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OIL AND GAS POLLUTION ON MARITIME ENVIRONMENT IN NIGERIA: AN APPRAISAL

By

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Abstract

The aim of this paper is to examine the impact of oil and gas pollution on the Maritime environment of Nigeria. It will also investigate the lessons Nigeria can Learn from the international regulatory frameworks, with a view to effectively get Corrected any deficiency in Nigeria's legal system. This paper majorly employed the doctrinal research methodology through an examination of the texts and articles covering the topic. This paper found that oil and gas pollution occurred even in the best regulated jurisdictions of the world, both in developing and developed countries. It also found that some jurisdictions such as the United States of America, United Kingdom and Norway have robust oil and gas Regulatory frameworks that are effective, Nigeria conversely, does not have effective legal and institutional frameworks for addressing oil and gas pollution offshore, hence oil and gas pollution on both territorial and Exclusive Economic Zone of Nigeria occurs almost on a daily basis. The paper concluded that a robust Regulation of the offshore environment in Nigeria anchored on best international Practice would mitigate the impact of oil and gas pollution on the maritime. Environment in Nigeria. An urgent paradigm shift in this regard was therefore recommended. It was further recommended that harnessing the regulatory framework for optimizing environmental compliance in the oil and gas and maritime sector in Nigeria will transform the governance structure and performance to enable government and operators address the gap that may have arisen as a result of legislation.

Keywords: Oil and Gas Pollution, Maritime Environment, Maritime Laws and Regulations.

INTRODUCTION

The focus is on Nigeria, drawing lessons from the regulatory frameworks in the United States of America, the United Kingdom and Norway. Highlighting the nexus between the oil and gas industry and the maritime environment. The paper will further consider among other things the impact of oil and gas pollution in the area of production, transportation, maritime facilities and equipment in Nigeria. It will analyse the strength and weakness of the existing legal and regulatory institutions in Nigeria on maritime oil and gas transportation and pollution. The paper shall seek to fill the gaps in Nigeria.

Oil and gas are the bedrock of the Nigerian economy because it contributes most of Nigeria's foreign exchange earnings. This natural resource has nevertheless posed many problems to the country. The discovery of oil and gas in late fifties in Oloibiri – Bayelsa State has negatively inhibited the growth of other sectors which hitherto formed the mainstay of the Nigerian economy. The discovery, again triggered several issues such as kidnapping, secret cults and so on. The paper will generally look at the environmental issues related with oil and gas activities in Nigeria with particular emphasis on its impact on maritime infrastructure. The maritime sector in Nigeria is restricted to Nigerians only by virtue of the maritime cabotage policy introduced in 2003. The Nigerian economy is 90 percent oil and gas dependent.[1] A report states that "the oil and gas sector represent 97 percent of Nigeria's foreign exchange revenues and contributes 79.5 per cent of government revenues.[2] Oil has generated an

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[1] R. Hutt, Which Economies are Most Heavily Reliant on Oil? World Economic Forum, 10 May 2016,https://www.weforum.org/agenda/2016/05/which-economies-are-most-reliant-on-oil/ Accessed 23 May 2022

[2] Nigeria facts and figures, http://www.opec.org/opec.web/en/aboutus/167.htm Accessed 23 May 2022; United Nations Development Programme, Niger Delta Human Development Report, 2006, 1.

estimated $600 billion since the 1960s"[3] to the nation's coffers. Nigeria is the largest oil producer in Africa, and the fifth – largest within the Organization for Petroleum Exporting Countries (OPEC), and the sixth largest oil producing country in the World. With a maximum crude oil production capacity of 2.5 million barrels per day, Nigeria ranks as Africa's largest producer of oil and the sixth largest oil producing country in the world.[4]

Overview of the Oil and Gas Industry in Nigeria

The advent of the oil industry can be traced back to 1908, when a German entity, the Nigerian Bitumen Corporation, commenced exploration activities in the Araromi area, West of Nigeria. These pioneering efforts ended abruptly with the outbreak of the First World War in 1914. Oil prospecting efforts resumed in 1937, when Shell D'Arcy (now Shell Petroleum Development Company) was awarded the sole concessionary rights covering the whole territory of Nigeria. The activities which were interrupted by the Second World War, resumed in 1947 with concerted efforts after several years and an investment of over N30 million, led to the first commercial discovery in 1956 at Oloibiri in the Niger Delta, presently in Bayelsa of Nigeria.[5] Actual oil production and export from Oloibiri field in present day Bayelsa State commenced in 1958 with an initial production rate of 5,100 barrels of crude oil per day.

Analysis of Maritime Legislation in Nigeria

The word "cabotage" is derived from the French word "caboter" which means to sail coastwise or "by then capes".[6] Cabotage is the carrying of trade along a country's coast; the transport of goods or passengers from one port or place to another in the same country. The privilege to carry on this trade is usually limited to the vessels flying the flag of that country.[7] Oppenheim *et al* provide thus:

Cabotage meant originally navigation and trade along the same stretch of coastal between the ports thereof, such coast belonging to the territory of one and the same State. However, the term cabotage or coasting trade as used in commercial treaties Comprises now sea trade between any two ports of the same country, whether on the sea coasts or different coasts, provided always that the different coasts are all in the same country as a political and geographical unit in contradistinction to the coasts of colonial dependencies of such country.[8]

Cabotage is a term used to describe government measures to protect or foster a domestic shipping industry by reserving all or a portion of intra-national sea commerce to ships which fly the national flag, are owned by local corporations or individuals, are built or repaired in local shipyards, or are staffed by the home country's sea men.[9] The Cabotage Act defines coastal trade or cabotage as follows:

(a) The carriage of goods by vessel, or by vessel and any other mode of Transport, from one place in Nigeria or above Nigeria waters to any other place in Nigeria or above Nigeria waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation, or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters;

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[3] UN confirms massive oil pollution in Niger Delta, 4 August 2011,https://www.amnesty.org/en/press-release/2011/08/un-confirm-massive-oil-pollution-niger-delta Accessed 24 August 2022

[4] R. Okere, Nigeria upstages Angola in crude oil production, The Guardian Newspaper, 04 April 2018, https://guardian.ng/energy/nigeria-upstages-angola-in-crude-oil-production/ Accessed 22 August 2022

[5] D. Olawuyi, *Principles of Nigerian Environment Law* (AfeBabalola University Press, 2015) 2- 25.

[6] American Heritage Dictionary of the English Language, Fifth Edition, defines cabotage as "the transportation of passengers and goods within the same country. Law or policy protecting transporters of passengers and goods within a country from competition from foreign carrier. French, trade and navigation in coastal waters, especially those belonging to a single country, from caboter, to sail along a coast, perhaps from Spanish Cabo, Cape, from Latin caput, head. http://www.thefreedictionary.com/Cabotage+trade Accessed 23 May 2022

[7] Black's Law Dictionary, 9th Edition, 230.

[8] L. Oppenheim and others, *International Law: A Treatise* (The Law book Exchange Ltd, 1920) 336.

[9] C. T. Jones, The Practical Effects on Labour of Repealing American Cabotage Laws, [1995] (22) (5), *Transportation Law Journal*, 403

(b) The carriage of passengers by vessel from any place in Nigeria situated on a lake of river to the same place, or to any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria, other than as an in-transit or emergency call, either directly or via a place outside Nigeria;

(c) The carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or any other place above or under Nigerian waters where the carriage of the passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and the engaging, by vessel, in any other marine transportation activity of a commercial Nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria.[10]

With few exceptions, most countries do not permit cabotage by foreign companies. Maritime cabotage is operational in other jurisdictions like Argentina, India, Vietnam, Indonesia, Australia, Malaysia, Philippines, South Africa, and so on. The rules in some cases limit such trade to vessels built, owned, registered and manned by the nationals of that country, unless an exemption has been granted. Cabotage regulations restricting trade to domestic carriers are a form of protectionism; the justifications for cabotage regulations include national security and the need to regulate public safety. The Federal Government of Nigeria (FGN) joined the league of Cabotage nations by the enactment of the revolutionary and ambitious piece of legislation – The Coastal and Inland Shipping (Cabotage) Act 2003 – popularly referred to as the Cabotage Act.[11] The Cabotage Act came into force one (1) year after the commencement date of the Cabotage Act[12] and applies to Nigerian inland waters, lakes, coastal waters, and territorial waters, Exclusive Economic Zone (EEZ), Islands (natural or artificial) within Nigeria water platforms, rigs, floating workshops and other such structures and any carriage in, under, or on Nigerian waters. The Cabotage Act gives the Minister the overall responsibility of making regulations and policies for the implementation of the Cabotage regime.[13]

The preamble to the Cabotage Act provides thus: "an act to restrict the use of foreign vessels in domestic coastal trade to promote the development of indigenous tonnage and to establish a Cabotage Vessel Financing Fund and related matters." Unlike other Casbotage laws like the Merchant Marine Act 1920,[14] commonly referred to as the Jones Act,[15] of the United States where the policy objectives of the Act are clearly stated by Congress. The National Assembly (NASS) did not state the reason for restricting foreign vessels in domestic coastal trade. However, the objectives include promoting the development of indigenous tonnage and establishing the Cabotage Vessel Financing Fund (CVFF). A careful reading of the Cabotage Act and a comparative study of the Cabotage laws in other jurisdictions show that government policy behind the Cabotage Act is to protect the local shipping industry in Nigeria. This can be gleaned from the build and repair of vessels provision of the Cabotage Act. Again, the provision for the manning of the vessels by Nigerian seafarers is an aggressive employment drive and local content development program.

Nigerian Meteorological Agency (NMA) Act

The Nigerian Meteorological Agency (NMA) is another key strategic agency of government charged with duties to look into environmental protection in the oil and gas industry. As a parastatal under the

[10]Cabotage Act, s. 2

[11] Cap. C51, LFN 2004

[12]Cabotage Act, s. 51

[13]Cabotage Act, ss. 14, 20, 22 (4), 24, 27 & 46 The FMOE has in line with its functions under the Cabotage Act prepared the following: (1) Guidelines on Implementation of Coastal and Inland Shipping (Cabotage) Act, 2003 Revised 2007; (2) Cabotage Vessel Financing Fund (CVFF) Guidelines 2006; (3) The Coastal and Inland Shipping Cabotage (Bareboat Registration) Regulation 2006 and (4) The Coastal and Inland Shipping Cabotage (Detention of Ships) Regulation 2006.

[14] 46 USC 55102

[15] The legislation is named after its sponsor, Senator Wesley L. Jones of Washington. C.T. Jones, The Practical Effects on Labor of Repealing American Cabotage Laws, [1994-1995] (22) *Transportation Law Journal*, 403.

Ministry of Aviation, the agency is saddled with responsibility under section 7 of the Act, with reference to environmental protection and ancillary matter in the oil and gas sector, to provide:

1) Issues weather forecast for the safe operation of the aircrafts, ocean-going vessels and rigs.
2) Monitor Meteorological Components of Environmental Pollution and Ozone concentration.
3) Provide weather services in marine environmental pollution and biometeorology for climate and human activities.
4) Proffer advice to the Federal and State government on seismological activities.[16]

The agency's mandatory involvement in relevant services is a critical strategic player in the area of oil and gas pollution especially in marine environment.

The Enforcement of Maritime Laws and Regulations

The 1999 Constitution (as amended), gave exclusive jurisdiction to the Federal High Court to entertain any matter concerning admiralty. The Federal High Court (FHC) exercises jurisdiction to the exclusion of any other court in civil and criminal matters in shipping and navigation on the River Niger or River Benue and on other such Inland Waterways in Nigeria Territorial Jurisdiction.[17] The judicial power of the Federal government of Nigeria is vested in the courts of law, by virtue of this, the courts are vested with mandatory jurisdiction to hear and determine matters related to oil and gas and environmental pollution in the Federal High Court (FHC). Liability claims and compensation is another major expectation in cases involving oil and gas pollution which is vested in the court to determine and make a pronounced judgment under the Petroleum Act, Minerals and Mining Act and the Land Use Act 1978.[18]

The Polluter Pays Principle is another measure to enforce the rule against environmental damage from industrial oil, waste pollution by the operators, because it places responsibility on the polluter to undertake any damage as a result of his activities by way of clean-up and remediate the affected environment from degradation as well as contamination to its normal position.[19] Polluter pays principle suggested in strong terms that those who damage the environment should man up to bear the responsibility of the cost of such damages, such as clean-up, remediation, rehabilitation and so on.[20]

Professor C.T. Emejuru in his paper, Polluter Pays Principle as a Veritable Instrument of Environmental Taxation defines:

> Polluter Pays Principle is a legal or policy implement for regulating economic activities, production processes and consumption patterns for the protection of the environment, human health and safety, resources management and generally in ensuring environmentally sustainable activities.[21]

The States have absolute right under the United Nations Convention on the Law of the Sea (UNCLOS) to regulate the exclusive economic zone that is within 200 nautical miles from the baseline in its territorial sea within the area of the coastal state the sovereignty rights of exploration.[22]

It is remarkable to note that international convention related to intervention on the high seas recognized state. In its provision granting states the right to take and enforce measures beyond the territorial water proportion to perceived threats to protect their coastlines and related areas, including fishing, from

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[16] Nigerian Meteorological Agency Act, Cap N152, LFN 2004, s. 1

[17] Section 251 (1), p.474, An Article on Transportation of Crude Oil in Nigeria Inland Waterways. A case for legislative Accountability by Dr. Kato Gogo. Published in Excellence in Governance and Creativity Legal Essays in Honour of His Excellency Chief Barr Nyesom Ezenwo Wike, Con. GSSRS, POS, (Africa) Executive Governor Rivers State.

[18] OPA, Cap 07 LFN 2004, s. 6, MMA, Cap M12 LFN 2004, s. 96, LUA, Cap 15 LFN 2004, s. 29

[19] O V C Okene, *Excellence in Governance and Creativity Legal Essays in Honour of His Excellency Chief Barr Nyesom Wike. Con. GSSRS, POS, (Africa) Executive Governor Rivers State* (Port Harcourt: Princeton Hall 2018) 496.

[20] United Nations Environmental Programme Assessment Report on Ogoni Land, 2011.

[21] *Ibid*

[22] Ibid

pollution or threat of pollution in the maritime environment.[23] There are basic challenges from activities over the years that need critical attention of stakeholders as a consequence brought about from pollution. From oil spills, gas flaring, industrial sewage and solid wastes, the modification of the ecosystem in the widened form of biodiversity loss, coastal erosion, flooding, deforestation and indeed the depletion of fisheries. There should be a comprehensive ecological master plan to be undertaken by the appropriate agencies charged with the coastal state of Nigeria to improve and protect the maritime ecosystem.[24]

The Nigerian legislation framework on the maritime areas for effective regulations and guidelines are as follows: the Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007, the Nigerian Oil and Gas Industry Content Development Act 2010, the Merchant Shipping Act 2007, Crude Oil Transportation and Shipment Regulation 1984, Carriage of Goods by Sea Act 1926, the Merchant Shipping Liability and Compensation Regulation, Nigerian Shipper's Council Act, 1977, Nigerian Ports Authority Act, the Coastal and Inland Shipping Act 2003, Petroleum Production and Distribution (anti-Sabotage)n Act 1975, Suppression of Piracy and Other Maritime Offences Act, 2019, National Oil Spill Detection and Response Agency Act 2006. All these Acts are legislated in Nigeria to oversee the affairs of the maritime environment from harmful conduct by the operators and to bring about development in the sector because it is the gateway to the Nation's economy.[25]

The 1999 Constitution of the Federal Republic of Nigeria provides that the state shall protect and improve the environment and safeguard the waters, air and land, forest and wildlife of Nigeria.[26] It is important to note that the Constitution empowered the National Assembly with exclusive legislative powers as a function over mines, mineral and natural gas by vesting in the federal government of Nigeria the entire ownership in property and control of all mineral, oil and natural gas under or upon any land in Nigeria or under the territorial waters and the exclusive economic zone of Nigeria.[27]

Vandalization of oil facility is another cause of maritime pollution in Nigeria. These usually occur as a result of illegal refineries, oil theft, oil transportation by sea, pipeline vandalization, when pipes are broken, uncontrollable oil and gas flows to the maritime environment and causing harm and pollution destroying livelihood and fishing. When there is a broken pipeline, there is a lot of apprehension because the supply of gas for electricity would be low and equally affects the revenue generation of the economic growth of the country.[28] As noted in a paper written by Prof. O. K Edu & Mr. J. P. Esanwede:

> The amount of money spent in replacing stolen or damaged equipment and other machinery are on the increase. Indeed, pipeline vandalization and oil theft are bleeding the economy of Nigeria and there is the need for all stakeholders to act urgently and quickly. The traditional occupation of fishing and farming of the locals in the oil bearing-communities has to a large extent, been displaced vandalization and oil theft. Consequently, the health and environmental pollution of the Oil-bearing communities are adversely affected by the unwholesome acts of oil pipeline vandals and thieves.[29]

Lack of adequate enforcement of the legal framework on oil and gas pollution is the cause of frequent pollution of the environment by operators; International Oil Companies (IOCs) in Nigeria and the lack of prosecution by government of those involved in oil theft and vandals have led to constant oil and gas pollution. Also, too much government interference into institutional functions, the inhabitants in the Niger Delta region suffer most, directly from oil and gas pollution either on the onshore or offshore. The safety of lives and property are been destroyed as a result of these incidences and resulting in low revenue input for the economy.

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[23] Article 221, paragraph 1, Law of the Sea Convention of 1982.
[24] O. Amari, Nigerian Conservation Law and International Environmental Treaties (2nd edn, 2018) 316
[25] Ibid
[26] O. Kayode, Oil Pollution Law and Governance in Nigeria (2018) 201
[27] Constitution of the Federal Republic of Nigeria 1999, s. 44 (3).
[28] Ibid by pipeline
[29] *Ibid*

It is noted that the oil in Navigable Waters Act is another robust legislation that prohibits the dumping of oil in the sea in order not to cause marine pollution through the discharge of crude oil, fuel, lubricating oil, heavy diesel oil or any mixture containing not less than 100 parts of oil into the prohibited sea area by Nigerian ships. Any ship that discharges prohibited oil into the protected waters, the owner or master of the ship shall be held responsible.[30] The Minister of Transport is empowered by the Oil in Navigable Waters Act to make regulations for Nigerian ships to be fitted with such pollution prevention equipment and to comply with the requirements for preventing or reducing discharge of oil and mixtures containing oil into Nigeria waters that would cause pollution.[31]
In order to have a clear understanding of the subject, the maritime environment of Nigeria is defined to consist of the inland waterways, the Waters or Rivers that are by law navigable by sea-going and coming ships as well as the water that play host to the exploitation and exploration of oil and gas activities and is found within the coastline of Nigeria ocean.[32] The United Nations International Law of the Sea (UNCLOS 111) left the duty of enforcement of the regulation on vessel-source marine pollution on the flag states which has noted in ship flying flags of convenience are very weak to really enforce. The Nigerian coastal waters are strategically located in the West African region and the coastline of the Gulf of Guinea which is a major route of oil and gas exploration and exploitation as well as transportation destination to the international markets of Europe and Asia, as well as the United States of America and there are many legislation that cover its activities both in National and International laws.

The Coastal and Inland Shipping Act, 2003 encourages the local participation of the maritime operations and limits foreign vessels in Nigeria territorial trade in order to empower the local grown ownership of vessel for the transportation of goods and services within the Nigeria maritime domain.[33] A vessel other than a vessel wholly-owned and manned by a Nigerian citizen, but not registered in Nigeria shall not engage in the domestic coastal carriage of cargo and passengers within the coastal, territorial, inland waters, Island or any point within the waters of the exclusive Economic Zone of Nigeria.[34]

It is pertinent to also mention that the Petroleum Industry Act (PIA) 2021, aims to introduce an effective institutional framework for Nigeria's oil and gas industry and focused on set-up structures that will promote transparency in governance, and to address the problem of exclusion of some key stakeholders in line with global best practice and further provide an independent sectorial regulation in the petroleum industry.[35]

The Impact of Oil and Gas Pollution on Maritime Infrastructure in Nigeria

Crude oil is nasty and destructive when it spills into the environment, and very toxic when it comes in contact with humans or animals. It is not useful until it is chemically processed, or refined into suitable products like naphtha, gasoline, heating oil, kerosene, asphaltic, mineral spirits, natural gas liquids, and a host of others.[36] Oil pipelines are the major means of transporting crude oil in many countries, Nigeria inclusive. Hence, they are important to Nigeria oil production.[37] In the United States of America, pipelines are the irreplaceable core of the United States of America petroleum transportation system and thus the key to meeting petroleum demand.[38] It is worthy of note that:

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[30] Oil in Navigable Waters Act Cap 06, LFN 2004, s. 2
[31] *Ibid,* s.5 (1)
[32] O. Kayode (n 49) 108
[33] O.V.C Okene (n 42) 479
[34] Coastal and Inland Shipping Act, 2003 (Cabotage Act), s. 3
[35] O. Yemi, *Energy Resources Law & Practice, Oil and Gas Law Practice, Cases and Theories*, 282.
[36] J. Conca, Pick Your Poison For Crude – Pipeline, Rail, Truck or Boat, https://www.forbes.com/sites/jamesconca/2014/04/26/pick-your-poison-for-crude-pipeline-rail-truck-or-boat/#508835be17ac Accessed 23 May 2022
[37] A. Okafor and A. Olaniyan, Legal and Institutional Framework for Promoting Oil Pipeline Security in Nigeria, [2017] (8) (2), *Afe Babalola University Journal of Sustainable Development Law and Policy*, 210; O. F. Adejoh, Petroleum Pipelines, Spillages and the Environment of the Niger Delta of Nigeria [2014] (4) (3) *World Environment*, 93-100
[38] J. R. L. Moses, 'Petroleum Products Supply and Distribution Through Pipelines and Trucks'<https:www.vanguardngr.com/2012/01/petroleum-products-supply-and-distribution-through-pipelines-and-trucks/> Accessed 23 March 2022

> In both the United States of America and Canada, more crude oil, petroleum products, and natural gas are transported in pipelines than by all other modes combined, using the unit of ton-mile which is the number of tons shipped over number of miles. In the United States, 70% of crude oil and petroleum products are Shipped by pipeline. 23% of oil shipments are on tankers and barges over water. Trucking only accounts for 4% of shipments, and rail for a mere 3%. In Canada, it's even more lopsided. Almost all (97%) of natural gas and petroleum products are transported by pipelines.[39]

The pipelines generally distribute the fuel needed for daily activities across Nigeria. Therefore, they are valuable to the physical and economic output of the nation. With the products they carry, pipelines help to provide economic growth to various communities across the country where they are laid by providing jobs around their maintenance and service. Some of the advantages of transporting oil through pipelines include safety, stability, lower cost, and higher efficiency. It was seen that where this mode of transportation is disrupted, it is bound to cause a major setback to the surrounding communities and to the nation at large, given the reliance on this infrastructure.[40]

According to the United Nations Development Program (UNDP), more than 60 percent of the people in the region depend on the natural environment for their livelihood and more than 6,800 spills were recorded between 1976 and 2001, with a loss of approximately 3 million barrels of oil.[41] Many experts and international environmental organizations like Amnesty International, Human Rights Watch and so on believe that due to under reporting, the true figures may be far higher. Under Nigerian regulations, oil companies must clean up all oil spills. However, these regulations are not enforced.[42] Royal Dutch Shell and the Italian multinational oil giant ENI have admitted more than 550 oil spills in the Niger Delta in 2004. By contrast, on average, there were only 10 spills a year across the whole of Europe between 1971 and 2011. Shell reported 204 Niger Delta spills in 2014 while ENI, which operates in a smaller area, reported a staggering 349 spills. On top of the 349 spills in 2014, ENI reported more than 500 oil spills in 2013. The Nigerian regulator – National Oil Spill Detection and Response Agency (NOSDRA) – reported 474 oil spills from ENI operations in 2012.[43]

An independent scientific assessment released by the United Nations Environment Programme (UNEP) says it could take 25 to 30 years, with an initial investment of $1 billion just for the first five years, to clean up pollution from more than 50 years oil operations in Ogoni land, ranging from the "disastrous" impact on mangrove vegetation to the contamination of wells with potentially cancer-causing chemicals in a region that is home to more than two million people. The report which took United Nations Environment Programme (UNEP) over a 14-month period to assemble, showed greater and deeper pollution than previously thought after the United Nations Environment Programme (UNEP) team examined more than 200 locations, surveyed 122 kilometres of pipeline rights of way, analyzed 4,000 soil and water samples, reviewed more than 5,000 medicals records and engaged over 23,000 people at local community meetings.

The report proposed the establishment of an Ogoni land Environmental Restoration Authority with an initial capital injection of $1 billion from the oil industry and the Government to cover the first five years of the clean-up project; and soil management centre with hundreds of mini-centres to treat contaminated soil and provide hundreds of job opportunities. It also recommended setting up a centre to promote learning and benefit other communities impacted by oil contamination in the Niger Delta

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[39] J. Conca, (n 52)

[40] A. Okafor and A. Olaniyan, (n 54)

[41] United Nations Development Programme, Niger Delta Human Development Report, 2006

[42] Amnesty International, 'UN confirms massive oil pollution in Niger Delta' https://www.amnesty. org/en/press-release/2011/08/un-confirms-massive-oil-pollution-in-niger-delta/ Accessed 28 May 2022

[43] *Ibid*

and elsewhere.[44] There are strong indications that the clean-up of over 2,500 contaminated sites in Nigeria's oil producing areas would cost the federal government and other stakeholders over $50 billion. A breakdown showed that it would cost $6 billion to clean-up Ogoni land alone while other parts of the Niger Delta would gulp about $44 billion. The exercise would take more than 50 years to execute through massive deployment of suitable technologies, experts and volunteers.[45]

Lessons for Nigeria

Marine protection is a serious issue both for global and national governments.[46] This is largely due to the unsustainable use of the marine environment by state and non-state actors for economic and other purposes leading to the pollution of the marine environment. Therefore, regulating marine environments require mutual cooperation between states under international law and the global initiatives.[47] According to the United Nations Conference on Environment and Development, implementing Agenda 21, observed that:

> The coastal area contains diverse and productive habits important for human settlements, development and local subsistence. More than half the world's population lives within 60 km of the shoreline, and this could rise to three quarters by the year 2020. Many of the world's poor are crowded in coastal areas. Coastal resources are vital for many local communities and indigenous people. The Exclusive Economic Zone (EEZ) is also an important marine area where the states manage the development and conservation of natural resources for the benefit of their people. For small Island States or countries, these are areas most available for development activities. Despite national, sub-regional, regional and global efforts, current approaches to the management of marine and coastal resources have not always proved capable of achieving sustainable development, and coastal resources and the coastal environment are being rapidly degraded and eroded in many parts of the world.[48]

This is the basis for action in marine environment protection as Nigeria has had a history of pollution-ravaged marine ecosystem. Marine environment in Nigeria provides habitat for marine creatures and in addition to supporting the economic exploitation and exploration of oil and gas sector for socio-economic development in Nigeria. As seen here, marine environment in Nigeria is highly polluted with hazardous substances from crude oil exploration and production.

Pollution has been defined as the introduction of contaminants into the natural environment that causes adverse change.[49] Pollution can take the form of chemical substances or energy, such as noise, heat or light. The components of pollution, can be either foreign substances/energies or naturally occurring contaminants.[50] The main precursors of oil and gas pollution on the maritime environment include tank failures, rupture of major delivery pipeline across the ocean, vessels' accidents, discharge of oil and waste by vessels, oil well blow-outs that could seep into the sea, human errors and other forms of sabotage or terrorist activities, including sea pirates.[51]

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[44] C. Eboh and F. Onuah, UN slams Shell as Nigeria needs biggest ever oil clean-up,https://www.reuters.com/article/us-nigeria-ogoniland/u-n-slams-shell-as-nigeria-needs-biggest-ever-oil--clean-up-idUSTRE7734MQ20110804 Accessed 28 May 2022

[45] U. Akpan, E. Ejoh and P. Okafor, Cleanup of oil producing areas to cost $50 billion on June 6, 2017,https://www.vanguardngr.com/2017/06/cleanup-oil-producing-areas-cost-50-billion/ Accessed 23 May 2022.

[46] Abdul Hasanat and M.D Saiful Karim, Ocean Governance and Marine Environment in Conservation, Daud Hasan MD Saiful Karim (eds) *International Marine Environmental Law and Policy* (Routledge London 2019) 17

[47] World Commission on Environment and Development 1987 *Our Common Future Oxford University* p43

[48] United Nations Conference on Environment and Development CD Agenda 21https:// sustainable development. un.org/content/documents/Agenda21.pdf Accessed 23 May 2022

[49] Olubunm iAwoyemi, *The Impact of oil Pollution on the environment of the oil producing communities of Nigeria: a critical Analysis of the statutory and Regulatory Provisions in Nigeria* (Awoyemi and Co Independent law publishing 2014) 4-7

[50] *Ibid*

[51] *Ibid*

The 1972 United Nations Conference at Stockholm defines pollution as "the discharge of toxic substances and the release of heat, such quantities or concentrations as to exceed the capacity of the environment to render them harmful."[52] International law in many ways beyond the protection of world climate has issued caution on the adverse environmental consequences of the oil and gas industry and any country that does not adopt safer, heathier environmental practices is blacklisted by others.[53]

The protection of marine environment from oil and gas pollution is fragmented but falls on both the global community and national governments.[54] That is one of the basic challenges confronting the regulatory authorities. While the global legal regime for the regulation and protection of the maritime environment is seemingly clear, the respective national laws are not so. Hence the adoption of some peculiar legal approach by the United States, United Kingdom and Norway but they however, pay huge respect to the global regime on maritime protection. United Nations Convention on the Law of Sea 1982, article 194 provides:

> States shall take individual or jointly appropriate, all measures consistent with the Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities and they shall endeavour to harmonise their policies in this connection.

This raises international and customary law practice for states to adopt in protecting the environment. Accordingly, advanced jurisdiction of the United States of America, United Kingdom and Norway patterned most of their national maritime laws along the international legal regime, but Nigeria could not ratify most of the international legal order. Consequently, the best international standards, strict enforcement, high and low penalties and best regulatory techniques, provided by global maritime regulatory frameworks in these countries may be missing in Nigeria.[55] Thus, the Nigerian maritime environment is among the worst polluted with the creeks and oceans highly degraded amidst poor regulatory and enforcement approaches.[56]

This paper examined the regulatory frameworks of the maritime – offshore environment in the United States of America, United Kingdom and Norway with the objective of drawing lessons for the effective regulation of the maritime environment in Nigeria. The paper looked at the various policies, laws and administrative approaches in these three countries by which they regulate the maritime environment. This was done with reference to impacts of the various regulatory approaches adopted in these countries. It was found that lessons could be learnt from the consideration of the various regulatory approaches in these countries. Some of the following measures were considered to see what lessons Nigeria could draw.[57]

1) Strict enforcement of regulatory powers
2) Balancing economic consideration that affect marine protection
3) Benefit of Independent Regulators
4) Stakeholders' involvement and participation in regulation

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[52] United Nations Convention on the Law of Sea (UNCLOS) 1982 Montego Bay 10 Dec, 1982 in force Nov, 1994 21 ILM (1982) 1261

[53] Convention on the prevention of marine pollution by Dumping of water and other matters, London 29 Dec, 1972 in force 30 August, 1975

[54] The monist theory or monism envision a situation where international law applies to state after ratification without domestication while Dualist theory sees international law as a separate sphere of law deferring impact and at such be domesticated before its application as separate. These are the normative nature of international law which makes it easier for states to adopt while others find it difficult to do so.

[55] Joshua P Eaton (1997), Environmental Tragedy, Environmental Regulations of translational Corporation and Human rights to a human Environment 15 BU *International Law Journal* 261-283

[56] Awoyemi (n 90) 79

[57] These measures were born out of the research of the impact of oil and gas pollution on the maritime environment in these countries.

These considerations and measures pervade in the legal regimes of the above-mentioned countries and would be considered to see what lessons Nigeria can draw from each of them.

1. Strict Enforcement of Regulatory Powers/Adequate Penalties

Poor enforcement of marine protection laws in Nigeria are a major challenge bedevilling the maritime sector.[58] This is due to lack of capacity, inadequate infrastructure and poor penal regimes. The result of which is the flouting of the existing regulatory frameworks by the international oil companies. The International oil companies have a penchant to leverage on the low standards and poor enforcement regulatory framework in developing countries.[59] Nigeria on her part has failed to internalize best international technology and standards such as environmental management. This provides a leeway or an escape route from environmental taxation, evasion of punishment and payment of fines as the case be.[60] It will suffice to mention the Nigerian Oil in Navigable Waters (ONWA) Act 1968 as an example. This is one of the major national legal regimes on marine environmental protection in Nigeria. In fact, this law was patterned after the International Convention on the Prevention of Pollution of the Sea by Oil 1954.[61] The Nigerian Oil in Navigable Waters Act (ONWA) stipulated fines are grossly inadequate and the law provides defences which enables the polluter to escape punishment.

Thus, the scope is severely limited and the application frustrated by in-built defences. This is not what obtains in the United States of America and the United Kingdom. In the United States of America, the Oil Pollution Act (OPA) provides that tanker vessels of over 300A0 gross tons may require to pay $10m for the cost associated with a spill.[62] In Nigeria, he only needs to pay N2000 which is currently less than 12 US dollars.[63] This makes it easier for vessel owners to pollute the maritime waters and get away with it because they are always prepared to pay the paltry fines imposed under the Nigerian Oil in Navigable Waters Act (ONWA) while environmental pollution continues.[64] Similarly, the Nigerian Oil in Navigable Waters Act (ONWA) has a plethora of defences and policies that the polluter can rely on to degrade the environment. The defence that oil spill was caused by the act of a third-party trespasser can exculpate the polluter in Nigeria whereas in the United States of America, under the Oil Pollution Act (OPA), the act of a third party or agent will not exculpate the employers or its agents.[65]

The Oil Pollution Act (OPA) limits the defence of the responsible party to those under the Act but the Nigerian Oil in Navigable Waters Act (ONWA) does not limit such defence but goes on to provide cover outside the one provided under the Act. The implication in Nigeria is that the responsible party can avoid liability if they can raise some of the defences whether provided in the Act or outside of it. This is very significant, in that, it contributes to lowering standards in environmental protection. Furthermore, the Nigerian Oil in Navigable Waters Act (ONWA) limits the rights of action and this hampers the victims of the oil pollution incident to bring action against the responsible party. The right victim to bring action against the vessel owners is allowed only if the Minister grants consent. This is not the case in United States of America. Oil Petroleum Act allows victims to ventilate their claims in the court if the common law remedies are inadequate.[66] Again, the Nigerian Oil in Navigable Waters Act (ONWA) does not establish the rights of the victims to proceed against the insurers and grantors.

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[58] Environmental Rights Action, Environmental Testimonies 12 dateline, Yenagoa January 6 1999, Subject war and Terror in Ijaw Land

[59] Aberos O. O (1999) Environmental Impact of Oil on Water: A Comparative Overview of the United States and Nigeria 24 Denv. *J Int L & Policy* 62

[60] IOC and poor regulatory frameworks in Nigeria

[61] The Convention was subsequently amended in 1962 and 1971. The preamble to the Act clearly confirms the objective and mission for its enactment.

[62] 33 USC 2704; Olubunmi Awoyemi, *The Impact of Pollution on the Environment of the oil Producing Communities of Nigeria independent law publishing 2014*

[63] ONWA (n 102)

[64] OPA US (n 103)

[65] 33 US C (270) (a)

[66] 1d (2702) (b)

Consequently, if a vessel becomes insolvent, no claim can proceed directly against the ship owners' insurers or guarantors despite the fact that they have collected premium from the ship owners. Again, the US Oil Pollution Act (OPA) has inbuilt polluter pays principle,[67] while the Nigerian counter-part – the Nigerian Oil in Navigable Waters Act (ONWA) has no inbuilt polluter pays principle. The result of which is that the polluter will always get away with it in the maritime environment in Nigeria. This means that there is no strict liability on the polluter to pay for oil spill clean-up costs. The emphasis is on paltry punishment of fine instead of urging the polluter to clean up the environment. Thus, the Nigeria's Oil in Navigable Waters Act (ONWA) will benefit from blocking these identified loopholes and ensure strict enforcement of the laws and other regulations relating to marine pollution from oil. Adequate fines and severe punishment will help to deter polluters from polluting the environment. This is not so in Nigeria and the pointers are that most polluters of the marine environment are international oil companies that can pay their way through the regulation in Nigeria which are fragmented, with their operational mandate sometimes confusing, nebulous and corrupt.[68]

In the case of the United Kingdom, the regulation of the United Kingdom maritime environment is saddled with the Parliament under the reserve legislative competence while the administration of the maritime environment regulation is in the hands of the Department of Energy and Climate Change (DECC) as well as the United Kingdom Offshore Operations Association (UKOOA).[69] However, due to overreaching European Union oversight of over regulatory functions, companies operating in United Kingdom Continental Shelf (UKCS) are expected to secure permit from both the European Union regulatory bodies as well as the United Kingdom Offshore Operations Association (UKOOA). This may be burdensome to the industry as the layers of authority could contribute to conflict among regulatory agencies which is a major concern in Nigeria.[70] However, due to transparency of the regulatory authorities in the United Kingdom, this challenge is seldom prevalent.[71] In the United Kingdom, every activity that would change the character of the ocean requires permit by the relevant authorities, hence the marine environment is saved of constant pollution which is not the situation in Nigeria.[72]

The paper argues that Nigeria stands to benefit from the strict enforcement of marine protection laws in the United States and the delimitation of regulatory functions among regulatory agencies between the federation and the states in United States of America.

This leads us to the next factor which is the economic consideration over and above environmental protection which the Nigerian government accords to the activities that generate maritime pollution in Nigeria.

2 Economic considerations that affect Marine Environmental Protection Laws

Most of the activities that contribute or lead to environmental pollution or degradation are major sources of revenue generation for most countries.[73] Examples include oil and gas exploratory activities including transportation and laying of pipelines, accidental discharge by vessels carrying oil at sea, coal minerals and mining activities, nuclear energy and electricity generation, through hydro and other forms of power generation sources.[74] The poor or inadequate management of the productive and exploratory activities

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[67] 33 USCA 2702 (a)

[68] United Nations, (2011) *Environmental Assessment of Ogoni Land* UNEP 217-219

[69] UK parliament dissolved and resolved matters <https:www.parliament.uk/siteinformation/glossary/dissolvedand resolved-matters/> Accessed 23 November, 2022.

[70] The UN Report on OGONI powered by UNEP singled out conflict among regulatory agencies in Nigeria as a major setback to environmental protection.

[71] In UK, the regulatory authorities are trained to know the implication of compromised environment, hence are more transparent than Nigerian regulatory authorities, so the incidence of regulatory failures and capture happens more often in Nigeria than in the UK.

[72] A. Adegoroye (2018) The challenge of Environmental Enforcement in Africa, the Nigeria Experience: *Proceedings of 3rd International Conference on Environment Enforcement* 57-60

[73] These include major natural resources such as coal, gas, crude oil, minerals and minerals.

[74] Under International law, States have the sovereign rights to explore these natural resources within their territories but are enjoined to ensure that activities likely to cause harm or damage to the territory of their neighboring states are controlled or prevented.

associated with these sectors, has more than anything else, contributed to marine environmental degradation in most countries whether developed and developing. Accordingly, the effective management and regulation of these sectors are a major concern of every government. This concern contributes to the level of regulation, as well as the policy thrust of governments in the United States of America, United Kingdom and Norway. The paper argues that there are factors that influence the policy thrust of the countries under review towards maritime regulation from pollution arising from the petroleum sector. These factors depend on whether the country is developed or developing. In most developing countries, much reliance is placed on the extractive and natural resources sectors for economic development and revenue generation.[75]

The economic development of the United States, the United Kingdom and Norway do not depend largely on the extractive industries and natural resources but on manufacturing and other service-oriented sectors. This is due to the importance of these sectors upon the realization of the need to diversify their economy and because the natural resource sector is depletable. For instance, fishing and agro-allied sectors yield as much revenue in Norway as the petroleum sector while the manufacturing and servicing companies in the United Kingdom are money spinning sectors comparable to petroleum. In the United Kingdom the oil and gas sector are near maturity hence the need to transit to other revenue yielding sectors beyond oil.[76]

In Nigeria, the story is different owing to its attachment to the petroleum sector that influences the authorities' regulations of the maritime sector from the petroleum sector. The oil sector accounts for 90 percent of the nation's export revenue and about 50 percent of Nigeria's Gross Domestic Product (GDP).[77] The petroleum sector provides huge economic booster for the nation and without oil and gas, it would be difficult for the day-to-day administration of the country. The service and manufacturing sectors are comatose while agriculture is beginning to receive a boost. This has influenced the consideration given to the oil and gas sector by the federal government of Nigeria. Furthermore, the oil sector is mainly found in the restive Niger Delta region which is said to be the poorest region in the world.[78] The region has the highest wetland in Africa with rich forest zones.[79]

There are equally a network of creeks and rivers with the Atlantic Ocean crisscrossing the entire land and marine space. The economic lives of the Niger Delta region is fishing and farming and this is essential if poverty level is to be improved.[80] This paper contends that it is these economic considerations that influence the federal government's resolve either to relax some of the existing marine environmental protection laws or to look the other way when these laws are flouted by International Oil Companies (IOCs), the former Nigeria National Petroleum Corporation (NNPC) and other industries generating revenue for the government. The economic considerations over the negative impact of pollution from this sector also influence the effectiveness and enforcement of the marine pollution laws in Nigeria. The observations raised should be addressed for us to have a robust marine protection law in Nigeria.

3 Benefit of Independent Regulator

Effective regulation is necessary if the marine environment is to be sustainable. Regulation comes in the form of policy adherence to laws and administrative oversight functions.[81] The government sometimes acts as the regulator and at other times government agency may be the regulator. In Nigeria, the regulatory functions are now performed by the Upstream Petroleum Regulatory Commission and the

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[75] In Nigeria Oil sector accounts for major export revenue and foreign exchange.

[76] Greg Gordon and John Paterson, Mature Province Initiatives in Greg Gordon and John Paterson and Usemez (edns) *Oil and Gas Law current Practice and emerging Trends* (Dundee University Press 2012) 111

[77] S. C. Dike, Energy Security: *The Case of Nigeria and Lessons from Brazil, Norway and the UK* (Pearle Publishers 2015)

[78] Mark Thumber, Ifeanyi Emelife and Patrick RP Heller, NNPC and Nigeria's Oil Patronage Ecosystem 2010 *Working Paper, Program on Energy and Sustainable Development* 25-28

[79] A. A. Agagu, Problems and Effects of the Oil Industry in the Niger Delta, in Niger Delta University, *Nigerian State Oil Industry and Niger Delta Harey Publication Company Port Harcourt 2008)* 250

[80] Augustin Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Evans Brothers Publishing Ibadan) 2-25

[81] Stuart Bell & Donald MC Gillivary, Environmental Law (7thed Oxford 2008) 222

Midstream and Downstream Regulatory Authority provided for under the Petroleum Industry Act[82]. The paper contends that the benefits of the independent regulatory bodies in the United States of America, United Kingdom and Norway would benefit the Nigerian environment protection regimes. The United States America Bureau for Ocean Management (BFOM) is the central regulatory body for the federal offshore environment while states have their respective regulatory agencies but with clearly defined regulatory functions. This makes it less tasking for the regulators of the United States of America.

Oil and gas exploratory activities must be carried out in a regulated environment whether onshore or offshore. The United States of America has a large coastal and maritime environment for oil and gas activities in most of its oil producing states. In the United Kingdom, the North Sea which is near Scotland[83] provides mainly the oil and gas environment.[84] In Norway, part of the North Sea cuts across and now empties into the Norwegian section. Norway also has an enviable maritime regulatory environment for oil and gas operations. Norway has one single regulator of its maritime environment. Regulation of oil and gas operation is even worse in the case of offshore due to the fragile nature of the offshore environment. The process of exploration, production, development, marketing and transportation of oil and gas resources must be regulated to avoid unpleasant consequences to human beings, flora and fauna. Some countries have regulators for each sector of the oil and gas exploration and production activities while others have one super imposed regulator such as government agency to deal with the regulations.

However, it is important that the regulator's role must be clearly defined, functions made unambiguous and detached from government. If there is any conflict of regulatory mandates by the regulator, the marine environment would be badly affected.[85] In the countries compared, the regulators are detached from the government even though these governments have oversight functions on the regulated subject which is the marine environment. One lesson learnt from past regulatory mistake in Nigeria is the engagement of government agencies such as the Department of Petroleum Resources and the Ministry of Environment in the regulation of the maritime environment. As appendages of the federal government, they have not been able to detach themselves from the government vision for revenue provision, far and above environmental protection. The past mistake should be addressed drawing lessons from the countries mentioned above. In the United States of America for instance, the oil and gas regulatory regime is fragmented in the federal as well as state marine environments.[86] In the aftermath of the 2010 BP Deep Water Horizon Oil Spill at the Gulf of Mexico in United States of America, the Mineral Mining Office (MMO) in United States of America was overhauled due to the fact that it combined revenue generation functions with those of environmental protection.[87]

4 Gains from Stakeholders involvement and participation in regulation

The participation of victims of pollution and the citizens in the regulation of the environment is a hall mark of modern environmental regulatory architecture. This should be adopted in Nigeria for the regulation on marine protection. Laws made with the participation of the citizens will have better results than a legal regime imposed on the people.[88]

Most of the marine protection laws are not autochthonous and as a result the laws are not known to the affected citizens and appear strange to the coastal community or population. The effect is that the laws are seldomly obeyed by the citizens. The United Nations Capital Development (UNCD) has stressed the need to integrate the people, economic and social conditions with environmental decisions. It states that

[82] Petroleum Industry Act (PIA), s. 4 (1) – 28 and s.29 (1) - 52

[83] Department of Energy and Climate DEC, Guidance Notes for consideration of good oilfield practice<http//www.org.gov.uk> Accessed 23 May 2022

[84] *Ibid*

[85] The findings of the UNEP Report on Ogoni Land 2008 singled out the conflict among regulatory bodies in Nigeria as a serious setback to effective environmental regulation objective of the government.

[86] This is the nature of the US Energy policy which vest ownership of minerals found on state land in the states and while those found on federal land is on the federal government. Individuals could also lay claim to oil found on their land.

[87] Greg Gordon, *Oil and Gas Law Current Practice and Emerging Trends* (2nd edn, Dundee University Press 2012) 187

[88] UN Convention on Environment and Development 1992 Held in Rio de Janeiro Brazil.

prevailing systems for decision-making in many countries tend to separate economic, social and environmental factors at the policy planning and management levels. This influences the actions of all groups in the society, including governments, industry and individuals, and has important implications for the efficiency and sustainability of development.

An adjustment or even a fundamental reshaping of decision-making in the light of country -specific conditions may be necessary if environment and development is to be put at the centre of economic and political decision-making, in effect achieving a full integration of these factors. In recent years, some governments have also begun to make significant changes in the institutional structures of government in order to enable more systematic consideration of the environment when decisions are made on economic, social, fiscal, energy, agricultural, transportation, trade and other policies, as well as the implication of policies in these areas for environment. New forms of dialogue are also being developed for achieving better integration among national and local government, industry, science, environmental groups and the public in the process of developing effective approaches to environment and development.

The responsibility for bringing about changes lies with Governments in partnership with the private sector and local authorities, and in collaboration with national, regional and international organizations, including in particular the United Nations Environment Program, United Nations Development Program and the World Bank. Exchange of experience between countries can also be significant. National plans, goals and objectives, national rules, regulations and law, and the specific situation in which different countries are placed is the overall framework in which such integration takes place. In this context, it must be born in mind that environmental standards may pose severe economic and social costs if they are uniformly applied in developing countries.[89]

Due to the nature of the marine space, some parts of the marine space are under the control of the national coastal states while others are under the control of the global community.[90] The application of international treaties or international law can be seen from the prism of the dualist and monist theory of law. The Dualist doctrine postulates that national law and international law constitute two distinct and separate categories of legal system. Therefore, the validity of national law is not conditioned by international law, such that within a state, the rules of international law cannot be applied but only after being transformed or received into that legal system.[91] The monist on the other hand, maintains that international law and national law must be regarded as manifestations of a single conception of law. The main reasons for this assertion is that both laws ultimately address the conduct of same subjects (i.e. the individual) and some of the fundamental notions of international law cannot be comprehended without the assumption of a superior legal order from which the various systems of national law are in a sense derived by way of delegation.[92]International practice does not support any of the competing theories of Monism[93] or Dualism completely.[94] As regards the question of primacy of international law, international jurisprudence leans in favour of monism with the primacy of international law.[95]

However, neither can international law create or invalidate national law, nor can national law create or invalidate International law. It is possible for the national law of an individual state by custom or by

[89] United Nations Conference on Environment and Development CD Agenda 21https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf Accessed 23 March 2022

[90] UNCLOS 1982

[91] E. A Oji, *etal,* 'Les Regles Generales du Droit International de la Paix', *HR* (1934) (47) 43

[92] H. Kelsen and Others, *International Law: Cases and Materials,* (St Paul-Minesota, West Publishing Co., 1980) 363-380; M. N. Shaw, International Law, (6thedn., New Delhi, Cambridge University Press, 2008) 132.

[93] E. A. Oji, "Application of Customary International Law in Nigerian Courts'', *NIALS Law and Development Journal* (2011)

[94]*Ibid*

[95] E. A Oji, 'Application of Customary International Law in Nigerian Courts', *NIALS Law and Development Journal* (2011) 1(1) 156

statute adopt rules of International Law as part of the law of the land, and then the rules of the said international law become *ipso facto* rules of National Law.

The national coastal states are to be regulated under exclusive economic zone areas within 200 nautical miles while areas beyond 200 nautical miles are within the jurisdiction of the international community by international law. This means that there is a dualist regulatory system for the maritime environment anywhere there is both a national legal regime and international legal regime. The United Nations Law of the Sea is the outstanding legal regime in regulating coastal waters and it recognizes this dual legal regime.[96] This creates mixed challenges for both regulators in the two divides.

The national government is confronted with international legal regime in regulating national and territorial waters while the international community will have to respect the domestic legal regime in regulating areas beyond national boundaries. The United States of America, United Kingdom and Norway were able to manage these dualists legal order in regulating their maritime environment successfully. The maritime environment in Nigeria is still struggling to draw a line between national and international waters. The maritime environment is heavily regulated by both global Treaty and National laws. While national laws in Nigeria are inadequate, the country needs the best international standards accruing from international treaty to regulate the maritime environment. It is hoped that effective regulation of the maritime space which takes into account the participation of the citizens in the United States, United Kingdom and Norway would be adopted in Nigeria, considering her socio-political circumstances.

Therefore, in marine protection, there is need to engage the vulnerable groups and the consequences of the failure to engage them far outweigh the benefits.[97] The European Union in recognition of the importance of public participation in environmental decisions affecting her members came up with Aarhus Convention of 1998.[98] The United Kingdom and Norway employ the benefits of Aarhus in major regulations that affect marine pollution. In the United Kingdom, the emphasis has now shifted from prescriptive legislative and regulatory approaches to goal-setting rules of engagement.[99]

The prescriptive approach is a top-down regulatory approach which ensures that the regulated body complies with set rules of government or its regulatory agencies. The prescriptive approach provides check-list for the regulated entities to comply, failing which they pay fines and or suffer some sanctions which may include the withdrawal of license or imprisonment and payment of penalties including some punitive tax.[100] The prescriptive regulatory approach does not allow the regulated industries to innovate out of the check-list even when it is beneficial to do so in order to protect the environment. The United Kingdom regulatory framework was prescriptive until the BP Macondo Gulf coast oil spill in the United States of America, which led to massive oil spill into the coast of the US and the death of 11 crew members.[101] The consequence of the BP Macondo Oil Spill was the massive review of the regulatory architecture in the United States of America, United Kingdom and Norway and the transition from prescriptive regulatory approach to goal-setting regulatory approach which is now considered effective and beneficial for environmental protection.

This paper contends that the prescriptive regulatory framework is like the top-down regulatory approach which does not require the input of the vulnerable groups and the participation of the regulated entities.

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[96] Territorial Waters Act LFN 2004.

[97] K. Ebeku, (2006) Oil, Niger Delta and the new Development Initiative Some reflections from social legal perspectives 3(4) OGEL 12 on the need to engage the Niger Delta region in the oil and gas explorations.

[98] The European Union in 1998 came up with three pillars of environmental justice, namely: access to environmental information, access to justice in environmental matters and participation in environmental decisions affecting people.

[99] Shane Bosma, (2012) The Regulation of marine Pollution Arising from Offshore oil and gas Facilities- An Evaluation of the adequacy of current Regulatory Regimes and the Responsibility of States to Implement A new Liability Regime 6 *A NZ Mar LJ.*

[100] The 1998 Petroleum Act UK on the duties and obligation of licensees.

[101] Bosma (n 153) 96-97

This is unlike the goal-setting approach which envisions the consequences of regulation on the regulated objects or groups and allows their participation in crafting the rules that affect or are likely to affect them for effective environmental protection goals.[102] The paper argues that this prescriptive legislative approach in Nigeria is against chapter 3 of the United Nations Conference on Environment and Development on the participation of various groups in environmental decision. According to the United Nations Conference on Environment and Development (UNCED) agenda 21.

One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making. Furthermore, in the more specific text of environment and development, the need for new forms of participation has emerged. This includes the need for individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work. Individuals, groups and organizations should have access to information relevant to the environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental measures. Any policy, definitions or rules affecting access to and participation by non-governmental organizations in the work of United Nations institutions or agencies associated with the implementation of Agenda 21 must apply equally to all major groups.[103]

The paper found out that the defunct Nigerian Petroleum Act, Oil in Navigable Waters Act, 1968 LFN 2004, Oil Pipelines Act, LFN 2004, National Oil Spill Detection and Response Agency Act 2006 and the National Environmental Standard Regulation and Enforcement Establishment Act 2007 are all prescriptive legislation that neither had the input of the regulated entities nor the citizens before they were promulgated in Nigeria.[104] The consequence of this mode of legislation and enforcement is that Nigeria environmental protection laws are ineffective and not proactive. The paper contends that Nigeria will benefit from the new regulatory approaches in the United States of America, United Kingdom and Norway with regard to adoption of some goal-setting approach and the benefits of engaging the vulnerable groups to participate in crafting laws that will affect them.

CONCLUSION

Oil pollution management and control in Nigeria has been tasking as oil production and exploration has not only come with tremendous economic benefits but with challenges also. The major challenge being that it has led to various oil spills that have degraded the Nigeria environment to the extent that human health and the environment have been threatened. These have led to the enactment of various laws from 1914 till date in an attempt to cope with the control and management of oil pollution in Nigeria. However, these laws were found inadequate to eradicate or control maritime environmental pollution from petroleum operations.

Secondly, apart from these national laws, Nigeria has attended several international conferences on environmental protection and has signed, ratified and acceded to several international treaties in an attempt to ensure a safe and sustainable environment. Some of these treaties do not have binding effect in Nigeria as they are largely soft laws.

Thirdly, Nigeria has through the instrumentality of legislation, established key institutions for environmental protection – particularly to provide for the management and control of oil pollution but without adequate enforcement, these laws and institutions are ineffective in curbing, preventing and managing oil pollution in Nigeria.

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[102] Julen Rochette and Glen Wright (2015) Strengthening the International Regulation of offshore oil and gas activities *Brief for GSDR: 1-2*

[103] United Nations Conference on Environment and Development Rio de Janeiro, Brazil, 3 to 14 June 1992 AGENDA 21

[104] Some of these regulations were made during the Military era and during this eras the rule of law and constitutional process were subjugated to the rule of force where fair hearing was abused and truncated.

Fourthly, successive governments have not had the political will to either put a stop to or effectively manage oil pollution in Nigeria, due to serious economic considerations over and above maritime protection. It could be said that due to the procedure and processes for the production and transportation of oil in Nigeria, it is inevitable to completely prevent oil pollution and particularly oil spills. However, when oil pollution or spills occur, efforts to contain it or clean it up leaves much to be desired. On the political mantra of the clean-up of Ogoniland, United Nations Under-Secretary General and the United Nations Environment Program (UNEP) Executive Director, Achim Steiner, noted:

> "The clean-up of Ogoniland will not only address a strategic legacy but also represent a major ecological restoration enterprise with potentially multiple positive effects ranging from bringing the various stakeholders together in a single concerted cause to achieving lasting improvements for the Ogoni People… But the question on the lips of many is whether the government has the will power to see it to its logical conclusion…[105]

The above shows that despite the avalanche of laws and institutions, the problem of oil pollution is endemic in Nigeria. There are reports of recent oil spills which have been left unaccounted for, uncontained or improperly managed despite the functions and responsibilities of National Oil Spill Detection and Response Agency (NOSDRA).[106] This point proves that there is an effective enforcement mechanism for oil pollution in Nigeria. Laws remain mere words on the pages of the paper called legislation and until they are allowed to function or are effectively implemented by the bodies and institutions charged with the functions, then the ideals or objectives of the legislation are of no use. This strengthens the functional idea of law as postulated by the proponents of Sociological Theory Law. According to Eugene Ehrlich, the real source of law is statutes or reported cases but the activities of society itself.[107]

Finally, the analysis and evaluation of the legal framework revealed that despite the fact that Nigeria has signed, ratified and acceded to several treaties – international and regional, they must be further domesticated in Nigeria for them to be binding or enforceable. Most of the domesticated treaties on oil pollution like the Oil in Navigable Waters Act is archaic.[108] The provisions of the law are incapable of preventing, managing or controlling oil pollution in Nigeria. Specifically, the criminal sections are basically toothless while the compensatory provisions are nothing but a mockery of what compensation should be in such a situation. Litigation in court on oil pollution to enforce the laws or claim compensation is another herculean task.[109]

In other occasions, where compensation is paid, they end up in the pockets of few individuals who are in no way members of the oil producing communities who suffer the effects of oil pollution.[110] Therefore, Nigeria has copious laws which make up the legal framework for oil pollution in Nigeria.[111] These laws have been incapable of stopping or preventing or even ensuring adequate clean-up of oil pollution (oil spills in particular) in Nigeria.[112]

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[105] B. Umuteme, "Is the Ogoni Clean-up, Jinxed" the Blueprint Newspaper of 13 April 2019https://www.blueprint.ng/is-the-ogoni-clean-up-jinxed/ Accessed 23 March 2020

[106] *Ibid*

[107] E. Ehrlich, *Fundamental Principles of Sociology of Law* (1936) in M. D. A. Freeman (ed.) *Lloyd's Introduction to Jurisprudence* (8thedn. Sweet & Maxwell, London 2008), 847

[108] D. S. Olawuyi, "Legal and Sustainable Development Impacts of Major Oil Spills" [2012] (9) (1) *Consilience: the Journal of Sustainable Development,* 1 – 5.

[109] S. A. Fagbemi& A. R Akpanke, "Environmental Litigation in Nigeria: The Role of the Judiciary" [2019] (10) (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* 26.

[110] T. C. Eze, "Redress for Pollution Damage under Common Law in Nigeria: An Appraisal" [2018] (3) (1) *Journal of Law and Global Policy,* 2

[111] A. O. Ekpu, "Environmental Impact of Oil on Water: A Comparative Overview of the law and Policy in the United States and Nigeria" [1995] (24) *Denver Journal of International Law and Policy,* 55.

[112] Common Law of Tort to wit: trespass, strict liability and nuisance.

Again, the protection of maritime environment is a daunting affair due to the transboundary nature of the coastal environment. While International Law is replete with measures, laws and regulations to protect the maritime environment, the nation states should do more than collaborate to protect the environment. It is suggested that the regions such as West Africa develop a maritime coast guard, for example, to police the maritime highway.

RECOMMENDATIONS

1. The problem with some of the regulations in maritime protection is lack of enforcement. The regulatory agents and bodies are ill-prepared for the effective performance of their duties due to regulatory failures and corruption. Therefore, there is need to beef up the teeth of these laws by amending them to ensure that there are serious punishment provisions capable of deterring further involvement in oil pollution.[113]
2. The sanctions in respect of oil companies come in the form of fines and these fines are not in tune with the prevailing economic realities of contemporary time. National Oil Spill Detection and Response Agency (NOSDRA) Act 2006 should be reviewed to enable it penalize defaulting violators. The fines should be increased while adequate incentives be accorded for the International Oil Companies that comply with existing regulations in the form of carrot and stick.
3. The compensation provisions for oil pollution should be expanded and made to take care of the means of livelihood of the affected persons until the time of restoration of the environment from the effect of oil pollution. The compensation should not be one-off payment but continuous one until the environment is restored to enable the victims resort to it for their survival. The provision of International Treaty and liability and compensation which require a deposit of compensation fund by International Oil Companies should be ratified and domesticated so that International Oil Companies operating in Nigeria will be made to deposit some funds to address adverse maritime environmental despoliation. This is the practice in the United States of America, the United Kingdom and Norway.
4. A robust regulation of the offshore environment in Nigeria, anchored on best international practice would mitigate the impact of oil and gas pollution on the maritime environment in Nigeria.
5. Harnessing the regulatory framework for optimizing environmental compliance in the oil and gas and maritime sector in Nigeria will transform the governance structure and enhance performance.

[113] M. C. Onuegbulam, "Restorative Justice International in the Repression of Crime in Oil and Gas Production in Nigeria" (2018) 9 (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 167-176