

LAWS REGULATING OIL POLLUTION IN NIGERIA (A RE-APPRAISAL)

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INTRODUCTION

A meaningful discussion of the Laws regulating Oil pollution in Nigeria must start from the 1950's when Shell D'Aray discovered oil in commercial quantity in Olobiri, Rivers State, in 1957. The joy of the indigenous people of the area could be termed today, looking back, as backwardness. They (we) could not have visualised the bad face of crude oil now manifested in Oil pollution as a real enemy, a possible source of death of mankind.

Oil is only one of the many substances polluting the aquatic environment, including marine, the fresh water and the brackish ecosystem.¹ Of all the environmental contaminants, oil pollution is the most devastating. The effect of oil pollution include the destruction of farmlands, vegetation, the location of fields, oil pipelines, destruction of terrestrial and marine life. Other aspects include health hazards due to gas flaring, effluent from refinery emissions. Among the hazards of oil pollution, oil spillage in its various forms, has been most noticeable. Apart from harming the environment, its economic loss is colossal. According to Awobajo,²

"Within 1976 -1980, this country witnessed seven hundred and eighty four oil spills. These oil spills resulted in the loss of 1,336,875 barrels (56,148,750 American Gallons of oil to the National Economy)'

With the frequent announcement of discovery of new reservoir of crude oil and with corresponding increase in volume of oil pumped out from the fields and hazardous materials being produced and transported

Idoniboye B. E. & Andy J.A. "Effect of Oil Pollution on Aquatic Environment" Seminar Proceedings 1985, P.311

² Awobajo S.A. "An Analysis of Oil Spill incidents in Nigeria, 1979 - 1980". In the Petroleum Industry in the Nigerian Environment. Proceedings of an International Seminar Sponsored by the Nigeria National Petroleum Corporation and Petroleum Training Institute, Warri, Bendel State, Nigeria. November, 9th - 12th, 1981, PP.57 - 63

nation wide, more oil spills could be expected.

DEFINITION

On the issue of pollution, it is strictly defined as the contamination of oil, air, water by noxious substances and noises. Environmental pollution is pollution arising from oil, gas and shipping operations; may consist of wastes, such as human waste, garbage, oil and oily mixtures, chemicals or any other substance, whether solid, liquid or gaseous, that are capable of degrading, altering of the quality of any part of the environment to the extent that is detrimental to the use of that part of the environment by man, animals, fish or plant that is useful to man.³

Environmental pollution is further defined as the direct or indirect alterations of the physical, thermal, biological or radioactive properties of any part of the environment in such a way as to create a hazard or potential hazard to health, safety and well-being of any living species.⁴

Environmental Law consists of rules, guidelines, legal practices which are principally aimed at interactively protecting the environment and people. It does not operate in isolation from other branches of law and non-legal disciplines out borrows heavily from them.

The Environment, "Our Environment" is the big issue of this decade. For the 1990's, the protection of the environment will continue to receive governments' attention. This has to be, for the environment, is our only source of life. Protection of the environment has become a major issue in terms of the problems faced by governments and solutions required to overcome a host of environmental problems-global warming; destruction of the OZONE layer, acid rain, deforestation, toxic waste are global issues which require appropriate environmental response(s). The range of problems and issues include

OLISA M.M. "Legal framework for pollution control in the petroleum Industry, Proceedings of an International Seminar sponsored by the Nigeria National Petroleum Corporation and Petroleum Training Institute, Warri, Nigeria - November 9th - 12th.

⁴ O. Oyebadejo; V.Ugbaja "Oil As Threat: Well Blow - Outs, Pipeline Failures, Spills ... Nigeria Oil and Gas monthly Vol. 1 No. 9 September, 1995.

among others - air pollution, water pollution, noise pollution, waste, disposal, radio-activity and, conservation of wild life. The issues range from street corner to the stratosphere.⁵ The real big issue is the knowledge and skill required by governments and lawyers to a particular issue and other issues and development of appropriate response.

All these elements put together mean that the conservation of the main environmental factors - water, soil, air, nature, landscape and space are of great importance for the preservation of the quality of life.⁶ A policy that tries to achieve this requires a legal framework which combines conservation with other elements of government policies - such as economic and territorial development and technology.⁷ Law in this context, is only one element in what is a major cross-disciplinary topic. It is this integration of the different aspects of Government policy and the complexity of the problems involved which make it imperative to avoid casual solutions which do not take into account other aspects of conservation policy or objectives of government.⁸

This paper is a re-appraisal of Nigerian Laws which govern oil prospecting, exploration, exploitation and related matters in the industry, especially causes of spills/pollution, effect on the atmosphere and the significance of International Law are discussed. Further, in this effort, we examine the effect of pollution on the Niger Delta Environment, Nigerian legislations to the effect of matters of compensation for damage caused by pollution are examined. Finally, in this effort, the inadequacies of the Laws are highlighted in the paper and suggestions toward a more effective policy and practice for the industry are proffered.

⁵ This common Inheritance: Britain's Environmental Strategy (CM 1200, 1990) HMSO.

⁶ Dekker. C.P.A. "Environmental Control Policies in the Netherlands." Paper presented at an International Seminar 1981.

⁷ Ibid

⁸ Ibid.

CAUSES OF SPILLS/POLLUTION

Whatever innocence Nigerians in the oil producing areas might have enjoyed, died about 1967 with the grounding of the Torrey Canyon, the break-up of the Ocean Eagle in Puerto Rican Waters in 1968, and the Santa Barbara offshore oil leak in 1969. With these incidents and more in the other parts of the oil producing world, the black gold showed it could be sometime likened to a dross.⁹

According to Nwankwo,¹⁰ the main causes of spills in Nigeria are:

"Burst/Rapture/corrosion of flow line/pipelines
Over pressure failures/overflow of process equipment components
Sabotage of well heads and flow lines
Horse failure on the SBM/SPM tanker loading system
Failure along pump discharge manifolds (Vibration effects)
Blow out"

Analysing the causes of spill, Idoniboye¹¹ observed that flow line/pipeline leaks have accounted for more than 30% of the total occurrence of oil and contributed well over 50% of oil spilled. Pollution arising from acts of sabotage appears to be peculiar to Nigeria he noted, and attributed such to three major reasons:-

- (1) A wrong sense of revenge
- (2) Theft and
- (3) Maneuvers to claim compensations probably because of the apparent lack of sensitivities, for welfare of the people in the

Op cit. See also "Effect of Oil Pollution on Aquatic Environment" Idoniboye E.E. and Andy, A.J. Proceedings of 1985 Seminar PP 312-315.

¹⁰ Nwankwo J.N. and Irechukwu D.O. (1981). "Problems of Environmental Pollution Control in the Nigerian Environment." Proceedings of 1981 International Seminar.

¹¹ Idoniboye E.E. and Andy A.J. Proceedings of 1985 Seminar PP 311-312 Op.cit.

polluted area on the part of the operating Companies.¹²

Another source of oil pollution is through indiscriminate dumping of waste oil by companies and individuals utilising petroleum products. Considering the thousand miles of pipeline in Nigeria, carrying tons of oil and hazardous substances across waterways and reservoirs are subject to leakage. Also, blowout of offshore oil and gas wells, the dumping oil drilling mud and oil soaked wastes, the destruction of offshore drilling rigs by storm, fire or ship collision, are all significant and potential sources of pollution.

Effects of Pollution

The effect of oil pollution (spillage) is most severe and noticeable in three immediate environments - the atmosphere, terrestrial and the marine environment.

The effect of pollution on land is most austere especially effects on land and crops. On crops, gas flaring causes reduced light intensity and the consequences that follow - e.g., Oxides of nitrogen and sulphur and the inevitable severe effect on crops, crop yields and wild life in the affected environment.¹²

These consequences, and including others, especially of flaring, have been validated by results of studies carried out in the Niger Delta¹³ and through Remote sensing applications in the Oil Pollution

¹² See Vanguard 8th October, 1996 P.2 The paper reported a fresh wave of oil spillage has swept Rivers, Bayelsa, Delta States sparking off another round of crisis in the region. Industry sources said that the spillage affected the pipes of Shell, Mobil and Agip and the Companies say the spillage was man induced. The spillage came against the background of compensation negotiations between the oil companies and the host communities in which the communities hope to get a better bargain from the exercise. Observers say oil companies should pay more compensation to host communities once there is a spillage. The World Bank report on oil spillage in Nigeria attributes 40% of the spillage to sabotage. Industry sources further opined that oil companies efforts are consistently being sabotaged through deliberate cutting of flow lines for compensation and the destruction of property.

Imevbore A.M.A. (Prof) The impact of oil pollution on the Biota of the Niger Delta in The Petroleum Industry and the Niger Delta Vol. 2 (Lagos NNPC Publication) p. 96.

Surveys¹⁴. Effort by government (Nigerian Government) to cap the dire consequences of Gas flaring was the Associated Gas Reinjection Decree No. 99, 1979 and as amended by Decree 7, 1985. 5.1. 1(2)(b) introduced the 2 kobo penalty for gas flaring. Gas flaring has not stopped so far even at the punitive penalty of 15 kobo per cubic meter.

The effect of oil on crops has also been documented as having adverse effect on crops and land. Oil penetrates leaves, plants and reduces respiration and photosynthesis, plants shed their leaves, trees die or suffer from bark fissuring, scarring, leaf deformities, produce toxic nutrients to plants, impoverishes the soil, stops crops from germinating, and affect underground water¹⁵. Apart from the adverse effect on crop and soil, oil pollution has serious economic consequences for it affects the social and economic life of the people - the victims of oil pollution.

The Atmosphere

This is the key part of all living creatures on earth. The National Policy on the Environment was formulated to protect the atmosphere which oil and Industrial pollution could annihilate. Apart from oil pollution, industry contributes to atmospheric pollution by endangering energy¹⁶ through combustion. The pollution of the atmosphere is generally a combination of oil and industrial pollution.

"gas flaring increases the air temperature while the relative humidity of the air decreases. And depletion of the ozone layer, acid rain etc. are some of the consequences of oil pollution on the atmosphere."

Marine Environment

The damage caused to the marine environment by oil pollution is incalculable. Within the marine environment, oil pollution destroys both the mangrove and the lives dependent on it. From the inception of oil exploration and exploitation most marine lives which constitute the inhabitants of the swamps are destroyed to make way for oil

¹⁴ Abiodun A. "Remote Sensing Applications in the Oil Pollution surveys" The Petroleum Industry and the Niger Delta. Op. cit.

¹⁵ Odu C.T.I. Op cit.

¹⁶ See National Policy on the Environment - Published by Federal Environmental Protection Agency. 1989

exploitation. According to Eboe-

"Off-shore activities pose a particular danger to the sensitive mangrove ecology."¹⁷

Also, Abiodun has observed that

"Many sea food including aquatic birds have been reported dead, as a result of blanketing water surface by oil firms thereby limiting oxygen in such waters".¹⁸

Oil pollution exposes the polluted environment to the free action of the air as in the oxygenation of the blood in respiration. On the surface of water, oil may limit oxygen exchange, entangle and kill surface organisms and coat the grill of fishes.¹⁹ The effect of oil pollution on marine environment is considerable on aquatic life and on the income, even drinking water of the inhabitants of the polluted area.

International Law

Interest in the prevention of pollution of the sea by oil dates back at least to 1926, when the International Conference of experts on the subject was held in Washington at the request of the United States. The Inter-Governmental Marine Consultative Organisation facilitated most of the work.²⁰

As we observed earlier,²¹ public awareness of actual and potential pollution of the sea as a result of such dramatic events as the

Oboe H. "Oil Companies and the environmental pollution in Nigeria" op. cit.

¹⁸ Abiodun A.A. "Remote Sensing Application in Oil Pollution Surveys". The Petroleum Industry and the Environment of the Niger - Delta op. cit.

¹⁹ Odu C. (Prof) "The oil Industry and the Environment" The Nigeria Accountant V.XIV, No. 1 Jan/March 1989, p.25.

²⁰ Inter-governmental Maritime Consultative Organisation (IMCO) is an affiliate of the United Nations.

See our observation under Causes of Spills.

Torry Canyon disaster in 1967,²² the Manhattan in Canadian waters in 1969, and the Santa Barbara Channel Oil spill from off shore wells in 1969, catalysed ship owners, governments, international agencies, oil companies and UNCLOSS III into serious efforts to prevent more disasters at sea.²³

Other significant conventions in respect of pollution on the High seas with reference to intervention on the High seas in case of oil pollution casualties (1969)²⁴ and the International Convention on Civil Liability for Oil Pollution Damage²⁵ were endorsed by various governments.

The International Convention for the prevention of pollution of the sea by oil adopted in 1969 set the stage. It prohibits tankers from discharging oil and waste within 50 miles of land or 150 miles from prohibited zone during tanker cleaning operations. The 1962 convention prohibits vessels weighing 20,000 gross tons or over from discharging oil or oily waste in prohibited zones. Under the convention, in Article IX(1), Vessels must record all cleaning, balloting of cargo tanks, accidental discharge of oil or oily residue.²⁶ Inability under the convention are imposed for breach of any of the provisions.²⁷ It is

²² The Torrey Canyon tragedy exposed lapses in both state and International Law. The tanker broke-up and sank in Calm Sea off the Coast of England with 119,328 tons of crude oil onboard. All the crude spilled into the sea and cost the British Government \$1.6 million to clean-up the mess. This was the straw that broke the camels back. From that disaster the international community took notice by, through their domestic legislations fashioned out laws/conventions to provide for remedies for such damage in the future. 'Obligations for pollution are now covered under International Law.

²³ See Okeke C.A. The theory and practice of International Law in Nigeria. Published by Fourth Dimension Publishers(Nigeria) (1986) .

²⁴ Nigeria is signatory to the Convention. It came into force in 1978.

²⁵ The convention came into force also in 1978. Thirty - three signatories, including Nigeria endorsed the convention.

²⁶ 1962 Convention. Article III (C).

²⁷ See Business Law and the Regulatory Environment - Concept and Cases, Lusk series. 7th Edition, Metzger et al Published by IRWIN 1990. pp. 1245-1262.

obvious that the objective of the various conventions is towards the protection under international law, man's only source of life - the environment-from contamination and destruction. These regulatory systems of pollution control have been fragmented, both at the international and municipal levels because the environment had been progressively polluted to the extent that remedial action became necessary. Most of the reactive responses were related to specific problems at particular times due to public concerts.

Since the first International convention on problems caused by pollution was held in 1962²⁸ and a second in 1954, states have been finding solutions to problems of Environmental pollution. Historically, people assumed that the air, water and land around them would absorb their waste products. In recent times, however, it has become obvious that nature's capacity to assimilate people's wastes is not infinite. Burgeoning population, economic growth, affluence and the products of our industrial society pose risks to human health and the environment.

For most part, International environmental law consists of convention agreed to by signatory states, such as the Ramsar Convention on Wetlands of international importance and the Vienna Convention for the protection of the OZONE LAYER.²⁹ These may provide general guidance on activities or they may lay down precise standards and requirements. This has now been established. The important point is that such law is not ultimately binding, except in a political sense, because of lack of sanctions available for non-compliance. It has however developed some generally agreed principles to cover such things as trans-boundary pollution which will apply even without the need for a treaty.³⁰

²⁸ Ramsar convention on Wetlands of International Importance especially as Wasteful Habitat (1971) was the first International convention dealing solely with habitat.

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³⁰ See-Simon Ball & Stuart Bell "Environmental Law Published by Black Stone Press, London W.12 pp. 20-21.

International (Law) Control

Without International concern the significance of environmental laws is best appreciated by imagining the usual disorder which characterize the absence of laws. Short of proper regulatory framework and International Concern our only source of life - our environment - will render human life nasty, poor, solitary, brutish and short. It is to avoid this horror that governments, the Nigerian Government in particular, is signatory to most International Conventions that relate to oil and environmental pollution. These are:-

International Convention for the prevention of pollution of the sea by oil 1954- 1971, the General Conventions on the Continental shelf and the High Seas, 1958, International Convention on Civil Liability for pollution (CLC), 1969, Convention on the Law of the Sea, 1982; International Convention for Oil Pollution damage (IOPC Fund 1971); the International Convention for the prevention of pollution from ships as modified by the protocol of 1978; the 1972 Convention on the prevention of Marine pollution by dumping of waste, Bio-diversity Convention at Rio-De-Jenerio, 1992, and Montreal protocol and Vienna Convention on Ozone protection among others.

NIGER DELTA ENVIRONMENT

A livable environment is a sine qua non for sustenance of human life, also a major determinant of the quality of life. The unfavorable consequences of resources exploitation on the Niger Delta environment are horrendous to the degradation and destruction of life supporting ecological systems and on natural resources, threats to human health and to important social-cultural values.

To evaluate matters of environmental concern in the Oil Industry, the first ever seminar on the "Oil Industry and the Niger-Delta Environment" was held in 1979 in Port-Harcourt. That seminar recommended:-

- prevention and remedial measures against oil pollution;
- contingency planning for controlling oil spills;
- monitoring and surveillance of the environment in the vicinity of the oil Industry activities;
- setting of standards;

- Sharing of responsibilities for oil pollution prevention, control and clean-up operations; and
- a seminar on the environmental problems of the oil and gas industry to be held biennially³¹

Also at a subsequent seminar in 1981, participants made a number of far reaching recommendations covering;

- Legal provisions-need for all embracing law on the prevention and control of the pollution of the environment;
- Funding and payment of compensation for damages resulting from major oil spills;
- Contingency planning for clean-up operations;
- Long term monitoring and surveillance programmes;
- Disposal of wastes from the oil industry; and
- Publication of the proceedings and the establishment of a professional body of environmental scientists and engineers.

From subsequent seminars, useful recommendations were made; government took notice and some of the recommendations have been implemented while others are still to be actualised. Though Nigeria now has a host of Environmental laws aimed at ensuring good oil practice, clean environment and a virile oil industry, much is still to be desired in order to achieve the status quo.³²

In the context of Nigeria, the Laws relating to conservation, especially, Oil Pollution before 1988 were insignificant. The laws Pre-Federal Environmental Protection Agency Decree 1988, protected the interest of the multinational oil companies instead of safeguarding of the environment from oil pollution and destruction. Due to lack of

31. Olisa M. "Legal Framework for pollution control in the petroleum industry." Paper Presented at the International Seminar sponsored by the Nigerian National Petroleum Corporation -November 9 - 12 - 1981. Petroleum Training Institute, Effurum, Bendel State-Published by Thomopolus Environmental Pollution Consultants. Hereinafter cited as Olisa.

³². Specifically, Current Environment Laws will be discussed in the Paper pre-FEPA Decree of 1988.

guidelines and absence of pollution laws, the oil companies degraded our environments at will. It was and until recently development at all costs. It would be wrong to consider the enforcement of environmental Laws as a disincentive to industrialisation' and investments bearing in mind that development which is not sustainable is not development in its totality.

From the above, we appreciate the scope of oil pollution covered by international conventions. The fact however, is that Nigerian governments have not been very concerned with international legal matters relating to oil pollution considering the very few conventions she has ratified by legislations. As a coastal state, Nigeria stands the risk of being polluted through the sea. Coupled with the fact that local legislations are often inadequate to deal with pollution menace, she ought to take advantage of these international conventions to protect her territory (environment) and to seek for redress in case of threat or actual damage, especially as we know that dumping activities have been known to be a major source of oil pollution in the West and Central African Region.³³ The recent dumping of toxic waste at Koko port is a pointer in that direction.

NIGER-DELTA ENVIRONMENT

Nigerian Legislations

The local legislations relating to oil pollution in Nigeria Pre-FEPA³⁴ including the following:-

Mineral Oil Act, 1914; Petroleum Law, 1955; Oil pipeline Act, 1958; Mineral Oil (Safety) regulations; the Petroleum Regulations, 1967; Oil in Navigable Waters Decree, (1968); Oil in Navigable Waters

And see - Tangi M.A. "Arrangement for dealing with oil pollution in the Framework of UNEP Action Plan for West and Central African Region." The Petroleum Industry and the Nigerian Environment, 1981 Seminar Proceedings P.32.

³⁴ The FEPA Decree of 1988: Before FEPA, all the laws relating to Oil Pollution were not consolidated in a single document neither were they geared towards the control, protection and sparse legislations dealing with specific matters with alternated sections or none at all. See Ajomo M.A. (Prof), The Socio-legal implication of Industrial Pollution Control".

Regulation, 1968; the Petroleum Act Regulations, 1974, the Association Gas Re-injection Decree, 1979; Petroleum (Drilling and Production) Regulations, 1969; Petroleum (Drilling and Production) Amendment Regulations, 1973; the Federal Environmental Protection Agency Decree 1988. The effectiveness of these Laws have not been determined. The Laws are indicative of Nigerian Government efforts towards limiting the degradation of the environment.

These legislations indicate that laws regulating oil pollution before the FEPA Decree (1988) were ad hoc and deficient generally. Though they imposed some obligations to prevent and control oil pollution during exploration, refining and transportation, they were inadequate. Pre-FEPA, the Inspectorate Division of the NNPC (this division is now the Ministry of Petroleum and Natural Resources) as the regulatory body of the oil industry had no legal capability to enforce her directives. In consequence, her orders were often ignored by the oil operators, therefore, those operating in the oil industry were unconcerned about the consequences of their acts in terms of specific requirement for damages, sanctions against those who infringe set regulations aimed at ensuring **GOOD OIL FIELD PRACTICE**³⁵ even leaving their equipment, oil wells etc. in good state of repairs and condition were not adhered to. Nigerian ad hoc regulations have been criticised for their lack of bite:

"The minister of Petroleum Resources is vested with the power to make regulations on the prevention of pollution but when such power is discretionary, even when it has been exercised, the half hearted admonition to petroleum operators to conduct their operations in a "business like manner" or in accordance with "good oil

35. Good Oil Field Practice A legal term (with technical connotations) that is used in production licenses. Oil and gas-field can be rate-sensitive, which means that the amount of oil and gas ultimately reconvened depends upon the speed at which the reserves are depleted. If production is too rapid, the field can be damaged (i.e) potential future production can be lost. There are other ways in which oil reservoirs can be damaged. Hence, good oil field practice means not damaging the fields. As most legal concepts, the precise meaning is a matter of debate. See Oil and Gas Dictionary - Paul Stevens. Publisher - Macmillan Press 1984 - P.92.

field practice" and "with improved equipment etc. has done no more than merely import into regulations the common law duty of care by general terms into petroleum operations."

The powers vested in the Minister of Petroleum Resources lack certainty. Even in some of the regulations, especially the Petroleum (Drilling and Production) Regulations 1969, provide in section 25, that licenses and lessees should take prompt steps to control oil pollution where it occurs and if possible end it. In context of the above provisions, operators in the industry do not have obligation to control nor end pollution. It is easier to say. It has not been possible to end it.³⁶ Oil companies are really under no obligation to prevent the occurrences of oil pollution not even to control and end it. The short-fall in our laws are perhaps due to Nigerian non ratification and implementation of most of the international conventions mentioned earlier. These problems created in our laws, pre-FEPA, appeared corrected with the promulgation of FEPA Decree 1988. Since after FEPA, the oil majors and even all ancillary to the oil Industries are now bound by the Laws guiding oil pollution.³⁷

Compensation for Pollution

Compensation in this paper refers to making good or lessening the bad effect of damage, loss, injury etc. i.e. recompense. Through compensation, an unpleasant aspect is made to seem less bad. As of present, there is no comprehensive policy on compensation inspite of the short - falls in Nigerian Laws designed to guide the operations of the Oil Industry, the Oil Pipelines Act 1956, as amended, did not affect the compensation provisions.

The Act provides for:

1. "Payment of compensation to owners or occupiers of property for any damage done by the holder of a permit to survey any land for pipeline purpose and for any

³⁶ Ajomo. M.A. (Prof) "The socio-legal implication of Industrial Pollution Control".

³⁷ Osuno B.A. "The Petroleum Inspectorate, the role of the Petroleum Inspectorate of the NNPC as the guardian of the Nigerian Oil Industry" Workshop proceedings published by the NNPC - P8

- injurious affection of any land by the oil pipeline license.³⁸
2. Damages arising from breakage or leakage of oil from pipelines; with the proviso that where the parties do not reach agreement, the matter should be settled by a court.³⁹
 3. Basis of assessment of compensation in the oil Industry is a fair and adequate compensation.⁴⁰

Again, we notice piecemeal regulations on the issue of compensation. There is no comprehensive enactment to regulate the conduct of operators in the industry against pollution.

The issue of compensation is generally enforced by the Ministry of Petroleum Resources and the Judiciary. With the Ministry, claims are related to "formulated guidelines concerning handling, treatment and disposal of oil companies effluents, chemicals, spills, and waste products. Also, claims are to be made to the tentative allowable limits of waste discharges for fresh water, coastal water and offshore areas of operation."⁴¹ To give effect to the provisions, the Inspectorate Division of the NNPC has established guidelines for dealing with the above matters. Compliance monitoring exercise has also been formulated. In the current guidelines, in the event of spillage, once the Inspectorate Division is informed, she will determine priority areas and clean-up measures to be complied with. This is not sufficient.

In the event of pollution, it is the natives of the area that bear the brunt. They are generally ignorant of the long term destructive effect of pollution. It has been reported that the Inspectorate Division of the NNPC "thinks that educating the people of the oil producing areas about the effect of pollution would increase their hopes for

38. S. 6(3) Oil Pipelines Act 1956.

39. S. 11(5) Oil Pipelines Act 1956.

40. Ekitkerentse G. Nigerian Petroleum Law, Macmillan Publishers 1985.

41. Jonah V.O. "Machinery for implementing Environmental Pollution Laws in Oil and Gas operations." The Petroleum Industry and the Nigerian Environment Proceedings of 1985 Seminar.

financial rewards, therefore, they should be kept in the dark."⁴² This is most unhelpful and this is one of the reasons why the FEPA Decree is significant. The Federal Environmental Protection Agency Decree (1988) (now FEPA Act CAP 13 LFN, 1990 as amended) was promulgated specifically to address environmental issues. The main functions of FEPA stated in Section 4 of the Act, include the general protection and development of the environment. Section 4 (e) empowers the Agency to carry out other necessary activities which are expedient for the full discharge of its functions. However, prior to the FEPA Decree, there was the Public Health Act of 1959, Minerals Act of 1945, Quarries Act of 1965, Town and Country Planning Ordinance of 1916 and others. These apart, there are environmental sanitation Laws, edicts and Commissions in states of the Federation. These in addition to the International treaties to which Nigeria is signatory.

The claim for compensation is finally enforced by the Courts where agreement is not reached by the Parties. Always, action for compensation is instituted under the law of tort (negligence, nuisance and the rule in *Ryland V Fletcher*⁴³) Negligence is a tort, actionable at the suit of a person suffering damage in consequence the defendants breach of duty of care to refrain from injuring him. Compensation in our context arises from Negligence on the aspect we referred to earlier. Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do.⁴⁴ Cases that were brought before the courts in Nigeria include:

⁴² Osuno B.A. "Development and Implementation of Regulations to Control Petroleum Related Pollution in Nigeria" The Petroleum Industry and the Nigerian Environment, 1981, Seminar Proceedings. P.26.

43. *Ryland V. Fletcher* (1866) L.R.I. Ex 265; 1868 L.R. 3H.L.330 (Sections 519 and 520 of the restatement of torts 2nd Edition *Ryland V. Fletcher* become a principle of strict liability for "abnormally dangerous" activities). Note also that the rule in *Ryland V. Fletcher* has been regarded as English Laws broadest attempt at a principle of strict liability for accidental harms.

⁴⁴ See also-Adeqale O. Judicial attitude to Environmental Hazards in Nigerian Oil Industry."

- Chief Simon Onojake V. Seismograph Services⁴⁵
- Anthony Atubin & Ore V. Shell BP Development Company Nigeria⁴⁶
- Seismograph Services Ltd. V. Akpormoro⁴⁷
- Amos V Shell BP Nigeria Limited.⁴⁸
- Umukoro Ehemewe V. Shell BP⁴⁹
- Chief Otuku & Ors V. Shell BP⁵⁰

These matters were brought before the courts for judicial determination for failure of the operators to conform to the required legal standard for safeguarding others against unreasonable risk of injury or failure to do what a person of ordinary prudence or a reasonable man would under similar circumstances.⁵¹ The decision of the courts either in favour or not, is a confirmation of claim for negligence.

In most of the cases, the court often granted damages or injunctions. Due to lack of a comprehensive law, the courts often awarded paltry damages⁵².

Injunctions have been granted reluctantly in cases of oil pollution on grounds of public interest. This was the holding in *Allar Iron V Shell BP Development Nigeria Ltd.* (The court denied the plaintiff an order of injunction).⁵³

In proving negligence, the courts appear to be more lenient with the plaintiff as the plaintiff has the burden of proof. As would be expected, the victims of pollution often find it "difficult to explain and prove terms like good oil field practice" of the industry. The courts' sympathetic nature with victims of oil pollution was demonstrated in

⁴⁵ Suit No. SHC/25/67 - Sapele High Court 1971.

⁴⁶ Suit No UCH/43/73 Ughelli High Court 1974.

⁴⁷ (1974) S.C. 119.

⁴⁸ (1974) 4 ECSR 486.

⁴⁹ Suit NO UCN/12/70 Ughelli High Court 1971.

⁵⁰ Suit No BHC/2/83 Bori High Court 1985.

op cit.

⁵² See the case of *R. Mon and Or V. Shell BP Development Co Nigeria Limited* where ₦200 was awarded as damages for damages to a fish pond. (1970/72) IRSLR 711.

⁵³ Suit No. W/89/71 Warri High Court 1973.

Machine Umudje V. Shell BP Nigeria Limited⁵⁴ where the court held the defendant liable in negligence notwithstanding the fact that the plaintiffs were unable to prove negligence on the part of the defendants. In this, case negligence was inferred. In the current development, the onus is on the defendant. This is so, so as to evade the burden of proof on the plaintiff, the maxim of "res ip sa loquitur" evolved.⁵⁵

The maxim is involved "when the facts bearing on causation and on the care exercised by the defendant are at the onset legally unknown to the plaintiff and ought to be within the knowledge of the defendant". This was what was addressed in Victor Eleru Or. V. Shell BP Development Company Nigeria⁵⁶ The plaintiffs were awarded damages. This development has been incorporated into the FEPA Decree (1988)

CONCLUSION

From the foregoing, pre and after FEPA, the enforceability of the laws relating to oil pollution in Nigeria is still short of expectation and comprehensive implementation of existing laws is over-due. There is urgent need for a comprehensive legislation for conditions, terms and rates of compensation. An all embracing Response on Compensation and Liability is over due. Though the FEPA Decree has taken care of most of the lapses in the earlier Regulations, there is need for a National Policy on Environmental standards despite FEPA Decree (1988).⁵⁷ For example, Environmental Impact Study should precede oil exploration. This will alleviate, amend or lessen the ecological problems. It is so in the Decree but is not being adhered to.

A comprehensive legislation will compel the operators in the Industry to make oil companies comply by adopting appropriate

⁵⁴ Suit No. PHC/101/76 Port Harcourt (1979).

⁵⁵ This maxim simply means - the thing speaks for itself) the maxim applies wherein it is so improbable that such an accident would have happened without the significance of the defendant, that a reasonable court could find without further evidence that it was so caused. The maxim throws onto the defendant the burden of disprove negligence..See Osborn Concise Law Dictionary.

⁵⁶ (1975) 7 - 11 SC. 155 op. cit p. 288.

See FEPA Decree (1988) sections 2, 4, 20 (1), (2), (3), 15 - 19, 21 (2) (b), 23, 24, 38.

production method and invest appropriately towards safety of our environment. In addition, it would be in the interest of indigenes of the oil producing areas (and other Nigerians alike) for the Nigerian Government to ratify urgently and adopt all the international conventions. It will be a signal to the oil companies and other operators that they must comply with all approved international laws and standards in Nigeria like elsewhere. Nigeria must adapt, and as Dias aptly put it, "adaptability is truly a condition sine qua non of the continued existence of a legal system"⁵⁸ Nigeria must join the International Legal system in the interest of the citizens and the Nation. She should join the International Legal System. A green paper on Remedying Environmental Damage issued by the Commission of the European Communities⁵⁹ takes up the theme of strict liability in the context of community pollution polity which is founded on "adult must pay"⁶⁰ principle. The Green paper is pitched at a very general level but envisages legislation to specify particular activities and processes rather than the creation of broad rule of liability.⁶¹ Within Nigeria, FEPA Decree of 1988⁶² according to Ajomo,⁶³ should be given a prominent place in the new constitution which is being envisaged to commence in 1998. In other words, the decree should be incorporated into the constitution like the Law Use Decree 1978. FEPA should be given an all pervading authority to enable it operate in all states of the Federation as a federal agency without it being questioned

⁵⁸ Dias R.W.M. Jurisprudence, Fourteenth Edition (Ed) W.V.H. Rogers, Publisher - Sweet & Maxwell, 1994.

⁵⁹ Ibid - Com (93) 47.

⁶⁰ The principle places the burden of pollution statement on the polluter in achieving oil pollution free environment. "The polluter pays principle seems however to treat society most fairly. This in on condition that beneficiaries, like farmers, fishermen, and other inhabitants in the oil and gas areas of operation do not collude to pollute even though they own the land or produce goods that are beneficial and essential to society".

⁶¹ op. cit.

⁶² The Decree is now CAP 131 of the Laws of the Federation, 1990.

⁶³ Ajomo M. A. (Prof) Oil Spillage is our worst Environmental Pollution. The Guardian on Sunday, September 22, 1996 PAZ1.

for usurping or violating the powers of the constituent units of the Federation under the constitution.

A vigorous enforcement of the Environmental Laws by FEPA should not be construed as "Unwarranted interference and harassment" or as "an attempt to provide work and money for environmentalists as long as they discharged their duties within the limits of the enabling activities ipso facto requires some regulatory measures to protect the former. The regulatory measures are aimed at ensuring and making our environment safe. This concerns developmental priorities within the acceptable legal framework, practices and procedures.

By enforcing the laws, it could possibly not be to the intention of government to discourage operators in the industry, rather government is only concerned with making economic activities, industrial operations and production environmentally friendly and compatible with the requirements of human survival and in compliance with the global notion of sustainable development. The various regulatory actions are aimed at establishing and maintaining ambient and effluent standards for individual pollutants, while regulatory activities for hazardous waste, have usually been focused on setting criteria for the handling of broad categories of wastes. This is the safest way of protecting our environment - our **ONLY SOURCE OF LIFE.**