

# **An analysis of the Domestic Legal Framework for Oil Pollution Control in Nigeria**

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## **Abstract**

*Oil pollution is without a doubt a serious issues in Nigeria today. Since Nigeria discovered oil in Oloibiri, the present day Bayelsa state in 1956 the environment has been wrought with oil spills which have caused the degradation of farmland and also the gradual destruction of aquatic life through the exploration and exploitation of crude oil. This is more disturbing considering the fact that the environment where these spills occur is an area where the main livelihood of the people which is farming and fishing depends on. This has negatively affected the people living condition and more or less destroyed the local economy. This paper seeks to analyse the various domestic legal framework that have been enacted by the Nigerian Government to tackle this unfortunate reality. The paper will also examine the contributions of these laws toward addressing this burning issues.*

## **1. Introduction**

Since the creation, the survival of man has depended largely on the level of his interaction with environment. Accordingly, this interaction has led to exploration and exploitation of environmental resources for the promotion of societal advancement towards improved well-being of man. Globally, one of the most exploited environment resources because of its huge economic benefit to the advancement of nation is crude oil.

The exploitation of crude oil and other associated oil production processes by endowed nations has led to oil spillages which has polluted and degraded the environment.<sup>1</sup>

The persistent recurrence of this incidence have led to the release of harmful pollutants such as hydrocarbons, gasoline, and lubricating oils amongst others into over 605,000 Hectares (Ha) of

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<sup>1</sup> Eseoghene, O. 'Effects of Oil Spills on Fish Production in the Niger Delta' <http://www.doi;101371/journal.pone.0205114> Accessed 25 January 2020

arable land and body of water in 1999.<sup>2</sup> As a result, adversely impacted on the physical environment of the oil-bearing communities. Consequently, increased the rate of environmental degradation and has perpetuated food insecurity as a result of death of fish and crops and viable rivers for fishing activities leading to loss of livelihood. Also, Michael asserts that the impact of oil spills is often widespread and could persist for several years with attendant adverse repercussion on both health and means of livelihood of the people living within the area. Claim arising from oil spillage often run into billions of naira. Given the magnitude of the consequential loss often time, the issue of valuation of damages and the assessment of compensation payable for oil spillage is always a challenge.<sup>3</sup> This concerns called for the need for the emplacement of measures to prohibit oil pollution and provide for redress to affected communities in the world.

One of the adopted strategies for the attainment of this, was the evolution of legal framework in the form of conventions to regulate oil exploitation activities in order to eliminate or minimize oil pollution in the world. Nigeria, has about 7. 07 billion barrels of proven oil reserves as of 2016 which ranks the country 10th in the world. The country's huge crude oil reserves accounts for about 2.2% of the world's total oil reserves.<sup>4</sup> The country's total oil reserve is located at the Niger Delta (ND) region which covers about 7.5 percent of Nigerian's total land mass and is endowed with extensive fresh water swamp forest and rich in biodiversity.<sup>5</sup> The exploration for oil in the Niger Delta since the discovery of crude oil in Oloibiri in 1956 has brought with it environmental degradation from oil pollution at an unprecedented scale.<sup>6</sup> The United Nations Development Programme (UNDP) estimates that between 1976 and 2001 alone, there were an approximate of 6, 800 oil spills discharging over 3,000,000 barrels of oil in to the environment in

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<sup>2</sup> Elum, Z. A. Monini, K. and Henri-Ukoha, A. 'Oil Exploitation and its Socioeconomic effects on the Niger Delta region of Nigeria' [2016] (23) (13) Environmental Science Research Journal; 13

<sup>3</sup> Michael Thomas, *The Oil Pollution and Redress Mechanism: Role of International Conventions* (London Press 2016), 9

<sup>4</sup> Oshienemen, N.A. Dilanthi, H. and Richard, P.H. 'Evaluation of the Impacts of Oil Spill Disaster on Communities and it Influence on Restiveness in Niger Delta Nigeria [2018] (212) *PEJ*;1054

<sup>5</sup> Ibid.

<sup>6</sup> Amnesty International 'Nigeria Petroleum Pollution and Poverty in Niger Delta' (Amnesty International Publication London 2019); 11

Nigeria.<sup>7</sup> Furthermore, the same reports showed that there were about 253 oil spills in 2006, another 588 oil spills in 2007, and about 719 oil spills in 2008.<sup>8</sup> Cumulatively, an estimated 9 to 13 million barrels of oil has spilled into the Niger Delta between 1958 and 2009.<sup>9</sup> As a result of this oil spills, marine waters in Nigeria and their basins including all navigable rivers such as the rivers Niger and Benue, the river Sokoto, Ogun, Hadejia, Kaduna, Gongola, Katsina-Ala, and Cross River<sup>10</sup> have been polluted by oil wastes, thus destroying aquatic life in their respective forms.<sup>11</sup> Hence, not only reducing the population of fishes in the river, but also damaging the ability of the fishes to reproduce, causing both immediate damage and long-term harm to fish stocks. Also it reduces ascorbic content of vegetables by an estimate of 36% and the crude protein content of cassava by an estimate of 40%, thus resulting in a 24% increase in the prevalence of childhood malnutrition in the region with negative implications on the living standard and safety of citizens.<sup>12</sup> This necessitated the enactment of legislations to regulate the exploration and exploitation of oil and the enactment of legislation for the redress of oil pollution. To this end, the Federal government of Nigerian (FGN) ratified and domesticated some international environmental Conventions. These include the ratification and domestication of International Convention for the Prevention of Pollution of the Sea by Oil of 1954 through the enactment of Oil in Navigable Waters Act of 1968 and the Petroleum Act, 1969<sup>13</sup> as the principal legislation that regulates the petroleum sector in Nigeria. Also, in 1990, the Harmful Wastes (Special Criminal Provisions) Act was promulgated.<sup>14</sup> Pursuant to the Basel Convention of 1989.

The FGN, in response to the ratification of UNCLOS, enacted the National Oil Spill Detection and Response Agency Act 2006.<sup>15</sup> The Act provided for the establishment of the National Oil Spill

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<sup>7</sup> UNEP Environmental Assessment Report on Ogoni land (2017); 5 <<https://www.unenvironment.org>> Accessed 4 November 2020

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Friends of the Earth International 'A Journey through the oil spills of Ogoniland II (2019); 12 [https://www.foei.org/news/oil\\_spills\\_ogoniland\\_nigeria\\_shell-II](https://www.foei.org/news/oil_spills_ogoniland_nigeria_shell-II)

<sup>12</sup> Okonkwo, E.C. 'Oil Spills in Nigeria: are there Social and Economic Impacts in International oil spill (2018) American Petroleum Institute Conference Proceedings;19

<sup>13</sup> As amended in 1962 1969 and 1971

<sup>14</sup> Harmful Waste Act LFN, 2004.

<sup>15</sup> Ibid.

Detection and Response Agency (NOSDRA) to enforce its provisions and coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in compliance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990) to which Nigeria is a signatory.<sup>16</sup> To further strengthen oil pollution redress mechanism, the FGN in accordance with International Convention on Civil Liability for Oil Pollution Damage, and the United Nations Environment Programme (UNEP) recommendation, created the Environmental Restoration Fund for Ogoniland with capital base of USD 1 billion to be co-funded by the Federal Government and the petroleum companies in 2016.<sup>17</sup> The fund is aimed at restoring the environment of polluted areas, of addressing the causes of ongoing contamination and payment of compensation to affected victims of oil pollution.<sup>18</sup> Accordingly, by February 2017, the Shell Petroleum Development Company (SPDC) made available the USD 10 million as take-off fund for the Hydrocarbon Pollution Remediation Project (HYPREP) while the FGN through the Nigeria National Petroleum Corporation (NNPC) contributed sum of USD 180 million as part of their contribution towards the ORF.<sup>19</sup> Consequently, in January, 2019, commencement of the clean-up of the region began but have been at snail pace due to low compliance to funding of the ORF by oil companies.<sup>20</sup>

Despite the remarkable efforts of the FGN in the ratification and domestication of international environmental conventions in the redress of oil pollution in Nigeria through enactment of several laws and guidelines as well as agencies to enforce these regulations, the desired result is yet to be achieved. The country has continued to experience oil pollution through several incidents of oil spillages with adverse impacts on human health, the environment and the economy with little or no redress to victims in most cases. For instance, between 2015 to 2016, over 386,000 barrel of crude was spilt into the Niger-Delta. Notably though, SPDC alone claims it experienced oil spillage to the tune of about 18, 700 barrels in 2015,

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<sup>16</sup> Ibid.

<sup>17</sup> UNEP Environmental Assessment Report (2017); [https://www.shell.com.ng/sustainability/environment/unep\\_environment\\_assessment\\_of\\_Ogoni\\_land/unep\\_fag.html](https://www.shell.com.ng/sustainability/environment/unep_environment_assessment_of_Ogoni_land/unep_fag.html)

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> UNEP Environmental Assessment Report on Ogoni land cleanup and Restoration Programme (2019); 8-17

however, the company only took responsibility for less than 1000 barrels, and blames over 90% of the reported cases of oil spill on its facilities to sabotage, thereby evading clean –up and payment of compensation.<sup>21</sup>

## **2. The Constitution of the Federal Republic of Nigeria 1999**

The constitution of the federal Republic of Nigeria 1999 is superior to all other laws and it regulates the judicial, executives and legislative organs. The Nigerian Constitution is a law of superior force,<sup>22</sup> the Constitution is also a literary or material source of law when construe in the concrete sense and in a formal source of law, being the ground norm or fundamental law of the land upon which all other law derives their sources from.<sup>23</sup> Section 12 (1) of the Constitution provides that no treaty between the Federal and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.<sup>24</sup>

Owing to the high increase for the need for environmental protection, the constitution of the Federal Republic of Nigeria 1999 made specific provision on the environment. This is found in Section 20 of the Constitution, which provides Thus:

“The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria”

Looking at the wordings of the above provision, there is no doubt that the section is quite broad. The most unfortunate thing is that section 20 of the constitution falls under chapter 2 of the Constitution, which is not justiciable and therefore is merely a declaratory right and operates as a directory as against mandatory provisions. The effects of this is that a citizen cannot institute an action in court for the enforcement of his rights or seek for the protection of his/her rights or seek for remedy for the violations of his/her rights under the above provision. However, going by the provision of section 12 subsection 1 of the Constitution, the National Assembly is empowered to domesticate foreign laws or international

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<sup>21</sup> S.O. Agahino, 'Petroleum Exploitation and Agitation for Compensation by Oil Producing Communities in Nigeria' *GSSF* [2000] (1), 11-12

<sup>22</sup> BO Nwabueze, *Judicialism in Commonwealth Africa* (1981) 109.

<sup>23</sup> D Lloyd, *The Idea of Laws* (England Penguin Books 1979) 194.

<sup>24</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended)

treaties bothering on environmental protection into Nigeria's local legislations.<sup>25</sup>

### **3. Oil in Navigable Water Act<sup>26</sup>**

This Act which objectives is to implement the terms of the International Convention for the Prevention of Pollution of the Sea by oil 1954 to 1962 and to make provisions for each prevention in the navigable waters of Nigeria. Section 1 of the Act prescribes a criminal sanction for discharge of oil by a ship into the part of sea (prohibited sea areas<sup>27</sup>) to which the convention applies. The goal of this Act is to protect aquatic animals, coral reefs the impact of such pollution, and the likely flow of such oil beyond national boundaries. A sustainable defence of this charge of committing an offence under Section 1 above shall only be entertain where such discharge was done for the purpose of saving human lives or for the safety of the vessel.<sup>28</sup> This law's goal is to safeguard the maritime environment. One of the shortcoming of this law is that it does not provide for inland petroleum pollution. Pursuant to Section 1 of the Act, a Nigerian ship is prohibited from discharging oil into a prohibited sea area. It is therefore an offence under the Act for oil to be discharged from any vessel or from any place on land or from any apparatus used for transferring oil from or to any vessel, into the territorial waters of Nigeria and all other waters (including inland waters) which are within the seaward limits of the territorial waters and are navigable by going ships.<sup>29</sup>

Section 7 of the Act empowered the Minister of Transport to make regulations requiring masters of Nigerian Ships (other than Tankers) of 80 tones gross tonnage or more which use fuel oil to keep records of oil discharges from the ship for the purpose of securing the safety of any vessel or life, oil escapes due to damage to the ship or leakage and operations relating to ballasting. It is however observed that no time frame is given within which the Minister should make the required regulations. Section 8 of the Act makes it an offence for the harbor Authority who fails to provide facilities at harbors. While section 10 of the Act makes it an offence for owners

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<sup>25</sup> The Constitution of the Federal Republic of Nigeria 1999

<sup>26</sup> Cap o6 Laws of the Federation of Nigeria 2004

<sup>27</sup> Article 1 of the Schedule to the Act defines it as "All sea areas within fifty miles from land and outside the territorial waters of Nigeria"

<sup>28</sup> Section 4 of the Act

<sup>29</sup> Section 3 of the Oil in Navigable Waters Act.

or masters of a vessel or occupier of a place on land who fail to report discharge of oil into waters of a harbor, for the purpose of preventing damage to vessel or life and accidental discharge of oil through leakages.<sup>30</sup> Prompt report of such discharges will lead to a quick clean up as marine would face greater damage if oil pollutants remain too long in water. Another shortcoming of this Act is that it contains numerous defences which negates its usefulness.<sup>31</sup>

#### **4. Oil in Navigable Water Regulations**

The Oil in Navigable Waters regulation is a subsidiary legislation to the Oil in Navigable Waters Act. The essence of the regulation is to ensure a clean environment devoid of environmental pollution in petroleum operations. The regulations which were made pursuant to Legal notice No. 101 of 1968 and 22 April 1968 as its commencement date prescribed the kind of equipment that must be fitted in a ship to prevent pollution by oil. It further specifies the oil discharge and oil transfer records that must be maintained, as well as the precautions that must be taken when loading, discharging bunkering oil to prevent escape of oil.<sup>32</sup>

#### **5. Hydrocarbon Oil Refineries Act LFN 2004**

The Hydrocarbon Oil Refineries Act<sup>33</sup> provides for the licensing and control of the refining of hydrocarbon oils for the purpose of excise and for matters regarding petroleum exploration in Nigeria. Section 3 of the Act provides that, ‘if the Board, after due enquiry, is satisfied that the premises mentioned in an application and intended to be used by the applicant as a refinery are in such a state and contain such equipment which would enable proper control for excise purposes to be exercised over activities to be carried on therein, the Board shall, on payment of a fee of five hundred naira, issue to the applicant a refiner’s licence in the prescribed form in respect of such premises’.<sup>34</sup> The law also provides that a licence issued under the Act shall unless previously revoked, remain in force until 31st December next following the date of issue, and shall then expire.<sup>35</sup> The law also empowers an officer with the powers at any time to enter upon any

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<sup>30</sup> Ibid

<sup>31</sup> CE Emole, Regulation of Oil and Gas pollution ‘Environmental Policy and Law’ (1998) (28) 105.

<sup>32</sup> Regulation 5 of the Oil in Navigable Waters Regulations

<sup>33</sup> LFN Cap H5 2004.

<sup>34</sup> Ibid.

<sup>35</sup> S 6 (1) of the Hydrocarbon Oil Refineries Act LFN 2004

premises and examine and take account of any equipment, meters, vessels, utensils, goods or material used for or in any way connected with the refining of hydrocarbon oils.<sup>36</sup> The law also provides that ‘if an officer has reasonable grounds to suspect that any refining of hydrocarbon oils is contrary to the provisions of this Act is being carried out on any land or premises, he may enter thereon, if need be by force, and dismantle or seize any apparatus and equipment used for or in connection with such unlawful refining.’<sup>37</sup> Section 7 (1) (a) (b) of the Act<sup>38</sup> provides that any person who refines hydrocarbon oils in contravention of the provisions of section 1 of the Act shall be guilty of an offence and shall be liable on summary conviction to a fine of not less than four hundred naira or more than two thousand naira or to imprisonment for a term of two years, or to a fine of an unlimited amount or to imprisonment for a term not exceeding five years, or both.

## **6. The Petroleum Act LFN 2004**

The petroleum Act primarily set out the ownership structure of oil minerals in Nigeria, the procedure and requirements for the granting of operational licences, ministerial oversight on oil operations and the minister’s power to enforce the provisions of the law and sanction defaulting operators, among others. This law further provides for environmental protection, in broad terms, however it empowers the minister to make regulations regarding several issues including the protection of the environment. Section 9 (1) of the Act provides that:

The Minister may make regulations-

(.....) (b) providing generally for matters relating to licenses and lease

Granted under this Act and operations carried on thereunder, inclu-

ing (....) (ii) the conservation of petroleum resources;

(iii) the preservation of pollution of water courses and the Atmosphere.....

This approach of clustering environmental protection responsibility with the core responsibility of regulating licencing process, establishing ownership structure, among other sundry duties

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<sup>36</sup> S 12 (1)

<sup>37</sup> S 15

<sup>38</sup> Hydrocarbon Oil Refineries Act



is applicable to one emerging oil producing country which is Angola.<sup>39</sup> But in developed countries like the USA,<sup>40</sup> UK Australia and Saudi Arabia among others established a separate environmental protection agencies which enforces environmental protection requirements of the law regarding the petroleum industry. Australia, for example operates a very unique system of environmental protection of pollution arising from petroleum operations. The operators are generally responsible for the cleanup of oil spills, where such spills arise from oil rig or any other source (exploration rig, platforms and pipelines), except where such spills occur in a proportion that is beyond their capacity to cleanup.<sup>41</sup> Where pollution occurs within three nautical miles of the baseline of a coastal state then the relevant state or territory would be responsible along with the Australian Maritime Safety Authority (AMSA).<sup>42</sup> However, where marine pollution occurs outside three nautical miles from baseline, the Commonwealth along with AMSA would take responsibility for cleanup.<sup>43</sup> The inherent advantage in this kind of approach is that it makes room for easy remediation of oil spills and engenders cooperation among the major stakeholders: oil companies,

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<sup>39</sup> In Angola, the Ministry of Petroleum, just like in the case of Nigeria regulates both the core industry operations (licensing and monitoring) and the environment as well. The Decree on Environmental Protection for Petroleum Activities, No. 39/00 of 10 October 2000, which is administered by the Ministry of Petroleum sets out the licensees responsibilities on environmental protection in the course of petroleum exploration and production. It further requires the licencees to comply with EIA's- being an important instrument for achieving environmental protection in any project. It provides details on the EIA process, with an emphasis on the procedure for obtaining environmental licenses from the Ministry of Urbanization and environment. [www. Saiea.com/dbsa-handbook-update2012/pdf/chapter03.pdf](http://www.Saiea.com/dbsa-handbook-update2012/pdf/chapter03.pdf) accessed 1 November 2019.

<sup>40</sup> In the USA, the environmental protection Agency, asides the power to makes regulations concerning environmental laws generally, is saddled with the responsibility of enforcing most of environmental protection and sustainable development, legislation, including oil pollution prevention and response to oil spillage, gas flaring among others. Some of these legislations include: Oil pollution Act (OPA), Pollution Prevention Act (PPA), Resources Conservation and Recovery Act (RCRA), Atomic Energy Act (AEA), Beach Environmental Assessment and Coastal Health Act (BEACH), Clean Air Act (CAA), Clean Water Act (CWA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)[https://epa.gov/laws-regulations/laws-and -executive-orders](https://epa.gov/laws-regulations/laws-and-executive-orders) accessed 1 November 2019.

<sup>41</sup> J Allen Global Oil Stain- Cleaning Up International Conventions For Liability And Compensation For Oil Exploration/Production Australian Journal of Maritime Law (2011) (25) 96.

<sup>42</sup> The Australian Maritime Safety Authority Act 1990 S. 6 (1) (a).

<sup>43</sup> Ibid.

the various state's environmental regulatory agencies and the AMSA, depending on the proportion of the spills. The situation in Nigeria is slightly different as all cases of spills, cleanup or any form of remediation is a matter squarely within the regulatory province of two competing federal government agencies, the DPR and NOSDRA. Nigeria can adopt this system of decentralized regulation of petroleum related pollution by amending the relevant statutes and empower state governments environmental agencies to regulate all forms of offshore spills and other forms of pollutions, while a single federal agency should regulate all forms of air pollution particularly gas flaring, like it is the case in Australia. Where the volume of pollution is beyond the capacity a state's environmental agency, it can invite the federal agency for support. Furthermore, an environmental fund for the petroleum industry should also be established wherefrom funds can be sourced to support programmes on environmental protection relating to gas flaring. In addition, the regulatory system in Nigeria that empowers the NNPC as a regulator as well as operator of petroleum operations, which also performs environmental protection responsibilities should be reviewed to give room for the diversification of responsibilities as against the present fusion of powers approach to regulations. This fusion of duties in one agency obviously has the ability of causing conflict of interest and compromise. For example, how would NNPC through DPR address a case of gas flaring a pollution caused by Nigerian Petroleum Development Company Limited (NPDC), an upstream petroleum operating company owned wholly by the same NNPC. This fusion of responsibilities does not engender a transparent and effective enforcement system of environmental laws in the oil and gas industry. The government should set in place a new regulatory system that ensures clear separation of these responsibilities as it is in the USA, UK Australia and Saudi Arabia. Furthermore, the global best practice<sup>44</sup> in the oil and gas industry regulation is to separate

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<sup>44</sup> 'Global best practice' means such practices and procedures employed in the petroleum oil and gas industry worldwide by prudent and diligent operators under conditions and circumstances similar to those experienced in connection with relevant aspect or aspects of the Petroleum operations, principally aimed at guaranteeing a conservation of petroleum and gas resources, which implies the utilization of adequate methods and processes to maximize the recovery of hydrocarbons in a technically and economical sustainable manner, with corresponding control of reserves decline, and to minimize losses at the surface, operational safety which entails the use of methods and processes that promote occupational security and the prevention of accidents.

regulatory agencies from revenue generating agencies; this is because, if the regulatory agencies ie the ministry is dependent on oil for revenue in any way, situations may arise where the regulators may be reluctant to enforce ‘best practices’ because enforcement may reduce its own income. Additionally, the DPR being an integral part of the Ministry of Petroleum Resources exercises both petroleum licencing and environmental protection functions. Environmental regulations functions should be transferred to the ministry of Environment.

## **7. Petroleum (Drilling and Production (Amendment) Regulations 2019**

This is the most prominent regulations on environmental protection regarding petroleum oil and gas operations in Nigeria.<sup>45</sup> This regulation was made by the Directorate of Petroleum Resources on behalf of the Minister. The DPR has also made other guidelines such as the guidelines for the establishment of Hydrocarbon processing Plant (Petroleum Refinery and Petrochemicals) in Nigeria (2008) which has provisions regarding environmental protection relating to gas flaring among several other issues.

The EGASPIN has divided the petroleum industry into six stages of operations for the purpose of determining the nature and sources of wastes, its treatment and control, monitoring, limitation and standards. These are: exploration, production, terminal operations, hydrocarbon processing, oil transportation and marketing operations.<sup>46</sup>

The first two stages, the exploration and development operations, mainly include some activities which may entail the use of explosives regulated by the Explosive Act,<sup>47</sup> drilling and oil well completion.<sup>48</sup> This part of the regulations is confusing, instead of setting environmental standards for operators, focuses more on explaining the nature of each phase of operations. The regulations generally prescribe guidelines and standards that must be observed by operators, just like the primary Act but this is not the cardinal outlook of this subsidiary legislation. For instance, the entirety of article B-C of this part, spanning several pages merely presents a technical description of the nature of exploration, characteristics and

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<sup>45</sup> EGASPIN 1991, revised in 2002.

<sup>46</sup> Ibid.

<sup>47</sup> Cap E18 LFN 2004.

<sup>48</sup> Ibid.

issues like gas flaring which are likely to be associated with environmental harm. It is in article D that it sets standards for the use of explosives and other technical elements associated with seismic operations. These standards however relates to health and safety and not environmental control of gas flaring in the cause of exploration which is the main concern of this research.

At the exploration level of operations, the level of atmospheric emissions is minimal as it may be generated by vehicles, machines and equipment used in the operations.<sup>49</sup> Similarly, sound pollution is usually associated with seismic activities, but depending on the location of the productions, it might also have minimal impact on human health and the environment. At the level of operations, the EGASPIN prescribes that where water based drilling fluids are contaminated with oil to the extent that they would cause sheen upon discharge, they should be treated for oil recovery.<sup>50</sup> Where oil-based fluids are used at this stage, the regulation requires that they be recovered, reconditioned and recycled.<sup>51</sup> The regulations further provide for deck drainage, sanitary wastes, chemical and hazardous waste disposal standards.<sup>52</sup> It would cause nuisance where it is located close to areas already habited or nuisance to those involved in the operations. Other standards set concerning this phase of operations relate to health and safety rather than environmental protection on gas flaring which cause diseases and damages to crops. Furthermore, article E of this part of the guidelines provide for environmental management. It requires operators to adopt planned and integrated environmental management practices. This operates based on the precautionary principle that requires advance steps to be taken to protect the environment, even where there are no generally acceptable scientific evidence showing the likelihood of environmental impact in the future. This phase requires an environmental impact assessment EIA report/environmental permit as a precondition for operations.<sup>53</sup>

The regulations also prohibit the discharge of waste into any waters, swamps, or pits, except those specifically designed for the operations and where there is no likelihood of overflow.<sup>54</sup> The third

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<sup>49</sup> EGASPIN revised 2002 Part II (c) (2.1.1).

<sup>50</sup> Part II (2.2.1) (i).

<sup>51</sup> Ibid. Part (2.2.1) (ii).

<sup>52</sup> Part II (2.4, 2.5) and (2.7) respectively but nothing is mentioned specifically on gas flaring in these provisions.

<sup>53</sup> Part II (E) (3.2).

<sup>54</sup> Part II (3.4).

stage is the production phase. This involves the active recovery of hydrocarbons from production formations. At this stage, discharges are composed principally of produced formations water and also drilling fluids (and other effluents) and drill cuttings while concurrent development drilling is in progress.<sup>55</sup> At this point, wells have been drilled and mobile equipment and installations put in place of the mobile ones in the previous phases, and water and gas are separated at the surface.<sup>56</sup> Oil Pollution at this stage may occur as a result of discharges from production operations which may include effluents (solids, liquids and gases) and accidental oil spills, atmospheric emissions from fuel combustion to produce heat oil water separation, and where it results is a gas flaring, of carbon monoxide, oxides of nitrogen, sulphur and particulates are discharge into the atmosphere.<sup>57</sup> Similarly hazardous chemicals and radioactive elements used in the production, sands and other produced solid wastes can retain high oil contents and can contaminate water,<sup>58</sup> if not properly disposed of.

Terminal operations is another phase of petroleum operations which comes with its attendant environmental challenges. Crude oil produced is stored, dehydrated, piped, etc from or to tank farm. This part of the regulations prescribes standards for storage installation of equipment, loading system, among others in order to control associated environmental pollution. Gas flaring could also be as a result of emission problem which may be associated with combustion wastes from gas turbines/ combustion engines, and the hydrocarbon emissions from tank vents.<sup>59</sup>

The last stage of the operations relates to marketing operations. This involves the storage of the products in tanks, especially at retail outlets, which might experience corrosion, malfunction, etc that could lead to leaks that contaminate the environment.<sup>60</sup> The regulations also prescribe the standardization and environmental evaluation (post impact) report.<sup>61</sup> While the EIA is required as a precondition for operations, the EER is done in the course of operations and after pollution has already occurred. It is a process of

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<sup>55</sup> Part III (A) (i).

<sup>56</sup> Part III (B).

<sup>57</sup> Part III (c).

<sup>58</sup> Ibid.

<sup>59</sup> Part IV (2.1).

<sup>60</sup> Ibid.

<sup>61</sup> Part VIII (1.3).

accessing the level of environmental damage already incurred in order to prepare a strategy for restoration.<sup>62</sup>

Part IX of the regulations provides for the enforcement modality in terms of permits and sanctions for non-compliance with the rules. It provides that all effluent discharges (gaseous, liquid or solid) connected with petroleum operations require environmental permit to be given under the hand of the Director of DPR.<sup>63</sup> Part IX also prescribes some penal sanctions for non-compliance with the regulations. For example, article 4.5 provides:

Any person or body corporate who contravenes any provisions of the environmental guidelines and standards, commits an offence and shall on conviction, where no specific penalty is prescribed therefore, be liable to a fine, imprisonment and or revocation of licence/permit.

(a) Where the offence is committed by a body corporate or by a member of a partnership, firm or business, every director and /or relevant management staff, shall be liable.

Similarly, on pollution penalty, Part IX (4.6.2) of the regulations provides concerning oil/chemical/hazardous materials spillages thus:

- a. All avoidable spillages, when they occur, shall attract a royalty not less than N 500,000, to be deducted at source and additional fine of N 100,000 for every day the offence subsists;
- b. The spiller (operator or owner of vessel) shall pay adequate compensation to those affected and;
- c. The spiller shall restore/remediate the polluted environment to an acceptable level as shall be directed by the Director of petroleum Resources.<sup>64</sup>

It is worthy to note that the above sanction does not specifically tie the fine to the volume of gas spillage recorded by an oil company, which means a company may pay a sum not commiserate with the volume of environmental harm caused by it through gas flare. This is inequitable as polluters may not be penalized commensurate with the volume of pollution caused by them.

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<sup>62</sup> Ibid.

<sup>63</sup> Part IX (3.1).

<sup>64</sup> Part IX (4.6.2) EGASPIN revised 2002

## **8. Conclusion/Recommendations**

It can be said that the various legal framework bordering on oil pollution in Nigeria have had both negative and positive impact in the redress of oil pollution in Nigeria. However, the negative effects prime among these which is the continued and unabated oil spills being recorded in the environment are threatening to over shadow the positive impacts of these legal framework, what is needed is for the Federal government of Nigeria to take a firm stand against oil pollution by sanctioning both the oil companies who are negligent with their pipelines and other installations in the operation areas, including vandals who contribute to this grave environmental problem. The Federal government also needs to strengthen the existing statutory bodies/agencies vested with the responsibility of oil pollution management and prevention in Nigeria in other to ensure strict adherence and enforcement of the existing laws.