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THE GAPS IN NIGERIA'S INSTITUTIONAL FRAMEWORK FOR CRUDE OIL PROJECTS

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ABSTRACT

The fulcrum of this article is to evaluate the viability as well as the Gaps in Nigeria's Institutional Framework for Crude Oil Projects. We argue that there are several regulatory agencies performingidentical funsctions in Nigeria with regards to the monitoring and control of the activities of the oil companies hence, these is the confusion of social efficiency due to the duplication of statutory duties. We put forward the suggestion that there should the tasks of each agency should be properly spelt out in such a manner that would ensure its efficiencies in the management and administration of policies in the oil industries particularly with reference to cases oil spillages and compensation of its victims.

Keywords: Oil, Gas, Governance, Law, Institutions, Nigeria.

INTRODUCTION

Nigeria is among the Nations of the world blessed with large deposit of crude oil. Like any other country of the world, some institutions are always put in place either by statute, executive fiat or by incorporation to carry out certain institutional responsibilities in the management of crude oil projects. This article is interested in making an inquiry into the institutional framework regulating crude oil projects in Nigeria. For the purpose of this

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article, 'Institution' is simply an Organisation founded for a given purpose whereas institutional framework refers to the system of formal laws, regulations, procedures and informal conventions or customs and norms that shape socio-economic activities and human behaviour.³ However, in this article, the word 'institutional framework' is not used in its strict sense; rather, it is used to represent the Institutions charged with the responsibilities of managing, controlling and detecting cases of oil spillage in Nigeria as well as payment of compensation to victims of oil spill incidents. Accordingly, there are numerous institutions involved in the management, control and detection of oil spillage in Nigeria which ought to be ensuring fairness in compensation of victims of oil spill incidents. Unfortunately, these institutions are mainly designed to safeguard the environment and the resources the environment provides.⁴ For emphasis, these institutions are not just worthy to be mentioned but its role as regards to compensation of victims of Oil spillage in Nigeria needs to be appraised. Accordingly, these institutions are mainly the Nigerian:

- a) Federal Ministry of Petroleum Resources (FMPR);
- b) Federal Ministry of Environment (FME);
- c) Niger Delta Development Commission (NDDC); and
- d) National Emergency Management Agency (NEMA)

FEDERAL MINISTRY OF PETROLEUM RESOURCES (FMPR)

This is the Federal Ministry in charge of Petroleum Resources in Nigeria. Like any other Ministry in Nigeria, it is superintendent by a substantive Minister of Petroleum as well as a State Minister for Petroleum. Hitherto, the Nigerian President, President Mohammadu Buhari is the substantive Minister for petroleum while Ibe Kachukwu is the State Minister for Petroleum The Minister for Petroleum exercises general supervision over all operations carried out under licenses and leases granted to persons prospecting, exploring or mining oil in Nigeria pursuant to s. 2 of the Petroleum Act. The Minister is also empowered to delegate power to act in certain circumstances to institutions like Department of Petroleum Resources (DPR) which is a Department under the Ministry of Petroleum Resources created by virtue of s. 10 of the NNPC Act. Oche encapsulated the establishment of DPR as follows:

Section 10 of the NNPC Act established a department known as the Petroleum Inspectorate. It made the inspectorate an integral part of the NNPC. The same section authorized the minister to delegate to the chief

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³ Institutional Framework: http://www/answers.org Accessed 18/1/2017.

Adati Ayuba Kadafa, Mohamad Pauzi Zakaria and Fadhilah Othman, 'Oil Spillage and Pollution in Nigeria: Organizational Management and Institutional Framework' (2012) (Vol. 2) (No. 4) *Journal of Environment and Earth Science* 22 at 27. Available at www.iiste.org. Accessed 5/12/2018.

⁵ Petroleum Act Cap P10 LFN 2004, s. 8.

⁶ NNPC Act cap N123 LFN 2004

P.N Oche, Petroleum Law in Nigeria: Arrangements for upstream operations (Jos, Heirs Great Commission 2004) 58.

executive of the inspectorate such powers conferred upon him under the Petroleum Act, as amended or any other enactment, to issue permits and licenses for activities connected with petroleum exploration and exploitation among others... In 1985, the NNPC was restructured, in the course of the exercise, the petroleum inspectorate of the NNPC was excised and made part of the ministry of petroleum resources. By virtue of this, the NNPC became shorn of the capacity to exercise the power conferred on the minister by section 2(1) of the Petroleum Act as amended.

It was the Petroleum Inspectorate that upon the re-organisation of NNPC in the 1980's gave way for Department of Petroleum Resources (DPR). From the above, it is very pertinent to discuss the Role of DPR as it relates to incidents of Oil Spillage, its management and compensation of victims of oil spillage.

DEPARTMENT OF PETROLEUM RESOURCES (DPR)

This is a department in the ministry of petroleum resources headed by a director known as Director of Petroleum Resources. The minister of petroleum is empowered under s. 10 of the NNPC Act to delegate his power to the director of petroleum resources. While the Federal Ministry of Petroleum resources as an institution, is not expressly empowered by the Petroleum Act and the Petroleum (Drilling and Production) Regulations (PDPR) 1969 to compensate victims of oil spillage, it can be said that Regulation 25 of PDPR imposed an obligation on licensees and lessees to avoid environmental pollution or degradation. This obligation is expected to be implemented by the Director of Petroleum Resources. For emphasis, regulation 25 provides that 'the licensee or lessee shall adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent pollution of inland waters, rivers, water course....'

Therefore, it can be said that the place and role of DPR in environmental protection cannot be overemphasized. It is so because FMPR through DPR has a regulatory and supervisory function in cases of oil spill management and environmental protection. Under paragraphs 23 and 24 of the First Schedule to the Petroleum Act, the Minister for Petroleum is empowered to revoke any license or lease not complying with the obligations imposed on the licensee or lessee by the Petroleum (Drilling and Production) Regulations which serves as a punishment for defaulters. However, though the Ministry of Petroleum Resources and its Department of Petroleum Resources are not expressly positioned or charged under any Nigerian legislation to undertake compensation to victims in cases of oil spillage, but there exists under the Act some provisions empowering the FMPR and DPR to ensure protection of the environment by ensuring that licensees and lessees adopt practical precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent the pollution of the environment. The Act also

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See generally, S.A. Egwu, 'Oil Spill Control and Management' (2012) (1) Petroleum Technology Development Journal.

empowers the FMPR and DPR to revoke the license or lease of persons and incorporations not complying with the obligations imposed on the oil prospecting license or mining lease granted to it.⁹

FEDERAL MINISTRY OF ENVIRONMENT (FME)

The Nigerian Federal Ministry of Environment is principally charged with the responsibility of environmental sustainability. It is also the window through which the International Treaties and Conventions on Environment entered into by the Government of the Federation is honoured. In carrying out its function of environmental sustainability, FME establishes specialized Agencies to carry out certain functions. Among these Agencies are National Environmental Standards and Regulation Enforcement Agency (NESREA) and National Oil Spill Detection Agency (NOSDRA). Before 2006, FME was concerned with issues of oil spill management, control and remediation. It collaborated with FMPR and other relevant sister institutions as well as international organizations in executing these functions. With the establishment of NOSDRA, certain functions were relieved from the ministry and vested in the Agency. The functions of NOSDRA principally relates to National Oil Spill detection, its management and response. It is therefore pertinent to appraise the responsibilities of NOSDRA as it relates to oil spillage and compensation of its victims.

NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (NOSDRA)

NOSDRA as an Agency under the Federal Ministry of Environment was established to take care of oil spill detection and response. It was established in 2006 as a deliberate and articulated response by the Federal Government of Nigeria to fight environmental degradation and devastation of the coastal eco-system of Nigeria, particularly in the oil-producing areas of the Niger-Delta Region of Nigeria. It seems that NOSDRA is statutorily empowered to coordinate oil spill Management and ensure the implementation of the National Oil Spill Contingency Plan (NOSP) for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-Operation 1990. The NOSP which is a blueprint for checking Oil Spill through containment, recovering and remediation/restoration was first drafted in 1981 and accordingly reviewed in 1987, 2000 and 2006 respectively. NOSDRA is mandated to play the lead role in ensuring timely, effective and appropriate response to all oil spill as well as protect the threatened environment and ensure clean-up of all impacted sites to the best practical extent.

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⁹ ibid

NESREA is a parastatal/Agency of FME established by NESREA Act 2007. Also NOSDRA is an Agency of FME established by NOSDRA Act 2006.

See generally, S.A. Egwu, 'Oil Spill Control and Management' (2012) (1) *Petroleum Technology Development Journal*.

¹² See www.NOSDRA.org.ng Accessed 1/7/2013.

Statutorily, the NOSDRA Act under its establishment section established an Agency now known as National Oil Spill Detection and Response Agency (NOSDRA). ¹³ Under the Act, the establishment of NOSDRA was primarily aimed at the enforcement of the obligations imposed on Nigeria by the International Convention on Oil Pollution Preparedness, Response and Co-Operation 1990. As earlier posited, the Agency is charged with the responsibility for the preparedness, detection and response to all oil spillage in Nigeria which primarily constitute its major objective. ¹⁴

Among others, the major responsibilities of NOSDRA as an Agency under FME is to carry out surveillance and enforce compliance with all existing environmental legislation relating to prevention, detection and general management of oil spills, oily wastes, gas flaring in the petroleum industry as well as enforcing compliance with the provision of international agreements, protocols, conventions and treaties relating to oil and gas, oil spill response management and such other related agreements as may from time come into force. These responsibilities of NOSDRA are not just enormous but very clear and comprehensive with respect to the handling of oil spill incidents in Nigeria. Even though the Agency is not expressly empowered to compensate victims of oil spillage, it is working out a compensation framework for victims of oil spillage and same can be inferred from the proposition of Mrs Uche Okwechime viz: 16

... The existing problem of Oil Spillage damage is no longer acceptable to communities in the Niger Delta... NOSDRA and the United Nations Development Programme (UNDP) are partnering to develop a framework for accessing damages of oil spill... as well as rates for effecting compensation to communities of impacted sites....¹⁷

Of interest to this work is the fact that amidst many enactments regulating cases of oil spillage and compensation of its victims, only the NOSDRA Act, through its regulation made pursuant to s. 26 of the NOSDRA Act, expressly provided for compensation of victims of cases of oil spillage in Nigeria. Under the Regulation, an owner or operator of an oil spill facility shall pay compensation to an oil spilled victim for damage caused to the victim's person, business or property and it further provided that, an owner or operator shall internalize the cost of compensation as part of polluter-pay-principle.

It can, therefore, be said that NOSDRA is the body charged with the responsibility of oil spill Management, remediation and environmental restoration which NOSDRA is permitted under the NOSDRA Act to collaborate with other concerned sister institutions such as DPR, FME itself, NEMA, NDDC and others as the case may be.¹⁹ The Federal

¹³ NOSDRA Act 2006, s.1.

¹⁴ NOSDRA Act 2006, s.5.

¹⁵ NOSDRA Act 2006, s.6(1), (c) - (d),(2), (3) and 7.

¹⁶ Uche Okwechime was one time Acting Director General of NOSDRA.

Oil Spill, F.G. to Unveil New Compensation Policy. Available at www.NOSDRA.gov.ng/index.x.php%fid% D40. Accessed 9/7/2013.

Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation 2011, Regulation 26.

¹⁹ NOSDRA Act 2006, s.19.

Government through FME also intervened in extreme cases of oil spillage as it plays an oversight function over NOSDRA especially through the provision of funds and appointment of its officers. In all, it can be said that the FME carries out its responsibilities pertaining to oil spillage through NOSDRA which is a parastatal under its ministry statutorily charged to do so under the NOSDRA Act.

NATIONAL EMERGENCY MANAGEMENT AGENCY (NEMA)

National Emergency Management Agency (NEMA) is an Agency established by section 1(1) of the NEMA Act to among others manage and respond to National Emergencies. It also monitors the state of preparedness of all other agencies, bodies or institutions which may contribute to disaster management in Nigeria. Therefore, NEMA is also empowered to monitor NOSDRA's preparedness in the event of oil spill disaster in Nigeria as disaster according to the NEMA Act, include anything from crises, epidemic, drought, flood, earthquake, storm, train, road, aircraft, oil spillage, etc which causes disaster to people and their environment. It can also be said that beyond monitoring of agencies preparedness in response to disaster management, NEMA also provides relief materials to affected victims or communities in which cases victims of oil spillage may not be exempted where the spill is disastrous in nature. This is so because in Nigeria, NEMA is among such other Agencies expected to collaborate with NOSDRA in the event of disastrous oil spillage.²¹

Among others, of keen interest to this work as it relates to NEMA being an institution which is ordinarily charged with the monitoring of the state of preparedness of other institutions, bodies or Agencies when it comes to disaster management and supply of relief materials to victims in emergency and disastrous situation; is whether, it is empowered to compensate victims of oil spillage or other disasters. Sadly, it can be answered in the negative that NEMA is not empowered to pay compensation to victims who are affected by disastrous situations. Hence, NEMA cannot also pay compensation to victims of oil spillage as there is no provision in the NEMA Act, suggesting payment of any form of compensation to victims of oil spillage in Nigeria or victims of other disasters of National emergencies vis-à-vis victims of oil spillage.

NIGER DELTA DEVELOPMENT COMMISSION (NDDC)

Niger Delta Development Commission (NDDC) is a commission established by the NDDC Act²² among others to tackle ecological and environmental problems arising from the exploration of minerals in the Niger Delta. It is also required to advice Federal and State Governments in the Niger Delta on the prevention and control of oil spillage, gas flaring and environmental pollutions. Similarly, it is equally empowered to liaise with oil companies in tackling issues of environmental pollution, its control and management.²³

²⁰ NEMA Act 1999, s. 6.

²¹ NOSDRA Act, 2006 s.19.

²² NDDC Act, s.1(1).

²³ NDDC Act, s.7(1) (h) and (i).

The NDDC Act further established a body known as Directorate of Environmental Protection and Control (DEPC) which is responsible for executing all environmental responsibilities of the NDDC including those spelt out under s. 7 of the NDDC Act. ²⁴ DEPC is also empowered to liaise with member states and other appropriate Agencies, Bodies and Commissions in discharging her responsibilities under the NDDC Act. It is not in controversy that the DEPC is the ideal body to collaborate with NOSDRA in the event of any major disastrous oil spill in Nigeria as NOSDRA is empowered under s. 19 of NOSDRA Act to collaborate with other sister Agencies in the prevention, control and management of oil spillage in Nigeria.

It is regrettable, unacceptable and unbelievable that NDDC which among others was ordinarily established to monitor the preparedness of all Agencies, Bodies or Institutions which may contribute to disaster management in Nigeria is not empowered under its Act to compensate victims of oil spillage which in all ramification appears to be the most foreseeable disaster prone to be suffered by the people of the Niger Delta whose interest and region the NDDC is principally established to protect and develop. This is more so that no section of the NDDC Act seems to suggest, allow or even imply that NDDC can facilitate or pay compensation to victims of environmental hazards like degradation, oil spillage and others. As a matter of urgency, the NDDC Act needs to be amended in order to accommodate or reflect such misplaced priorities.

THE ROLE OF OIL COMPANIES IN CASES OF OIL SPILLAGE IN NIGERIA

Apart from the Institutions mentioned and appraised above, some incorporated companies operating in Nigeria are also expected to carry out certain Statutory, Corporate and/or Social responsibilities. Oil companies as used here represents multinational and transnational oil companies exploring, prospecting and/or mining oil in Nigeria. It also includes indigenous companies like the Nigerian National Petroleum Co-operation (NNPC) and its likes. These oil companies are said to be essential stakeholders in the oil industry and as a result, compounded with enormous roles in cases of oil spillage in Nigeria. As a fact, the roles of oil companies in the management and control of oil spillage are enormous and so essential that most of which have been statutorily codified in the various Legislation and Regulations governing oil industry in Nigeria. Among others, these roles of the oil companies include prevention, control and management of oil spillages.

PREVENTION, CONTROL AND MANAGEMENT OF OIL SPILLAGE

Prevention, control and management of oil spillages are the essential obligations of the oil companies in Nigeria. Accordingly, these obligations are statutorily imposed on the oil companies as part of their undertaken prior to the granting of any of the enabling concessionary instruments. In that regard, regulation 25 of the Petroleum (Drilling and Production) Regulation (PDPR),²⁵ and regulations 25, 28 and 118 of Oil Spill and Oil Waste

²⁴ NDDC Act, s.9 (1) (d).

²⁵ 1969.

Management Regulation (OSOWMR)²⁶ provides to the effect that oil companies and operators are required to take all necessary steps towards prevention of oil spillage and in any event where spill occurs, it must take prompt steps to stop it. This role is preventive as well as proactive in nature. To fulfil the obligations, the oil companies are required to strictly adhere to the Best Practice of oil industry on the one hand and on the other hand, to employ the use of Best Available Technology (BOT) and Best Practicable Technology (BPT) in the oil field. Similarly, oil companies are statutorily required to prepare and submit to NOSDRA a Spill Prevention, Control and Counter Measure Plan (SPCCP) as well as an Oil Spill Contingency Plan (OSCP). This particular role is only aimed at protecting the environment by way of minimizing or preventing the occurrence of oil spillages in Nigeria.

PREPARATION AND SUBMISSION OF SPILL PREVENTION, CONTROL AND COUNTER MEASURE PLAN (SPCCP) AND OIL SPILL CONTINGENCY PLAN (OSCP)

Among the roles of oil companies in cases of oil spillage in Nigeria is to submit to NOSDRA a Spill Prevention Control and Counter Measure Plane as well as Oil Spill Contingency Plan. This duty is meant to be adhered to before any oil company discharges any form of oily waste/spill from installations, tanks, pipelines etc.²⁷

The rationale for these obligations are numerous. At first, there are instances where eventualities require the deliberate discharge of oily waste or spill in other to save lives, properties or to respond to emergency situations. In this instance, the companies are duty bound to prepare and send to NOSDRA SPCCP and OSCP before discharging waste or spilling oil into the environment. Also, this obligation, if observed, will enable NOSDRA to carry out Environmental Impact Assessment before affirming or disallowing the SPCCP and OSCP. Strict adherence to this role may ensure prevention of avoidable and unnecessary spills. However, the questions is, can the observance and enforcement of this role really apply in an emergency situation?

Report of Cases of Oil Spillage or Oil Discharge to the Relevant Institutions/Agencies

Another prominent role of oil companies in Nigeria is to promptly report cases of oil spillage or discharge of oil to the relevant Agencies within 24hours of its occurrence and the report is required to be in an 'Oil Spill Report Form'.²⁸ The essence of this role is to enable the relevant Agencies to take immediate measures towards stopping the spill and also prevent avoidable damage to man and the environment at large.

Investigation of Oil Spills

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²⁶ 2011

²⁷ See OSOWMR 2011, Regulations 4, 5 and 6.

²⁸ See OSOWMR 2011, Regulation 8 and OSRCRDAR 2011, Regulation 4.

Oil companies participate actively in the investigation of oil spill cases/incidents in Nigeria. Accordingly, oil companies are part of the Joint Investigation Team (JIT) which mainly comprises representatives of NOSDRA, host communities, oil companies and other relevant institutions.²⁹ The JIT is generally charged with the responsibility of investigating cases of oil spill immediately after spill incidents are reported. As a member of JIT, oil companies allow the JIT access to their installations where necessary, provide personnel, equipment and also takes care of logistics. Most importantly, the security report of installations, causes of oil spillage and other vital information are supplied to JIT by the oil companies.³⁰ In carrying out this duty, JIT must be led by NOSDRA whenever there is a major or catastrophic or third/fourth tier oil spillage else it may amount to a breach of statutory duty on the side of no co-operating members of JIT.

Payment of Compensation

Another celebrated role of oil companies in Nigeria is payment of compensation to the deserved victims in cases of oil spillage.³¹ This role under consideration appears to be the most important role of the oil companies in cases of oil spillage in Nigeria. However, it is rather unfortunate that victims of oil spillage are hardly compensated due to legal technicalities and Lacuna in the various Legislations regulating the oil industry in Nigeria. This is so because, Oil companies are statutorily exempted from compensating victims of Oil Spillages if such spillages are caused by either an act of the plaintiff, sabotage, vandalism or other third party's intervention.³²

Environmental Restoration

It is the obligation of the oil companies to undertake clean-up operations, remediation and environmental restoration.³³ In compliance to this duty, the oil companies in 1981 formed a body known as Clean Nigeria Association (CNA) which the agreement was not just signed in 1981 but it became operational in 1985 and later incorporated into a Guarantee Company on the 8th day of September 2000.³⁴

CNA is a '2nd tier spill' response co-operative organization formed by the Oil Producers Trade Sector (OPT) for the purpose of assisting the Nigerian Petroleum Industry in her efforts to protect the nation's environmental heritage while they develop the nation's petroleum resources.³⁵ 'First Tier' oil spill are mild oil spills caused by the oil companies' facilities within or around the environment where they operate. It is (1st tier oil spill) purely managed by the oil companies themselves. 'Second Tier' oil spill are the medium seized spills requiring the assistance of Agencies like NOSDRA and its likes to manage while

OSOWMR 2011, Regulations 9 & 25 and OSRCRDAR 2011, Regulation 5.

³⁰ OSOWMR 2011, Regulations 9 & 25 and OSRCRDAR 2011, Regulation 5.

OSRCRDAR 2011, Regulation 26.

³² Oil Pipeline Act Cap O7 Laws of the Federation of Nigeria 2004

³³ OSRCRDAR 2011, Regulation 28.

³⁴ See Clean Nigeria Association at www.Cnang.org. Accessed on 11/06/2013.

³⁵ See Clean Nigeria Association at www.Cnang.org. Accessed on 11/06/2013.

the 'Third Tier' oil spill or catastrophic spill is disastrous and requires National and International assistance/response to manage.

Among others, CNA objectives include establishment and maintenance of a speedy and effective response capability to combat 2nd tier oil spill. In addition to capability maintained by any member, it also provides support in combating 3rd tier oil spill at the request of members, non-members or government agencies. Similarly, CNA provides training programmes, conduct and support research in subjects pertaining to the environment.

CONCLUSION AND RECOMMENDATIONS

The institutional framework in Nigeria as it relates to the oil industry is not properly coordinated and does not live up to the maximum expectations. Most of the institutions runs parallel of the other and carries on its activities independently in such a manner which does not encourage institutional synergy in the course of discharging its responsibilities. Also, due to the incoherence in the management of the institutions, job duplication arises thereby leading to waste of manpower, finance and other resources. Finally, the institutions concerned with the responsibilities of managing the oil and gas industries are not statutorily empowered to compensate victims of oil spillages in Nigeria, hence there exists a big gap in that regard. To effectively manage the fallouts of the oil industry in Nigeria, institutional framework particularly as it concerns management, remediation and prevention of oil spillage vis-à-vis compensation of victims of oil spillage need to be rejig and strengthened. hence it is recommended that:

- a) The role of the institutions responsible in managing and administering the oil industry in Nigeria should be properly and adequately spelt out in the statute establishing them or in its terms of references.
- b) The institutions charged with the management, formulation and administration of policies in the Nigerian oil and gas industry should be statutorily positioned in such a manner that it can undertake or ensures that the multinational and municipal oil companies where the need be, adequately compensate victims of oil spillage in Nigeria.
- c) The various institutions charged with the responsibility of administering, managing or formulating policies regulating the oil industry in Nigeria should at all material point in time be in position to cross breed ideas, synchronize their policies and synergize to ensure efficiency in the management and administration of oil and gas policies in Nigeria.

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