

Review

Applicable international environmental impact assessment laws for the Niger Delta Area of Nigeria

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The Niger Delta Area of Nigeria has undergone several alterations in her environment through various projects development including oil and gas exploration, dredging and mining activities. These activities have continued to impact the environment as relevant organs of the government deliberately down play the relationship between environmental degradation/pollution and project developments. Though, there are plethora of international laws and conventions, some domesticated in the country, the objectives of these laws in relation to assessing the environmental impact (in this case the Niger Delta Environment) as applicable to project developments will be brought to the fore. The specific objective hereto is to appraise selected International Environmental laws and the Nigerian Environmental Impact Assessment methodology in demonstrating how the Niger Delta Environment can be preserved for future generation. This paper affirms that Environmental Impact Assessment laws are strictly predicated on adherence of procedural requirements and not the requirement for proper utilization of resources, this notwithstanding, provides a veritable tool for environmental sustainability if properly applied.

Key words: International law, Niger Delta, environment, impact assessment.

INTRODUCTION

The natural environmental process as the need arises, needs to be altered from time to time to meet the comfort of emerging cultures, societies, species, developers and environmentalist. The point being made here is that such activities should not adversely or irreversibly alter the natural environmental process. This was corroborated by the World Commission on Environment and Development (WCED, 1987), which highlighted basic requirements for the sustainability of the Environment Development which meets the needs of current generations without

compromising the ability of future generations to meet their own needs. The concept supports strong economic and social development, in particular for people with a low standard of living. At the same time, it underlines the importance of protecting the natural resource base and the environment. Economic and social well-being cannot be improved with measures that destroy the environment. Intergenerational solidarity is also crucial: all development has to take into account its impact on the opportunities for future generations. It is estimated that in

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one region alone in the Niger Delta, flaring is statistically likely to cause 49 premature deaths, 5000 respiratory illnesses among children, some 120,000 asthma attacks and 8 additional cases of cancer each year (Environmental Rights Action and the Climate Justice Programme, 2009). This is more worrisome when it is carried out in an uncontrolled approach, predicated by the pursuit for profit by the foreign investors engaged in developmental projects in the area, whereas these developments must be sustainable by meeting the needs and aspiration of the current generation without compromising the ability to meet those of future generations.

The adherence to standards, commencing from the project conceptual stage to actual construction has being an issue of concern. Though, there are applicable laws, regulations and conventions promulgated and adopted in Nigeria, the role these laws play in assessing the impact (positive or negative) to the Niger Delta Environment must be brought to the fore. This study will further x-ray the import of applicable international environmental laws midwived by the United Nations and its relevant bodies and in particular Nigeria environmental impact assessment law of 1992 as it relates to the developmental projects and other allied activities in the Niger Delta.

The laws and regulations that are enacted and in operation by relevant authorities in the Nigerian context will be stated and reviewed as they are evoked for the protection of the Nigerian natural environment. This is anticipated to minimize and mitigate the deterioration of health quality, destruction of flora and fauna, pollution of water resources, destruction of traditional economic infrastructures within communities accommodating these super investments.

NIGER DELTA AREA

The Niger Delta, like most deltas in Africa, is a storehouse of bio-diversity, food, energy and mineral resources. As the world's third largest wetland, it is characterized by significant biological diversity, to bulk of proven oil reserves (culled from Niger Delta Development Commission NDDC) Master Plan. This makes the region a veritable economic and socio-cultural hub of human activities in Nigeria. The region, situated in the southern part of Nigeria and with the south by the Atlantic Ocean and to the east by Cameroon occupies a surface area of about 112,110 km². It represents about 12% of Nigeria's total surface area and its estimated population by 2005 was over 31 million persons (culled from NDDC Master Plan). Abieyi (2005) posits that the region is also endowed with potentials in fishery, forest products, large clay deposits and a good climatic condition that supports tourism and wild life. Further to this, is the thick

evergreen forest which houses diverse animals and plant species and whose flora and fauna are dominated by extensive mangrove belts and water hyacinth. Regrettably, it has also become a source of intricate and perhaps excruciating conflicts, contradictions, environmental degradation and pollution from decades of prolonged and persistent oil and gas exploration and exploitation. The Niger Delta today is inundated with a maze of pipelines, delivery lines, flow lines, canals and slots, drilling sites, flare stations, geophysical prospecting transects, etc., making it a frontline of adverse changes and vulnerability (Opuaji, 2015). Peel (2009) corroborated this fact that petroleum operations have caused massive environmental pollution in the oil producing area of the Niger Delta. Specifically, there have been pipeline leakages, wells blow-outs and spillages which have had severe effects on land, water resources, the micro-climate and to residents. There have been unquantifiable environmental degradation and hazards, loss of valuable agricultural land and settlements to the burrow pits as well as impoverishment of the people (Okoli, 2008). The activities of these companies and their operations no doubt impact on the environment with the attendant alterations. In spite of the huge and damaging side effect of the various project development in the area, relevant organs of government have deliberately down play the connection between environmental degradation and pollution with project development (Powell, 1993). From the foregoing, the region environmental challenges has underscored the need for strong legal framework for impact assessment.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA): AN APPRAISAL

EIA attempts to determine the effects of modernization processes with agriculture, industrialization, urbanization, oil and other mineral exploration and exploitation, transportation, housing pattern and cultural heritage on the existing equilibrium relationship between the surroundings and its inhabitants between project conception and completion. The usual approach adopted is to obtain ecological baseline data, field and laboratory studies, interviews and consultations with individuals/representatives of the communities of the project area. Several techniques have become routine in the EIA process (Usman, 2001). These techniques include:

- (1) Description of the natural environment with biophysical, chemical, ecological, hydrogeological/geological, socio-economic, health status, etc.
- (2) Description of the processes, projects, etc., being proposed or already undertaken for a given environment.

(3) The effects of “developmental” processes, projects and related activities on the natural environment and proximal areas of influence.

(4) The spatial temporal content of the study area (that is, the environment) is a critical component in assessing impacts including all the areas likely to be potentially affected by the projects.

In order to bring in some order in the developmental processes, an aspect of EIA has evolved laws, regulations, treaties, ethics and standards that promotes the philosophy that the environment is not an abstract concept but represents a phenomena that must be sustained for the quality of life of human beings, including generations yet unborn. The existence of the general obligation of states to ensure that “developmental” and “modernization” activities within their jurisdiction and control conform to these international environmental regulations, laws, treaties, has resulted to the evolution and promulgation of associated laws such as National Environmental Standard and Regulations Enforcement Agency (NESREA, 2007) relating to the EIA process. NESREA is charged with the responsibility of enforcing all the environmental laws, guidelines, policies, standards and regulations in Nigeria. This is also in addition, to all international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory (Ojile 2009). However, the challenge has been the lack of commitment by both relevant international organizations and the government to ensure the true applicability of these laws (Usman, 2001). There is no doubt that several assessment reports are produced for intended projects and associated exploitation activities with promises of potential economic benefits to the host community but not for the environment which guarantees the sustainability for the future (Adigun and Oniemola, 2009). In summary, environmental impact assessment attempts to determine the effects of developmental projects on the existing equilibrium relationship between the environment and its inhabitants.

INTERNATIONAL LAWS, POLICIES AND REGULATIONS

Issues bordering on the protection of the environment cuts across several areas and disciplines, including political interests, economic interests, international relationships as well as interests in human right laws, international trade and international environment laws (Abdulkadir and Imam, 2009). The pronouncement of the Secretary General of the United Nations Organization, Ban Ki Moon, that “the world is still waiting for a solution that is long-term and economically viable” (<http://www.reuters.org>), clearly indicates that the search for a permanent solution remains on-going. In the light of

this development, the study of the impact of the activities of man on the environment thus cuts across several disciplines of contemporary academic exercise. This underscores the major goal of international environmental laws which seeks to develop universally negotiated agreements that create effective international standards for environmental protection (Michael, 1992).

In 1992, a United Nation conference on Environment and Development (Rio Declaration on Environment and Development, 31 ILM 874, 1992) which developed five critical documents vi-za-vis Agenda 21, an action plan for sustainable development in the 21st century, the Rio declaration- principles on healthy environment and equitable development, the convention on biodiversity, the convention on climate change and a statement of forest principles. These five documents provides the legal and ethical framework for the preservation and impact monitoring of the environment from a global perspective (Ojile, 2006)

Much of contemporary international environmental law deals with issues such as the sustainable use of fresh waters, fisheries, forestry, and biological diversity (endangered species) (UNEP, 2010). An isolated developmental activity may have very little negative environment impact within a more or less confined space, e.g. regions, states, Local Government Areas (in the Nigerian context), but the cumulative effects and implications of such impacts may be much more adverse as time goes on and the spatial influence of the impact increases. For instance, sometime in the year 2012, the flood events of relatively high return periods occurred in the lower regions of the Niger-Delta river basin, (FEMA, 2012). Some experts (Orupabo and Hart, 2015) attributed these events to the release of waters from dams located at the upstream sections of the rivers Niger and Benue systems. The environmental impacts of the released waters from the dams were of little negative effect in regions at the upstream sections of the river systems. As shown in Figure 1, it was down-stream sections of these river systems (the Niger Delta communities) that were relatively negatively impacted upon and the spatial influence greatly increased due to the topography of the area.

In the same manner, phenomena such as oil spills as a result of technical accidents or sabotage may have increased influence away from the region of occurrence of the incidence and residual negative impacts be more severe in geospatial attributes and as time progresses. That the Niger Delta region of Nigeria groans from environmental degradation requires that certain assumptions underlying the immense neglect of the area’s environment be confronted from a legal and ethical grounds that are rooted in sustainable development (Udoh, 2001).

It is on this basis that International Environmental Laws have had too much in common with International Human



Figure 1. Effect of flood in parts of Nigeria (National Emergency Management Agency (NEMA), 2012).

Rights Laws for the regulation of man's developmental activities that may negatively impact the environment.

An outline of some international laws, regulations and policies with their corresponding objectives and applicability are reviewed in this work. They have been severally applied to commonly identified developmental projects for regulating and protection of environments in other climes. These laws can promote the sustainability of the Niger Delta environment and in particular has implications from the immediate geo-spatial location of the activity (community, Local Government Area (LGA), state, region, etc.) to proximal communities at various epochs (that is, in time and space).

There are also Nigerian national laws derived from these international Laws. Between 1963 and 1990, Nigeria became signatory to a number of international laws, which led to the promulgation of these national laws targeted at protecting the Nigerian environment and in particular Niger Delta Region. They include but not limited to the following, Mineral Oil (Safety) Regulations Act 1963, Petroleum Regulations Act 1967, Oil in Navigable Waters Act 1968, Oil Terminal Dues Act 1968, Petroleum (Drilling and Production) Regulation Act 1969, Petroleum Amendment Act 1973, Associate Gas Reinjection Act 1979, and Harmful Wastes (Criminal Provisions) Act No. 42 of 1988 (Eneh, 2010; Amukam, 1997).

Environmental impact assessment is carried out within the framework of both local, national and international environmental guidelines and regulations. Some of these statutory international laws and regulations are summarized as the following.

World Bank Guidelines on Environmental Assessment (EA) 1991

The World Bank Operational Directive 4.00 of 1989 (Environmental Assessment) subsequently amended as Operational Directive 4.01 in 1991 deals on

environmental impact assessment. EA is designed to be a flexible process that makes environmental considerations an integral part of project preparation and allows environmental issues to be addressed in a timely and cost effective way during project preparation and implementation. The bank requires the execution of an EA on a proposed industrial activity by a borrower as pre-requisite before granting any financial assistance in form of loans. These guidelines are published in the Bank's EA source book Vols. 1-3 of 1991. The critical issues raised are Biological Diversity, Coastal and Marine Resources Management, Cultural Properties and Hazardous, and Toxic Materials and international waterways.

International Union for Conservation of Nature and Natural Resources (IUCN) Guidelines 1996

The World Conservation Union statutes have undergone several amendments from 1948 to the recent amendment of 2015. It provides the list of threatened animals and categorized them based on the relative risk of extinction; in addition, list of species that cannot be assessed due to insufficient data. This system is designed to determine relative risk of extinction and the main purpose of the list is to catalogue the species that are regarded as threatened at the global level, that is, at risk of overall extinction. It recognizes principally, that conservation of nature and natural resources involves the preservation and management of the living world, the natural environment of humanity, and the earth's renewable natural resources on which rest the foundation of human civilization.

Convention on the conservation of migrating species of wild animals (Bonn Convention, 1979)

This convention was adopted in 1979 and entered into force on November 1, 1983. It is also known as the Bonn

Convention, it recognizes that states must be the protectors of migratory species that live within or pass through their national jurisdictions, and aims to conserve terrestrial, marine and avian migratory species throughout their ranges. It is concerned with the promotion of measures for the Conservation and management of migrating species. Migratory species are vulnerable to a wide range of threats, including habitat shrinkage in breeding areas, excessive hunting along migration routes, and degradation of their feeding grounds.

Convention on Biological Diversity (1992)

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. To this end, the objectives of this convention, are to be pursued in accordance with its relevant provisions. They include the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Further to this, is an appropriate access to genetic resources through proper transfer of relevant technologies, using an appropriate funding approach.

Convention Concerning the Protection of the World Cultural and Natural Heritage Sites (or World Heritage Convention, 1978)

This convention set aside areas of cultural and natural heritage for protection. These are areas with outstanding universal value from the aesthetic, scientific and conservation point of view.

Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal (1987)

It came into force in Nigeria in 1989. This convention defines wastes that must be regulated and controlled in its trans-boundary movement, to protect human and environmental health against their harmful effects. It was to protect by strict legal control, human health and environment against adverse effect, which may result from generation and management of hazardous waste. One of the interesting attributes of this convention is that if wastes are smuggled into the territory of one state without the competent authority's consent, such waste

can be returned back to the country.

United Nations Framework Convention on Climate Change (1992)

This convention aims to protect climate system for present and future generation. In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) was adopted as the basis for a global response to tackle the challenge posed by climate change. With 195 parties, the convention enjoys near-universal membership. The ultimate objective of the convention is to stabilize greenhouse emission.

Geneva Conventions on the Continental Shelf and the High Seas (1958)

This treaty was assented by Nigeria on May 28, 1971. It contains rules designed to prevent or minimize oil pollution arising from exploitation of the continental shelf or its natural resources. It was used to mark the territory of the seas and its internal waters.

The International Convention for the Prevention of Pollution of the Sea by oil, 1954 (amended severally from 1958 through 1982 to 1992)

The international convention for the prevention of pollution of the sea by oil is a product of the deliberations of the Inter-Governmental Maritime Consultative Organization (IMCO). This treaty was assented by Nigeria on April 22, 1968. This regulation covers the obligation of state as it relates to the pollution of the marine environment from all polluting sources such as oil, nuclear related activities, etc. This convention applies to all ships, except tankers of under 150 tons gross tonnage and other ships of under 500 tons gross tonnage. All ships covered by this convention are to carry an oil record book in a form specified in the annex, to be completed whenever certain operations take place.

Convention for Cooperation in the Petroleum and Development of the Marine and Coast Environments of West and Central Africa, 1984

This treaty was ratified by Nigeria on August 5, 1984. It has the objective of protecting the marine environment of coastal zones and related internal waters falling within the jurisdiction of the states of the West and Central African region.

The United Nation Organization as an international organization meant to maintain the efficacy and efficiency

Table 1. Applicable International Environmental Laws and Regulations.

| S/N | Laws/Regulations | Effective date | Summary of purpose | Responsible organization |
|-----|---|----------------|---|--------------------------|
| 1. | The Endangered Species (Control of International Trade and Traffic Act, No 11) | 1985 | Prohibits the hunting and Trading of animal Species | UNO |
| 2. | World Bank Guidelines on Environmental Assessment (EA) | 1991 | Guidelines required to attract support from World Bank | World Bank |
| 3 | International Union for Conservation of Nature and Natural Resources (IUCN) Guidelines | 1996 | Provision of list of threatened animals and categorize them based on the risk of extinction | UNO |
| 4 | Convention on the Conversation of Migrating Species of Wild Animals (Bonn convention) | 1979 | Promoting measures for the conservation and management of migrating species | UNO |
| 5 | Convention on Biological Diversity | 1992 | It aims at conserving biological diversity | UNEP |
| 6 | Convention Concerning the Protection of the World Cultural and Natural Heritage Sites | 1978 | It sets aside areas of cultural and natural heritage for protection | UNESCO |
| 7 | Basel Convention on the Control of Trans-Boundary Movements of Hazardous wastes and their Disposal | 1987 | It regulates and controls the trans-boundary movement of wastes | UNEP |
| 8 | United Nations Framework Convention on Climate Change | 1992 | It aims at protecting the climate system for present and future generations | UNO |
| 9 | Geneva Conventions on the Continental Shelf and the High Seas | 1958 | It is designed to minimize oil pollution | UNO |
| 10 | Convention for Cooperation in the Petroleum and Development of the Marine and Coast Environments of West and Central Africa | 1984 | To Protect the marine environment of coastal zones and related internal waters | AU |

of International law recognizes the sovereignty and individuality of each state among the committee of nations (Ajayi and Ikporokpor, 2002). The states have exclusive jurisdictional control over its territory (that is, its environment). It is to this extent that many conferences, conventions, treaties and protocols were initiated to protect the world environment.

From the foregoing, Table 1 shows the applicable international laws and regulations as enunciated above. It showed the effective date of the promulgation of these laws, its purpose and responsible organizations. However, majority of these laws were established between 1985 and 1992. This period marked an increase on the awareness and advocacy of the danger and implication of certain activities on the environment

including the Niger Delta area of Nigeria. The Niger Delta region of Nigeria is one area that epitomizes the dereliction in its true sense owing to the uncaring attitude of man to the environment. In the Niger Delta of Nigeria, the exploitation of rich oil and gas deposits in the vast swamps and the triangular-shaped coastal region, through which the River Niger and its tributaries discharge their waters into the Atlantic, has fast become a tragic experience for the vast majority of the population (Peel, 2005). The world body (United Nations) and its agencies rose to the occasion through the adoption of these relevant environmental laws. The Geneva Convention of continental shelf and high seas of 1958 was the oldest. It was observed that the Organization of African Unity (now African Union) has not done much in

this regard as very few conventions and protocols geared towards the preservation of the environment have been adopted (Abdulkadir and Imam, 2009). This is despite the enormous impact on the environment especially as developing countries. International Environmental Laws relating to impact assessment are strictly predicated on the adherence of procedural requirements rather than guidelines on the utilization and exploitation of environmental resources. Douglas and Okonta summed up this issue quoting a report submitted to the World Conference of Indigenous Peoples on Environment and Development during the Rio Earth Summit in June 1992, by the kings, chiefs and community leaders of the Niger Delta which states "Apart from air pollution from the oil industries 'emissions and flares day and night, producing poisonous gases that are silently and systematically wiping out vulnerable airborne biota and otherwise endangering the life of plants, game and man himself, we have widespread water pollution and soil and land pollution that respectively result in the death of most aquatic eggs and juvenile stages of life of fin-fish and shell-fish and sensible animals (like oysters) on the land, whilst on the other hand agricultural land contaminated with oil spills become dangerous for farming, even where they continue to produce any significant yields" (quoted in Okonta and Douglas, 2001). Having reviewed the content of some international environmental laws and agreeing with Akintayo (2006); these laws are broad and extensive as applicable to the Niger Delta area in Nigeria. The African Charter on Human and People's Right (Ratification and Enforcement) Act Cap 10, Article 24 succinctly states that "all peoples shall have the right to a general satisfactory environment favourable to their development. In view of the importance of these international environmental laws and conventions as may be applied to the Niger Delta of Nigeria, most of these laws has not been ratified and domesticated by the country (Charles, 1984). This has raised serious moral and ethical questions about the Niger Delta Environment. Further to this, the corpus of international laws and conventions relating to the environment without the capacity provisions detailing out necessary ingredients of the subject matters makes it difficult to seek for justice and remedies when the environment is abused.

CONCLUSION

Finally, environmental issues in the Niger Delta has provoked considerable interest both nationally and internationally particularly in the mid-1990s despite the availability of relevant international laws on the environment that are not strictly enforceable. The environment of the Niger Delta should no longer be seen as a mere object, but a co-subject with man's activities. The region's environment has majorly been plagued by

extensive land degradation, water and air pollution mainly through oil and gas related activities such as seismic blasts, oil pipelines leakages, dredging, gas flaring and effluent discharges driven by the various multinational companies. In view of the net effect of these activities, Awajiusuk (2010) asserts that the Niger Delta can be seen as an environment cum ecosystem so mangled, raped and denuded that the area has been labelled by the most endangered delta in the world. However, the much talked about UNEP report on the Ogoni (in Niger Delta Region) environment clean up readily demonstrated the implication of international organizations intervening and bringing to the fore issues of the human activities on the environment and its impact assessment from the world view based on the relevant international laws, regulations, policies, and guidelines.

Conflict of Interests

The authors have not declared any conflict of interests.

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