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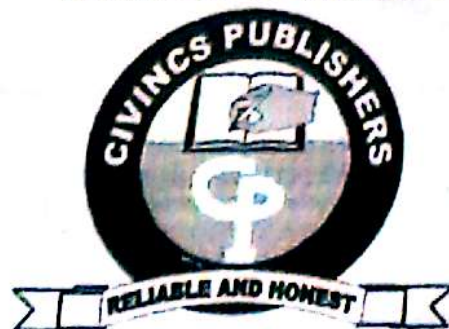
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AN EVALUATION OF THE INSTITUTIONAL FRAMEWORKS ON ENVIRONMENTAL PROTECTION IN NIGERIA: PROMISES AND CHALLENGES

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ABSTRACT

The successfulness of environmental legislations rests on the institutional frameworks put in place to regulate activities likely to affect the quality of environment. Without the aid of institutional frameworks, environmental legislations will be reduced to mere tissue papers. Thus, no amount or quantity of environmental legislations can effectively protect the environment without the support of institutional frameworks. It is on this premise that this paper examines the institutions involved in the protection of a healthful environment in Nigeria. To achieve this, the paper relies on doctrinal legal research methodology which is a content analysis of issues in contention. Consequently, the paper found that the act creating these institutions are characterised with some shortcomings that largely account for their low performance since an institution is bound by the law creating it. Thus, profitable suggestions are made to enhance the system.

INTRODUCTION

The 1970s and 1980s symbolised an epoch in which protection, preservation, and management of environmental resources became an essential segment of national and global politics.¹ This was mainly due to the understanding among nation states that there is a correlation between the state of a country's environment and its socio-economic condition.² Moreover, the awareness that environmental issues go beyond national and territorial boundaries, and are therefore not exclusive to particular regions led to the deliberation about global environmental issues, and the expansion of laws, policies, and

¹ Margaret Fubara, *Law of Environmental Protection* (Caltop Publication Limited, Nigeria, 1998) 56.
Brigadier Mamman kotangora, *The environment* (Federal Ministry of Works and Housing, Nigeria, 1988)

² Ibid

plan of actions at national and international levels.³ Nigeria had no unique and noticeable clear ambitions for the nation's environment until the acceptance of the need for National Policy on the environment in 1989.⁴ Towards the late 1980s, the government began to advance and cultivate national strategies to address environmental issues in Nigeria.⁵ This episode symbolised a landmark in environmental protection for Nigeria because it signified the emergence of the government endeavour to establish a national agenda for environmental management.⁶ This was induced by the involvement and attendance of Nigeria in the United Nations Conference on Human Environment held in 1972 Stockholm, Sweden.⁷ The Conference brought about awareness among governments to be more positive and practical in their approach to addressing the issues concerning the environment.⁸ This episode represents a driven factor to the establishment of Federal Environmental Protection Agency (FEPA) in 1988 and the subsequent adoption of National Policy on environment for Nigeria. The establishment of FEPA marked the genesis of institutional framework on the protection of environment.⁹ This was born out of the acknowledgement of the fact that a formidable institution is fundamental in the regulation, management, and control of activities likely to diminish the quality of environment. Ever since then, there has been series of changes as an attempt to solidify the regulatory institutions saddled with the responsibility to foster the protection of environment in Nigeria. Thus, this paper examines the efficacy of the major institutions in the protection of a healthy environment in the Niger Delta of Nigeria. To achieve this, critical evaluations of the institutional legal frameworks have been examined in order to discover the extent to which the institutions can go in the protection of environment. This is desirable because every institution is limited or curtailed by the law creating it. Thus, this paper is divided into five major parts. This introduction is the first part. The second part examines a brief history of environmental institutions in Nigeria. The third part examines the major institution involved in the protection of environment in Nigeria. The fourth part looks into the general challenges affecting the effectiveness of the environmental institutions. The article makes a conclusion of the findings from the discussion and with suggestions for a way forward.

³ See Richard A. Mathew, Michael Brklacich and Bryan McDonald "Analyzing Environment, Conflict and Cooperation" in *Understanding Environment, Conflicts and Cooperation*, United Nations Environment Programme, (UNEP, 2004) 5-16.

⁴ Margaret Fubara, *Law of Environmental Protection* (Caltop Publication Limited, Nigeria, 1998) 56; Brigadier Mamman kotangora, *The environment* (Federal Ministry of Works and Housing, Nigeria, 1988) 2.

⁵ Adeola O Adeyemo, *Assessing Environmental Protection and Management System in West Africa: A Case Study of Nigeria* (Unpublished MSc thesis submitted to Southern Illinois University Carbondale, United States, 2008) 18-52.

⁶ Ibid.

⁷ See Declaration of the UN Conference on the Human Environment held in Stockholm (1972) LM Doc A/Conf 48/14 at 2.

⁸ Ibid.

⁹ FEPA was created in 1988.

A BREIF HISTORY OF ENVIRONMENTAL INSTITUTIONS IN NIGERIA

Poverty has always been reason adduced by the people for tolerating substantial damage that they would ordinarily not have. This poverty is responsible for permitting the exportation of wastes into Africa in general and Nigeria in particular. A good example of this case was the Koko dumping incidence of 1987.¹⁰ In September 1987, an Italian man named Gian Franco Raffaelli approached one Sunday Oyemirs Nana, a farmer at Koko, a small village in old Bendel State (now Delta State) to dump about 3,886 tonnes of toxic and hazardous waste on behalf of his company at an agreed sum.¹¹ Months later, when the effects started leaking into the environment, it was later discovered that the wastes were stored at the port of Koko and the Nigerian Government issued an ultimatum for the company to return the wastes back to its original place. At last, the Italian Government accepted to bear the cost of importing the wastes back to Italy. In July 1988, two ships were sent down by the Italian Government for the carriage of the wastes.¹² This incidence acted as a vehicle that drove the attention of the government on the implication of the negligence of her environment. It prompted the Nigerian Government to the promulgation of the Harmful Waste (Special Criminal Provisions) Decree which later became an Act.¹³

In December of 1988, the Nigerian Government established the Federal Environmental Protection Agency (FEPA) by Decree No. 58 for the protection of environment. The foremost goal of FEPA was to protect, control, and manage the Nigerian environment, and made recommendation to the federal government on national environmental policies, and priorities. FEPA's directive required it to embark on environmental research, expand and prescribe national regulations and create guidelines and criteria for the protection of all aspects of the environment. During this time, FEPA operate as an agency under the Federal Ministry of Works and Housing.

The establishment of FEPA symbolised a landmark for environmental protection and administration in Nigeria. To deal with environmental issues at the state level, five regional FEPA offices were created in some of the largest states and industrial centers in Nigeria. Benin City, Kaduna, Kano, Lagos, and Port Harcourt.

In the 1990s, the government took steps to incorporate environmental issues with development planning. One of these first steps included amending the law governing the creation and mandate of FEPA and FEPA was merged with the Natural Resources Conservation Council (NARESCON) and the Departments of Land and Natural Resources and of Erosion Control under the Ministry of Agriculture.¹⁴ This was in part to Nigeria's active involvement in the 1992 Conference on Economy and Development organized by the United Nations.¹⁵ In 1999, when President Olusegun Obasanjo came

¹⁰ Adewale O. "Africa: The Waste Basket of The West" (1988) 67 *Business and Society Review*, 48-50

¹¹ "Nigeria waste Imports from Italy" Retrieved from <http://www1.american.edu/ited/nigeria.htm> [accessed on the 17th October 2013]

¹² Ibid

¹³ Harmful Waste (Special Criminal Provisions) Act Cap. H 1 Laws of Federation of Nigeria 2004 formerly Harmful Waste (Special Criminal Provisions) Decree No. 2 of 1988

¹⁴ See Decree 59 of 1992

¹⁵ Margaret Fubara, *Law of Environmental Protection* (Caltop Publication Limited, Nigeria, 1998) 56-58.

into power. FEPA was replaced with the Federal Ministry of Environment (FME¹⁶) with a view to strengthen national institutions for protecting and conserving the environment.¹⁷ The FME¹⁸ hold on to the functions of former FEPA and it is in charge of synchronising the protection of environment and natural resource preservation for sustainable development.¹⁹

In 2007, the institution again underwent another change. The FEPA Act, 1998 was expressly repealed and replaced with the National Environmental Standard Regulation (Establishment) Agency (NESREA) Act 2007. NESREA has the mandate to enforce all environmental laws in Nigeria including international agreement or conventions on environmental protection.²⁰ Thus, NESREA is today the main organisation responsible for the protection of environment in Nigeria. Others are National Oil Spillage Detection Response Agency, Niger Delta Development Commission, and the Ministry of Environment.

INSTITUTIONS ON ENVIRONMENTAL PROTECTION IN NIGERIA

While there may be other institutions whose duty may indirectly involve the protection of environment, this paper will be limited to those institutions that are directly involved in the protection and preservation of a healthy environment. They are: National Environmental Standard (Establishment) Agency,²¹ National Oil Spillage Detection Response Agency;²² Niger Delta Development Commission;²³ and the Ministry of Environment.

i. National Environmental Standard Regulation (Establishment) Agency 2007

The Nigerian Senate and the House of Representatives passed the National Environmental Standard and Regulation (Establishment) Agency Bill on 17th and 30th May, 2007 respectively. The Nigeria President Umar Musa Yardaua (of blessed memory) assented to the Bill on 30th July, 2007.²⁴ The NESREA Act repealed the Nigeria major law on the environment. That is, the Federal Environmental Protection Agency Act.²⁵ Accordingly, the NESREA Act becomes the principal law on environmental protection in Nigeria and the new agency (NESREA) replaced the old FEPA.²⁶ The establishment of NESREA is in consonance with the requirement and strategy of the National Policy on environment, which requires the government and place legal institutions to protect and manage the Nigerian environment.²⁷ Section 2 of the Act covers the objectives of the Agency and provides as follows:

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ See section 7 of NESREA Act 2007.

¹⁹ NESREA 2007

²⁰ 2006

²¹ 2004

²² (Hereinafter called the NESREA Act)

²³ See NESREA Act, 2007 No. 25, section 36

²⁴ That is, the Federal Environmental Protection Agency

²⁵ See paragraph 7 of the National Policy on Environment 1989 revised in 1998

The Agency shall, subject to the provisions of this Act, have responsibility for the protection and development of Nigeria's biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.²⁶

The Agency is charged with the enforcement and implementation of all laws, rules, regulations, standards and guidelines dealing with the protection of environment. In the area of environmental protection, the Agency can forbid and ban processes or the use of equipment or technology that undermine environmental quality.²⁷ The Act prohibits the release of hazardous substance into the environment without lawful permission and authorisation. The Agency is authorised to enforce compliance with laws, guidelines, policies, and standards on environmental matters.²⁸ In carrying out its mandate, NESREA is expected to coordinate and liaise with stakeholders, within and outside Nigeria on matters of environmental standards, regulations and enforcement. It also has the power to enforce compliance with the provisions of international agreements, protocols, conventions, and treaties on the environments, including climate change, biodiversity, conservation, desertification, forestry, oil and gas, chemicals, hazardous waste, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force.²⁹

The Agency also has the power to undertake, coordinate, utilise and promote the expansion of research experiments, surveys and studies by public or private agencies, institutions and organisations concerning causes, effects, extent, prevention, reduction and elimination of pollution and such other matters related to environmental protection and natural resources conservation other than in the oil and gas sector as the Agency may, from time to time, determine.³⁰ NESREA is enjoined to work in collaboration with other relevant agencies and with the approval of Minister,³¹ establish programmes for setting standards and regulations for the prevention, reduction and elimination of pollution and other forms of environmental degradation in the nation's air, land, oceans, seas and other water bodies and for restoration and enhancement of the nation's environment and natural resources.

The above provisions show that NESREA has a wide mandate to savage the country from the menace of environmental pollution. However, the power of NESREA to enforce compliance with environmental laws does not extend to oil and gas matter. For instance, the provision of section 7(g) states that, "enforce compliance with regulations on the importation, exploitation, production, distribution, storage, sale, use, handling and

²⁶ NESREA Act, 2007 No. 25

²⁷ *Id.*, section (8)(d)

²⁸ *Id.*, section 7

²⁹ *Ibid.*

³⁰ NESREA Act, 2007 No. 25, section (8)(m)

³¹ NESREA Act, 2007 No. 25, section (8)(o)

disposal of hazardous chemicals and waste other than in the oil and gas sector". Thus, the expression "other than in the oil and gas sector" is an express exclusion of NESREA from matters having to do with oil and gas knowingly well that the major polluters in the country are the oil industries.

Also, while NESREA is empowered to enforce compliance with international conventions and protocols, this however is subject to limitation. Nigeria has ratified several international agreements on the environment in matters such as climate change, biodiversity, desertification, forestry, oil and gas, hazardous waste, marine and wildlife and pollution.³² However, the implementation of these conventions largely depend on their domestication. The reason being that, by section 12(1) of the Constitution of the Federal Republic of Nigeria, no international treaty or agreement has force of law unless such treaties or agreements have been adopted and passed into law by the National Assembly.³³ Therefore, the power of NESREA to enforce international treaty is limited only to those passed into law by the National Assembly.³⁴

Assuming that some of these treaties have been passed into law, the function of NESREA to enforce compliance with environmental laws in Nigeria is still subject to restriction in section 7 and 8 of the NESREA Act 2007, which contain the restrictive phrases "other than in the oil and gas sector". This means that the power of NESREA will not extend to environmental issues arising from the oil and gas sector. This restriction has highly limited the overall power of the Agency to monitor and supervise activities that are largely responsible for the dilapidation of the Niger Delta environment.

ii. National Oil Spillage Detection and Responses Agency³⁶

The National Oil Spill Detection and Response Agency (NOSDRA) is one of the institutions responsible for the protection of environment. It deals with oil spills and ensure that the oil industries comply with the best practices in their operation.³⁷ After the detection of oil at Oloibiri, Ogbia Local Government of Bayelsa State, in the 1956, Nigeria joined other oil producers in the world.³⁸ Ever since then, communities in the oil region began to experience a continuing devastation and decline of the ecosystem owing to the oil spills arising from oil exploration which they had celebrated in suspense that the 'black gold' would improve their standard of living.³⁹

Due to the outcry from the oil communities region and demands from local and international media, in 2006, an Act of the National Assembly, NOSDRA Act was

³² Nugent C "Review of Environmental Impact Assessment and Monitoring in Aquaculture in Africa" Retrieved from [ftp://ftp.fao.org/docrep/fao/012/i0970e/i0970e01b.pdf](http://ftp.fao.org/docrep/fao/012/i0970e/i0970e01b.pdf) [accessed on the 2nd March 2014]

³³ For example, Nigeria has ratified the convention of Biological Diversity, Bamako Convention, Rio Declaration, Agenda 21 and many others.

³⁴ See the Constitution of the Federal Republic of Nigeria 1999 [as amended in 2011]

³⁵ For example, the African Charter on Human and Peoples' Rights has been ratified since 1990 as part of the Nigerian Law by the National Assembly

³⁶ National Oil Spill Detection and Response Agency Act, 2006

³⁷ Id, sections 5 and 7

³⁸ Torulagha P. S "Niger's Dilemma: Is Petroleum a National Resources or Not" Available at <http://www.unitedijaw.com/torulagha0000110.htm> [accessed on 28th October, 2013]

³⁹ Ibid.

enacted. The Act established NOSDRA and vested with the responsibility for preparedness, detection and response to all oil spillages in Nigeria.⁴⁰ The Agency is headed by a Director-General to be appointed by the president on the recommendation of the minister.⁴¹ The general functions of the Agency are as stated in section 5 of the Act which is reproduced below⁴²:

- a to be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector,
- b receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria,
- c co-ordinate the implementation of the Plan as may be formulated, from time to time by the Federal Government,
- d co-ordinate the implementation of the Plan for the removal of hazardous substances as may be issued by the Federal Government and,
- e perform such other functions as may be required to achieve the aim and objectives of the Agency under the Act or any plan as may be formulated by the Federal Government.

This author argued that the power conferred on NOSDRA is limited in scope to oil spillage. It does not include other environmental problems such as gas flaring and dredging that have adversely affected communities in the Niger Delta. Also, NOSDRA do not have the mandate to enforce environmental legislations.⁴³ This limitation dictates the extent to which NOSDRA can go in controlling incidences of oil spills. The only penalty NOSDRA can impose for non-compliance is a fine of N500, 000 00 (five hundred thousand naira) approximately \$3, 500 (three thousand, five hundred dollars).⁴⁴ This amount is too low to control oil spills. This is because it does not commensurate with what the law intends to avert. On this note, NOSDRA has been portrayed by several observers as a toothless bull dog that neither barks nor bites.⁴⁵ It has not been seen as an agency to reckon with because oil explorers have gone scot-free whenever there is occurrence or cases of oil spills.⁴⁶ One author has argued that regardless of being given the task of restoring and preserving the environment from oil spills and ensuring best practices toward mitigating the unfavourable impact of oil exploration in communities especially in the Niger Delta which is the centre of the industry in Nigeria, NOSDRA appears to have failed the people woefully, in fact many oil communities are even

⁴⁰ National Oil Spill Detection and Response Agency Act, 2006, section 1

⁴¹ Id, section 8

⁴² Id, section 6

⁴³ Rotimi Ajayi "Environmental Degradation Review of NOSDRA Act Now" Retrieved from <http://www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/> [accessed on the 10th March, 2014]

⁴⁴ National Oil Spill Detection and Response Agency Act, 2006, section 6(2)

⁴⁵ Tina A Hassan "Is NOSDRA a Toothless Bull Dog?" Retrieved from http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=16249:is-nosdra-a-toothless-bulldog&catid=10:environment&Itemid=11 [accessed on the 8th February, 2014]

⁴⁶ Ibid.

ignorance of its existence.⁴⁷ This is due to the curtailment in the power of NOSDRA to mere supervisions. This is so because where the agency found that the oil industries are not complying with the provisions of the laws, it can only impose a penalty for failure to comply but cannot enforce compliance because its power is limited to ensuring compliance and not enforcement.

iii. **Niger Delta Development Commission**⁴⁸

The purpose for the establishment of this Commission is to tackle environmental pollution problems associated with the Niger Delta of Nigeria. (Hereinafter called NDDC Act)⁴⁹ The Act establishes the Niger Delta Development Commission with the power to oversee the problem of oil spills in the Niger Delta and its resultant effects.⁵⁰ By section 7 (1) of the Act, the commission is empowered to,

- (a) formulate policies and guidelines for the development of the Niger Delta area;
- (b) conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing, urban development, water supply, electricity and telecommunications;
- (c) cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socioeconomic development;
- (d) prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes;
- (e) implement all the measures approved for the development of the Niger-Delta area by the Federal Government and the member States of the Commission;
- (f) identify factors inhibiting the development of the Niger- Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger- Delta area;
- (g) assess and report on any project being funded or carried out in the Niger Delta area by oil and gas producing companies and any other company including non-governmental organizations and ensure that funds released for such projects are properly utilized;
- (h) tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger-Delta and advise the Federal Government and the member states on the prevention and control of oil spillages, gas flaring and environmental pollution.
- (i) liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control, and

⁴⁷ Rotimi Ajayi "Environmental Degradation: Review of NOSDRA Act Now" Retrieved from <http://www.vanguardngr.com/2011/10/environmental-degradation-review-of-nosdra-act-now/> [accessed on the 8th March, 2014]

⁴⁸ Niger Delta Development Commission Act, Cap. N 86 Laws of Federation of Nigeria, 2004

⁴⁹ Ibid, section 1

⁵⁰ Ibid

- (j) execute such other works and perform such other functions which, in the opinion of the Commission, are required for the sustainable development of the Niger Delta area and its people

It is obvious from the provisions above that the Commission is conferred with enormous powers to guarantee the sustainable development of the Niger Delta area. The question however is on the effectiveness of the commission in the implementation of the object of the Act. It has been argued that the failure in the implementation of the objectives of the Act lies in the lack of the political wills on the part of the government to ensure observance with the provisions of the Act. On this note, Nlerum said⁵¹

It has been demonstrated that the institutional mechanisms established to tackle the problems of the Niger Delta have woefully failed to perform this function, with the result that the Niger Delta region is yet to witness any noticeable improvement either in the physical conditions of the area or in the standard of living of the indigenes. One major factor that has led to this state of affairs is the lack of the requisite political will and commitment to see to the actual development of this region. The federal government which had since independence been controlled by one major ethnic group or the other had not shown sufficient interest in addressing the plight of the minority Niger Delta.

Apart from the above view, the NDDC Act 2004 is in itself inadequate in addressing environmental challenges in the Niger Delta. This is because the commission has no power to enforce and ensure compliance with laws regulating oil and gas sector. The Act only requires the Commission to liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control. This suggests that the commission's mandate is that of recommendation without power of enforcement. Therefore, its establishment fails to address environmental problems associated with the activities of oil industries in the Niger Delta. Another obstacle to NDDC Act 2004 is its lack of participatory provisions. The Act neither contain provisions for the representation of the local people for whose advantage the Act was enacted nor is there a provision for their involvement and membership in the planning and execution of projects. However, the provision for states members of the oil producing states in the commission cannot be considered as affording representation to the local people who bear the burden of environmental abuse. Participation of people is essential in environmental decision-making process. Therefore, the lack of provision for the involvement of the indigenous people in the planning and execution of the commission's project can be regarded as a violation of their human right to development which make participation a key element of the right. This suggests that people should have say over

⁵¹ Nlerum S. Okogbule "The Plight of the Minority Niger Delta in Nigeria: The Poverty of Protective Legal and Institutional Mechanism" Retrieved from <http://www.nigerianlawguru.com/articles/general/THE%20PLIGHT%20OF%20THE%20MINORITY%20NIGER%20DELTA%20IN%20NIGERIA,%20THE%20POVERTY%20OF%20PROTECTIVE%20LEGAL%20AND%20INSTITUTIONAL%20MECHANISMS.pdf> [accessed on the 8th March, 2014]

the direction of the development process, rather than merely being consulted about projects and policies that have already been concluded. Thus, the NDDC Act is of little significance in environmental protection in Nigeria. This is so because the commission has no power to enforce and ensure compliance with environmental laws. Its creation therefore is of political gimmicks.

iv. Federal Ministry of Environment

Prior to the establishment of the Ministry, the Federal Environmental Protection Agency (FEPA) was the sole agency responsible for the protection of the environment and enforcement of environmental legislation in Nigeria.⁵² With the return to civilian administration in 1999, the elected president Olusegun Obasanjo merged FEPA with the newly established Ministry of Environment and the duty of FEPA was transferred to the newly established ministry.⁵³ Due to this change, the Ministry of Environment assumes the responsibility of enforcing compliance with environmental laws and regulations and safeguards the environment against pollution. However, with the establishment of NESREA in 2007, the power of enforcing and protecting the environment was taken away from the Ministry of Environment and transferred to the newly agency National Environmental Standard Regulation (Establishment) Agency.⁵⁴ However, the Federal Ministry of Environment retains the mandate to evaluate environmental impact assessment prior to the execution of any project.⁵⁵ This power has not been effectively performed because dangerous activities are permitted to proceed without environmental impact assessment. Commenting on this, Ibaba S. Ibaba said⁵⁶.

Establishments in the private sector (manufacturing companies, etc) hardly undertake EIA studies for their activities, even though such activities impact on the environment. This is also true of public projects undertaken by the three tiers of government (Federal, State and Local Governments). Oil companies, who embark on EIA studies, violate the rules. There are instances where they have commenced the project before the EIA study is done. For example, the Shell Petroleum Development Company (SPDC) commenced a multi-billion dollars project, the Estuary Amatu (E.A) project which cut across communities in Bayelsa and Delta States before EIA commenced.

⁵² See the Federal Environmental Protection Agency Act 1988

⁵³ Federal Environmental protection Agency (FEPA) was joined with the federal Ministry of Environment pursuant to the Presidential Directive Ref. No SGF 5/5/221 of October 12, 1999, cited in Fagbohun, O. "Reappraising the Nigerian Constitution for Environmental Management" (2002) 1 (1) A.A.U. Law Journal, 44

⁵⁴ See section 36 of National Environmental Standard Regulation and Establishment Agency Act 2007

⁵⁵ Federal Ministry of Environment "About the Federal Ministry of Environment" http://www.climatechange.gov.ng/page.php?seo=about_fme [accessed on the 6th April, 2014]

⁵⁶ Ibaba S. Ibaba "Environmental Protection Laws and Sustainable Development in the Niger Delta" Retrieved from http://www.africanajournal.org/PDF/vol4no1/vol4no1_2_Ibaba%20S.%20Ibaba.pdf [accessed on 6th April, 2014]

Thus, it is suffice to say that the federal ministry of environment has power to extend extent to ensure compliance with environmental legislations. This is so because compliance with a prior environmental impact assessment before embarking upon any project would ensure that the potential effects of the project on the environment and the people would have been noted and adequate measures would have been put in place to mitigate the potential effects.

CHALLENGES TO THE EFFECTIVENESS OF THE EXAMINED INSTITUTIONS

While in the course of examining each of the institution, some flaws were specifically identified as factors that may be constraining the performance of the institutions. In this section, the general challenges and profitable suggestions for future improvement for the protection of environment were looked at.

a) Statutory Shortcomings and Inconsistencies

One of the major problems affecting the effectiveness of the examined institutions lies in the law creating the institutions. Generally an organisation is bound by the law creating it and it is expected that it must act according to the dictate of the law. Thus, where an organization oversteps its power that may be a good ground to void such actions or steps. First, the Act creating NESREA expressly excluded the power of the agency from interfering in oil and gas matters. There is an inconsistency in this limitation having given the agency the general power to enforce all environmental laws in Nigeria. This may be due to the fact that oil business is the major back bone of the Nigeria economy. It is therefore imperative that the provision excluding the power of NESREA in oil and gas matters be removed if there is sincerity on the part of the government to protect its citizens from environmental menace. With regard to NOSDRA, the Act creating it has not given it the power of enforcement, instead, it has power only to ensure compliance. This is no more than supervisory responsibility. The position of the Niger Delta Commission is similar to that of NOSDRA because its power does not extend beyond formulation of policies and offers advises as to the protection of Niger Delta region where oil activities are taken place. This shortcoming has affected the effectiveness of environmental institutions in the protection of a healthy environment for Nigerians. It is therefore suggested that there is the need to strengthen these institutions with the mandate to take adequate punitive measures against an erring polluter.

b) Government Intervention

It is well known that oil operations are under the exclusive legislative list and therefore fall within the purview of federal jurisdiction.⁵⁷ The Federal Government of Nigeria is a partner in the oil industry it regulates. It is not unusual for a government to

⁵⁷ See for example, section 44 of the Constitution of the federal Republic of Nigeria, 1999. See also the second schedule to the constitution which listed those areas where the Federal Government has exclusive legislative authority. This includes mines and minerals, including oilfields, oil mining, geological surveys and natural gas.

be a running mate in a business it regulates.⁵⁸ However, unless an institution independent of the government is put in place, the law may likely remain ineffective. The Government of Nigeria has failed to guarantee autonomous regulation of the oil industry in the protection of environment. This is because, much regulatory power of the oil industry is vested in the Department of Petroleum (DPR) which remains a wing in the ministry of petroleum resources. This indeed conflict with the concept of independent regulatory institution as understood in the world legal order. The World Bank with specific reference to the Niger Delta said⁵⁹

This situation has resulted in the government inadequately regulating oil pollution while at the same time, being party to much of the oil-related environmental problems of the Niger-Delta⁶¹

More so, nearly all laws dealing with environmental protection in Nigeria are under the control of respective minister for each ministry as each is required to ensure compliance with those laws. This largely conflict with the principle of autonomous. It is indeed ironical and an anomaly because the ministries are run and control by the Federal Government who continues to benefit from proceed of the oil industry. Also, the express keep out of NESREA from ensuring compliance in the oil and gas sector evidenced the fact that the government is yet to assure its responsibility in the protection of the environment. Finally, the current structure of placing NESREA directly under the auspices of the Federal Ministry of Environment does not promote any significant changes to be made in the quest for effective environmental protection as the Agency continue to receive its authority and mandate from the ministry.

c) Inadequate Funding of Regulatory Agencies and Man Power

Environmental regulatory institutions in developing countries usually lack sufficient funding and technical expertise. For instance, NESREA, NOSDREA and the NNDC financially depend largely on the grant and allocation from the Federal Government to be able to execute their objectives. This may hinder the performance of the institutions where adequate funds are not provided for the implementation of their duties. Commenting on this, Ohwahwa said⁶²:

⁵⁸ David Osigbemhe Iyalomhe "Environmental Regulation of the Oil and Gas Industry in Nigeria: Lessons from Alberta's Experience" (Unpublished Master Dissertation submitted to the Faculty of Law, University of Alberta 2001) 19-25

⁵⁹ Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta* Amnesty International Publication, United Kingdom, 2009, 43

⁶⁰ The World bank, *The Nigeria Rapid Country Environmental Assessment*, final Report, 30 November, 2006 quoted in Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta*, Amnesty International Publication, United Kingdom, 2009, 42

⁶¹ ibid

⁶² Fred Ohwahwa "Deliberate Leakage in the Oil Industry" [Lagos] *African Guardian* (28 September 1992), 12 quoted in David Osigbemhe Iyalomhe "Environmental Regulation of the Oil and Gas Industry in Nigeria: Lessons from Alberta's Experience" (A Master Dissertatlion, Faculty of Law, University of Alberta)

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The ability of the DPR to carry out its onerous functions have been further limited due to the bureaucratic processes in the Ministry crippling its operation, the inadequate training of staff to enable them to cope with the changes in the oil industry, the lack of tools and other infrastructures necessary to perform their jobs and the increasing temptation to look the other way while oil companies violate rules and regulations.

In support of this view, the Amnesty International lamented⁶³

Question as to which agency or ministry has responsibility for ensuring that oil companies comply with environmental and safety regulations become somewhat irrelevant when the issue of enforcement is considered. Amnesty International examined the capacity of both the DPR and the state and federal ministry of environment to enforce environmental laws and standards, and address pollution, they were all found to be seriously constrained by lack of capacity and resources. This seems inexcusable given the hundreds of billions of dollars in oil revenues that have been collected by the Nigeria government.

Also, the World Bank further stated thus⁶⁴

Environmental Inspectors belonging to the FMEV (Federal Ministry of Environment) often have to rely on private companies for providing cars to undertake monitoring activities, in addition to hotel bills, per diems and other expenses, compromising legitimacy and effectiveness in the environmental monitoring process.

Thus, owing to the limited budgetary resources at the disposal of these institutions, they are incapable to remit adequate numbers of trained and experienced human resources to execute their functions of implementing, managing and administering the environmental regulations and laws. This has resulted in a pitiable circumstance where the officials of the regulatory agencies have had to depend on oil companies (the violators) to take them to the location of oil spills in order to carry out their duties.

CONCLUSION

A careful look at the institutions on the protection of environment in Nigeria revealed that the problem is not that the institutions are not just there; instead, they have not been that effective in the performance of their duties. The laws creating some of these institutions contain ample promises for Nigerian towards preserving the quality of the environment and ensuring sustainable development. However, these promises are increasingly fading due to the challenges that inhibiting the performance of the institutions. These challenges are indeed surmountable and it only requires a political

⁶³ Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publication, United Kingdom, 2009) 44.

⁶⁴ World Bank, "Defining an Environmental Development Strategy for the Niger Delta" quoted in Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publication, United Kingdom, 2009) 112.

will on the part of the government. It is true that these institutions must have recorded some achievement since their inception but much of their powers are excluded from oil and gas activities that account for not less than 70% of Nigeria pollution. It is however imperative in view of realities on ground and with a view to better the Nigerian environment that the laws creating these institutions be revisited and reviewed upward to ensure adequate and proper protection of environment. It is also suggested that the prescribed penalty for pollution of the environment be made stiffer because polluter tends to follow the law where the punishment prescribed is high.