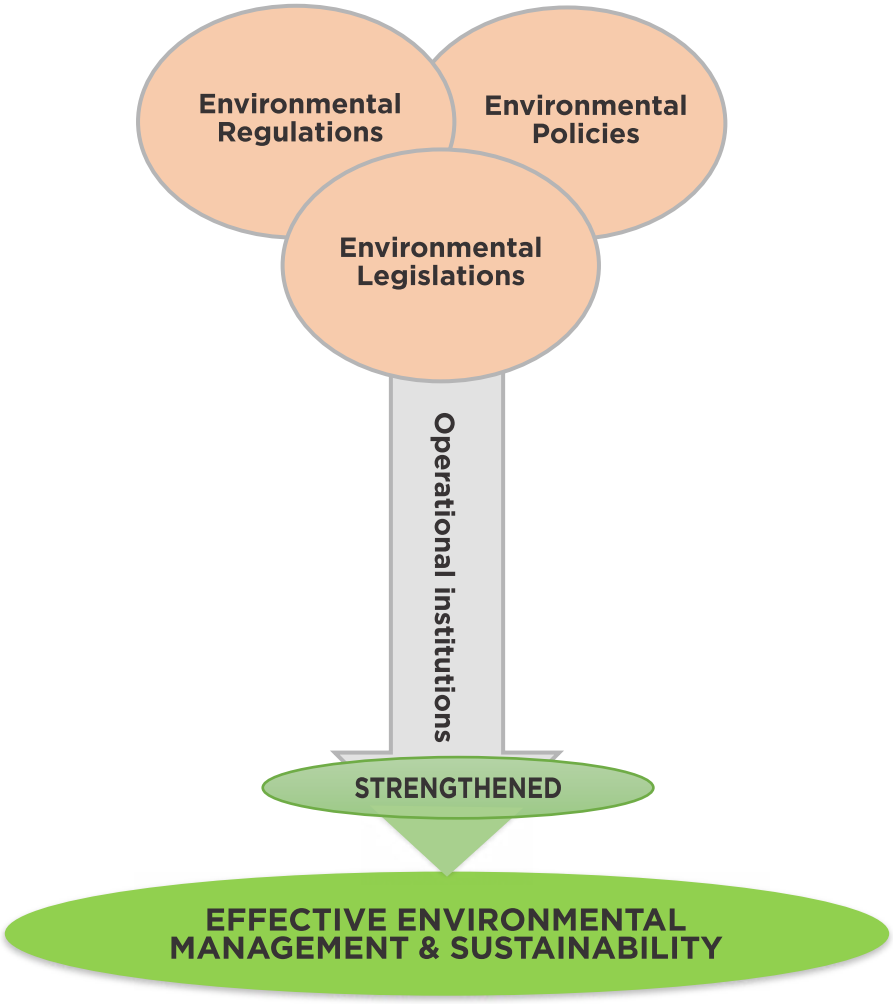
REVIEW OF ENVIRONMENTAL LEGISLATIONS IN NIGERIA: CASE STUDY OF EIA ACT, NOSDRA ACT, NESREA ACT, EGASPIN REGULATION AND HYPREP GAZETTE



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The views expressed in this report are those of the authors and CEHRD alone. They do not represent the views of any other organization, company or institution.

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FOREWORD

Laws have played both negative and positive roles in the management of the Nigerian environment as it relates to the activities of individuals and industries. In some cases, it looks as if the proponents of some legislations just want to fulfil all righteousness by enacting some legislations because oftentimes the content turns out to be empty, ineffective or does not reflect the reality of what they are meant to achieve. In some other cases the enforcers are not well informed on the extent of their powers and responsibility or not willing to act it. The major challenges most times is the proliferation of several regulatory agencies/departments/commissions etc with overlapping duties with each fighting for control rather than seeking synergy. The inadequacy of the penal or correctional provisions in a number of the laws also often renders the laws useless and incapable of achieving any positive change.

The above and more is why I commend this exemplary work done by Centre for Environment, Human Rights and Development with the leadership of Nenibarini Zabbey, PhD. It is timely and expedient at this point. Why? Because the Nigeria and global environment are changing regularly, presenting diverse challenges and opportunities which must be addressed or taken advantage of. As such there is the need for regular reviews to reflect new realities, redefine stakeholders, reassess the functionality or otherwise of clauses, add new clauses etc. so as to ensure relevance.

The gaps identified herein are valid and the recommendations should be given deeper consideration to be able to do the needful and effectively manage our environment. I wish to add further recommendations as follows;

- Mandate consultants to adopt simple as opposed to scientific languages in study reports, such as the EIA Reports. This will make clear and understandable to the ordinary community persons
- Simplify enquiry and response systems on concerns of citizens regarding certain situations
- Mainstream Community Right To Know Clauses into Environmental regulations or enact a Community Right To Know Legislation to keep the

communities informed on activities likely to impact on their environment that are being carries out around their neighbourhood

- Continually Improve on the penal and correctional measures and processes in the laws to enable the law achieve their goals.

I am glad to have contributed my piece to this work and I commend it to all researchers, practitioners and corporate organisations out there for use in their various works.

Thank you and God bless.

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LIST OF ACRONYMS

BoT	Board of Trustee
CEHRD	Centre for Environment, Human Rights and Development
CPA	Climate and Pollution Agency
CNA	Clean Nigeria Associates
DPR	Department of Petroleum Resources
EIA	Environmental Impact Assessment
EGASPIN	Environmental Guideline and Standards for the Petroleum Industry in Nigeria
ESI	Environmental Sensitivity Index
FEC	Federal Executive Council
FEPA	Federal Environmental Protection Agency
GMD	Group Managing Director
HYPREP	Hydrocarbon Pollution Remediation Project
ISO	International Organisation for Standardization
JV	Joint Venture
MD	Managing Director
MDA	Ministry, Department and Agency
MPE	Ministry of Petroleum and Energy
NAFDAC	National Agency for Foods and Drugs Administration and Control
NCA	National Communications Act
NCC	National Communications Commission
NESREA	National Environmental Standards and Regulations Enforcement Agency
NGO	Non-Governmental Organization
NOSDRA	National Oil Spill Detection and Response Agency
NOSCP	National Oil Spill Contingency Plan
NNOC	Nigerian National Oil Corporation
NNPC	Nigeria National Petroleum Corporation
OPRC	Oil Pollution Preparedness, Response and Cooperation
NPD	Norwegian Petroleum Directorate
PAHs	Poly-aromatic Hydrocarbons

EXECUTIVE SUMMARY

This report reviews three principal laws and two regulatory guidelines that seek to prevent/regulate and remedy environmental impact in Nigeria. Three of the legislative instruments (i.e. the National Oil Spills Detection and Response Agency (NOSDRA) Act, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) and the Hydrocarbon Pollution Remediation Project (HYPREP) Gazette, are exclusively focused on regulating, monitoring and managing pollution and other diverse impacts of operations of the oil industry in Nigeria. The other two reviewed legislations i.e. the Environmental Impact Assessment (EIA) Act and the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, cover the full gamut of impacts in all environmental media such as soil, water, air, forest, wetlands, etc., and their mitigation and control for other industries/project developments with potentials for environmental impact or emissions. An apparent reactionary approach, exemplified by the response to the toxic waste dumping incidence in Koko in 1988, may have dictated formulation of environment specific laws/regulations. This pattern narrowed prospects to better serve the public interest enunciated in their outline. It was based on precipitate action excluding needs-based reviews and hierarchical consultations such as the call for memoranda from interest groups and the public hearing step in the law making process. As the legislations and regulations do not operate in vacuum but implemented by designated agencies, a comprehensive evaluation of the departments and agencies that implement the legal instruments were analysed. A general overview of the reviewed regulatory instruments and the implementing agencies indicated several gaps and overlapping inter-agency roles exist. The study therefore, reviewed environmental legislations, and implementing agencies in Nigeria with an aim to identifying gaps and weaknesses that could be strengthened for effective environmental management.

The review involved a desk review of the respective environmental legislations and agencies. The study involved a review of peer reviewed and grey literatures. Key words such as 'environmental regulations in Nigeria", "EGASPIN Nigeria", and "NOSDRA Act review" were search using search engines including Google Scholar, Google, and ScienceDirect. Reports published by the Ministry of

Environment, Petroleum Resources, NOSDRA, HYPREP and NESREA formed parts of the grey literature that were reviewed. Experts in polluted land management and practitioners were also consulted for expert experience on the workability of the legislations. Following this, there was a collation of feedbacks from stakeholder consultations involving civil society organizations, community representatives and government officials of relevant agencies. In essence, this report is a synthesis of collated stakeholder and published views, and analysis of the expert team involved in the project.

Gaps and shortcomings were identified in each of the regulation and legislations. The recommendations made in this report should increase stakeholder/public interest and focus on issues for reforms to optimize the performance of the legislation/regulations. Timely collaborative action by all stakeholders would effectively contribute to attaining sustainable management of the Nigerian environment for the wellbeing of citizens and preservation of the ecosystem to provide its goods and services. Also, a comparative analysis of the operationalization of environmental management in other jurisdictions namely United States of America, United Kingdom, Canada, Oman, Brazil and Norway, was undertaken. Clearly, Nigeria's environmental regulatory framework can be strengthened by periodic review to set standards/targets based on locally derived empirical data and global best practices. Efforts must also aim to engineer inter-agency collaboration to optimize performance, improve synergy and improved efficiency through the mechanism of a national stakeholder working group (NSWG) for environmental management.

EIA Act

The study observed that while the EIA Decree No. 86 of 1992 (and later EIA Act 2004) had existed for decades, there were obvious gaps including weak public participation, complexities in the EIA system, conflicting stakeholders' roles, poor public displays of EIA Report, inefficient registry (that is still manually held in a digital world), and weak penalties. Recommendations proffered include that, a mechanism should be developed to improve the participatory approach in the EIA process. In compliance to the 21 days public notice provision, EIA records should be disseminated in communities proposed for a project, to allow for effective stakeholder review and contribution to the content. This would be an improvement on the current practice where the EIA records are pasted at the

local government council headquaters, where in nearly all cases, the community to be impacted by the project neither sees or make inputs to the final EIA document. In addition, mass and social media platforms, as well as traditional channels of community communications such as the towncrier can be used to publicize public hearings, elicit comments on EIA reports; notify and inform stakeholders on decisions and appeal processes.

NESREA Act

The NESREA Act has overlapping and conflicting functions with institutions such as NOSDRA, DPR and others, contradictory scope and restricted mandate (for instance restricting NESREA from the Oil and Gas sector), weak penalties, limited technical capacity, and funding challenges were identified as shortcomings that should be rectified. Although provision is made for three public interest representatives on the Governing Council in the Act, its value and legitimacy is diminished by the exclusion of non-governmental or civil society representation and requiring the Minister of Environment to appoint them.

Recommendations for improving the services of NESREA include the harmonization of roles and functions; review of penalties and structure to guarantee the independence of the institution. There is also need to focus on the mandate, and not be distracted by the revenue generation role. Specifying that the three public interest representatives indicated in the Act will be appointed from the constituency of organized Civil Society represented by leaders in the NGO sector and Professional Groups will promote public interest decision-making.

Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)

The study identified several gaps, such as the byzantine role of DPR, Powers and legitimacy, Scope and Target Values, Conflicting interpretation of the regulation by stakeholders, lack of transparency, operational detachment (they maintain their head office in Lagos; far from the operational base of the oil and gas industry they oversee), etc.

Some of the recommendations include, transfer the role of supervision of the EGASPIN to NESREA, review and resolve the controversies with the target and intervention values. There is a need to , relocate the operational base of the

supervising Agency to the Niger Delta. Location of the administrative structure responsible for implementing EGASPIN in the Niger Delta region will ensure physical proximity to all operational issues of the petroleum industry in Nigeria that should be regulated. This would increase efficiency and cost effectiveness. Also, it is recommended that the process of mainstreaming and compliance monitoring of EGASPIN should be transparent, end-to-end, by encouraging more stakeholder collaboration and the use of technology to engender access and transparency. Nigeria faces a big challenge of widespread tendency to corruption and abuse of public trust. It is thus justified to put in place institutional procedures and discourage vesting powers for discretionary waivers in an individual especially in the petroleum industry where big multinational corporations are the major players with much imfluence and resources to peddle for securing unjustified concessionary approvals. For instance, the discretionary powers bestowed on the Director of DPR for concessional approvals above set intervention and target values negate principles of transparency, probity and due diligence in corporate responsibility and should be abolished. Intervention/Target values Nigeria should be reviewed to be at par with international standard through a validation process based on nationally derived baseline data.

National Oil Spill Detection and Response Agency (NOSDRA)

Inadequate logistics, weak penalties for oil spillers or polluters, lack of capacity, and an unclear framework for collaboration contribute to the inefficiency of NOSDRA. In addition, the detached head office (in Abuja, away from the Niger Delta which is the operational base of the oil and gas industry), poor funding, unclear metrics for restoration and compensation, conflicting roles with DPR, etc.

Recommendations for improving the existing NOSDRA include developing sustainable funding framework, stringent penalties, and clear framework for collaboration with other stakeholders. Confidence of stakeholders particularly local communities in NOSDRA could be boosted by developing metrics for measuring environmental compensation in polluted areas. Also, it is recommended that NOSDRA should enforce insurance policies covering pollution remediation and third party liabilities from oil spill, etc. A cross-jurisdictional comparison was made between NOSDRA operations, Brazil and Norway. Both Brazil and Norway had stringent rules, including the criminalization of pollution. The amendments proposed in the 2018 Bill are

germane. Non-governmental organizations (NGOs) and organized community leadership organizations active in oil polluted areas such as the Niger Delta region should champion advocacy for the NOSDRA Act Amendment Bill. Renewed efforts should mobilized stakeholder to pressure government for presidential assent.

Hydrocarbon Pollution and Remediation Project (HYPREP)

Some of the structural and operational shortcomings identified with HYPREP relate to the lack clarity in its mandate scope and bureaucratic bottlenecks for efficient operations. There are also issues of absence of proper framework for collaboration, and a sustainable fundingstructure., Again, HYPREP appears to be bugged down with political intrigues which may interfere with its overall performance and drive for timely results. politicization of the remediation process, and peculiar constraints of being enmeshed within the mainstream civil service structure..

Recommendations made include, need to have a clear mandate, need for transparent framework for collaboration and stakeholder participation, need to revisit the Gazette setting up HYPREP, etc. To improve the performance of HYPREP, the Nigerian Government would need to strengthen HYPREP with a statutory framework for effectiveness e.g. it could be made a Federal Government Commission or Agency, to achieve efficiency and sustainability. The Federal Government should initiate legal instruments to empower HYPREP work effectively.A more efficient governance and operational structure modelled on existing Federal Government Commission or Agency which incorporates a sustainable funding mechanism should be outlined for HYPREP.

General Observations

The study outlined 10 general observations cutting across the different legislations.

1. **Overlapping Functions** – The identified agencies have overlapping functions in most cases.

2. **Chaotic regulation** – The environment in Nigeria is regulated by several agencies and laws. There are too many regulatory agencies with similar, and in some cases, conflicting roles. This has led to a chaotic regulatory

space. Today, a company in the environmental sector may have to get permits from all these entities (NOSDRA, DPR, NESREA, etc) for the same service range.

3. **Distractions of Revenue Generation** – The regulatory agencies appear more focused on the revenue-generating aspects of their functions, than on their regulatory roles. Environmental regulatory agencies should not be structured as revenue-generating organizations. This has been a major distraction.

4. **Conflicting Roles with State Equivalents** – Every State in Nigeria has their equivalent of a Ministry of Environment, and even several agencies under it. These agencies are in most cases glorified vehicles who are poorly structured, and who appear completely or partially ignored by the federal environmental legislation and regulations.

5. **Poor Funding** – There is an obvious poor funding challenge across all the institutions.

6. **Lack of Capacity** – The task of regulation requires modern technologies, techniques and skills set. Unfortunately, that is clearly inadequate in the agencies.

7. **Framework for Collaboration** - While most of the Acts and Regulations have collaborative components embedded, there are no clear framework to foster efficient collaboration..

8. **Stakeholder Involvement** – In most cases, there is no framework for stakeholder engagement.

9. **Lack of Transparency** – Most of the regulatory agencies operate with "black-box" secrecy. Matters of the environment are of public interest, and it is counter-productive to operate without transparency, as is the case in most cases.

10. **Strategic Communication** –Most of the regulatory agencies do not have a clear framework for strategic communication.

It is clear from the study that the Nigerian Government's approach to environmental legislation/regulation has followed a reactionary trajectory rather than a pragmatic approach. This, perhaps, may be the foundational basis for sub-optimal performance in public and private sector environmental management in Nigeria. Activating a timely collaborative stakeholder process for reforms towards a paradigm shift is the way to go. The new approach should be based on a national strategic framework developed through a deliberately hierarchical bottom-up stakeholder consultation process involving relevant university-based experts, accredited professional groups, leading practitioners in the NGO sector and research scientists. A national stakeholder-working group (NSWG) should be created as part of the plan to serve as clearing house for the validation of national baseline data and the vetting of standards/regulation parameters and intervention/target levels. The national stakeholder-working group (NSWG) can also help to foster inter-agency collaboration in the Nigerian environmental regulatory sector and coordinate implementation of the recommended mandatory periodic joint inter-agency public reporting for improved synergy and partnership towards attainment of sustainable environmental management in Nigeria.

Recommendations

- Review the EIA Act to improve participatory mechanisms and stakeholder inclusiveness
- Expand the scope of Impact assessment to consider human rights and gender implications
- Make HYPREP independent by strengthening the institution to a Commission or Agency
- Eliminate conventional ministerial bureaucracy in HYPREP
- Delineate NESREA's roles and functions, and develop stringent penalties for defaulters
- Eliminate discretionary powers in the EGASPIN
- Transfer the implementation of the EGASPIN to NOSDRA
- Review the EGASPIN to provide for risk-based soil screening values
- Review the NOSDRA Act to strengthen the organization to carter for all manner of spills in the country
- Provide for stringent penalties in the NOSDRA Act

INTRODUCTION

The environment is central to human existence because the sustenance of life depends on environmental quality, including environmental goods and services. More so, natural resources endowed in the environment are exploited by nation states for sustainable economic development. Environmental Laws are thus promulgated to guarantee right of National Governments to exploit available resources to drive economic development for the benefit of citizens. In Nigeria, the primary interest appears to be economic exploitation while the motivation for environmental protection is secondary. Thus, environmental legislation in Nigeria has been reactionary. For example, the development of the Hazardous waste Decree was a reaction to the 1988 Koko toxic waste dump. This led to the establishment of federal environmental protection agency (FEPA) and later prompted the process for enactment of Decree 58 in 1988 – precursor of the Environmental Impact Assessment (EIA) Act.

Onyenekenwa and Agbazue (2011 p.490) however suggested that the serial formulation of environmental protection policies in Nigeria was in a bid to manage and control widespread anthropogenic environmental degradation. Notwithstanding its origin, the performance of extant environmental laws and regulations in Nigeria have become subject of intense stakeholder agitations over the years. Stakeholder concerns point to inherent weaknesses and failure to deliver envisaged environmental protection and equity in the appropriation of benefits from environmental resources. There are also issues about lack of access to alternative livelihood opportunities to mitigate losses from degraded environmental assets.

According to Onyenekenwa and Agbazue (2011 p.490), environmental laws in Nigeria are not formulated based on nationally generated baseline data. Results from expert studies within the local context should form the basis for setting parameters to regulate environmental standards. Even where externally developed standards needs to be adopted, set values should be validated by results in local studies. The concerns expressed by researchers relate to the fact that Nigerian environmental regulatory agencies are not known to set or validate standards on the basis of nationally commissioned studies. Not much

collaboration is known to exist between university-based or other national leading researchers with Nigerian environmental regulators as the basis to set or periodically review regulatory values. Rather, its guidelines and standards are adopted from the templates of foreign jurisdictions or other entities hence they suffer deficiencies arising from socio-economic, cultural and climatic differences. Again, exclusion of public participation/interest groups during formulation, implementation and monitoring stages of environmental legislations are major shortcomings to their efficacy. Beyond the general shortcomings, specific environmental laws or guidelines/projects may face peculiar issues negating optimal implementation such as deficient capacity in terms of human, material and financial resources. As a consequence of deficient technical assessments, some significant impacts may be inadequately qualified making it difficult to plan appropriate mitigation measures. This has warranted express legal requirement for registration, certification and accreditation of EIA professionals (ECA 2005, p.xv).

The pertinent role of environmental education for attaining the goal of environmental sustainability was stressed by Norris (2016 p.1). Onyenekenwa and Agbazue (2011 p.490) suggested that to achieve the goal of environmental sustainability in Nigeria, environmental education needs to be mainstreamed in the curricula of primary, secondary and tertiary schools for awareness creation on topical subjects (e.g. environmental pollution, climate change). Enunciation of good policies and proper investment in appropriate technologies can also help achieve environmental sustainability in Nigeria (Oyebanji et al.,2017 p.216).., As part of its advocacy for sustainable green development and restoration of environmental quality and the right of Nigerians to a healthy and natural environment, the Centre for Environment, Human Rights and Development (CEHRD) commissioned this study with the support of its partners. It is believed that effective implementation of laws, guidelines and standards at par with best practice is one way environmental sustainability can be achieved.

ENVIRONMENTAL LAWS IN NIGERIA

The dumping of toxic wastes in Koko, former Bendel State (presently Delta State) awakened the national consciousness to develop an effective framework to protect the Nigerian environment. Prior to the above unfortunate event, Nigeria did not have coordinated and comprehensive legislation or framework to protect the environment. Following the era of lack of specific environmental legislations, a series of environmental legislations, regulatory reforms and restructuring took place in the intervening years. This birthed several laws, and created institutions to protect and manage environmental risks in Nigeria.

Nigeria has several environmental laws, all of which derive legitimacy from Section 20 of the Constitution of the Federal Republic of Nigeria. Section 20 of the Nigerian constitution states that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife in Nigeria". This study reviewed key legislation, guidelines, and regulations in Nigeria by identifying gaps therein and made recommendations for improved environmental management. Specifically, the following laws and regulations were analyzed:

i. Environmental Impact Assessment (EIA) Act
ii. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act
iii. EGASPIN
iv. NOSDRA Act
v. HYPREP Gazette

Nigeria has several environmental legislations and agencies. Despite the attempt to clearly define the distinct role of each, the often overlapping and in some cases duplicitous roles of the many agencies and regulations in the environment sector have been a course of concern to many. The presence of many agencies has been argued to be chaotic and complicates the compliance space. This study will, therefore, examine these regulations, identify gaps, challenges and areas of conflict, and make recommendations.

While there are other legislations in Nigeria with environmental component, however, the laws examined in this report are the main environmental legislation

in Nigeria. Environment falls within the concurrent list of the Nigerian constitution; therefore states (and Local Governments) have a mandate to enact their environmental laws as well and enforce same. For instance, the 36 states and the Federal Capital Territory have different versions of their environmental laws, just like NESREA. An example is the enactment of the Rivers State Environmental Protection and Management law in 2019.

Also, different states have their waste management and environmental sanitation laws. For instance, Rivers State Waste Management Agency which was passed by the Rivers State House of Assembly in 2013, and assented by the Governor in 2014. Another example is the Lagos State Government, which set up the Lagos Waste Management Authority in 2007 through the LAWMA Law No. 5 cap. 27, Vol. 40 of 2007. These respective laws all reflect the multilevel stakeholder interest on matters concerning the environment.

EIA ACT

Introduction

In a bid to strengthen environmental regulation, the Nigerian government promulgated the Harmful Waste (Special Criminal Provisions Etc.) Decree 1988, Decree No. 42 and the Federal Environmental Protection Agency Decree 1988, Decree No. 58, which set up the Federal Environmental Protection Agency (FEPA). Following this, the government took further steps to strengthen environmental regulation and protection. To this end, the Environmental Impact Assessment (EIA) Decree No. 86 of 1992 was promulgated. The law categorizes all developmental projects, whether undertaken by the private or public sector, and prescribes whether or not an EIA is required before the commencement of a project. Following the repeal of the decree setting up FEPA, which principally had the implementation powers of the EIA Decree, in 2004, this decree became the EIA ACT E12 of 2004.

According to the Act, prior to the commencement of any project, the proponent should consider the environmental impacts of such a project. In the case that it is established that the proposed project will significantly impact the environment, then an Environmental Impact Assessment should be done. The Act proposes the criteria for screening, scoping and assessment to ascertain the level of impact of a proposed project.

Minimum Content of the EIA

The act specifies the minimum content of the EIA as:

a. a description of the proposed activities;
b. a description of the potentially affected environment;
c. a description of the practical activities;
d. an assessment of the potential impacts of the proposed activities;
e. identification of mitigation measures for potential impacts;
f. an indication of knowledge gaps;
g. an indication whether the other LGAs, States, and territories outside of Nigeria may be impacted;
h. brief non-technical summary.

Gaps/ Shortcomings and Recommendations

i. Public Participation - While the EIA Act recognizes the role of public participation, there is no clear definition of the metric or guiding framework for choosing participants. Thus, EIA outcomes could be teleguided by the quality of public participation orchestrated. Even when this is not deliberately orchestrated, the lack of indigenous knowledge is one of the challenges of exclusion of the public. Involving the public through prompt provision of information, ensuring easy access to relevant information on proposed projects, and early/sustained engagement of stakeholders will give opportunity to wide stakeholder contribution to the content of EIA reports. This is recognized as an approach that can make the EIA process effective (UNEP, 2004). Failure to comply with the mandatory 21-day public display for stakeholders to contribute on content of EIA reports can hinder public participation especially in affected communities (Ereba and Dumpe 2010 p.33). Some other factors limiting adequate public participation in the EIA process include: Time – Stakeholders need to devote some of their limited time to follow the EIA process. They may have to travel to the LGA Secretariat or other locations where draft EIA Reports are displayed to review content. Money – Travel to locations of EIA display require spending of transport and other related cost which may not be easily afforded by very poor community-based stakeholders. Literacy – Illiterate persons who may be affected by proposed projects cannot read displayed draft reports except with assistance of an interpreter which may be a cumbersome process due to volume and perhaps technical details. Language – some community-based stakeholders may only be able to communicate in their native language and cannot speak or read English and so hindered from participating in the EIA review process except with assistance. Education – Most affected stakeholders may lack basic education required to effectively comprehend EIA Report content., Cultural differences – There are some community-specific cultural practices that are peculiar and at variance with the general norm or conventional practices which may be a source of misunderstanding or conflict. Gender – There is usally disproportional gender represention favouring men in some community leadership structures which may result in relegation of issues affecting women. At the same time, women are more

affected by some category of impacts on some communal resources like water sources due to their role in the family/household. Physical remoteness – this factor can dissuade participation of some stakeholders due to transport and other cost that may be involved. Political/institutional culture of decision-making – some affected stakeholders may face challenges associated with marginalization, discriminations or other real or perceived disadvantageous policies. However, the media can help publicize public hearings, elicit comments on EIA reports; notify and inform stakeholders on decisions and appeal processes (ECA 2005 p. xvi).

Public scrutiny: The provision in the EIA Act for mandatory 21-day display of draft EIA reports is the key window for scrutiny by a concerned public especially community and or other interest stakeholders who may be affected. However, oftentimes, those who constitute the audience in public EIA displays and reviews, do not understand the issues. A facilitated process to engender robust public scrutiny should be ensured by incorporating accreditation of limited credible NGOs and Media representatives active within the local jurisdiction of the focal project. Accredited NGOs and Media representatives should be involved throughout the EIA process to help mobilize for effective public participation. For example, taking steps to sensitize knowledgeable community stakeholders and eliciting public engagements on relevant issues using traditional and social media. Facilitating engagement of all affected stakeholders on the platform of a Network would ensure that the right category and quality of audience are effectively involved in the review of draft EIA reports. Furthermore, need to clearly define the acceptable channels for public notice. Electronic displays should be incorporated so that stakeholders can view documents remotely on the World Wide Web. Public registry should also be online, so that stakeholders can have access to it remotely, and at all times

ii. **Two EIA Systems?** – Federal Ministry of Environment through the relevant Department supervises EIA. The DPR also does the same for oil and gas projects. There is a possibility of dual standards in the implementation of the EIA Act by DPR and Federal Ministry of Environment. This duplication may be also affect the standards and interpretation of both systems.

iii. **Conflicting roles** – There are conflicting roles by the respective federal and state agencies. Roles should be clearly defined to avoid ambiguity.

iv. **Deficient Screening/Content** – Screening is an important process in the EIA system and should not be trivialized. The public is not often included in the screening and scoping which result in exclusion of some stakeholders (Ereba and Dumpe 2010, p.33). This potentially excludes those who might be impacted by the project. There is a further challenge of accurately reflecting potential risk of social and health impacts and threats to ecologically sensitive areas posed by proposed project developments, as required by the EIA Act (Ereba and Dumpe, 2010 p.33) probably due to deficient technical capacity of the assessment team (ECA 2005).

v. **Public Notice** – The EIA Act did not clearly specify the means the public notice should be served. It gives discretionary power to the Agency to choose how to publish the public notice. The lack of specifics can make room for exploitation. Thus, EIAs could be made available for reviews, without the key stakeholders (public) being aware. In reflection of modern technological capabilities, the Ministry Department and Agencies (MDAs) and concerned entities should take advantage of technology to display the EIA drafts electronically. Displaying copies at designated government offices that the public may not have access may not have the anticipated reach. By displaying on designated portals, the public can remotely access and make comments and input more effectively. To accommodate rural dwellers who may have limited IT skills and access, copies can be made available to Community Development Committee Offices, Churches, Secretariats of Youth Groups, and other areas of convergence.

vi. **Project Exemption** - While the exemption clause may have been crafted in good faith, however, it is a gap that could be potentially abused. Vesting full powers in the President (the other option being the Council) to declare a project to have minimal impact and therefore granted an exemption, is arbitrary, and could be applied

with digression. The process of identification of potential impacts is beyond one person, as it involves multidisciplinary considerations. The President, although supreme in his constitutional powers, does not possess superior knowledge across all disciplines. Presidential powers should not negate science. This clause could potentially result in the politicization of the environment.

Define project exemption criteria: It is necessary to define the criteria for exemption projects under EIA Act. The criteria should clarify that exemption decision is expedient and not granted on frivolous or patronage grounds. Well defined exemption criteria will prune down Presidential powers to unilaterally exempt projects, except in clear cases of national emergency.

Stringency and categorization of penalty: The penalty provision is petty. Also lumping all non-compliant defaulters together for individual penalty of one hundred thousand Naira or 5 years imprisonment and corporate defaulters for fifty thousand to one hundred thousand Naira fine does not take into cognizance the true of value of consequential damages or losses that may ensue negligent non-compliance. Provisions should be made to mandate a comprehensive enquiry to ascertain reason(s) for non-compliance and recommend categories of fine, imprisonment and other sanctions commensurate with the assessed value of the cost of damages/losses occasioned by the specific act of non-compliance

vii. **Public Registry** – The EIA Act recommends the establishment of a public registry that will have all related information, as well as reports, concerning the proposed project. While this is a good idea, the benefits are not fully harnessed in a manual display – currently practiced. The public institutions where these registers are domiciled are often ladened with procedural access policies and bureaucratic bottlenecks that is discouraging to the public. A digital public registry that can be remotely accessed by all stakeholders will serve the purpose more effectively.

viii. **Weak Penalties** – The penalties stipulated in the EIA Act are insufficient to serve as a deterrent. Such weak penalties are a disincentive for compliance.

ix. **Deficient capacity:** The EIA process entails procedures requiring competent human and other technical, financial and material resources for a successful implementation process. More complex project such as the installation of major oil and gas processing facilities requiring large scale displacement of longstanding communities and cultural settlements and sensitive ecological habitats may even be more demanding in terms of technical competence of regulation officials, EIA Consultants and team members including community representatives and other affected stakeholders. However, inadequate capacity is one of the biggest challenges inhibiting effective EIA application in Africa (ECA 2005, p.xv; xvii). As a consequence of deficient technical assessments, some significant impacts may be inadequately qualified making it difficult to plan appropriate mitigation measures. This has warranted express legal requirement for registration, certification and accreditation of EIA professionals (ECA 2005, p.xv).Prospects of successful implementation of the EIA Act can be further optimized by including project categorization and requisite Consultant qualification/certification and professional accreditation required.

NESREA ACT 2007

Introduction

Up until 1988, there was no coordinated framework for environmental protection. The tragic dumping of Toxic Waste in Koko Port, Bendel State (in present day Delta State), in 1987, catalyzed the push for the legislation for environmental protection and enforcement in Nigeria. This led to two quickfire decrees: Harmful Waste (Special Criminal Provisions, etc.) Decree 42 of 1988 and Decree 58 of 1988, which set up the Federal Environmental Protection Agency (FEPA). The core mandate for FEPA was environmental management and protection.

Following the return to democratic rule in 1999, and the restructuring that ensued, FEPA and other related MDAs coalesced to form the Federal Ministry of Environment. This new entity lacked the legislative framework and backing to ensure effective enforcement. To this end, and in exercise of the responsibilities of the Federal Government to protect the environment as contained in Section 20 of the constitution, the NESREA Act 2007 was enacted. This effectively created NESREA (and repealed FEPA Decree), as a parastatal of the Federal Ministry of Environment (Ladan, 2012).

NESREA is responsible for "enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory". It would seem that the thematic areas covered by the NESDREA Act is broad and diverse. There may be a challenge of effective coverage and discharge of the functions to be at par with international reference standards. Ladan (2012 p.125) identified that NESREA face major challenges to effectively discharge the responsibility of covering the twenty-four scheduled regulations assigned to it.

Governing Structure

According to the NESREA Act, the Governing Council of NESREA shall consist of the following:

a. a Chairman who shall be appointed by the President, on the recommendation of the Minister;
b. the Permanent Secretary of the Federal Ministry of Environment or his representative;
c. a representative each, not below the rank of Director from the-
    i. Federal Ministry of Solid Minerals Development,
    ii. Federal Ministry of Agriculture and Natural Resources,
    iii. Federal Ministry of Water Resources,
    iv. Federal Ministry of Science and Technology,
    v. a representative of the Standards Organisation of Nigeria,
    vi. a representative of the Manufacturers' Association of Nigeria,
d. the Director-General of the Agency; and
e. three other persons to represent the public interest, to be appointed by the Minister of Environment.

Gaps and Shortcomings

i. Overlapping and conflicting functions – NESREA have roles and functions that overlap with those of other MDA's. For instance, the overlapping roles of the National Communications Commission (NCC) and NESREA in the regulation of telecommunication towers and masts. Both have their respective regulations, and this is overlapping, given the different and in some cases, conflicting requirements. This is even further complicated with the fact that section 135 of the National Communications Act (NCA) empowers the state to regulate the siting of masts if they desire. Thus, a telecommunication operator is torn between three levels of environmental authorization, just to site a single facility. These overlapping functions could make the enforcement space chaotic.

ii. Contradictory Scope – There are instances where the scope of the law appears to contradict itself. For instance, section 7c lists "oil and gas" under their coverage scope; listing it under international agreements, protocols, conventions and treaties on the environment. Also, section 30(a) empowers them to search any facility, including oil and gas facility, as long as they are in possession of a court warrant to do so. On the contrary, Sections 7(g), 7(h), 7(l), 7(k) and other sections exempt her from regulatory and compliance enforcement in the oil and gas sector. This appears contradictory.

iii. Restricted Mandate – NESREA is restricted from environmental regulation in the oil and gas sector. Given that most reported pollution incidences in Nigeria are linked to the oil and gas industry, therefore, restricting the nation's leading environmental regulatory Agency from carrying out regulatory roles in the oil and gas sector is limiting and counter-productive. This restricted mandate appears to undermine their essence.

iv. Penalty – The Act recommends a penalty for obstruction of an officer enforcing the act. The Act fixed an upper limit that must not be extended (not exceeding N200,000 for individuals, and N2,000,000.00 for corporate entities). This is not sustainable as inflationary pull and currency devaluation over the years have eroded the value of the penalty.

v. Disincentive for Compliance – The penalties have lost value over the years and are therefore not commensurate. In some cases, it is cheaper to violate the regulations and pay the fine than obey the regulation. For instance, the penalty for discharge of hazardous substances is N1,000,000. This amount may be cheaper than the cost of following the regulation by safely disposing waste in line with the regulations. Penalties should serve as a deterrent to encourage compliance.

vi. Reporting line – While the Act prescribes the appointment of a Director-General to act as the Chief Executive of NESREA, some critical decisions are still reserved for the Minister of Environment, who is a political appointee of the President. For instance, curiously, the Minister who is not directly involved in the operations of NESREA, reserves the right to prescribe fees and rates for the Agency. It is noteworthy to mention that the constitution does not prescribe a specific qualification (other than the basic education requirement for all public officers) for the Minister of Environment. Therefore, the Director-General may find himself taking instructions from a Minister of Environment with no expertise or experience in the environmental sector.

vii. Technological Capability – Modern environmental regulation and compliance monitoring require specialist technologies, techniques and skills. For instance, NESREA ought to have the most modern tools in location intelligence and geospatial mapping, unmanned aerial surveillance and drones, up-to-date high-resolution satellite imagery, photogrammetry tools, data analytics,

laboratories (fixed and mobile), etc. NESREA, as currently structured, does not have the requisite skills mix to carry out its statutory functions.

viii. Funding Gaps – NESREA does not have the funding capacity to carry out its roles effectively. Procuring the above state-of-the-art technologies requisite for real time monitoring of environmental protection compliance is relatively capital intensive.

Recommendations - NESREA

Broaden public interest representation

A notion to serve public interest is indicated in section 3(1)e of the NESREA Act. The Minister of Environment enunciates this through appointment of three representatives into the Governing Council. However, it is not specified how, and from what constituency, the public interest representatives will emerge. Since the Act already includes representatives from the Government and Private/Business Sector (i.e. 'Representatives of Oil Exploratory and Production Companies' and 'Manufacturers' Association of Nigeria'), it will be more auspicious to specify that the three public interest representatives be appointed from the constituency of organized Civil Society represented by credible and outstanding leaders in NGOs and Professional Groups. Inclusion of civil society representatives on the Governing Council of NESREA will promote public interest decision-making rather than depending solely on the auspices of the Minister of Environment to take operational decisions.

Streamlining operational scope:

On the basis of fast paced global developments, and the technical depth and expertise required for environmental regulation at the national level, together with the enormity of the NESDREA mandate, effective capacity building will be required in terms of human, technical, material and financial capacity (Ladan 2012 p.137). It further requires effective cooperation and collaboration of various stakeholders in the protection of the environment and management of natural resources in Nigeria. Streamlining the thematic/sectoral coverage of NESDRA will ensure efficiency. For instance, NESREA may exclude regulations in the Food, Drugs, Beverages and Pharmaceuticals sector covered by the National Agency for Foods and Drugs Administration and Control (NAFDAC) as well in areas covered

by the mandate of the Standards Organisation of Nigeria (SON) except where the issue specifically pertain to environmental effluents, discharges, other streams of waste and pollution.

Flexible Penalty Adjustment Regime: In view of historical currency (de)valuation dynamics, penalties should not be "hardwired" in the Act. If the penalty must be stated in the act, then what should be stated in terms of lower limit, so it can be adjusted to accommodate currency valuation and changing procurement dynamics. Constantly reviewing the schedule of penalties can serve as an incentive to obey the regulations.

Sustainable funding mechanism: NESREA's mandate is enormous and would require an elaborate and sustainable funding mechanism for effectiveness and efficiency. In order to build state-of-the-art technological capability, well trained staff, etc. legally provided annual percentage funding from the national budget should be considered similar to the arrangement in place for the Ecological Fund. However, the agency should be more focused on its regulatory role, and not be distracted by the revenue-generating activities.

EGASPIN

Introduction

Typically, oil and gas production potentially impact negatively on the environment. Therefore, the industry is usually regulated to ensure minimal impact on the environment. In Nigeria, the Department of Petroleum Resources (DPR) is saddled with the responsibility of regulating the entire oil and gas sector.

The history of DPR can be traced back to the history of hydrocarbon regulation in Nigeria. In pre-independence Nigeria, the Hydrocarbon Section of the Ministry of Lagos Affairs handled all Petroleum matters. Following increased activities in the hydrocarbon industry, a Petroleum Division was created in the Ministry of Mines and Power. In 1971, the Nigerian National Oil Corporation (NNOC) was created, with the DPR remaining a Department in the Federal Ministry of Mines and Power. In 1975, the Department of Petroleum Resources became a Ministry. Following Decree 33 of 1977, the Nigerian National Petroleum Corporation (NNPC) was formed. The decree created the Petroleum Inspectorate as part of the newly formed NNPC. Following a restructuring in 1988, the Petroleum Inspectorate was moved to become part of the Ministry of Petroleum Resources, and renamed the DPR. The DPR is currently domiciled in the Ministry of Petroleum Resources, where it regulates the hydrocarbon industry in Nigeria.

The DPR is saddled with the responsibility of managing the environmental risks by ensuring industry operators do not degrade the environment. To this end, DPR has been issuing environmental guidelines since its formation (in the old structure). In 1991, the DPR came up with the Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN). This is the basis for regulating the environment in the oil and gas industry in Nigeria. In essence, EGASPIN was issued in 1991 to set standards for compliance by operators in the Nigerian oil industry especially with regard to environmental and safety performance. The ultimate objective of EGASPIN was “to prevent, minimise and control pollution from the various aspects of petroleum (industry) operations”. Its goal as a regulation, was to enhance “environmental sustainability and good governance in the Nigerian oil sector”. Since the release of EGASPIN in 1991, there have been three other updated releases in 2002, 2016, and 2018 (Olawuyi and Zebima 2019, p.7).

A major highlight of the achievements of the regulation is that it is relatively holistic and comprehensive. Also, while there remain questions on certain aspects, EGASPIN attempted to recommend global best practices, which is encouraging. However, while EGASPIN may seem comprehensive, there have been several calls for a review. For instance, the UNEP Report on Ogoniland points to the inconsistent interpretation of EGASPIN by both DPR and NOSDRA. The ambiguous classifications of target values and intervention values were also highlighted as an area that needed more clarity. The report also recommended the transfer of oversight of the EGASPIN, from DPR to the Federal Ministry of Environment.

Gaps and Shortcomings

i. **Crowded Functions** - DPR currently has a crowded function. They regulate the Petroleum industry in Nigeria; which goes beyond just regulating the environment as it concerns the oil and gas sector. This crowded functions of combining complex regulatory and enforcement roles (EGASPIN compliance) and general industry oversight (licensing, technical regulation, etc) affect their focus, efficiency, and execution.

ii. **Powers/Legitimacy** - EGASPIN was authored and supervised by the Department of Petroleum Resources (DPR). The DPR is a department under the Federal Ministry of Petroleum Resources and is by extension a part of the oil industry itself. It is difficult for a department domiciled under the Ministry of Petroleum Resources – a ministry that has a principal role in the oil and gas sector – to efficiently regulate both itself and the other players. This calls to question their legitimacy and effectiveness and can be argued to be a conflict of interest.

iii. **Discretionary Powers of the DPR** – EGASPIN conferred so much powers on the DPR.. For instance, the discretionary powers bestowed on the Director of DPR for concessional approvals above set intervention and target values negate principles of transparency, probity and due diligence in corporate responsibility. The rather arbitrary power to allow potentially life threatening pollution as expressed in EGASPIN sections - 'unless otherwise permitted by the Director of Petroleum Resources' is subject to abuse since the conditions that can warrant such discretionary approvals

are not defined but depends solely on the disposition of the individual occupying the designated office 'Director of DPR'. There are concerns that culprit 'polluter' companies can leverage their influence and resources to procure waivers as a strategy to circumvent due compliance obligations. In this scenario, predisposed human populations in vulnerable communities and other environmental resources would be subjected to risk. For an entity that is a core part of the industry to be vested with so many powers to the point of granting waivers, even when thresholds are exceeded, is disturbing.

iv. **Legislation** - As stated above, EGASPIN is a regulation authored and managed by the DPR. It is not an act of parliament. Thus, it derives its powers from the DPR. Perhaps, mainstreaming this as an act of parliament may give it more impetus.

v. **Limited Scope and Target Values** – When compared to international thresholds, EGASPIN's prescribed intervention and target values are curiously high. While countries like the US, UK, Canada, Norway and Oman set low thresholds for intervention and target values to discourage pollution, EGASPIN's thresholds are relatively very high (Olawuyi and Zebima 2019 p.11). The high values and the resultant penalties are not stringent enough to serve as a deterrent to pollution. Unlike the case in the US, UK, Norway, Canada and Oman, EGASPIN does not provide intervention and target values for contaminants in soil and surface water (Olawuyi and Zebima 2019, p.11). Further discrepancies exist in EGASPIN when compared to international standards. For instance, EGASPIN's permissible concentrations for heavy metals such as benzene, toluene, mercury, lead and cadmium are about three times higher than the standards set by international organizations such as the World Health Organization (WHO), and the International Organization for Standardization (ISO) (Olawuyi and Zebima 2019 p.11-12). Concerning the values of polyaromatic hydrocarbons (PAHs) in groundwater, EGASPIN only covers 10 PAHs while the US Environmental Protection Agency (EPA) standard covers16 PAHs (Olawuyi and Zebima 2019, p.12). The scope of EGASPIN should be reviewed to cover the full spectrum of the relevant 16 PAHs to adequately regulate exposure risk in the environment. Olawuyi and Zebima (2019) recommended the "Alberta Tier 2 Soil and

Groundwater Remediation Guidelines (2010)" and "Alberta Soil and Water Quality Guidelines for Hydrocarbons at Upstream Oil and Gas Facilities (2001)") as good reference sources to improve stringency in target and intervention values for Nigeria.

vi. **Conflicting Interpretation** – There seems to be a conflicting interpretation of provisions in the EGASPIN. For instance, the UNEP Report 2011 noted the conflicting understanding of the EGASPIN by both the DPR and NOSDRA. When key stakeholders such as this hold different interpretations to the same regulation, then it is indicative of the level of confusion out there.

vii. **Community Involvement** – It has become increasingly clear that there is a strong role for host communities in the cleanup and remediation of polluted areas. EGASPIN is not clear and emphatic on the role of community stakeholders. Roles could be defined for communities, such as community participation in revegetation, monitoring, etc.

viii. **Conflicting Roles** – The roles of EGASPIN (DPR) are often conflicting with other MDAs, such as NOSDRA. In addition to this, the DPR is torn between the distracting roles – revenue drive from fines and permit, and environmental regulation. Combining these roles can be distracting and ultimately affects their efficiency in any of the roles.

ix. **Lack of Transparency** – The implementation of the EGASPIN is often opaque to the public and community stakeholders. It is difficult to see through the processes or even get access to information. For instance, the updated EGASPIN is not even on the DPR website for public access. Such "black box" regulation does not inspire confidence in the stakeholder.

x. **Operational Detachment** – DPR maintains its Head Office in Lagos. The operational base of the oil and gas industry is in the Niger Delta Region. While it can be argued that they maintain regional presence in the Niger Delta, however, such detached leadership can deepen spatially-induced bureaucratic bottlenecks.

Recommendations – **EGASPIN Improving stringency:** The DPR should initiate a stakeholder consultation process for the purpose of achieving more stringent provisions to bring EGASPIN to be at par with international standards. For

example, the permissible concentration of heavy metals needs to be reviewed to lower target levels in compliance with recommendations of the World Health Organisation (WHO) and the International Organisation for Standardization (ISO). In fact, target values should be constantly reviewed in line with global trends and best practices. In essence, the process of managing and implementing EGASPIN should be more transparent. There should be greater stakeholder involvement in the processes.

Additionally, the scope of EGASPIN should be reviewed to cover the full spectrum of the relevant 16 PAHs to adequately regulate exposure risk in the environment. Olawuyi and Zebima (2019) recommended the "Alberta Tier 2 Soil and Groundwater Remediation Guidelines (2010)" and "Alberta Soil and Water Quality Guidelines for Hydrocarbons at Upstream Oil and Gas Facilities (2001)") as good reference sources to improve stringency in target and intervention values for Nigeria

Abolition of discretionary waivers: The arbitrary powers given to the Director of DPR to grant waivers on prescribed guidelines should be abolished as part of recommended review of the EGASPIN. Discretionary waivers, especially for remediation close-out target levels, is not only subject to abuse but also negates the principles of transparency and prone to compromise the rights of Nigerian citizens to a healthy and natural environment. The option to waive mandatory compliance to extant regulatory provisions without explicit justification, tilts power relations in favour of polluter companies against vulnerable community populations and abets evasion of corporate responsibility to remediate and restore healthy environmental quality.

Legislative and administrative reforms: In view of the importance of the EGASPIN, it may be proposed as a bill for legislation into an act of parliament. This may give it the much-needed public ventilation in the course of the parliamentary debate, as well as give it more legal impetus when passed. Additionally, DPR needs to focus on their traditional role of regulating the oil and gas industry. EGASPIN should be transferred to an independent regulator such as NESREA. DPR cannot be an active player in the oil and gas sector, while also regulating the environment. Finally, for proximity to the epicenter of its operational activity, the Headquarters of the DPR should be moved to the Niger Delta, closer to the operational base of the industry they regulate.

NOSDRA

Introduction

The National Oil Spill Detection and Response Agency was established following the enactment of the NOSDRA Act 2006. The Agency is saddled with the responsibility of "preparedness, detection and response to all oil spillages in Nigeria". NOSDRA was created "as an institutional framework to coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 90) to which Nigeria is a signatory.

Governance Structure

According to the Act, NOSDRA shall have a Governing Council which shall be appointed by the President, on the advice of the Minister of Environment. The Governing Council consist of the following:

a) a Chairman, appointed by the President;
b) Director-General of the Agency who shall act as the Secretary to the Governing Council;
c) one representative each of the following Federal Ministries not below the rank of Director –
   i. Environment
   ii. Energy
   Iii. Defence
   iv. Transportation
   v. National Emergency Management Agency, and
   vi. Oil Producers' Trade Section of Lagos Chambers of Commerce (OPTS).

Core Functions

According to the NOSDRA Act, the following are the core functions of NOSDRA:

a) be responsible for surveillance and ensure compliance with all existing environmental legislation in the petroleum sector including those relating to prevention, detection and general management of oil spills, oily wastes and gas flare;

b) Enforce compliance with the provisions of international agreements, protocols, conventions and treaties relating to oil and gas and oil spill

response management and such other related agreements as may from time to time come into force;

c) receive reports of oil spillages and coordinate oil spill response activities throughout Nigeria;

d) coordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government;

e) coordinate the implementation of the Plan for the removal of hazardous and noxious substances as may be issued by the Federal Government;

f) ensure that all oil industry operators in Nigeria subscribe to and be bonafide members of Clean Nigeria Associates (CNA) or any other similar association by whatever name called; and

g) perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any plan as may be formulated by the Federal Government pursuant to this Act.

Gaps and shortcomings

Detached Head Office - NOSDRA maintains her head office in Abuja; far away from the oil production fields, platforms and pipelines of the oil-producing region, where oil spills occur. This gap between the administrative headquarters and the field sites, and the unnecessary bureaucracies in between, clearly affects the efficiency of NOSDRA operations.

Poor Logistics – NOSDRA is poorly funded (UNEP, 2011). In view of the poor funding of NOSDRA, and the reliance of detached and underfunded MDAs for operational collaboration, NOSDRA is left grossly incapacitated. To carry out the statutory roles effectively, NOSDRA is often constrained to rely on the logistic arrangement of the companies that pollute the environment. This already compromises their operations and causes public distrust In sum, NOSDRA cannot function effectively while depending on logistical support of the oil companies.

Weak Penalties – This appears to be a disincentive for obeying the law. For instance, failure on the part of the polluter to report a spill within 24 hours will attract a fine of N500,000. Failure to clean up attracts another fine of N1,000,000.

In view of the value and nature of the oil and gas industry, this amount is small, and not enough to deterrent to failure to report or clean up spills.

Lack of Capacity – There is an obvious gap in terms of capacity. The 2011 UNEP Report on Ogoniland corroborated this by noting that NOSDRA does not have the capacity to carry out proactive oil spill detection and remedial response. To function effectively, NOSDRA needs modern technologies, as well as capacity development for staff of the Agency. Infact NOSDRA should have composite staffing, made up of multidisciplinary teams where sociologist, criminologist, soil scientist, microbiologist and the likes function for effective environmental management.

Collaboration – The Act requires collaboration (with specific definition of tasks) with other federal MDAs such as Federal Ministry of Works, Federal Ministry of Health, Federal Ministry of Transportation, Federal Ministry of Water Resources, etc. These MDAs are mostly detached from the oil and gas industry, unaware, distant, poorly funded, poorly equipped, and without any motivation to take part in such joint operations. For instance, the Act recommends that the Federal Ministry of Water Resources mobilize boreholes for water supply to the affected areas. There is hardly any record where this was ever accomplished. The Appropriation Act guides the Federal Ministry of Water Resources, like other government MDAs. Without a clear budget item for the above complementary role, where would they muster the funds to tackle emergency water deployments as mandated by the NOSDRA Act? Therefore, the current collaborations are impractical and unrealistic, as presently structured.

Strange Collaborative roles - The Act specifically assigned a role to the Oil Producers Trade Section/Lagos Chamber of Commerce, for the provision of Environmental Sensitivity Index (ESI) maps of the areas affected or potentially affected areas. This is a strange role, given that the Lagos Chamber of Commerce is an independent entity, confined to Lagos. ESI maps are very important for oil spill contingency planning. Therefore, NOSDRA should not be at the mercy of a private entity that is not under it. The Agency should carry out robust ESI studies periodically, to update what they have, given the dynamics of oil facilities and the host ecosystems.

Poor Funding – The Agency has a gamut of responsibilities, but little funding to carry out its responsibilities. An agency that requires specialist skills, technology and a robust logistical apparatus, can only function effectively if properly funded. For instance, one of the key roles of NOSDRA is surveillance activities to prevent oil spill. However, the Agency lacks the financial capability to carry out this function at full scale. The current funding framework, which derives largely from subventions from the Federal Government, is not sufficient.

Restoration and Compensation - While the Act empowers NOSDRA to ensure appropriate remedial action is taken for the restoration and compensation of the environment, the Agency has not come up with a clear metric for measuring the efficiency of this role. What are the metrics for measuring environmental compensation? What are the metrics for measuring ecosystem services, and the restoration of same, in the event of a spill?

Conflicting roles – Roles of NOSDRA, particularly in cleanup and remediation, are often conflicting with that of the DPR.

NOSDRA in Comparison to other Jurisdictions

ISSUES	NOSDRA	BRAZIL	NORWAY
Polluter Pays Principle	The NOSDRA Act puts the responsibility of cleaning and remediation of the polluted area to the polluter. Specifically, section 6(3) prescribes a penalty of a further fine of one million Naira for failure to clean and remediate the polluted area. While this may be argued to be insufficient, it is all the same a penalty to encourage compliance.	Article 14 of Law No. 6,938 of August 31, 1981 mandates the polluter to take responsibility for remediation and compensation of the polluted environment.	Licensee bears the liability. In the event there are many licensees within a license, the operator bears the liability. Where he is unable to pay at given deadline, the outstanding is shared between the licensees in reflection of their respective stake. If the pollution is as a result of force majeure, that is beyond the polluter, the liability is reduced to a considerable rate.

Criminalization of Oil spill	NOSDRA only imposes fines, in addition to getting the polluter to clean the spill.	Brazil's Law No. 9,605 criminalizes crime against the environment. Beyond administrative penalties, a violator may be jailed between 1-5 years. This is also applicable to a "competent authority" (Government official) who fails to take reasonable steps to prevent such pollution	The Petroleum Activities Act (Nov. 1996, No. 2) criminalizes pollution arising from willful or neglect of regulations and provisions pursuant to the Act. The penalties range from fine or prison terms for up to three months to for willfully violating prosvisons to aggravated circumstances which could attract up to two years imprisonment.
Collaborative roles in prevention, control and inspection	NOSDRA Act lists different MDAs expected to collaborate. However, in most cases, the roles were not clearly defined. Beyond this, most of the agencies lack the financial depth, facility, capacity and motivation to collaborate.	The roles are relatively clearly defined. For instance, Law No. 9,966 of April 28, 2000 clearly defined roles by the Ports authorities in handling oil and other harmful substances at the ports, vessels, platforms, etc. The article clearly defines the expectations of the ports in combatting oil spill.	There are clear roles for each of the regulatory agencies, such as the Ministry of Petroleum and Energy (MPE), the Norwegian Petroleum Directorate (NPD), the Petroleum Safety Authority (PSA), and the Norwegian Climate and Pollution Agency (CPA).

Insurance against Pollution	No clear enforcement covering liabilities from damage to environment as a result of pollution.	Brazil's laws makes it mandatory for concessionaires to have in place, an insurance that covers areas such as civil liability for damages to the environment.	The Petroleum Activities Act (Nov. 1996, No. 2) stipulates that licensees must provide reasonable insurance cover, including for pollution damage and third party liabilities.

Proposed Amendment

Recommendations - NOSDRA

Advocacy for Amendment of NOSDRA Act: In response to some of the gaps highlighted, the National Assembly in 2018 passed the National Oil Spill Detection and Response Agency Act Amendment Bill 2018. The Bill sought to address some of the challenges, such as funding gaps. The amendment proposed that 2.5% of the ecological fund, to serve as "superfund" for the Agency. The Bill also proposed additional 0.5% operations funds of oil companies, as a contribution to NOSDRA to effectively carry out their operations. These two new revenue sources would have addressed in part, some of the funding challenges. However, the President declined to assent the amendment, citing reasons, such as the claim that the Bill undermines the powers of the Minister of Petroleum Resources, and will burden the oil and gas industry. The amendments proposed in the 2018 Bill are germane. Non-governmental organizations and organized community leadership organizations active in affected areas (Niger Delta region) should sustain advocacy for fresh passage of the NOSDRA Act Amendment Bill. Fresh efforts should mobilize for stakeholder support to secure presidential accent. Some of the strategies that can be adopted include media campaigns, other targeted national and international advocacy initiatives, bilateral and multilateral diplomacy especially from countries with best practices and lobby of political leaders for inclusion as party manifesto and national election campaign issues.

HYPREP

Introduction

On the 4th of August 2011, the United Nations Environment Programme (UNEP) submitted the report of the Environmental Assessment of Ogoniland, to the Federal Government. One of the key recommendations of the report is the need to set-up Ogoniland Environmental Restoration Authority to manage the implementation of the report outcomes. In response, the Federal Government established the Hydrocarbon Pollution Restoration Project (HYPREP –the first HYPREP) on the 20th July 2012. Interestingly, apart from not adopting the recommended name by UNEP, the federal government also broadened the mandate of HYPREP to include other areas outside of the geographic boundaries of Ogoniland.

The first HYPREP was domiciled in the Ministry of Petroleum Resources. Nigeria operates her oil licenses from a Joint Venture arrangement, where the NNPC holds in trust for the Federal Government, 55% of the shares. Therefore, by implication, the Ministry of Petroleum Resources is part and parcel of the JV arrangements that led to the pollution in the first place. This was like entrusting the polluter with the responsibility of managing and regulating the cleanup and remediation process in Ogoniland.

Following calls for a review, particularly on the governance framework, structure and nomenclature, the federal government approved the revocation of the notice of establishment of Hydrocarbon Pollution Restoration Project Unit of the Ministry of Petroleum Resources, 2014. Consequently, a new project was established with the same acronym, but a modified name. Thus, the Hydrocarbon Pollution Remediation Project (HYPREP) was established with an Official Gazette of the Federal Republic of Nigeria on the 12th December 2016. In contrast to the revoked initial HYPREP, the new HYPREP is to domiciled in the Ministry of Environment.

Objectives of HYPREP

According to the Official Gazette setting up HYPREP, shall ensure the achievement of the following objectives in Ogoniland and other communities:

i. Determine the scope and means of remediation of soil and groundwater contamination in impacted communities

ii. enhance local capacity for better environmental management and promote awareness of sound environmental management as well as ensure livelihoods and sustainable livelihoods and sustainable development;
iii. ensure security and promote peace building efforts in impacted communities; and
iv. strengthen governance, transparency and accountability in the region.

Functions of HYPREP

According to the official gazette, the functions of HYPREP include:

a) investigate, map and evaluate hydrocarbon polluted communities and sites in Nigeria, referred to it by NOSDRA or the Federal Ministry of Environment in collaboration with the Department of Petroleum Resources (DPR) and make recommendations to the Federal Government;
b) implement recommendations of the UNEP Report on Ogoniland as directed by the HYPREP Governing Council;
c) initiate and develop work programmes aimed at restoring all the hydrocarbon impacted communities and sites referred to HYPREP;
d) undertake a comprehensive assessment and mapping of all environmental issues associated with hydrocarbon pollution in collaboration with NOSDRA;
e) provide guidance data to undertake remediation of contaminated soil and groundwater in Ogoniland and such other communities as may be referred to it;
f) technically evaluate alternative technologies to be employed to undertake remediation of contaminated soil and groundwater;
g) make recommendations for responding to future environmental contamination from hydrocarbons; and
h) ensure full environmental recovery and restoration of Ogoni ecosystem and ecosystem services for Ogoni people and other impacted communities.

Governing Structure

The Official Gazette recommends two layers of governance. The first is the HYPREP Governing Council and the other is the HYPREP Board of Trustees. The HYPREP Governing Council shall consist of the following:

a) Minister of Environment – Chairperson;
b) Minister of State Petroleum Resources/GMD NNPC;
c) Minister Budget and National Planning;

d) Minister of Niger Delta Affairs;
e) National Security Adviser;
f) MD NDDC;
g) MD SPDC;
h) one representative of Non-Governmental Organizations dealing with environmental issues;
i) one representative of the Oil Producing states on 2-year rotational basis;
j) two representatives of Ogoni Community and two alternates; two representatives of other Niger Delta Communities and alternates;
k) one representative of UNEP as an observer;
l) the Project Co-ordinator of HYPREP, who shall serve as Secretary of the HYPREP Governing Council;

As outlined above, and unlike the more conventional situation where organizational management structures are supervised by a Governing Board or Council, HYPREP has two superior hierarchical structures – the Governing Council and the Board of Trustees. Notwithstanding the two hierarchies of approving channels, in practice, HYPREP must get through the Minister of Environment as a third approving authority before its major procurement and project decisions can get clearance for presentation at the Federal Executive Council (FEC).

According to the Official Gazette, HYPREP shall have the Ogoni Trust Fund, which shall be managed by a BOT, comprising of:
a) Chairperson appointed by the President on the recommendation of the Minister;
b) Minister of State for Environment;
c) Minister of Finance;
d) Minister of State for Petroleum Resources and Chairman NNPC;
e) two representatives from Ogoniland;
f) three participating International/Contributing Oil Companies (Shell, AGIP and Total);
g) one representative of other communities in the Niger Delta;
h) one representative of the Non-Governmental Organizations (NGOs), active in environmental matters;
I) one representative of UNEP;

HYPREP Funding
According to the official gazette, HYPREP is to be funded from:
a) budgetary allocation, subvention and grants from Federal Government;
b) payments from NNPC and JV Partners;
c) payment from Nigerian Oil Companies
d) payments from Refineries;

e) grants-in-aid from national, bilateral, multilateral agencies or individuals;
f) gifts or testamentary disposition;
g) other monies which may accrue to HYPREP from time to time.

Gaps and Shortcomings

1. **Unclear Mandate** - The mandate of HYPREP appears confusing and unclear, when juxtaposed with the recommendations of UNEP. First, it was a direct result of the outcome of UNEP recommendation on Ogoniland, yet it assumed a scope and name that suggests it is not limited to Ogoni.

2. **Unclear Framework for Collaboration** - The first item on the list of functions of HYPREP in the Official Gazette requires high-level collaboration with NOSDRA, Ministry of Environment and DPR. While this sounds normal, experience has shown that inter-agency handshakes in Nigeria are mostly chaotic. Therefore, it would have been necessary for a framework for such collaboration be clearly defined.

3. **Composition of Governing Council** - The composition of the Governing council and the Board of Trusties appear to conflict with the scope and configuration of HYPREP. With a permanent membership of Ogoni representatives on the Board of Trustees and Governing council, the suggested inference is that the scope is limited to Ogoni.

4. **Politicization of HYPREP** - The crowded representatives on the BOT and Governing Council by political appointees, and people with no direct role – and with potentially no environmental background – could prove unproductive. The scope of HYPREP's responsibility is largely scientific in nature; therefore, the Governing council should be more scientific than political. Crowding the Board with political appointees and general bureaucrats might introduce unnecessary bureaucracies and distractions.

5. **Unclear sustainable funding structure** - The funding sources are ambiguous and not explicitly defined. Beyond the initial $1 billion, which had some level of details on the breakdown, how will the project be funded sustainably, outside the scope of the initial sum? 5% of the initial sum is also expected to come from the refineries? There are four national refineries in Nigeria, and private refineries under construction. Out of these, only two are domiciled in Ogoniland. Will all the “refineries” in

Nigeria contribute, or just the two in Ogoni especially because the scope of HYPREP mandate is national? Clearly defining the contributory structure in the official gazette will put clarity and enforcement.

6. **Procurement Dynamics** - The gazette recommended a take-off fund of $1 billion dollars. It has been nearly a decade since the report was submitted. Within this period, the currency (Naira) has been devalued over a 100% and there has been heavy inflationary pull. Also, national and international procurement dynamics have since changed, and this may need a review.

7. **Civil Service Bureaucracies** - HYPREP is patterned after the regular civil service structure. For an agency that requires quick thinking and action in executing emergency measures, the bureaucratic bottlenecks of the Nigerian civil service structures might stifle the smooth running of the agency.

8. **Legislative Backing** - HYPREP was set up via the Official Gazette. It was not set up by an act of parliament. This means it is entirely at the prerogative of the President and Commander in Chief. If HYPREP is backed by an act, apart from the legislative and public ventilation it will have in the debates leading to the enactment, the Agency will securely have legislative backing and operational protection.

Recommendations - HYPREP

Restructuring for efficiency: Performance appraisal of HYPREP on its mandate for four years since inauguration in its current form indicates that its operations has been very slow with unimpressive results. The UNEP Report on environmental assessment of Ogoniland had outlined a framework for emergency and priority actions to be carried out by HYPREP (UNEP 2011, p.13). The day-to-day management of HYPREP represented by the Project Coordinator and probably a management team appear to be inhibited and not well defined for operational efficiency. To improve the performance of HYPREP, the Nigerian Government should restructure HYPREP to attain a model similar to a Federal Government Agency or Commission, by means of regulatory frameworks, to achieve sustainability, efficiency and better service delivery of project goals (Zabbey et al., 2017).

Enactment of HYPREP Act: The Federal Government may have to initiate enactment of HYPREP Act by proposing a Bill to the National Assembly. The Act

should outline its governing and operational structure and sustainable funding mechanism. Critical feedback and other inputs of stakeholders such as beneficiary communities can be incorporated into the Act formulation by including a public hearing step as part of the enactment process.

CROSS-CUTTING OBSERVATIONS AND RECOMMENDATIONS

The following were gaps observed to be common amongst the environmental legislations in Nigeria:

1. **Overlapping Functions** – Most of the agencies have overlapping functions. For instance, both NOSDRA and DPR (EGASPIN) have oil spill response procedures. Another example is NESREA and NCC, who both have regulations for siting of telecommunication masts and towers. These duplicitous and overlapping roles can create confusion. There are specific instances where both regulations prescribed different requirements for the same issue. For example, while the NCC recommends a minimum setback distance of 5 meters to any building in a residential area, NESREA recommends 10 meters. These conflicting recommendations can be confusing and make the regulatory landscape chaotic.

2. **Chaotic regulation** – The environment in Nigeria is regulated by several agencies and laws. There are too many regulatory agencies with similar, and in some cases, conflicting roles. The Environmental Impact Assessment Act for instance applies to massive projects, including oil and gas project. The EIA Act is handled by the Federal Ministry of Environment through the respective Agency. DPR manages the EGASPIN, which is the guideline for the environment of the Oil and Gas. NOSDRA is also an agency created to respond to oil spill. NESREA is another agency under the Federal Ministry of Environment that regulates the environment. Today, a company in the environmental sector may have to get permits from all these entities (NOSDRA, DPR, NESREA, etc) for the same service range. This multiple roles by multiple agencies is often confusing and chaotic.

3. **Distractions of Revenue Generation** – The regulatory agencies appear more focused on the revenue-generating aspects of their functions, than on their regulatory roles. Environmental regulatory agencies should not be structured as revenue-generating organizations. This has been a major distraction. While they are within their rights to enforce sanctions and levies, such should directed to the revenue collecting arm of the Federal Government, so as not to distract the respective environmental agencies from their core regulatory roles.

4. Conflicting Roles with State Equivalents – Every State in Nigeria has their equivalent of a Ministry of Environment, and even several agencies under it. These agencies are in most cases glorified vehicles who are poorly structured, and who appear completely or partially ignored by the federal environmental legislations and regulations. For example, despite being the closest to the oil installations and spills site, they play no clear roles in oil spill response.

5. Poor Funding/Institutional Capacity – There is an obvious poor funding challenge across all the institutions. The enforcement agencies are all structured like the Nigerian Civil service, heavily burdened with bureaucratic inefficiencies. Agbazue et al., 2017 stressed the indispensability of strengthening the institutional capacities of environmental law enforcement and regulatory agencies if compliance monitoring is to be effective. Funding challenges and institutional capacity development can be addressed by implementing cost-effective strategies such as complimentary budgeting for common facilities like Reference Laboratories, Satellite-based observatory/surveillance. Prioritizing advanced technical training for personnel in use and deployment of high-technology equipment for environmental quality monitoring would also contribute to enhance institutional capacity.

6. Lack of Capacity – The task of regulation requires modern technologies, techniques and skills set. Unfortunately, that is clearly lacking in the agencies.

7. Fostering Inter-agency Collaboration - While most of the Acts and Regulations have collaborative components embedded, there are no clear framework to foster efficient collaboration. As a result of this, most of the agencies exist in isolation, and the required collaboration needed cannot be achieved in such detached and isolated mode. Creating mandatory periodic joint public reporting programmes/engagements can help to foster inter-agency collaboration.

8. Stakeholder Involvement – For any regulator to succeed, it is important to engage stakeholders. Unfortunately, this is not the case here, as most regulators are detached, and in some cases exude a superior disposition that precludes them from getting stakeholder input, and masks them from reality.

9. Lack of Transparency – Most of the regulatory agencies operate with "black-box" secrecy. Matters of the environment are of public interest, and it is

counter-productive to operate without transparency, as is the case in most cases.

10. Strategic Communication – Strategic communication is an important aspect of effective regulation. Most of the regulatory agencies do not have a clear framework for strategic communication.

S/N	LAWS/REGULATIONS	GAPS/CHALLENGES	RECOMMENDATIONS
1	NESREA Act	i. **Overlapping and conflicting functions** – NESREA seems to have roles and functions that overlap with those of other MDA's. For instance, the overlapping roles of NCC and NESREA in the regulation of telecommunication towers and masts ii. **Contradictory Scope** – There are instances where the scope of the law appears to contradict itself. For instance, section 7c lists "oil and gas" under their coverage scope; listing it under international agreements, protocols, conventions and treaties on the environment. Also, section also empowers them to search any facility, including oil and gas facility, as long as they are in possession of a court warrant to do so. On the contrary, Sections 7(g), 7(h), 7(l), 7(k) and other sections exempts her from regulatory and compliance enforcement in the oil and gas sector. This appears contradictory. iii. **Penalty –** The Act recommends penalty for obstruction of an officer enforcing the act. The act fixed an upper limit that must not be extended (not exceeding N200,000 for individuals, and N2,000,000.00 for corporate entities). This is not sustainable as inflationary pull and currency devaluation over the years have eroded the value of the penalty. iv. **Disincentive to obey regulations** – The penalties have lost value over the years and are therefore not commensurate. In some cases, it is cheaper to violate the	i. Harmonize roles and functions. Preferably, others should collapse into NESREA. For instance, NESREA should supervise the implementation of the EGASPIN. ii. Have a clear scope definition. Taking out the oil and gas from the regulatory watch of NESREA is counter-productive. iii. In view of historical currency (de)valuation dynamics, penalties should not be "hardwired" in the Act. If the penalty must be stated in the act, then what should be stated is the lower limit, so it can be adjusted to accommodate currency valuation and changing procurement dynamics. iv. Constantly review the schedule of penalties, to serve as an incentive to obey the regulations.

		regulations and pay the fine, than obey the regulation. For instance, the penalty for discharge of hazardous substances is N1,000,000. This amount may be cheaper than the cost of following the regulation by safely disposing it in line with the regulations. v. **Reporting line** – While the Act prescribes the appointment of a Director General to act as the Chief Executive of NESREA, some critical decisions are still reserved for the Minister, who is a political appointee of the President. For instance, curiously, the Minister who is not directly involved in the operations of NESREA, reserves the right to prescribe fees and rates for the Agency. vi. **Technological Capability –** Modern environmental regulation and compliance monitoring require specialist technologies, techniques and skills. NESREA does not have the requisite tools and skills set for effective regulation. vii. **Funding Gaps –** NESREA does not have the funding capacity to carry out their roles effectively.	v. NESREA should be completely independent, and not depend on the Minister to take operational decisions. vi. NESREA should be more focused on their regulatory role, and not be distracted by the revenue-generating activities. vii. NESREA needs a clear roadmap for building technological capability. viii. There is a need for developing a framework for sustainable funding.
2	EIA Act	i. **Public Participation** - While the EIA Act recognizes the role of public participation, there is no clear definition of the metric for choosing participants. Thus, EIA outcomes could be teleguided by the quality of public participation orchestrated. ii. **Two EIA Systems?** –Federal Ministry of Environment through the relevant Department supervises EIA. The DPR also does same for oil and gas projects. This duplicity may be counter-productive as the standards and interpretation of both systems may vary. iii. **Conflicting roles** – There are conflicting roles by the	i.

		respective federal and state agencies. iv. **Screening** – The public is not often included in the screening and scoping. This completely masks out those who will be potentially impacted directly. v. **Public Notice** – The EIA Act did not clearly specify the means the public notice should be served. It gives discretionary power to the Agency to choose how to publish the public notice. The lack of specifics can make room for exploitation. Thus EIAs could be made available for reviews, without the key stakeholders (public) being aware. **vi.** **Project Exemption -** While the exemption clause may have been crafted in good faith, however, it is a gap that could be potentially abused. Vesting full powers to the President to declare a project to have a minimal impact is and therefore granted an exemption, in our opinion, is excessive. The process of identification of potential impacts is beyond one person, as it involves multidisciplinary considerations. The President, although supreme in his constitutional powers, does not possess superior knowledge across all disciplines. Presidential powers should not negate science. This clause could potentially result in the politicization of the environment. **vii.** **Public Registry –** The EIA Act recommends the establishment of a public registry that will have all related information, as well as reports, concerning the proposed project. While this is a good idea, however, the benefits are not fully harnessed in the current manual structure. The public institutions where this registry is domiciled are often laden with unfriendly access policies and bureaucratic bottlenecks that is discouraging to the public. A digital public registry that can be remotely	

		accessed by all stakeholders will serve the purpose more effectively. viii. **Weak Penalties –** The penalties stipulated in the EIA Act are not sufficient enough to serve as a deterrent. Such weak penalties are a disincentive for compliance.	
3	NOSDRA Act	i. **Poor Logistics –** In view of the poor funding of NOSDRA, and the reliance of detached and underfunded MDAs for operational collaboration, NOSDRA is often left incapacitated. To carry out their roles, they are often forced to rely on the logistic arrangement of the "polluter". This already compromises their operations. ii. **Fixed Penalties –** This is a disincentive for obeying the law. For instance, failure on the part of the polluter to report a spill within 24 hours will attract a fine of N500,000. Failure to clean up attracts another fine of N1,000,000. In view of the value and nature of the oil and gas industry, this amount is small, and not enough deterrent. iii. **Collaboration –** The Act requires collaboration (with specific definition of tasks) of other federal MDAs such as Federal Ministry of Works, Federal Ministry of Health, Federal Ministry of Transportation, Federal Ministry of Water Resources, etc. These MDAs are mostly detached, unaware, distant, poorly funded, poorly equipped, and without any motivation to take part in such joint operations. For instance, the Act recommends that the Federal Ministry of Water Resources mobilize boreholes for water supply to the affected areas. There is hardly any record where this was accomplished. iv. **Strange Collaborative roles** - The Act specifically assigned a role to the Oil Producers Trade Section/Lagos Chamber of Commerce, for the provision of ESI maps of the areas affected, or potentially affected. This is a strange role, given	i. Need for clear funding structure. The current funding derivation should be reviewed to make room for increased funding. ii. In view of historical currency valuation dynamics, penalties should not be "hardwired" in the Act. If the penalty must be stated in the act, then what should be stated is the lower limit. iii. Revisit the mechanism for collaboration. The MDAs that NOSDRA is recommended to rely on are not themselves capable of performing those roles. iv. Periodic review of ESI maps and any other that will aid in contingency. NOSDRA should be in charge of this process, and not rely on the generosity of a third-party. v. Clear metrics should be set for remediation, restoration and

		that the Lagos Chamber of Commerce is an independent entity, confined to Lagos. ESI maps are very important for oil spill contingency planning, therefore NOSDRA should not be at the mercy of a private entity that is not under it. The Agency should carry out robust ESI studies periodically, to update what they have, given the fast changing dynamics of oil facilities and the ecosystem. v. **Poor Funding –** The Agency has a gamut of responsibilities, but little funding to carry out these responsibilities. vi. **Restoration and Compensation** - While the NOSDRA Act empowers them to ensure appropriate remedial action is taken for the restoration and compensation of the environment, the Agency has not come up with a clear metric for measuring the efficiency of this role. vii. **Conflicting roles –** Roles of NOSDRA, particularly in cleanup and remediation, are often conflicting with that of the DPR.	environmental compensation as stated by the NOSDRA Act. vi. Roles should be harmonized with other agencies. DPR should relinquish all oil spill related activity to NOSDRA. For NOSDRA to perform, they will need to expand and firm up their technical capabilities. vii. Propose that insurance policies covering pollution remediation and third party compensation be made compulsory for operators.
4	EGASPIN	xi. **Crowded Functions** - DPR currently has a crowded function. They regulate the Petroleum industry in Nigeria; which goes beyond just regulating the environment as it concerns the oil and gas sector. This crowded function of combining regulatory roles with enforcement roles affects their focus, efficiency, and execution. xii. **Powers/Legitimacy** - EGASPIN was authored by, and derives it's powers and legitimacy from the Department of Petroleum Resources (DPR). The DPR is under the Federal Ministry of Petroleum Resources, and is a part of the oil industry itself. It is difficult for a department domiciled under the Ministry of Petroleum Resources – a ministry that has a principal role in the oil and gas sector – to efficiently regulate both itself and the other players. This calls to question their legitimacy and can be argued to be a conflict of interest.	i. ii. iii. iv.

		xiii. **Legislation** - As stated above, EGASPIN is a regulation authored and managed by the DPR. It is not an act of parliamentary. Thus, it derives its powers from the DPR. xiv. **Scope and Target Values –** When compared to international thresholds, the prescribed intervention values are curiously high. xv. **Community Involvement –** It has become increasingly clear that there is a strong role for host community in the clean up and remediation of polluted areas. EGASPIN is a bit silent on the role of community stakeholders. xvi. **Conflicting Roles –** The roles of EGASPIN (DPR) are often conflicting with other MDAs, such as NOSDRA. vii. **Lack Transparency –** The implementation of the EGASPIN is often opaque to the public and community stakeholders. It is difficult to see through the processes, or even get access to information. For instance, the updated EGASPIN is not even on the DPR website for public access. Such "black box" regulation does not inspire confidence in the stakeholder. viii. **Operational Detachment –** DPR maintains its Head Office in Lagos. The operational base of the oil and gas industry is in the Niger Delta Region. While it can be argued that they maintain regional presence in the Niger Delta, however, such detached leadership can deepen spatially-induced bureaucratic bottlenecks.	
5	HYPREP	i. **Unclear Mandate** - The mandate of HYPREP appears confusing and unclear. First, it was a direct result of the outcome of UNEP recommendation on Ogoniland, yet it assumed a scope and name that suggests it is not limited to Ogoni.	i. The mandate of HYPREP needs to be clearly defined to avoid any ambiguity. ii. A clear framework for collaboration should be

		ii. **Unclear Framework for Collaboration -** The first item on the list of functions of HYPREP in the Official Gazette requires high-level collaboration with NOSDRA, Ministry of Environment and DPR. While this sounds normal, experience has shown that inter-agency handshakes in Nigeria are mostly chaotic. Therefore, it would have been necessary for a framework for such collaboration be clearly defined. iii. **Composition of Governing Council** - The composition of the Governing council and the Board of Trusties appear to conflict the scope and configuration of HYPREP. With a permanent membership of Ogoni representatives on the Board of Trustees and Governing council, the suggested inference is that the scope is limited to Ogoni. iv. **Politicization of HYPREP** - The crowded representatives on the BOT and Governing Council by political appointees, and people with no direct role – and with potentially no environmental background – could prove unproductive. The scope of HYPREP's responsibility is largely scientific in nature; therefore, the Governing council should be more scientific than political. Crowding the Board with political appointees and general bureaucrats might introduce unnecessary bureaucracies and distractions. v. **Unclear sustainable funding structure** - The funding sources are ambiguous and not explicitly defined. Beyond the initial $1 billion which had some level of details on the breakdown, how will the project be funded sustainably, outside the scope of the initial sum? 5% of the initial sum is also expected to come from the refineries? There are four national refineries in Nigeria, and private refineries under construction. Out of these, only two are domiciled in Ogoniland. Will all the "refineries" in Nigeria contribute, or just the two in Ogoni? Clearly defining the contributory structure	established. iii. The Governing Council should be constituted in a manner that representation, inclusive and is insulated from the politics of the day. iv. A sustainable funding framework should be established. v. HYPREP has an important mandate to implement both emergency measures and long term measures. Their current operational structure which mirrors civil service bureaucracy cannot achieve this effectively. vi. HYPREP can be strengthened, so it does not function at the mercy of the President. It needs to be firmed up with a legislative backing.

		in the official gazette will put clarity and enforcement. vi. **Procurement Dynamics -** The gazette recommended a take-off fund of $1 billion dollars. It has been nearly a decade since the report was submitted. Within this period, the currency has been devalued over a 100% and there has been heavy inflationary pull. Also, national and international procurement dynamics have since changed, and this may need a review. vii. **Civil Service Bureaucracies -** HYPREP is patterned after the regular civil service structure. For an agency that requires quick thinking and action in executing emergency measures, the bureaucratic bottlenecks of the Nigerian civil service structures might stifle the smooth running of the processes. viii. **Legislative Backing -** HYPREP was set up via the Official Gazette. It was not set up by an act of parliament. This means it is entirely at the prerogative of the President and Commander in Chief. If HYPREP is backed by an act, apart from the legislative and public ventilation it will have in the debates leading to the passage, the Agency will have legislative backing and protection.	

CONCLUSION

It is clear from the study that the Nigerian Government's approach to environmental legislation/regulation has followed a reactionary trajectory rather than a pragmatic approach. This, perhaps, may be the foundational basis for sub-optimal performance in public and private sector environmental management in Nigeria. Activating a timely collaborative stakeholder process for reforms towards a paradigm shift is the way to go. The new approach should be based on a national strategic framework developed through a deliberately hierarchical bottom-up stakeholder consultation process involving relevant university-based experts, accredited professional groups, leading practitioners in the NGO sector and research scientists. A national stakeholder-working group (NSWG) should be created as part of the plan to serve as clearing house for the validation of national baseline data and the vetting of standards/regulation parameters and intervention/target levels. The national stakeholder-working group (NSWG) can also help to foster inter-agency collaboration in the Nigerian environmental regulatory sector and coordinate implementation of the recommended mandatory periodic joint inter-agency public reporting for improved synergy and partnership towards attainment of sustainable environmental management in Nigeria.

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