Innovations

# Environmental laws and the politics of environmental enforcement in Nigeria oil-rich Niger Delta region

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***Abstract***
*The last six decades have seen the massive ecological damage done to the Niger Delta environment through unwholesome activities by oil multinationals. The region continue to suffer from avoidable oil spills, oil pollution and gas flaring and these have affected the economic activities of the region and lives of its inhabitants. To address the pollution of the region which has caused great damage to aquatic lives, air and land, the government has enacted several environmental laws, regulations and standards to regulate the oil industry and to curb its negative externalities. Unfortunately these laws have not translated into substantive environmental quality as environmental enforcement continue to fall short in addressing environmental disaster in the region, hampering the nation's drive towards environmental sustainability and sustainable development. Using secondary data derives from scholarly articles and documents, this paper explains that the overdependence of the Nigerian government on crude oil is the major explanations for its weak enforcement of environmental laws. It concludes that environmental enforcement in the region can only be strengthened if the government were to pursue policies that will lessen this dependency.*

***Keywords:*** *1.Environmental Degradation, 2.Niger Delta, 3.Environmental Enforcement, 4.Environmental Law, 5.Politics, 6.Oil Pollution*

## Introduction

Environmental problems like oil spills, gas flaring and other forms of pollution which affects the ozone layer, causing climate change and global warming, has become serious issues that can no longer be ignored due to its existential threat to the human race. Global cooperation is therefore needed to address many of the environmental issues that threatens human lives as it is only through such concerted efforts that sustainable livelihood can be guaranteed. To ensure a sustainable environmental development, it is vital that individual states enact environmental laws which flows from decisions reached in these international mega conferences. Expectedly, these environmental laws should be aimed at improving the quality of the environment and the development of environmental resources in more sustainable ways that will benefit future generations or at the very least, ensures that future generations are not deprived of it due to man's greedy drive for economic prosperity. Such laws should be able to address the inequality and poverty that are so often the major spill over from environmental degradation since these laws are expected to set the guidelines for acceptable conduct of oil multinationals or those whose activities are linked to or directly affects the environment.

However, environmental laws are not enough as the plethora of these laws have not made the environment safer. Hence, as Laitos and Wolongevicz, (2014) explain, "There is…an odd paradox. We have been exceptionally aggressive in utilizing our legal institutions to manage, regulate, and protect environmental and natural resources, yet there is a growing consensus that the earth and its planetary systems are in serious trouble" (p. 3, 4). Thus, the increasing degradation of the environment in a scale never seen before indicates that the earth survival depends just as much on the enforcement of these environmental laws (Field and Field, 2009). While many countries can boast of robust environmental laws and regulations guiding the operations of corporations and businesses whose activities directly affects the environment, the enforcement of these laws is questionable. Enforcing environmental standards is even more difficult especially in countries like Nigeria whose economic activities are situated around or are largely dominated by a single primary product, like oil.

However, current discourse on environmental enforcement in Nigeria has attributed its weakness to be a fundamental explanation to the underdevelopment of the Niger delta. In a survey carried out by Atubi, (2015), in one of the oil rich states in Nigeria, it was shown that negligence on the part of the government in its oversight duties like monitoring and enforcement were considered a major reason for environmental degradation. In the same vein, Allen (2012) has argued that the non-implementation of environmental laws is the reason for the conflict in the Niger Delta region. Okonkwo (2020) has also in her study drew a link between environmental enforcement and environmental justice and showed that the non-enforcement of environmental regulations in the Niger delta region has led to environmental injustice.

These studies, (Atubi, 2015; Okonkwo, 2020; Allen, 2012,) evidently shows a clear and an emerging consensus that the non-enforcement of environmental standards have negative multiplying effect on the Niger Delta region. This task of this paper is to account for the political, constitutional and strategic reasons behind Nigeria weak enforcement culture given the beliefs among scholars that Nigeria's environmental laws are still capable of curtailing activities that impinge on the environmental rights of the people (for example, see Natufe, 2001). The paper makes the claim that an understanding of the structural relations between the Nigerian government and oil multinationals provides a more viable explanation in dissecting environmental enforcement failures in the country and goes beyond the current legal and institutional approach to enforcement in Nigeria. Its objective is not only to look at the state of environmental enforcement in the delta region of Nigeria which is the financial powerhouse of the country, but also to account for the reason behind the non-enforcement of environmental laws and standards in the region.

## Study Area and Methodology

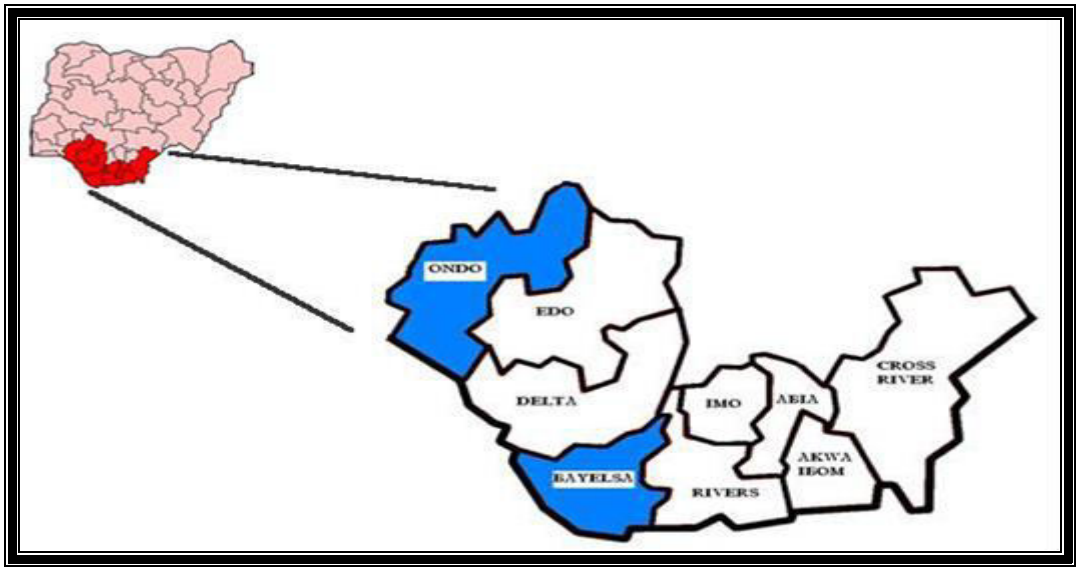
### The Niger Delta

The Niger Delta region is situated in the southern part of Nigeria and according to Steiner (2010), it is one of the most densely populated region in the whole of Africa. While the region is largely underdeveloped, it is however considered as one of the most important of the ten wetlands, deltas and ecosystem across the world. It host and serves as habitat to a number of rare species, biodiversity, primates, birds, fauna and flora, (Amnesty International, 2018). There are certain plants that are peculiar or native to the Niger Delta as they cannot be found in other places. Estimates shows that there are about 46,000 plants species in the region and of these, about 205 are said to be endemic or native to the region (Twumasi and Merem, 2011). Unfortunately, many of this biodiversity are threatened with extinction or forced migration in the Delta region as a result of oil production (Jike, 2004)

Ayuba, (2012) noted that due to its abundant biodiversity, the Niger Delta region is seen as a key conservation zone of the Western coast of Africa. It also occupies a vast mangrove ecosystem and

within its West African coastline, it boast of different types of fish, (Steiner, 2010). The region is also well known for its sandy coastal ridge barriers and mangrove freshwater. It comprises of 9 states and these are, Akwa Ibom, Abia, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers States.

**Figure 1: Map of Nigeria Showing the Niger Delta Region**




**Source: NDDC 2014**

The Niger Delta has been used synonymously with the oil producing states in Nigeria and this later conception of the region has come to define how people view it in recent times. From an historical perspective, the Niger delta region comprises the present states of Bayelsa, Rivers and Delta State. This is seen from earliest report which delimited the area to "Western Ijaw Division (Western Nigeria), and (Eastern Nigeria) the Rivers Provinces but excluding Ahoada and Port Harcourt", (1959; Willink's Report, 1958).

At the creation of OMPADEC in 1993, the Niger Delta area was further defined to include Edo state, Akwa Ibom and Cross River state. This was done due to geographical contiguity of these new additions to the historically defined ones. Especially when viewed from its geographical position the very term itself has to do with the deltaic cross-network of rivers and lands that surrounds the River Niger which empties itself into the Atlantic Ocean in the southern part of the country. Today, the region is now expanded to include Abia, Ondo and Imo states with the creation of NDDC in 2000. The reason for this later delineation has been adduced to ease of administration and development of oil producing areas given the consequences of oil production on the environment, hence the lumping together of oil producing states with those of the Niger Delta region which are also oil producing states, (Akpomuvie, 2011, Etekpe, 2007)

**Methodology**

Data gathering was carried out through secondary sources. This involved the use of books, relevant articles on the subject area, documents, grey literatures, and internet sources. Relevant materials were obtained from university's libraries. For example, the University of Benin library in Edo State and Delta State University, Abraka library were important secondary sources. However, the materials obtained through this medium were qualitatively analysed using content analysis. This enabled us to sort out only articles that were germane to the issues addressed in the paper.

**The Primacy of Environmental Enforcement in Sustainable Development Discourse**

The presence of environmental laws does not in itself guarantee that regulated bodies or companies will obey, (Field and Field, 2009). These laws must be enforced and one way that government ensures that the laws will be obeyed is by establishing agencies or regulated bodies whose mandate is see that companies comply. In this sense environmental enforcement can therefore be defined as the several ways, methods and instrument through which government and civil society ensures and/or guarantee compliance with its environmental standards, regulations or law (Rose, 2011; Volokh and Marzulla, 1996; Hayes, 2000). It is an important instrument used in pursuing the goals of sustainable development. The ability of states to achieve sustainable development in their policy framework depends on their capacity to enforce the laws they have created to address certain damaging activities that impacts the environment. Put succinctly, achieving sustainable development is anchored on the enforcement of environmental regulations.

According to The United States Environmental Protection Agency (2003) "environmental laws and regulations are designed to protect human health and safeguard the environment. But they can achieve their purpose only when companies and facilities comply with its requirements". Rousseau (2009), also observed that for environmental policy to be efficient and effective, it has to be complemented with a well thought out monitoring and enforcement strategy, otherwise the basic rationale for environmental laws which is to achieve sustainable development and ensure quality environment will be defeated. The task in ensuring sustainable development in a competitive economic world is a difficult one. It is a task that goes beyond the enactment of laws restricting or redefining human actions on the environment. Therefore, aside the calls that individual states should create laws focused in ensuring environmental quality, there has been even greater emphasis in making sure these laws should be enforceable. Thus, to ensure the sustainable development of environmental resources, the role of environmental enforcement cannot be undermined. Since the drive for economic prosperity has placed undue stress on the environment, the need to conceptualize development to take cognizance of its environmental and social dimension has become necessary. In developing economies like Nigeria enforcing environmental regulations is even more challenging as her economy is based on oil following the near total neglect of other sectors of the economy like agriculture. The subsequent impact of oil on the environment of oil-bearing communities in the Niger Delta region has been missive.

**Environmental pollution and environmental regulation in the Niger Delta Region**

It is unfortunate that the Niger Delta region significance and development has often been associated with oil production and the advent of foreign oil multinationals. This is an erroneous view as there are documented reports of the importance of the region especially in pre-colonial times. Dike (1956) noted that the region was an emporium of commercial activities and this was before the discovery of oil. Products like cocoa, rubber, palm produce and other informal commercial activities thrived in the region before the influx of European traders. While the 400 years of African contact with the New World (America) and Europe before active colonialism was principally about the slave trade (Rodney, 1972), in Nigeria, especially in the late 18th and early 19th century, the Niger Deltans were known for their farming and industriousness, (Mabogunje, 1968; Alemieyesigha, 2005).

In Edo and Ondo state, states in the western part of the country, for example, there was a thriving cocoa and timber business that earned substantial income from exports for Nigeria. Oil was not principally the driving force of the Nigerian economy before and immediately after her independence in 1960. The region is also known to be well endowed before oil became the mainstay of economic activities in the country (Jike, 2004). However, the discovery and exploration of oil in the region did not only drastically changed and alter the occupation of the Niger Delta people, it also changed its geography and economy. The region is today considered one of the most polluted region in the world due to decades of oil production. This has affected its creeks, swamps and mangrove covers or forests, a rich habitat for rare biodiversity. The depletion of fish population and forced migration of certain

animal species is not the result of overfishing or overhunting but studies on the region have adduced these to oil and gas pollution which has continued on a massive scale from oil and gas (Akpomuvie, 2011; Clark, 2009; Etemike, 2009). The World Bank (2007) observed that oil production and exploration in the region has occasioned serious degradation of the environment to the extent it has become a serious security threat and has seriously hampered the region inhabitants to fend for themselves. It has also occasioned violent confrontation with the government who are seen as complacent and instigator to their plight.

The advent of oil exploration in Nigeria and foreign oil multinationals has no doubt had tremendous benefits to the Nigeria economy. It has brought about series of innovations and technological benefits. Countless number of persons have benefitted either through employment, scholarship, as service contractors and oil and gas training. All these are attributed to the generic presence of oil companies in the region. However, these innovations and technologies have been at a massive cost to the environment. Compare to those who have directly or indirectly benefitted from these oil companies, majority of the people have been at the receiving end of this ecological disaster, (Eneh, 2011). The view of many people in the region is that oil exploration has affected their lives in more negative ways. Many have attributed loss of lands, flooding, and erosion to the activities of these companies. (Premium times, 2016).

**Oil Spills**

One of the visible feature of oil exploration and its negative externalities in the region is oil spills. Oil spill pollution is overreaching as it has the propensity to spread wide and fast and leads to soil contamination, destruction of fertile lands, underground water pollution and health issues. Since 2019, according to data from NOSDRA, there have been 639 oil spills incident resulting in 28,003 barrels of oil spewed into the environment (Mongabay, 2021). In spite of laws which mandates oil companies to report cases of oil spills within 24 hours, data shows that this law is not comply with in the industry. The 2021 Nembe massive oil spillage in Bayelsa State, an oil rich state, which spills about 2 million barrels of crude oil and lasted for 32 days before it was stopped is an indication of widespread laxity to this law (Akpan and Onoyume, 2021). The fact that oil spills reportage primarily depends on oil companies database has also affected regulations and enforcement. For example, while the Nembe oil spills was reported to have occurred on November 5$^{th}$ 2021 by the operating oil company, Aiteo, indigenes of the community where the incident took place has argued that it started on November 1$^{st}$ 2021, (Akpan and Onoyume, 2021). In any case, the 24 hours window for reporting oil spills in line with the law may not have been adhered to by the polluting firm.

Again since oil companies depend on the regulated industry in reporting oil spills and providing information on it, there have been cases where issues are underreported. This was the case of Shell in 2008 and 2009 in Bodo community, when it falsely reported or understated the volume of oil spilled and thereafter offer the community affected the paltry sum of 4000 dollars. When the matter was taken to court, Shell did not only admit to making false statement about the spill but also agreed to settle out of court and pay the community the sum of 55 million dollars, (Amnesty International, 2018). The discrepancies in oil spills reported between the Nigerian government and those of the oil companies have also led many to believe that oil spills incidence may actually be higher. For example, since 2014 down to 2018, reported spills by Eni (formerly Agip) was put at 820 in the Niger delta region. These spills amounts for about 26,286 barrels lost. Shell reported oil spills was 1,010 since 2011 amounting to 110,535 barrels spilled. However within this timeframe, the Nigerian government reports 1659 for Eni and 1369 for Shell, (Amnesty International, 2018).

An investigation by Amnesty International using decoders which analysed thousands of reports and photographs provided by companies about their oil spills shows a substantial numbers and higher

volumes of oil spills than what was previously reported. Also doubtful was the often cited narrative that these oil spills are majorly the cause of sabotage and vandalism, (Amnesty International, 2018). While there are laws mitigating causes of oil spills in the Niger delta, enforcement of these laws have not induced the level of compliance needed to address oil spills in the region. The negative impact of oil spills is multifarious. Oil spills as a major degradation of the environment is directly related to poverty as it deprived dependents of the environment from having access to a quality environment that provides food and water to them. The occasional outcomes from oil exploration like flooding, sea level rise through pollution of the atmosphere by activities like gas flaring has made life difficult for the Niger Delta inhabitants (See Table 1 for some major oil spill incidence in Nigeria)

**Table 1: Some Oil Spills Incidents in Nigeria.**

| s/no | Location | Year | Volume spilled | Environmental/social-economic impact |
|---|---|---|---|---|
| 1 | Focardo, Delta State | 1979 | 570,000 barrels | Aquatic environs and swamp affected |
| 2 | Funiwa N0. 5 Well, Funiwa Field | 1980 | 421,000 | Acres of mangrove forest destroyed |
| 3 | Oshika village oil spill, Rivers State | 1983 | 5000 | Killed fish, crabs and shrimp in lakes and swamp forest |
| 4 | Jesse pipeline explosion, Delta State | 1998 | | Thousands died |
| 5 | Etiama, Bayelsa State | 2000 | 11,000 | Farmlands and properties destroyed |
| 6 | Nembe oil spill | 2021 | 2 million barrels estimate | Farmlands, over 20 communities, aquatic environs affected |
| 7 | Bodo oil spill | 2008 /2009 | 600,000 barrels | Farmlands and aquatic lives affected |

Compiled by the author

**Gas Flaring**

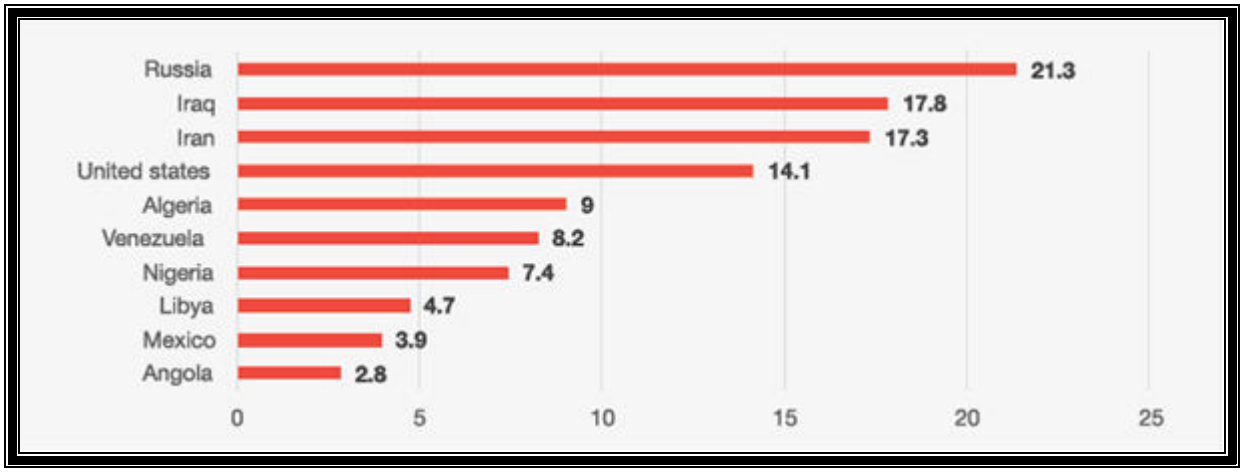
The issue of gas flaring is particularly of grave concern because of its pervasiveness in the entire Niger Delta environment where oil is produced. Gas flaring is a global menace and in 2018, it was estimated by the World Bank that globally, gas flaring cost the world US$20 billion while in Nigeria alone, it is estimated that the country lost N233 billion which translate to US$761.6 million. According to the National Environmental, Economic Development Study (NEEDS), the environmental cost of gas flaring in Nigeria is in the region of 28.8 billion naira [US$94 million], (PriceWaterhouseCooper, PWC, 2019; see Table 2).

**Table 2: Revenue Lost to Gas Flaring in Nigeria (2014-2018)**

| | Volume of gas flared per thousand scf | Average price of gas per thousand scf | Revenue lost in $ | Revenue lost in Naira |
|---|---|---|---|---|
| **2018** | 282,080,000 | 2.70 | 761,616,000 | 233,054,496,000 |
| **2017** | 324,192,401 | 2.70 | 875,320,000 | 267,847,920,000 |
| **2016** | 288,917,198 | 2.60 | 751,185,000 | 229,862,610,000 |
| **2015** | 330,933,000 | 2.40 | 794,240,000 | 243,037,440,000 |
| **2014** | 393,839,836 | 2.50 | 984,600,000 | 301,287,600,000 |

Source: DPR annual report, NNPC and PWC analysis

**Graph 1: Top Ten Gas Flaring Country in The World in 2018 (Billion Cubic Feet)**




*Source: International Energy Agency (IEA)*

*As graph one shows, while efforts to reduce gas flaring has seen a reduction in the percentage of gas flared since 2002, Nigeria still rank in the top 10 gas flaring countries in the world with 7.4 billion cubit flared in 2018 according to available data, (PWC, 2019).*

**Colonialism, the Nigerian State, Oil Companies and Environmental Law Enforcement**

If government cannot effectively effect its own laws against pollution especially given the impact of ecological disaster on the economy and health of the people, it therefore begs the question, why? To answer this demands that we look critically at the relationships that shapes the political and economic interests between the state and oil companies. It is hoped that such modest analysis is vital to unravel why environmental enforcement is weak in Nigeria and especially in the oil sector.

Colonialism created a faulty elite class (Graf, 1988). The premature integration of Africa economy into the world capitalist system did not only restrict the independent development of the African society, It also led to the creation of a fortuitous elite class that was bequeathed to Africa during independence and the reorientation of Africa economy towards monoculturalism: a single product economy. This Nigerian elite class did not only strive to copy the lifestyles of the colonizers but they also imbibed their value system as it ensures their economic viability after independence. Thus the oppressive nature of colonial rule was expanded upon by the Nigeria elite class and policies made under colonialism which advances the exploitation of natural and mineral resources were given legal backing by the new Nigerian political elites. The modus operandi of the multinational corporations which has served very well the colonial regime were very much retained and used to perpetuate environmental pollution in the country (Agbonifo, 2002). The state was thus used as a vehicle to advance the interest of this class and the exploitation of natural resources as the elite depends more and more on economic

rents, (Graf, 1988). For instance, Colonialism operates on an economic system where nature is seen as a resource to satisfy human needs and in this case, the resource-starved industries in the metropoles. This was in direct contrast to African concept of nature in precolonial times, which emphasized unity between humans and nature, (Chokor, 1993).

According to Murombedzi (2003), the colonial ideas of nature imported to Africa was based on "the European Enlightenment's dualism between humans and nature" a construction that tend to see the environment as one that must be conquered for economic growth and wealth. Colonialism was geared towards exploitation of the resources of the colonized. Hence it was premised on resource extraction to the benefits of European industries. So as a direct process of subjugation, it ensures control and gives direct access to owners of industries the resources they need to ensure production. It strives on its own rationality many of which borders on a misreading of African culture in precolonial times. Colonialism disrupted the symbiotic interactions the African people had with their environment. Divorced from policies that are more Eurocentric, driven by western-inclined environmental movement, and made for the benefits of the metropolitan society and orchestrated through private property ownership, the communal attachment to the preservation of the environment weakened. Therefore, environmental protection was not so much a priority in earliest colonial administration in Africa countries and Nigeria in particular. Resource extraction was pursued and invested upon to ensure that the shortage of degraded resources in the West is addressed.

Kameri-Mbote and Cullet (1997), has argued that the laws and policies that emanates during colonialism was chiefly geared towards resource extraction 'from the colonies for the metropoles'. It was of little concern to enact laws protecting the environment. Laws created during colonialism n Nigeria like the 1889 ordinance, the 1907 mineral (oil) ordinance and the Mineral Act of 1914, (Omorogbe, 1991), were not in actuality aimed at protecting the environment, except by protection, it meant giving British companies the sole access to these mineral and natural deposits and to explore for oil. These laws were created to fast-track the exploitation of the country resources with little or no regard to the sustainability of the process. For example, through the Minerals Act which underwent several amendments in 1925, 1950 and 1958, the colonizers claimed the ownership of the mineral resources in the country and by the ordinance, empowered European companies by granting long term leases. The Mineral Ordinance also entrenched the monopoly over the exploitation of mineral resources the colonialists have, on the territory that they have declared protectorates, (Omeje, 2006)

One of the biggest beneficiary of these earliest colonial-oriented Acts was Shell when it was granted exploratory licenses in 1921 (Olayiwole, 1987). But as Omeje (2006) contend, the license was to ensure that "the economic interests…of the British Empire against other foreign competitors, notably American oil multinationals that were obviously interested in the Nigerian market" was protected (P. 35). Shell monopoly of the oil industry in this earliest period was based on an agreement reached with the colonial state that the proceeds from the sales of crude oil will be shared on 50-50 ratio (Osoba, 1987). In noting the rational for this sharing formula, Osoba stated that it was "designed to make cheap petroleum available to the industrial societies in Europe and America, while keeping the petroleum producing countries in a state of relative poverty and underdevelopment (Osoba, 1987, p. 228) Agbonifo (2002) also wrote that the continued destruction of the Niger Delta environment is not an isolated event but one that had historical roots and attachment with colonial legislations. This view of colonial reciprocity in Africa post-colonial environmental statutes has also been noted by Kameri-Mbote and Cullet (1997). They too believed strongly that African environmental laws often lack the power of enforcement since it is tailored to advance capitalist interests and is an offshoot of colonial policies. Oil companies under colonial law were untouchable and unmonitored. They were free to do whatever they want to do. Agbonifo (2002) noted this horrifying scenario in Nigeria:

> The transnational corporation's colonial mind-set and over-riding profit motive became readily apparent only a few years after it

> began oil extraction in the Niger Delta. Enamoured by its imperial privileges, the transnational corporation resorted to wanton exploitation of the people and environment destroying forests, farmlands, and constructing overland crude oil pipelines without any regard to the wellbeing and safety of local peoples' rights to life and privacy, (p. 6)

So unlike the precolonial period, the colonizing power did not genuinely pursue the protection of the environment. As shown above, colonial by-laws like the ones mentioned, were all aimed at advancing the objectives of imperialism which is meeting the industrial demands of the multinationals in the home country. This is why Agbonifo, (2002) view, that the foundation of the colonial state was maintained through partnership and business, is an apt description.

**The Politics of Post-colonial Oil –related Environmental Laws and Enforcement in Nigeria**

As the preceding section shows, colonial environmental laws do not do much to prevent the destruction of the environment because the protection of the environment was not a priority to the colonizers. Any attempt to develop a holistic environmental policy would mean a defeat of the primary reason for coming to Africa which is to exploit resources for the fledgling industry in the home country. Hence conservation laws and whatever mineral ordinances enacted during colonialism were geared towards giving upper hands to foreign multinationals to aggressively exploit the resources in the environment while preventing others to do so. Therefore environmental regulations that were environmentally friendly and nationalistic in scope did not appear in Nigeria until much more lately.

Prior to 1992, Nigeria like most countries in the world does not have national environmental laws that addresses the impact of human activities on the environment. Environmental protection was mostly seen as an ad hoc activities that does not demand the concerted effort of the state. Since industrialization was largely view from the lens of economic development, enacting laws that will protect the environment was considered detrimental to Nigeria drive towards economic development given Nigeria dependence on oil proceeds, (Adegoke, 1998). Beginning from the 1960 oil has begun to gain significant dominance in Nigeria economy and it was believed that from an economic perspective, it was not viable for laws to be made restricting its progress. As table 3 shows while the contribution of oil to the nation's total exports in 1960/1965 was insignificant compare to agriculture or non-oil exports (it was less than 3 percent in 1960 and less than 26 percent in 1965), by 1975 it has dwarfed agricultural production and other non-oil exports and has become a major financial hub for the Nigerian government. It is this structure of the Nigerian economy defined by oil production that helps us to understand elite's accumulation and policies towards it. As earlier noted, colonialism created an elite class that, bereft of economic power will have to look to the state. Therefore environmental laws that were designed by the country's independent leaders had all the markings of colonial environmental ideas.

**Table 3: Nigeria's Total Exports and Value of Oil Exports**

| Years | Total exports (billion =n=) | Value of oil exports (billion =n=) | Oil export as % of total exports | Non-oil export as % of total export |
|---|---|---|---|---|
| 1960 | 0.34 | 0.01 | 2.1 | 97.9 |
| 1965 | 0.54 | 0.14 | 25.9 | 74.1 |
| 1970 | 0.89 | 0.51 | 57.3 | 42.7 |
| 1975 | 4.93 | 4.56 | 92.5 | 7.5 |
| 1980 | 4.93 | 13.63 | 96.1 | 3.9 |
| 1985 | 11.72 | 11.22 | 95.7 | 4.3 |

| | | | | |
|---|---|---|---|---|
| 1990 | 109.89 | 106.63 | 97.0 | 3.0 |
| 1995 | 950.66 | 927.57 | 97.6 | 2.4 |
| 2000 | 1,945.72 | 1,920.90 | 98.7 | 1.3 |
| 2005 | 7,246.53 | 7,140.58 | 98.5 | 1.5 |
| 2010 | 11,631.81 | 11,230.55 | 96.6 | 3.4 |
| 2015 | 9,729 | 6,950 | 71.4 | 28.6 |

Sources: CBN 2008, 2015

**The Land Use Act of I978 and the Nigeria Constitution**.

Like their colonial forebears, the Nigerian elites seeks to consolidate their hold to power by first appropriating the peoples land. This was achieved with the promulgation of the Land Use Decree in 1978 as Land Use Decree No 6 and incorporated into the 1979 constitution as an Act and places all lands under the trust of the federal government, (Francis, 1984). While the Land Use Act is not particular on oil and gas, it had reverberating effects on natural resource development and environmental pollution and conflict in the Niger Delta region. It led to the abysmal seizure of traditional lands for the stated purpose of development as the governors now have the authority to revoke land rights for what they considered the good of the public, (the governors were military personnel who were merely extension of the head of state at the centre). The effect of the act on the Niger delta inhabitants was even massive. The legitimization and vesting of land ownership to the government led to the dispossession of indigenous lands and empowered so to speak, oil multinationals in appropriating the lands for oil exploration all in the name of "public interest" defined as "the requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith" (see the Land Use Act, 1978). The Act was more of a rubber stamp as it was chiefly geared towards advancing government interest, making sure that the federal government continue to have the exclusive right to oil resource ownership and control (Ako, 2009). It was more or less a replica of the colonial Mineral ordinance of 1914 which grants the colonial administration the sole rights to the mineral deposits in the Niger Delta region.

The Nigeria constitution does not explicitly make provisions that directly addresses environmental discontinuities like oil spills and gas flaring, it however vested power in the central government to ensure that laws are made to the effect that "mines and minerals, including oil fields, oil mining, geological surveys and natural gas" are regulated for the common good of the people. In section 20 of the 1999 Nigerian constitution as amended, it is so stated that,

> The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria

Basically the main goal of this provision is to ensure the protection of human rights and the sustainable development of the environment. This is because the rights of every human can only be enjoyed in a sane environment or one that is free from pollution of any kind and sort. While the unambiguity in this provision is well noted, the contention has often been whether an environmentally distress person whose rights have been violated can approach the court to demand a redress. Olong (2012) has drawn attention to the unenforceability of this law by virtue of another section in the constitution, section 6(6) (c) which states that,

> The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution (The Constitution of the Federal Government of Nigeria)

As noted by Olong (2012), this section of the Nigerian constitution has been majorly interpreted to mean that the court have no power to adjudicate on matters that deals with environmental discontinuities. This is due to the fact that as posited by Abdulkadir , Section 20 of the constitution which expressly deals with the environment "falls under the provisions of fundamental objectives and directive principles of state policy set out in chapter two of the Constitution which by section 6(6) (c) are generally not enforceable" (Abdulkadir, 2014, p. 123). Indeed, this right to enforce ones environmental rights is sacrificed under the logic of multiplicity of action which makes it difficult to go to the court for redress, (Wonika, 2012).

The 1999 constitution was a departure from earlier constitutional arrangement as for the very first time, it reflected a deep concern for the sustainability of the environment. But it was largely inadequate to address environmental justice and it was deemed unable to provide succour for victims of environmental pollution and disaster in the Niger delta region of Nigeria, (Abdulkadir, 2014). The centralist nature for instance of the constitutional provisions on environmental law and enforcement has been touted as a serious impediment to the realization of sustainable development of the region, (Wonika, 2012). The centralization of environmental protection measures in the federal government of Nigeria while states play secondary roles has led to a situation of non-compliance with environmental statutes in the country

There are more specific and direct oil-related environmental laws in the country whose objectives is to address the pollution problem arising from petroleum activities. However, these laws have failed woefully due to certain ambiguities in it. Some of these laws are, The National Environmental Standards and Regulations Enforcement Agency Act, 2007 (NESREA), The National Oil Spill and Detection Agency (Establishment) Act 2006 (NOSDRA Act, 2006), and The Associated Gas Reinjection Act.

**The National Environmental Standards and Regulations Enforcement Agency Act, 2007 (NESREA)**

The NESREA Act effectively replaced the Federal Environmental Protection Agency (FEPA) Act of 1988 was enacted in 2007. It was to be the nation's top environmental agency having broad powers to enforce Nigeria's environmental policies. Its main responsibilities includes biodiversity protection, and conservation, the sustainable development of the country's natural resources, and ultimately, the development and protection of the environment, (See section 2 of the NESREA Act 2007). But curiously, it was exempted from overseeing oil companies' activities, especially in spite of various studies showing that the oil companies are the greatest violators of environmental standards in the country (Konne, 2014; Boele, Fabig, & Wheeler, 2001).

However, for a body considered as the apex in environmental enforcement issues and with such enormous power, it is difficult to understand why it is excluded from exercising oversight on the activities of the oil industry. This is because as it has been argued, it is not possible for the agency to deliver in its mandate which is to ensure sustainable development if its core function does not extend to the oil industry, which paradoxically seem to be the greatest threat to the realization of sustainable development in Nigeria, (Stevens, 2011). Nevertheless this exclusion "may have been informed by political undertones and vested interest considerations of powerful lobbyists in the Nigerian oil and gas industry" (Ugbaja, 2016, p. 57).

**The National Oil Spill and Detection Agency (Establishment) Act 2006 (NOSDRA Act, 2006)**

The establishment of the National Oil Spill and Detection Agency (NOSDRA) follows the incessant oil spills that characterised oil production in the Niger Delta region. NOSDRA was established in 2006 through an Act by the National Assembly of the Federal Republic of Nigeria to curtail the enormous

amount of spills which affects both lands and waterways and by extension the livelihood of Niger Delta communities. The Act was amended in 2018 but was denied assent by the president in 2019. According to Essen (2020), the rationale for denying assent to the bill was hinged upon the belief that the amendment undermine the authorities of the Ministry of Petroleum Resources.

According to Section 1 of the NOSDRA Act, the agency was charged with the responsibility to ensure adequate preparedness, detection and swift response to oil spills in the country. Hence in line with the objective which is majorly to implement the National Oil Spill Contingency Plan (NOSCP), which Nigeria adopted in 2003, the agency is thus required to come up with a plan that will aid the monitoring and response to oil pollution through the establishment of an operational organisation, (Section 5 of the NOSDRA Act 2006). The NOSDRA Act criminalizes failure to report oil spill under 24 hours and attracts a monetary sanction of N500, 000.00 every day that it is unreported. Sanctions were also placed on failure to clean up sites that have been impacted. (See, Section 6{2} and {3} of the NOSDRA Act). Suffice it to say that though NOSDRA powers were broad, the continued oil spills pollution in oil bearing communities is a clear indication that its enforcement powers are weak, (Watts and Zalik, 2020).

However given the rate of oil spills in the Niger Delta region where oil multinationals operates, it is clear that NOSDRA is defaulting in their mandate to ensure a cessation of oil spills. Recent statistics shows a growing incident of oil spills in the region even though it is believed that the available data is not an adequate representation, (Watts and Zalik, 2020). More so, it has become customary for oil companies and government regulatory agencies to adduce oil spills mostly to sabotage. This however has been seriously challenged given the inconsistency in data published by oil multinationals and relevant government agencies. (Watts and Zalik, 2020). Lack of personnel and support from the government has been touted as major drawbacks in the exercise of their enforcement powers. NOSDRA weak enforcement powers have also been attributed to their overly dependence on oil companies for logistics like provision of transport, oil spills data and outright co-optation by oil multinationals through financial inducement. Oil companies are mandated by virtue of the Act to provide means of transportation, whether vessels or aircrafts to environmental agencies or regulators in the event of a spill. The lack of finance, transportation system, etc. has led to situations where regulators depend heavily on oil companies for assistance in doing their job. According to a former Director General of the Agency, Mr Peter Idabor, reliance on defaulters to provide helicopters, boats and other equipments in monitoring spills has serious consequences on the objectivity of the agency. In his words:

> People are saying that NOSDRA depends on oil operators to carry out its regulation duties. They say we enter their helicopters, boats, and use other equipment belonging to operators to inspect or monitor spills, but what can we do really? There are no tools to work with…we need good offices, equipment and personnel require training and retraining (quoted in Yafugborhi, 2018, p. 6)

However, the fine for circumventing the law on oil spill is too minimal as oil companies may prefer to pay the meagre amount than to seriously get involved in any clean-ups or report one where they will be required to do clean-up. Given the inflationary rate of the Nigeria currency this is one aspect of the law that is long overdue for assessment. As one researcher puts it, "This situation then removes deterrence and fosters an environment where the law is observed more in its breach than in compliance", (Ugbaja, 2016:61)

**Table 4: Summary of Oil Spill Incidence, 2010-2021**

| Year | Number of spills | Quantity spilled (barrels) |
|---|---|---|
| 2010 | 537 | 17, 658.10 |
| 2011 | 673 | 66, 906. 84 |
| 2012 | 844 | 17, 526. 37 |
| 2013 | 522 | 4, 066. 20 |
| 2014 | 1087 | 10, 302. 16 |
| 2015 | 753 | 32, 756. 87 |
| 2016 | 434 | 1, 658. 98 |
| 2017 | 429 | 9, 097. 05 |
| 2019- April, 2021 | 881 | 43, 000 |

Source: DPR (2019-2021 data by NOSDRA)

**The Associated Gas Reinjection Act**

The country has had the notorious distinction of being tagged the second largest gas flaring country in the world and loses billions of dollars to the unwholesome practice. Gas flaring cost the country in both economic, environmental and health terms and due to its massive environmental problems it causes, the Nigerian government has responded through policies to curb it. One such policy is the 1979 Gas Reinjection Act. Act directs oil companies to submit a detailed plan towards the commercialization of gas and or its reinjection before October 1st 1980. The Act also expressly prohibits the flaring and will consider it illegal from on the 1st of April 1984 unless as permitted by the Minister of Petroleum Resources under the stewardship of the Head of State. Since 1979 when the Gas Reinjection Act was enacted to address the menace, it is on record that the government has extended this date at least seven times. Notable deadline dates are 1984, 2004, 2016, and 2020. As 2020 deadline became infeasible, Nigeria now looks to 2025 to end gas flaring according to the Minister of State for Petroleum Resources, (Akinpelu, 2021).

If the purpose of the Act was to compel oil companies to re-inject the gas that is associated with oil production, then it is safe to say that like every other oil related environmental policies in the country, the 1979 gas reinjection Act failed abysmally to ensure compliance with its laws, (Stevens, 2011; Ebeku, 2007). It has been argued by some scholars that the Act was really never enforced. Oshionebo (2009) for instance observed that

> The government has never been steadfast in enforcing the Act. For example, oil TNCs often fail to meet compliance deadlines set under the Act without the government punishing or sanctioning the TNCs. Indeed, the government seems all too willing to permit oil corporations to flare gas by prescribing generous rules for the granting of permission to flare gas (p. 55)

Government regulations on gas flaring is so weak that they don't have the technology to even track oil companies' penalty payment for flaring gas. Reasons given for the inability of the government to combat gas flaring includes oil dependency, low charges for flaring gas, and insufficient gas reinjection infrastructure. This has led to the growing concern that stopping gas flaring will be very difficult. It is contended that to stop it, will demand the government shutting down "flaring fields and cut off the income they provide", an action that the government cannot take because of the revenue from oil production, (Akinpelu, 2021). The business-like relationship between the Nigerian government and oil companies has also affected enforcement of this Act, and other Acts overseeing oil production in the country. Nigeria is in joint venture agreement with oil companies receiving a large proportion of the money realized in the region.

There are other environmental statutes that were made to enhance compliance in the oil industry. Examples includes Environmental Impact Assessment Act which is more of a generic Act like NESREA (considered earlier), Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, 2011, The Oil in Navigable Waters Act of 1968, The Oil Pipelines Act of 1956, and the Nigeria's Criminal Code of 1916. Some of these laws or Acts are generic laws that have no specific relationship with oil and gas exploitation in Nigeria Niger Delta region. Their mandate nevertheless aimed at protecting the environment from wanton destruction. They too however, suffers from political intrusion and weak enforcement. The UNEP Report (2012) which exposed the perverseness of oil pollution in the entire Niger Delta region is an indictment on the country's enforcement agencies and shows widespread non-compliance with the country's environmental laws.

**Conclusion**

The pollution of the Niger Delta environment is not as a result of the dearth of environmental laws in Nigeria. As the paper shows, Nigeria have laws that directly strives to resolve most of the problems that bedevilled the region. Some of these laws even go as far as to encourage the participation of the public to take active role in ensuring a quality environment like the EIA Act. However, the contention has being in the areas of enforcement as oil multinationals have exploited the loopholes in these laws for their selfish goals. The Nigerian government has also due to the importance of the oil industry, enact laws that seem to be more favourable to the oil companies to the detriment of host communities who suffers immeasurably from the negative externalities that comes with oil production. While there is certainly need for many of these laws to be updated in other to ensure effective deterrence and compliance, the focus should be to create laws that are enforceable. As the paper shows, this is still difficult given the reliance of the government on oil rents which hinders its political will to enforce the country's environmental laws. It is therefore a matter of urgency that the Nigerian government creates policies that will enhance the viability of other sectors. This will lessen its dependency on oil and oil multinationals, and also lead to a re-evaluation of its joint agreement with oil multinationals.

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