

A Survey of the Legal Framework for the Control of Oil and Gas Pollution from Some Selected Countries *

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Abstract

This study undertakes a comparative study of the legal framework for environmental protection in some oil and gas producing jurisdictions. Some jurisdictions were selected for this purpose. The legal framework for the prevention and control of oil and gas pollution in these countries will be compared with the position in Nigeria. The study aims at analyzing the efficacy or otherwise of the extant Nigerian statutory framework vis-a vis that of some jurisdictions with respect to the control of oil and gas pollution. The study makes a case for an effective and adequate comprehensive body of legislation to deal with oil and gas pollution as against the present situation of fragmented and often conflicting laws that are unable to deal with the problem in Nigeria.

Keywords: Oil and Gas Pollution, Prevention and Control, Accross Countries of the World.

1. Introduction

1.1 **Oil:** The Dictionary of Geology, simply described oil as petroleum oil.¹ The term “oil” in geological terms therefore refers to petroleum oil and not any other form of oil. Petroleum has also been described as an organic material which occurs naturally in green to black coloured mixtures of hydrocarbon oils found as seepages beneath the earth crust and which could be obtained by boring into the earth crust². Petroleum is formed beneath the earth crust across countries of the world.

1.1.2 **Gas:** has been defined as a combustible fluid from fuel or lighting.³ In a specialized sense, it has been defined as a mixture of the low molecular weight paraffin series hydrocarbons methane, propane, and butane, with small amount of higher hydrocarbons, also frequently containing small or large proportions of nitrogen, carbon dioxide, and hydrogen sulphide, and occasionally small proportions of helium.⁴ It has also been described as natural hydrocarbon oils which are associated with the production of petroleum.⁵ Gas as used in this thesis refers to the combustible liquid hydrocarbon either occurring independently or in association with petroleum oil.

1.1.3 Pollution

Pollution has been defined as man made or aided alteration of chemical, physical⁶ or biological quality of the environment to the extent that is detrimental to that environment or beyond acceptable limits. Pollution is therefore a phenomenon that is adverse to the environment.

1.1.4 Oil and Gas Pollution

This describes the pollution of the environment occasioned by oil and gas prospecting and production.

1.1.5 Environment

The environment has been defined to include water, air, land and all plants and human beings or animals living therein and the interrelationship which exist among these or any of them.⁷

2. A Summary of the Statutory Framework relevant to Environmental Protection in the Nigerian Oil and Gas Sector.

Environment issues were not in the front burner of national debate before 1988. However, with the advert of during of toxic waste in the Nigerian port town of Koko and with the public out cry that followed, concern about the sustainability of the Nigerian environment became an issue of national discourse. The government of the federation responded by enacting the Harmful Waste (Special Criminal Provision etc)Act,⁸ the Federal Environmental Protection Act (FEPA)⁹ and the Environmental Impact Assessment Act,¹⁰ all in the same year of

¹ Dictionary of Geology, (New Delhi: Academic Publishers, 2006) P.249

² M.P.M. Walker (ed) Chambers Dictionary of Science and Technology (New York: Chambers Harraps Publishers Ltd, 2002) p. 806.

³ *ibid*, p. 493

⁴ *op.cit*, fn 7,p.236.

⁵ *op. cit* fn. 8, p.772.

⁶ section 41 of the FEPA Act, Cap F 10, LFN,2004

⁷ section 38 *ibid*

⁸ Cap H1, LFN, 2004

⁹ Cap F10 LFN,2004

¹⁰ Cap E 12 LFN, 2004

1988. The period before this time has become popularly referred to as the “pre environmental era.”¹¹The above legislations were however not specifically targeted at oil and gas pollution but at general environmental protection. Furthermore, none of the legislations contained a clear cut provision on what should be done in the event of oil pollution actually occurring.¹² It is noteworthy however that legislations in the Nigerian oil and gas sector dates back to the colonial period with the Oil Minerals Ordinance of 1916.¹³ This was followed by the Oil Pipeline Act of 1956.¹⁴

In 1968, the Oil in Navigable Waters Act was promulgated because of the need to conform with international efforts in the area required by the International Convention for the Prevention of Pollution of the Sea by oil of 1954 as amended in 1962. In 1967 however Petroleum Regulations¹⁵ were made pursuant to the Petroleum Act 1969.¹⁶ Other relevant regulations made pursuant to the Petroleum Act include the Petroleum (Drilling and Production) Regulations in 1969,¹⁷ the Petroleum (Drilling and Refining) Regulations of 1973,¹⁸ and the Petroleum (Refining) Regulations in 1974.¹⁹ The Oil in Navigable Waters Regulation²⁰ was also made in 1968 pursuant to the Oil in Navigable Waters Act. The Associated Gas Re – injection Act was enacted in 1979. The Oil and Gas Pipeline Regulations were also made in 1995 pursuant to the Oil Pipeline Act.

The above statutes enumerated above showed little or no concern for the negative impact of oil prospecting, production, refining and marketing on the Nigerian man and his environment. The Associated Gas Re – injection Act merely placed an illusory ban on gas flaring without the permission of the Minister.²¹ The statutes did not also provide any institutional framework for the enforcement of pollution prevention and control. The administrative framework within the ministry of petroleum resources and later the NNPC were inadequate and inappropriate for this function. An attempt was however made in 2006 to establish an institutional framework for the control of oil spill pollution through the enactment of the National Oil Spills Detection and Response Agency Act (NOSDRA).

The 2006 Act narrowed its focus to the prevention of oil and gas pollution arising from oil spills. The other aspects of oil and gas pollution such as effluent discharge from petroleum refining activities and gas flaring was removed from the ambit of the agency. There is however presently a bill before the Senate of the National Assembly seeking to enlarge the scope of the Act by renaming it the “National Oil Pollution Management Agency Act”.

The amendment, if it sails through, would also enlarge the jurisdiction and powers conferred on the agency by the Act. Some regulations have also been made pursuant to the NOSDRA Act.

2.1 Canada

Canada has a largely privatized oil industry and is one of the best countries in terms of prevention and control of oil and gas pollution. In many years of oil exploration and exploitation in Canada, very few spills have been recorded. Apart from accidents involving oil tankers, very few incident of spill has been reported.²² Most of the spill incidents are isolated. One of such incidents was that which occurred when a construction company accidentally punctured a pipeline in Burnaby, British Colombia and certain quantity of oil escaped shooting plumes of 20 metres into the air.²³ Both the operators and the civil society in Canada are environment friendly.

The legislations governing oil spills, individual oil pollution generating accidents and environmental emergencies in Canada are:

¹¹ O. Fagbohun, *The Law of Oil Pollution and Environmental Restoration*, (Lagos: Odade Publishers, 2010) p.188

¹² The Environmental era legislations were mainly focused on general environmental issues

¹³ Cap M 120, LFN, 2004

¹⁴ Cap 445, LFN 1958, now Cap 08 LFN, 2004

¹⁵ L.N. 71 of 1967, a subsidiary of Cap P10 LFN 2004

¹⁶ now cap P10, LFN 2004

¹⁷ L.N. 69 of 1969, *ibid*

¹⁸ L.N.26 of 1973 *ibid*

¹⁹ L.N.45 of 1974 *ibid*

²⁰ L.N.10 of 1968, A subsidiary of Cap O6 LFN, 2004

²¹ section 3, Associated Gas Re-injection Act, Cap A25, LFN, 2004

²² A reported 10.6 million gallons was spilled into the Atlantic Ocean, 563-6441cm S.E. of Cape Race, Newfond and in an incident inviting a ship known as “The Athenian Voltic”

²³ [wwwCanada “Burnaby Oil Spill Update”](http://www.Canada.ca/BurnabyOilSpillUpdate) Verdena- 19, Human Rights <<http://versenac19.wordpress.com/200/07125wwwf>. Canada, Burnaby, Burnaby Oil, Spill, Update> accessed 12/09/2011.

- (1) The Canadian Shipping Act;²⁴
- (2) The Marine Liability Act;²⁵
- (3) The Fisheries Act;²⁶
- (4) The Migratory Birds Convention Act;²⁷
- (5) The Canadian Environmental Act;²⁸
- (6) The Transportation and Dangerous Goods Act;²⁹ and
- (7) Canada Oil and Gas Convention Act;³⁰

This is unlike the situation in Nigeria where even extant legislations in the oil gas sector do not concern themselves with the issue of pollution. Canada has both the infrastructure and training required to respond to an oil spill. Gas flaring is banned in Canada. The various Acts have established specialized bodies for their administration. In Nigeria, there are no adequate infrastructures for the control of oil pollution and gas flaring is still the rule rather than the exception. Institutional capacity for the administration of extant laws is also weak.

The Environmental Protection Branch of Environment Canada is the Federal Agency responsible for ensuring that appropriate reporting, surveillance and response mechanism are in place to deal effectively with Environmental emergencies.³¹ They coordinate the efforts of government and industry in their response to environmental emergencies and advise them on the scene commander and the Federal Monitoring Officer of the Canadian Coast Guard on environmental priorities and response strategies.³²

Responsibilities for environmental protection are complimentary and clearly defined. There are no overlaps in functions or conflict between the agencies that will work to sustain the environmental protection efforts. This is unlike the case in Nigeria where Directorate of Petroleum Resources (DPR), National Environmental Standards Regulation and Enforcement Agency (NESREA) and National Oil Spill Detection and Response Agency (NOSDRA) are struggling for roles and contradicting their various efforts.

Every oil spill in Canada which affects an appreciable area of land, water and air can lead to prosecution under the Canadian Environmental Protection Act, the Migratory Birds Convention Act, the fisheries Act and/or the Canadian shipping Act. In addition to fines, a polluter may also be expected to foot the costs of remediation. Most oil spills in Nigeria go unpunished as operators quickly avail themselves of the avalanche of available defences.

Canada has a detailed and substantial legal framework for the control of oil and gas pollution. It is an environment friendly developed economy and does not permit the exploration and exploitation of oil and gas resources at the expense of the natural environment and biodiversity. It is among the few countries that approach petroleum activities from the standpoint of sustainable development. This is unlike Nigeria where pipelines criss-cross the mangrove swamp forests and regularly spill oil into such forests wiping out large tracts of them without any body batting an eyelid.

The culture of sustainable development is so much imbibed by all that even companies willingly give up mining rights and concessions so as to assist in the consolidation of the natural environment by the creation of specially protected areas.

2.2 The United Kingdom

The United Kingdom used to be a large exporter of oil until 1999 when oil production began to decline as a result of the exhaustion of its well known deposits and shifts to more areas with higher cost of production. Ownership of petroleum resources in the United Kingdom is vested in the crown and thus shares the domanial mode of ownership with Nigeria. The United Kingdom has a long history of legislation in the area of environmental protection from oil pollution and has an array of legislations in the area. They include the, Petroleum (Production) Act, 1934; Prevention of Oil Pollution Act, 1971;

²⁴ R.S 1985 C.S. --9

²⁵ R.S 2001 C.6

²⁶ R.S. 1985 CF-14

²⁷ S.C.1994 C.C.2

²⁸ S.C.1999 C.33

²⁹ S.C 1992 C.34

³⁰ R.S. 1985 C.0-7

³¹ Canadian Wildlife Service, Environmental Conservative Branch, Environment Canada Atlantic Region, "Oil Spill Response Plan" August, 1999

³² Regional Environmental Emergency Team, Atlantic Region Contingency Plan for Environmental Emergency, (1999).

Pollution Prevention and Control Act, 1992; Off Shore Installations (Emergency Procedures) Regulations, 1976; Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations, 1998, etc. The pipes used for transportation of crude are of such a high quality that there is yet no reported case of oil spillage emanating from the pipeline networks.

This is unlike the case in Nigeria where the NOSDRA was only enacted in 2006, more than 50 years after oil and gas exploration and production commenced. The pipes used in Nigeria for the pipeline networks are also of very low quality hence many have been corroded already. The United Kingdom also maintains the laudable practice of writing the provisions of international conventions to which it is signatory into its national legislations. Non-vessel oil spills are also very rare as is the case with Canada.

The Department of Trade and Industry is the lead regulator for discharges and gaseous emissions outside the territorial waters of the United Kingdom. The Environmental Agency or the Scottish Protection Agency is in charge of regulations for waters within three nautical miles zone. There are also other bodies for specific environmental issues in the oil and gas industry. The DTI in conjunction with other specialized agencies has the responsibility of measuring environmental performance in the oil industry.³³

It is mandatory requirement for every applicant for a license to include a statement of its environmental policy which must also state the mitigating measures the prospective licensee is to adopt to minimize risk to the environment.³⁴ A proposed plan of compliance with the condition to be imposed by the Department of Trade and Industry (DTI) is also included in the application. It is the Environmental Protection Program marshaled by the operator in its application that will determine the outcome of the application for license.³⁵ There are no such conditions attached to the grant of an oil mining lease or license in Nigeria.

The United Kingdom anchors the very success of its exploratory and production activities in the oil and gas industry on the compatibility of such activities with the environment. There is a high level of awareness that oil drilling activities can only be of value to the society where they conduce with environmental balance and are not a threat to the environment. This situation is exactly the opposite in Nigeria where the Niger-Delta environment is been mindlessly devastated to the extent that if nothing is done to ameliorate the situation, the terrain could become uninhabitable in the next 30 years.

2.3 The United State of America

The legal framework for the control of oil and gas pollution in the United States is founded on three laws. These are the Oil Pollution Act (OPA) of 1990,³⁶ the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA), 1980³⁷ and the Water Control Act of 1972 otherwise known as the Clean Water Act.^{38,215} In addition to the above Acts is the National Oil and Hazardous Substances Contingency Plan issued by the United States Environmental Protection Agency.³⁹

The OPA is administered by the United States Guard and provides for liability for oil pollution damage occurring in the navigable waters and the adjoining shoreline or the exclusive economic zone of the United States. The Act also established the Oil pollution Fund for responses and payment of claims where an operator is unable to furnish adequate funds for the purpose.⁴⁰ The Act also declares the content of the National Contingency Plan.⁴¹

The CERCLA is also known as the “superfund.” It makes provisions for the clean up of sites contaminated by spills and hazardous substances. It provides liability for clean ups and clean up procedures that protect humans and the environment. The Act empowers the president to clean up hazardous substances sites either directly or through a responsible party by enforcement actions. Under the Act, the trustee for the environment may recover

³³ Apart from agencies of government, industry associations such as the UKOOA, IADC and OCA work with the DTI to determine the environmental performance of operators

³⁴ Two types of license are issued

³⁵ *ibid*

³⁶ 33 U.S.C.2701

³⁷ 42 U.S.C 9601

³⁸ 33. U.S.C 1251

³⁹ Restoration, Natural Resources Damage Assessment and Restoration Program ‘Laws, Regulations and Authorizing Statutes’ at <<http://restoration.doc.gov/laws.html> accessed 19-02-2012

⁴⁰ section 1012 OPA

⁴¹ section 4201, OPA

damage for pollution and use same for natural resources restoration.⁴²The CERLCA operates retroactively and can be used against those responsible for hazardous wastes before its enactment.

The Clean Water Act aims at maintaining and restoring the chemical, physical and biological integrity of the waters of the United States and to apply the best available and economically achievable technology to maintain waters quality so as to ensure protection of fish, shellfish, wildlife and human recreation activities. In a nutshell, it aims at preventing the pollution of the waters of the United States.

The United States can therefore be said to have an array of mutually complementing legislations for the prevention and control of oil and gas pollution. Its National Oil Contingency Plans thrive on the existing legislations such that there is a harmony between law and implementation. The United State designates the Environmental Protection Agency (EPA) as the lead agency for inland waters and land based oil spills while the United State Coastal Guards (USCG) is the lead agency for coastal and deep water port oil spills.

In summary, though the United State of America has the potential threats for devastating oil spills in view of the large size of its oil industry; it has a sophisticated and effective legal framework to meet these challenges. The 2011 regulations made pursuant to the NOSDRA are patterned after the United States model of oil pollution response mechanism. It is however doubtful whether Nigeria possesses the trained personnel and equipment for the implementation of the regulations. One common feature of the oil and gas pollution prevention mechanism discussed above is their awareness that oil and gas activities are hazardous in nature and their readiness to legally address the situation at all times. This is unlike in Nigeria where all the preoccupation of government is on how to maximize oil output with little or no attention being paid to the damaging effects of oil production on the environment.

2.4 Saudi Arabia

The Saudi Arabian beaches are cited as the most polluted in the world with about 11 million barrels of oil polluting²¹ them and the surrounding environment. It has been said that fewer coral species survive in the Persian Gulf than the red sea as a result of high salinity from oil pollution. A significant interest in environmental protection in Saudi Arabia has been marked by the establishment of the Environmental Committee in 1999. The National Environmental Committee was an initiative of the Saudi Chamber of Commerce and Industry (SCCI).⁴³ The initiative for the establishment of the National Environmental Committee was followed by the enactment of the Environmental Act in 2001. The Act provides for limitation of emissions and the conduct of environmental impact assessment for every new project.

Furthermore, Article 32 of the basic Rules of the Kingdom enjoins the government to endeavour to conserve the environment and prevent pollution. In pursuance of this provision, the government has embarked on the establishment of parks and conservation of forest resources as well as the provision of drinking water through the establishment of large desalination plants.⁴⁴The enforcement of environmental laws in Saudi Arabia is constrained by several factors shared in common with countries like Nigeria, Angola and Iraq. These factors include weak institutional mechanisms, lack of political and economic will, absence of the technical capabilities as well as lack of NGO and public participation.⁴⁵

The National Contingency Plan for combating oil pollution was established in Saudi Arabia in 1991 by the /Metrological and Environmental Protection Administration (MEPA). The general policy in Saudi Arabia is that oil exploration must be carried on at a minimal risk to the environment. MEPA is the national response co-ordinator for oil spill activities such as NOSDRA in Nigeria. Other Organizations at the area level assist with the response efforts.

Saudi Arabia possesses a recognizable framework for the control of oil and gas pollution and pollution generally unlike Nigeria. Sabotage of oil facilities is unknown in Saudi Arabia. This contrasts with the situation in Nigeria where pipelines are deliberately vandalized for the purposes of oil theft or in pursuit of resource control agitation.

⁴² section 106 CERLA

⁴³ Energy Information Administration "Saudi Arabia Environmental Issues" Nov., 2002 at <http://www.era.doe.gov/emeu/cabs/Saudi.enu/html>. Accessed 22/08/2011

⁴⁴ *ibid*

⁴⁵ UNEPGEO-2000, Chapter Three: Policy Response- "West Asian "Laws and Institutions" at <<http://www.unepgeo.org/geo/2000/English/0206.html> accessed 25th October, 2012

2.5 Iraq

Iraq has a paucity of data on oil spills. It may however appear that oil spills in Iraq has gone down consequent to the drop in production occasioned by the ban of oil imports from Iraq following the gulf war. The major protection agency in Iraq is the Supreme Council for the Environment attached to the Ministry of Health and was established in 1975. Iraq has no sectoral control of oil and gas pollution. The move to have such a specialized law in the oil sector only occurred in 2007 with the submission of a draft Hydrocarbon or Oil Law to the Iraq Council of Representatives. This law however is sparse on environmental protection but focuses more on the framework for Production Sharing Agreements (PSA) for the enhancement of oil production. It however has a provision prohibiting oil companies to continue with gas flaring after one years of commencement of operations.⁴⁶

The law further provides for best practices in the sector and the conduct of oil exploration and production in such a way as not to endanger human life and the environment.⁴⁷The law further makes elaborate provisions for environmental protection and safety in the course of petroleum activities and the immediate clean up of polluted sites as well as the payment of compensation for damages to state and private property.⁴⁸ It also provides for the avoidance of damage to land, water, table, trees, crops, buildings or other infrastructure or goods.⁴⁹

However, it is uncertain whether the draft hydrocarbon or oil law has been passed into law in Iraq. It is submitted that after been passed into law, its implementation shall yet be hampered by weak institutional capacity, lack of trained personnel as well as the absence of the political and economic will to reduce oil production for the sake of the environment as is the case in Nigeria. There has however been an increase in water pollution as a result of the gulf war largely occasioned by discharge of toxic chemicals into oil wells. The sanction induced shortage of equipment has also made the implementation of the limited environmental programs of the republic impossible.

2.6 Angola

There is no report of any major oil spill in Angola. The constitutional law of Angola confers on the citizens the right to live in a healthy non-polluted environment.⁵⁰ The State if enjoined under the law to adopt measures for environmental protection⁵¹ and then to promote the defence and conservation of national resources so as to guide their exploitation in the best interest of the Angolan people.⁵² The principles developed at the Rio conference and that of Agenda 21 are incorporated into the Environmental Law (EL) of Angola.⁵³ This law also incorporates the obligations of the Angolan State under ratified international conventions⁵⁴ Articles 3, 4 and 5 enunciates the principles to follow in all environmental legislation.

The major principles upon which Angola anti-pollution legislation are based include improvement of the welfare and quality of life of the people,⁵⁵ preservation and protection of the environment,⁵⁶ rational use of national resources,⁵⁷ sustainable development,⁵⁸ prevention⁵⁹ of environmental damage through the establishment of environmental impact assessment, etc.

The implementation of the above principles by the enactment of quality legislation has been very slow indeed as a result of opposition from the oil industry operators, and land owners. There is also no culture of judicial intervention in environmental matters. Political instability and widespread poverty have been militating against the enforcement of the few extant regulations.

In Angola, it is also a requirement of the law that a claimant in any pollution litigation is expected to prove direct causation and negligence on the part of the defendant. This has not been easy for such claimants due to the limited access to the means of producing such proofs. Oil pollution is not identified as a major environmental problem in Angola. Nevertheless, Angola has moved from a non-existent legal framework situation to a position where relevant international conventions on the issue are ratified and the implementation of a national response

⁴⁶ article 25 of the Draft Oil Law, 2007

⁴⁷ article 31 *ibid*

⁴⁸ article 31 (a) *ibid*

⁴⁹ article 31 (5) *ibid*

⁵⁰ Constitutional Law C. art. 24/33 *ibid*

⁵¹ *Ibidi*, art. 24/2

⁵² *ibid* art. 12/2

⁵³ Coelho, A in *Juris Angola Environmental Law*, March 2 20/<http://www.Jurist.Law Pp.h edu/world/angola cor2 htm>.

⁵⁴ *ibid*

⁵⁵ art 3/2, Environmental Law and CL Art. 9

⁵⁶ art 3/2 EL and CL arts. 12/2, 24/1 and 24/2

⁵⁷ art 3/2 EL.

⁵⁸ EL arts 5/a, 5/b, 4/d, 80 and 11/2

⁵⁹ EL AA 4C, 10⁰, 15⁰ and 18⁰

plan commenced.⁶⁰ There is currently in place a National Oil Spill committee chaired by the Minister of Petroleum with inputs from other governmental agencies and the national oil company. Notwithstanding the above efforts, the pre-occupation of the Angolan State, as is the cases of other developing countries like Nigeria appear to be the maximization of oil output. Thus, the institutions on ground to implement anti-pollution laws lack the capacity and moral will do so.

The ongoing civil war has taken its toll on efforts to control oil and gas pollution by making the government to shroud matters partaking to oil revenues in top secrecy. Much of what goes on in the oil sector is not made open to the public because the sector is seen as a major engine for providing the much needed revenue to the government for the prosecution of the war.

2.7 Equatorial Guinea

The Mining Law No. 92006 is the fundamental law that regulates oil activities in Equatorial Guinea. This law vests all the mineral resources within the country and its exclusive economic zone on the state. Article 31 of this law emphasizes environmental protection and reclamation and enjoins all license and contract holders in the mining industry to carry out their activities in accordance with the best practices available in the industry.

The Hydrocarbon Law No 8/2006 also provides for the submission of a detailed plan for environmental protection to the Minister for approval before the commencement of operations.⁶¹ Equatorial Guinea is a party to many international conventions on environment but none of them have been ratified.⁶² Equatorial Guinea has no National Oil Spill Contingency Plan.⁶³ The coordination of oil spill emergencies is left in the hands of private companies. There are also no trained personnel or equipment for responding to oil spill emergencies. The available policies and laws are also inconsistent such that the Minister has conflicting and contradicting interests and jurisdiction. A workshop was held in 2007 for the purposes of assisting the country to evolve a national oil spill contingency plan.⁶⁴

As a follow up, agencies of the United States started a basic intermediate multi-hazard training for Equatorial Guinean environmental sector officials.⁶⁵ In summary, Equatorial Guinea does not yet have an effective and functional framework for the prevention of oil and gas pollution.

2.8 Congo Brazzaville

Congo Brazzaville is sub-Saharan Africa's fifth largest producer of crude oil after Nigeria, Angola, Gabon and Equatorial Guinea. It is a well known fact that pollution from oil operations constitutes a major source of contamination of Congo's fish population. Oil pollution is however viewed as an unnecessary distraction by the government who are concentrating their effort on the Congolese civil war. The government is also very unwilling to antagonize the oil companies as a result of over dependence on oil revenue. Furthermore, the close proximity between the Congolese and Angola oil rigs .has made it difficult to clearly identify the exact source responsible for any single spill incident.

There are no specific anti oil pollution enactments in place in Congo Brazzaville. The government has however ratified some international conventions on the environment such as the Convention on Biodiversity, Climate Change Convention, Desertification Convention, Endangered Species Convention, Tropical Forest Conventions etc. It has also contracted the membership of the Law of the Sea Convention in 2005 but has not ratified it. Congo Brazzaville is pre-occupied with environmental issues from vehicle emissions, water pollution from the dumping of refuse and deforestation. It has shown little or no interest in anti oil pollution legislations. Thus, it is like a banana republic where economy is thriving at the expense of the environment. Concepts such as "sustainable development" are not common phrases in Congo Brazzaville. Congo Brazzaville is bereft of any known national oil spill contingency plan. Oil companies in the Republic operates plant based contingency plans.

⁶⁰ By 31st May, 2002, Angola had ratified the 1992 CLC. The 1992 Fund Convention and the 1990 Oil Pollution Response Convention (OPRC)

⁶¹ article 5, Hydrocarbon Law No. 8/2006

⁶² The Encyclopedia of Earth "Equatorial Guinea" at <http://www.earth.org/article/equatorialGuinea>. Accessed 12th March, 2012.

⁶³ *ibid*

⁶⁴ Equatorial Guinea had not ratified the Convention for Oil Preparedness, Response and Co-Operation (OPRC, 1990) as at 2006

⁶⁵ US Forest Services Assessment Mission, Cameroun and Equatorial Guinea, Final Report, July 11, 2006

2.9 Cameroun and Chad

The Republic of Cameroun came into the map of the world as an oil-producing nation as a result of the Chad-Cameroun Petroleum Development and Pipeline Project currently been undertaken by the World Bank, Exxon Mobile of the U.S.A. and Petronas of Malaysia. The twin purpose of the project is to develop oil fields in Southern Chad and build a pipeline of over 1,000km long from Chad to off shore loading facilities in the Western coast of Cameroun. The pipeline is to run from Chad through the pygmy forest in Cameroun to the western Coats of Cameroun.

There was an attempt by the stakeholders, i.e. the government of Cameroun and Chad and the consortium of oil companies to address environmental concerns by commissioning Environmental Impact Assessment (EIA) and Environmental Management Plan (EMD) for the project. This is in recognition of the threat to the environment posed by the project. This draft environmental documentation has been criticized for not having genuine local participating input.⁶⁶

The EMP is also criticized for shifting the burden of mitigating possible negative environmental consequences away from the consortium to the government of Cameroun without any regards to the capacity of the Cameroon government to fulfill that role.⁶⁷ There was also no provision in the draft document for any fund for the payment of liabilities arising from accidental spills. It only provided for response to spills at the later stage of the project. Neither Cameroun nor Chad has a national oil spill contingency plan. They all rely on the multinational oil companies to provide disaster responses in the event of spills.

The World Bank, a major stakeholder in the Chad-Cameroun pipeline project has commissioned its council of scientific and Industrial Research to prepare a national oil spill contingency plan for the project. The government of Cameroun has not ratified the plan. Cameroun has not also ratified the Convention on Oil Preparedness, Response and Co-operation (OPRC). There was an oil spill in the Cameroon forest on 18th January, 2007 and there was great difficulty in containing the spill as a result of the absence of an oil spill contingency plan. The absence of such a plan made it difficult for the public to estimate the extent of likely damage so as to determine the adequacy or otherwise of the response efforts of the responsible party. The spill therefore led to widespread negative environmental and social impact due to the inability of the government and other stakeholders to monitor and contain the spill as there was no information available to them to work with.

The republic of Cameroun and Chad are good examples of cases where there are non-existent legal framework for the prevention and control of oil and gas pollution. These last three countries are not committed to the legal prevention and control of oil and gas pollution. They view the phenomenon of oil and gas pollution as undeserving of any serious legal and legislative attention. They are more concerned with reaping the benefits of oil production.

3. Conclusion & Recommendations

This study examined the legal framework for the control of oil and gas pollution in some selected Jurisdictions. For the purposes of comparison and analysis three categories of countries have been selected. The first category consists of countries that do not have any natural oil spill response plans and do not have laws in place against gas planning. Where such laws exist, they exist in an inconsistent and uncoordinated manner. The problem of oil and gas pollution in such countries is not given any serious legislative attention. At best, they adopt ad hoc government interventions if ever, to deal with the problem. The shallowness in this approach is underscored by the fact that pollution is an inevitable adjunct of oil and gas exploration.

It is therefore necessary to have a legal framework in place to ensure best practices in the oil field and a proper co-ordination of efforts in the event of an oil spill or gas leak. Three countries in this group include Republic of Congo, Equatorial Guinea and Cameroun.

The second category which included Nigeria consisted of countries that have extant laws and are signatories to international conventions and oil and gas pollution control and prevention. However, the national oil spill response in this category is inefficient and defective due to lack of capacity for enforcement of extant laws, weak institutions and a deficient governmental structure. In most cases, the extant laws are inconsistent, duplicated and overlapping. Countries included in this group are those whose governments are shy of implementing municipal and international environmental laws for fear that this might hurt their economies. The economies of most of

⁶⁶ African Oil Journal .Com, The Chad Camerounian Petroleum Development and Pipeline Project, Chad News, 25th March 2005

⁶⁷ World Bank Office Memorandum 25th June, 1997

these countries are so dependent on the continuous production of crude oil such that any short down of an oil facility on grounds of redressing environmental concerns could lead to widespread economic problems. The countries selected from this group are Saudi Arabia, Angola and Iraq.

The third category is mainly developed economies that have been quite effective in the implementation of their National Oil Spill Contingency Plans. Anti-oil pollution laws in such countries are actively in place and effectively enforced. The technologies for best practices in the oil industry are available and made mandatory for operations. Gas flaring has also been abolished in these countries. The countries chosen from this group are Canada, the United Kingdom and the United State of America.

Also there is the absence of a clear cut provision in the Constitution of the Federal Republic of Nigeria, 1999 making environmental rights a constitutional right as is the case with other countries such as India, Indonesia and Mali. In the first place, section 20 of the 1999 Constitution does no more than provide a non-justiceable objective for the Federal Government in the handling of environmental matters. The observance by the government of this provision is merely directory and not mandatory. There is so much limitation on its enforcement despite its broad posturing.

The provisions of Chapter II of the Constitution where the section is contained are not justiceable. Again, the section does not guarantee the personal right of Nigerian citizens to a pollution free environment. Thus, environmental rights as contained in the 1999 Nigerian Constitution are neither justiceable rights nor fundamental rights that can be enforced by the invocation of the Fundamental Rights Enforcement Procedure Rules made pursuant to the Constitution.

The implication is that even at the present time, when Public Interest Litigation has become accepted by the 2011 edition of the Fundamental Rights Enforcement Procedure Rules, which expressly dispense of the requirement of *locus standii* in actions brought under it, environmental rights, not being listed under Chapter iv of the Constitution as fundamental right, cannot be enforced using the procedure. This has severely restricted the usefulness of the 2011 version of the Fundamental Rights Enforcement Procedure Rules which has expressly abolished the *locus standii* requirements in enforcing fundamental rights in matters listed under Chapter four of the Constitution.

In a country like India, the Constitution provides that “the State shall endeavour to protect and improve the environment, and to safeguard the forest and wild life of the country.”⁶⁸ It further provides that “it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures”.⁶⁹ The foregoing section of the Indian Constitution conferred environmental rights as enforceable rights on India citizens.

In the case of Mali, its 1982 Constitution confers the right to a healthy environment on every person.⁷⁰ It also provides that the defence of the environment and promotion of all quality of life are a duty for all and the State.⁷¹ The above provision has the effect of constituting environmental rights in Mali as an inalienable and fundamental right of both the State and every citizen of Mali. Thus, any Malian citizen can approach the courts to halt an act of environmental degradation whether or not it affects him personally.

The situation is also similar in the Republic of Indonesia. Under the Indonesia Constitution,⁷² protecting the environment in which the present generation lives and in which the future generation shall develop is considered public responsibility in the Islamic Republic. Therefore, economic or other activities that may irreversibly destroy the environment or pollute it shall be forbidden.⁷³ It is therefore the constitutional duty of every Indonesian and not just the State to ensure that the environment is not polluted or destroyed. This implies that suits aimed at protecting the environment by private individual are welcome.

Finally, Nigeria could borrow a leaf from the legal framework of countries such as Canada and the United Kingdom where oil and gas production is carried on in a most environmentally friendly manner such that in some cases oil and gas exploitation is abandoned where such exploitation and production activities could pose a danger to the environment. In this regard, laws could be put in place to enable the government, host communities, operators and other stakeholders to be conscious of the environment in all oil and gas exploitation activities.

⁶⁸ Article 48(A), The Constitution of India(52nd)Amendment Act, 1985

⁶⁹ Article 51(A) (g) *ibid*

⁷⁰ Constitution of Mali, 1992

⁷¹ Cited from UNEP Environmental Law Training Manual, Nairobi, 1987,p.40

⁷² Constitution of the Republic of Indonesia 1945 abrogated in 1949 and reinstated in July 5, 1959

⁷³ article 50(iv) *ibid*

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