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Addressing the Defects in the Legal Frameworks on Toxic Materials Pollution from Oil Exploitation in Nigeria

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Abstract

The Koko toxic waste dump incident of 1988 jolted the Nigerian government to the reality of the effects of toxic materials on human health and the environment. Prior to 1988, the government of Nigeria had no legal and policy framework on environmental protection and environmental matters were not constitutionally provided. The absence of constitutional provision on environmental matters and a legal framework on environmental protection paved way for the Koko toxic waste dump incident and incessant pollution of the oil endowed communities with toxic materials from oil exploitation activities. The repeat of Koko toxic waste incident in 2017 and records of constant pollution of the environment with flared gas and oil spills have shown the ineffectiveness of the extant legal framework on hazardous waste. This has led to loss of lives and means of livelihoods and has resulted in conflicts, agitations, insecurity, and resort to self-help in the oil endowed States of Nigeria. The objective of this research, therefore, is to address the defects in the legal framework on toxic materials and oil exploitation in Nigeria, with a view to identify areas for reform. The findings shows that the absence of an effective sanction regime for corporate entities, the absence of effective institutional and administrative frameworks are the defects in the extant legal frameworks and the major reason for the continued pollution of the environment of the oil endowed states with toxic materials from gas flaring, oil spillage and sludge from exploitation activities. It also finds that reliance on the extant legal framework for protection of the environment from pollution from toxic materials is inadequate in terms of the country meeting the targets of the African Agenda 2063, Sustainable Development Goals, and the commitments in the Paris Agreement. The research recommends the reform of the Harmful Waste Special (Criminal) Provisions Act to include effective sanction regime for corporate entities and enforcement mechanisms that will promote environmental justice in Nigeria.

Keywords: Toxic Materials, Pollution, Oil Exploitation, Environmental Justice

1.0 Introduction

One notable effect of oil exploitation activities on the environment is the pollution of the environment with toxic materials which has led to the loss of means of livelihood, health-related

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challenges, birth defects, poor development and displacements.[767] There is no doubt that the petroleum sector has substantially improved the nation's economy over the years as oil is considered the mainstay of Nigerian economy.[768] However, activities associated with petroleum exploitation, development and production operations have left negative impacts on the atmosphere, soils and sediments, surface and groundwater, marine environment, biological diversity and sustainability of terrestrial ecosystems of the Oil endowed State.[769] These negative impacts of oil exploitation activities need to be addressed through an effective sanction regime in the legal frameworks to deter offenders and future offenders from continuous pollution of the environment. The sanction regime in the extant legal framework on toxic materials and oil exploitation in Nigeria is inadequate and unable to serve as a deterrent to ceaseless toxic material pollution in the Oil endowed States. The need to reform the extant legal framework and improve upon the sanction regime is key to achieving environmental sustainability in the oil endowed States that bear the greatest brunt of pollution emanating oil exploitation activities.

The article is divided into five sections to ease understanding and enable flow of arguments canvassed in this research work. The section after this introductory section is the overview of the extant legal frameworks on toxic materials and oil exploitation in Nigeria, the third section will examine the defects in the extant legal framework, section four will address the identified defects in the legal frameworks, and section five concludes the work.

2.0 Overview of the Extant Legal Frameworks on Toxic Materials and Oil Exploitation in Nigeria

This section will examine the extant legal framework on Toxic Materials and Oil Exploitation in Nigeria.

2.1 The Constitution of Federal Republic of Nigeria 1999 as amended.

The issue of the protection of the environment was for the first time given Constitutional recognition under the Constitution of Federal Republic of Nigeria 1999 as amended (CFRN 1999, as amended). It is important to state that the CFRN 1999, as amended elevated environmental matters to Constitutional status.[770]It is common knowledge that the previous constitutions of Nigeria, that is, the 1979 Constitution, the Republican Constitution of 1963, the Independence Constitution of 1960, the Littleton Constitution of 1954, the Macpherson Constitution of 1951, the

[767] Olubayo, Oluduro. "Oil Exploration and Human Rights Violations in Nigeria's Oil Producing Communities." Intersentia 5 June 2014.www.intersentia.com.Accessed 21 May 2021.

[768] Iloeje, Anthony. "Crude Oil Exploitation: The Environment and Economic Implications to the Niger Delta People." *International Organisation of Scientific Research Journal of Environmental Science, Toxicology and Food Technology.*Vol.10, no.7, 2016,p.47

[769] John, Kanayochukwu Nduka. "Impact of Oil and Gas Activities on Acidity of Rain and Surface Water of Niger Delta, Nigeria: An Environmental and Public Health Review." *Journal of Environmental Protection*.Vol.7, no.4,2016,p.45.

[770] Nwauzi, Linus and Amadi Felix. "Protection of Environment in Nigeria under the 1999 Constitution."www.researchgate.net/. Accessed 12 April 2021.

Richard Constitution of 1946, and the Clifford Constitution of 1922 never provided for environment in any form, either as a fundamental right or a directive principle.[771]

The CFRN 1999, as amended provides for environmental matters as one of the fundamental objectives and directive principles of state policy. Section 20 thereof states; thus, 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria.' The section directed that matters mentioned therein should be given effect to by the government by way of a legislation to promote environmental protection. Though, the section is under chapter two of the CFRN 1999, as amended which is non-justiciable. However, with judicial activism and public interest litigation, matters of the environment are considered justiciable in Nigeria especially as they have been legislated upon by the National Assembly at the federal level and the State Houses of Assembly at the various States.

This is evidenced by the Supreme Court decision in the landmark case of *Center for Oil Pollution Watch v. NNPC*, [772] where the Centre for Oil Pollution Watch commenced legal action against the Nigerian National Petroleum Corporation (NNPC) over an oil spillage in ACHA Community of Abia State of Nigeria. The oil spillage was allegedly caused by the defendant's negligence resulting from its pipeline, which had corroded due to lack of maintenance, had ruptured, fractured, and spewed its entire Contents of persistent hydrocarbon mineral oil into surrounding streams and river of lneh/Aku, resulting in contaminating two community streams that were the major sources of water supply to the community. The plaintiff alleged that although the defendant contained the spillage on the surface, it failed to clean up or reinstate the Ineh/Aku streams/river. Furthermore, the plaintiff averred that the respondent was negligent in both the causation and containment of the oil spillage; that the spillage had harmful effect on living resources, marine life, human health, and other usage of the streams. On appeal the Supreme Court held that there is no gain saying in the fact that there is increasing concern about climate change, depletion of the ozone layer, waste management, flooding and global warming etc… both nationally and internationally, countries and organizations are adopting stronger measures to protect and safeguard the environment for the benefits of the present and future generations and it is on that reason that they will expand the principle of Locus standi to allow any one bring an action to court on environmental matters.

Also, the ratio in the decided case of *AG of Ondo State v. AG of Federation*[773] which accentuates the point that environmental matters are justiciable once legislated upon despite being under chapter two of the Constitution that is non-justiciable. The matter was instituted at the Supreme Court sitting in its original jurisdiction. On behalf of the government of Ondo State, the plaintiff brought this action against the Attorney-General of the Federation and the Attorneys-General of the 35 states comprising the Federal Republic of Nigeria. The major issue for determination was whether the Corrupt Practices and Other Related Offences Act, 2000, is valid and as a law enacted

[771] Ayodele, Babalola. "The Right to a Clean Environment in Nigeria: A Fundamental Right?" *Hastings Environmental Law Journal.*Vol.26, no.1, 2020,p.3.

[772] (2019) 5 NWLR (PT.1666) p.518. The Supreme Court of Nigeria showcased the fact that environmental matters are justiciable by extending the scope of application of the doctrine of *locus standi* as it relates to environmental matters and the right to institute an action for the protection of the environment. The Court also noted that operators, owners and oil pipeline license holders have a duty to maintain and repair their oil pipelines so as to safeguard the water, air and land, forest and wildlife from environmental degradation.

[773] (2002) LPELR-623(SC).

by the National Assembly and in force in every state of the Federal Republic of Nigeria (including Ondo State) and if chapter two of the CFRN 1999, as amended is justiciable. The Supreme court held in affirmative that two of the CFRN 1999, is justiciable if legislated upon by the National Assembly or State Houses of Assembly.

This justifies the reason why the Federal Government and the State Governments make laws that will guarantee environmental protection, promote safe disposal of waste, and ensure that the citizens have access to a healthy environment free from all forms of pollution. The Constitution being the grundnorm,[774] has laid the foundation for the enactment of laws that will ensure environmental protection in Nigeria, and this includes promoting a healthy ecology free from all forms of toxic material pollution in the oil-endowed states of Nigeria.

2.2 The Harmful Waste (Special Criminal Provision Etc) Act Cap H1, LFN 2004

The Harmful Waste (Special Criminal Provisions Etc) Act[775] was enacted after the Koko toxic waste incident.[776] The Act was enacted with the specific aim of prohibiting the carrying, depositing, and dumping of hazardous wastes on any land, territorial waters and matters relating thereto.[777] This Act is meant to serve as a penal legislation. The offences are constituted when a person carries out any of the acts or omissions stated in sections 1 to 5 of the said Act. Also, the said Act made provisions for civil liability in section 12. The said Act sought to remove any immunity conferred by the diplomatic Immunities and Privileges Act on certain persons for the purpose of criminal prosecution. It is however important to note that despite its provisions on civil and criminal liability, it does not provide compensation to the victims of environmental damage. The resultant damage to the environment can lead to health problems, loss of agricultural produce by farmers, and food scarcity, which requires compensating the victims of environmental damage.

Section 6 of the said Act provides a sentence of life imprisonment and in addition the forfeiture of any aircraft, vehicle, or land connected with or involved in the violation. This provision of the said Act is applicable to individuals and not to corporate bodies. However, the question that arises from that provision of the said Act in question is where the offence is committed by a corporate body will the sanctions in that provision apply? Will the directors or any person acting in a representative capacity of the corporate body be imprisoned for life based on the provision of section 6 of the said Act? Based on literal interpretation of section 6, the sanctions are applicable to individuals who violate the Act not on corporate bodies as section 7 of the Act provides as follows: Where a crime under this Act has been committed by a body corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of-

(a) a director, manager, secretary or other similar officer of the body corporate;

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[774] The Constitution of the Federal Republic of Nigeria 1999 (as amended). S.1.See also Ogbara, Nurudeen. "Constitutional Protection of Environmental Right in Nigeria." www.academia.edu. Accessed 22 April 2020.

[775] Cap H1 LFN 2004.

[776] Nwufo, Cecilia Chinwe. "Legal Framework for the Regulation of Waste in Nigeria." *An International MultiDisciplinary Journal Ethiopia.* Vol. 4, no.2, 2010, p. 491.

[777] Gozie, Ogbodo**.** "Environmental Protection in Nigeria: Two Decades after the Koko Incident." A*nnual Survey of International & Comparative Law*,p.1.

(b) any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, he as well as the body corporate, shall be guilty of the crime and liable to be proceeded against and punished accordingly.

The sanction imposed on corporate bodies and the directors or any person acting in a representative capacity for a corporate body under section 7 of the said Act are inadequate as the said section provides that any corporate body found liable will be proceeded against and punished accordingly. The inadequacy of the sanction regime in section 7 is a gap in the said Act as there is no yard stick to measure the kind of sanction or punishment that will be meted on any erring corporate body to serve as deterrent to others who may wish to violate the provisions of the said Act. This may be the reason no identifiable corporate body has been prosecuted or convicted under the provisions of the said Act since enactment despite the constant dumping of toxic materials on the environment of oil endowed States by the Transnational Oil companies (TNOCs).[778]

Additionally, inadequacy of the sanction regime in the Act is the reason there are yet to be prosecution and conviction of the culprits involved in the 2018 incident of oil-related toxic material dumping in Koko, Delta State.[779] Though, the case was probed by the 9th House of Representative Committee on Environment, Petroleum Resources, Upstream, and Gas, more than five (5) years after the occurrence of the incident.[780] It is important to note that the 2018 Oil-related toxic material incident in Koko is a crime and in law criminal matters are not statute-barred but the delay in investigation, prosecution and conviction of the culprits denies the indigenes justice. According to William Gladstone, 'Justice delayed is Justice denied.'[781] Considering that it is over five years since the second Koko toxic materials incident and the culprits are yet to be prosecuted, one can say that justice has been delayed and the suspects will not be deterred from committing the offence again to the detriment of the environment and health of the indigenes of Koko community.[782]Bassey[783] and **Ezeudu**[784]have also expressed their concerns about the absence of a single conviction of corporate bodies that discharge toxic materials during oil exploitation and exploration activities in the environment of the oil endowed States since the enactment of the said Act.

Ezeudu attributes the absence of a single conviction since enactment of the Act to the absence of effective sanction regime for corporate bodies and effective institutional framework that will

[778] Nwufo, Cecilia Chinwe. "Legal Framework for the Regulation of Waste in Nigeria." p.491.

[779] "Toxic Waste in Koko." The Nationng,17 Mar.2018, www.thenationonlineng.net/toxic-waste-koko. Accessed 23 April 2020.

[780] Amaize, Emma,Ovuakporie Emman, and Agbakwuru Johnbosco. 'Reps Probe Alleged dumping of Toxic Waste in Koko.'Vanguard Newspaper, 2 Mar. 2017. www.vanguardngr.com. Accessed 12 July 2021.

[781] Sourdin, Tania and Burstyner Naomi. "Justice Delayed is Justice Denied." www.ssrn.com.Accessed 17 July 2021.

[782] Amaize, Ovuakporie, and Agbakwuru. "Reps Probe Alleged Dumping of Toxic Waste in Koko," p. 31.

[783] Okpa, Ujong Bassey. "Adequacy and Enforcement of Green Crimes: A Stinging Satire of the Nigerian Case." *Sch Int J Law Crime Justice.* Vol.3,no 1 ,2020,p. 49.

[784] **Ezeudu, Martin-Joe.** "Revisiting Corporate Violations of Human Rights in Nigeria's Niger Delta Region: Canvassing the Potential Role of the International Criminal Court." *African Human Rights Law Journal*. Vol. 11, no. 1, 2011,p.23.

ensure administration and enforcement of the provisions of the said Act.[785][786] This gap in the extant legal framework needs to be addressed to ensure that offenders are adequately punished so as to serve as deterrent to future offenders and to ensure that the oil endowed States get environmental justice. Another identified reason for absence of a single conviction since the enactment of the Act is the fact that the jurisdiction to try all cases under the Harmful Waste (Special Criminal Provision) Act is vested on the Federal High Court.[20]Ukponu[21]is of the view that the court is already overburdened with other cases in which it has exclusive jurisdiction, and as such imposing cases of hazardous/toxic materials on it would stretch the court resulting in congestion and delayed trials. Ukponu[787] has called for specialised environmental courts that will fast track adjudication of all environmental matters including matters under the Harmful Waste (Special Criminal Provisions) Act of Nigeria.

Considering the recent cases of pollution of land and seas with toxic materials that led to death of fishes in Rivers, Delta, and Bayelsa States respectively,[788] it is important for law and policy makers to look towards a reform of this legislation which has become obsolete and ensure that offenders are punished and to deter future offenders. The Act is in dire need of reform to incorporate all the identified gaps brought to the fore in this work.

2.3 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

The Federal Government in line with section 20 of the CFRN 1999, as amended established the National Environmental Standards and Regulations Enforcement Agency (NESREA) under the Federal Ministry of Environment. The National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act) empowered the agency to take responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.[789] The NESREA Act also empowers the Agency to be responsible for enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international Agreements, Protocols, Conventions and Treaties on the environment to which Nigeria is a signatory.[790] By the NESREA Act 2007, the Federal Environmental Protection Agency Act was repealed.[791]

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[785] Amaize, Ovuakporie, and Agbakwuru. "Reps Probe Alleged Dumping of Toxic Waste in Koko," p. 31

[20] Harmful Waste (Special Criminal Provisions) Act, LFN 2004,S.13.

[786] Ukponu,Michael."Environmental Law and Access to Justice in Nigeria - A Case for a Specialised National Environment and Planning Tribunal (NEPT)."*Nnamdi Azikiwe University Law Review*. Vol .1, no 1,2019 p.52.

[787] Okpa, Ujong Bassey. "Adequacy and Enforcement of Green Crimes: A Stinging Satire of the Nigerian Case.' *Sch Int J Law Crime Justice*,p. 49.

[788] Collins, Nnabuife. "How Toxic Discharge Caused Massive Death of Fishes in Delta, Rivers and Bayelsa." Nigerian Tribune. 15 May 2020,www.tribuneonlineng.com. Accessed 1 May 2021.

[789] The National Environmental Standard and Regulation Enforcement Act 2007, S.7(b).

[790] The National Environmental Standard and Regulation Enforcement Act 2007, S. 7.

[791] The National Environmental Standard and Regulation Enforcement Act 2007 CAP F 10, S.36.

One of the functions of the Agency as stipulated in Section 7 (g) of the NESREA Act is to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector. In line with this function, the National Environmental (Hazardous Chemicals and Pesticides) Regulations were made.[792] These regulations have the objectives of protecting human health and the environment from the harmful effects of hazardous chemicals and pesticides, and other agro chemicals. The regulations also promote safety in the use of these hazardous chemicals, control the import, export, sales, and handling of hazardous chemicals, contribute to the sustainable development of agriculture and the conservation of the environment, and enforce the provisions of the Harmful Waste (Special Criminal Provision etc.) Act among other things.[793]

Under regulation 8(1), a person importing or exporting hazardous chemicals and pesticides shall affix to every package or container label, with the following information (a) name, address, and telephone number of the manufacturer, importer, exporter or any other relevant person; (b) the trade name, chemical name, common name and Chemical Abstract System (CAS) number of the substance and the manufacturer and expiring date of the substance; (c) signal words such as "Danger" "Warning" and Pictograms, in accordance with United Nations Global Harmonized System (UN GHS). By the provision of regulation 33 (1) any person who contravenes the provision of the Regulations commits an offence and shall be liable on conviction to a fine not exceeding ₦1,000,000 (One Million Naira) or imprisonment for a term not exceeding 5 (five) years. Where an offence is committed by a body corporate, it shall on conviction, be liable to a fine not exceeding N1, 000,000 (One Million Naira) and an additional fine of N50,000 (Fifty Thousand Naira) for every day the offence subsists.[794]

However, this regulation does not apply to hazardous/ toxic materials from oil and gas sector as it was clearly stated in the NESREA Act that the agency will enforce compliance with regulations on the disposal of hazardous chemicals and waste other than in the oil and gas sector.[795] Regulation of the oil and gas sector is within the mandate of National Oil Spill Detection and Response Agency (NOSDRA).[796] Accordingly, NOSDRA lacks the power to regulate toxic material pollution as it is the sole mandate of NESREA to administer the Harmful Waste (Special Criminal Provisions) Act. Further, the NESREA Act provides a wider coverage on toxic materials which is the focus of this thesis as it addressed issues on harmful waste in section 35 and provides sanctions for hazardous /toxic materials in Section 27. An examination of section 27 of the NESREA Act shows that the Act prohibits the discharge of hazardous substances into the air, land, and the waters of Nigeria or at the adjoining shorelines, except where such discharge is permitted or authorized under any law in force in Nigeria. The section contains penalty for violating these provisions which is a fine not exceeding N1, 000,000 (One Million Naira) upon conviction for an individual or to imprisonment for a term not exceeding 5 years.

[792] National Environmental (Hazardous Chemicals and Pesticides) Regulations, S.I. No. 65 of 2014.
[793] National Environmental (Hazardous Chemicals and Pesticides) Regulations S.I. No. 6 5 of 2014, Reg.1.
[794] National Environmental (Hazardous Chemicals and Pesticides) Regulations, S.I. No. 65 of 2014, Reg. 33 (2).
[795] The National Environmental Standard and Regulation Enforcement Act 2007, S. 7 (g).
[796] National Oil Spill Detection and Response Agency Act 2006,S.6.

Where the offence was committed by a body corporate, it shall on conviction, be liable to a fine, not exceeding N 1,000,000 (One Million Naira) and an additional fine of N50,000 (Fifty Thousand Naira) for every day the offence subsists. Also, every person who at the time the offence was committed oversaw the body corporate shall be deemed to be guilty of such offence. The person shall be liable to be proceeded against and punished accordingly provided that nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. The said Act took cognizance of the provisions of the Harmful Waste (Special Criminal Provisions) Act as it stated that, the provisions of the Harmful Waste (Special Criminal Provisions, etc) Act shall apply in respect of any hazardous substance constituting harmful waste as defined in section 37 of the NESREA Act.[797]

Though, the NESREA Act made provisions for sanction of both individual and body corporate that violate the provisions of the said Act by direct or indirect discharge of harmful quantities of toxic materials into air, land or water in Nigeria,[798] it is important to state that the penalty for a body corporate is inadequate and [799]a corporate entity may prefer to pay the sum of ₦1,000,000 (One Million naira) and daily N50,000 (fifty thousand naira) penalty than to spend billions of Naira on recycling[800] which is considered not to be cost efficient to the corporate entity.[801]One can deduce such preference by corporate bodies gleaning from the actions of a TNOC like Shell Petroleum Development Company. Despite paying the sum of $1[802]5.5 million out of court settlement to the Ogoni region in 2009 in the New York case of *Wiwa v. Royal Dutch Petroleum*[37]for the harmful effect of gas flaring, Oil pollution and human right abuses, Shell Petroleum Development Company continued routine gas flaring. This is evidenced by the fact that Oil Spills increased to 2000 tonnes while gas flaring by Shell increased by ten percent (10%) in 2019.[803] This reveals that the fine prescribed under the NESREA Act will not deter corporate bodies like Shell Petroleum Development Company from polluting the environment with toxic materials.[804]

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[797] The National Environmental Standard and Regulation Enforcement Act 2007, S. 27 (5).

[798] Direct discharge of toxic materials is where the toxic materials where intentionally discharged or dumped on the environment, while indirect discharge are referred to as accidental discharge of toxic materials. Author links open overlay panel; **Torgeir, Bakke**, **Jarle Klungsoyr** and **Steinar Sanni**. "Environmental Impacts of Produced Water and Drilling Waste Discharges from the Norwegian Offshore Petroleum Industry." *Marine Environment Research.*Vol.92 , 2013, p.154.

[799] The National Environmental Standard and Regulation Enforcement Act 2007,S.27 (2) and (3).

[800] Recycling refers to reuse and reclamation of useful materials in a manner that is safe and protective of human health and the environment. Toxic materials are recycled if they are used, reused, or reclaimed. Shaija Sign Shikha. "Treatment and Recycling of Waste Water from Oil Refinery/Petroleum Industry." *Advances in Biology Treatment of Industrial Waste Water and their Recycling for Sustainable Future.* Springer, 2018,p.303.

[801] Shaija, Sign Shikha."Treatment and Recycling of Wastewater from Oil Refinery/Petroleum Industry."*Advanced in Biological Treatment of Industrial Waste Water and their Recycling for a Sustainable Future,* Springer, p. 332.

[802] Civ. 8386 (KMW) S.D.N.Y. 22 February 2002.

[803] Energy Voice. "Flaring Rises for Shell in Nigeria." *Energy Voice*.10 May 2021.www.energyvoice.com/.Accessed 30 August 2021.

[804] **Andy, Rowell. "Shell Pays up in New York but Continues to Flare Gas." *Ecologist.* 23 June 2009.**www.theecologist.org/**.Accessed 19 July 2021.**

2.4 The National Oil Spill Detection and Response Agency Act, 2006

The National Oil Spill Detection and Response Agency Act (NOSDRA) was enacted in 2006.[805] The Act established the National Oil Spill Detection and Response Agency which is an institutional component of the NOSDRA Act saddled with the responsibility of coordinating the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the international convention on Oil Pollution Preparedness and Cooperation (OPPC90) to which Nigeria is a signatory. [806]Foremost on the objective of the Agency as stipulated in Section 5 (a) of the NOSDRA Act is to 'establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution.'

The function of the Agency as stated under Section 6 (1) (d) of the Act is to 'co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government.' However, it is important to state that, while the NESREA administers Harmful Waste (Special Criminal Provisions) Act and toxic materials other than harmful waste from the Oil and gas sector, the NOSDRA Act did not address issues of oil related toxic materials dumped on the environment despite the fact that sludges and other oil-related toxic pollutants resulting from exploitation activities are discharged on the environment by the TNOCs.[807]Considering the need to fill this gap, it would be appropriate for the NOSDRA Act to be amended to address dumping of toxic/harmful materials arising from Oil exploitation activities on the environment. This will fill the gap in administration of toxic materials from the oil and gas sector which is not within the mandate of NESREA.[808]

2.5 The Petroleum Industry Act 2021

Nigeria's petroleum laws were overdue for reform, and the Petroleum Industry Act 2021 (PIA 2021) came with improvements to the subsector after 14 years of attempts made to pass the bill into law.[809] The Act repealed some existing petroleum laws,[810] while some petroleum laws were also saved pending the expiration of existing oil prospecting license and mining leases.[811]It introduced changes to the governance, administrative, regulatory, and fiscal framework of the Nigerian oil and gas industry.[812]The implication is that the repealed petroleum laws cease to exist

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[805] The National Oil Spill Detection and Response Agency. The National Oil Spill Detection and Response Act 2006 . www.nosdra.org.ng. Accessed 17 May 2021.

[806] The National Oil Spill Detection and Response Act 2006, S.5.

[807] Enegide, Chinedu and Chukwuma Kelechukwu Chukwuemeka. "Oil Spillage and Heavy Metals Toxicity Risk in the Niger Delta Nigeria." Vol 8, no.19, 2018,p. 162.

[808] Chuks, Ezike. "An Analysis of the Deficiencies Impeding Regulation of Environmental Standards in the Nigerian oil and Gas Industry and Possible Solutions Through Legal Transplantation from other Model Regimes." www.openair.rgu.ac.uk. Accessed 16 May 2021.

[809] Solina, Kennedy, Martin Dietrich Brauch, PerrineToledano, and TehtenaMebratu-Tsegaye."Nigeria's Petroleum Industry Bill: A Missed Opportunity to Prepare for the Zero-Carbon Future."www.ccsi.columbia.edu/.Accessed 3 July 2021.

[810] The Petroleum Industrial Act 2021, Section 310 (1) .The Associated Gas Reinjection Act of 1979, the Hydrocarbon Act of 1965, Motor Spirit return Ac, Nigerian National Petroleum Corporation (Project) Act of 1993, Nigerian National Petroleum Corporation Act of 1977.

[811] Petroleum Industrial Act 2021, Section 311 (9), the Petroleum Act of 1969, Oil Pipelines Act 1956, Petroleum Profit Tax Act.

[812] Petroleum Industry Act 2021,S. 2.

with the enactment of the Petroleum Industry Act, but the PIA 2021 provides that any regulations or subsidiary legislation made under any of the repealed Act that is not inconsistent with the provisions of the PIA shall continue to be in force until revoked or amended by any other subsidiary legislation made under the PIA 2021.[813]

The essence of the enactment of the PIA 2021 is to ensure transparency, strengthen the governing institutions, and attract investment capital, among other objectives. This is important as the institutions are strengthened to enforce petroleum related law and hence eliminate or reduce pollution of the environment of the oil endowed states with toxic materials.[814] The Act also seeks to limit the power of the Minister of Petroleum Resources by revoking the power to grant, amend, revoke or renew licenses, and removing the Minister's seat on the board of NNPC Limited, which the thesis aligns with.[50] Two proposed regulators, the Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority would replace the existing regulating bodies and consult each other on new regulations or amendments.[815] The thesis aligns the regulatory roles to be exercised by the regulatory authorities, allowing for more transparent oversight and will help enforce measures that will end pollution of the Oil endowed States with toxic materials from drilling or oil exploitation activities of TNOCs.

The PIA 2021 has been commended for improving upon the sanction regime in the petroleum related laws and inclusion of environmental component as it proposes encouragement for environmental clean-ups in the Oil endowed States of Nigeria.[816]For instance, section 238 of the PIA 2021 states that failure to incorporate host communities development trust fund may be grounds for revocation of applicable license or lease. The use of 'may" against 'shall' has marred the effectiveness of the sanction regime in section 238 of the PIA 2023. Further, the PIA 2021 established environmental remediation funds, [817] and a requirement for environmental management plan for any project requiring an environmental impact assessment and prohibit the use of chemicals in upstream petroleum operations unless a permit is granted by the Commission.[818] However, these environmental components are not strong and will not speed up ecological restoration of the environment of the oil endowed states that are being damaged by toxic materials arising from exploration activities of TNOCs. This is because the PIA 2021 still provided an avenue for gas flaring in the Oil endowed States as against total phasing out of gas flaring, which has resulted in ill health and death of human beings and most living things in the environment of the Oil endowed States.[819] Considering that Nigeria was unable to meet the 2020

[813] Petroleum Industry Act 2021,S. 311 (1).

[814] Ezike, Chukwuemeka Chuks. "Deficient Legislation Sanctioning Oil Spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill.'' [50]Petroleum Industry Act 2021,S. 3.

[815] Petroleum Industrial Act 2021 , Ss. 4 and 29 .The DPR, Petroleum Inspectorate, the Petroleum Products Pricing Regulatory Agency, the Petroleum Equalisation Fund, among others.

[816] Petroleum Industrial Act 2021, S.102.

[817] Petroleum Industrial Act 20 21, S.103.

[818] Petroleum Industrial Act 2021,S. 102 (7).

[819] Okunuga, Adebisi. "End Gas Flaring NG: The Unspoken Dangers of Gas Flaring In Nigeria." International Climate Change Development Initiative Africa. 20 Sept.2020. www.medium.com/climatewed/endgasflaringng.Accessed 3 July 2021.

target of phasing out gas flaring, it was expected that the PIA 2021 will include such provisions that will help the country phase out gas flaring without including exceptions to gas flaring.[820]

The PIA 2021 despite prohibiting gas flaring, still provides for metering to ascertain the quantity of gas flared and requires gas producing licensees or lessees to submit an elimination and monetization plan for the associated gas within one year of the effective date of the law, and also created an avenue for continuous gas flaring in the Oil endowed States of Nigeria.[821] This is because it made provisions for circumstances where gas can be flared which includes; where it is required for facility start-up; or for strategic operational reasons, including testing.[822]The PIA 2021 also contains provisions where gas flaring penalty may not apply which includes; in event of emergency, pursuant to an exemption granted by the Commission; or as an acceptable safety practice under established regulations.[823]

These provisions, especially the provision on emergency, may only serve as an avenue to flare gas by TNOCs and illegal refineries.[824] The PIA 2021 by these provisions failed to take into consideration the health related challenges such as asthma, cancer, bronchitis, birth defects that are associated with toxic materials emanating from gas flaring on the indigenes who live in the oil endowed states.[825] Despite environmental remediation, this health related challenges will persist because of the harmful nature and exposure of the indigenes of the oil endowed states to toxins from gas flaring in the environment.[826] The country by the provisions in the PIA 2021 on flaring gas in exceptional circumstances have lost the opportunity of total phasing out of gas flaring and achieving zero carbon in line with the flare out target set by the country and their commitment to the Paris Agreement.[827]The country also lost the opportunity of ensuring ecological restoration, promoting a healthy environment free from toxic materials in the Oil endowed States of Nigeria as well as mitigating global climate change.[828] The PIA 2021 clearly did not effectively eradicate the problem in the obsolete petroleum related laws it came to solve. This will prolong the agitations in the oil endowed States.

2.6 Petroleum Act of CAP P10, LFN 2004

The Act regulates oil and gas exploitation in Nigeria. It is among the Acts that were not repealed by the Petroleum Industrial Act 2021.[829] This is because the Petroleum Act is saved from being

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[820] Kingley, Jeremiah. "Zero Gas Flaring by 2020 No Longer Possible, Says FG." *Guardian Newspaper.* 18 Aug. 2019.www.guardian.ng/. Accessed 3 July 2021.

[821] Petroleum Industrial Act 2021, Ss. 104,106 and 107.

[822] Petroleum Industrial Act 2021,S.107.

[823] Petroleum Industrial Act 2021,S.104.

[824] Petroleum Industrial Act 2021,S.104 (1) (a).

[825] Adebisi, Okunuga. "End Gas Flaring NG: The Unspoken Dangers of Gas Flaring in Nigeria." International Climate Change Development Initiative Africa. 20 Sept.2020 .

[826] Nenibarini, Zabbey et al. "Remediation of Contaminated Lands in the Niger Delta, Nigeria: Prospects and Challenges." *Science of The Total Environment Journal*.Vol.586, 2017,p.553.

[827] **Afolabi ,Elebiju and Daniel Odupe. "Cessations and Destinations: Issues in Gas Flaring Commercialisation in Nigeria."www. arbiterz.com/.Accessed 2 July 2021.**

[828] Chinwe, Nwanya.'Climate change and Energy Implications of Gas Flaring for Nigeria.'*International Journal of Low-Carbon Technologies*.Vol.6, no.3, 2011,p.151.

[829] The Petroleum Industrial Act 2021, Section 310 (1).

repealed until the expiration of existing oil prospecting licences and mining leases. [830]The Act provides for the exploration of petroleum from territorial waters and the continental shelf of Nigeria and also vests the ownership of and all onshore and offshore revenue from petroleum resources in the Federal Government of Nigeria.[67] The Act empowers the Minister of Petroleum Resources to grant three types of interests namely; exploration, prospecting and production rights.[831] The Act also empowers the minister to make regulations which include regulations on environmental protection in the oil and gas sector.[832] Pursuant to the Act, the minister issued the Petroleum (Drilling and Production) Regulations which implemented the provisions of the Petroleum Act[833] with respect to (applications for) oil exploitation licenses and oil prospecting licenses and relative operations of boreholing and oil extraction in Nigeria.[834]

In practice, the former Department of Petroleum Resources ("DPR") now the Upstream Petroleum Regulatory Commission exercises the power granted by section 9(1) of the Petroleum Act pursuant to its mandate to enforce safety and environmental regulations.[835] In carrying out this regulatory function effectively, the DPR has the responsibility of issuing environmental guidelines, which will ensure control of pollution from various aspects of petroleum exploitation.[836] However, one wonders the effectiveness of the regulations issued by the Minister seeking to enforce the provisions of the Petroleum Act and the guidelines issued by DPR to help in pollution control, considering the constant pollution of the environment of oil endowed States with toxic materials during petroleum exploitation.

It therefore reveals that the Regulation despite having the force of law has not effectively enforced the provisions of the 52 years old Petroleum Act. This is because oil exploitation licenses are still being renewed despite the need for remediation in the polluted environment of the oil endowed States.[837] While the guidelines made pursuant to the regulations to ensure pollution control has also not provided a remedy to the constant pollution of the environment of the Oil endowed states especially as there are still incidences of pollution with toxic materials resulting from oil spillage.[838]This is as a result of the ineffectiveness of the sanction regime in the said Act. Section 13[76] of the said Act provides for a penalty of N2000 for anyone found guilty of an offence under

[830] Petroleum Industrial Act 2021, Section 311 (9).
[67]Petroleum Act CAP P10 LFN 2004, S. 1.
[831] Petroleum Act CAP P10 LFN 2004, S. 2
[832] Petroleum Act CAP P10 LFN 2004, S.9(1) (b) (i) and (iii).
[833] Damilola, Olawuyi .*The Principles of Nigerian Environmental Law.* Revised Edition. Afe Babalola University Press, 2015,p.31.
[834] The Petroleum Drilling Regulations was first issued in 1969 and it has gone through series of amendments . IEA. Petroleum Drilling Regulations was first issued in 1969. www.iea.org.Accessed 16 May 2021.
[835] Damilola , Olawuyi. *The Principles of Nigerian Environmental Law.* 2015,p. 30. Section 9 (1) of the Petroleum Act of 1969, empowers the Minister to make regulations on licensing and leasing , safe working condition, conservation of petroleum resources.
[836] Damilola, Olawuyi, *The Principles of Nigerian Environmental Law*,p. 31.
[837] Ezike,Chukwuemeka."**Environmental Crime Liability of the Nigerian Government in its Oil Pollution Menace."** ***Environmental Risk Assessment and Remediation*.Vol.2, no. 2,2018,p. 182.**
[838] Department of Petroleum Resources."Health Safety and Environment Guidelines."www.dpr.gov.ng/ dprguidelines/#hse. Accessed 17 May 2021. [76] Petroleum Act CAP P10 LFN 2004, S. 13 [77]Oil Pipelines Act CAP 07 LFN 2004,S.7 .

the Act. The penalty though may be valuable at the time of enactment of the Act but is grossly inadequate in 2023.

2.7 Oil Pipelines Act CAP 07, LFN 2004

This Act stipulates the procedure for obtaining licenses to build, establish and maintain pipelines for use by oilfields and oil mining companies in Nigeria.[77] The said Act is among the enactments that were not repealed by the Petroleum Industrial Act 2021 due to the fact that existing oil prospecting licences and mining leases are yet to expire.[839]It defines a pipeline to include 'a pipeline for the conveyance of mineral oils, natural gas and any of their derivatives or components, and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives or components.'[840]

There are two types of permits that can be obtained under the Act: permit to survey routes for oil pipelines and license to construct, maintain and operate oil pipelines. Under the Act, a license holder must take reasonable steps to avoid unnecessary damage to the environment that is preventing damages to land, buildings, crops, or profitable trees. Where such damage occurs, the holder must pay compensation.[841] Furthermore, under section 11(5) (c) an oil pipeline license holder is required to compensate persons who suffer damages because of leaks or breaks in the pipeline. The Act prohibits a license holder from making alterations to the flow of water in any navigable waterway, or waterways required for domestic or irrigational use such as to diminish or restrict the available amount of water, or undertake construction activities that will cause flooding or erosion, without express permission of the Minister.[842] In addition, section 17(4) makes the grant of licenses subject to regulations to be made by the Minister under section 33 (c) concerning public safety and prevention of land and water pollution.

The Oil Pipelines Regulations made pursuant to the Oil Pipelines Act, implement the provisions of this Act.[843]Section 9 (1) of these regulations requires that environmental emergency plans be put in place by pipeline operators, while section 25 makes any contravention of the regulations punishable with a fine of N50 and/or imprisonment for three months. Despite the provisions that will ensure pollution prevention, the sanction regime under the Act which is a fine of N50 or three months imprisonment, cannot deter TNOCs and illegal refineries in the oil endowed States from polluting the environment with toxic materials[844]

Also, the sanction regime in the Act will not enable licensees to take precautionary measures to ensure environmental protection from toxic materials from Oil spills to prevent Oil pollution of the environment of the oil endowed States.[845]The Act failed to prescribe penalty for a body

[839] Petroleum Industrial Act 2021,Section 311 (9).
[840] Oil Pipelines Act CAP 07 LFN 2004, S.11 (2).
[841] Oil Pipelines Act CAP 07 LFN 2004,S. 6 (3) and (4), 11 (5).
[842] Oil Pipelines Act CAP 07 LFN 2004, S.14.
[843] The Oil Pipelines Regulations CAP 07 LFN 2004.
[844] Ezike, Chukwuemeka Chuks. "Deficient Legislation Sanctioning Oil Spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill." *International Journal of Environment and Sustainability*. Vol. 7, no. 1,2018, p. 30.
[845] Amalachukwu, Okafor, and Ayobami Olaniyan. "Legal and Institutional Framework for Promoting Oil Pipeline Security In Nigeria." *AfeBabalola University: Journal of Sustainable Development Law & Policy*. Vol.2, 2017,p.135.

corporate that violates the provisions of the Act. It was clearly stated in section 32 of the Act that any corporate body found guilty of violating the provisions of the Act shall be liable to be proceeded against and punished accordingly. Because most licensees are bodies corporate, the absence of a specified sanction is a gap that needs to be filled.[846]

2.8 Oil in Navigable Water Act CAP 06, LFN 2004

This Act domesticates and gives effect to provisions of the International Convention for the Prevention of Pollution of the Sea by Oil 1954 to 1962 in Nigeria.[847] The Act is in fact the first law that deals specifically and solely with the industrial waste generated by oil production.[848] This Act is not among the enactments that were repealed by the Petroleum Industrial Act.[849]The Act prohibits the discharge of certain oils into sea areas, designation of prohibited sea areas, discharge of oil into the waters of Nigeria, putting in place the right equipment in ships to prevent oil pollution, penalties for offences, enforcement and application of fines among others. Section 1 prohibits the discharge of crude oil, fuel, lubricating oil, and heavy diesel oil from ships into Nigeria's territorial waters or shorelines. Section 3 makes it an offence for a shipmaster, occupier of land, or operator transferring oil to discharge it into Nigerian Waters. It also requires the installation of anti- pollution equipment in ships. Section 6 stipulates the punishment for such discharges to consist of a fine, while section 7 requires that the records detailing the occasions of oil discharge be kept.

The Oil in Navigable Waters Regulations of 1968 implements the provisions of this Act.[850] The Regulations, made pursuant to sections 5 and 7 of the Oil in Navigable Waters Act, require ships to install oily-water separator equipment capable of preventing pollution of the navigable waters by oil.[851] The Regulations also require that due precautions be taken when loading, discharging or bunkering oil to prevent spills, and also that regular inspections of ships are carried out to prevent oil leakages.[852] The Act and its Regulations therefore provide legal framework for enforcing safety and protection of the marine ecosystem and environment in Nigeria. They also contain provisions that could be evoked to clean-up oil spill in the country's territorial waters and compensation for damage to marine ecosystem. Example of such provisions is contained in article 2 of the Oil in Navigable Waters Regulations[853] which made provisions for separate equipment for Oil and water or that must be contained in the Nigerian ship other than a tanker to prevent pollution of the marine environment with Oil and in any event of pollution the separator also treats the water.

The Oil in Navigable Waters Regulation also made provisions for every Nigerian Ship to keep an Oil discharge record to ensure that adequate precautions are taken when loading and discharging oil from a ship.[854] Despite the robust provisions of this Act and its Regulations that make the discharge of oil into the sea prohibited and an offence, the monetary penalties of a fine of N2000

[846] Oil Pipelines Act CAP 07 LFN 2004,S. 32.
[847] Oil in Navigable Water Act CAP 06 LFN 2004,S. 1 (4).
[848] Oil in Navigable Water Act CAP 06 LFN 2004, Preamble.
[849] Petroleum Industrial Act 2021,S. 310 (1).
[850] The Oil in Navigable Waters Regulations CAP 06 LFN 2004.
[851] The Oil in Navigable Waters Regulations CAP 06 LFN 2004, Arts 1 -2.
[852] The Oil in Navigable Waters Regulations CAP 06 LFN 2004, Art 5-6.
[853] The Oil in Navigable Waters Regulations CAP 06 LFN 2004.
[854] The Oil in Navigable Waters Regulations CAP 06 LFN 2004, Article 4.

stipulated under sections 6 of the Act is inadequate and require reform to serve as a deterrent to future offenders, and to reflect the fact that oil pollution is a source of toxic material which is harmful to aquatic lives and the entire marine environment.[855]

2.9 The Environmental Impact Assessment Act CAP, E12 LFN 2004

This Act provides that any project or activity, which might significantly affect the environment, must undergo an environmental impact assessment prior to commencement.[856] An environmental impact assessment (EIA) is an assessment of the potential impacts whether positive or negative, of a proposed project on the natural environment. The objective of an environmental impact assessment is to establish and consider the extent to which any activity to be authorised by any level of government may affect the environment.[857] The EIA Act prohibits the undertaking of, or embarking on projects including oil exploitation, which may significantly affect the environment without prior consideration of their environmental effects.[858]

The Act provides a detailed account of the minimum contents of an environmental impact assessment, as well as the conditions to be met in handing down a decision on a proposed activity.[859] This includes a description of proposed activities; a description of the concerned area; a description of the practical activities; potential environmental impact and alternatives; possible mitigation measures; uncertainty degree and reliability of the information; potential effects in other states, local governments or in foreign territories; and brief and non-technical summary of the study. The environmental assessment process may include a screening or mandatory study, the preparation of a mandatory assessment report by a review panel, the design and implementation of a follow up program.[860]Sections 6-11 of the Act provide that before a decision is reached whether in favour or otherwise, opportunity must be given to government agencies, members of the public and experts to make comments on the environmental impact assessment of a proposed activity.

The Schedule to the Act contains a list of activities subject to the full EIA process, which entails a mandatory study of the project and a preparation of a mandatory study report. The list includes activities such as airport construction, agriculture, housing and infrastructure projects, industrial activities, ports, mining, fisheries, forestry, land reclamation, quarries, waste treatment and hazardous waste disposal, drainage and irrigation, railways, transportation, power generation and transmission, and petroleum operation activities such as oil and gas field development.[861]

The Agency can either ensure that a mandatory study for such activities, is conducted, and reported; or in the alternative, prepared and submitted to the Council, who will then refer it to mediation or a review panel.[862] The Council refers the project to mediation or review where it

[855] Damilola, Olawuyi. *The Principles of Nigerian Environmental Law.*p.33.
[856] The Environmental Impact Assessment Act E 12 LFN 2004,S. 1 and 2.
[857] The Environmental Impact Assessment Act E 12 LFN 2004, S.1.
[858] The Environmental Impact Assessment Act E 12 LFN 2004,S. 2(1)–(3).
[859] The Environmental Impact Assessment Act E 12 LFN 2004,S. 4, 9(1).
[860] The Environmental Impact Assessment Act E 12 LFN 2004, S. 16.
[861] The Environmental Impact Assessment Act E 12 LFN 2004, Schedule.
[862] The Environmental Impact Assessment Act E 12 LFN 2004,S. 23.The 'Council' is the Federal Environmental Protection Council established by the Federal Environmental Protection Agency Act. See S. 63(1) of the

determines that it is likely to cause significant adverse environmental effects. If on the other hand, the project is not likely to mitigate environmental effects; the project will be referred to the Agency for appropriate action.[863] Appropriate action includes permitting the project to be carried out in whole or in part and ensuring that appropriate mitigation measures are implemented.

Where the project is likely to result in environmental damage, the Agency will not permit the project to be carried out.[864] Therefore all Oil exploitation activities are expected to always conform with the provisions of EIA Act to prevent adverse environmental impacts of the oil exploitation activities on the environment of the Oil endowed States. Under section 60, failure to comply with any provisions of the Act, makes the offender liable to fines or imprisonment. Despite the importance of this Act, it prescribed monetary penalty of N100,000 fine or to five years imprisonment for individuals and in the case of a firm or corporation to a fine of not less than N50,000 and not more than N100,000 which is generally inadequate to compel any form of diligent compliance, especially for TNOCs in Nigeria.

This is because the activities of TNOCs during oil exploitation results in environmental damage and is a breach of the fundamental right of the indigenes, this is evidenced by the decision of the Federal High Court in *Jonah Gbemre v Shell Petroleum Development Company of Nigeria Limited and others,* [865] where the applicant, Gbemre, a representative of the Niger Delta Iwherekan community instituted an action against the Nigerian government for its failure to stop the oil and gas company Shell Petroleum Development Company of Nigeria in gas flaring for decades and Shell for engaging in massive and unceasingly intense gas flaring in the community, in the course of its exploration and production activities (jointly respondents). The applicant argues that Shell Petroleum Development Company of Nigeria failed to consider the environmental impact of its activities on the communities' means of livelihood, collective survival, as well as the gas flaring's contribution to the adverse and potentially life-threatening effects of climate change. The applicant claimed that such gas flaring activities violated the community's rights to life and human dignity as constitutionally guaranteed by sections 33 and 34 of the CFRN 1999 ,as amended and reinforced by Articles 4, 16, and 24 of the African Charter on Human and Peoples Rights ratified and domesticated by Nigeria.[866] The Federal High court held that the practice of gas flaring is unconstitutional as it violates the guaranteed fundamental right to life and dignity of human persons provided in the CFRN 1999, as amended and the African Charter on Human and Peoples Rights.[867]

The environmental damage is from accidental and incidental discharges of toxic materials such as drilling fluids, which are a complex mixture of hydrocarbons that are toxic in nature and may interfere with normal plant development and reproduction or crude petroleum, and refined

Environmental Impact Assessment Act of 1992, Laws of the Federation of Nigeria 2004, CAP E12. This Act is now repealed so this will be the council established under the National Environmental Standards Regulatory and Enforcement Agency.

[863] The Environmental Impact Assessment Act E 12 LFN 2004,S. 26.

[864] The Environmental Impact Assessment Act E 12 LFN 2004,S. 40,41.

[865] (2005) 6 AHRLR 152.

[866] CAP A9, LFN 2004.

[867] Damilola ,Olawuyi. *The Principles of Nigerian Environmental Law,* p.33

petroleum products from drilling machineries and equipment or gas flaring.[868]It is also important for EIA to be carried out in event of any oil spill and gas flare to ascertain the extent and impact of toxic materials on the environment of the oil endowed States and work towards environmental restoration. [869]It is clear that the Act provides machinery for enhancing a sustainable environment in Nigeria, but this may have been delayed due to weak enforcement of the provisions of the Act in Nigeria. Considering the importance of this Act there is currently a Bill before the Senate of the National Assembly to repeal and re-enact the EIA Act 2020.The bill is yet to pass second

reading.[870]

2.10 Petroleum (Drilling and Production) (Amendment) Regulations 2020

These Regulations was adopted in 1969 (the principal regulation) and has gone through several amendments with the latest amendment in 2020.[110]This regulation is still in force as the principal legislation which is the Petroleum Act was not repealed by the Petroleum Industrial Act 2021 due to the fact that the existing oil prospecting licences and mining leases are yet to expire.[871]The Regulation implemented the provisions of the Petroleum Act[872] with respect to (applications for) oil exploitation licenses and oil prospecting licenses and relative operations of boreholes and oil extraction.

They also set out the rights and powers of licensees and lessees under the Act. The regulations require the licensee or lessee which includes the Transnational Oil Companies (TNOCs) to adopt all practicable precautions, including the provision of up-to-date equipment approved by the Director of Petroleum Resources, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluids or substances which might contaminate the water, banks or shoreline or which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible, end it.[873]

The Regulation more importantly enjoins TNOCs (licensees and lessees) to dispose of oil wastes from storage vessels into proper receptacles constructed in accordance with the law.[874] Also, the waste collected must be disposed of in the way and manner approved of by the Director of Petroleum Resources or as provided by any applicable law or regulations.[875][876] The TNOCs have

[868] Alshuwaikhat, Habib. "Strategic Environmental Assessment Can Help Solve Environmental Impact Assessment Failures in Developing Countries."*Environmental Impact Assessment Review* Vol.25,n.4, 2005,p.307.

[869] Antunes, Paula, Rui Ferreira dos Santos, and Jordao, Luis.'The Application of Geographical Information Systems to Determine Environmental Impact Significance.' *Environmental Impact Assessment Review*. Vol.21, no.6, 2001,p.511.

[870] National Assembly Federal Republic of Nigeria, Bill Tracker . www.nass.gov.ng/.Accessed 12 July 2021.

[110]Petroleum (Drilling and Production) (Amendment) Regulations 2020.

[871] Petroleum Industrial Act 2021, S.11(1) and (9).

[872] Damilola, Olawuyi. *The Principles of Nigerian Environmental Law,* p.31.

[873] The Petroleum (Drilling and Production) Regulations to the Petroleum Act 1969, Regulation 17 (1) (b)

[874] The Petroleum Act, See The Petroleum (Drilling and Production) Regulations to the Petroleum Act 1969 S. 40

[875] Oshionebo, Evaristus. *Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study.* University of Toronto Press, 2009,p.21.

[876] The Petroleum (Drilling and Production) Regulations to the Petroleum Act 1969, Regulation 41.

obligation to decommission their oil facilities (when no longer being used) and restore the damaged land in that area to as far possible to its pre-existing condition.[877] Also abandonment of oil boreholes and wells are prohibited except allowed in writing by the Director and derelict wells and boreholes must be secured properly.[878] Though a contravention of this Regulation carries a sanction, however, one major criticism of the Regulation by Scholars like Eghosa, Osa Ekhator is the personification of the powers in the Petroleum Act and its incidental Regulations in an individual, the Minister of Petroleum Resources or in the President.[879]Also, the possibility of TNOCs non-compliance with the provisions of the Regulations on proper disposals of toxic material resulting from oil exploitation activities, because of the personalisation of powers in the Regulation calls for devolution of powers through inclusion of an implementation mechanism in the Regulations.[880]

It is important to state that instead of ensuring environmental sustainability of the oil endowed States that is being polluted with toxic materials resulting from oil exploitation activities, the subsequent amendments to the 1969 Regulations (the principal Regulations) focuses on fees and royalties to be paid to the government.[120] This calls for concern considering the fact that ensuring environmental sustainability is a key factor towards meeting the goals and targets of Agenda 2030 which is a global framework of action for people, planet, prosperity, peace, and partnership.[121]It integrates social, economic, and environmental dimensions of sustainable development, and Nigeria is a signatory.

2.11 *African Charter* on Human and Peoples' Rights (Ratification and Enforcement) *Act, CAP A9, LFN 2004*

Nigeria has ratified and domesticated the African Charter on Human and Peoples' Rights ('African Charter') by virtue of the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act.[881]The African Charter has both domestic and international human rights implications for achieving environmental justice. Article 24 of the African Charter states as follows; 'All peoples shall have the right to a general satisfactory environment favourable to their development and states shall have the duty, individually or collectively to ensure the exercise of the right to development.' Domestication of the African Charter has broadened the domestic enforcement of rights under the African Charter including the right to a healthy environment.[882]

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[877] Oshionebo, Evaristus. *Regulating Transnational Corporations in Domestic And International Regimes: An African Case Study*,p.22.

[878] The Petroleum (Drilling and Production) Regulations to the Petroleum Act 1969, Regulation 33.

[879] Eghosa, Osa Ekhator. Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation. *Annual Survey of International and Comparative Law*. Vol. 21, no.1,2016, p.65.

[880] Eghosa, Osa Ekhator. Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation. p.66. [120] The Petroleum (Drilling and Production) (Amendment) Regulations 2020, Regulation 2. [121]UnitedNations."The 2030 Agenda for Sustainable Development."www.sustainabledevelopment.un.org. Accessed 15 June 2021.

[881] *African Charter* on Human and Peoples' Rights (Ratification and Enforcement) Act, *CAP A9*, LFN *2004*.

[882] *African Charter* on Human and Peoples' Rights (Ratification and Enforcement) Act, *CAP A9*, LFN *2004*, Article 24.

The right to a general satisfactory environment here refers to the right to sustainable environment, that is the right to an environment free from all forms of pollution[883] including pollution from toxic materials resulting from oil exploration which are dangerous to human health and all living things on land and marine environment of the oil endowed States of Nigeria. Though the African Charter did not specify the need to protect the environment from pollution from toxic materials, the provision of Article 24 covers the field on protection of the environment from all forms of pollution and this includes pollution from toxic materials from oil exploitation.

Despite the provisions of the African Charter on the right to a satisfactory environment, the oil endowed States of Nigeria are yet to achieve environmental sustainability as their environment is still being polluted with toxic materials from exploitation activities of Transnational Oil Companies. It is note-worthy that one of the identified problems hindering the achievement of sustainable environment in the oil endowed States is enforcement of the obsolete petroleum related laws, weak regulatory regime and lack of political will by regulatory agencies to drive the administration of these laws and regulations.[884] This has hindered the achievement of a healthy ecology in these States, hence the reason the problem of environmental pollution with toxic materials still persists.[885]

3.0 The Defects in the Legal Frameworks on Toxic Materials and Oil Exploitation The gaps in the laws, especially lack of effective sanction regime, absence of implementation mechanisms as well as absence of prosecution has also made perpetrators of toxic material pollution of oil endowed States to continue with environmental pollution.

The NOSDRA Act made provisions for a penalty of Five Hundred Thousand (N500, 000) for each day of failure of oil spiller to report a spill.[886] The report shall be in writing to the nearest zonal office of NOSDRA closer to the impacted site, not later than 24 hours after the occurrence of the spill.[887] In addition, there is a penalty of One Million Naira (₦1,000,000) for failure of the oil spiller to clean up the impacted site.[888] It is important to note that the penalty of ₦1, 000,000 is not for each day of failure to clean the impacted site, which means the oil spiller can spill as much oil as possible and pay a fine of ₦1,000,000 when he wishes. The penalties are inadequate when compared to the impact of oil spill on the environment of the oil-endowed States. This is because these spills can stay longer than 50 years in the environment, exposing the indigenes to health risks such as cancer, birth defects and also contribute to food insecurity due to low crop yields.[889]Also, the penalties are limited to oil spill by Transnational Oil Companies (TNOCs) as the Act did not take into consideration other toxic materials discharged during oil exploitation activities such as

[883] Ebeku, Kaniye. "**The Right to a Satisfactory Environment and the African Commission."** ***African Human Rights Law Journal*.Vol.1, 2003, p.149.**

[884] Sirleaf, Matiangai. "Prosecuting Dirty Dumping in Africa" *The African Court of Justice and Human and Peoples Rights in context: Development and Challenges*. Cambridge Press, 2019,p. 553.

[885] Sirleaf, Matiangai. "Prosecuting Dirty Dumping in Africa." *The African Court of Justice and Human and Peoples Rights in Context: Development and Challenges*, p. 553.

[886] The National Oil Spill Detection and Response Act 2006 . S .6(2).

[887] The National Oil Spill Detection and Response Act 2006 . S .6(2).

[888] The National Oil Spill Detection and Response Act 2006 . S .6(3).

[889] Saleh, Ashiru et al. "Risk and Environmental Implications of Oil Spillage in Nigeria." *International Journal of Geography and Environmental Management.* Vol. 3 no.2 ,2017,p. 44.

drilling fluids and chemicals, sludge, produced formation water and toxic gases released when the natural gas are flared to convert methane to carbon dioxide.[890]This defect in the law is a cause of the incessant pollution of the environment of the Oil endowed States with toxic materials.

It is noteworthy that the Harmful Waste (Special Criminal Provisions) Act did not prescribe adequate penalties for body corporate that violate the provisions of the Act, as it is is provided in section 7 of the Harmful Waste Act that where an offence is committed by a body corporate, the body corporate will be proceeded against and punished accordingly.[891] Though the Harmful Waste Act is administered by NESREA however, the NESREA Act did not fully address this defect in the Harmful Waste Act. This is because the penalties provided in the NESREA Act are for hazardous materials that are not oil and gas related.[133]Where then lies the penalty for TNOCs who may directly discharge other toxic materials other than oil spill from chemicals used during oil exploitation which are high in lead, mercury, methane and which cannot be classified as oil spills? It means that there is no sanction regime in any of the Act to address and deter TNOCs from discharging toxic materials such as chemicals used during oil exploitation activities into the environment of the oil endowed States. An effective sanction regime on toxic materials from oil exploitation activities and multistakeholder collaboration between NESREA and NOSDRA is a necessity as it will address the incessant discharge of oil related hazardous material by TNOCs which are the major cause of environmental degradation and increase in greenhouse gas emissions that are causative factors of climate change.[892]

4.0 Addressing the Defects

It has been noted in this work that the defects in the extant legal framework are the major reason for the continuous pollution of the environment of the oil endowed States with toxic materials from oil exploitation activities. Addressing this defect therefore requires reform of the extant legal frameworks to include strict measures like withdrawal of licenses or strict application of the polluter pay principle[893] to serve as a deterrent to corporate bodies that may be the source of oil spill or discharge oil related toxic materials on the environment of oil-endowed States of Nigeria. Further, the law reform should also provide the institution to administer the Act and the designated institution must be funded and provide regular capacity building to prevent regulatory capture. All this cannot be achieved without creating awareness on the dangers of toxic material pollution, political will on the part of government and the need to address the enforcement of judgements in Nigeria. Environmental sustainability of the oil endowed States should not be negotiated as pollution cuts across national boundaries and affect global Climate Change.

5. Conclusion

Toxic materials pollution is on the increase because of globalisation. Many nations around the world have put in place Laws to check pollution of the environment with toxic materials which are

[890] The National Oil Spill Detection and Response Act 2006 . S .6(2).

[891] Harmful Waste (Special Criminal Provisions, Etc.) Act CAP HI Law Federation of Nigeria 2004, S.7.

[133]The National Environmental Standard and Regulation Enforcement Act 2007, S. 7 (g).

[892] Chukwuemeka, Chuks-Ezike.' Deficient Legislation Sanctioning Oil Spill in Nigeria: A Need for a Review of the Regulatory Component of Petroleum Laws in Nigeria and the Petroleum Industries Bill.*'International Journal of Environment and Sustainability*. Vol.7, no.1,2018, p.30.

[893] Saleh, Ashiru et al."Risk and Environmental Implications of Oil Spillage in Nigeria." *International Journal of Geography and Environmental Management,* p. 44.

mostly carcinogenic in nature. However, the defects in our laws have contributed to the increase in toxic materials pollution. Reform of the extant legal framework to address the issue of toxic materials pollution from the oil sector is paramount if Nigeria seeks to promote environmental justice especially in the oil endowed states that bear the greatest brunt of the effects of toxic materials on the environment.