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 Intentional investigation of oil spills in Nigeria unveiled that some of these spills incidents 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 1990\(^2\) 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

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
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 - NOSC Revised 2010 (givacaf.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
petroleum resources. 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 referred 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. These sections placed an obligation on NOSDRA as an Agency to prevent and respond to oil pollution in Nigeria. These sections are further critically assessed below. Despite these provisions contained in the NOSDRA Act to protect the environment, oil pollution increases in the Niger Delta area of Nigeria. The Department of Petroleum Resources’ annual report shows that in 2017 there were 429 oil spill cases and 9097.05 barrels spills. In 2018, about 569 spill incidents with 718.22 barrels spills. Amnesty International investigations revealed that oil spills and leakages are left unattended for days, sometimes weeks before the leaks were switched off. 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. Thedata in this article are assessed from the amended NOSDRA Act, Stakeholder Democracy Network, Amnesty international, the Environmental Assessment of Ogoniland reported by the United Nations Environment Programme (UNEP), the Department of Petroleum Resources, and published articles and newspapers.

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of Spills</th>
<th>Quantity Spilled (Barrels)</th>
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</thead>
<tbody>
<tr>
<td>2010</td>
<td>537</td>
<td>17,658.10</td>
</tr>
<tr>
<td>2011</td>
<td>673</td>
<td>66,906.84</td>
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<tr>
<td>2012</td>
<td>844</td>
<td>17,526.37</td>
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<td>2013</td>
<td>522</td>
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<tr>
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<tr>
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<td>753</td>
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<tr>
<td>2016</td>
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<td>1,658.98</td>
</tr>
<tr>
<td>2017</td>
<td>429</td>
<td>9097.05</td>
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</tbody>
</table>

II. THE CORE FUNCTIONS OF NOSDRA

There are two key functions of NODRA, that is, to prevent and respond to oil spills. The NOSDRA Act requires the Agency ‘to monitor, regulate tiers one and two oil spills…’ Tier one oil spill is an operational spill that is less than or equal to 7 tonnes (50 bbls). While tier 2 spills are ‘greater than 7 tonnes (50 bbls) but less than 700 tonnes (5000 bbls).’ 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

10Queen, Estherfroenuss, Premium Times Newspaper (2019) available at <Buhari declines assent to NOSDRA Amendment Bill, gives reasons (premiumtimesng.com)> accessed 13 December 2020
11See the New Amended NOSDRA Act available at A 407 (fao.org) > accessed 14 November 2020
12Onwuteaka, J., 2016. Hydrocarbon oil slick clean-up and remediation in the Niger Delta. forest, 3(2) at p13
13See The core functions of NOSDRA below
19Amnesty International available at Everything you need to know about human rights in Nigerian Amnesty International | Amnesty International> accessed 13 November 2020
20T Davis and T Jones “Environmental Assessment of Ogoniland” (United Nation Environmental Programme 2011) available at Environmental Assessment of Ogoniland (zaragoza.es)> accessed 20 November 2020
21Source: Department of Petroleum Resources, 2018 Nigerian oil and gas industry annual report at p 99
22Though, there are other functions recognised by the NOSDRA Act see sections 5, 6, and 7; PereoweiSubai, (2019) Towards a viable institutional approach to oil spill regulation in Nigeria (2)2 NDU Law Journal PP 5-7
23See section 5 of the NOSDRA Act
24See section 32 of the NOSDRA Act
25See section 32 of the NOSDRA Act
the impact of the spill on the environment (Emphasis added).26 In the event of tier three 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; Ambitiuni, 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
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 and 7 of NOSDRA
31 See the Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, 2011 available at ng-government-gazette-dateded-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
35 Ibid 22
36 Ibid 22
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 is it 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 Ogani 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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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 28\textsuperscript{th} August 2008, no site visit was done till 7\textsuperscript{th} of November 2008, which is about 72 days after the incident.\textsuperscript{42} In Yorla oil well spill in Rivers state of Nigeria, it was reported that the oil spill ‘continued burning for over a month’\textsuperscript{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 8\textsuperscript{th} October 2015, no JIV until 11 December 2018. This is about 430 days after the incident occurred.\textsuperscript{44} In 2016, it took SPDC 113 days to turn off a spill in ‘Kolocreek to Rumuekpe Pipeline Riser at Aminigboko.’\textsuperscript{45} In 2017, oil spill at Imo River – Ogale Pipeline at Umuololo was turned off after 121 days.\textsuperscript{46} This is also the case of the spill at Otumara-Escravos Pipeline at Ogidigben, where it took 180 days to stop the spill.\textsuperscript{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.\textsuperscript{48} Justifying the delay, SPDC states that lack of specialist equipment and heavy rains and flooding sometimes caused these delays.\textsuperscript{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.’\textsuperscript{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 creeks\textsuperscript{51} 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>
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<tr>
<th>Response time (Days)</th>
<th>Reported volume</th>
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<th>Location</th>
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<tr>
<td>Eni</td>
<td>430</td>
<td>4</td>
<td>2015</td>
</tr>
<tr>
<td>Shell</td>
<td>252</td>
<td>10</td>
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<td>Shell</td>
<td>190</td>
<td>0.2</td>
<td>2015</td>
</tr>
<tr>
<td>Shell</td>
<td>189</td>
<td>0.4</td>
<td>2015</td>
</tr>
</tbody>
</table>

\textsuperscript{39} T Davis and T Jones “Environmental Assessment of Ogoniland” (United Nation Environmental Programme 2011) 139  
\textsuperscript{41} Ibid  
\textsuperscript{42} Ibid  
\textsuperscript{43} Ibid  
\textsuperscript{45} Ibid at 37-40  
\textsuperscript{46} Ibid  
\textsuperscript{47} Ibid  
\textsuperscript{48} Ibid at 24  
\textsuperscript{49} Ibid at 24  
\textsuperscript{51} T Davis and T Jones “Environmental Assessment of Ogoniland” (United Nation Environmental Programme 2011) 139  
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. Form A is an initial notification form about leakage of oil. This form is to be filled and return to the office of NOSDRA within 24 hours by the spiller. 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.

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. The oil spill monitors recorded that out of 6333 incidents only 3247 were received.

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. 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. 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. 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 States 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. 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

<table>
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<tr>
<th>Company</th>
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<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
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<td>180</td>
<td>2016</td>
<td>20” Otumara-Escravos Pipeline at Ogidigben</td>
</tr>
<tr>
<td>Shell</td>
<td>156</td>
<td>2014</td>
<td>Bonny Well 2L Flowline at Ererekiri / Okolo Launch</td>
</tr>
<tr>
<td>Shell</td>
<td>126</td>
<td>2012</td>
<td>16” South Forcados Trunkline at OviriOlomu</td>
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<tr>
<td>Eni</td>
<td>123</td>
<td>2015</td>
<td>Idu 11Ls Thermo Well</td>
</tr>
<tr>
<td>Shell</td>
<td>121</td>
<td>2017</td>
<td>12” Imo River-Ogale Pipeline at Umuololo</td>
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<tr>
<td>Shell</td>
<td>113</td>
<td>2016</td>
<td>20” Kolocreek to Rumuekpe Pipeline Riser at Aminigboko</td>
</tr>
</tbody>
</table>


Ibid 10

Ibid 11

Ibid 12

Ibid 13

Ibid 14

Ibid 15

Ibid 16

Ibid 17

Ibid 18

Ibid 19

Ibid 20

Ibid 21

Ibid 22

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Ibid 25

Ibid 26

Ibid 27

Ibid 28

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Ibid 30

Ibid 31

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Ibid 39

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Ibid 41

Ibid 42

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Ibid 44

Ibid 45

Ibid 46

Ibid 47

Ibid 48

Ibid 49

Ibid 50

Ibid 51

Ibid 52

Ibid 53

Ibid 54

Ibid 55

Ibid 56

Ibid 57

Ibid 58
there is a spill the first point of contact is the National Response Centre (NRC). \(^\text{61}\)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. \(^\text{64}\)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. \(^\text{65}\)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. \(^\text{66}\)A similar detailed chart is contained in the Oil Pollution Emergency Plan (OPEP) in the UK. \(^\text{67}\)The OPEP contains names and numbers of whom to contact whenever there is a spill, those numbers are updated regularly to enable anyone, including the operators who saw a spill to phone the control room. \(^\text{68}\)In fact, the system of contact is as simple as a press of a button. \(^\text{69}\)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. \(^\text{70}\)NOSDRA Act encourages NOSDRA to assist spillers and clean up exercises if it is expedient. \(^\text{71}\)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. \(^\text{72}\)

In practice, the officials of NOSDRA perform below expectations due to a lack of professional staff and equipment. \(^\text{73}\)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. \(^\text{74}\)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.” \(^\text{75}\)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. \(^\text{76}\)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.’ \(^\text{77}\)This position of NOSDRA is also faulted by experts. \(^\text{78}\)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’ \(^\text{79}\)

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

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\(^\text{61}\) Ibid
\(^\text{62}\) Ibid
\(^\text{63}\) 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
\(^\text{64}\) Ibid 41-42
\(^\text{65}\) Oil Pollution Emergency Plan (Health and Safety Executive) <http://www.hse.gov.uk/osdr/guidance/oil-pollution.htm> accessed 8 October 2020
\(^\text{66}\) Ibid
\(^\text{67}\) Ibid
\(^\text{68}\) 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
\(^\text{69}\) See section 5(c) of the NOSDRA Act
\(^\text{70}\) Ibid
\(^\text{72}\) 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
\(^\text{74}\) Ibid
\(^\text{75}\) Ibid
\(^\text{76}\) Ibid at 25
represent NOSDRA in JIV.\textsuperscript{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.\textsuperscript{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.\textsuperscript{83}

The lack of staff by NOSDRA was denied by the former Director General of NOSDRA.\textsuperscript{84} He states that the Agency has a staff strength of 547 senior technical officers.\textsuperscript{85} It has at least two functional 4-wheeled drive vehicles in each zonal office.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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 NOSDA has its headquarters sited at the centre while regional offices are created at the state levels.\textsuperscript{90} The office at the centre is better equipped than the state or regional\textsuperscript{91} 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.\textsuperscript{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.\textsuperscript{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 NOSDRA 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.

\textsuperscript{82}Ibid
\textsuperscript{85}Ibid
\textsuperscript{86}Ibid
\textsuperscript{87}Ibid
\textsuperscript{88}Ibid
\textsuperscript{89}EgufeYafoogbohi, 2018. Nigeria lags in response to oil spill —NOSDRA. Vanguard Newspaper
\textsuperscript{90}T 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
\textsuperscript{91}Ibid 140
\textsuperscript{92}Ibid 140
\textsuperscript{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 NSODRA 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 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 NSODRA seems to cure this defect by mandating NSODRA 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 NSODRA staff to investigate oil spill locations. This particular provision is contrary to NSODRA’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

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94 See Section 5 of the NOSDRA Act
95 EGASPIN Part VI, E, 3.2.1
98 Ibid
99 Ibid
101 T Davis and T Jones “Environmental Assessment of Ogoniland” (United Nation Environmental Programme 2011) 250
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.

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