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ENFORCEMENT OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE OPERATIONS OF THE OIL AND GAS INDUTRY IN NIGERIA: NEED FOR A PARADIGM SHIFT

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Abstract: *In general, more regulation was expected to harness the EIA tool for improved governance of the oil and gas industry's operations, where as it stands now; not much has been achieved yet. The country suffers a great deal due to poor control and management of events in the oil and gas sector that result in environmental issues such as contamination, pollution and ruins; even with all the laws, regulations and institutional directives. The doctrinal research approach which guided this study towards the examination on what constitutes the activities of a certain and particular area (i.e. oil and or gas), their manner of operation (including those relating to EIA requirements) as well as their compliance level both with national legal framework and others such like international conventions-treaties-protocols-textbook references-case laws among others, with regard to how enforcement or compliance cum recommendation on environmental concerns/ social-economic developmental initiatives have so far been pursued. Thus far, some activities seemingly complies with current needs (societal demands) without prejudicing its future generations' entitlements. There is ample evidence showing that operations of oil companies in Nigeria led to severe negative impacts on environment, aquatic animals, jobs, economic trees and crops due to recurrent spillages, fire incidences as well as gas flaring which could have largely been stopped or minimized if proper enforcement of directives and recommendations were put into practice. Specific suggestions on measures for bringing about improved socio-economic/deployment without compromising environmental integrity for posterity in Nigerian Oil Industry are equally recommended.*

Keyword*: Environmental Impact, Enforcement, Oil & Gas operations, Regulations, Assessment, Reforms*

1. Introduction

In the light of various accounts, the hunt for oil in Nigeria must have been kick started sometimes in the year 1908, by a German-owned company known then as Nigerian Bitumen Company, which did; on that very first day, oil prospecting somewhere in Araromi village of Ondo State in South-West part of Nigeria (Nwokedi, 1998). The search, prospecting and drilling were said to have been stopped because they were not successful because it did not yield any result of oil discovery; on this note in 1914 *Minerals Ordinance* of 1914 was enacted to regulate

oil exploration and exploitation in the country then, it was gathered that exploration activity took off again in 1937 by Anglo-Dutch group who Shell d'*Arcy* is located in Owerri, Imo State, in the South-East region of Nigeria. In this regard, due to the Second World War all operations came to a halt and exploration activities were stopped until 1946 when Shell merged with the British Petroleum to become Shell BP. Thereafter the *Ordinance* of 1914 was amended by *Ordinance* No. 1 of 1925, No. 3 of 1950 and No. 5 of 1958.

Consequently, the *Minerals Oils (Safety) Regulations* were enacted when people started to pay more attention to oil and there was an upsurge in the activities of prospecting for and drilling petroleum. This paper will consider the changes that took place in this first attempt at regulating. Following a review, such legislation emerged as the *Mineral Oils (Amendment) Decree* 1970, which has also come under later review in 1993 and 1997. These statutory instruments include *The Petroleum (Drilling and Production) Regulation* 1969 issued by virtue of *Section* 9 of the *Minerals Ordinances Orders* of 1914, which was further revised in gentlemen' agreement between Shell BP Company and Nigeria government. Yet it was not until four years later that oil exploded onto Nigerian scene when in 1956 Shell BP struck liquid gold at Oloibiri in Ogbia Local Government Area (present day Bayelsa State), followed by another find at Afam (present day Rivers State) same year. Sustaining any growth trends saw production reaching early on five thousand one hundred barrels per day by year end. Consequently, it became possible to export crude oil to Europe with Nigeria joining comity of nations listed among major oil producers/exporters; however, all those legislations failed to capture any notion relating environment or its preservation/support.

In 1960, following the independence of Nigeria from the British Crown, there arose the issue of constructing a domestic refinery by the oil and gas industry at Port Harcourt so that the country would be self-productive and sufficient as far as the domestic market was concerned. Consequently, in 1965, *Hydrocarbon Oil Refineries Act* was issued to license operators in the refining of hydrocarbon oils and control it. Similarly, that same year saw the commissioning of the Port Harcourt Refinery with an installed capacity projected at about 35,000 barrels production per day.

This article has it that the *Petroleum Act* of 1969 became the principle written law governing Oil and Gas in Nigeria until the *Petroleum Industry Act* 2021 (together with its subsidiary legislations) came into operation (Akpomuvie, 2011). Nevertheless, these stipulations take care of all objects of operations e.g. drilling, operation of drilling rigs, bulk transportation of petroleum products etc. without rationale. Their input in the early nineties was about 29% and by 1971 to seen estimated at around 44%, yet and even in the nineties; their share of all foreign exchange earnings has been as high as 90% up to now. It amazes that in a few years they were able to boost their production up to 1.5 million barrels.

Nigeria eventually joined the Organization of Petroleum Exporting Countries in 1971 and became a signatory to the July 1971 agreement only by then; that agreement's contents as being "declaratory statement of petroleum policy in member countries" in Article 90/Organization of Petroleum Exporting Countries *Resolution* XVI which has also been adopted within the organization. This became the position paper for the Federal Government's quest to secure mandatory participation in these concession areas and thus it introduced joint venture. The modalities of Federal Government's participation, along with its rights and

obligations consequent upon these acquisitions, were given legal form by way of participation agreements. Further, it has been elaborated by Olisa, "*an assignment of a fractional interest in a petroleum leasehold estate and also transfer of assets and funds employed in development of such leasehold*" (Olisa, 1987).

In 1971 marked another milestone in the evolution of Nigeria petroleum law, the NNOC was set up to..., The Nigerian National Oil Corporation was given authority to carry on business as regards the Acquired and other assets interest of the Federal Government and to this end it became the Federal Government s commercial arm/agent. In 1977 Nigerian National Oil Corporation gave way for Nigerian National Petroleum Corporation (Siyanbola and Oladipo, 1990). This came with a new structure that resumed functions of Ministry of Petroleum Resources. NNPC was empowered for carrying on business in oil and gas industry or any other inspectorate arm of industry. *Exclusive Economic Zone Act* commenced operations in 1978 while AGRA was enacted in 1979. This is followed by Nigerian *LNG Act* which took effect from year 1990 with a backdated commencement date of April 24, 1989. Also, this enactment is incrementally moving towards re-directing investment into Gas aspect of the sector. As at now there exist plethora legislations governing Oil and Gas business in Nigeria more tilting towards generation of revenue leaving almost infinitesimal fraction on preservation and protection or environment and health impact it portends on populace.

The above-described laws and what they are used to do when closely and critically reviewed in relation to regulation of oil and gas sector, we see that in comparison they all are more inclined towards social development and economic development rather than protection and conservation of environment.

1.1 Environmental Impact Assessment Act, Cap E12 Laws of the Federation of Nigeria 2004

This bill stands out as a landmark legislation within the Nigerian environmental system and for this reason it was much noted because it was among the early few bills to give ordinary people say in decision making with regard to development. This may be initiated by an organ of either a private or public nature which is keen on undertaking a project that potentially degrades the environment and one may be directed by the said organ to put in place an instrument requiring their approval before the issue is tackled. *EIA* then poses us priority number one as far I am concerned; you must address a letter applying for *EIA* before proceeding on any proposal by the Agency. It also provides legality should there be contravention of any provision contained therein. The main aim of *Environmental Impact Assessment Act* from general perspective is prevention of undesirable impacts associated with development projects which should be identified and solved before commencement of such project (Okon, 2001).

These are some objectives of Environmental Impact Assessment amongst others are responsible use and exploitation of natural resources; sustainable productivity of ecosystem; the most important fact in this regard is that the air, land and water have carrying capacity and absorptive capacity which are to be preserved; prevention of the degradation of environmental quality; and use of appropriate technology.

In *section* 2 of the *Act*, it is specified that an Environmental Impact Assessment study has to be carried out before the commencement of an oil and gas project. The purpose of this

exercise is to help one understand more clearly what the project is all about and how much / it will affect/impact the environment.

In *section* 4 the principal parameters of an Environmental Impact Assessment are defined with regard to the following key issues are a description of the proposed activities; draft on the affected environmental along with the details that you will use to know and assess which type of environment the proposed activities will affect; and a description of the practical activities as appropriate.

This is because holistically, the comparison between their possible environmental impacts and what is likely to happen and also how the proposed action, its possible alternatives operate gives you the short term or long-term impacts cannot be directly compared. Hence, it is also necessary to provide the rationale as to why the proposed task aims at addressing particular negative tendencies in a setting and at the same time you are expected to describe them so that they can be appraised. It is done to find knowledge gaps and to identify the fact that the required information cannot be estimated may also be an issue. Inquires on the issues of the environment in any State or Local Government outside Nigeria or its equivalent, does it affect by the proposed activities or not.

Under *Section* 7, it is stipulated in the *Act* that, before an agency proceeds to make a decision on an activity that has been subjected to environmental assessment, it will invite comments as follows: Government agencies' views, the public's view, professionals in the area and interested groups so far as the EIA of the activity is concerned.

2. Sustainable Development and Environmental Protection

In Nigeria, as well as in other countries it is clear that the issue of sustainability is much complex and it covers the academia and professional world. The objectives created by the principles following this order are found within a given institution or an organization. This will ensure there is enough skills to tackle Nigeria's sustainable development needs in implementing Post 2015 Development Agenda (Erhun, 2015). In spite of the fact that in the last years even growth rate which could help to decrease poverty has not been maintained. It occurs in Nigeria where you can see that, for long period now, economic and social dimensions/developments are given priority over human rights, environmental protection and sustainability (Ayodele, 2000). Therefore, economic sustainability is one of the principal aspects of sustainable development. Economic sustainability describes the ability to keep and maintain high real growth rate of economy for attaining development or economic goals without infringing right to conserve and live environment/life as inadvertently guaranteed permanently.

When considering Nigeria perspective, it is easy to see a wide range of obstacles that can slow down the process of development, which in turn necessitates applying more comprehensive approach focused on combination of economic, social, environmental and human rights security elements. Looking at the objectives if the economy as captured in the constitution of Nigeria (FME 1979:49), it's said that State shall *"(a). direct its policy towards ensuring amongst other things as its primary purpose; mobilizing the resources of the nation for promoting national prosperity, and an efficient, a dynamic and self-reliant economy;/ (b). control the national economy in such manner as to secure highest welfare, freedom and*

happiness of every citizen on basis of social justice and equality of status and opportunity;/ (c) operate or supervise major enterprise"; / (d) only guarantee a citizen's right to practice any business or profession beyond sanctioned by law major sectors"

Moreover, it is elucidated that the State shall ensure the goals not only in approach but also in instruments of economic development, which effect and guarantee respect for human rights and fundamental freedoms as well as possibilities for all. This concerns coordination, among other things sociopolitical organization so there is quicker social reformation therefore there should be full exploitation of all available resources for people development. The wealth or means of making and distributing goods or services may not be monopolised or oligopolised or deployed so as to serve a given class to the detriment of others. These are statutory rights like right to home, right to food ,right to work for minimum wages within geographical boundaries of Union Territory or its territories which are owned or leased by anyone / any corporation /state/collective entities, right to old age care including pension and relief for victims of disasters due to natural calamity; shoe; right against unemployment allowances from his employer if he becomes out of employment; Petrocaribe loan-disabled-rights alone buoyed off from time immemorial.

Just like Nigeria, Nigeria has ethnic and religious issues which also implies that there may be discrimination and deprivation between the different ethnic groups of the society. It is not today that Krik-Greene was quoted in Mustapha's article on ethnic factor in Nigerian politics:

> 'The fear has always been the hidden motive in Nigerian politics and was manifested every time there were a tension or confrontation. No, neither it is a physical fear of violence nor a spiritual one of retribution but instead it is a psychological fear of discrimination, of domination. This is a fear that someone may not be able to get what they really deserved or expected (Mustapha, 2006).

Nevertheless, a book by Ibeanu (2007) indicates that there were tensions in Nigeria due to the dread of being outmatched by its ethno-regional elite which helped 'set off' the currents of ethnic and political tension. The writer also cautioned against thinking interstitially that what Nigeria currently has is 'heterogeneity of congruous social groups with inclinations on primordial bonds that impel them to violent civil conflict and deep suspicion' (Akin, 2007). This issue keeps on rising since those ethnic groups who do not have Ministerial positions will raise issues about marginalization and sidelining. This fear is still very much alive today within the various tribes in Nigeria especially among the different tribes this web may be indeed be in a bid to predict the sustainability of Nigeria's politics and therefore overhaul the entire political system of the country. According to Matsura "Development that is sustainable is as much a prescriptive issue, as it is a scientific concept. It is directly linked with peace, human rights and equality having in mind ecosphere and global warming."

It is imperative that all these mechanisms are in place to guarantee the fair and just exploitation of productive resources which intern determine peace and SDIs for a pluri-national state at some given level. Ukpore might be reflecting on his part of statement when he condemns that if sustainability should come within the reach everyone, women/men (even though her phrase may appear paradoxical) shall participate in implementation of economic policy and social development (Ukpore, 2009). Nevertheless, on an issue like this all must have a say- the Nigerian position stability expects to have stake of all ethicized in Nigeria (Coronel,

Alves da Silva, and Leonardi, 2016). Nevertheless, participation on decision making varies from one nation to another depending on socio-political consciousness of the people, for instance let us look at the following situation with different nationalities: In spite of this observation, however, it is not apparent whether certain groups are indeed worse off than others:

> This was the case even within the colonial era where that can be observed, by taking education as an example, how this phenomena hindered the growth of Human capital formation through education and general country development. In Northern Nigeria under the British Colonial policy we find two policies that were combined; the anticipation of a class of African educated men, just as it took place in Southern Nigeria, and the determination to fashion an Anglo-Muslim aristocratic culture in Northern Nigeria. According to Lugard, such type of educated men emerged from Southern Nigeria who were inconsiderate and unable to sit under any kind of control rather his overemphasis appears very self-centered.

Nigeria, being a British colony, as of now is for the most part interpreted to be so only in the event that Britain by chance decided not to play up North in case its population did not really deserve it nor inhibited her education from going on by them and for themselves Central Nigeria just like Southern was none (Ayodele, 2000). To this we can infer he calls attention as we analyze sustainable development in sub-Saharan Africa, particularly in Nigeria it is necessary slow down one gear and extend more room for sustainable democracy because the majority of states known for chaos put their emphasis into support of political peace more than environmental problems nor Ecosystems of their state (Omotola, 2009). From this instance one gets to comprehend Nigeria that provides one Coming reference situation for interface between the sectors (Aboluwodi, 2011). Although there seems to be a yawning gap in the goals of uniting the different ethnic constituencies into a nation-state and the major significance of doing it is rather than fighting environmental related issues. Indeed, it is obvious that the myriads of problems that are experienced in Nigeria today clearly show that economic and revenue generation issues take precedence, and they lead even over sustainable development and environmental protection.

It is self-evident that these tensions are more displayed in the Political landscape of Nigeria and include but are not limited to religious crises ethnic agitations economic stagnation and decline inequitable distribution and use of the commonwealth degradation of the environment insecurity. The solution to these problems is considered as the principal solution to one of the most acute issues known as sustainable human development, one. The implication at this point is that Nigeria should redesign its current socio-political arrangement so that more real development could be accommodated. Thus, it has been put very appropriately, adequately or fittingly that ‘’it is only in the context of a reconstructed state that Nigeria can experience the likelihood of sustainable development” (Babawale, 2007).

2.1 Environmental protection, Sustainable Development and the Oil and Gas Industry in Nigeria.

This kind of development is one way to respond to the environmental challenges affecting the entire planet and it has now affected many countries around the world including

Nigeria. although, it might be debated by many seeking to find and exploit oil and gas in Nigeria may be the single most important activity causing environmental degradation, making environment unsustainable in the process. This way the government through all instruments, takes over the obligation of assuring that mineral extraction in its territories is really sustainable; so that there will be continuous growth on environment yet not on people's right to lives, offering a sound or moderately quite loud environment. So it is therefore on these premises that sustainable development imposes Nigerian state with duty to ensure both present and future generations receive optimum social economic benefits from natural resources within a state without undermining need for protection of environment. The United Nations Resolution on Permanent Sovereignty over natural resources provides that sovereignty must be exercised in the interest of national development and well-being of the entire people of the state concerned (United Nations General Assembly resolution 1803 (XVII) 1962).

From the above discussion, it can be said that sustainable development has its basis on the following three main pillars; economic development, social development and environmental protection. Therefore, the Nigerian Government as well as Oil companies operating in Nigeria are obliged to follow and respect regulatory provisions and also embrace and implement policies which will do this integration. The oil companies in their operations.

Furthermore, they should take steps to enable them to be more cost-effective with their use of energy, apply the gentle approach that targets pollution and mitigation as well as show sensitivity in their corporate social responsibilities to the oil producing communities. They should also address the problems of environmental degradation, depletion and despoliation which they have caused, forbear from doing so in their future projects while observing human rights and labour standards. It is also envisaged that these prerequisites will be met by oil companies in their exploitation of natural resources for the advancement of economic, social as well as environmental sustainability under sustainable development.

The above specifications were based on the understanding of the concepts of sustainable development as given by the UNDP and WEC in their energy assessments which, under this head, are forms of energy generation and use for the purpose of supporting a long-term overall human development covering all social, economic and environmental dimensions. The quality of life for every living being on earth should steadily rise without compromising its capacity – this is what the sustainable development guarantees.

2.2 Environmental Impact Assessment and Environmental Protection

Thus, this process can also be termed as Environmental Impact Assessment since it shows the evaluation of the changes happened to the environment in the course of development to help determine if those changes are positive or negative. It is a tool of policy and management, deployed in the practice of planning and decision as per the *Act* (Lawrence and Folarin, 2004). Prior to commencement of any Oil and Gas project is stipulated by The Environmental Impact Assessment Act that an Environmental Impact Assessment be carried out. This is done in order that sound decision can be taken on what project is being proposed and its likely impact upon the environment. In one of the requirements stipulated by EGASPIN, it provided for an Environmental Impact Assessment study to be carried out which states that it shall be prepared by proponent/initiator with consultants certified by Department of Petroleum Resources who together with Department DPR Review.

The World Bank reveals this; as from 1991 through OPSOP-85-1 it forces to get the protection of environment implemented in projects at an early stage even before and IFI borrower proposes it for assistance. Just the same, a good number of international and regional organizations as well as bilateral donors at the regional level/ take it for granted, and even prohibitive measures may be put in place which prevent such support from reaching projects in Nigeria without EIA implementation.

Hanly v. Kleindienst (1972), is the classification of the Supreme Court in USA referred to as a twofold test that helps one to know if an activity causes a major human environment impact. They are that it is used to determine whether the impacts of a proposed activity will be greater than those of current uses in the area affected by it and the kind of environmental impacts which are qualitative effects of the action itself which are non-transitory and do not depend on any probability or frequency that cause the contribution to the existing adverse conditions or uses in that area.

In Nigeria under the *Environmental Impact Assessment Act*, in *Section* 2(2) the wording used is also 'significantly affect the environment'. However, this phrase has not been interpreted in courts of Nigeria so far and it is proposed that an American definition would be a good leading factor. Environmental Impact Assessment has been very crucial to prevent environmental degradation. This together with responsible use and exploitation of natural resources are among key areas it has contributed. These however are among commendable success stories as there is still much to be done mostly in the monitoring and compliance with an Environmental Impact Statement emanating from an Environmental Impact Assessment study.

This paper will seek to analyze the fact that environmental impact assessment is almost never mentioned let alone done before the approval of projects in Nigeria and more so those in the infrastructure sector. The application of it, which is legislated by this Act, are not followed as far as developing a program of work that will take into account both development and environmental concerns for the implementation of environmentally-friendly projects is concerned. Most of these will be Federal, State and Local Governments who normally give approvals for projects even before the required preliminary impact study list is prepared only for such EIAs as they may require (Muhammad, 2014). In particular a case was said to have occurred when Aluminum smelting Company ignored BAF Environmental Impact Assessment report on its intended dredging activity in Imo River.

Thus it stands out that; Under an international joint venture agreement among Aluminum Smelting Company Nigeria limited, Ferrostal AG Germany, Reynolds international Incorporated United States, referencing the olden times, it can be speculated that Westminster Dredging might have been responsible for dredging of Imo River which was contracted to them even though the EIA report pointed out that there could be serious repercussions of dredging without first implementing mitigation measures and recommendations. Also, it said that 'if dredged will bring into production 'salt water intrusion into fresh water zone' then condemn spoil surface fresh water or 'upper underground relocation in present relocating and tidal outflow/inflow,' which may cause salt intrusion hence likely elevate turbidity inland aquatic resources and menace submergence fishing settlement' or farming landscape. It is therefore in

this direction they suggested that prior to commencement of any dredging activities, a very wide investigation should be carried out and model developed.

In the report were even more detailed: for example, they recommended that levees, temporary dams or silt fences should be put up to keep or stop the loose materials from spreading too far away from the dredging area. The above was not only skipped in an EIA report but also taken for granted and moved to the head office of Aluminum Smelting Company of Nigeria Limited. Instead, a Nigerian Navy was contracted; their naval fast attack crafts were then sent to guard the dredger into illegal dredging and hence causing one of the worst environmental disasters. Eventually, Imo River engulfed its banks spilling into Opobo Town, Queens Town and Kalaibiama which are all within Opobo/Nkoro Local Government area of Rivers State.

However, the move caused concerns during the proposal to dredge Rivers Niger and Benue by Petroleum Trust Fund then, for the improvement of their inland waterways also. In this regard, there was a problem with the proposed EIA of the dredging of Rivers Niger and Benue when PTF hired a consulting firm to conduct Environmental Impact Assessment Report. Egborge reported that "*During the dry season the team had completed all the field work and only after that they discovered that it was relevant to consult with primary stakeholders and communities*" (Egborge, 2013). It is thus clear that sustainable environmental development will be realized only when procedural requirements as laid out under *Environmental Impact Assessment Act* or any other relevant guidelines relating to performance of Environmental Impact Assessment are adhered to.

Yet, for EIA which is an instrument through which regulation should be used as a means of achieving sustainable development in both private and public sectors of Nigerian economy there is need for more intensive coverage. I would like here draw your attention to a number errors in drafting arising from different provisions of the statute; both the implementation of the *Act* and enforcement of its provisions properly would help achieve the goals of sustainable developments in the oil and gas industry in Nigeria if it were to be implemented.

3. Enforcement Challenges of the Environmental Impact Assessment requirement

However, the process of Environmental Impact Assessment is not always followed to the latter and in most cases, it is upon the project developer's discretion (Ako, 2020). A consortium of Lagos State/Harm, an IPP (Independent Power Project) for example made some contracts that involved Lagos State Government, Environmental Power Nigeria Ltd, Yinka Folawiyo Power Limited. That the Independent Power Project (IPP) was initiated to tackle epileptic power supply experienced in Lagos State was as a result of this development. Despite that fact that such requirement was stated by Environmental Power Nigeria Ltd no EIA cone out for impromptu Barges projects within the same time frame and also there were no records or filing which showed if an EIA has been conducted during development or operation o system project.

Thus, like in *Oronto Douglas v. Shell Petroleum Development Co.Ltd* (1974) in the Douglas case - Oronto Douglas was contesting Shell's stand which stated that it would not conduct an Environmental Impact Assessment for Nigerian Liquefied Natural Gas project at Bonny. The court found that the plaintiff did not have the locus standi to sue Shell in as much as it related to observance of the provisions of the Environmental Impact Assessment Act by

shell. It is under the *Environmental Impact Assessment Act* that you may encounter other problems. For instance, it's probable to undermine EIA totally just because of the exception this Act makes. The exceptions are in *Section* 15(1) – so it shall not be required to carry out environmental assessment of project.

Based on the above, the agency classifies the project as one of those identified by the president, commander-in-chief of the armed forces or councils having their environmental effect at a minimum level. The project is planned during an emergency that is nationwide and as such only short-term employees will be taken on for it measures have been taken by the government. In the light of his opinion nothing in the programme should affect this project nor imply that anything would be done unless, and if, the conditions printed above do not exist for a project that could be in the interest(s) of public health or safety.

The previous paragraphs above, for instance, are not applicable to the *Environmental Impact Assessment Act*. If for example a person stops certain development in Nigeria this does not mean that the President of Nigeria might not circumvent or disapprove laws needing an Environmental Assessment Impact in oil and gas projects. It thus appears that multi-national oil corporations who enjoy a business relationship with the President may convince him into providing approval for their planned projects without carrying out Environmental Impact Assessment, even if it runs counter to the fact that it highlights adverse impact of such projects. The discretion powers vested on the president should be exercised reasonably; they are conditional on minimal negative impact which shall emanate from projects carried out on environment or public health interest. Consequently, it is imperative to ask what exactly at least harm has to come from a project before it becomes selfish, and how can one determine this with any dignity?

The government does not take it into account if you are about to give the decision-making authority on that subject; rather, it will overemphasize the importance of its projects in social and economic contexts alone. This problem is obviously interconnected with the oil and gas field which is proved by some court's decisions. In *Chinda & Ors v. Shell BP* (1974) - it was refused by Court to grant an injunction against defendant from polluting plaintiff's land, creek & fishpond, however while arguing on this matter it argued that; since an order of such nature is injurious to a company negatively impacting the revenue accruing...supplementary paper on: Negative effects of the above includes on negative position of Federal Government revenue collection system. It was argued that same conclusions were reached by court in *Shell BP v. Usoro* case. This is made clear in all irregularities that Ajomo who during his time in the oil sector was instrumental in raising the profile of environmental degradation made it very clear that such issues are not adequately addressed since oil companies wield blanket influence and the courts patronize these corporations. The judges paying no heed to the fact that there can be no wisdom in destroying nature as by using something wisely then, it will make sure that economic development preserved.

The situation is however not the same as described that it is in one place of the United States of America. According to Holland (2005), doubles perspectives to environmental impact assessment issue in America, and they can be characterized as firstly, this data will be gathered by the federal agencies in order to know what health and environmentalists there may be

consequences of their action and; to create awareness on any environmental issues that may be of concern according to the appropriate agency action.

The statute named National Environmental Policy Act (NEPA) requires Federal Agencies of the USA that in case of the actions of the Agency are (1) 'major' and (2) they 'significantly' affect "quality of the human environment", they will have to provide an environmental impact statement. Most Federal Agencies have established procedures to define what types of decisions need to be given consideration and preparation of environmental impact statements. Judges have interpreted these terms by reference to cases originating in the United States. For instance, "major" has been viewed as a type of an action that "is a significant enough course which necessitates a vast amount of planning, time, resources or expenditure."

The case of *Rucker v. Wills* (1973) introduces an important point - it was found that defendants, who were corps of engineers, did not have to prepare environmental impact statement on a permit of building a fishing pier and marina. The court concluded that the project was "not major" wherein private character of a project and minimal federal involvement were highlighted.

The key difference that exists explicitly here is the fact that in Nigeria priorities are more focused on revenue generation and monetary benefits above all, it displays openly its disregard to the environmental protection requirements as a result the need for environmental impact evaluation examination is not a priority there, and any recommendations from such evaluations to be used for or against issuing approval for oil and gas prospecting or mining. Instead, they show more interest in collection of information and liability of activities carried out in that field in long term or short term prior to issuance of operational license for that activity.

3.1 The Precautionary Principle

The concept was indeed initially expressed in *Principle* 15 of the *Rio Declaration* that calls for an approach by which a broad range and capability-based measure will be employed to protect environment by all states. Regarding risks of a harm which is serious or irreversible, at present there are no full scientific development and/or the possibility of technical measures to control the situation. Certainty, under no circumstances should yesteryears of these reasons convince you that there is not a valid ground to delay the adoption of such measures, which are low cost as far as preservation of environment is concerned.

This category falls within those states which implement the NFE and therefore attracts their attention. The prescriptive nature of this principle is directly deduced from the fact that natural systems should not be exploited but maintained. It is more of a risk management strategy as adequate emphasis has been laid on getting the scientific data for development decision making and there is an obligation to use precautionary measures in accordance with potential damage. It mirrors concepts found in law of torts such as the reasonable foreseeability test and the prevention of harm. This principle has been transposed into many international treaties. In *Article* 3(1) under the *United Nations Framework Convention on Climate Change*, it is provided

The parties should be in a position to prevent, mitigate and ultimately eliminate the root causes of climate change, as well as its side effects. It is important to note that just because the certain scientific knowledge is incomplete, it doesn't mean that there are no chances of serious

or irreversible harm hence measures should not be taken; rather than that it implied that policies and measures to address climate change should be cost-effective in order to create global benefits at/with low cost. In the same course, under *Bamako Convention* 4(3) e/f *section* we read it, interprets that it deals with those needs of banning of importing into Africa and intra-Africanian trading of hazardous wastes-needs that From now on, each party will endeavor to adopt the Japanese/Korean approach to the pollution problem which in part requires among other things not releasing substances into the environment that can affect people or the environment for which there is no direct scientific proof with respect to such harm. The parties agreed to work together for directing suitable measures as a precautionary principle concerning pollution prevention by clean production and capacity equivalence not assimilated permit-based system on emission.

There are numerous approaches to the deployment of the spirit in practice, it is a blend of dynamic leadership and disposition to act in case there are no reasons for action. Within an urban context this principle has its complete practical realization when a central government should be encouraged in doing what is right, by prohibiting certain behaviors which can be harmful to identified environments. This shall also imply regulation on activities, substances amongst others that may harm the environment even when there is no conclusive scientific proof on their danger or majority support. Measures that may help reduce pollution such as waste minimization's redesign, input substitution and clean production processes should be widely implemented.

The referenced document also underscores this as a significant part of the deal and states that 'the precautionary principle' whose author specifies it when doing such is to be employed. Accordingly, if there are threats of serious or irreversible damage, lack of full scientific knowledge should not be used as a reason for postponing cost-effective means to prevent environmental degradation. With this, therefore; and by implication, it could be vigorously suggested that the principle under discussion is a benchmark for all Oil and Gas laws and operations in Nigeria, and conversely shall be used for application/ deployment of a law or laws related to or safeguarding natural environment or management of environment.

3.2. The Preventive Principle

The Nigerian oil and gas laws asides, for instance, also imply that a right could not exist to harm these waters in the course of petroleum exploitation. It also embodies an obligation to avert those perils which are underlain by the CIL rule of not causing serious harm to the environment extraterritorially. Preventive paradigm seeks to trim down the odds for environmental harms whether there is trans-boundary or international harm causal connection.

Presently, as regards disputes between the neighboring states-parties and in situations where the partners of a natural resource are involved, for example if it is a river, the "precautionary principle" should be operated to the effect that every state or states which shares borders with another state or states should take steps so that they will not do anything which may prejudice their neighbor's interests in what is a common resource. Briefly put, State A must see to it that in its plan for some activity that might have possible detrimental effect on State B, the later shall be given prior notice. An excellent example is Pulp Mills – Argentina took steps against Uruguay at International Court of Justice, *inter alia* complaining about

Uruguay's alleged failure to comply with obligation under treaty to hold consultations re-uses capable of affecting Rio Uruguay as waterway between them.

On 26 February 1975 Argentina signed Treaty with Republic of Uruguay. As per some treaty provisions articulated by Argentina republics of Uruguay and Argentina were going to establish joint regime for utilization of river. Under Statute 1974 parties who fail resolve dispute amicably through direct negotiations may refer it to International Court of Justice either party. *Statute* 1975 prescribes functions and parties obligations as regards pollution prevention and liability for damage effects generated by pollution establishment *ad hoc* administration River Uruguay, encompassing regulatory coordination elements. *Republica* Argentina submits more specifically, *Article* 9-13 the statutes provide mandatory prior notification consultation Caruaru part planning execute works liable affect navigation regime river quality its waters. *Republica* Argentina stated government Uruguay unilaterally permitted Spanish company ENCE build pulp mill near Fray Bentos city without observing notification consultation procedure October Argentine

In the same time period, the government gave its grievance about permitting that chain of industries because their operations were causing harm to the environment by then and it even went ahead to complain to him about those specific companies. The industry promoters made representations direct to Uriguan Government and, in spite of his representations Caruaru Sigue persisted to not attend to prescription *Por la norma* 2011-975; Then was convened by the Argentine State for stating the actions of the Uruguayan Republic through him and he complies with the obligations assumed juridic instrument international with reference: the duty of the measures necessary and sensible for the best use of the river Uruguay, there are obligations that require you to give information to Caruaru and or Argentina before the meeting, it is hammered home that procedures prescribed under *chapter* II of the 1975 *statute* are followed. These also include the obligations to protect and preserve the aquatic environment from any kind of pollution and such protection should be given to fisheries, and biodiversity as one of their duties; for example, taking a deep look about environmental impacts that should be authentic and fair to all parties. Combine efforts in preventing pollution, preserving biodiversity and also ensuring the provision of fisheries fishery system.

In its judgment, the International Court of Justice decided that with a majority of eleven to three, the People's Eastern Republic of Uruguay did not violate her responsive obligations under such *paragraphs* as those incorporated in *Articles* 35, 36 and 41 Uruguay *Statute of Rivers*. The Court also concluded that there was insufficient proof was there before it that can lead to the conclusion that Uruguay failed to do its duty in this respect too –namely the protection of fauna and flora- among others, and other things.

The standards are also adopted by Nigeria which is in the context of application of Preventive Principle and there they refer to some specific sectors. The measures are focused on reducing the discharges into Nigerian's environment of the poisons Some other mechanisms include monitoring systems for industries, condition that the industry will use the best available technology in prevention and treatment of waste, directive on environmental audits and sanctions against shortsightedness.

In spite of there being numerous environmental standards and regulatory laws there exists a gap of the expression of rights and responsibilities regarding the organizations that are expected to safeguard these values. Based on findings by this paper, the agency does neither

have enough human resources nor do they have enough funds for them to effectively perform their duties. The government should financially support National Environmental Standards Regulations Enforcement Agency and ensure staff training in their agency. Hence, it is therefore strongly recommended that along with acquiring legal responsibilities they are also vested powers to regulate oil and gas industries which apparently are being left by criminals to ruin environment without any control or supervision system to interject them.

3.3. The Polluter Pays Principle

It is based on the recognition that in any economic system of cost allocation those who create pollution should bear the costs of their activities. It does not however imply that the general public should be made to pay for the costs but is a method of correcting an externality or internalizing a cost. The polluter Pays Principle embodies a technique for internalizing environment costs in that whoever benefits from environmental degrading activity will bear the cost of such damage. Especially, Polluter Pays Principle is made for giving injured parties, relief to who have suffered harms due to certain harmful activities towards the environment. This principle finds application in Unites States on making polluters liable for destruction caused to natural environment.

There are scenarios when organ-spiller dangerous ingredients were merely advised and in more severe situations penalized under the repealed *National Environmental Protection Agency Act*. The spiller was also to be held liable including costs of removal that may be incurred by any government body or agency in restoration or replacement of natural resources damaged or destroyed as a discharge and third parties in reparation, restoration, restitution or compensation as may be determined by the agency from time to time. Thus, this is the expression of Polluter Pays Principle for that matter and this is done so that there should not be any externalities as far as liability and environmental pollution are concerned. Nonetheless, it continues to apply because National Environmental Agency has not yet legislated any provision so far till date so it remains peculiar rule on liability for oil pollution which obtain in Nigeria. Even up till now there are peculiarities in this respect.

The award under *Section* 11(5) of the *Oil Pipelines Act* deals with such cases at present. This is why the paper concludes that besides the *NESEREA Act*, liability should be imposed on perpetrators of pollution for environmental harm caused by activities in oil and gas sector. One may give the above advice and preserve environment at the same time only when it comes to using oil &gas for economic benefits, even if this practice prevents any company in oil and gas sector from being granted an operational license.

4. Conclusions and Recommendations

Oil companies currently operating in Nigeria urgently require to alter their production and consumption approach. They are required to do so by engaging in the Environmental Impact Assessment process; developing policies that will do less harm to our environment and make our natural resources more sustainable. Moreover, if a proposed project shows an Environmental Assessment likely negative impact on the environment it should be abandoned irrespective of the projected subject-matter and the prospects of economic gains that it provides. Hence, since there is likely to be a conflict between environment and economy, the

environment should prevail. In addition, there should be an implementation by the Nigerian government.

The government through policy and legislative measure should promote sustainable exploitation of natural resources, without tolerating a further deterioration of the environment.

Also, active steps should be taken by the government through policy measures to improve the quality of life of people by providing food, education, jobs, health care, water and sanitation. To tackle the menace of poverty and its effects, the government should urgently introduce poverty eradication programs for the people in the oil producing communities.

The government and stakeholders within the industry should ensure that oil companies in carrying out their operations should adopt measures that will increase their energy efficiency and embark on pollution reduction and mitigation projects. The government should ensure through monitoring and enforcement mechanisms that companies carry out their corporate social responsibility in their host communities.

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