THE ROLE OF STATE LEGISLATION IN ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT IN THE NIGER DELTA REGION OF NIGERIA

ARUGU O. LOVE PhD.
Political Science Department
Federal University Otuoke
Bayelsa State - Nigeria
E-mail: mummylovearugu@yahoo.com

CHARLES SOLOMON
Political Science Department
Federal University Otuoke,
Bayelsa State – Nigeria
E-mail: Completecharlie 1@yahoo.com

ABATRACT

It is an indisputable fact that the activities of man negatively affect the quality of our environment and this turn adversely affect the quality of man's life. Since human well-being is inextricably linked to continue availability of natural means of support and this implies that any threat to the security of these resources constitutes a direct threat to human survival and development.Therefore,sustainable development and environmental protection have become essence variables in the discourse on developmental engineering the world over. In the Niger Delta region of Nigeria where the bulk of the nation's crude oil and gas is sourced from, the activities of oil Translational corporations have blighted the ecosystem of the region, leading to the decimination of flora and fauna. This is at variance with the ethos of sustainable development, which place high premium on protection of the ecosystem. However, in order to stem wanton abuse of the environment, the Federal Government has promulgated several laws to regulate the activities of oil TNSs with a view to bringing them in line with internation best practices in order to engender sustainable and socio-economic development of the region but despite the extant laws which are primarily mearnt to protect the environment from further indiscriminate abuse, the region's environment is still bedeviled with reckness degradation by the oil TNCs. Thus, the key question explored in this paper is:" why have the extant laws unable to protect the Niger Delta environment and ultimately bring about sustainable and socio-economic development?" Therefore, this study attempts a holistic examination of the several environmental protection legislations on the Niger Delta environment. Sustainable development has been widely conceptualised as development that meets the need of the present without compromising the ability of the future generation to meet their own need. Environment is described as the external factors influencing the life and activities of human, plants and animals, Degradation is regarded as the decline in the quality of the environment as a result of the activities of oil TNCs in the Niger Delta region of

Nigeria. Environmental protection laws are Laws enacted by the Nigerian state to check the pollution of the environment in order to engender sustainable development in the country.

Keywords: Sustainable development, Environment, Degradation, Environmental protection laws, oil Transnational cooperation or companies and Ecosystem.

INTRODUCTION

The issue of environmental degradation thrown up by the activities of Oil TNCs operating in the Niger Delta region of Nigeria for the past years has been well documented in various literatures. Consequently, a great deal of research literature has been written by scholars, opinion leaders and stakeholders to underscore the increasing level of degradation of the environment and its adverse effect on the socio-economic development of the area.

However, in response to this, the Nigerian State has enacted several laws and initiated policies to check the excesses of the Oil TNCs and generally regulate the oil industry, which is a sine qua non for sustainable development. The imperatives of making the region's ecology green has become inevitable in view of glaring environmental hazards the area has been exposed to in recent times.

We note that in spite of these laws and policies meant to protect and conserve the environment, environmental degradation has continued unabated in the Niger Delta. Several factors have been identified as responsible for the inability of these legislations to effectively protect the environment. These are ineffective execution, poor enforcement, weak provision, inadequate provision, impunity by Oil TNCs, etc.

Therefore, in this paper, our aim is to investigate the overall impact of these legislations on the continued degradation of the Niger Delta ecosystem by Oil TNCs. The important point to note however is that degradation of the region's environment and the various laws meant to stem the pollution of the oil producing communities are ridden with contradictions and our focus is to direct our investigations and analysis to the discovery and understanding of these contradictions in order to solve them holistically.

Critical Examination of the Impact of Environmental Laws on Environmental Protection and Sustainable Development in the Niger Delta Region

The degradation of the Niger Delta environment has become a topical issue and has attracted both local and International attention to the plight of the Oil producing community, whose environment has been severely devastated by the activities of the Oil TNCs. This has in effect undermined sustainable development in the area, which ultimately has accentuated rural poverty, desperation, frustration and despondency among the people.

However, in the bid to stem and check the tide of unrestrained degradation of the environment and in response to the groundswell of agitation by the oil producing communities on the negative impact of the devastation of their ecology by the Oil TNCs, the Federal Government has promulgated some laws with a view to checking and regulating the damaging effects of the oil industry and protect the environment for sustainable development in the area. These legislations are: the Petroleum Drilling and Production Regulation Act (1969), The Mineral Act (1969), the Associated Gas Re-injection Decree (1977), the Federal Environmental

Protection Agency (FEPA) Act (1988), The Environmental Impact Assessment (EIA) Decree No. 36 of 1992 and the the National policy on the Environment launched by the Federal Government in 1989 (Ibaba 2005, 26).

However, despite these legislations and policies, the devastation of the region's environment has continued unabated and is worsening. This has been largely blamed on ineffective execution of the extant environmental protection laws in the country. Corroborating on this line of thought, the Human Rights Watch (1997, 7) noted that the Nigerian environmental laws in most respects when compared to their international counterparts are poorly enforced by the appropriate authorities. The above view is also shared by a World Bank Report, (1995, 11) which identified the lack of enforcement of environmental laws as one of the main challenges facing the Niger Delta region.

A corollary of the above is that the Oil TNCs have in collusion with the Federal Government through substandard environmental protection laws, debilitated the local economics (Naanen, 2001). In the same vein, Enyia (1991) pointed out in a study that the degradation of the ecology of the region by the Oil TNCs is ironically enhanced by the various State legislations meant to protect the environment. Also, Nna (2001, 7) noted in a study that the environmental protection laws "more than anything else form the legal basis and fundamental for the devastation of the Niger Delta environment".

However, the Oil TNCs are equally considered as part of the problem which Movement for Survival of Ogoni People (MOSOP) alleged in a protest that the Ogoni environment has been systematically destroyed by the Oil TNCs without the people getting commensurate compensation for the loss of productive farmland, polluted waters and general environmental degradation (Okoko and Ibaba, 1997, 12).

Ibaba (2005, 43) stressed that the isolation of the environmental laws from development programmes and policies of the State, faulty implementation strategy or techniques, inadequate penalties for violation, the non-involvement of the citizenry in the formulation and execution of the laws and the lack of a clear focus are recognized as veritable factors which are obstacles to the proper execution of these legislations and consequently on their overall impact on the environment.

We note that the lack of enforcement of environmental laws is identified as the most fundamental cause of the inability of these legislations to promote the sustainable exploitation of the Niger Delta ecosystem. Ibaba (2005, 44) further contended that this is due to the character of the Nigerian State, because according to him, the State is weak and dependent, thus it lacks the courage to compel the Oil TNCs to comply with the laws. It is imperative to note that the Oil TNCs are multinational corporations and thus operate within the ambit of International imperialism. Therefore they use their enormous capital, expertise, technology and support of their home governments to emasculate policies and laws of the Nigerian State. In addition, since oil controls the commanding heights of the Nigerian economy and the Nigerian State is a joint venture partner with the Oil TNCs, the State deals with them cautiously in order not to rock the boat.

Therefore, the provisions of environmental laws create loopholes which undermine enforcement, nebulous standards and regulations that could be contravened, loosely specified and vaguely defined (Adibe and Essaghah, 1999, 76).

In this subsequent discussion, we shall critically examine the provisions of some of the state legislations enacted to address the reckless abuse of the environment in order to bring about sustainable development in the Niger Delta region.

- **The Petroleum Drilling and Production Regulation Act (1969):** One of the greatest challenges facing the eco-system of the oil producing areas as a result of oil and gas exploitation is spillage. It is in recognition of the problems posed by oil spillage that the Federal Government enacted Act no. 51 of 1969 (Ikporukpo, 1983, 143).

However, the question that comes to mind is;" have the Oil TNCs been upholding this Act? What has the Federal Government done with regards to the violators of the Act?"

- **The Associated Gas Re-injection Decree (1977):** This law is sequel to the adverse effect of gas flaring on the eco-system of the Niger Delta region. According to records, over 16.8m^3 billion cubic metres of natural gas is flared annually by Oil TNCs in Nigeria . This results in an annual emission of 2,700 tonnes of particular matter, 160 tonnes of oxides sulphur, 5,400 tonnes of carbon monoxide and 27106 tonnes of oxide to the atmosphere (Daily Sunray, 1993). It is against this backdrop that the Federal Government enacted the Associated Gas Re-injection Decree (1977) which is meant to compell Oil TNCs to re-inject the excess gas being flared into the earth. However, 43 years after the decree was promulgated, the Oil TNCs have continued to flare gas.
- **The Federal Environmental Protection Agency Act – (CAP 131) 1988:** The Federal Environmental Protection Agency(FEPA) was created by decree No. 58 of 1988 as an attempt by the Federal Government to implement appropriate projects designed to ameliorate ecological challenges in Niger Delta (FEPA, 1999). Section 4 of the Act spells out the functions of the Agency as "the protection and development of the environment in general and environmental technology, including initiation of policy in relation to environmental research and technology"

The FEPA law has been aptly described as the most serious attempt and embracing law by the Federal Government to protect the Niger Delta environment in order to promote sustainable development. Thus Adibe and Essaghah (1999,86) contended that the Federal Environmental Protection Agency (FEPA) represented a watershed in effective and efficient environmental management and protection in Nigeria.

In similar vein Alapiki (1992,188) opined that "the most comprehensive legislation on the environment in Nigeria is the Federal Environmental and Protection Agency (FEPA) Act".It was hoped that the law would adequately and comprehensively address environmental challenges in the Niger Delta region. However, the hopes were misplaced. Curiously, only scant attention was given to the petroleum industry; even that was not far-reaching. Thus the only mention of the petroleum industry in section 23 of the Act states that:

> *The Agency shall cooperate with the Ministry ofPetroleum Resources (Petroleum Resources Department) for the removal of oil related pollutants discharged into the Nigerian environment and play such supportive role as the Ministry of Petroleum Resources (Petroleum Resources Department) may from time to time requires from the Agency.*

We can infer that given the negative impact of the oil industry on the Niger Delta ecosystem, this provision is grossly inadequate and therefore cannot address the environmental challenges of the area.It would be pertinent to give a hindsight into the nebulous and vague provisions of section 36 of the Act which states:

> *When any offence against this Act or any regulationsmade there has been committed by a corporate body*
>
> > *or by a member of a partnership or other firm or business, every director or offices of that corporate body or any member of the partnership or other person concerned with the management of such firm or business shall, on conviction be liable to a fine not exceeding ₦500,000 for such offence and in addition shall be directed to pay compensation for any damage resulting from such breach thereof or to repair and restore the polluted environmental areas to an acceptable level as approved by the Agency.*

In addition, a remarkable feature of the FEPA Act is the attention placed on pollution control and prohibition, which is a major environmental problem in the region. Thus, section 20 prescribes penalties for "the discharge of hazardous substances" into the environment. Sub-section 2 of section 20 prescribes ₦100,000 fine or 10 year imprisonment for an individual offender. While sub-section 3 stipulates a fine not exceeding ₦500,000 and "an additional fine of ₦10,000 for everyday the offence subsists" for corporate offenders.

We can deduce from the above provisions that the penalty is not stringent enough because the amount is too meager, thus Oil TNCs have continued to violate the law with impunity as evidenced by worsening environmental pollution in the Niger Delta. It is also true of the "general penalties" as provided in section 35 which prescribes a maximum fine of 20,000 or a maximum 2 year imprisonment for individual offenders.

Another obvious defect that can be discerned from the provisions of the Act is that the penalty prescribed does not graduate according to the quantum of oil spilled or the size of the area polluted. Therefore, even if Oil TNCs spill one million barrels of crude oil, the same penalty applies.

Also, the Act did not prescribe amount of compensation to be paid to victims of spillage, as a result their fate is left at the mercy of the Oil TNCs. Furthermore, there was no provision for periodic upward review of the fine to accommodate inflationary trends, thus the fines are static. To show how ineffective the law has been since it was enacted in 1988, no Oil TNC or individual has been successfully prosecuted and fined in accordance with the Act; in spite of overwhelming record of pollution of the Niger Delta ecosystem by the Oil TNCs.

Furthermore, the law made it mandatory for Oil TNCs to restore or rehabilitate the degraded environment, but no Oil TNCs in the Niger Delta has taken a proactive measure to restore the environment. The Ogoniland is a classic case in point, where vast swathe of the land has been destroyed by SPDC but the outcry on this matter has failed to move SPDC to clean up

and rehabilitate environment. The case is presently before the UN General Assembly. But SPDC has not been sanctioned. Therefore it is a common sight to witness polluted sites left uncleaned for decades by Oil TNCs in the region.

- **The Environmental Impact Assessment (EIA) Decree No. 36 of 1992:**
  The EIA Decree set out the procedures and methods, compelling organizations to carry out environmental impact assessment on certain public or private project. (1992). To achieve the aims of the Decree,, it "gives specific powers to the Federal Environmental Protection Agency (FEPA) now the Federal Ministry of Environment to facilitate environmental assessment of projects.
  The EIA law stipulates that before the commencement of any new project, its environmental impact must be assessed or evaluated with a view to mitigating its effects on the environment. Accordingly, section 2, sub-section 1 of the Decree states that:

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

Also, sub-section 27, section 1 provides that:

> *Where the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment, its environmental impact assessment shall beundertaken in accordance with the provision of this Decree.*

Therefore, FEPA is expected to evaluate the submissions, hold consultations with all stakeholders and then take a decision; it is the final arbiter on such issues. However, in the Niger Delta the law is not strictly adhered to.

Consequently, Oil TNCs who embark on EIA studies violate the provisions of the Decree. Cases are abounding where they commenced work on the projects before the EIA study was carried out. For instance, the Shell Petroleum Development Company (SPDC) began its multi-billion dollar Estuary AMATU (E.A) project in 2002, which crisscross several communities in Bayelsa and Delta States before EIA was done. (Environment Watch, 2002, 6).

In some extreme cases, EIA studies are totally ignored by Oil TNCs. For instance, in 1993 Agip constructed Ogbinbiri – Olugboboro – Tebitaba trunk oil pipe-line in Southern Ijaw local government area of Bayelsa state. But no EIA study was carried out either before or after the project commenced. But the company was not sanctioned. And in some cases , EIA studies are not properly done, thereby creating ecological and socio-economic problems for communities. For instance, the construction of oil and gas pipe-line in Gbarain in Yenagoa local government area of Bayelsa State by SPDC, without a proper EIA study in 2001 created environmental problems and socio-economic difficulties for the host communities (Opolo

Obunugha, Onopa, Gbarantoru, etc.) This is in violation of the EIA Decree, but the company was not sanctioned.

It is worth remarking that the EIA Decree has some inherent defects, which largely account for its ineffectiveness. In the first place, some projects are executed from mandatory EIA. Section 16, sub-section 2 of the Decree stress that:

> *For greater certainty, where theFederal, State, or Local governmentExercises power or performs a duty orFunction to be carried out, an environmental Assessment may not be required if the projectHas been identified at the time the power is Exercised or the duty or function is performed.*

With regards to the mandatory study activities, the provisions are limited. For example, while land reclamation is a mandatory study activity, EIA is only required if the area is 50 hectare or more, the implication therefore is that if the area is less than 50 hectares, EIA study is not required.

Another obvious defect observed was that the penalty prescribed for violating the provisions of the Decree, is rather too meager to deter offenders, particularly Oil TNCs. Section 62 of the Decree which deals with offence and penalty provides ₦100, 000 fine or five year imprisonment for an individual offenders and a minimum of ₦1m as a paltry amount to compel Oil TNCs to obey the provisions.

In addition, in spite of the obvious several cases of violation of the Decree by Oil TNCs, no record exist to confirm that any Oil TNCs has been fined this amount till date.Also, obvious lacuna observed in the decree is that there is no provision compelling Oil TNCs to consult the host communities when EIA study is being undertaken. As a result, they are neither consulted nor involved in any aspect of the studies. Thus,, according to Ibaba (2005, 49), the benefits derived from involving the local people are lost. We are aware of the fact that they have immense knowledge of the local ecological process, which can be integrated to enrich project design, as well as develop a team spirit that would elicit the commitment of the host communities (Adibe and Essaghah 1991, 20). The non-involvement of the people sometimes renders the EIA studies useless. Again, there is no provision making it mandatory for Oil TNCs to disclose impact assessment studies to the communities concerned.

Therefore, on the whole EIA Decree has done very little to protect the Niger Delta environment from wanton degradation.

RECOMMENDATIONS

1. Nigeria's environmental protection laws / policies should be holistically reviewed for they are outdated.
2. Implementation and monitoring agencies should be re-organized and re-orientated for improved performance
3. Host communities should be fully involved in the EIA studies in order to afford them the opportunity to know the risk and benefits of sch projects in their environment.
4. Commensurate compensation should be madeto host communities in an event of environmental degradation caused by activities of Oil TNAs.

5. Law enforcement agencies should be averhauled.
6. Environmental sustainablility education should be incorporated into the school curriculum from primary to tertiary levels.

CONCLUSION

From the above analysis we can infer that the various environmental protection laws enacted to protect environment and promote sustainable development in the Niger Delta region are too weak, ineffective, defective, outdated, etc. As a result the degradation of the region's eco-system continues unabated and at alarming rate,with the extant laws generally seen as paper tigers.

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