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THE PARADOX OF NOSDRA TO PREVENT AND QUICKLY RESPOND TO OIL SPILLS IN NIGERIA

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ABSTRACT: The Department of Petroleum Resources' statistics of oil spill incidents in Nigeria states that in 2017, there were 429 oil spill cases. 2018 alone recorded 569 spill incidents. Amnesty International investigation of oil spills in Nigeria unveil that some of these spill incidents recorded were left unattended by the oil corporations for days, weeks, and sometimes even months. This has increased crude oil pollution in Nigeria, and this has a huge impact on the environment. The control of crude oil pollution in Nigeria is saddled with the National Oil Spill Detection and Response Agency (NOSDRA). NOSDRA is an Agency set up by law and one of its duties is to prevent and quickly respond to oil spills and reduce its impacts on the environment. Despite this clear mandate, oil spills and impacts on the Nigerian environment is on the increase. In this light, this article investigates the role of NOSDRA under the established law, how does NOSDRA receive information to respond to oil spills, the capacity of NOSDRA to respond and prevent oil spill incidents in Nigeria. The findings of this research unveil that NOSDRA is slow in responding to oil spills, the Agency lacks qualified staff and vessels to carry out its statutory duties.

KEYWORDS: NOSDRA, oil spills, oil corporations, Nigeria

I. INTRODUCTION

Nigeria is a member of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC).¹ The OPRC was adopted in 1990² and entered into force in 1995.³ The OPRC was drafted by the International Maritime Organization (IMO).⁴ The IMO is a United Nations specialized agency that is committed to developing international treaties for maritime safety.⁵ Article 3 of the OPRC encourages parties to have oil pollution emergency plans.⁶ This encourages member states at the national levels to develop a National Oil Spill Contingency plan to coordinate and respond promptly to oil pollution.

Nigeria developed its National Oil Spill Contingency plan in 2003 and officially adopted it in 2005.⁷ The National Oil Spill Detection and Response Agency (NOSDRA) was established in 2006 by an Act of Nigerian Parliament.⁸ The NOSDRA Act is one of the laws made by Nigerian lawmakers to implement the National Oil Spill Contingency plan to reduce the impacts of oil pollution in the Nigerian environment.⁹ The NOSDRA Act was amended in 2018, however, the president declined assent to the amendment in 2019. The reason for withholding assent was that few sections of the amendment undermine the powers of the ministry of

¹ Babatunde, I.O. and Akpambang, E.M., 2017. Impediments to enforcement of environmental treaties against oil pollution. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 8(2), pp.12-27.

² See International Maritime Organization available at International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (imo.org) accessed 20 December 2020

³ Ibid

⁴ Ibid

⁵ International Maritime Organization, available at International Maritime Organization | Britannica accessed 13 November 2020

⁶ See International Convention on oil pollution preparedness, response, and cooperation, 1990 (with annex and procès-verbal of rectification). Concluded at London on 30 November 1990, available at volume-1891-I-32194-English.pdf (un.org) accessed 24 December 2020

⁷ See International Tanker Owners Pollution Federation Limited, available at [Nigeria - ITOPF](#) accessed 12 November 2020 [Nigeria - ITOPF](#); Though the National Oil Spill Contingency plan was reviewed in 2010 see Microsoft Word - NOSCP Revised 2010 (giwacaf.net) accessed 15 December 2020; The National Oil Spill Contingency Plan [NOSCP] (Revised May 2009)

⁸ See the National Oil Spill Detection and Response Agency established Act 2006, available at [NOSDRA ACT.pdf](#) accessed 6th November 2020

⁹ See National Oil Spill Detection & Response Agency <<http://www.nosdra.gov.ng/>> Accessed 5 August 2020; Igboanugo, A.C. and Chiejine, C.M., 2012. Pollution Survey of Ikpoba River, Benin City, Nigeria. *Journal of Emerging Trends in Engineering and Applied Sciences*, 3(3), pp.567-571 at 567

petroleum resources.¹⁰ This article does not dwell on the reason for the rejection of the amendment but rather assessed relevant provisions of the NOSDRA Act and how NOSDRA has been operating to reduce oil pollution in Nigeria. Section 1 of the Act established NOSDRA hereinafter refers to the 'Agency'. Some of the relevant sections of the NOSDRA Act for the protection of the environment are set out in sections 5, 6, and 7.¹¹ These sections placed an obligation on NOSDRA as an Agency to prevent and respond to oil pollution in Nigeria.¹² These sections are further critically assessed below.¹³ Despite these provisions contained in the NOSDRA Act to protect the environment, oil pollution increases in the Niger Delta area of Nigeria.¹⁴ The Department of Petroleum Resources' annual report shows that in 2017 there were 429 oil spill cases and 9097.05 barrels spills.¹⁵ In 2018, about 569 spill incidents with 718.22 barrels spills.¹⁶ Amnesty International investigations revealed that oil spills and leakages are left unattended for days, sometimes weeks before the leaks were switched off.¹⁷ This article investigates the core role of NOSDRA under the established Act, the practical operations of NOSDRA, especially, how it receives oil spill information and how it responds to oil spills. Again, the article critically assessed the capacity of NOSDRA, particularly, the personnel and equipment available to the Agency to carry out its functions. The data in this article are assessed from the amended NOSDRA Act, Stakeholder Democracy Network,¹⁸ Amnesty International,¹⁹ the Environmental Assessment of Ogoniland reported by the United Nations Environment Programme (UNEP),²⁰ the Department of Petroleum Resources, and published articles and newspapers.

Table 1: Spill Incidence Summary copied from the Department of Petroleum Resources²¹

Years	Number of Spills	Quantity Spilled (Barrels)
2010	537	17,658.10
2011	673	66,906.84
2012	844	17,526.37
2013	522	4,066.20
2014	1087	10,302.16
2015	753	32,756.87
2016	434	1,658.98
2017	429	9097.05

II. THE CORE FUNCTIONS OF NOSDRA

There are two key functions of NOSDRA, that is, to prevent and respond to oil spills.²² The NOSDRA Act requires the Agency 'to monitor, regulate tiers one and two oil spills...'.²³ Tier one oil spill is an operational spill that is less than or equal to 7 tonnes (50 bbls).²⁴ While tier 2 spills are 'greater than 7 tonnes (50 bbls) but less than 700 tonnes (5000 bbls)'.²⁵ Section 5 of the NOSDRA Act provides that when there are tiers one and two oil spills NOSDRA is to ensure 'a safe, timely and effective, and appropriate response' so as to reduce

¹⁰ Queen, Esther Iroanusi, Premium Times Newspaper (2019) available at <Buhari declines assent to NOSDRA Amendment Bill, gives reasons (premiumtimesng.com)> accessed 13 December 2020

¹¹ See the New Amended NOSDRA Act available at A 407 (fao.org)> accessed 14 November 2020

¹² Onwuteaka, J., 2016. Hydrocarbon oil spill clean-up and remediation in the Niger Delta. *forest*, 3(2) at p13

¹³ See The core functions of NOSDRA below

¹⁴ Department of Petroleum Resources, 2018 Nigerian oil and gas industry annual report at p 99 available at <https://www.dpr.gov.ng/wp-content/uploads/2020/01/2018-NOGIAR-1.pdf>> accessed 12 July 2020

¹⁵ 'The True Tragedy Delays and Failures in Tracking Oil Spills in the Niger Delta' (Amnesty International 2011) Index: AFR 44/018/2011<<http://www.amnesty.cz/zakazdoucenu/doc/Niger-Delta-True-Tragedy-Report.pdf>> accessed 24 July 2016

¹⁶ Department of Petroleum Resources, 2018 Nigerian oil and gas industry annual report at p 99 available at <https://www.dpr.gov.ng/wp-content/uploads/2020/01/2018-NOGIAR-1.pdf>> accessed 12 July 2020

¹⁷ Department of Petroleum Resources, 2018 Nigerian oil and gas industry annual report at p 99 available at <https://www.dpr.gov.ng/wp-content/uploads/2020/01/2018-NOGIAR-1.pdf>> accessed 12 July 2020

¹⁸ 'The True Tragedy Delays and Failures in Tracking Oil Spills in the Niger Delta' (Amnesty International 2011) Index: AFR 44/018/2011<<http://www.amnesty.cz/zakazdoucenu/doc/Niger-Delta-True-Tragedy-Report.pdf>> accessed 24 December 2020

¹⁹ See Stakeholder Democracy Network, available at SDN | Issues of governance, environment, human rights in the Niger Delta, Nigeria (stakeholderdemocracy.org)> accessed 12 December 2020

²⁰ Amnesty International available at Everything you need to know about human rights in Nigeria| Amnesty International | Amnesty International> accessed 13 November 2020

²¹ T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nations Environment Programme 2011) available at Environmental Assessment of Ogoniland (zaragoza.es)> accessed 20 November 2020

²² Source: Department of Petroleum Resources, 2018 Nigerian oil and gas industry annual report at p 99

²³ Though, there are other functions recognised by the NOSDRA Act see sections 5,6, and 7; Pereowe Subai, (2019) Towards a viable institutional approach to oil spill regulation in Nigeria (2)2 NDU Law Journal PP 5-7

²⁴ See section 5 of the NOSDRA Act

²⁵ See section 32 of the NOSDRA Act

²⁶ See section 32 of the NOSDRA Act

the impact of the spill on the environment (Emphasis added).²⁶ In the event of tier three oil spills, the Act requires a collaborative effort between NOSDRA and several government agencies²⁷ to respond and reduce the impacts of oil spills on the environment.²⁸ The Act did not define tier 3 spills. However, tier 3 spills are assumed to be greater than 700 tonnes (5000 bbls). The point to note here is that NOSDRA as an Agency is mandated by section 5 of the NOSDRA Act to timely and effectively respond to an oil spill.

Aside from section 5 of the NOSDRA Act which gives power to the Agency to respond to oil spills. The establishing Act of NOSDRA goes further to give another function to the Agency. Section 1(1) states that the Agency should prepare and detect oil spills.²⁹ Section 1(1) is further strengthened by section 6(1) (a) which states that 'the Agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation in the petroleum sector including those relating to **prevention, detection** and general management of oil spills...emphasis added.' Section 19 (b) is specific when it clearly states that 'the Agency shall **inspect** oil and gas facilities with a view to ensuring full compliance with existing environmental legislation on oil pollution.' This means NOSDRA is also obligated to carry out detection and prevention functions by inspecting oil facilities to stop oil spills on the environment. This prevention duty is in line with what NOSDRA stands for, that is, National Oil Spill **Detection** and **Response** Agency (NOSDRA). This signifies that NOSDRA is required to carry out surveillance activities to prevent an oil spill, should prevention fail, and an oil spill occurs NOSDRA is required to respond timely and effectively to reduce damage and impacts of crude oil pollution in the environment. In this sense, NOSDRA's key functions are summarised into prevention and response to oil spills.³⁰ This piece will assess these two functions below.

III. NOSDRA RESPONSES TO OIL SPILL INCIDENTS

To respond to oil spills in Nigeria, NOSDRA established the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011.³¹ One of the most important parts of the regulation is regulation 5 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011. This Regulation 5 requires a Joint Investigation Visit (JIV) to the site immediately if there is an oil spill.³² The JIV is a fact-finding mission, which includes the oil corporations, a representative of the affected community and NOSDRA officials. The JIV is to find out the cause of oil spill, the total volume of oil spill, the area it has covered and the impact on the environment.³³ The JIV is very important because oil leaks/pipelines sometimes are not turned off until 'during or after the JIV.'³⁴ It is not clear if this is still the practice. However, investigation shows that land remediation or clean-up exercise after an oil spill is based on the outcome of the JIV report.³⁵ As Amnesty International said, it is an industrial practice in Nigeria not to start clean-up exercises until JIV is completed.³⁶ Not only that the JIV report also determines if oil spill impacted communities are to be compensated by the spiller.³⁷

The point to note is that regulation 5 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation imposes an obligation on the oil corporations to provide craft to convey NOSDRA's staff to the affected site. Regulation 5 provides that a joint investigation team comprising the owner or operator of the spiller facility should visit the spill site and investigate the cause and event of the spillage.³⁸ In other words, the law placed a duty on the oil corporations, that is, the operators to provide vessels for the joint visitation of crude oil spill sites. This section is contrary to the provision of section 5 of the NOSDRA Act which requires NOSDRA to respond to oil pollution safely, timely and effectively. Relying on the oil

²⁶ See section 5 (a) of the NOSDRA Act; Ambituuni, A., Amezaga, J. and Emeseh, E., 2014. Analysis of safety and environmental regulations for downstream petroleum industry operations in Nigeria: Problems and prospects. *Environmental Development*, 9, pp.43-60 at 10

²⁷ Ewulum, B., Okaphor, E. And Okoli, N., 2020. An Appraisal of The Impact of The National Oil Spill Detection and Response Agency on Environmental Pollution in Nigeria. *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)*, 2(1). p 60

²⁸ See Second Schedule of the NOSDRA Act

²⁹ See the last line of section 1(1) of the NOSDRA Act

³⁰ However, there are other objectives and functions outlined by the Act see generally sections 5 6 and 7 of NOSDRA

³¹ See the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011 available at [ng-government-gazette-dated-2011-07-17-no-68.pdf](https://www.ngovernment-gazette-dated-2011-07-17-no-68.pdf) (gazettes.africa)> accessed 12 October

³² See Regulation 5 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011

³³ Rim-Rukeh, A., 2015. Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process. *Journal of Environmental Protection*, 6(03), p.259 at 262

³⁴ Amnesty International, (2018) Negligence in The Niger Delta Decoding Shell and Eni's Poor Record On Oil Spills, p 20 available at <<https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>> accessed 20 November 2020

³⁵ Ibid 22

³⁶ Ibid 22

³⁷ Rim-Rukeh, A., 2015. Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process. *Journal of Environmental Protection*, 6(03), p.259 at 262

³⁸ See the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011

corporations to provide vessels is contrary to the powers assigned to NOSDRA which is to detect and respond to oil spill incidents. Not only it is contrary, but it may also delay its performance as opposed to its mandate which is to quickly respond to oil spill disasters. For example, the United Nations Environment Programme (UNEP) report on Ogoni exposed NOSDRA's delay in responding to oil pollution issues in Nigeria. The UNEP report confirmed that investigation of oil spill sites is organised and led by the oil corporations.³⁹ An interview conducted by Amnesty International in 2013 with the former Director of NOSDRA revealed that NOSDRA is being informed of oil spills, the date, the time and the hour to visit the site by the oil corporations via a text message.⁴⁰ In 2009, a letter written by NOSDRA to Shell Petroleum Development Corporation (SPDC) for site visit reads thus: "It is, however, regrettable that SPDC has not deemed it fit to respond to the various efforts of the Agency in ensuring that the damage assessment exercise is carried out promptly."⁴¹ This clearly shows that NOSDRA may not have the required facilities to convey its staff to oil spill sites. The implication of this is that there will be an unnecessary delay to visit the spill sites on time. The more the delay the more the damage to the environment. This is exactly what happened in Bodo oil spill. At the start of the spill, NOSDRA was first informed of the spill on 28th August 2008, no site visit was done till 7th of November 2008, which is about 72 days after the incident.⁴² In Yorla oil well spill in Rivers state of Nigeria, it was reported that the oil spill 'continued burning for over a month'.⁴³ Again, in 'Nembe Obama South Flowline', operated by Eni- one of the oil corporations in Bayelsa state of Nigeria, a spill was reported on the 8th October 2015, no JIV until 11 December 2018. This is about 430 days after the incident occurred.⁴⁴ In 2016, it took SPDC 113 days to turn off a spill in 'Kolocreek to Rumuekpe Pipeline Riser at Aminigboko'.⁴⁵ In 2017, oil spill at Imo River – Ogale Pipeline at Umuololo was turned off after 121 days.⁴⁶ This is also the case of the spill at Otumara-Escravos Pipeline at Ogidigben, where it took 180 days to stop the spill.⁴⁷

Though NOSDRA and the oil corporations attributed some of these delays to different factors such as insecurity in the Niger Delta area, protests by the local communities, in some cases slow rate of flow of the pipelines.⁴⁸ Justifying the delay, SPDC states that lack of specialist equipment and heavy rains and flooding sometimes caused these delays.⁴⁹ SPDC's recent publication on its website shows some improvement regarding the JIV. According to SPDC, 'average time to complete clean-up of free and/or residual spilled oil has decreased from 13 days in 2016 to seven days in 2019. For example, closer engagement with communities has helped SPDC to access spill locations more quickly, meaning, on average, joint investigations now commence within three days in 2019 compared with six days in 2016'.⁵⁰ The point is that NOSDRA relying on the oil corporations to carry out its statutory functions is unacceptable. The Niger Delta area, the target area of operation has a lot of creeks⁵¹ and as such, getting to an oil spill site requires ocean worthy and standby boats to facilitate a quick response. Therefore, relying on oil corporations for the function of an independent Agency like NOSDRA is contrary to section 5 of the NOSDRA Act and the objectives of the Agency which is to detect and respond to oil spills on time.

Table 2: Slowest 10 Responses of oil spills in Nigeria copied from Amnesty International ⁵²

	Response time (Days)	Reported volume (Barrels)	Year	Location
Eni	430	4	2015	8" Nimbe South-Obama flowline
Shell	252	10	2016	20" TEP at Ugbuegun
Shell	190	0.2	2015	12" Imo River - Ogale Pipeline at Owaza
Shell	189	0.4	2015	Ubie Well 5S/L Flowline at IduEkpeye

³⁹ T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nation Environmental Programme 2011) 139

⁴⁰ "Bad Information—Oil Spill Investigation in the Niger Delta" (*Amnesty International*, 2013) Index No: AFR 44/028/2013, 48 <<https://www.amnesty.org/en/documents/AFR44/028/2013/en>> accessed 24 October 2020

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ Amnesty International, (2018) Negligence in The Niger Delta Decoding Shell and Eni's Poor Record on Oil Spills, p 23 available at <<https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>> accessed 20 November 2020

⁴⁵ Ibid at 37-40

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid at 24

⁴⁹ Ibid at 24

⁵⁰ Shell Sustainability Report 2019, available at <<https://reports.shell.com/sustainability-report/2019/special-reports/spill-prevention-and-response-in-nigeria.html>> accessed 10 October 2020

⁵¹ T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nation Environmental Programme 2011) 139

⁵² Amnesty International, (2018) Negligence in The Niger Delta Decoding Shell and Eni's Poor Record on Oil Spills, p 24 available at <<https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>> accessed 20 November 2020

Shell	180	44	2016	20" Otumara-Escravos Pipeline at Ogidigben
Shell	156	3	2014	Bonny Well 2L Flowline at Ererekiri / Okolo Launch
Shell	126	18.84	2012	16" South Forcados Trunkline at Ovirilolu
Eni	123	3.2	2015	Idu 11Ls Thermo Well
Shell	121	15	2017	12" Imo River-Ogale Pipeline at Umuololo
Shell	113	73	2016	20" Kolocreek to Rumuekpe Pipeline Riser at Aminigboko

IV. HOW DOES NOSDRA RECEIVE OIL SPILL INFORMATION?

It is important to know how NOSDRA receives information about oil spills and who is to inform the Agency of oil spills. This is because knowing how quickly NOSDRA receives oil spill information determines how timely the Agency will intervene to oil spill incidents. The investigation into NOSDRA's operation reveals that NOSDRA already has an established structure on how it gets information about oil spill. The format in which NOSDRA gets information is through Form A known as oil spill/leak notification report.⁵³ Form A is an initial notification form about leakage of oil.⁵⁴ This form is to be filled and return to the office of NOSDRA within 24 hours by the spiller.⁵⁵ There is a lot of information required to be filled, but the most important information contained in form A are the date of the spill, location of the spill and the contact details of the company oil spill response team.⁵⁶

The weakness of the reporting system of NOSDRA form A is that notification of oil spill is tied to a reporting officer of the operator. An oil spill can be reported by indigenous people who live close to the facility through telephone calls or messages. These facts are not recognized and included in the reporting system. Again, the 24 hours to fill and submit form A appears to be unrealistic and impossible. For the reporting officer to visit the affected site to take information and return it within 24 hours is impracticable. In practice, about fifty percent of form A, always come in after weeks of an oil spill.⁵⁷ The oil spill monitors recorded that out of 6333 incidents only 3247 were received.⁵⁸

The recent amendment of NOSDRA tried to make the reporting system simple for a quick response. For instance, Section 6 (1) of the NOSDRA Act specifically placed a legal obligation on the oil spiller to report oil spill incidents in writing, by fax or by electronic email within 24 hours after the occurrence of an oil spill.⁵⁹ Failure of a spiller to report an oil spill after 24 hours attracts a stringent penalty of N2,000,000 (\$2000) for each day of the failure to comply with the 24 hours deadline.⁶⁰ This report required by section 6 of the NOSDRA Act could be delivered to the nearest zonal office of NOSDRA or the National Control Centre.⁶¹ This provision, that is, section 6 appears to have made the reporting system simpler especially the inclusion of electronic emailing of oil spill incidents. However, the NOSDRA Act still fails to mention and include the importance of indigenous people who live around the oil pipelines to report oil spills either by telephone calling or emailing. In the United State of America (USA) and the United Kingdom (UK), the laws regulating oil pollution also require the organisation that responsible for an oil spill to report such incidents.⁶² The difference between NOSDRA and other jurisdictions like the USA and the UK is the flow chart of the reporting system. In the USA, whenever

⁵³Annex 9 Comparison Table of Forms Used to Collect Information Before or During JIV, Improving Oil Spill Response in Nigeria-Comparative Analysis of the Forms, Data and Related Process of the JIV' (Stakeholder Democracy Network 2016)< <http://www.stakeholderdemocracy.org/improving-oil-spill-response-in-nigeria-comparative-analysis-of-the-forms-data-and-related-processes-of-the-joint-investigation-visit-jiv-and-suggestions-on-how-these-could-be-improved/>> accessed 30 October 2020

⁵⁴ Ibid 32

⁵⁵ Ibid 10

⁵⁶ Ibid 31

⁵⁷Improving Oil Spill Response in Nigeria-Comparative Analysis of the Forms, Data and Related Process of the JIV' (Stakeholder Democracy Network 2016)< <http://www.stakeholderdemocracy.org/improving-oil-spill-response-in-nigeria-comparative-analysis-of-the-forms-data-and-related-processes-of-the-joint-investigation-visit-jiv-and-suggestions-on-how-these-could-be-improved/>> accessed 30 October 2020

⁵⁸Ibid 30

⁵⁹ See section 6 (2) of the NOSDRA Act

⁶⁰ See Section 6 (2) of NOSDRA Act

⁶¹ See section 6(4) of NOSDRA Act

⁶²The National Response Centre' (U S Environmental Protection Agency) <<https://www.epa.gov/emergency-response/national-response-center>> accessed 8 November 2020

there is a spill the first point of contact is the National Response Centre (NRC).⁶³ The NRC will immediately notify the On-Scene Coordinator (OSC) whose duty is to move to the scene of the incident and assess the size of the spill and report to the National Response Team (NRT) depending on where the spill occurs. If the spill occurs on the coast, then it is the Coast Guard that is responsible, but if it is onshore the Environmental Protection Agency handles it.⁶⁴ It is worthy to note that apart from the NRT there are additional 13 Regional Response Teams available. The Coast Guard is backed up with more than \$30 million-worth of oil spill response equipment to deal with a major spill.⁶⁵ Stakeholder Democracy Network argued that without this system the Macondo spills in the USA would have caused far serious damage to the environment than what was recorded.⁶⁶ A similar detailed chart is contained in the Oil Pollution Emergency Plan (OPEP) in the UK.⁶⁷ The OPEP contains names and numbers of whom to contact whenever there is a spill, those numbers are updated regularly to enable any person, including the operators who saw a spill to phone the control room.⁶⁸ In fact, the system of contact is as simple as a press of a button.⁶⁹ This sort of arrangement is lacking in NOSDRA's structure of receiving oil spill information.

V. THE CAPACITY OF NOSDRA TO RESPOND TO OIL SPILL

NOSDRA as a regulator is expected to monitor and supervise site clean-up or remediation assessment.⁷⁰ NOSDRA Act encourages NOSDRA to assist spillers and clean up exercises if it is expedient.⁷¹ This means NOSDRA is expected to have the capacity that is, trained personnel and relevant technology to detect leaking pipes and impacts of oil to the environment. Therefore, having professionals to identify the level of crude oil damage on the environment is crucial. This is because the level of damage recorded by NOSDRA in the JIV determines whether a clean-up exercise is necessary.⁷²

In practice, the officials of NOSDRA perform below expectations due to a lack of professional staff and equipment.⁷³ Amnesty International's interview with one of the zonal directors of NOSDRA revealed that the volume of oil spill in the affected area is sometimes estimated by testing the depth of the oil with a rod or stick.⁷⁴ A similar approach is used to detect the cause of a spill, according to the director, "if spills are at 12 0'clock it is sabotage but if it is 6 0'clock it is corrosion."⁷⁵ That is, a spill at 12' 0 clock midnight is vandalised except in the morning by 6 0' clock. But these facts had been disputed by Accufacs, a USA firm which specialises in an oil pipeline. According to Accufacs NOSDRA's approach to ascertaining the cause and the volume of a spill is very poor.⁷⁶ In the case of assessing the impact of an oil spill, NOSDRA 'estimate the spill volume by measuring the amount of land or water that is visually impacted.'⁷⁷ This position of NOSDRA is also faulted by experts.⁷⁸ Experts believe that spills that occur for a longer period may spread into streams and swamps and it may no longer be seen as most of the oil may 'have spread downstream, been flushed by rains, or moved due to the tide'⁷⁹

The lack of qualified staff and equipment for NOSDRA gives leeway to the oil corporations to influence the JIV over NOSDRA.⁸⁰ It was reported that in one of the site visits, a student who is under placement was sent to

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ C Gragg, J Groft, I Samiami "Environmental Regulation and Pollution Control in the Global Oil Industry in Relation to Reform in Nigeria" (Stakeholder Democracy Network 2014) 41

⁶⁶ Ibid 41-42

⁶⁷ Oil Pollution Emergency Plan (*Health and Safety Executive*) <<http://www.hse.gov.uk/osdr/guidance/oil-pollution.htm>> accessed 8 October 2020

⁶⁸ Oil Pollution Emergency Plan (*Health and Safety Executive*) <<http://www.hse.gov.uk/osdr/guidance/oil-pollution.htm>> accessed 8 October 2020

⁶⁹ C Gragg, J Groft, I Samiami "Environmental Regulation and Pollution Control in the Global Oil Industry in Relation to Reform in Nigeria" (Stakeholder Democracy Network 2014) 32

⁷⁰ See section 5(c) of the NOSDRA Act

⁷¹ Ibid

⁷² Improving Oil Spill Response in Nigeria-Comparative Analysis of the Forms, Data and Related Process of the JIV' (*Stakeholder Democracy Network 2016*) 32; Rim-Rukeh, A., 2015. Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process. *Journal of Environmental Protection*, 6(03), p.259, 272.

⁷³ C Gragg, J Groft, I Samiami "Environmental Regulation and Pollution Control in the Global Oil Industry in Relation to Reform in Nigeria" (Stakeholder Democracy Network 2014) 6

⁷⁴ Amnesty International, 2013. Bad Information: Oil Spill Investigations in the Niger Delta. P 13

⁷⁵ Ibid

⁷⁶ Amnesty International., 2015. Clean it up shell's false claims about oil spill response in the Niger Delta. P 20-23

⁷⁷ Ibid

⁷⁸ Ibid

⁷⁹ Ibid at 25

⁸⁰ Watts, M. and Zalik, A., 2020. Consistently Unreliable: Oil Spill Data and Transparency Discourse. *The Extractive Industries and Society*.

represent NOSDRA in JIV.⁸¹ The implication is that the oil corporations whose major objectives are to make profit are likely to take undue advantage of the JIV process and come up with a report to avoid compensation and clean-up exercises. This is because payment of compensation and clean-up exercises require huge capital.⁸² For instance, in Bodo oil spill, SPDC alleged that only 1,640 barrels of oil were spilled in total, however, Accufacts disputed this figure and said the amount spilled is between 1,440 and 4,320.⁸³

The lack of staff by NOSDRA was denied by the former Director General of NOSDRA.⁸⁴ He states that the Agency has a staff strength of 547 senior technical officers.⁸⁵ It has at least two functional 4-wheeled drive vehicles in each zonal office.⁸⁶ Aside from this, the Agency has sued and sanctioned all the oil corporations operating in the Niger Delta for non-compliance with environmental standards.⁸⁷ He further claimed that the Agency's scientists undertake an independent sample analysis to determine the level of damage and impact on the environment and that it is always making sure that results published by oil corporations are verified by the Agency.⁸⁸ NOSDRA might have few vehicles and some scientists, however, there are mandatory requirements such as ocean worthy craft and other equipment which will enable the Agency to carry out its functions. According to section 5 (k) of the NOSDRA Act, the Agency is to 'determine and position vital combat equipment at most strategic areas for rapid response.' The former Director failed to mention that NOSDRA has boats or combat equipment for its operations. This shows that NOSDRA might not have combat equipment. Recently, the current Director General of NOSDRA, Sir Peter Idabor admitted to the fact that NOSDRA lacks equipment and trained personnel to perform its functions. According to sir, Peter Idabo:

NOSDRA, set up in 2006, has not been able to catch up with its counterparts in other countries of the world in best practices because of inadequate funds, manpower, equipments and weak legal framework among others. "People are saying that NOSDRA depends on oil operators to carry out its regulation duties. They say we enter their helicopters, boats and use other equipment belonging to operators to inspect or monitor spills, but what can we do really? We don't have the tools to work. "We are lucky we have not been faced by a large-scale spill after the Bonga spill. We are getting warnings that some facilities around Cotonou could erupt. If they erupt, what do we do? We need good offices, equipment and personnel require training and retraining,"⁸⁹

This shows that NOSDRA does not have the required facilities and trained personnel to quickly respond to oil spills. An investigation by UNEP in relation to some of the causes of short of staff unveil that NOSDRA has its headquarters sited at the centre while regional offices are created at the state levels.⁹⁰ The office at the centre is better equipped than the state or regional⁹¹ offices irrespective of the fact that the regional office is sited close to the oil production fields. Many staff preferred the centre to the regional offices because there are basic social amenities at the centre. Unlike the centre, the regional office experiences poor light condition, no good education for the staff's kids.⁹² Aside from these facts, most of the qualified experts preferred to work for the oil corporations for better salaries and emoluments than working for either the Federal or state governments Agencies.⁹³ This shows that NOSDRA needs funds to employ more qualified staff, train more staff, get combat equipment to perform its functions in line with the establishing Act. The need to provide training for the staff and get equipment is recognised in section 5 (f) and (h) of the NSODRA Act. This Section encourages NOSDRA to provide programme and drilling exercise for the staff of NOSDRA to respond to an oil spill. Section 5 (h) urges the Agency to support research in order to improve the method of responding to an oil spill. These provisions are key in actualizing the functions of NOSDRA in the future.

⁸¹Rim-Rukeh, A., 2015. Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process. *Journal of Environmental Protection*, 6(03), p.259 -271, 264

⁸²Ibid

⁸³Amnesty International, 2013. Bad Information: Oil Spill Investigations in the Niger Delta.

⁸⁴ "Rebuttal of Amnesty International Report" (National Oil Spill Detection and Response Agency News 2016)<<http://www.nosdra.gov.ng/>> accessed 7th October 2020

⁸⁵Ibid

⁸⁶Ibid

⁸⁷Ibid

⁸⁸Ibid

⁸⁹EgufeYafugborhi, 2018. Nigeria lags in response to oil spill —NOSDRA. Vanguard Newspaper

⁹⁰T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nation Environmental Programme 2011) 140available at Environmental Assessment of Ogoniland (zaragoza.es)> accessed 20 November 2020

⁹¹ Ibid 140

⁹² Ibid 140

⁹³ Ibid 140

VI. THE CAPACITY OF NOSDRA TO DETECT AND PREVENT OIL POLLUTION

As already highlighted above detection and prevention of oil spills is one of the functions of NOSDRA.⁹⁴ There is an adage that says, 'prevention is better than cure.' This detection and prevention function is the most important function of NOSDRA because detection and prevention require NOSDRA to carry out surveillance work as well as inspection of rusty pipelines. This may reduce oil spills and its impacts on the Nigerian environment. Before the NOSDRA Act was enacted, this detection and prevention function was placed on the oil corporations by the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002.⁹⁵ This law was criticized on the ground that shifting the responsibility of inspecting pipelines to prevent oil spills on the oil corporations is not effective because it makes government agencies that have the responsibility to monitor, inspect and prevent oil spills to go to sleep.⁹⁶ The oil corporations whose primary aim is to make profit will not change rusty pipelines as at when due hence, there were incessant oil spill incidents in the Niger Delta area of Nigeria.⁹⁷ Section 6 of NOSDRA seems to cure this defect by mandating NOSDRA to carry out detection and prevention roles. This is also obtainable in other jurisdictions such as the USA and UK. For instance, the Bureau of Safety and Environmental Enforcement in the USA 'has 55 inspectors, and they conduct not less than a thousand inspections in a year.'⁹⁸ This is also the position of Offshore Environmental Inspectorate of the UK, it carried out more than 50 inspections in a year.⁹⁹ NOSDRA could learn from these examples to prevent oil spills in Nigeria. But the truth is that the capacity of NOSDRA to take advantage of detection and prevention responsibility and the lessons from the USA and UK is doubtful because NOSDRA has no boat to detect and prevent oil spills in Nigeria.¹⁰⁰

VII. SUGGESTIONS AND CONCLUSION

To strengthen NOSDRA to perform its statutory duties, NOSDRA may consider the following to enable its functions to prevent and respond to oil spills in Nigeria. NOSDRA may consider amending Regulation 5 of the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations, 2011 which requires the oil corporations to convey NOSDRA staff to investigate oil spill locations. This particular provision is contrary to NOSDRA's core functions recognised in sections 5 and 6 of the established Act which mandated the Agency to detect and respond to oil spill in Nigeria. NOSDRA should also consider increasing the pay role of workers to attract more qualified staff who have in-depth knowledge of the oil industry. A good working condition, like social amenities, should be made available to the staff at the regional level since the regional offices are closer to the oil field. The UNEP report suggested that the number of staff in NOSDRA should be given detailed training either on a quarterly or yearly basis to understand the nature of the job.¹⁰¹ The training should go along with recruitment of competent staff as well as creating enabling environment for research of better ways of preventing and responding to oil spills. This training and research of staff could be achieved if tax and sanctions recovered from oil corporations are set aside for this purpose. Offering NOSDRA's staff training will not only strengthen the Agency but will also fulfil section 5 (k) and (h) of the NOSDRA Act which encourages the Agency to develop programme for training as well as to conduct research to increase its performance. NOSDRA should make a compulsory plan to acquire boats for its operations. They need not to have plenty of vessels now but there is a need to get at least one boat that will convey its staff to inspect site whenever there is oil spill. If there is no fund to acquire boat the Agency can make a special request to the federal government of Nigeria to generate funds to acquire boats because the essence of the Agency is dependent on vessels that will move people to inspect and respond to oil spills. One key area the Agency should prioritize is the detection and prevention function. NOSDRA should have a routine timetable to inspect pipelines to identify rusty pipes and be able to effect change of pipelines by the operators as at when due. This might reduce oil spills in Nigeria. The Agency should again consider making NOSDRA's contact details including phone numbers and email addresses available to NGOs, civil society, and indigenous people. Phone numbers should be given to community chairmen to disseminate to indigenous people. This will make anybody who first saw a spill inform the nearest zonal office of oil spills.¹⁰² Phone numbers should be updated from time to time for easy contact. It is important to

⁹⁴ See Section 5 of the NOSDRA Act

⁹⁵ EGASPIN Part VI, E, 3.2.1

⁹⁶ Izoukumor, N.A., 2019. A Critical Assessment of the Pollution Prevention Laws and Regulations of Nigeria: Why They Failed to Protect the Environment of Nigeria. *JL Pol'y & Globalization*, 87, p.43.

⁹⁷ Agbonifo, P., 2016. Oil spills injustices in the Niger Delta Region: reflections on oil industry failure in relation to the United Nations Environment Programme (UNEP) report. *International Journal of petroleum and gas exploration management*, 2(1), pp.26-37, 33

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Agbonifo, P.E., 2015. The Dilemma in Nigerian Petroleum Industry Regulations and Its Socioeconomic Impact on Rural Communities in the Niger Delta. *International Journal of Management Science*, 2(5), pp.84-92 at 91

¹⁰¹ T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nation Environmental Programme 2011) 250

¹⁰² Improving Oil Spill Response in Nigeria-Comparative Analysis of the Forms, Data and Related Process of the JIV' (*Stakeholder Democracy Network* 2016) 31 < <http://www.stakeholderdemocracy.org/improving-oil-spill-response-in-nigeria-comparative-analysis-of-the->

note that these suggestions may strengthen NOSDRA in its operation. However, NOSDRA remains weak, it is not equipped either staffed to respond and prevent oil spills in Nigeria. NOSDRA may stand for oil detection and response Agency. In the real sense, NOSDRA is the paradox of what it is mandated to do.

REFERENCES

Legislation

- [1] International Convention on oil pollution preparedness, response, and cooperation, 1990 (with annex and procèsverbal of rectification). Concluded at London on 30 November 1990
- [2] The National Oil Spill Detection and Response Agency established Act 2006
- [3] The New Amended NOSDRA Act 2018 available at A 407 (fao.org)
- [4] The Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011 available at ng-government-gazette-dated-2011-07-17-no-68.pdf (gazettes.africa)
- [5] Environmental Guidelines and Standards for the Petroleum Industry in Nigeria 2002

Journal Papers

- [6] Babatunde, I.O. and Akpambang, E.M., 2017. Impediments to enforcement of environmental treaties against oil pollution. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 8(2), 2017 12-27
- [7] Agbonifo, P.E., The Dilemma in Nigerian Petroleum Industry Regulations, and Its Socioeconomic Impact on Rural Communities in the Niger Delta. *International Journal of Management Science*, 2(5), 2015 84-92
- [8] Agbonifo, P., Oil spills injustices in the Niger Delta Region: reflections on oil industry failure in relation to the United Nations Environment Programme (UNEP) report. *International Journal of petroleum and gas exploration management*, 2(1), 2016 26-37
- [9] Izoukumor, N.A., A Critical Assessment of the Pollution Prevention Laws and Regulations of Nigeria: Why They Failed to Protect the Environment of Nigeria. *JL Pol'y & Globalization*, (87) 2019, 43-45
- [10] Watts, M. and Zalik, A., Consistently Unreliable: Oil Spill Data and Transparency Discourse. *The Extractive Industries and Society*. 7(3) 2020, 790–795
- [11] Rim-Rukeh, A., Oil spill management in Nigeria: SWOT analysis of the joint investigation visit (JIV) process. *Journal of Environmental Protection*, 6(03), 2015, 259- 262
- [12] Ewulum, B., Okaphor, E. And Okoli, N., An Appraisal of The Impact of The National Oil Spill Detection and Response Agency on Environmental Pollution in Nigeria. *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)*, 2(1) 2020, 58-65
- [13] Igboanugo, A.C. and Chiejine, C.M., Pollution Survey of Ikpoba River, Benin City, Nigeria. *Journal of Emerging Trends in Engineering and Applied Sciences*, 3(3), 2012, 567-571 at 567
- [14] Onwuteaka, J, Hydrocarbon oil spill cleanup and remediation in the Niger Delta. *Journal of Geography, Environment and Earth Science International*, 3(2) 2016, 1-18
- [15] Ambituuni, A., Amezaga, J. and Emeseh, E., 2014. Analysis of safety and environmental regulations for downstream petroleum industry operations in Nigeria: Problems and prospects. *Environmental Development*, (9) 2014, 43-60

Reports Papers

- [16] Department of Petroleum Resources, Nigerian oil and gas industry annual report (2018) available at <https://www.dpr.gov.ng/wp-content/uploads/2020/01/2018-NOGIAR-1.pdf>
- [17] Stakeholder Democracy Network, Improving Oil Spill Response In Nigeria Comparative Analysis Of The Forms, Data And Related Processes Of The Joint Investigation Visit (JIV) And Suggestions To How These Could Be Improved (2016) available at [Improving-Oil-Spill-Response-in-Nigeria.pdf](#) (stakeholderdemocracy.org)
- [18] Stakeholder Democracy Network, Environmental Regulation Pollution Control In The Global Oil Industry In Relation To Reform In Nigeria (2014) available at [Environmental-Regulation-and-Pollution.pdf](#) (stakeholderdemocracy.org)
- [19] Amnesty International and CEHRD (Centre for Environment, Human Rights and Development), The true 'tragedy'—delays and failures in tackling oil spills in the Niger Delta. (2011) available at [Layout](#) (amnesty.org)

- [20] Amnesty International, Negligence in The Niger Delta Decoding Shell and Eni's Poor Record on Oil Spills, (2018) available at <https://www.amnesty.org/download/Documents/AFR4479702018ENGLISH.PDF>
- [21] T Davis and T Jones "Environmental Assessment of Ogoniland" (United Nation Environmental Programme 2011) available at Environmental Assessment of Ogoniland (zaragoza.es)>
- [22] Amnesty International, 2013. Bad Information: Oil Spill Investigations in the Niger Delta. "Bad Information—Oil Spill Investigation in the Niger Delta" (2013) available at <https://www.amnesty.org/en/documents/AFR44/028/2013/en>
- [23] Shell Sustainability Report 2019, available at <https://reports.shell.com/sustainability-report/2019/special-reports/spill-prevention-and-response-in-nigeria.html>

Websites

- [24] International Maritime Organization available at International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) (imo.org)
- [25] International Tanker Owners Pollution Federation Limited, available at Nigeria - ITOPF
- [26] National Oil Spill Detection & Response Agency <<http://www.nosdra.gov.ng/>>
- [27] Stakeholder Democracy Network, available at SDN | Issues of governance, environment, human rights in the Niger Delta, Nigeria (stakeholderdemocracy.org)
- [28] Amnesty International available at Everything you need to know about human rights in Nigeria| Amnesty International | Amnesty International
- [29] The National Response Centre' (*U S Environmental Protection Agency*) <https://www.epa.gov/emergency-response/national-response-center>

Newspaper

- [30] Premium Times Newspaper (2019) available at <Buhari declines assent to NOSDRA Amendment Bill, gives reasons (premiumtimesng.com)>
- [31] Vanguard Newspaper 2018 Nigeria lags behind in response to oil spill —NOSDRA. Available at Nigeria lags behind in response to oil spill —NOSDRA - Vanguard News (vanguardngr.com)