the major instances resulting from the loose interpretation of this Act. Shell Petroleum Development Company (SPDC) remains one of the biggest culprits until date in gas flaring.³⁵ Ekpu³⁶ believes that the term 'Good Oil Field Practice' should contain an obligation to minimise environmental damage. while amendment of the law is the only means to incorporate this suggestion. It can be argued that neither the minister nor the companies would be ready to push this amendment, because to do so, will mean an attempt to indict self. Since the government through Nigeria National Petroleum Corporation (NNPC) and the Oil Companies are themselves perpetrators, to expect them to push this amendment will be akin to shooting themselves on the foot.

Oil Pipelines Act, 1965³⁷

Pipelines are essentially part of the infrastructure in oil and gas exploration.³⁸ They are necessary for the carriage of refined products, crude oil, natural gas and any derivatives or component, and these include any substances like steam and water use or intended to be used for production, refining and transportation of mineral oils.³⁹ The Act creates a liability on the titleholder or a person in charge of oil pipeline to pay compensation to any person who suffers physical or economic injury from leakages of pipelines.⁴⁰ Despite this, a permit holder shall be exempted from paying compensation to victims, once it established under section 11 (5) (c) that those seeking "compensation, actually caused the spill or the spill occurred by the act of a malicious third party."⁴¹ Much as the third party clause is important to avoid malicious activities of militias and riotous groups, it has now been commandeered by most oil companies as an escape route to negative liability, and deny payment of compensation to victims of oil spills. The oil companies have taken advantage of this clause to claim sabotage for leaked pipelines.⁴² The third-party clause in the Act robs the public the advantage in Ryland rule. The rule in *Ryland v Fletcher*⁴³ created strict liability; which is *in tandem* with the PPP. The Oil Pipeline Act ought to follow this strict liability regime looking at the original intent of the Act, Compensation and remediation would become unenforceable against the oil company or government, because the oil companies can claim sabotage for pipeline leakages, and the government its willing collaborator can rely on its powers

³⁰ Petroleum Act section 8(1) (f) (g)

³¹ Ibid section 8 (1) (h) and Schedule 1, Paragraph 25 (1)

³² Ibid schedule 1 paragraph 25 (1)

³³ Ibid section 15 (1)

³⁴ Edu (n 11) 308

³⁵ Ukala (n 43) 105

³⁶ Ambrose O. Ekpu, 'Environmental Impact of Oil on Water: A Comparative Overview of the Law and Policy in the United State and Nigeria' (1995) 24 Denv. J. Int'l L. & Pol'y 55, 78

³⁷ Oil Pipelines Act 1965 cap 338 Laws of the Federation of Nigeria (Cap 07 LFN) 2004 (NGR)

³⁸ Friday Adejoh Ogbu, 'Challenges of oil and gas Pipeline Network and the Role of Physical Planners in Nigeria' (2011) 10 Forum E journal 41-51

³⁹ Ibid 43

⁴⁰ Section 20(1) of Oil Pipelines Act, states: "[the court shall award such compensation as it considers just in respect of any damage done to any buildings ... by the holder of the permit in the exercise of his rights thereunder ...] Nevertheless, victims of oil spills will not be entitled to any compensation provided that Section 11(5)(c)

⁴¹ Section 11(5)(c) of the Oil Pipelines Act

⁴² Rachael Eben, 'A systemic appraisal of Nigeria's vessel-source compensation regimes for spill victims' (2016) 24(3) African Journal of International and Comparative Law 406

⁴³ Under the rule in *Rylands v. Fletcher* [1868] UKHL 1 HL. A person who allows a dangerous element on his land which, if it escapes and damages a neighbour's property, is liable on a strict liability- it is not necessary to prove negligence on the part of the landowner from which the product or element has escaped.

under section 28 (1) of the Land Use Act (LUA)⁴⁴ to frustrate possible claim for compensation. under section 28 of the LUA, it is lawful for the governor⁴⁵ to revoke a right of occupancy of anybody, provided it is for public interest. Section 28 (3) explains public interest to include ... (b) the requirement of the land for mining or oil pipelines or for any purpose connected therewith. Owners of land could witness forfeited claims of compensation once it becomes imminent that they may lose their right due to environmental damage that have ensued, this exception exist to frustrate the regulations.

The Associated Gas Re-Injection Act⁴⁶

The highlights of the Nigerian government's failed policies and weak laws in relation to gas flaring in Nigeria is effectively discussed by Udungeri, in his dissertation on Corporate Environmental Liability Under the Nigerian Oil and Gas Law; A Critical Assessment of the Polluter Pays Principle. Section 3 of the Associated Gas Re-Injection Act, prohibits all companies from flaring gas after 1 January 1984. Section 4 of the Act stipulates punishment for offenders, to include cancellation of concession license of the particular field. More than three decades of existence of this Act, there are no records of any cancelled license on account of gas flaring or huge penalty imposed on any operator for gas flared to serve as deterrent. Various reports on the Niger Delta region have shown grave damage to the ecosystem as well as the well-being of the people.⁴⁷ The continued shift in the target dates is evidence of weak institutional and legal framework.

2. Other Legislation Indirectly Dealing with Corporate Environmental Liability in Nigeria

National Environmental Standards, Regulation and Enforcement Agency Act⁴⁸

The Act created the National Environmental Standards Regulations and Enforcement Agency (NESREA). The Agency is at present the principal government Agency charged with the responsibility of protecting the environment.⁴⁹ The NESREA has the responsibility of implementing all environmental laws, regulations, guidelines, and standards in Nigeria except in the oil and gas sector.⁵⁰ The notable section of the Act is section 7 (c) that mandates NESREA to enforce compliance with the provisions of international environmental agreements, protocols, conventions and treaties. The inclusion of oil and gas in the list of international treaties on the environment to be enforced by NESREA pursuant to s. 7 (c) is the reason this Act merits our review. Even though it appears inconsistent in the light of the mandate granted under s. 7 (h) which completely removed oil and gas from the list of sectors the Agency can enforce compliance and regulations.⁵¹ Laden had argued that oil and gas under section 7 (c) should be removed to bring section 7 (h) in agreement with the rest of the Act.⁵² It is argued that the provision should rather be strengthened to accommodate oil and gas sector, in the area of enforcement and compliance with regulations.

II. ENVIRONMENTAL IMPACT ASSESSMENT ACT 1992⁵³

The Act was enacted to provide an assessment of potential negative environmental impacts of any public or private projects may have on the environment.⁵⁴ The Act restricts the development of any project without prior checks of the effect on the environment.⁵⁵ The Act is a strategic process aimed at collating data about the latent and manifest risk the project may have on the environment and evidence of environmental effects of the proposed project before commencement. The liability for the failure to comply with the Act⁵⁶ is

⁴⁴ Land Use Act 1978 Cap L5 LFN 2004 (NGR)

⁴⁵ Ibid section 28 (1). Vests all land in the state on the governor of every state, Nigeria has 36 State in the Federation.

⁴⁶ Associated Gas Re-Injection Act 1979 Cap. A 25 LFN 2004

⁴⁷ Report of the Technical Committee on the Niger Delta' (November 2008) 102 <www.waado.org/NigerDelta/niger_delta_technical_com/NigerDeltaTechnicalReport.pdf> accessed 7 June 2017

⁴⁸ National Environmental Standards, Regulation and Enforcement Agency Act (NESREA) 2007 section 7 and section 8 (1) (k) Act. NESREA Establishment Act, 2007 this Act replaced Federal Environmental Protection Agency Decree no. 58, 1988 (NGR)

⁴⁹ Muhammed Tawfiq Ladan, 'Review of NESREA Act 2007 and Regulations 2009-2011: A new Dawn in Environmental Compliance and Enforcement in Nigeria' (2012) 8(1) Law, Environment & Development Journal p. 116

⁵⁰ Section 7 of NESREA Act

⁵¹ Ibid section 7(g, j, k, I)

⁵² Laden (n49) 124

⁵³ Environmental Impact Assessment Act 1992, cap E12 LFN 2004 (NGR)

⁵⁴ Ibid section 2(1)

⁵⁵ Ibid section 9 and 10

⁵⁶ Ibid section 60

hard to ascertain, because the language of the act is couched in vague and omnibus terms. The Act makes it compulsory for an Environmental Impact Assessment (EIA) study of a project to be ready at the start of such project.⁵⁷ It also requires the project to rely on the evidence collected to determine if such project should continue in its original proposed form or with adjustments or at best to stop such project.⁵⁸ The implementation of this Act has been challenging as the implementing agency created under the Act has been merged with the Ministry of Environment, with this merger of hitherto Federal Environmental Protection Agency (FEPA) into the Federal Ministry of Environment. Environmental Impact Assessment is now conducted by a directorate within the ministry in line with the provision of the Act.⁵⁹ More often than not projects are delayed, because of bureaucratic bottlenecks. Another contentious issue in this Act is the question of remedy available to interested persons in the event that the Agency failed or neglected to carry out its function, or when it did, its decision was poorly implemented. Even though the Act created an avenue for the interested party to make input, the act fails to grant persons or groups the right to sue. In *Oronto Douglas v Shell Petroleum Development Co*,⁶⁰ the Court held thus, the right of interested persons to make input by way of comment, does not carry with it the competence to pursue a judicial review, of a decision of the Agency about environmental impact assessment of any project. This no doubt is a strange judgment; it establishes the many deficiencies in the Act. This is so because the Act, unlike the National Environmental Policy Act of 1969 in the United States of America, created right of judicial review for the American citizens and interested parties. If this were to be the provision in Nigeria, many oil installations would have been relocated and/or denied approval.

Criminal Code of Nigeria 1990⁶¹

The Criminal Code is the substance of Nigeria's criminal jurisprudence. The Criminal Code Act prescribes six months of jail term for malicious harm to spring, stream, well, tank etc., that makes it less the customary usage.⁶² Section 247 prescribes six months' sentence for a person whose activities has deleterious consequences on the atmosphere such that can affect the wellbeing of the people. As straight forward as these provisions appear, the Attorney-General whose is the chief prosecuting officer of the Federation,⁶³ has been reluctant in the enforcement and prosecution of the defaulting oil companies who flagrantly contravene this enactment. Due to this institutional compromise, there no evidence of any prosecution of oil company in Nigeria six decades after commercial drilling began.

The problems associated with corporate environmental liability in Nigeria

1.6.1 *Locus Standi*

Locus Standi means the capacity of an individual to institute legal proceedings in court.⁶⁴ It entails the right to seek redress or initiate an action in court to compel enforcement of a right that has inures. Where a person has no *locus standi* the trial is out rightly invalidated, the law in respect of this concept is very strict.⁶⁵ In fact, it has been held in a plethora of cases that, a trial however competently conducted by a competent court will amount to a nullity if there is no *locus standi*.⁶⁶ It is an underlying notion in the Nigerian legal system and features prominently in criminal and civil proceedings. Unfortunately, it has been one of the greatest impediments of environmental litigation in Nigeria. In other jurisdictions, e.g. the UK and United States, the right of its citizens to initiate actions is guaranteed. Such actions as seeking compliance and enforcement of the environmental legislation.⁶⁷ The European Court of Human Right (ECHR) have decided in a number of cases

⁵⁷ Ibid section 2

⁵⁸ Ibid

⁵⁹ Ebeku (n25) (2003)

⁶⁰ *Oronto Douglas v Shell Petroleum Development Co* FHC/L/CS/573/93 Federal High Court, Lagos (1997) unreported

⁶¹ Criminal Code of Nigeria 1990 Cap .C38 LFN 2004 (NGR)

⁶² Ibid section 245

⁶³ CFRN 1999 section 150 and 174 (1) (a) (b) and (c)

⁶⁴ *Ladejobi v Oguntayo* (2004) All F.W.L.R. (pt. 231) p. 1209.

⁶⁵ Niki Tobi, 'Judicial Environment of Environmental Laws in Nigeria' Environmental & Planning Law Review (EPLR) (2) ISSN: 1597-4553 p. 90

⁶⁶ *Adesanya v President of the Federal Republic of Nigeria* [1981] 1 All N.L.R. 1 see also in England *R. v Inland Revenue Commissioners Ex P. National Federation of Self Employed and Small Businesses Ltd* [1982] A.C. 617; [1981] 2 W.L.R. 722; [1981] 2 All E.R. 93; *Hatton v United Kingdom* (36022/97) (2003) 37 E.H.R.R. 28; Times, July 10, 2003 (ECHR (Grand Chamber)) *Malone v Laskey* [1907] 2 K.B. 141 (CA)

⁶⁷ David. R. Boyd 'The Constitutional Right to a Healthy Environment, Environment Science and Policy for Sustainable Development', (2012)

<www.environmentmagazine.org/Archives/Back%20Issues/2012/JulyAugust%202012/constitutional-rights-

that its citizens can demand the enforcement of environmental laws.⁶⁸ In contrast, *locus standi* to sue or compel enforcement has not featured in any of Nigeria's environmental legislation or case law on the environment or in the oil and gas sector. No private person can initiate an action to compel the compliance of any statute in the oil and gas sector.⁶⁹

1.6.2 Procedural Challenges in pursuit of Environmental claims under Nigerian Legal System.

Apart from the inefficiency of substantive legal framework in the oil and gas sector, there is a problem of procedural law. The period between 1981–86 remains the stirring point of environmental liability awareness in Nigeria. It features 24 cases against Shell in Nigeria court seeking compensation for environmental damage they suffered.¹ By 2015, the number of cases against Shell has risen steeply to more than 500 in Nigeria and abroad, all primarily dealing with oil spills. The 1980s saw Chevron having 50 cases pending in Nigerian courts. By 2015, cases against Chevron increased to more than 200. Regrettably, the oil companies in the majority of these cases have come out victorious, due to the technicalities involved in proving nuisance or negligence that forms the cause of action for those cases. Despite this, many cases on oil spills are still being filed on the same issues at home and abroad. The latest been the case filed in a London court against Shell by Leigh Day Attorneys where an out of court settlement has been agreed.⁷⁰

Environmental liability cases have always been anchored on negligence, nuisance, and strict liability.⁷¹ In negligence, the burden of proof lies solely with the claimant. It is not sufficient to demonstrate that the activities of oil operator have greatly damaged the environment, thereby affecting personal properties or life. The claimant must go beyond that to prove that the injury he/she suffered was caused by the negligent act of the operators.⁷² This standard of proof requires expert knowledge to properly lay out the chain of events, which culminated into his injury. Many victims of environmental damage hardly possess this knowledge. In *Shell v. Enoch*.⁷³ A community suit for environmental damage was struck out because Shell contended that there was misjoinder of parties. Shell argued that each claimant has a distinct and separate claim, which do not merit a joint action. The Court of Appeal Port Harcourt division upheld the argument of shell. However, it did allow the claimants the opportunity to file individual and separate claims. The pain is in the cost of litigation, which is often high and impede the chances of the claimants proceeding against oil companies individually.

1.6.3 Lack of Environmental Information

In Nigeria, regulation of MNCs are hindered by the secrecy of information held by the government and the corporate actors. NGOs, the public and monitoring agencies who rely on the information from the oil companies are unable to determine the authenticity of the information on environmental practices. Nigeria has enacted the Freedom of Information Act,⁷⁴ but this law is hardly complied with. The government and MNCs are quite cynical about releasing information on oil companies' operations to the public. The corporations fear that the information divulged may be leaked to their rivals. This form the crux of their denial even when they are under obligation to disclose oil spills within twenty-four hours to the agency in charge like NOSDRA. For the government, there are circumstances where its establishments fear public revolt and shaming. Especially, if oil

full.html> accessed 15 October 2016. See James Boyd, 'Global Compensation for Oil Pollution Damages: The Innovations of the America Oil Pollution Act' [2005] 1 EPLR (2) ISSN: 1597-4553, 21.

⁶⁸ *Lopez Ostra v. Spain*, 20 EHRR (1994) 277; *Guerra v. Italy*, 26 EHRR (1998) 357; *Fadeyeva v. Russia*, 45 EHRR (2007) 10; *Öneryildiz v. Turkey*, 41 EHRR (2005) 20; *Taskin v. Turkey*, 42 EHRR (2006) 50, at paras 113–119; *Tatar v. Romania* [2009] ECtHR, at para. 88; *Budayeva v. Russia* [2008] ECtHR.

⁶⁹ Kaniye S.A. Ebeku, 'Locus Standi in Environmental Nuisance Actions: A Perspective from the Commonwealth' (2005) 17 ELM 14; Kaniye S.A. Ebeku, 'Judicial Attitudes to Redress for Oil-Related Environmental Damage in Nigeria' (2003) 12 RECIEL, 199 see the celebrated case of *Oronto Douglas v Shell Petroleum Development Co. of Nigeria Ltd* Unreported, suit No. FHC/L/CS/573/93, ruling of the Federal High Court, Lagos, delivered on February 17, 1997.

⁷⁰ 'Shell compensates Nigerian villagers after massive oil spills in Niger Delta following three-year London based legal battle', < www.leighday.co.uk/International-and-group-claims/Nigeria > (accessed 20 October 2017)

⁷¹ The House of Lords in *Ryland's v. Fletcher* (1868) L... R. 3 H.L.330 as follows:

"We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape."

⁷² Ibid p124

⁷³ *Shell v. Enoch* (1992) 8 NWLR 335 *Bodo Community v Shell Petroleum Development Co of Nigeria Ltd* Queen's Bench Division [2014] EWHC 1973 (TCC); Official Transcript.

⁷⁴ See sections 2, 3, and 4 of Freedom of Information Act 2011 Laws of the Federation of Nigeria

spill occurs during the strategic period of going to the polls, the government usually suspend the disclosure of information that may swing the poll.

1.6.4 Regulation

Regulation in Nigeria dealing with the oil companies has been irredeemably ineffective. Government enacts regulations and set up enforcement agencies charged with the duty of regulating, supervising and monitoring Nigeria's oil and gas industry.⁷⁵ These agencies are characteristically underfunded, poorly equipped for the task and, in the most part, are manned by corrupt officials lacking in regulatory competences and expertise.⁷⁶ The result of such weak regulatory authorities in Nigeria is the non-enforcement of regulatory laws.⁷⁷ This explains the persistent recklessness of oil and gas companies in Nigeria. The regulatory agencies are majorly departments and parastatals of government ministries. Thus, the principal – agent relationship between the government and regulatory agencies, it promotes ineffectiveness.⁷⁸ For instance, the Department for Petroleum Resources is one of the key regulators of the sector; but it is an arm within the ministry of petroleum, which is also culprits of environmental damage. The agencies are lacking independence and are often susceptible to being intimidated and influenced by government officials and powerful individuals to act within their realms and caprices.⁷⁹ The connection between fiscal, social, economic and political dynamics has put Nigeria in this situation. Nigeria lacks expertise, competence and the technology and cannot be self-sufficient to fund or undertake exploration of oil and gas. This situation has therefore put Nigeria at the mercy of the companies in the exploration of oil and gas resources.⁸⁰ The significance of this arrangement, especially on the part of the government is to make money, while predisposing the citizens to endure the ecological damage ensuing from oil production activities.⁸¹ Successive governments in Nigeria have continuously neglected, denied and failed to show the political will to enforce the environmental liability laws, because they dread losing investors in the oil sector. In addition, public regulation is ineffective given the fact that Nigerian government operates a joint-venture partnership with the oil companies, where government often holds over 60 percent of equity through the NNPC, its business component. This arrangement makes the government and the corporation jointly and severally liable to environmental accidents of oil spills.

Furthermore, since staff of regulatory agencies serve at the pleasure of the government, they often refuse to enforce the laws against oil companies. Since they are major benefactors of state and by extension the government of Nigeria, if they act otherwise it may anger government officials. This is commonplace in Nigeria and this practice by the civil servants is likely to go on for many years to come as long as government remains in joint-venture agreements with the oil and gas companies. The enforcement of regulations in the oil and gas sector will remain a mirage. To create safety net for their jobs, regulatory officers exercise caution so that they do not disappoint the government by daring to enforce the laws against it. This form of regulatory ambivalence in the sector as regulators now regulate to preserve their jobs by remaining self-serving rather than serve to safeguard public interests such compromises have seriously negated government's role as enshrined in the Nigerian Constitution.⁸²

⁷⁵ Department of Petroleum Resources (DPR) Government regulator of operations of the oil industry. Compliance, safety, licencing & permitting etc., National Petroleum Investment Management Oil Field Services Companies (NAPIMS) Investment arm of NNPC. Administers NNPC share of joint venture operations, Nigerian Content Division (NCD) Industry regulator charged with implementation of Nigerian content policy, Nigerian National Petroleum Corporation (NNPC) Oil industry regulator. Operates subsidiaries in the upstream and Downstream Marketing & Distribution operations, National Oil Spill Detection and Response Agency (NOSDRA), The National Environmental Standards and Regulations Enforcement Agency (NESREA)

⁷⁶ Evaristus Oshionebo 'Transnational corporations, civil society organisations and social accountability in Nigeria's oil and gas industry' A.J.I.C.L. 2007, 15(1), 107-129 see also L. A. Atsegbua, *Oil and Gas Law in Nigeria: Theory and Practice* (2nd edn, New Era Publication, Benin City, 2004), p.iii. see also Economic Intelligence Agency: Nigeria, Country Analysis Brief, April [2003], <<http://www.eia.gov/>> (accessed 20th Nov, 2017)

⁷⁷ Ibid p1

⁷⁸ Ibid p2 see also C. E. Emole, 'Regulation of Oil and Gas Pollution' (1998) 2 Journal of Environmental Policy and Law, 103, 109

⁷⁹ The reason why many laws and even the petroleum Act 1969 consider the most beneficial to Nigerian Economy has not witness any significant amendment and the same goes to all other Acts.

⁸⁰ Oshionebo (n32) 2

⁸¹ ibid [2]

⁸² There cannot be a more fundamental burden than the environmental objectives contained under s.20 of the Constitution, taking into consideration the important role of petroleum resources to the overall economic well-being of Nigeria and the burden of environmental degradation suffered by the communities that inhabit the oil-

1.6.5 The Ineffectiveness of Nigerian oil and gas Law

The problem of corporate environmental liability in Nigerian oil and gas sector is not one of absence of relevant laws.⁸³ One of the major evils related to oil and gas production is gas flaring, and experts say emissions from it contributes to global warming.⁸⁴ There have been numerous deadlines on ending gas flaring in Nigeria, but gas flaring continues as it were since 1969.⁸⁵ Oil companies agreed to put contingency measures in place by 1974 to end flaring, which they failed. The government then moved the deadline to 1979. Government soon realised that the corporations were not ready and President Shehu Shagari moved the deadline to 1984. While criminalising gas flaring.⁸⁶ Nigeria flares nearly 25% of Africa's greenhouse gas emissions.⁸⁷ Until now, MNCs have continued to flare gas in contravention of the law, as prescribed by Sections 3(2) (a) (b) of the Associated Gas Re-Injection Act.

As political efforts failed, the role of the court readily comes into focus. In *Gbemre v. Shell Petroleum Development Co.*,⁸⁸ The Federal High Court of Nigeria Benin Judicial Division made pronouncement to end gas flaring in Nigeria by restraining *Shell Petroleum Development Company of Nigeria Ltd (SPDC)*. The plaintiff, Jonah Gbemre, had argued on behalf of the Iwherekan Community in Delta State, that SPDC violated the fundamental rights of the people, as provided by sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria (1999), and Article 24 of the African Charter on Human and Peoples' Rights Act.⁸⁹ The plaintiff added that Shell's failure to engage in an assessment of the effects of gas flares in the Niger Delta region violated the Environmental Impact Assessment Act of Nigeria. The court barred SPDC from further flaring of gas in 2007. Shell however did not implement the Court's ruling citing improper assessment of its capacity to liquefy gas, in addition, it proceeded flaring. SPDC on its volition set the 2008 deadline, which the government conceded. Until now, Shell continues to flare gas with no end in sight. The Gbemre's case presents ineffectiveness of the Nigerian oil and gas laws from regulation to litigation. It also underscores the lack of political will to end gas flaring. There is a surge in the cases going oversee hence Nigeria courts are not firm as shown in *Ken Saro-Wiwa vs. Shell*,⁹⁰ where the family of Ken Saro Wiwa sued Shell in the United States District Court for the Southern District of New York, under the Alien Tort Statute for the abuse of human right perpetrated against the Ogoni people.

3. Factors Responsible for Weakness of the Oil and Gas Laws Dealing with Corporate Environmental Liability

Lack of Political Will of the Government

A strong regulatory institution is a function of a dyed-in-the-wool political will of the government. The Nigeria government's political will in respect of regulation has been limited to guarantee the Nigerian National Petroleum Corporation (NNPC) the unfettered ground to harness government's share of the resources explored with its partners in the Joint Venture Contracts. The regulatory climate is strongly tolerable of environmental accidents generated by the oil companies, due to the special relationship between the government and these companies.

producing region. The effective regulation of the environment, especially in the Nigeria oil and Gas sector is no doubt the *sine qua non* for industrial harmony in oil and gas production in the region. This is all the more important because the region is home to all of Nigeria's petroleum production, hosting all of the country's oil wells. An effective sustainable development will

⁸³ Environmental Law Research Institute Synopsis of Laws and Regulations on the Environment in Nigeria 'Environmental law and policies in Nigeria' <www.elri-ng.org/newsandrelease2.html> Accessed on 07 July 2016.

⁸⁴ Bruno Gervet, 'Gas Flaring Emission Contributes to Global Warming' (2007) Lulea University of Technology, 2 <www.ltu.se/cms_fs/1.5035!/gas%20flaring%20report%20-%20final.pdf> accessed 7 July 2016

⁸⁵ The military government led by General Yakubu Gowon ordered oil companies operating in the oil and gas industry in the Niger Delta to be proactive in ending gas flaring by 1974. Ofeibea Quist-Arcton, 'Gas Flaring Disrupts Life in Oil-Producing Niger Delta' (National Public Radio, 24 July 2007) <www.npr.org/templates/story/story.php?storyId=12175714> accessed 7 July 2016 (reporting that villagers see huge flames emitted from gas flaring sites and billows of black smoke that leap into the sky)

⁸⁶ Section 3 of Nigeria's Associated Gas Reinjection Act 1979 see also Kenneth Omeje, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria* (Routledge 2006) 43

⁸⁷ Eferiekose Ukala, 'Gas Flaring in Nigeria's Niger Delta: Failed Promises and Reviving Community Voices' (2011) 2 WLNR 97

⁸⁸ *Gbemre v Shell Petroleum Development Company Nigeria Limited and Others* [2005] Federal High Court of Nigeria in the Benin Judicial Division FHC/B/CS/53/05 unreported

⁸⁹ Associated Gas Re-Injection Act Cap. A9, Volume 1 Laws of the Federation of Nigeria, 2004.

⁹⁰ *Wiwa et al v. Royal Dutch Petroleum et al.* [2002] U.S. Dist. LEXIS 3293 [2002]

Unlike the Gulf of Mexico case in the United States of America,⁹¹ the Government of Nigeria does not inspire the regulatory institutions and neither can it insist on the oil companies to comply with relevant laws. The national and international courts have found majority of the oil companies within the region are engaged in practices that could lead to the destruction of the Niger Delta environment.⁹² The companies have sometimes denied this claims and attribute oil spills to sabotage, rather than pipeline leakages as a defence to evade clean-up and payment of compensation. This attempt to avoid responsibility has always met, stiff resistant from the people, NGOs and the National courts.⁹³

III. INEFFECTIVE REGULATORY INSTITUTIONS

The regulatory institutions in Nigeria are intensely dependent on financial patronage from the government and the oil companies. Independent regulatory institutions in any system are signs of a country's respect for rule of law.⁹⁴ Such strong regulatory institution has huge implication on investment, such as boosting the confidence of investors for a secure investment climate. It is also capable of increasing foreign direct investments to any country, once there is presence of a certain and independent institutional framework. The main government agencies to enforce environmental liability are DPR⁹⁵ and NOSDRA. These two are essentially seen as the running dogs of the political establishment.⁹⁶ Hence, they are susceptible to control and influenced towards giving favourable supervision to perceived allies (companies) of the seating government. There is a tacit starving of Huge budget for the DPR and NOSDRA so as to incapacitate them.⁹⁷ These Agencies are left understaffed and under-funded by the government so that they will be unable to perform their functions better.⁹⁸ The issue of funding from government remains a big challenge as the DPR and NOSDRA will have to rely on financial support from the same companies there are to perform supervisory, monitoring and evaluation work on. The effect thereof, is weak and ineffective regulation. For instance, DPR has to rely on Oil Companies and NNPC for funding, purchase of equipment and perhaps employment of staffs, bearing in mind that the NNPC is also a key polluter. Amanze-Nwachukwu has described DPR as being an appendage of the NNPC and has become subject to its commands, and that of the Ministry of Petroleum Resources and the presidency. He noted further that the result of which has made DPR increasingly lacking in manpower and finances to execute its functions.⁹⁹

IV. INTER-AGENCY RIVALRY

The Nigeria oil and gas sector is riddled with institutions with common goal but lacking in synergy to pursuit the goal. This is a situation that has created an inter-agency rivalry, thereby blurring their performances. There is a push to evolve a single regulator while scraping the superfluous agencies.¹⁰⁰ For instance, DPR whose mandate is monitoring of oil spills had several times clashed with NOSDRA in charge of the responsibility to supervise the clean-up of spills. The result of such overlaps creates a difficult system, which affects effective

⁹¹ In 2010 British Petroleum (BP) Gulf of Mexico oil spill, the United States government required BP to set aside \$20 billion in a compensation fund, even before the issue of fault was determined and BP complied.

⁹² Jędrzej George Frynas 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria ' (1999) 43 Journal of African Law 121.

⁹³ *Shell v. Enoch* (1992) 8 NWLR 335. And recently the United Kingdom court judgment against shell for compensation is being unenforced.

⁹⁴ Anthony M. Bertelli and Andrew B Whitford, 'Perceiving Credible Commitments: How Independent Regulators Shape Elite Perceptions of Regulatory Quality' (2009) 39 British Journal of Political Science 517, 522

⁹⁵ Functions of DPR (Department of Petroleum Resources) <<https://dpr.gov.ng/index/functions-of-dpr/>> accessed 10th June 2017

⁹⁶ Chika Amanze-Nwachukwu, 'Why DPR Can't Efficiently Regulate Oil Sector' (13 December 2011) <<http://allafrica.com/stories/201112130881.html>> accessed 9 June 2017; see also Mark C. Thurber and others, 'NNPC and Nigeria's Oil Patronage Ecosystem', in David G. Victor (eds) *Oil and Governance State-owned Enterprises and the World Energy Supply* (Cambridge 2012) 701.

⁹⁷ 'DPR says it can't function because of inadequate funding, under-staffing' (Premium Times, 6 November 2012) <<http://www.premiumtimesng.com/business/106050-dpr-says-it-cant-function-because-of-inadequate-funding-under-staffing.html>> accessed 9 June 2017. Ibid Amanze-Nwachukwu

⁹⁸ Ibid

⁹⁹ Chika Amanze-Nwachukwu, 'Why DPR Can't Efficiently Regulate Oil Industry' Thisday (Abuja, 13 December 2012) ibid n69

¹⁰⁰ DPR canvassed the signing of a memorandum of understanding between regulators as the means to resolve conflicts among them Stanley Opara, 'DPR Canvasses Collaboration Among Oil Industry Regulators' Punch (3 January 2013) <<http://www.punchng.com/business/energy/dpr-canvasses-collaboration-among-oil-industry-regulators/>> accessed 12 Oct. 2016

compliance and enforcement of regulations. It is common to hear complaints of numerous tolls, multiple penalties and fines on the oil companies. With these complexities, enforcement becomes weak. Hence, each regulator claims jurisdiction over the blameable act of a company.¹⁰¹ E.g. NOSDRA and NIMASA rivalry in 2012. NOSDRA had imposed a \$5 billion fine on SNEPCO for its 2011 offshore oil spill at Bonga, and NIMASA imposed \$6 million fine for the same spill on the same company.¹⁰² SNEPCO failed to pay the \$11 billion fine, imposed on it by the two agencies. The House of Representatives Joint Committee on Environment waded in to resolve the impasse where SNEPCO's hitherto objection to the fine was settle via a political solution.¹⁰³ As the federal government asked the company to pay NOSDRA the fine, it is unclear if the \$5 billion was eventually paid in full, but parties had conceded to NOSDRA fine.

It is imperative to streamlined regulators' functions on environmental liability in oil and gas sector. A presidential committee set up in 2012 proposed the rationalisation of these Agencies, advocated for the scrapping of NOSDRA. The Committee stated that NOSDRA's functions were already being performed by the DPR.¹⁰⁴ It is noteworthy to mention here that a greater number of operators in the oil and gas sector in Nigeria are foreign investors. Therefore, a clearer legal climate would result in increased competition for investment in the sector. Legal certainty and respect for the rule of law in any country form a key factor in the investors' choice of destination.¹⁰⁵ Nigeria is grasping with the situation in the oil and gas sector and acknowledges that legal certainty is part of the attraction the investor considers.¹⁰⁶ In Nigeria, many billion dollars' investment funds anticipated for the sector, are either being delayed or kept away¹⁰⁷ due to uncertainty of a clear regulatory framework. Although this problem is being addressed in the proposed Petroleum Industry Bill, which has been

before the National Assembly since 2004 and it yet to pass the third reading. It hope that when the law comes

into effect, investment in the sector will be more robust.

regulatory regime to comprise agencies which have clear functions, and defined objectives; and which are independent, transparent, accountable and participatory.¹⁰⁹

V. CORRUPTION

Underhand dealing is almost a norm and is prevalent in the oil and gas sector in Nigeria. Companies regularly evade liability from environmental accidents, or part with such liabilities with incredibly little penalties. This is an indication of the regulator's compromise. This backhand treatment happens sometimes at the start of business. For instance, in 2010, Halliburton, an American oil firm, arranged to settle a fine of \$35 million for the criminal conspiracy charge against it for offering bribes to Nigerian officials in order to be

¹⁰¹ Marginal field operators recently complained of being subject to multiple taxes from the federal, states and local governments much which they claim to hinder their operations. See Kunle Kalejaye, 'Marginal Field Operators Decry Multiple Taxes' Vanguard (March 26 2013) <www.vanguardngr.com/2013/03/marginal-field-operators-decry-multiple-taxes/> accessed 25 sept. 2016.

¹⁰² Terhemba Daka, 'Reps wade into \$11.5b charges on SNEPCO over spill' (BNN April 2, 2013) <<http://news.bestnaira.com/posts/view/reps-wade-into-115b-charges-on-snepco-over-spill>> accessed 26 sept 2016

¹⁰³ Clara Nwachukwu, 'Bonga oil spill: Presidency approves \$5bn fine against Shell' (24 July 2012) <<http://www.vanguardngr.com/2012/07/bonga-oil-spill-presidency-approves-5bn-fine-against-shell/>> accessed 12 January 2017.

¹⁰⁴ Steve Oronsaye, 'Restructuring and Rationalization of Federal Government Parastatals, Commissions and Agencies' (2014) White Paper on The Report of the Presidential Committee <www.premiumtimesng.com/news/top-news/4678-presidential-committee-asks-government-to-scrap-102-agencies.html> accessed 19 August 2016

¹⁰⁵ See Esteban Garcia-Canal and Mauro F. Guillen, 'Risk and the Strategy of Foreign Location Choice in Regulated Industries' (2008) 29 Strat. Mgmt. J. 1097

¹⁰⁶ Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Transaction Publishers 2002) 6; see also Timothy A. Slating and Jay P. Kesan, 'Making Regulatory Innovation Keep Pace with Technological Innovation' (2011) 6 Wisconsin Law Review 1109, 111

¹⁰⁷ Thomas Hansen, 'Nigeria: Growing away from Oil?' (Forbes, 18 November 2013) <www.forbes.com/sites/riskmap/2013/11/18/nigeria-growing-away-from-oil/#e7c322352e76> accessed 31 July 2017

¹⁰⁸ Adeoye Adefulu 'PIGB: FG Backs Single Petroleum Sector Regulator, Wants Minister as Chair' (13 December 2016) <www.petroleumindustrybill.com/2016/12/#.WHf-RNjviU> accessed 12 June 2017

¹⁰⁹ Jon Stern and Stuart Holder, 'Regulatory Governance: Criteria for Assessing the Performance of Regulatory Systems: An Application to Infrastructure Industries in the Developing Countries of Asia' (1999) 8(1) Utilities Policy 42

allocated lucrative oil bloc.¹¹⁰ In 2011, Shell and Italy's Eni, all oil companies, paid \$1.1 billion for Nigerian Oil block OPL 245 to government. This money ended up with a company belonging to the former petroleum minister Dan Etete. Etete had effectively awarded the block himself when he held the position of the petroleum minister.¹¹¹ He had these companies commenced exploration from the oil blocks. Later, these oil companies committed environmental damage in Nigeria

VI. CONCLUSION

The forgoing examination of the relevant laws in the Nigerian oil and gas sector has revealed the strengths and a number of weaknesses in relation to corporate environmental liability resulting in the weak regulation of the sector. Some of the weaknesses identified above are the overbearing influence of the government on the regulators, weak government will promote ineffective liability regime, overlap of functions between government agencies, corruption and weak legislations. There is no doubt about the agencies being weak, because there are literally departments and parastatals of government ministries. It follows, therefore, that since there exists a principal – agent relationship between the government and regulatory agencies, it breeds undue influence, and the agencies are made to act on the whims and caprices of the government officials. The Department for Petroleum Resources is one of the key regulators of the sector, but it is part of the ministry of petroleum¹¹² and the NNPC which is part thereof, is one of the major culprits causing environmental damage in the sector. What therefore is the way to get out of this conundrum? I hope that the discussion on polluter pays principle will provide a guide for the regulators to adopt effective means of enforcement in the oil and gas sector.

The article further reveals appreciable attempts to create civil and criminal liability applicable to oil and gas companies. These laws are weak and there is imminent need to modify the laws. These liabilities mentioned in the laws are not absolute and as such, it will be easier for a camel to pass through the eye of a needle than to curb corporate environmental liability with the current regime of laws. It is therefore important to submit that, for victims of corporate environmental accidents to gain any reasonable compensation, and to compel clean-ups, remediation and payment of damages, the laws must be strengthened and the liability should be absolute. Also, the exceptions created in the laws has to be removed as they have produced unfair compromises benefitting the oil and gas companies.

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