

READINGS

In Law and Policy

(Current Issues and Trends)



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of Rivers State (1967 - 2017)**

Edited by

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Chapter 25

Oil Pollution in Nigeria: An Assessment of Viability of Nigerian Criminal Legislations

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Abstract

Oil is one of the important sources from where the Nigerian government generates revenue to cater for the need of its citizenry. While it is understandable that the Nigerian Government has the legal right to explore oil wells; it is however crucial to ensure that such exploration does not cause unnecessary hardships to the people and to the land. This is in view of the fact that the people of the oil region rely heavily on their land for income and sustenance. It is against this background that this paper examines the criminality of Oil pollution under the Nigerian law. This involves analysis of the punitive laws on oil pollution in Nigeria in order to assess whether such laws provides adequate sanctions or punishment for oil pollution. To achieve this, the paper adopts a doctrinal method which involves analysis of primary and secondary sources of law. On this note, profitable recommendations were made to ensure a polluted free environment for the inhabitants of the oil region.

Key words: Oil, criminal liability, pollution

Introduction

The detection and exploration of natural resources have produced diverse corollaries to countries endowed with such resources.¹ Though some of these countries have become economically strong and self-sustaining, the opposite is the case in other states.² When oil was first detected in the Nigeria, there was arguably so much confidence and self-assurance that it would be a source of enormous development for the country. As years passed by, the anticipation is no longer promising and the communities in the oil region have been suffering from unceasing oil pollution since the commencement of oil exploration and this has scored very low on the United Nation's Human

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¹ See Abdulkadir B.A, "Gas Flaring in The Niger Delta Of Nigeria: A Violation Of The Right To Life And Comment On The Case Of *Johnah Gbemre V Shell Petroleum Development Company Of Nigeria Limited*" (2014) 22 IJUMIJ 75

² Ibid. see also Akinlo, A. E. "How important is oil to Nigeria?"

Development Index.³ Oil pollution has done huge damage to the environment because it has led to the pollution of the essential elements of the environment (air, water, and land). Therefore, the source of livelihood for people are increasingly being put at risk. This is because the right of the people to means of sustenance is being affected by pollution of the environment. However, as environmental consciousness grows, there has been a growing appreciation that the continued existence and development of humankind depend on a healthy environment.⁵ That is, an environment free of pollution. It is on this premise that this paper examines how oil pollution is affecting the life of the citizens. While Nigeria is faced with many ecological challenges such as oil spillage, gas flaring, seismic survey, dredging and many others, the focus of this paper will be limited to oil pollution. On this note, this introduction is divided into four major parts, this introduction being the first part, the second part discusses the meaning and impacts of oil pollution. The third part examines basic legislations on the control of oil pollution in Nigeria. To achieve this, the paper relies heavily on judicial interpretations of oil pollution in notable jurisdictions. The last part presents the conclusion.

Meaning of Oil Pollution

Many literatures have been written on the causes and impacts of oil pollution and as such this paper will not dwell into this area of discussion further. However, within the objective of this paper, it is imperative to have a brief understanding of what oil pollution entails. The term pollution denotes the occurrence and inputs of wastes and the impact of these wastes on the environment. Ordinarily, pollution means the contamination of the environment (water, air & land) through deliberate or inadvertent actions of man, which consequently impairs the natural state of these components to the disadvantage of the dependent inhabitants and the ecosystem.⁶ Po

³ See UNDP, Niger Delta Human Development Report, 2006, 1-6.

⁴ See for example, United Nations Environmental Programme, "Global Environment Outlook", UNEP, 2007, 1-3; United Nations, "Resilient People, Resilient Planet: A Future Worth Creating", United Nations, 2012, 1-5; World Commission on Environment and Development, "Our Common Future, From One Earth to One World", WCED, 1987, 4-8.

⁵ Oyejide, T. Ademola. Kaplan, David Robbins, Glen, "Enhancing Linkages of Oil and Gas to the Nigerian Economy." MMCP discussion Paper No. 8 March, 2011. P.1-104; See Francis O. "Environmental Injustice and Human Rights Abuse: The States, MNCs and Repression of Environmental Groups in the World," Human Ecology Review 8, No. 1 (2001): 39; Gurr, Ted. R. "Why We Rebel: A global Analysis of Communal Mobilization and Conflict Since 1945," IPSR 14 (1999) 201.

⁶ Ogboghodo, I. A., Iruaga, E. K., Osemwota, I. O., & Chokor, J. U. (2004). An assessment of the impact of crude oil pollution on soil properties, germination and growth of maize (*Zea mays* L.).

may result from different sources such as noise, chemicals, solid or effluent wastes, foul gaseous emissions and so on. From another view point, pollution has been more aptly described as the introduction by man directly or indirectly of substances into the environment thereby causing harms to the living resources, endangers human health and constitute hindrance to the marine activities including fishing.⁷

Pollution is the release of undesirable substance into the environment. Many human activities industrial production, burning of fossil fuels, agriculture, and product use, among others generate pollutants that can find their way into the ocean. At one time, people thought that the vastness of the ocean could dilute pollutants enough to eliminate their impacts. It is now known, however, that some pollutants can significantly alter marine ecosystems and cause harm sometimes deadly to species from the top to the bottom of the food web. Therefore, oil pollution concerns with pollution resulting from oil activities starting from exploration, production, to transportation, and distribution.⁸ However, pollution emanating from oil production processes is mostly due to accidental discharges or leakages from faulty, rusty or ill maintained equipment. It may also be as a result of oil pipeline vandalisation, engineering drills, inability to effectively control oil wells, failure of machines, and inadequate care in loading and offloading of oil vessels. The 1989 oil spill from the grounding of the oil tanker Exxon Valdez, still the largest such spill in U.S. history, is infamous for the devastation it caused to the fragile marine wildlife in Alaska's Prince William Sound. The tanker spilled approximately 11 million gallons of its 53- million-gallon cargo of crude oil, killing an estimated 900 bald eagles, 250,000 seabirds, 2,800 sea otters, 300 harbor seals and uncounted fish and invertebrates. This is clear picture of what oil pollution can cause to the society and the people. Similarly, instances of the grave impact of oil pollution abound in Nigeria, particularly in the Niger-Delta region where oil production activities take place.⁹ For instance the two oil spills recorded in Rokpokwu community of Rivers State spread through three communities thereby destroying their water ways including large piece of land, aquatic life,

crude types-Forcados light and Escravos light. *Environmental Monitoring and Assessment*, 96(1-3), 143-152.

⁷ Malcon N. Shaw; International Law, fourth Edition 2002....p. 607

⁸ Nishida, H., Miyai, M., Tada, F., & Suzuki, S. (1982). Computation of the index of pollution caused by heavy metals in river sediment. *Environmental Pollution Series B, Chemical and Physical*, 4(4), 241-248.

⁹ Opukri, C. O., & Ibaba, I. S. (2008). Oil induced environmental degradation and internal population

economic trees and plants species.¹⁰ Also, similar occurrences were experienced in Dare (Bayelsa State) and Warri (Delta State) and are partly responsible for the pervading crisis in the oil Region.¹¹ Therefore, there is the need for a solid and efficient means of controlling oil pollution through legal and institutional means. It is on this premise that this paper seeks to look at the oil pollution as a criminal offence punishable under the Nigerian Law.

Available Legislations

This part looks at both the general and the specific legislations criminalizing oil pollution in Nigeria. The general laws include: the Oil in Navigable Water Act, the Petroleum Act, and other similar laws on the issue. The specific legislation to examine in this paper is the Criminal Code because it regulates criminal matters in Nigeria.

Oil in Navigable Water Act¹²: The Oil in Navigable Water Act was passed to give recognition and effect to the domestication of the International Convention for the Prevention of Pollution of the Sea 1954. The Act makes provisions for several pollution crimes in order to mitigate the occurrence of oil pollution. These crimes as provided in section 3 include: intentional or negligent discharge of oil into prohibited sea areas and/or Nigerian waters, failure to install oil pollution equipment on ship or keep record of oil matters, failure by harbor authorities to provide oil reception facilities¹³ and also report the presence of oil in harbor waters. Under this Act, pollution arising from transportation of oil by ships through the voluntary or involuntary actions of oil companies, ship owners, tanker operators, harbor authority and individuals is penalized. Application of the Act. Apart from provisions that are specifically expressed to apply to Nigerian ships only, the act is applicable to all vessels, whether registered or not registered in Nigeria and irrespective of Nationality save the exemptions provided in the Act. In board terms, seven offences are created under this Act, namely; Discharge of certain oil into

¹⁰ Adeniyi Olatunbosun

¹¹ Osuji, L. C., Egbuson, E. J., & Ojinnaka, C. M. (2005). Chemical reclamation of crude-oil-inundated soils from Niger Delta, Nigeria. *Chemistry and Ecology*, 21(1), 1-10.

¹² Oil in Navigable waters Act Cap O6 LFN 2004.

¹³ See National Research Council, Committee on Shipboard Wastes, Clean Ships, Clean Ports, Clean Oceans: Controlling Garbage and Plastic Wastes at Sea (National Academy Press, 1995), 126. Port reception facility is a kind of palliative measure provided by an international shipping ports to collect oil mixtures, residues and garbage that are generated from sea going vessels. See also Bariweni P.A. Akaso, A.A. Abowei J.F.N, Some Environmental Challenges and Solutions in the Nigerian Ports Systems: The Public-Owned and Private Ports in Ontario, Canada Example" (2012) *International Journal of Fisheries Aquatic Science*, 1(2). p. 92.

prohibited sea area¹⁴, Discharge of oil into the waters of Nigeria¹⁵, Failing to install equipment in ships to prevent oil pollution,¹⁶ failure of persons in control of ship to keep records of matters relating to oil,¹⁷ failure of harbor authority to provide oil reception facilities,¹⁸ transferring oil at night¹⁹ and failure to report discharges of oil into waters of harbours.²⁰ The relevance section here is section 3 which protect the environment against the impacts of oil pollution. The section provides²¹:

(1) If any oil or mixture containing oil is discharged into waters to which this section applies from any vessel, or from any place on land, or from any apparatus [such as pumping stations and pipelines²²] used for transferring oil from or to any vessel (whether to or from a place on land or to or from another vessel), then subject to the provisions of this Act-

- (a) if the discharge is from a vessel, the owner or master of the vessel; or
- (b) if the discharge is from a place on land, the occupier of that place;
- (c) if the discharge is from apparatus used for transferring oil from or to a vessel, the person in charge of the apparatus, shall be guilty of an offence under this section.

(2) This section applies to the following waters, that is to say -

- (a) the whole of the sea within the seaward limits of the territorial waters of Nigeria, and
- (b) all other waters (including inland waters) which are within those limits and are navigable by sea-going ships.²²

Furthermore, in order to ensure absolute compliance to the act, provision for penalties were enshrined in it. For instance, the Act provides that a person guilty of an offence under section 1,3 and 5 shall be liable on summary conviction to a fine of not exceeding ₦2,000 (if by a magistrate court)²³ while in contravention of section 7 an accused shall on summary

¹⁴ Ibid, section 1(1) and (2)

¹⁵ Ibid, section 3(1)

¹⁶ Ibid, section 5(5)

¹⁷ Ibid, section 7(1) (2) (5) (a) and (b)

¹⁸ Ibid, section 8(8)

¹⁹ Ibid, section 9(1) and (5)

²⁰ Ibid, section 10(1)

²¹ Id, section 3

²² Id, section 3(2)

²³ Ibid, section 7(5)(a) and (b)

conviction be liable to a fine of not more than ₦1000. However, where a conviction is made the proprietor shall on summary conviction be liable for a fine not exceeding ₦1,000 or a term of imprisonment not exceeding six months, or to both fine and imprisonment.²⁸ Also, where an accused fails to report discharge of oil into harbor waters, he shall be liable on summary conviction to a fine not exceeding ₦400.²⁹ This amount to say least is ridiculous as there are polluters who would after committing the offence prefer to pay a paltry penalty. Therefore, it is suggested that the law be reviewed in order to meet the present day reality.

Though the Act has prescribed punishments for some categories of offences, there are some defenses available to the polluter under the Act. In fact, the entire section 4 of the Act is devoted to defenses for the offences created under section 1 and 3. That is, the discharge of certain oils in prohibited sea areas by Nigerian ships and discharge of oil into the waters of Nigeria respectively. By this, the owner or master of a ship or vessel would be availed of a charge if he shows to the satisfaction of the court, that the discharge was to secure the safety of any vessel, prevent damage to any vessel, cargo or to save life.³⁰ subsection (2) also provides that an accused person could in defense prove that he has taken immediate steps to mitigate damage in addition to showing that the oil-escape was brought about by damage to vessel or as a result of a leakage not attributable to any want of reasonable care. Further, concerning an occupier of land or person in charge of apparatus charged under Section 3, it is availing simply to prove that the escape was due to any want of reasonable care and that all practicable and reasonable steps were taken subsequent to the discovery to mitigate damage.³¹ It is also a defense to show that the discharge came about through the act of some person³² or that the discharged oil was an effluent product of oil refining process which disposal could only reasonably be effected by its discharge into the waters in question and that all practically reasonable steps have been taken to eliminate oil from the effluent.³³ With respect to offences created under section 5 (failing to install equipment to prevent oil pollution in ships), 7 (failing to keep record of matters relating to oil) and 10 (failing to report discharge of oil into waters of harbor) the Act provides no defenses. These are violations, making them ones of strict liability. It should be noted that

²⁸ Ibid, section 10(1)

²⁹ Ibid.

³⁰ Ibid, subsection(1)

³¹ Ibid, subsection(4)

³² Ibid, subsection(3)

³³ Ibid, section 4(1)

from sections 3, 7 and 10 that permit no defenses the other offences created under the Act are subject to the available defenses.

The Penalties, Defences and Prosecution factor: Taking a look at the penalties as judged by today's reality, suggest a need for a review of the Oil in Navigable Waters Act as regards pecuniary penalties. This is in a bid to capture fundamental dynamics of present day pollution processes. Further to this, the laws have not been able to capture the numerous other pollution cases that have become the issues of today's arguments. This therefore also suggests that in order to have a proper compensation provision, the law needs to be extended to other pollution. For instance, payment of fine sum such as N2, 000, N1, 000, and 400 could not in any deter polluter from polluting the environment. In fact, as ridiculous as the amount seems, a polluter would rather prefer to pay such ridiculous amount as fine that embarking on a precautionary measures which is greater.

Defenses : For offences under section 1 and 3, the owner of master of a vessel is availed if he could prove to the satisfaction of the court that the discharge was to secure the safety of any vessel, prevent damage to any vessel, cargo or save life of persons on board. This is notwithstanding that the pollution resulting from such discharge has devastating effect on the population of the polluted water area. This is an absolute leeway or escape route for a flouting ship or vessel owner without more. One disadvantage of this defense is the fact that the degree of damage to vessel envisaged and the sort of cargo on board that would warrant discharge off oil pollutants into prohibited waters are left for the ship masters determination. Secondly, under subsection (2) defense of accident could avail an accused person provided immediate steps were taken to mitigate the damage. These available defenses are too opened in that no criteria whatsoever are provided for in order to determine or ascertain whether such defenses could avail the offender.

Prosecution : The offender under the Act can only be prosecuted with the approval of the Attorney General of the Federation (AGF). This means that where approval is not given, the offender cannot be prosecuted under the Act. It is not in doubt that the office of the AGF is a political one, prosecuting the offender might be frustrated. The consequence of this is that the right of the people to prosecute is at the liberty of the Attorney General. On this note, there is the need to review this particular provision by settling out some conditions to be able to access whether the AGF is acting rightly or not and an aggrieved person should be able to challenge any decision of the AGF in this regard.

Petroleum Act

The Petroleum Act is a crucial law in the oil industry and as section 9 (1) (b) provides authority to make regulations on operations for prevention of air and water pollution. The coastal areas especially the Delta where oil exploration and production activities are carried on are the worst hit by oil industry pollution. Therefore, in consideration of this pollution, the Petroleum (Drilling and Production) Regulations in paragraph 25 makes it mandatory for a licensee or lessee to "adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources. To prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil and mud or other fluids or substances which might contaminate the water banks or shoreline or which might cause harm or destruction to fresh water or marine life." However, in case any such pollution has occurred the licensee or lessee must take immediate steps to control and if possible put an end to the pollution. However, the question as to what "all practicable precautions for the prevention of pollution" remain subjective, because such an ambiguous provision can be interpreted by different operators to suit their own purpose. There should be avoidance of vagueness and ambiguity which makes the provisions of the law subject to diverse interpretations. Thus the expression, if "all practicable precautions" is meant to be the provision of up-to-date equipment. In addition, Paragraph 36 of the Petroleum (Drilling and Production) Regulation provide that, "the licensee or lessee shall maintain apparatus and appliances, boreholes and wells capable of producing petroleum, in good conditions, and shall carry out all his operations in proper and workmanlike manner in accordance with these and other relevant regulations, methods and practices accepted by the Director of Petroleum Resources as good oil field practices." This means that if the good oil field practices are strictly complied with, it will address the issue of oil pollution envisaged by paragraph 25 of the Regulation. No matter how good and well intended the regulations, the concept of good oil field practices need further definition or clarification in order to avoid ambiguity.

In view of the above requirements, violators were made liable under the Act. For instance, Section 45 of the Petroleum Refining Regulation makes any contravention punishable with a fine of N100 (U.S\$0.7) or imprisonment term of six months. This penalty in today's market value is ridiculously low and it shows a total lack of commitment to environmental safety and security. The less than \$1 fine will in no way deter the polluters and may even harden them the more. This goes to the foundation of the legislation as lacking in public input and therefore may require a review. Therefore

water, water bodies and coastal areas will continue to be at the receiving end of oil pollution if the penalties chargeable are not reviewed upward.

Harmful Waste (Special Criminal Provisions) Act³⁰

Owing to the indiscriminate disposal wastes worldwide and in particular, the dumping of toxic waste at Koko Port, then Bendel State in 1988, the Federal Military Government specifically promulgated this decree now an Act to criminalize dumping of harmful wastes. The Act was enacted for the purpose of prohibit the carrying, deposit and dumping of harmful waste on any territorial water of Nigeria.³¹ The Act authorizes the minister saddled with the responsibility for works and housing to seal up any or site used or being used for the purpose of depositing or dumping harmful waste.³² The Act imposes civil liability (apart from criminal liability) on any one dealing with harmful waste.³³ The immunity from prosecution conferred on certain persons by the Diplomatic and Privileges Act does not extend to crime committed under the Act.³⁴ The Act defines Harmful waste to mean:

.....any injurious, poisonous, toxic or noxious substance and in particular, includes waste emitting any radioactive substance if the waste is in such quality, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury, or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste.³⁵

A contravention of any provision of the Act amount to a crime in respect of which the Federal High Court has the exclusive jurisdiction to try.³⁶ Any person that violated the provisions of the Act will be liable to prosecution and upon conviction be sentenced to life imprisonment.³⁷ There is also a provision for civil liability under the Act. By section 12 of the Act, where any damage occurred by any harmful waste which has been deposited or dumped on any land, the person who deposits, dump or imported the harmful waste

³⁰ Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formally Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988.

³¹ Id, see the preamble to the Act and in particular the provision of section 1.

³² Id, section 11.

³³ Id, section 13.

³⁴ Id, section 9.

³⁵ Id, section 15.

³⁶ Id, section 13.

³⁷ Id, section 6.

or who caused the harmful waste to be deposited, dumped, or imported is liable for damages.³⁸

It need be pointed out that by section 12 of the Act,³⁹ a person is deemed to have deposited or dumps harmful waste under the Act if he deposits or dumps harmful waste, whether solid, semi-solid or liquid, in such circumstances or for such period that he may be deemed either (a) to have abandoned it where it is deposited or dumped or (b) to have brought it to the place where it is so deposited or dumped for the purpose of its being disposed of or abandoned whether by him or any other person.⁴⁰

The definitions given of harmful wastes under the Decree can conveniently accommodate oil pollutants being deleterious and noxious and this could be invoked against oil polluters in Nigeria. The Act though remains a landmark in the history of Nigeria; however, the Act is fraught with some challenges which renders it ineffective for oil pollution control in Nigeria. For instance, by section 1(2), the Act only applies where the corporation or individual disposes harmful waste without lawful authority. Thus, where there is lawful authority to dispose harmful waste, the disposer will not be liable under the Act.⁴¹ This suggests that the government may give permission or authority to dispose waste notwithstanding the likely effects on the people. Also, although far reaching in penalty which admits no defence; the Act failed to address the restoration of the polluted land or water and the affected population. Besides, knowingly well that the major polluters are the corporate body, the Act failed to prescribe penalty against corporate offenders. It only stated that the offender "shall be liable to be proceeded against and punished accordingly." It is therefore suffice to say that corporate bodies are excluded from liability within the purview of the Act.

Oil Pipelines Act⁴²

This Act was enacted to make provisions for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oil fields and oil mining.⁴³ The Act applies to pollution arising from corrosive pipelines or leakages from pipelines laid in the

³⁸ *Id*, section 12(1)(b)

³⁹ *Id*, section 1(3)

⁴⁰ *Ibid*; for more detail view see Aina E. O. and Adedeipe N. O, "The Making of the Nigerian Environmental Policy" University Press, Ibadan, 1991, 311.

⁴¹ *Ibid*

⁴² Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria, 2004.

⁴³ See the preamble to the Act. For more detailed view see Amokaya G. Oludayo, *Environmental Law and Practice in Nigeria*, University of Lagos Press, Nigeria, 2004, 670.

distribution, marketing and transportation of crude oil.⁴⁴ Oil pipeline is defined as a pipeline for the conveyance of mineral oils, natural gas and any of their derivatives or components and also any substance (including steam and water) used or intended to be used in the production or refining or conveying of mineral oils, natural gas, and any of their derivatives and components.⁴⁵

The Act forbids the holder of the license to construct any works upon land which is the site of or is within fifty yards of any public roads, dam reservoir or building belonging to or occupied by the Federal or State Government or Local Government, or upon any land appropriated for any railway or situate within one hundred of any railway.⁴⁶ The Act also forbids the holder of the license from making any alteration in the flow of water in any waterway, or construct such works in, under or over any navigable waterway or make such alteration in the flow of water required for domestic, industrial or irrigational use as would diminish or restrict the quality of water available for such purpose.⁴⁷

The purpose of this Act is to control and prevent pollution of water that may occasion from leakages of oil. When there is oil leakages or spills, water and land may be polluted. When water and land are polluted, the source of livelihood of residents will be affected. For example, the Committee on Economic, Social and Cultural Rights which observes and supervises the execution of the International Covenant on Economic, Social and Cultural Rights adopted General Comment No. 15 where water is acknowledged not only as a limited resource and a public good but also as human right.⁴⁸ In its preamble, the committee declares that: "the human right to water entitles everyone to sufficient, safe, acceptable, physical accessibility and affordable water, for personal and domestic uses."⁴⁹ This shows that access to polluted water is vital to the realisation of basic human rights.

⁴⁴ Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004, section 11 (5).

⁴⁵ Id, section 11(2).

⁴⁶ Id, section 14 (a).

⁴⁷ Id, section 14 (c).

⁴⁸ United Nations. "General Comments of the Human Rights Committee of the International Covenant on Civil and Political Rights." (1989a) UN Doc. CCPR/C/21/Rev.1 (May) United Nations Publications, New York; Water Supply and Sanitation Collaborative Council (WSSCC). (1997). "Vision 21: Water, Sanitation, and Global Well-Being." A Statement from the Water Supply and Sanitation Collaborative Council (Draft), United Nations (December 22, 1997)

⁴⁹ See the Committee on Economic, Social and Cultural Rights "Substantive issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights" General Comment No. 12/2002/11.

The Act gives the holder of a license or its agents the right to enter upon and take possession of any land for the purpose of constructing, maintaining and operate an oil pipeline and ancillary installation.⁵⁰ Therefore, the Act is more of general provisions protecting the economic interest of the government and less protective of the environment free of pollution. Thus, it is more of associate to the licensee than the protection of the latter's environment.

Criminal Code⁵¹

The Criminal Code has two significant provisions relating to the protection of water quality and utility. Firstly, section 234(e) states that any person who deliberately diverts or obstructs the course of any navigable river so as to diminish its convenience for purposes of navigation is guilty of a misdemeanour and is liable upon conviction to imprisonment for two years. The second and more significantly for the present purposes is section 243 which forbids water pollution. It states that: "Any person who corrupts or fouls the water of any spring, stream, well, tank, reservoir, or place so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour, and is liable to imprisonment for six months". There is an equivalent provision against air pollution. Section 247 provides that any person who:

- "(a) vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along the public highway; or
- (b) does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, whether human or animal, is guilty of a misdemeanour, and is liable to imprisonment for six months."

This Act remains the major legislation for criminal liability in Nigeria. This is because it contains minimum degree of provisions for the protection environment against oil pollution. However, in the actual fact, Nigeria has not recorded a single case of conviction against corporation on pollution. In fact, the Code suffers a major setback. The reason being that under the Nigerian legal system, a corporate body cannot be liable to be sentenced to a term of imprisonment. In the *locus classical* case of *Attorney-General (Eastern Nigeria) v Amalgamated Press*,⁵² the court stated that a company cannot be charged with an offence for which imprisonment is the only punishment. It is equally

⁵⁰ Oil Pipelines Act, Cap. O7 Laws of Federation of Nigeria 2004, section 11 (2)

⁵¹ The Penal Code applies in the North

⁵² [1956-57] 1 F.R. N.C.R. 12

canvassed that a corporation can never be liable for any offence the sole punishment for which is death. Therefore, where the offender is a corporate body, the only practical punishment is the option or award of fine upon conviction.⁵³ While some other laws made reference to imposition of fine in the alternative, the Criminal Act does not contain provision for fine. Therefore, a corporate body or institution cannot be tried under the Act since the corporation cannot be sentenced to imprisonment. The provisions of the Act are only designed for individual offenders. Thus, it is argued that there are no provisions for corporate criminal liability under the Criminal Code in Nigeria.

Conclusion

In the paper, it has been established that there are plethora of legislations that regulate oil pollution in Nigeria like other jurisdictions. It is however worrisome that some of these laws lack enforcement mechanism, rendering them mere toothless bulldogs. It is seen that pollution by ocean sea vessel requires the consent or permission of the relevant authorities, but this has never been the case in any instance in Nigeria. It is also the requirement of the law that where pollution occurs, the offending ship is under obligation to pay penalty, unfortunately the amount of penalty specified under the law is paltry, if not ridiculous. In the same token, corporate entities who have been major perpetrators of oil pollution have been excluded through judicial authorities, these are the challenges of environmental pollution in Nigeria.