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LEGAL AND INSTITUTIONAL ASPECTS OF THE CONTROL OF OIL POLLUTION IN NIGERIA

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Abstract
Pollution and more particularly oil pollution usually result in the degradation of the environment. The environment is basically constituted as the air, water and land and has for ages remained the nature's greatest legacy to mankind. The air, water and land constitute the basic necessities for human existence. In spite of nature's generous provision of these necessities of life, the environment has been and is still being polluted by man through indiscriminate disposal of domestic, commercial and industrial wastes. Fortunately, man ultimately depends on resources in his immediate environment for sustenance. The pollution of the environment at times could be a consequence of industrialization and oftentimes as a result of combined human and natural factors. There is also a fast-growing tourist industry encouraging hordes of human traffic which gives more time and opportunity to encroach upon countryside and beaches, often times polluting land, air and water, as well as jeopardizing plant and animal lives in the process. These selfish exploitations of natural resources subject the lives of the present and future generations to unimaginable risks. By implication, the process of extraction of oil from underneath the surface or from the subsea has been characterised as development associated with technological know-how. The menace of pollution has attracted the concern of government who in turn churns out relevant legislations and institutional agencies to checkmate pollution. Notwithstanding these efforts, much has not been achieved in curtailing the pollution. In the light of this, this study analysed the legal and institutional frameworks for the control of pollution in Nigeria. The paper also examined extensively the challenges to the effective enforcement of these laws and proffered some solutions to the challenges.

Keyword: Pollution, Environment, Degradation, constitutes of environment, industrial wastes

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1. Introduction

Oil pollution leads to the degradation of the environment which is exacerbated by industrialization. By implication, the process of extraction of oil from underneath the surface or from the subsea has been characterised as a development associated with technological know-how.

Oil pollution is the release of liquid petroleum hydrocarbons into the environment and it is ultimately caused by human activity.[1]It is the accidental release of oil into a body of water, from a tanker, offshore drilling, or underwater pipeline which is a hazard to marine life and environment, often referred to as a marine oil spill. These spills can spread toward land and affect land animals as well as marine life. An oil spill is technically captured as oil discharged accidentally or intentionally, that floats on the surface of water bodies as a discrete mass and is carried by the wind, currents and tides. Oil spills can be partially controlled by chemical dispersion, combustion, mechanical containment, and adsorption. They have destructive effects on coastal ecosystems. It is also defined as the presence of significantly large amount or layers of crude or refined oil on soil or sea water.[2] An oil spill is a form of environmental pollution. It is the release of a liquid petroleum hydrocarbon into the environment because of human activity.[3] The term 'oil spill' is most commonly used in the context of marine oil spills where crude oil, refined petroleum products or by-products, ships' bunkers, oily refuse, or oil mixed in waste is released into the ocean or coastal waters. It should be noted that the costs incurred for removing oil spills are usually very high, and it may take several months, in some cases many years to clean up the spills. Marine oil spills may take place due to a variety of reasons. Some of these are carelessness or mistakes on the part of the oil tanker owner; break down of equipment in the tanker/vessel; oil release into the environment from the natural geological seeps on the sea floor; acts of terrorism, whereby there are intentional no oil spills; hostile acts such as when two nations are at war, one may decide to dump gallons of oil into the other state's ocean-water.

The effects of oil spills are devastating to put it lightly. It has the most effects on marine animals; fishes, whales, and seahorses, and has even rendered some marine animals endangered species. Birds are also affected as well as the repellence of their feathers is damaged making them prone to die from hypothermia. Furthermore, it affects the sights of such birds if it encroaches on their eyes. Ingestion of the spilt oil while they attempt to clean themselves, could lead to death. Generally, it affects the growth, enlarged livers, fluctuations in the heart beat-rates, fin erosion, reproduction, eggs and larval survival. The devastating

[1] Angel N. Chioke and Ikenna P. Ukam, "Developing an Effective Legal Framework for Oil Pollution Management in Nigeria" in *Journal of Commercial and Property Law*, Nnamdi Azikiwe University Awka, Vol. 8, Issue 1, 2021, p. 83.
[2] Business dictionary <http://www.businessdictionary.com/definition/oil-spill.html> last accessed, May 2024
[3] M. T. Okorodudu, (1998) *Law of Environmental Protection*: Text C. From Ebeku, K. *Judicial Attitudes to Redress Oil Related Environmental Damage in Nigeria RECIEL 12 (2) 2003, P.207.* See also Adamu Kyuka Usma, *Environmental Protection Law and Practice* (Ababa Press Ltd, Nigeria), 2012, Pp. 228-233.

effect of oil spills usually manifests in the high mortality rate in mangrove areas, sea-weeds and algae.

Oil spills constitutes one of the most serious forms of oil pollution, releasing large amounts of oil into marine and coastal areas. Oil spills can come from oil tankers, offshore platforms, pipelines, and other sources. Major oil spills can kill wildlife, contaminate beaches, and damage local economies dependent on fishing and tourism. Some of the largest oil spills in history include the 2010 deep-water horizon spill in the Gulf of Mexico which released nearly 800 million litres of oil.

In Nigeria, particularly the oil-rich Niger Delta region has been plagued by numerous oil spills over the past decades causing widespread contamination of soil, groundwater and surface water. Between 1976 and 1991, more than two million barrels of oil polluted Ogoni-land, a region within the Niger Delta in 2,976 separate oil spills. In 2020 and 2021 alone, Nigeria's National Oil Spill Detection and Response Agency (NOSDRA) recorded 822 combined oil spills, totalling 28,003 barrels of oil spewed into the environment.[4]

The most recent oil spill occurred in June 2023 at a Shell facility in Ogoni-land in Rivers state, contaminating farmland and the Okuku River.[5]The spill has upended livelihoods in the fishing and farming communities, which have long endured environmental pollution caused by the oil industry. Oil spills in the Niger Delta have been attributed to various factors, including equipment failure, corrosion of pipelines and sabotage by militants and organized crime groups. Shell, the major oil company operating in the region, often blames oil spills on sabotage but many spills have been linked to rusty and poorly maintained pipelines.[6]The impact of oil spills on the environment and local communities is devastating. Farmland and water bodies are polluted, leading to the destruction of crops and the death of aquatic life. Fishing and farming, the main sources of livelihood for many in the region, are disrupted, leaving people without income. The health of local residents is also affected, with increased incidence of skin diseases, respiratory problems, and other ailments. Life expectancy in the Niger Delta is 41 years, 10 years lower than the national average.[7]

Man depends on resources in his immediate vicinity for sustenance. However, these resources

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[4] Dele Ogunyemi, "Oil spill ravaging N'Delta communities as NOSDRA gives assurances" in *The Punch*, 24 November, 2023, p. 43.
[5] Environmental Assessment of Ogoni-land Report <https://www.unep.org/topics/disasters-and-conflicts/country-presence/nigeria/environmental-assessment-ogoniland-report>
[6] Dele Ogunyemi, supra, at note 4 above.
[7] Ihuoma N. Anyanwu, *et al,* "Pollution of the Niger Delta with Total Petroleum Hydrocarbons, Heavy Metals and Nutrients in Relation to Seasonal Dynamics" in *Scientific Reports*, Vol. 13, 2023, p. 89.

are routinely depleted without adequate or any consideration for their conservation or replacements. Significantly, the growth in the number of people who are demanding goods and services, are related to the increasing knowledge and technology available to mankind as well as make it possible for industrial production and trade to grow. [8]The implication of this is that there will be new factories and chemical plants, new sources of resources depletion and environmental pollution, and also growing is the amount of leisure time that people have. There is also a fast growing tourist industry. People have more time and opportunity to encroach upon countryside and beaches, often times polluting land, air and water, as well as jeopardizing plant and animal life in the process. These selfish exploitations of natural resources make bleak the future of the world youth and the unborn generations. The need to assess the relevance of legal and institutional frameworks for the control and/or checking violation of international conventions appertaining to pollutions, particularly oil pollutions in Nigeria cannot be over-emphasised. However, there is little or nothing on the combined interaction of legal and institutional frameworks for the control of oil pollution in Nigeria.

2. Definition, Nature and Scope of Environmental Law and Oil Pollution

Definitional terms actually constitute a necessary first step to understanding the current and subsisting legal and institutional framework associated with oil pollution on the one hand and the significant challenges to the process of controlling oil pollution. Pollution has been defined as man-made or man aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to the environment beyond acceptable limits.[9] Pollution also involves the making of any feature of the environment offensive, harmful or less suitable for human, animal or plant life and the effectiveness of the legal regimes on pollution control which is the focus of this project. Pollution is the release into any environmental medium any process of substances which are capable of causing harm to man or any other living organisms supported by the environment. It is the introduction by man directly or indirectly of substances or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, farm, living resources and ecosystems. The 1972 United Nations Conference at Stockholm defines pollution as, 'the discharge of toxic substances and the release of heat in such qualities or concentrations as to exceed the

[8] TF Agbanike, *et al*, "Oil, Environmental Pollution and Life Expectancy in Nigeria" in *Applied Ecology and Environmental Research*, Vol. 17, Issue 5, 2019, p. 11147.
[9] Oxford Dictionary, 7th ed.

capacity of the environment.'[10]

The word "environment" discovers its origins in the French term 'environ' which means "to encircle." It encompasses all the surroundings where humans live. These surroundings cover both the entirety of the natural world and the human-made terrain. The natural environment comprises elements like air, water, lakes, trees, and mountains, while the human-made environment consists of developments such as buildings, roads, parks, bridges, monuments, gardens, and more. According to Black's Law Dictionary, environmental law is defined as;

> A collective body of rules and regulations, orders and statutes, constraints and allowances that are all concerned with the maintenance and protection of the natural environment of a country.[11]

The term 'pollution' emerges from the Latin word "polluere," denoting the act of polluting any aspect of the environment. Environmental pollution takes place when any component is unveiled into the environment, humiliating its property to a point where it becomes inappropriate for human habitation. Various forms of environmental pollution involve air pollution, water pollution, noise pollution, and more. Environmental sustainability refers to the ability of the environment to continue to support life in the long term. This means meeting the needs of the present without compromising the ability of future generations to meet their own needs. Environmental sustainability encompasses a wide range of issues, including climate change, biodiversity loss, pollution, and resource depletion. The goal of environmental sustainability is to create a world in which people can live in harmony with the natural environment and where future generations can thrive.[12]

The need for theoretical framework adopted in this paper cannot be over-emphasised. The associated theory explains the jurisprudential basis, theories and principles guiding our field of study in law and justifying how they apply to our research. In general, concepts of pollution, and control and management of spillage as it is common with oil pollution stem from the combined principles of tort law and environmental law, in which the need for recondite legal evaluation by way of approximate and appropriate legislation to contain continuing and future occurrences of such wrongful act causing injury both to individuals and the environment is checked. These concepts are not to be confused with environmental

[10] L. A. Atsegbua., *et al*, Environmental Law in Nigeria-Theory and Practice, (Lagos: Ababa Press Ltd., 2004), p. 71 quoting The United Nation Conference on Environment (otherwise referred to as the Stockholm Conference 1972).

[11] Black's Law Dictionary, 8th ed. The Free Legal Dictionary, 2nd edition, also defined environment as an amalgam of state and federal statutes, regulations and common law principles covering air and water pollution, hazardous waste, the wilderness and endangered wildlife.

[12] Donella Meadows 1972, cited by M. T. Okorodudu-Fubara, Law of Environmental Protection, Materials and Text Caltop Publications (Nig.) Ltd., Ibadan, 1998, p. 89.

pollution which is the generic term that refers to the continuous damage to the environment.

The general idea that the injurious consequences of pollution, particularly oil pollution, should be checked or managed through the instrumentality of legislations finds support in two basic organs to wit: legal framework and institutional arrangements.[13] The object of this approach is to ensure the efficacy of the frameworks, that is to say, the ability to achieve compliance, thereby checking the menace of pollution on the one hand and on the other hand envisage the quality and quantum of difficulties, that is to say, surmounting challenges in the process of combating the menace of pollution.[14]A related concept is the precautionary principle which applies to environmental decision-making where there is scientific uncertainty. This principle requires that where there are threats of damage to the environment, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation or pollution. The type of damage envisaged is primarily concerned with environmental pollution more particularly oil pollution.

To date, there is still no general consensus as to a definition of environmental damage or pollution in international law. In 1998, a group of 'Experts on Liability and Compensation for Environmental Damage' completed an extensive review of international, regional, and state legislation and practice to develop a general working definition of this term.[15]According to this Group, environmental damage or pollution is a change that has a measurable adverse impact on the quality of a particular environment in any of its components, including its use and non-use values, and its ability to support and sustain a quality of life and a viable ecological balance. In this sense, environmental damage does not include damage to persons or property, although such damage could be consequential to the damage caused to the environment. It should also be noted that the term such as pollution or adverse effects simply describe the threshold beyond which environmental damage may entail liability, and are not synonymous with environmental damage.[16]

Oil spills are a persistent and devastating form of oil pollution in Nigeria, particularly in the Niger Delta region. The environmental and social impacts are severe, with local communities bearing the brunt of the damage. Urgent action is needed to address the root causes of oil spills, clean up contaminated areas, and provide support to affected communities. Spills are

[13] Raphael Adeoluwa, "Assessing the Legal Frameworks on Environment and Climate Change Enforceable in Nigeria by the National Environmental Institution" in *Nnamdi Azikiwe Journal of International Law and Jurisprudence*, 2019, p. 74.
[14] M. A. Ajomo, and O. Odewale O., Environmental Law and Sustainable Development in Nigeria, N.I.A.L.S. and the British Counsel, 1994, p. 82.
[15] UNEP Working Group, 1998 [Hereafter, The UNEP 1998]
[16] Ibid.

naturally forms of pollution. Pollution could be caused by oil spills as well as gas flaring. This type of pollution constitutes persistent and devastating forms of oil pollution in Nigeria, particularly in the Niger Delta region. The environmental and social impacts are severe with local communities bearing the brunt of the damage.[17]Urgent action is needed to address the root causes of oil spills, clean up contaminated areas, and provide support to affected communities. There are different types of factors resulting in oil pollution:

A. Urban Runoff

Runoff occurs from oil that accumulates on roads from vehicles that can be washed into storm drains and waterways during rain or snow melt, polluting urban runoff. Sources include vehicle leaks, fuel spills, and improper oil disposal. The oil floats on the water and is carried from cities into rural areas, contaminating the environment. Oil pollution from runoff is a significant environmental issue in Nigeria, particularly in the Niger Delta region where oil exploration and production activities are concentrated. Runoff refers to the process by which oil and other pollutants are carried away by surface water, such as rainwater or floodwater, and deposited in other areas. The Niger Delta region has long suffered from environmental degradation due to oil spills, gas flaring, and other oil industry activities. Oil spills often occur due to pipeline corrosion, poor maintenance, human error, oil theft, and intentional sabotage. When oil spills occur, the oil can seep into the soil and contaminate groundwater, or it can be washed away by rainwater or floodwater, leading to further pollution through runoff.

The impact of oil pollution from runoff on the environment and local communities is severe. Oil contamination can destroy farmland and fishing grounds, making it difficult for people to earn a living. The pollution also contaminates drinking water sources, exposing people to health risks. Studies have shown that exposure to oil pollution can lead to various health problems, including skin irritation, respiratory issues, and even cancer.

Despite the devastating impacts of oil pollution, the clean-up efforts in the Niger Delta have been slow and ineffective. In 2011, the United Nations Environment Programme released a report documenting the extent of oil pollution in Ogoni-land, a region within the Niger Delta, and set out urgent recommendations for clean-up. However, nearly a decade later, work has begun on only 11% of the polluted sites identified by UNEP, and no site has been entirely cleaned up.[18]

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[17] AA Ikhumetse, "A Critical Review of Oil Spills in the Niger Delta Aquatic Environment: Causes, Impacts and Bioremediation Assessment" in *Environmental Monitoring and Assessment*, Vol. 194, No. 816, 2022, p. 98.
[18] Ekpali Saint 'Timeline: Half a century of oil spills in Nigeria's Ogoni-

B. Atmospheric Fallout

Oil burned by vehicles and planes pollutes the air, and some of this oil eventually falls out of the atmosphere onto land and water. This atmospheric fallout occurs when the oil is knocked out of the air by rain or snow. Atmospheric fallout is a significant type of oil pollution in Nigeria, particularly in the Niger Delta region where most of the country's oil exploration and production activities take place. Atmospheric fallout refers to the deposition of pollutants from the air onto surfaces such as soil, water, and vegetation.

In the Niger Delta, atmospheric fallout is primarily caused by gas flaring, which is the burning of natural gas associated with crude oil production. Nigeria is one of the largest gas flaring countries in the world, with an estimated 2.5 billion cubic feet of natural gas flared daily. Gas flaring releases various pollutants into the atmosphere, including nitrogen oxides, sulphur oxides, carbon monoxide, particulate matter, and hydrocarbons.[19]These pollutants can travel long distances and be deposited on the surrounding environment through atmospheric fallout. The forms of pollution include natural seeps,[20]water and oil pollution.

Oil pollution is the release of liquid petroleum hydrocarbons into the environment caused by human activity. It is the accidental release of oil into a body of water, from a tanker, offshore drilling, or underwater pipeline which is a hazard to marine life & environment often referred to as a marine oil spill. These spills can spread toward land & affect land animals as well. An oil spill is oil, discharged accidentally or intentionally, that floats on the surface of water bodies as a discrete mass and is carried by the wind, currents and tides. Oil spills can be partially controlled by chemical dispersion, combustion, mechanical containment, and adsorption. They have destructive effects on coastal ecosystems. It's also defined as the presence of significantly large amount or layers of crude or refined oil on soil or sea water. An oil spill is a form of environmental pollution. It is the release of a liquid petroleum hydrocarbon into the environment because of human activity. The term 'oil spill' is most commonly used in the context of marine oil spills where crude oil, refined petroleum products or by-products, ships' bunkers, oily refuse, or oil mixed in waste is released into the ocean or coastal waters. Costs incurred for removing oil spills are very high, and it may take several

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land,'<https://www.aljazeera.com/features/2022/12/21/timeline-oil-spills-in-nigerias-ogoniland (accessed 28 May 2024)

[19] Gas flaring in the Nigerian Delta Region, See particularly Anya Kingsley Anya, Gaga Wilson Ekakitie, Esther C. Anya, Anatolijs Krivins and Ingūna Jurgelāne-Kaldava, "Entrepreneurial, Legal and Logistics Aspects of Gas in Nigeria" in *Journal of Entrepreneurship and Sustainability Issues*, 2024, p. 82.

[20] Ifeoma Christy Mba, *et al, Causes and Terrain of Oil Spillage in Niger Delta Region of Nigeria: The Analysis of Variance Approach,* 2019, p. 57.

months, in some cases many years to clean up the spills. Marine oil spills may take place due to a variety of reasons. Some of these are carelessness or mistakes on the part of the oil tanker owners; break- down of equipment in the tanker/vessel; oil released into the environment from the natural geological seeps on the sea floor; acts of terrorism, whereby there are intentional non-oil spills; hostile acts, such as when two nations are at war, one may decide to dump gallons of oil into the other nation's oceans.

The effects of oil spills are devastating to put it lightly. It has the most effects on marine animals; fishes, whales, and seahorses, and has even rendered some marine animals endangered species. Birds are also affected as well as the repellent of their feathers is damaged making them prone to die from hypothermia. Also, affects their sight if it encroaches on their eyes. Ingestion of the spilt oil while they attempt to clean themselves, could lead to death. Generally, it affects the growth, enlarged livers, changes in heart rates, fin erosion, reproduction, eggs and larval survival, ultimately, shows the high mortality rate in mangrove areas, seaweeds, and algae.

The Niger Delta is a major oil-producing region, but decades of oil exploration and production have resulted in widespread pollution of land, water, and air. Spills from pipelines, wellheads, and storage facilities, as well as illegal refining activities, have contaminated waterways, soil, and vegetation, and thereafter has affected the local ecosystems and livelihoods.[21]

C. Effects of Oil Pollution on the Environment

The occurrence of 'Oil spills' and 'gas flaring' has not been a very common transaction not until the advent of exploration of oil and gas in Nigeria. Consequent on the above, the term 'oil spills' and 'gas flaring' were introduced.[22] It is a serious form of environmental pollution. Against the backdrop of exploring every kind of environmental issues, oil spills is one major area that should not be ignored. In the light of the above, there are different types of spills. Drawing attention from the above, the study shall examine the origin, causes and effects, and moreover the worst 10 oil spills that have happened in the World.

The origin of spills is associated with the discovery and exploration of oil in the Niger delta region.in fact, in the process of transporting oil from the oil wells to the farm tanks through

[21] G. B. Odemerho, cited byAjomo and Odewale., in Environmental Law and Sustainable Development in Nigeria, 1988 supra, p. 189
[22] ED Oruonye, *et al*, "Ending Gas Flaring in Niger Delta Region: Does Nigeria Have the Political Will?" in *International Journal of Petrochemistry and Natural Gas*, Vol. 2(2), 2002, p. 66.

specialized pipes across a most difficult and rugged marine environment, spills from the pipes were recorded.

As the word suggests, it is the release or escape of oil into the sea or any other water body. In other words, oil spills can be defined as contamination of water bodies due to spilling of oil as a result of negligence of humans or an accident. This term oil spills is generally associated with marine where the oil is released directly to the deep sea. The oil spills include any type of crude oil or any type of distilled oil like kerosene, lubricating oil, diesel fuels, gasoline, hydraulic oil and jet fuels. This oil spill can be a few gallons to millions of gallons. The costs incurred in cleaning of these spills are enormous and it can take months and years. The Oil Spill Act was passed in 1990 and further revised in 1994 to prepare and prevent oil spills.[23]

D. Causes of Oil Spills

Oil spills can occur in many ways. However, the most notable form of occurrence include the following:

I. Natural Causes

Oil spills occur naturally by natural disaster, movement of tectonic plates and also as a result of inadequate trap system. Oil spill can be caused by natural seepage, especially in the ocean, as tectonic plates shift, they may release oil from reserves trapped deep such as drilling beneath the ocean floor.[24]

II. Human Causes

Oil spills can occur due to manmade reasons which include: oil bunkering, sabotage and oil siphoning, negligence and lack of awareness, lack of proper technology, terrorism, leakage during transportation and storage, lack of proper maintenance of oil vessels and accident due to human errors. [25]

When oil tankers have equipment faults, it may get stuck on shallow land. When the tanker is attempted to move out of shallow land, abrasion may cause a hole in the tanker that will lead to large amounts of oil being released into the oceanic bodies. However, although this form of oil spill is the most commonly known and has the highest media attention, only 2% of oil in

[23] Luke Onyekakeyah, "Oil Pollution: Causes, Consequences & Control Strategies" in *The Guardian*. 14 June 2005, p.65.
[24] NP Ololube, et al, "Issues of Human Security and Educational Development in the Niger Delta Region of Nigeria" in *African Education Review*, Vol. 10(3), 2013, p. 478.
[25] Idowu Adegbite "Environmental degradation and human rights violations" (1999)3/1 *Modern Practice Journal of Finance and Investment Law*, p. 134

water bodies is a result of this action.[26]From nature and human activities on land, the large majority of oil spilled is from natural seeps geological seeps from the ocean floor as well as leaks that occur when products using petroleum or various forms of oil are used on land, and the oil is washed off into water bodies.

III. Sabotage

It has also been defined to include any act done wilfully with intent to obstruct or prevent the production or distribution of petroleum product in any part of Nigeria. Sabotage includes the wilful indirect or secret action to prevent or ruin a plan that is the subversion of all efforts of the Nigerian National Petroleum Corporation and its subsidiaries to make sure that there is effective transportation that is effective production and distribution of the petroleum products to all the States of the Federation of Nigeria.[27]It will appear that sabotage has been a major evil that has plagued the oil industry in Nigeria. Shell Petroleum Development Company of Nigeria (SPDC) said that in 1996 sabotage accounted for more than 60 per-cent of oil spilled at its facilities in Nigeria.[28]The percentage has increased over the years both because the number of sabotage incidents has increased. In 1997, Shell stated that 63,889 barrels or almost 80 per-cent of it were spilled due to sabotage. Other oil companies similarly reported sabotage to their pipelines and installations. Shell states that sabotage is usually easy to determine, since there is evidence of clearly drilled holes, hacksaw cut, cutting of protective cages to open valves, and etcetera. In few cases where the evidence is unclear, ultrasonic sounding is taken for further clarification. Similarly, Shell said that 60 per-cent of spillages in Ogoni from 1985 to the time it ceased production in the area were caused by sabotage.[29]It is necessary to note that all these claims by oil companies may be subjective, as the claims of sabotage are hotly disputed by communities concerned. Community leaders pointed out that given the fact that compensation payments are paid late and are inadequate even when it is proved that the company is at fault, there is little for them to gain from polluting their own water and destroying their own crops.[30]

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[26] Okeola Olayinka "Challenges and contradictions in Nigeria's water resources policy development: A critical review" (2017) 6/1 *International Journal of Science and Technology*, p. 10.
[27] Zephaniah Osuyi Edo "The challenges of effective environmental enforcement and compliance in the Niger Delta region of Nigeria" (2012) 14/6 *Journal of Sustainable Development in Africa*, p. 263
[28] Ibid.
[29] Macaulay J.Akpan, "Challenges & Panacea for Sustainable Development of the Niger Delta Region: An Empirical Analysis" in *Benue State University Journal of Private & Public Law,* vol. 1 No. 1, 2013, p.224.
[30] J. E. Ekore., (Unpbd) Seminar Presented to Environmental Protection Law Class. 2001-2002 Session

There are situations where oil companies have been alleged to be involved in covering up oil spills. In 1996, the British Advertising Standards Authority[31] reviewed the claim that 60 per-cent of spills in Ogoni were caused by sabotage, following complaints from members of the public and from Friends of the Earth and concluded that the advertisers had not given enough information to support the claim, and asked that it should not be repeated. Statistics from the Department of Petroleum Resources indicate that only 4 per-cent of all spills in Nigeria were caused by sabotage during the period 1976 to 1990, these statistics include, offshore spills, which have been by far the largest, and are unlikely to be caused by sabotage.

Part of the problem is that there is no independent confirmation that spillages have been caused by sabotage. Although the Department of Petroleum Resources is supposed to confirm sabotage and community members may also be invited to inspect the damaged installation but often, no genuinely independent experts are present.

In spite of the problem associated with finding an independent confirmation as to whether a particular spill is an act of sabotage or not, there are obviously other ways by which oil spills could occur. They are as follows: Well blow out; Corrosion of pipelines; Natural causes like rain and heavy storm; Flood; Leaks from storage facilities and pipelines; Oil seeps; Accidental ruptures or grounding of oil tankers; Atmosphere fallout and improper discharge of waste, like produced water drilling mud's cutting and refinery effluent; Equipment malfunction; and Maintenance error. It could be seen from the above that not all cases of oil spills could be attributed to sabotage. However, much of the spillages on the Nigerian shore areas are as a result of sabotage. The incidence of sabotage seems to be peculiar to Nigeria as no other member of the Organization of Petroleum Exporting Countries[32]or African Petroleum Producing Association is inundated with this problem.[33]

E. Impacts of Oil Spill on the Environment

Oil spills have caused widespread contamination of soil and water bodies in the Niger Delta. When oil spills into water, it spreads rapidly and the volatile components evaporate while the less volatile ones dissolve, emulsify or sink to the bottom. This contaminates the water and sediment, harming aquatic life. Oil spills also pollute the air, affecting aerial life. The

[31] CLO Annual Report, 1997 at 205-206. See also *the Guardian*, 8 July 1997, p. 5 cited in Kaniye Ebeku, "Compensation for Damage Arising from Oil Pollution: *Shell Petroleum Dev. Coy Nig. v. Ambah* Revisited" in *Nigerian Law and Practice Journal*, vol. 6 No. 1, March, 2002, p. 19.

[32] *Elebanjo v. Dawodu*(2006) 15 NWLR pt. 1001 p. 76. See also *NNPC v. SLB Consortium Ltd* (2008) 10 SCLR pt. 10 p. 237.

[33] However, we hear and see isolated cases of oil producing countries who are at war burning one another's oil installations, examples are Iran and Iraq's War of the 1980 and US and Iraq's hostility of 1991 and 2003-2004

collective impacts of these pervasive spills are worsened by seasonal floods which transfer the oil pollution to farmlands and occupied areas.

Oil spills have destroyed farmlands and fishing grounds, the main sources of livelihood for many communities. In Ikarama, a community in Bayelsa state, oil spills have led to very low crop yields, with many farmers harvesting tiny or no yams and cassava at all. This has contributed to a decline in local food production and deepened poverty. In Goi, Rivers State, crude oil seeps into processed cassava, rendering it unsafe for consumption.

F. Health Impacts

Hundreds of thousands of people living in the Niger Delta are being exposed to oil contamination near their homes, farmlands, fishing grounds and in their drinking water and foods. However, the consequences of such exposure on their health are not well known. Potential health risks include respiratory problems from inhalation of volatile organic compounds, skin rashes and other dermatological effects from skin contact, and gastrointestinal problems from ingestion of contaminated water and foods. [34]

G. Social and Economic Impacts

Oil spills have caused deaths, destruction of farmlands, fishing industry, tourism facilities and cultural areas. The social impacts include community conflicts, violence and frustration which lead to militancy. Oil spills have also reduced tourism and hospitality industries, causing job losses, poverty and revenue declines.

The economic impacts include the high costs of clean-up and compensation, damage to agricultural lands, fishery and wildlife. In 2002, Nigeria lost about N7.7 billion due to destruction of pipelines carrying petroleum products. In 2000, Nigeria lost about $4 billion in oil revenues due to vandals' activities on oil installations. Illegal oil bunkering is also a major problem, with an estimated 300,000 barrels per day of Nigerian crude being stolen and sold illegally.

H. Effects on Habitation

It is generally not possible to protect an entire coastline from the effects of a major oil spill, so the authorities have to set priorities for their oil spill response. It goes without saying that designated conservation areas, such as national parks, or sensitive marine areas are particularly worth protecting and are given high priority in clean-up efforts. As a rule,

[34] Best Ordinioha and Seiyefa Brisibe "The human health implications of crude oil spills in the Niger delta, Nigeria: An interpretation of published studies Best for Medical Journal, 2013

however, these areas are too large to be protected in their entirety. Here, sensitivity rankings can facilitate the oil spill response: these describe the general sensitivity of the various shoreline types to oil pollution. In exceptional cases, it may even be possible to define "sacrificial areas" which are less important from a nature conservation perspective and where no protective measures are taken.[35]

When defining these sensitivity rankings, one factor which is taken into account is whether the section of coastline is a "high-energy" area, for example, area with rocky or sandy shores that are subjected to direct wave action, or whether they are relatively calm, "low-energy" areas such as the wadding sea which are protected by sandbanks or offshore islands. Of course, within the major habitats described here, other more detailed sensitivity rankings can be defined for a targeted oil spill response.[36]

3. Legal Framework for the Control of Oil Pollution in Nigeria

The legal framework for the control of oil pollution in Nigeria is a complex and multifaceted issue that involve various enactments, regulations, and international treaties. The activities of the oil industry in Nigeria, though a major contributor to the national economic power has been identified as one of the major sources of environmental pollution in Nigeria. There are consequently many and varied legislations supported by diverse institutional regulatory agencies aimed at regulating the multifarious fallouts associated with the exploitation and exploration of oil in Nigeria. The process of exploration and exploitation, and other process of handling, transporting and storage of oil have as a matter of fact resulted in oil pollution. Consequently, there is the Petroleum Act, which laid the basic legal foundation for oil prospects and exploration. Furthermore, there are chains of other legislations operating in concert to regulate in regulating oil pollution. The consideration will address both legal and institutional frameworks.

I. The Constitution of the Federal Republic of Nigeria

The constitution of the Federal Republic of Nigeria, 1999 as amended, has been the grund-norm for legislations in Nigeria. Section 20 provides that "The State shall protect and improve the environment and safeguard the water, air, land, forest, and wildlife of Nigeria." Furthermore, section 17 (2) (d) (ii) complements the afforested provision by stating that:

[35] NP Ololube, *et al,* "Issues of Human Security and Educational Development in the Niger Delta Region of Nigeria" in *African Education Review*, Vol. 10(3), 2013, p. 478.
[36] Organization of the Petroleum Exporting Countries (OPEC) website, available at <http://www.opec.org/opec.web en/ about us/167.htm> accessed 21 May, 2024

"Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented." These constitutional provisions are instrumental to the protection of the Nigerian environment. The provide the legal framework for regulating oil pollution in Nigeria and contains several provisions that are relevant to environmental protection and the regulation of the oil and gas industry.

The Constitution vests ownership and control of all minerals, mineral oils, and natural gas in, under or upon any land in Nigeria solely in the government of the Federation.[37]This means that the federal government has exclusive jurisdiction over the exploration, production, and regulation of oil and gas resources in the country. Items 39 and 68 of the Second Schedule to the Constitution empower the National Assembly to make laws for the prevention of oil pollution.

The Constitution emphasizes the need for environmental protection and sustainable development in the oil and gas sector. Section 20 states that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria." However, this provision is not justiciable as it cannot be directly enforced in court. The Constitution recognizes the rights of individuals and communities to benefit from the exploitation of mineral resources in their areas. It emphasizes the importance of fair compensation, adequate resettlement, and environmental protection in cases where oil and gas activities affect local communities. In the case of *Gbemre v Shell*,[38]the court held that gas flaring by oil companies violated the constitutional rights to life and dignity of the people of the Niger Delta.

While the federal government has overall control of the oil and gas sector, the constitution also allows state governments to participate in the ownership and administration of the minerals and mineral oils within their respective states. However, state governments cannot make laws for the prevention, control and remediation of oil pollution as this is strictly within the legislative competence of the National Assembly.[39]

The Constitution of Nigeria provides a framework for regulating oil pollution, but its effectiveness is limited by the lack of justifiability of the environmental protection provision and the exclusive jurisdiction of the federal government over oil and gas resources.

II Oil in Navigable Waters Act

[37] Section 44 (3) of the 1999 Constitution
[38] (2005) 6 AHRLR 152
[39] See the Exclusive Legislative List under the 2nd Schedule, Part 1 of the 1999 Constitution.

This is an Act 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 such prevention in the navigable waters of Nigeria. The Act is the first law that deals specifically and solely with the industrial waste generated by oil production.[40]It is concerned with the discharge of oil from ships. However, the enforcement of this legislation has been watered down by several loopholes in its provision through which offenders may wriggle through. Some researchers contended that the penalties prescribed in the act are too lenient on offenders and apart from ineffective enforcement of the laws contained in the act, they find it cheaper to breach the laws and pay ridiculously low fines than adhere to them.

III National Oil Spill Detection and Response Agency Act

The agency at the forefront of response to oil spill incidents is the National Oil Spill Detection and Response Agency (NOSDRA). Section 1 (1) of the NOSDRA Act 2006 provides that NOSDRA is the federal agency with the statutory responsibility for preparedness, detection, and response to all oil spillages in Nigeria. A National Oil Spill Detection and Response Agency was also approved by the Federal Executive Council of Nigeria. The Ministry of Environment, which initiated the Agency, also forwarded to the Federal Executive Council for approval, the reviewed draft National Oil Spill Contingency Plan (NOSCOP) which the Agency will manage. The establishment of the contingency plan and the agency was in compliance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (ICOPPRC) to which Nigeria is a signatory. Apart from intensifying efforts towards compliance monitoring and enforcement of oil and gas regulations and standards, the ministry is also mounting pressure on the oil and gas operators for a gas flare-out. Efforts are also being made to ensure the use of environmentally friendly drilling fluid and mud systems.

IV National Environmental Standards and Regulation Enforcement Agency Act

The Act established the National Environmental Standards and Regulation Enforcement Agency, and it has been the major federal body charged with the protection of Nigeria's environment. NESREA was created to replace the defunct Federal Environmental Protection Agency (FEPA). Section 7 (a) states that the Agency is authorized to enforce compliance with laws, guidelines, policies, and standards of environmental matters. Its authority extends to the enforcement of environmental guidelines and policies, such as the National Policy on the

[40] Taiwo Ajala, "Taking Environmental Danger Seriously: Time to Break New Grounds" in *Lagos State Law Journal*, 2000, p. 91.

Environment, 1999.[41]

V Environmental Guidelines and Standards for the Petroleum Industry in Nigeria

The Nigerian Department of Petroleum Resources (DPR), the department primarily responsible for regulating the oil industry, expanded these requirements in 1991 by promulgating the Environmental Guidelines and Standards for the Petroleum Industry. EGASPIN confirms that oil and gas operations are governed by the Nigerian Petroleum Act and subsequent federal legislation. Regarding oil spills, EGASPIN requires that oil companies commence clean-up within twenty-four hours of the occurrence of a spill.[42] Where a spill is on inland waters or wetlands, the only option for clean-up is complete containment and removal. Operators must conduct their clean-up efforts in a way that does not cause additional harm to the environment.

VI Petroleum (Drilling and Production) Regulations 1969

The Petroleum (Drilling and Production) Regulations 1969, provides in Section 25, that licenses and losses should take prompt steps to control oil pollution where it occurs and if possible, end it. However, a learned writer Yalaju averred that in the context of this section, operators in the industry do not have an obligation to control nor end pollution.

Apart from statutory enactments regarding liability for environmental pollution, there is a liability for environmental pollution under the Common Law principles of Law of Torts that is: Trespass; Negligence (res ipso facto); Public and Private Nuisance. The case of *Ryland v Fletcher*[43]which emphasized strict liability against the defendant is also relevant. The court held in that case that anyone bringing onto lands, during a "non-natural" use of the land, something "likely to do mischief if it escapes… is prima-facie answerable for all the damage which is the natural consequence of its escape." All of these have been used to recover damages in cases of oil spills litigated through the courts. They are also applicable to environmental pollution claims. The species of trespass to land we are interested in here is committed where a person without lawful justification, directly places or projects any material object that pollutes the environment upon land in the possession of another such as aid oil spillage on land.[44]

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[41] Bashir Yusuf Ibrahim, "The Framework of Environmental Law of Nigeria: A Critical Analysis" in *Journal of Private and Comparative Law*, ABU Zaria, vol. 1 No. 2, 2006, p.215.
[42] Aliyu Ibrahim Kankara, 'Examining Environmental Policies and Laws in Nigeria' (2013) 4(3) *International Journal of Environmental Engineering and Management* 170
[43] (1868) LR 3 HL 330
[44] Olasupo Shashore, "Public Interest Litigation- Enforcing Social & Economic Rights" in *The Advocate*,

VII Environmental Impact Assessment Act of 1992

This Act was promulgated to protect and sustain our ecosystem. The law makes the development of an EIA compulsory for any major project that may have adverse effects on the environment. It sought to assess the likely or potential environmental impacts of proposed activities, including their direct or indirect, cumulative, short term and long-term effects, and to identify the measures available to mitigate adverse environmental impacts of proposed activities, and assessment of those measures. The carrying out of EIAs is policed by the Federal Environmental Protection Agency, and by state environmental protection agencies. Federal and State Agencies A few Federal and State agencies deal with the problems of oil spill in Nigeria. The agencies include: the Department of Petroleum Resources (DPR), the Federal Ministry of Environment, the State Ministries of Environment and the National Maritime Authority. The efforts of the oil companies and Non-Governmental Agencies led to the forming of the Clean Nigeria Associates (CNA) in November 1981.[45]

The CNA is a consortium of eleven oil companies operating in Nigeria, including Nigeria National Petroleum Corporation. The primary purpose of establishing the CNA is to maintain a capability to combat spills of liquid hydrocarbons or pollutants in general. Amnesty International is another notable non-governmental agency which has contributed a lot to persons living in Niger Delta, significantly aiding in enforcing & protecting their fundamental human rights. There is also, the former Niger Delta Project for Environment, Human Rights and Development (NDPEHRD), the Centre for Environment, Human Rights and Development (CEHRD)[46]is a rural-based and rural-focused non-profit organization founded on 15 August 1999 by conservationists, environmentalists, activists, and health workers in the Niger Delta region of Nigeria. CEHRD was formed to respond to the environmental, human rights, rural health, and underdevelopment problems plaguing the Niger Delta. Their goal has been to serve as a bridge between the rural communities of Nigeria and their rights by empowering them through education and assistance. Furthermore, to forge a common link with the rural communities of the Niger Delta region through the following; campaigns, participatory education, and enlightenment of the people on the problems confronting them. Equipping them with the basic knowledge of their situation and encouraging them to address the issues themselves in a non-violent manner, our mission is to assist the people of the Niger

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International Journal of the Law Society, OAU Ife, 30th ed. 2012, p.101.

[45] Amokaye OG, "Procedural Aspects of Environmental Litigation in Nigeria" in the *Journal of Private & Commercial Law*, 2001, vol. 2, p 185.

[46] Olong Mathew Adefi "Human Rights, the Environment and Sustainable Development in Nigeria' in *Lead City University Law Journal*, vol. 1 part 1 Jan-June 2008, p. 84.

Delta both as an organization, but also in helping them gain more control and self-determination over registered with the Nigerian Ministry of Environment as an environmental non-governmental organization (ENGO) and also with the Social Services Bureau of the Ministry of Social Welfare as a Non-Governmental Organization (NGO) with the Government of Rivers State of Nigeria with tax-exempt status respectively.

VIII Petroleum Industry Act 2021

The Petroleum Industry Act (PIA) of 2021 is a comprehensive legislative framework that aims to restructure and reform Nigeria's oil and gas industry, including addressing issues related to oil pollution. Some key aspects of the PIA regarding oil pollution include:

Regulatory Oversight: The PIA establishes two new regulatory agencies - the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA). These bodies are tasked with overseeing technical and commercial regulation of petroleum operations, including monitoring and enforcement related to oil spills and environmental damage.[47]

Environmental Remediation: The PIA mandates that oil companies operating in Nigeria must carry out environmental remediation of areas impacted by oil spills and other pollution. It requires the establishment of an Environmental Remediation Fund to finance clean-up efforts. Host Community Development: A key aspect of the PIA is the provision for the development of host communities impacted by oil and gas activities. This includes requirements for oil companies to contribute a percentage of their operating expenditure to a Host Community Development Trust Fund to support infrastructure, environmental remediation, and other initiatives in these communities.[48]

Transparency and Accountability: The PIA aims to improve transparency and accountability in the management of Nigeria's petroleum resources. It requires the publication of contracts, licenses, and other industry data to enhance public oversight. However, the effective implementation of these provisions remains a challenge. Experts note that the PIA's success will depend on the political will to enforce its regulations, as well as the ability of regulatory agencies to operate independently and without undue political interference. The Petroleum Industry Act represents a significant legislative effort to address longstanding issues of oil pollution, environmental degradation, and lack of community development in Nigeria's oil-

[47] Section 310 of the PIA 2021 repealed 10 legislations which include Associated Gas Reinjection Act, No 43 of 1984.

[48] Urenmisan Afinotan, 'How Serious is Nigeria about Climate Change Mitigation through Gas Flaring Regulation in the Niger Delta?' (2022)24/4 *Environmental Law Review*, p. 89.

producing regions. If properly implemented, it has the potential to transform the industry and improve outcomes for affected communities.[49]

3.2 Institutional Framework on Environmental and Oil Pollution

This will cover pollution and oil pollution. Institutional framework refers to such governmental and non-governmental agencies saddled with the responsibility of monitoring and regulating the implementation of the various legislations appertaining to pollution in Nigeria, as well as in the global community. This embraces the governmental agencies charged with the responsibility of monitoring the implementation of the various legislations associated with pollution and more particularly oil pollution. These Institutions are statutorily created. Examples of these Institutions include the Department of Petroleum Resources, the National Oil Spill and Response Agency, the National Environmental Standard and Regulation Agency, the Ministry of Niger Delta, Niger Delta Development Commission, Federal Ministry of Environment, Attorney General either of the State or of the Federation.[50]

There are also supplementary institutions for the prevention of environmental degradation by oil and gas companies in Nigeria. These institutions are not created by laws. An example of such institution is Non-Governmental Organisations (NGOs).[51]

I. **Establishment of the Department of Petroleum Resources**.

The Department of Petroleum Resources popularly known as (DPR) was established under par II of the Nigerian National Petroleum Act under the name 'Petroleum Inspectorate.' The Act in Section 10 specifically stated that: "there shall be an established apartment to be known as the petroleum inspectorate which shall, subject to the other provisions of this part, be an integral part of the Corporation.[52]Section 10 (2) (a) and (b) of the Act spelled out the functions of the Department of Petroleum among others to include:

(a) Issuing permits and licenses for all activities connected with petroleum exploration and distribution thereof, and
(b) Acting as the agency for the enforcement of the provisions of the said Acts and any

[49] Uwaegbulam Chinedum and Gbonegun Victor, 'Significance of Nigeria's New Climate Change Law, by Experts' in *The Guardian* (Nigeria 20 December 2021) p. 53.
[50] Akintola Zainab, *et al*, 'A Review of Nigeria's Climate Change Act 2021' *News and Events*, January 2022, <https://www.aluko-oyebode.com/insights/a-review-of-nigeria's-climate-change-act-2021> accessed 30 August 2024
[51] J G Frynas, "Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners" in *Social and Legal Studies,* Vol. 10, Issue 3, 2010, p. 406.
[52] Urenmisan Afinotan, 'How Serious is Nigeria about Climate Change Mitigation through Gas Flaring Regulation in the Niger Delta?' (2022)24/4 *Environmental Law Review*, p. 89.

relevant regulations made there under by the minister.

(c) Carrying out such other functions as the minister may direct from time to time.

Other functions of the Department of Petroleum Resources also include:

i. Supervising all petroleum industry being carried out under licenses and leases in the country to ensure compliance with the applicable laws and regulations in line with good oil-producing practices.

ii. Enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.

iii. Keeping and updating records on petroleum industry operations, particularly on matters relating to petroleum reserves, production and exports of crude oil, gas, and considerate, licenses and leases as well as rendering regular reports on them to the government.

iv. Advising government and relevant agencies on technical matters and policies which may have an impact on the administration and control of petroleum.

v. Processing all applications for licenses to ensure compliance with laid-dawn guidelines before making recommendations to the Honourable Minister of Petroleum Resources.

vi. Ensuring timely and adequate payments of all rents and laities as of due.

vii. Monitors government indigenization policy to ensure that local content philosophy is achievable.

II Prevention of Environmental Degradation by the DPP

The petroleum industry has a complex combination of interdependent operations that range from exploration, exploitation, and production to transportation and marketing of finished products to consumers. At each stage of these operations, gaseous liquid and solid waste materials are produced and discharged into the environment.[53]These discharged wastes can adversely affect the air, water, and soil if not properly discharged and controlled.

The Department in its to bid protect the environment from pollution by oil operators issued Environmental Guidelines and Standards for the Petroleum Industry in Nigeria. This

[53] Brown E Umukoro and Moses O Omozue, 'Prosecuting Environmental Pollution Cases in Nigeria: The Head of a Carmel Passing through the Eye of a Needle' (2022)15/2 *Baltic Journal of Law and Politics*, p. 2234.

guideline emerged as a result of one of the DPR's statutory functions to ensure that the petroleum industry operators do not pollute the environment in the course of their operations. For the Department to effectively carry out these regulatory activities it has been developing Environmental Guidelines and Standards since 1981. The guidelines cover the control of the pollutants from the various petroleum exploration, production, and processing operations. It also covers environmental control of various petroleum activities in Nigeria, including, terminal operations, hydrocarbon processing plants, oil and gas, transportation, and marketing.[54]

In the area of exploration and development operations, Part II of the guidelines provides for environmental management. It makes it mandatory for an operator to obtain an environmental permit from the Department before Seismic and Drilling Operations can commence in Nigeria. This will go a long way to prevent environmental degradation. Section 3.1.1 of part II sets a limitation for effluent exploration to control the quality and quantity of industrial effluents associated with oil drilling. The DPR tried to ensure that the discharge of the effluent did not cause any hazard to human health and living organisms (Fauna and Flora) and did not impair the quality use of adjacent surface waters, land, and groundwater. The guideline in section 5 provided for spill prevention and countermeasures plan. It states that drilling operations shall have comprehensive spill prevention and countermeasures plans, approved by the Director of Petroleum Resources.

The Department also tried to ensure a clean and healthy environment by providing for clean-up of oil spills this is provided for in section 5.1.2.1 of the same part as follows "clean-up efforts all inland and near-shore spillages of crude oil, products, and chemicals, shall be subjected to clean-up certification as provided in the oil/chemical spill contamination clean-up certification forms. To ensure compliance, the Department provided for sanctions in section 7 of the guidelines, as provided for in Section 4 of the enforcement powers and sanctions that:

(a) All avoidable spillage when they occur shall attract a royalty not less than N500 000: 00 to be deducted at source and an additional fine of N100 000: 00 for every day the offense subsists.

I. The spiller (operator or owner of the vessel) shall pay adequate compensation to those affected

II. The spiller shall restore/remediate the polluted environment to an acceptable level as

[54] SA Fagbemi, 'Right to Clean and Unpolluted Air in Nigeria' (2020)4/1 *African Journal of Law and Human Rights*, p. 64

shall be directed by the Director of Petroleum Resources".[55]

It finally provided that "when the effluent quality of discharge is exceeded by twenty (20) per-cent of the allowed daily/monthly average concentration per parameter a fine of N5,000.00 for every 50m of water discharged is imposed. In addition, upon conviction, imprisonment for a term not exceeding 2 years shall apply for a first offender. Section 4.7.1 provides that "any person body corporate or operator of a vessel or facility who persistently violates the provisions of these guidelines and standards shall have his lease, license and/ or permit revoked. From the foregoing, it is very clear that the DPR is very serious in the bid to protect the environment from being polluted by the exploration of oil by the operator's oil company. The measures taken by the DPR will go a long way to checkmate oil operators and reduce the likelihood of environmental degradation.[56]

In the area of production operations, the same measures as discussed above are embarked upon by DPR to ensure that the environment is not degraded in the course of production of oil by the operators. For example, spill control measures and clean-up are equally put in place, so also the issue of compensation to those affected by the spillage. Another serious challenge that is addressed by the guideline is the issue of gas flaring. The guideline prohibited gas flaring, but however, allowed it under certain conditions. The guideline provides inter alia; "gas flaring is prohibited. However, should the licensee/operator be constrained to flare gas, the following conditions shall be met.

i. An appropriate waiver and a permit to flare the gas shall be issued by the Director of Petroleum Resources.

ii. The flared gas shall attract an appropriate fine for every standard cubic meter flared in accordance with existing laws…

iii. Pre-treated clean" gas shall be burnt, and the flare shall be luminous and bright. i.e. show complete smokeless combustion at operating gas flow rate. The relative density of emitted smoke shall not exceed 40% of smoke density and 60% of light transmission through smoke observed over a period of one (1) hour.

iv. The allowable heat radiation of 60m from the base of the flare.

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[55] Isabella Kaminski, 'Growing Number of Countries Consider Making Ecocide a Crime' in *The Guardian* (Nigeria, 26 August 2023) <https://www.theguardian.cpm/environment/2023/aug/26> accessed 16 September 2023

[56] Adeola FO," Environmental Injustice & Human Rights Abuse: The States MNCs and the Repression of Minority Groups in World System" in *Human Ecology Review*, vol. 8, 2001, p. 84

The DPR has put in place spill-prevention measures to check and control oil spillage during production operations. It is in this regard that the Department provided for a joint spillage investigation team comprising of operator, community and DPR so that the team can monitor and report any spillage for prompt action. To ensure compliance, the Department made provisions for sanctions ranging from payment of fine, imprisonment, and revocation of license or permit 32 for want of compliance.

III Establishment of the National Oil Spill Detection and Response Agency[57]

Section 1 (1) of the National Oil Spill Detection and Response Agency Act provided for the establishment of the Agency. It provided that: "There is established an Agency to be known as the National Oil Spill Detection and Response Agency (in this Act referred to as "Agency.)"[58]

NOSDRA is a parastatal under the Federal Ministry of Environment, Housing, and Urban Development established by an Act of the National Assembly on the 18th day of October 2006 as a body Corporate with perpetual succession and a seal, which may sue and be sued in its corporate name. NOSDRA is vested with the responsibility to coordinate the implementation of the National Oil Spill Contingency Plan for Nigeria in accordance with the International Convention on Oil Pollution Prevention.

Response and Co-operation 1990, to which Nigeria is a signatory NOSDRA is also mandated to play the lead role in ensuring timely, effective and appropriate response to oil spills, as well as ensuring clean-up and remediation of all impacted sites to all best practical extent. NOSDRA shall also identify high risk priority areas in the oil-producing environment for protection as well as ensuring compliance of oil industry operators with all existing environmental legislations in the petroleum sector.

IV Composition of the National Oil Spill Detection and Response Agency

Section 2 (1) of the Act established the governing board of the Agency. It provides that "There is established for the Agency a Governing Board to be known as the National Oil Spill Response Governing Board (in this Act referred to as "The Governing Board") which shall be responsible for the formulation of policy for the Agency and act in Governing Board capacity to the Agency in the exercise of any of the functions conferred on the Agency and the Director

[57] Cap. N157 LFN 2006
[58] Section 1 of NOSDRA Act 2006. The NOSCP is a blueprint for checking oil spill through containment, recovery, and remediation/restoration of all impacted sites to all best practical extent. It is a mechanism for preventing loss of lives, assets and natural resources.

General by this Act."[59]

Subsection (2) provides for composition of the board thus "the Governing Board shall consist of:

a. A Chairman

b. One representative each of the following Federal Ministries not below the rank of Director: Environment, Defence, Petroleum Resources, Transport, Aviation (Department of Meteorology), Communications, Housing and Urban Development, the Nigerian Police, Oil Products Trade Section of Lagos Chambers of Commerce (OPTS), Agriculture and Rural Development, Water Resources and, Institute of Oceanography and Marine Research.[60]

From the above, the board members are thirteen (13) in numbers drawn from the various sectors. A careful study of the membership shows seriousness for the concern of the environment. The members appear to be stake holders of environmental concern however some representation is not necessary for example, what is the representative of Defence on the board? Their presence is not of any significant. The present of the representative of police is enough because it is the police that do the enforcement of the law. The decision of the board can be enforced with the assistance of the Nigerian police. The nation is not at war therefore there is no need for the representative of the defence on the board. Recent happening in the oil industry suggest that a representative of Civil Defence Corps should be on the Board.[61]The Act establishing the corps, that is, Civil Defence Act empowers them to fight pipeline vandalism. So, their presence on the board is very necessary.

V National Environmental Standards Regulation Enforcement Agency Establishment

National Environmental Standards Regulation Enforcement Agency (NESREA)[62]was established by Section 1(1) of the National Environmental Standards Regulation Enforcement Agency Act as a body corporate with perpetual succession and a common seal. The Agency has power to sue and be sued in its corporate name. The Agency has the responsibility of the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general. It also has the responsibility of evolving environmental technology, including coordination and liaison with relevant

[59] Hugo Odiogor, "NOSDRA and the Intrigues of Oronsaye's Report" in the *Vanguard*, 15 May, 2012 p.10.
[60] Ken Kingsley Ezeibe, *The Legislative and Institutional Framework of Environmental Protection in the Oil and Gas Sector in Nigeria – A Review*, available at http://www.google.com.ng/url?url= (accessed 5 December, 2023).
[61] Emeka Nnanna Ojijiagwo, *Development of a Sustainable Framework to Manage Flare Gas in an Oil and gas Environment: A Case Study of Nigeria*, a Thesis Submitted to the University of Wolverhampton for the award of Degree of Philosophy (July 2017) 13
[62] Sections 20 (4), 21 (4), 22 (3) & (4), 23 (3) & (4), 24, 25, 26 & 27

stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.[63]

VI Friend of the Earth

Friend of the Earth was founded in 1969 in the United States of America by David Brower. It became an international network in 1971. This organization has its secretariat in Amsterdam its executive committee called EXCOM runs the administration of the organization.

Friend of the Earth considers environmental issues in their social, political and human rights contexts. Their campaigns for environmental protection stretch beyond the issues of conservation movement, it seeks to address the economic and development aspects of sustainability. Friends of the Earth acts independently of political party, religious bodies, or other influences they are opened democratic and non-discriminatory in their bid to seek for a better environment.

I. Earth watch

Earth Watch is an international non-profit organization established for the purpose of protecting threatened species, fragile habitats and conducting research on the impact of climate change. Earth watch was established in 1971 and it has over 93,000 volunteers who have contributed more than 11 million hours of their time to frontline environmental research all over the world. Earth Watch is also described as an International Environmental Charity which is committed to conserving the diversity and integrity of life on earth to meet the needs of current and future generations. Its mission is to engage people worldwide in scientific field research and education in order to promote the understanding and action necessary for a sustainable environment.[64]

Earth Watch has trained thousands of teachers, scientists and students, changing attitudes and behaviours in the corporate world; and working with close to 100,000 people members of the public to directly support conservation research all over the world.210 Earth Watch enjoyed other organizations and individual to urge Shell BP to clean up the oil spill along the Gulf Coast of Mexico.[65]

Earth Watch is also working to restore and manage mangrove plantations and explore the

[63] O. A. Bowen, "The Role of Private Citizens in the Enforcement of Environmental Laws" in Omotola JA, supra, p.165

[64] S O Giwa, *et al*, 'Assessment of Millennium Development Goal 7 in the Niger Delta Region of Nigeria *via* Emissions Inventory of Flared Gas' (2016)35/2 *Nigerian Journal of Technology*, p. 350

[65] Ibid.

capacity of different mangrove species to store carbon, which could help to ameliorate the effect of climate change. Through extensive dialogue with oil companies, the Spanish Navy, the European Union and Fishermen, scientists from the International Marine Time Organization to divert shipping lanes off the Southern Coast of Spain. This agreement has safe guarded crucial paragraphing grounds for common and bottlenose dolphins.[66]

VII. Environmental Rights Action/Friends of the Earth, Nigeria

This Organization was founded in 1993.The Organization is dedicated to the defence in human ecosystem in terms of human rights, and to the promotion of environmentally responsible government, community and individual practices in Nigeria through the empowerment of local people. Environmental Rights Action/Friends of the Earth Nigeria acts as a peaceful pressure group campaign for change in the policy of governmental, nongovernmental and commercial organizations where such policies are likely to act against environmental human rights.

The mission of this organization is to protect the environment and democratize development. The Organization has been crying out against the environmental degradation in the Niger Delta area of Nigeria. They have called on the National Government, the State Government and the oil companies operating in the Niger Delta to keep the environment pollution free and to clean up the oil spilled on the environment. They also called on these bodies to compensate the inhabitants for the loss of their crops, farmland, rivers, etc. so as to make lives worthy of living.[67]

4. Challenges and Prospects of Control of Oil pollution in Nigeria

There is need to examine the associated challenges and thereafter the prospects of existing frameworks on pollution.

4.1 The Impacts of Oil Spill Disasters on Communities in the Niger Delta

Environmental Degradation: The discovery of oil in Nigeria in the 1950s has led to significant environmental degradation, especially in the Niger Delta region. Oil spills have contaminated water sources, soil, and air, affecting both terrestrial and aquatic life. Negative health effects: Oil pollution has had detrimental effects on the health of communities in the Niger Delta.

[66] Wale Ajayi, "Achieving Environmental Protection through the Vehicle of Human Rights: Some Conceptual Legal and Third World Problems" in *University of Benin Law Journal*, vol. 2 No.1 (1995) p. 46
[67] Haruna Isah Umar, "A Review of the Major Source and Effect of Pollution in Inland Water Bodies of Nigeria" in *International Journal of Engineering research and Technology*, Vol. 9, Issue 6, 2020, p. 748.

Residents have reported health issues related to exposure to oil-contaminated water and air, leading to concerns about long-term health consequences.[68]

i. Impact on Livelihoods: Oil spills have devastated farmlands and aquatic life, diminishing the agricultural potential of the region and affecting the livelihoods of people dependent on farming and fishing for survival.

ii. Social and Economic Disruption: The continuous oil spills have disrupted the social fabric of communities, leading to conflicts, displacement, and economic hardships. The loss of productive land and water sources has exacerbated poverty and food insecurity in the region.

iii. Challenges in Seeking Justice: Communities affected by oil pollution face challenges in seeking justice and compensation. Limited access to reliable information and legal frameworks, as well as the control of crucial data by oil companies, hinder communities from effectively communicating their plight and seeking redress.[69]

iv. Community Empowerment and Advocacy: Despite the challenges, communities have been actively involved in monitoring, reporting, and advocating for the mitigation of oil spills. Organizations like Social Action Nigeria have been training community members to detect spills early, collect evidence, and engage with governmental agencies to ensure timely response and remediation.

These impacts underscore the urgent need for sustainable environmental practices, effective regulation, and community empowerment to address the devastating consequences of oil pollution on communities in the Niger Delta.

4.2 Challenges of Pollution faced by rural communities in the Delta Region

Recurring Oil Spills: The Niger Delta has experienced a significant number of oil spills, an arguably number of over 7000 incidents reported over a 50-year period, resulting in spillage of an estimated 13 million barrels of crude oil since 1958. These spills have led to continuous environmental degradation, contamination of water sources, and adverse health effects on communities living in the region.[70]

Sabotage and Vandalism: Acts of sabotage and vandalism, particularly in the oil pipelines,

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[68] Okeola Olayinka, "Challenges and Contradictions in Nigeria's Water Resources Policy Development: A Critical Review" in *International Journal of Science and Technology*, Vol. 6(1) 2017, p. 9.
[69] Ibid.
[70] N.S. Olaniran, "Environment and Health: An Introduction" in NS Olaniran, *et al* (eds.) *Environment and Health*, Lagos, Macmillan, (1995), pp. 34-151.

have been a major challenge in the Niger Delta region. This has resulted in significant economic losses, with Nigeria losing nearly over 300,000 barrels of oil per day due to pipeline vandalism, leading to billions of dollars in lost revenue. These acts of vandalism distort the community's efforts to curb oil spills and they are mostly orchestrated by members of indigent communities.

Environmental Degradation: The exploitation of oil resources in the Niger Delta has led to extensive environmental degradation, including deforestation, loss of mangrove forests, and depletion of fish populations. The region's ecosystem has been severely impacted by oil pollution, affecting biodiversity and the livelihoods of local communities.[71]

Lack of Accountability: There have been challenges in holding oil companies accountable for their actions in the Niger Delta. Limited access to reliable information, under-reporting of oil spills, and inadequate government oversight have hindered efforts to address the environmental and social impacts of oil pollution.

Socio-Economic Impacts: The persistent issues of oil spills, sabotage, and environmental degradation have had profound socio-economic repercussions on communities in the Niger Delta. Poverty, unemployment, and marginalization have contributed to the prevalence of oil pipeline sabotage and vandalism, exacerbating the region's challenges.

Health Risks: The exposure to oil spills and crude oil production sites in the Niger Delta has posed significant health risks to the local population. Contamination of water sources with hydrocarbons and trace metals has raised concerns about public health issues, including respiratory problems, skin diseases, and other health complications.[72]

With the government addressing these major challenges in the Niger Delta requires a multi-faceted approach involving sustainable environmental practices, effective regulation, community empowerment, and accountability measures to ensure the well-being of both the environment and the communities living in the region

4.3 The Prospect of Community Action in Curbing Oil Pollution

The impact of community actions in protecting the Nigerian environment from oil pollution is significant, especially in regions like the Niger Delta. Communities in the Niger Delta have

[71] Peter C. Nwilo and Olusegun Badejo, Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas, available at https://www.fig.net/resources/publications/figpub36/chapters/chapter_8pdf (accessed October 1, 2023).
[72] Timileyin Omilana, "Nigeria Leads Africa in Pollution-Related Deaths" in *The Guardian*, 23 December 2019, p. 53.

been actively involved in monitoring, reporting, and advocating for the mitigation of oil spills, which have devastating effects on their lands, water sources, and livelihoods.

A. Community Monitoring and Reporting

Communities in the Niger Delta, empowered by organizations like Social Action Nigeria, have been trained to monitor and report oil spills effectively. Through workshops and practical skills training, community members are equipped to detect spills early, collect critical evidence, and engage with governmental agencies like the National Oil Spill Detection and Response Agency (NOSDRA). This proactive approach enables communities to play a crucial role in ensuring timely response and remediation of oil spills.[73]

B. Advocacy and Awareness

Community actions also involve advocating for fair treatment and environmental justice. By actively reporting oil spills and data discrepancies presented by oil companies, communities strive to hold accountable those responsible for environmental degradation. Additionally, community members engage in raising awareness about the detrimental impacts of oil pollution on their health, agriculture, and overall well-being.[74]

i. Ogoni-land

The Ogoni people in the Niger Delta have been at the forefront of the struggle against oil pollution. In the 1990s, Ken Saro-Wiwa led the Movement for the Survival of the Ogoni People (MOSOP) in protesting Shell's environmentally destructive practices. Despite facing repression and the execution of Saro-Wiwa, the Ogoni people have persisted in their efforts to seek justice and environmental remediation.

In 2011, a UN Environment Programme (UNEP) assessment found widespread oil pollution in Ogoni-land, with soil contamination up to 5 meters deep in some areas. The report recommended an initial $1 billion clean-up fund, but Shell and the Nigerian government have been slow to implement the recommendations.

ii. Bodo Community

The Bodo community in Gokana, Rivers State, has also been impacted by major oil spills from Shell's operations. After the 2008 and 2009 spills, the community approached lawyers to

[73] E.O. Longe, *et al*, "Water Resources Use, Abuse and Regulations in Nigeria" in *Journal of Sustainable Development in Africa*, Vol. 12, No. 2, 2010, p. 39.
[74] Florence Lawrence *et al,* "Nigeria Records 3, 203 Oil Spillage Cases in Four Years" in *the Guardian* 24 August 2011, p. 25

seek justice. However, Shell has been slow to clean up the spills and provide adequate compensation to the affected farmers and fishermen.[75]

iii. Kegbara Dere

Kegbara Dere is another Ogoni community that has suffered from chronic oil pollution. Residents like Emadee Roberts Kpai and Barine Ateni described how oil spills have devastated their farmlands, destroyed fish stocks, and polluted their water sources. The women of Kegbara Dere have been vocal in demanding that Shell leave their community.

iv. Seeking Justice and Redress

Communities affected by oil pollution, such as those in Ogoniland, have been vocal in demanding justice and compensation for the damages caused by oil spills. Despite facing challenges in seeking redress due to limited access to reliable information and legal frameworks, these communities persist in their efforts to hold oil companies accountable for the environmental devastation they have endured.[76]

v. Long-Term Sustainability

Community actions go beyond immediate responses to oil spills; they aim to foster long-term sustainability and environmental restoration. By advocating for comprehensive clean-up efforts, access to safe drinking water, and support for affected individuals, communities strive to ensure a healthier and more sustainable environment for future generations.

5. Conclusion

It has been demonstrated that the essence of the paper is to examine the available framework for the control of oil pollution in Nigeria. The paper found that the environment is the greatest legacy for man. Therefore, oil pollution leads to the degradation of the eco-system. Man lives in the environment to survive, therefore, man must safeguard the environment from being polluted. The investigation also found that pollution, and more particularly, oil pollution in the environment has been responsible for the degradation of the environment. The paper therefore traced the historical consequence of pollution partly to increasing rate of industrialization in the urban areas as well as other factors engendering pollution, more particularly, oil pollution with respect to the Niger delta region of Nigeria. By implication, the paper found that the

[75] Peter Nwilo and Olusegun Badejo, "Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas" available at http://www.fig.net/pub/figpub/pub 36/chapters (last accessed 26 March 2023)
[76] Oil Spillage Occurs in Sapele" in the *Vanguar*d, 18 February 2004, p.32.

process of extraction of oil from underneath the surface or from the subsea has been fraught with high-technological know-how as well as utilisation of scientific equipment by thorough-bred scientific experts well versed in the acquisition and deployment of huge technological know-how and expertise in extracting oil from the subsea and other strange environments.

The paper did focus on the critical analysis of the legal and institutional framework for the control of pollution, and more particularly oil pollution in Nigeria. Consequent on this, it was observed that notwithstanding the avalanche of legislations and institutional agencies, there is still pollution, and more particularly oil pollution. It will be recalled that section 20 of the Constitution of the Federal Republic of Nigeria, 1999 provides for the improvement of the environment and safeguard the water, air and land, forest and wildlife of Nigeria. Significantly, this provision is non-justiciable. That notwithstanding the failure of our constitution to provide for environmental right under chapter IV, the birth of the African Charter on Human and Peoples Rights and its enactment as part of the Nigerian Law, has provided a platform of refuge for environmental right. Consequently, the authors found that with respect to the enforcement of most of the environmental laws, for instance, the EIA Act, it is the government that prosecutes. Recent experience has shown that where the government is the culprit, there will be no way of ensuring that some remedies are advanced unless through civil actions. Furthermore, the federal government has vested interests in all the oil companies. It is doubtful whether the federal government agencies will impose penalties on her agencies? In fact, this will amount to imposing penalties on itself. It has been stated that NNPC holds 60 per-cent shares in all the joint-ventures with the other oil companies. Therefore, an imposition of penalty on any oil company is tantamount to imposition of tax on the federal government.

Furthermore, section 37 of the NESREA Act provided for the setting-up of States and Local Governments Protection Agencies, there still remains much to be done to create awareness on rural dwellers on the need for sustaining the environment. More of these people are totally oblivious of the danger until the calamity actually strikes. It was found that in respect of state environmental protection laws, certain problems arise which of course tend to whittle down their relevance.[77]More often, emphasis is laid on merely ensuring clean and healthy sanitary environment as against more complex environmental problems like pollution and environmental degradation. At the various levels, there is the problem of conflict of powers

[77] Kaniye Ebeku, "The Right to a Satisfactory Environment & the African Commission" in *African Human Rights Law Journal*, Pretoria, vol.3 2003, p.158.

among the agencies usually established to tackle the problem of pollution. Other problems confronting the agencies are lack of trained technical manpower, inappropriate technology, quick money philosophy, absence of, or existence of ill-equipped institutional framework and absence of information.

With respect to the economy, and associated problem of pollution, it leaves us with the question of sustainable development. The imposition of tax on the externality does not stop the polluting effect of the waste products on our environment. The issue of preservation of natural resource for generations yet unborn cannot be compromised for monetary compensations.

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