

RELATED LEGISLATIONS IN OIL INDUSTRY AND SUSTAINABLE DEVELOPMENT IN NIGER DELTA



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Abstract

This paper explores the extant laws promulgated by the Nigerian State to regulate the activities of the oil industry in Nigeria. These legislations are primarily designed to protect the environment and regulate the activities of oil transnational corporations (TNCs) with a view to bringing them in line with international best practices in order to engender sustainable socio-economic development of the region. This is against the backdrop of the outcries by host communities, international organizations, NGOs, etc. on the continued massive decimation of flora and fauna in the region. This indeed is at variance with the ethos of sustainable development which places high premium on the protection of the eco-system. These legislations rather than engendering sustainable development have further undermined its efforts in the region. This can be attributed largely to ineffective legislations, outdated legislations, inadequate penalties for violations, weak provisions, poor implementation of legislations, lacuna deliberately inserted into the legislations by the state, etc. Consequently, the key question explored in this study is: “why have the various legislations been unable to bring about sustainable development in the Niger Delta?” Therefore, the paper recommends repeal and review of all legislations governing the oil industry, enactment of other legislations to strengthen the task of promoting sustainable development. Besides, the implementations of extant legislations are paramount in engendering sustainable development in the Niger delta region, which has witnessed reckless degradation of its environment by oil TNC. Therefore, the paper is of the view that legislations such as the Petroleum Drilling and Production Regulation Act (1969), the Associated Gas Re-injection Decree (1977), The Environment Impact Assessment (EIA) Decree No. 36 7 1092, are outdated and should have no place in our oil industry, if we must bring the industry to tow developments in other parts of the world, in order to spur sustainable development in the Niger Delta. Thus, this paper attempts a holistic and integrated approach to the entrenchment of sustainable development with appropriate and enforceable legislations.

Keywords: *The State, Environment, Legislations, Degradation and Oil*

Background to the Study

Legislations enacted to protect the environment and ultimately engender sustainable development have become essence variable in discourse on development engineering in the Niger Delta. It has become a topical issue attracting both local and international attention to the efficacy or otherwise of these legislations in stemming wanton abuse of the environment and thus stimulating sustainable development of the region. It is obvious that the protection of the environment, sustainable and socio-economic development fall within the ambit of these legislations. Because without environmental protection, development is hampered and therefore there won't be any sustainable development. Thus declining quality of the environment and its resources base tends to create a crisis of development in the Niger Delta.

Sustainable development was espoused with its attendant strategies to ensure that human and physical development should be in conformity with the demand for the protection of the environment. In retrospect, the term was first brought to common use by the World Commission on Environment and Development otherwise known as the Brundtland Commission in its 1987 landmark proclamation titled "Our Common Future" (Uchegbe, 1998). A definition of the commission explains sustainable development as: A process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional changes are in harmony and enhance both current and future potential to meet human need and aspirations.

The above postulation confirms the existence of a harmonious requirement for sustainable development. In its report WCED defined sustainable development as the "development that meets the need of the presents without compromising the ability of the future generation to meet their own needs" (Wikipedia, 2007). Similarly, Amodu (2008) defined sustainable development "as the development that is channeled towards the enhancement of the human environment, which meets the need of the present, but yet makes allowances for the future generations to meet their too." Corroborating further on this path of thought, WCED stressed that if human needs are to be met on a sustainable basis, the earth's natural resources base must be conserved and enhanced. Thus Ropetto (Pearce, 1990) stated that: Sustainable development rejects policies and practices that support current living standards by depleting the productive base including natural resources that leaves future generations with poorer prospects and greater risk.

Therefore, we can assert that sustainable development is multidimensional: economic, political, social and cultural and seeks to maximize the benefits and contributions of the environment to development through the promotion of an enduring exploitation of natural resources. Consequently, if sustainable development is to be achieved, it requires the attainment of three basic objectives: the creation of wealth, environmental protection and enhancement of

productivity capability. However, in the Niger delta region, scant attention has been paid by Oil TNCs to promote sustainable development.

In response to this state of affairs, the Nigerian State has promulgated several legislations and initiated policies to check the excesses of Oil TNCs which in the view of policy makers would compel Oil TNCs to comply with international best practices in order to stimulate sustainable development in the region. From available evidence, it is clear that in spite of these legislations and policies meant to protect and conserve the environment, environmental degradation has continued unabated in the Niger Delta. A host of factors have been identified as responsible for the inability of these legislations to effectively protect the environment and thereby bring about sustainable development in the region. These can be traced to ineffective execution, poor enforcement, weak provisions, inadequate provision, outdated legislations, and impunity by Oil TNCs etc. Therefore, in this study, our goal is to investigate the potency and effectiveness of these legislations in promoting sustainable development in the Niger Delta region. A pertinent point to stress however is that the wanton degradation of the region's environment and the various laws meant to arrest the pollution of the oil producing communities are ridden with contradictions and our focus is to direct our enquiry and analysis to the discovery and understanding of these contradictions in order to solve them holistically. The next section takes a critical examination of the provisions of these legislations and their impact on sustainable development in the Niger Delta. The final section is conclusion and recommendation.

Objective of the Study

The objective of the study is to investigate the potency and effectiveness of these legislations in promoting sustainable development in the Niger Delta region.

Literature Review

Analysis of Legislations on Oil Industry and Sustainable Development in the Niger Delta

The continued degradation of the Niger Delta environment has become a topical issue and has attracted both local and international attention to the plight of the host communities, whose environment has been severely devastated by the activities of the oil industry. This has in effect impinged sustainable development in the region. However, in view of its obvious negative impact on the environment and in response to upsurge in agitation by host communities, the Federal Government has enacted some legislation in its attempt to halt and regulate the tide of unrestrained degradation by the Oil industry and protect the environment for sustainable development in the region. These legislations can be identified as: the Petroleum Drilling and Production Regulation Act (1969), the Mineral Act (1969), the Associated Gas Re-injection Decree (1977), The Federal Environmental Protection Agency (FEPA) Act (1988), the Environmental Impact Assessment (EIA) Decree No. 36 of 1992 and the National Policy on the Environment launched by the Federal Government in 1989 (Ibaba, 2005).

However, the study notes that despite these legislations and policies, the devastation of the region's environment has continued unabated and is deteriorating. This has been largely blamed on ineffective execution of the extant environmental protection laws in the country. Corroborating on this line of thought, the Human Rights watch (1997) noted that the Nigerian environment laws in most respect when compared to their international counterparts are poorly enforced by the appropriate enforcing authorities. The above view is also shared by a World Bank Report (1995, 11) which identified the lack of enforcement of environmental laws as one of the bane confronting sustainable development in the Niger Delta region.

A corollary of the above assertion is that the Oil TNCS have in collusion with the Federal Government through sub-standard environmental protection laws, debilitated the local economies, thereby undermining sustainable development in the area (Naanen, 2001). In the same vein, Enyia (1991) pointed out in a study that the degradation of the eco-system of the region by the Oil TNCS is ironically enhanced by the various legislations meant to engender sustainable development. Also, Nna (2001) noted in a study that the environmental protection laws "more than anything else form the legal basis and fundamental for the devastation of the Niger Delta environment". However, the Oil TNCS are equally considered as part of the problem which MOSOP alleged in a protest that the Ogoni environment has been systematically destroyed by the Oil TNCS without the people getting commensurate compensation for the loss of productive farmland, polluted waters and general environmental degradation (Okoko and Ibaba, 1997) Ibaba (2005) further stressed that the isolation of the environmental laws from development programme and policies of the State, faulty implementation strategy or techniques, inadequate penalties for violation, the non-involvement of the citizenry in the formulation and execution of the laws and lack of a clear focus are recognized as veritable factors which are obstacles to the proper enforcement of these legislations to have positive impacts on the sustainable development of the area.

We note that the lack of enforcement of environmental laws is identified as the most fundamental cause of the inability of these legislations to promote sustainable exploitation of the Niger delta ecosystem. In addition, Ibaba (2005) contended that this is due to the character of the Nigerian State, because according to him, the State is weak and dependent, thus it lacks the courage to compel the Oil TNCS to comply with the laws. It is imperative to note that the Oil TNCS are multinational corporations and thus operate within the purview of international imperialism. Therefore, they use their enormous capital, expertise, technology and support of their home governments to emasculate policies and laws of the Nigerian State. In addition, since oil controls the commanding heights of the Nigerian economy, the state deals with them cautiously in order not to rock the boat. Therefore, the provisions of environmental laws created loopholes which undermine enforcement, nebulous standards and regulations that could be contravened as they are loosely specified and vaguely defined (Adiba and Essashah, 1999).

In our subsequent discussion, we shall critically examine the provisions of some of the legislations enacted to address the reckless abuse of the environment in order to stimulate sustainable development in the Niger Delta region. The Petroleum Drilling and Production Regulation Act (1969); one of the greatest challenges confronting the eco-system of the oil producing areas as a result of oil and gas exploitation is spillage. It is in recognition of the problems posed by oil spillage that the Federal Government enacted Act no. 51 of 1969. (Ikporukpo, 1983)

The license of loss shall adopt all practicable precautions, including the provisions of up to date equipment approved by the Road Petroleum Inspectorate to prevent the pollution of inland water ways, rivers, and water courses, the territorial waters of Nigeria or high seas of oil . . . which might cause harm or destruction to fresh water or marine life. And where such pollution occurs or has occurred, shall take prompt steps to control it and possibly end it. However, the pertinent question that comes to mind is “have the Oil TNCS been upholding this Act?” What has the Federal Government done with regards to the violation of the Act? This is because there have been numerous obvious cases of fragrant violation of this Act by Oil TNCs in the Niger Delta region without any sanction being imposed on them.

The Associated Gas Re-injection Decree (1977)

This legislation is sequel to the adverse effect of gas flaring on the eco-system of the Niger delta region, which has continued to undermine sustainable development efforts of the area. According to records, over 16.8m³ billion cubic metres of natural gas is flared annually by Oil TNCS in Nigeria. This result in an annual emission of 2,700 tonnes of particulate matter, 160 tonnes of oxides sulphur, 5,400 tonnes of carbon monoxide and 27,106 tonnes of oxides to the atmosphere (Daily Sunray, 1993). It is against this backdrop that the Federal Government enacted the Associated Gas Re-injection Decree (1977) which is meant to compel Oil TNCS to re-inject the excess gas being flared into the earth. However, 37 years after the decree was promulgated, the Oil TNCS have continued to flare gas. With erring Oil TNCS paying paltry fine to the Federal Government not to the host communities who are at the receiving end of gas flaring.

The Federal Environmental Protection Agency Act – (CAP 131) 1988

The Federal Environment Protection Agency (FEPA) was created by decree No. 58 of 1988 as an attempt by the Federal Government to implement appropriate projects designed to ameliorate ecological challenges in Niger delta (FEPA, 1999) section 4 of the decree surmises the functions of the Agency as “the protection and development of environment in general and environmental technology, including initiation of policy in relation to environmental research and technology”.

In view of its encompassing mandate the FEPA Act has been aptly described as the most serious attempt and embracing law by the Federal Government to protect the Niger delta environment in order to promote sustainable development. Thus, Adibe and Essagha (1986) contended that the Federal Environment Protection Agency (FEPA) represents a watershed in effective and efficient environmental management and protection in the Niger delta and Nigeria as a whole.

In a similar vein, Alapiki (1996) posited that “the most comprehensive legislation on the environment in Nigeria is the Federal Environment Protection Agency (FEPA) Act”. It was hoped that the law would adequately and comprehensively address environmental challenges confronting the Niger Delta region. However, the expectations were misplaced. Curiously, only scant attention was given to the petroleum industry; as it was not far-reaching enough to make any meaningful impact in addressing the devastating impact of the oil industry in the area. Thus, the only mention of the petroleum industry in section 23 of the Act states that: The Agency shall cooperate with the Ministry of Petroleum Resources (Petroleum Resource Department) for the removal of oil related pollutants discharged into the Nigerian environment and play such supportive role as the Ministry of Petroleum Resources (Petroleum Resource Department) may from time to time require from the Agency.

We can infer that given the negative impact of the Oil industry on the Niger Delta ecosystem, this provision is grossly inadequate and therefore cannot address the monumental environmental challenges of the region in order to stimulate sustainable development in the Niger Delta. It would be pertinent to give hindsight into the nebulous and vague provision of section 36 of the Act which states: When an offence against this Act or any member of a partnership or one firm or business, every director or offices of the corporate body or any member of the partnership or other person concerned with the management of such firm or business shall on conviction be liable to a fine not exceeding N500,000 for such offence and in addition shall be directed to pay compensation for any damage resulting from such breach thereof or to repair and restore the polluted environmental areas to an acceptable level as approved by the Agency.

Besides, a remarkable feature of the FEPA Act is the attention placed on pollution control and prohibition, which is a major environmental problem in the region. Thus, section 20 prescribes penalties for the discharge of hazardous substances into the environment. Sub-section 2 of section 20 prescribes N100, 000 fine or 10 years imprisonment for an individual offender. While sub-section 3 stipulates a fine not exceeding N500, 000 and “an additional fine of N10,000 for every day the offence subsists” for corporate offenders. Looking critically at the provisions of the Act, we can deduce from that the penalty is not stringent enough, because the amount prescribed is too meager, thus Oil TNCS have continued to violate the law with impunity as evidenced by

worsening environmental pollution witnessed in the Niger delta area. It is also true of the “general penalties” as provided in section 35 which prescribes a maximum fine of N20,000 or a maximum 2 years imprisonment for individual.

Another obvious defect that can be discerned from the provisions of the Act is that the penalty prescribed does not graduate according to the quantum of oil spilled or the size of the area polluted. Therefore, even if Oil TNCS spill one million barrels of crude oil, the same penalty applies. Also, the Act does not prescribe amount of compensation to be paid to victims of spillage, as a result their fate is left at the mercy of the Oil TNCS. Furthermore, there is no provision for periodic upward review of the fine to accommodate inflationary trends, thus the fine is static while in reality nothing is static. To show how ineffective the law has been since it was enacted in 1988; no Oil TNCS or individual has been successfully prosecuted and fined in accordance with the provisions of the Act, in spite of overwhelming record of pollution of the Niger delta ecosystem by the Oil TNCS.

Furthermore, the law made it mandatory for Oil TNCS to restore or rehabilitate the degraded environment but no Oil TNCS in the Niger delta has taken a proactive measure to restore the environment. The Ogoni -land is a classic case in point, where vast swathe of the land has been destroyed by Shell Petroleum Development Company Ltd. Despite the outcry by the host communities on this issue, SPDC has rebuffed all attempts by international organizations such as United Nations, NGOs and the Federal Government to clean up and rehabilitate the environment. The case is presently before the UN Assembly. But SPDC has not been sanctioned. Therefore it is a common sight to witness polluted sites left uncleansed for decades by Oil TNCS in the area. Therefore, the FEPA Act is ineffective and can be aptly described as a toothless bulldog, which cannot galvanize sustainable development as earlier envisaged by stakeholders in the region.

The Environment Impact Assessment (EIA) Decree No. 36 7 1992

The EIA Decree is an important legislation in an attempt by the State to stimulate sustainable development in the country. It sets out the procedure and methods, compelling organizations to carry out environmental impact assessment on certain public or private projects. To achieve the aims of the Decree, it gives specific powers to the Federal Environment Protection Agency (FEPA) to facilitate environmental assessment of projects. The EIA law stipulates that before the commencement of any new project, its environmental impact must be assessed or evaluated with a view to mitigating its effects on the environment. Accordingly, section 2, sub-section 1 of the decree states that:

The public or private sector of the economy shall not undertake, embark or authorize projects or activities without prior consideration, at an early stage, of their environmental effect.

Also, sub-section 27, section 1 provides that: Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall be undertaken in accordance with the provision of this Decree. Therefore, according to the provisions of the decree, the FEPA vested with the power to evaluate the submissions, holds consultations with all stakeholders and then take a decision; it is the final arbiter on such issues. However, in the Niger Delta the law is not strictly adhered to, and therefore flagrantly abused by Oil TNCS and Oil Servicing Companies.

Consequently, Oil TNCS that embark on EIA studies violate the provisions of the Decree. Cases are abound in the Niger Delta, where they commenced work on the projects before the EIA study was carried out. For instance, the Shell Petroleum Development Company Ltd (SPDC) began its multi-billion dollar Estuary AMATU (E.A) project in 2002, which crisscross several communities in Bayelsa and Delta States before EIA was done. (Environment watch, 2002)

In some extreme cases, EIA studies are totally ignored. For instance in 1993, Agip constructed Obiginbiri-Olugboboro-Tebitaba trunk oil pipe line in Southern Ijaw local government area of Bayelsa State. But no EIA study was carried out either before or after the project commenced. But the erring company was not sanctioned. And in some cases, EIA studies are not properly done, just to fulfill the law, thereby creating ecological and socio-economic problems for the communities. For instance, the construction of oil and gas pipeline in Gbarain clan in Yenagoa Local government area of Bayelsa State by SPDC, without a proper EIA study in 2001 created environmental problems and socio-economic difficulties for the host communities (Opolo, Obunugha, Onopa, Gbarantoru, etc.) This is in flagrant violation of the EIA Decree, but the company was not sanctioned. It is worth noting that the EIA Decree has some inherent defects and loopholes, which largely account for its ineffectiveness. In the first place, some projects are excluded from the mandatory EIA. Section 16, sub-section 2 of the Decree stress that: For greater certainty, where the Federal, State, or local government exercises power or perform a duty or function to be carried out, an environmental assessment may not be required if the project has been identified at the time the power is exercised or the duty or function is performed.

Furthermore, with regards to the mandatory study activities, the provisions are limited. For example while land reclamation is a mandatory study activity, EIA is only required if the area is 50 hectare or more, the implication therefore is that if the area is less than 50 hectares, EIA study is not required. Another obvious defect observed was that the penalty prescribed for violating the provisions of the Decree is rather too meagre to deter offenders, particularly Oil TNCS. Section

62 of the Decree which deals with offence and penalty provides N100,000 fine or five year imprisonment for and individual offender and a minimum of N1,000,000 as a paltry amount to compel Oil TNCS to comply with the provisions.

In spite of the obvious several cases of violation of the Decree by Oil TNCS, no record exists to confirm that any Oil TNCS has been fined this amount till date. Also in addition, an obvious lacuna observed in the Decree is that there is no provision compelling Oil TNCS to consult the host communities when EIA study is being undertaken. As a result, they are neither consulted nor involved in any aspect of the studies. Thus, according to Ibaba (2009), the benefits derived from involving the local people are lost. We are aware of the fact that they have immense knowledge of the local ecological process, which can be integrated to enrich the project design, as well as develop a team spirit that would elicit the commitment of the host communities (Adibe and Essagha, 1999). The non-involvement of the people sometimes renders the EIA studies useless. Again, there is no provision making it mandatory for Oil TNCS to disclose impact assessment studies to the communities concerned.

Conclusion

Based on the critical examination of the provisions of the various legislations meant to promote sustainable development in the Niger Delta, we can safely infer that the legislations have failed to protect the environment and thereby cannot stimulate sustainable development as earlier envisaged. The study discovered that the inability of the legislations to deliver on their mandate are as a result of weak legislations, ineffective, defective, outdated, inadequate and , weak provisions among others.

Recommendations

Based on the study, we recommend the following:

1. Repeal of the Associated Gas Re-injection Decree (1977) and the Petroleum Drilling and Production Regulation Act (1969). In their place enact new legislations with wide ranging mandate to tackle environmental degradation in the Niger Delta region.
2. Total review of the Federal Environment Protection Agency Act (Cap 131) 1988 and the Environment Impact Assessment (EIA) Decree No. 36 of 1992 to bring it in line with what is obtainable elsewhere, with stringent and enforcement provisions.
3. Also, the only way these legislations can make impact on sustainable development in the region is the enforcement of the provision and prosecution of erring Oil TNCS.

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