



EXAMINATION OF THE EFFICACY OF LEGAL FRAMEWORK ON OIL PRODUCTION AND SUSTAINABLE ENVIRONMENTAL DEVELOPMENT IN NIGERIA

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Abstract

This article has taken a critical survey of national and international laws and /or legal framework as well as revealed the existence of some critical provisions governing best practices for sustainable environmental management in the sphere of petroleum resources and pollution, particularly in Nigeria. The legislative and institutional framework regulating Nigeria's petroleum industry run through the whole gamut of subsisting laws contained in the Nigeria legal system including the Constitution of the Federal Republic of Nigeria, some of the international and regional treaties in force in the country, part of the laws made by the government of federating states, the local government edicts, common laws and case laws. This article examined in comparative context by reviewing the oil production activities, governmental policies and measures put in place in developed economies like the United Kingdom, Canada and USA. The article further review the efficacy of legal and institutional framework operational in UK, Canada and critically compared same with the present Nigeria regimes on the production, exploration, and environmental impact of oil activities in Nigeria. The article concluded that the adoption of effective sustainable reforms will encourage responsible petroleum exploration and production activities in ways that positively influence economic development of oil-producing host communities and also preserve human and environmental health, sustainable environmental management, good environmental governance, effective environmental management and protection in the Nigeria.

Keywords: Environment, Oil Pollution, Exploration, Legal Framework and Sustainable Development

Introduction

Every stage of petroleum exploration operations, development and production, decommissioning and rehabilitation, transportation and distribution often result in considerable environmental impacts, human health risks and in most cases cause interference with socio-cultural systems as well as socio-economic problems within the oil-producing host communities.⁶⁴ The Nigeria's Niger Delta region is essentially covered by Oil Prospecting License (OPL), Oil Exploration License (OEL) and Oil Mining Lease (OML) that grant oil exploration and production companies' unrestricted access to operate in both onshore and offshore locations with the region. Consequently, there are several environmental impacts associated with petroleum prospecting, exploration and production in the Niger Delta region. For example, disturbance of forests and ground surface as result of geological and seismic surveys, site clearing for construction of roads, tanks farms, brine pits and pipelines, exploratory drilling, development drilling and production wells, construction of processing and production facilities⁶⁵. Over the past fifty five years, a total of about 1,182 exploration wells have been drilled to date in the delta basin, and about 400 oil and gas fields of varying sizes have been documented, ⁶⁶apart from environmental exploration and production operations in both offshore fields within the Niger Delta region. Some of the petroleum exploration and production related activities have caused environmental pollution and pose potential risks to the atmosphere, soils, sediments, surface and groundwater, marine environment and terrestrial ecosystems in the Oil-

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⁶⁴ Y. K. Kharaka,, and others., "Environmental Issues of Petroleum Exploration and Production: Introduction," *Environmental Geosciences*, 12 (2)., (2005), 61-63

⁶⁵ N. G. Obaje., *Geology and Mineral resources of Nigeria*, (London, UK: Springer, 2009), 45

⁶⁶ L.C Osuji. "Some Environmental Hazards of Oil Pollution in Niger Delta, Nigeria," *African Journal of Interdisciplinary Studies*, 3 (1)., (2002), 11-17

producing host communities in the Niger Delta⁶⁷. The major sources of environmental pollution in the Niger Delta region include oil spillage, pipeline explosion, gas flaring and venting, improper disposal of large volumes of petroleum-derived hazardous waste streams, such as drilling mud, oily and toxic sludge⁶⁸, equipment failure/oil spills associated with ageing facilities, sabotage of petroleum facilities (including illegal oil bunkering and artisans refining), oil well blowout, oil blast discharges and other operational discharges⁶⁹. Recently, some of the environmental problems, human health risks and safety issues as well as some economic problems associated with upstream and downstream petroleum operations have been extensively reviewed by Ite et al⁷⁰ and Anejionu et al⁷¹. Although export of petroleum resources have enormously contributed to Nigeria's economy over the past years, the past and present petroleum exploration and production have affected human right to a healthy environment⁷² due to harmful/detrimental consequences associated with petroleum-related environmental pollution and degradation in the oil-producing host communities within the Niger Delta region⁷³. Therefore, it could be argued that poor management of the petroleum resource, ineffective government's petroleum development policies and unsustainable operational practices by the multinational oil companies has led to socio-economic, socio-political, military and complex interaction problems involving the people, economic development and the environment in the Niger Delta region.

⁶⁷ J. P Eaton., "The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment," *Boston University International Law Journal*, 15, (1999), 261 -571

⁶⁸ Ibid

⁶⁹ U. Idemudia., "Corporate Partnerships and Community Development in the Nigeria Oil Industry: Strengths and Limitations", *Geneva: UNRISD: Copenhagen Business School*, (2007), 56.

⁷⁰ S. O. Aghalino, and other., "Oil Exploitation and Marine Pollution: Evidence form the Niger Delta, Nigeria," *Journal of Human Ecology*, 28 (3)., (2009), 177-182

⁷¹ K. S. Ebeku., "The Right to a Satisfactory Environment and the African Commission," *African Human Rights Law Journal*, 3, (2003), 149-166

⁷² Ibid

⁷³ U. E Ite., "Changing Times and Strategies: Shell's Contribution to Sustainable Community Development in the Niger Delta, Nigeria," *Sustainable Development*, 15 (1). (2007), 1-14,

The Concept of the Environment

The word “environment” is a wide and extensive term covering virtually every sector of the earth on which life depends- the atmosphere, hydrosphere, lithosphere, the soil, climate et cetera and the inter relationship among these factors and humans, flora and fauna. Thus, the defunct Federal Environment Protection Agency Act⁷⁴ state that “environment” includes water, air land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them. The interaction within the natural environment and man’s interference with these has led the pollution of the environment. Pollution has been defined as the introduction by man directly or indirectly of substance or energy into the environment resulting in deleterious effect of such nature as to endanger human health, harms living resources and ecosystem and impairs or interferes with amenities and other legitimate uses of the environment.⁷⁵

Under the repealed Federal Environment Protection Agency Act, pollution was defined as man-made or-aided alteration of chemical, physical or biological quality of the environment to the extent that it detrimental to that environmental to that or beyond acceptable limits.⁷⁶

According to the WHO in 1974, the World Health Organization stated in 1974 that the environment is considered or directly or indirectly as a result of activities of man so that it becomes less suitable for all or some of the uses for which it was naturally suitable. Thus any undesirable changes in the natural characteristics of the environment in any state of matters are pollution. Oil pollution may occur in various ways. It may occur from deliberate dumping,⁷⁷ from accidental spills, from leakage at a drilling rig, negligence or used oil improperly disposed of. It must, however be realized that even in the best oil field practice, spillage of crude oil and the resultant pollution, cannot be completely eliminated a certain amount of pollution is

⁷⁴ Cap F. 10 L.F. N 2004, Section 4

⁷⁵ O. K. Edu, *Relation of Petroleum Industry in Nigeria*, Scholar Press Saarbrucken, Deutschland/Germany, 2016, 206

⁷⁶ Al Gore. “Earth in the balance, ecology and the human spirit” Houghton Mifflin Company (1991) p 108 referred to by A. O. Salu “securing environmental protection in the Nigerian oil industry” in *MPJFIL* vol.3. No. 2, 1999, 337

⁷⁷ This may occur when a vessel is in jeopardy and there is no other means of saving life or the vessel itself.

a concomitant of petroleum production.⁷⁸ When oil spills occur⁷⁹, it leads to pollution and environment degradation of the area in question. The impact of oil pollution on the environment cannot be over emphasized. A good example of the effect of oil spillage on water and oceans was made clear by Irading environmentalist and former vice president of the United States of America. Mr. Al Gore⁸⁰when he stated

One of the most viable contaminated in ocean and some inland river system released by Saddam Hussein into Persian gulf, or the one negligently released by the Exxon valdez Prince William sound, capture our attention but the far more numerous smaller spills that take place unnoticed every year probably do more cumulative damage to the oceans. It is in the third world where the effects of water pollution are most keenly bad tragically felt in the form of high death rate from cholera, typhoid fever, dysentery and diarrhea from both viral and bacterial sources.

According to Professor Ambrose Alli⁸¹

As a result of oil losses vast tract of agricultural land have been laid waste, thus becoming unproductive, surface water and river courses are invariably contaminated and polluted rendering the water undrinkable, and the aquatic life is destroyed the result is great hardship for the inhabitant who become impoverished and deprived these unfortunate

⁷⁸ G. Etikerense., *Nigerian petroleum law* 2nded (Lagos: Dredew Publishers, 2004) 157

⁷⁹ It may be debated whether humans can live without oil or not, but it is most times agreed that we are heavily dependent on it in this modern world and will find it hard to live without it. If we continue to use oil in our everyday lives we must make sure that we use it efficiently. This we can do by trying to ensure that we minimize the negative effects of oil in our environment in order to expel all the negative repercussions. An oil spills is the release of liquid petroleum hydrocarbon into the environment especially marine areas due to human activity and is on a form of pollution which can have devastating effects on plants, animals life and the environment oil spills may also occur on land they may due to the release of crude oil from tankers, offshore platforms, drilling rigs and well, it may also include the spills of refined petroleum products such as gasoline ads diesel. Illegal waste oil dumping into oceans by organization as well as natural disasters such as hurricanes and earthquakes can also contribute to oil spills. Oil spills at sea are generally much more damaging than those on land, since they can spread for hundreds of miles which can cover beaches with a thin coating of oil. This can kill sea birds, mammals, shellfish, and other sea organisms. Oil spills on land are more readily containable if a makeshift earth dam can be rapidly created around the spill site before most of the oil escape and land animals can avoid the oil more easily.

⁸⁰ Cap F. 10 L.F. N 2004, Section 4S

⁸¹ A. F. Alli, "Ceremonial opening Address" in the petroleum industry and the Nigerian environment proceedings of international seminar held in Port-Harcourt, Nigeria, 1981, 2

citizens are therefore compelled to migrate to other towns and villages in search of decent life.

Stressing on the adverse impact of oil on human life as well as on the environment Ucggebu⁸² says that:

Oil pollution is a deleterious effect on human beings and marine life. It constitutes a hazard to organism. As the oil producing state are usually riverine, oil spills contaminated their water which is their main source of survival and makes unfertile the little land they hav

Oil Spillage and Liability

The world has today been be-deviled with oil spillage that have has devastating consequences in different parts of the globe making it paramount for the legal regimes in place to be enforced and further strengthened to forestall these violation thereby making our environment safer. Nations, oil companies regulatory bodies and all involved in the industry must as a matter of urgency and necessity realize that there is the need to be more cautions and responsible in the conduct of oil exploration and transportation.

It may be debated whether humans can live without oil or not, but it is most times agreed that we are heavily dependent on it in this modern world and will find it hard to live without it. If we continue to use oil in our everyday lives we must make sure that we use it efficiently. This we can do by trying to ensure that we minimize the negative effects of oil in our environment in order to expel all the negative repercussions this article critically examined the production of oil and gas by extensively comparing what is obtainable in other countries whose economic are built around exploration and production of petroleum resource and the aftermath impact on the physical environment.

The production of oil and gas, legal and institutional framework and its consequent environmental impact on the social economic land scape are further examined in comparative context in this article by reviewing the oil production activities, governmental policies and measures put in place in

⁸² A. Uchebgu "Legal framework for oil spills and the clean-up liability and compensation in Nigeria" in the petroleum industry and the Nigerian environment, proceedings of international seminar, held in Lagos 1983, 33

the following countries, United Kingdom, Canada, United States,. The article further review the efficacy of legal and institutional framework operational in these countries and critically compare them with the present Nigeria regimes on the production, exploration, and the environmental impact of oil activities in Nigeria.

United Kingdom

Liability for oil spills with the other, the operator on the “polluter pays” basis with unlimited liability for costs associated with pollution and clean up, there is a substantial⁸³regulatory regime involving many government bodies for offshore installation, most of which are located in the North Sea⁸⁴, oil pollution, primary responsibility rests with the marine and coastguard agency⁸⁵.

Special rules have been imposed for pollution that is caused by an offshore installation by the Offshore Pollution Liability (OPOL) Agreement of 1975. The OPOL agreement was introduced as an interim measure during the negotiation phase of the convention of civil liability for oil pollution damage resulting from exploration of seabed mineral resources. Negotiation with this convention was ultimately unsuccessful and it was never ratified.⁸⁶ However, the UK considered the OPOL agreement to be a satisfactory means of providing for a strict liability regime in case an operator should default on providing the clean-up costs associated with an incident.⁸⁷

The aims of OPOL are:

⁸³ The United Kingdom used to be a large exporter of oil until 1999 when oil production began to decline as a result of the exhaustion of its well-known deposits and shifts to more areas with higher cost of production. Ownership of petroleum resources in the United Kingdom is vested in the crown and thus shares the dominical mode of ownership with Nigeria. The United Kingdom has a long history of legislation in the area of environmental protection from oil pollution and has an array of legislations in the area. They include the, Petroleum (Production) Act, 1934; Prevention of Oil Pollution Act, 1971;

⁸⁴ Regional Environmental Emergency Team, Atlantic Region Contingency Plan for Environmental Emergency, (1999).

⁸⁵ Journal of Law, Policy and Globalization www.iiste.orgISSN 2224-3240 (Paper) ISSN 2224-3259 (Online)Vol.31, 2014, accessed on the 12th April, 2020

⁸⁶ Pollution Prevention and Control Act, 1992; Off Shore Installations (Emergency Procedures) Regulations, 1976;

⁸⁷ Petroleum (Production) Act, 1934; Prevention of Oil Pollution Act, 1971;

- A. To provide an orderly means for the expeditious settlement of claims arising out of an escape or discharged of oil from offshore exploration and production operation;
- B. To encourage immediate remediate remedial action by the parties;
- C. To ensure the financial responsibility of the parties to meet their obligations;
- D. To provide a mechanism for ensuring that claims are met up to the maximum liability under OPOL;
- E. To avoid complicated jurisdiction problems

Claimants under OPOL include public authorities who can make a claim for any remedial measure taken to prevent, mitigate or eliminate pollution damage or to remove or neutralize the oil following an escape or discharged.” Any one damaged by pollution from the oil spills may also file a claim for compensation if they have suffered “direct loss or damage caused by contamination.⁸⁸”

⁸⁸ Pollution Prevention and Control Act, 1992; Off Shore Installations (Emergency Procedures) Regulations, 1976; Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations, 1998, etc. The pipes used for transportation of crude are of such a high quality that there is yet no reported case of oil spillage emanating from the pipeline networks. This is unlike the case in Nigeria where the NOSDRA was only enacted in 2006, more than 50 years after oil and gas exploration and production commenced. The pipes used in Nigeria for the pipeline networks are also of very low quality hence many have been corroded already. The United Kingdom also maintains the laudable practice of writing the provisions of international conventions to which it is signatory into its national legislations. Non vessel oil spills are also very rare as is the case with Canada. The Department of Trade and Industry is the lead regulator for discharges and gaseous emissions outside the territorial waters of the United Kingdom. The Environmental Agency or the Scottish Protection Agency is in charge of regulations for waters within three nautical miles zone. There are also other bodies for specific environmental issues in the oil and gas industry. The DTI in conjunction with other specialized agencies has the responsibility of measuring environmental performance in the oil industry. It is mandatory requirement for every applicant for a license to include a statement of its environmental policy which must also state the mitigating measures the prospective licensee is to adopt to minimize risk to the environment. A proposed plan of compliance with the condition to be imposed by the Department of Trade and Industry (DTI) is also included in the application. It is the Environmental Protection Program marshaled by the operator in its application that will determine the outcome of the application for license there are no such conditions attached to the grant of an oil mining lease or license in Nigeria. The United Kingdom anchors the very success of its exploratory and production activities in the oil and gas industry on the compatibility of such activities with the environment. There is a high level of awareness that oil drilling activities can only be of value to the society where they conduce with environmental balance and are not a threat to the environment. This situation is exactly the opposite in Nigeria where the Niger-Delta environment is been mindlessly devastated to the extent that if nothing is done to ameliorate the situation, the terrain could become uninhabitable in the next 30 years.

There is expectation to the operation of strict liability, which includes if the incident of pollution is a result of war, hostilities,⁸⁹ an expectation natural phenomenon, an act or omission of a claimant or a third party that intended to cause the damage negligence or wrongful acts from the state or authority.⁹⁰

Canada

Canada is the world's sixth largest producer of petroleum and the largest supplier of crude oil import to the United States.⁹¹ Offshore drilling in Canada⁹² is regulated by the federal government on the west coast and in the arctic and by joint federal provincial bodies off the coasts of Newfoundland and Nova Scotia. Safety standard,⁹³ liability, limits on liability where there is no illegality or negligence and punishment are established by law⁹⁴. Responsibilities for responding to oil spills are shared by many federal and provincial agencies⁹⁵

⁸⁹ Merchant Shipping (Oil Pollution Preparedness, Response and C-operation Convention) Regulations, 1998, etc.

⁹⁰ If it resulted from compliances with instruction or conditions from the licensing states.

⁹¹ Canada has a largely privatized oil industry and is one of the best countries in terms of prevention and control of oil and gas pollution. In many years of oil exploration and exploitation in Canada, very few spills have been recorded. Apart from accidents involving oil tankers, very few incident of spill has been reported. Most of the spill incidents are isolated. One of such incidents was that which occurred when a construction company accidentally punctured a pipeline in Burnaby, British Colombia and certain quantity of oil escaped shooting plumes of 20 metres into the air. Both the operators and the civil society in Canada are environment friendly. The legislations governing oil spills, individual oil pollution generating accidents and environmental emergencies in Canada are:(1) The Canadian Shipping Act; The Marine Liability Act; The Fisheries Act; The Migratory Birds Convention Act; The Canadian Environmental Act; The Transportation and Dangerous Goods Act; Canada Oil and Gas Convention Act;

⁹² Ibid

⁹³ Canadian Wildlife Service, Environmental Conservative Branch, Environment Canada Atlantic Region, "Oil Spill Response Plan" August, 1999

⁹⁴ O. Fagbohun. The Law of Oil Pollution and Environmental Restoration, (Lagos: Odade Publishers, 2010) .188

⁹⁵ This is unlike the situation in Nigeria where even extant legislations in the oil gas sector do not concern them with the issue of pollution. Canada has both the infrastructure and training required to respond to an oil spill. Gas flaring is banned in Canada. The various Acts have established specialized bodies for their administration. In Nigeria, there are no adequate infrastructures for the control of oil pollution and gas flaring is still the rule rather than the exception. Institutional capacity for the administration of extant laws is also weak. The Environmental Protection Branch of Environment Canada is the Federal Agency responsible for ensuring that appropriate reporting, surveillance and response mechanism are in place to deal effectively with Environmental emergencies. They coordinate the efforts of government and industry in their response to Environmental emergencies and advise them on the scene commander and the Federal Monitoring

The Canada Oil and Gas Operation Act⁹⁶ (COGOA) generally prohibit oil spills and require all spills to be reported. persons who are responsible for an oil spills are required to “take all reasonable measure consistent with safety⁹⁷ and the protection of the environment to prevent any further spill to repair or remedy any condition resulting from the spill and to reduce or mitigate any danger to life, health, property or the government that result or may reasonably be expected to result from spill. “The chief conservation officer in the national energy board (NEB) can step in to take any action that he deems necessary. This official can also bring in other parties to do work that are not being done by the polluter.⁹⁸ The costs are to be borne by the polluter and constitute a debt owed to the government. Third parties hired by the government are not liable for any damages unless they act unreasonably.

The regulatory petroleum regimes in Canada include the following:⁹⁹

- A. The National Energy Board-Canada’s National Energy Board (NEB) has broad responsibilities in the field of oil and gas exploration. Its

Officer of the Canadian Coast Guard on environmental priorities and response strategies. Responsibilities for environmental protection are complimentary and clearly defined. There are no overlaps in functions or conflict between the agencies that will work to sustain the environmental protection efforts. This is unlike the case in Nigeria where Directorate of Petroleum Resources (DPR), National Environmental Standards Regulation and Enforcement Agency (NESREA) and National Oil Spill Detection and Response Agency (NOSDRA) are struggling for roles and contradicting their various efforts. Every oil spill in Canada which affects an appreciable area of land, water and air can lead to prosecution under the Canadian Environmental Protection Act, the Migratory Birds Convention Act, the fisheries Act and/or the Canadian shipping Act. In addition to fines, a polluter may also be expected to foot the costs of remediation. Most oil spills in Nigeria go unpunished as operators quickly avail themselves of the avalanche of available defenses. Canada has a detailed and substantial legal framework for the control of oil and gas pollution. It is an environment friendly developed economy and does not permit the exploration and exploitation of oil and gas resources at the expense of the natural environment and biodiversity. It is among the few countries that approach petroleum activities from the standpoint of sustainable development. This is unlike Nigeria where pipelines crisscross the mangrove swamp forests and regularly spill oil into such forests wiping out large tracts of them without any body batting an eyelid.

The culture of sustainable development is so much imbibed by all that even companies willingly give up mining rights and concessions so as to assist in the consolidation of the natural environment by the creation of specially protected areas.

⁹⁶ The Marine Liability Act

⁹⁷ The Environmental era legislations were mainly focused on general environmental issues

⁹⁸ Canada, Burnaby, Burnaby Oil, Spill, Update> accessed 12/09/2019. Journal of Law, Policy and Globalization www.iiste.org access on the 16/04/2019

⁹⁹ A reported 10.6 million gallons was spilled into the Atlantic Ocean, 563-6441cm S.E. of Cape Race, Newfound and in an incident inviting a ship known as “ The Athenian Voltic”

responsibilities include the regulation of oil and gas exploration, development and production, enhancing worker safety and protecting the environment¹⁰⁰.

- B. The Department of Indian and Northern Affairs (INAC) – INAC works in partnership with northern and aboriginal government and people govern the allocation of crown lands to the private sector for oil and gas exploration; develop the regulatory environment set and collect royalties and approve benefit plans before development takes in a given area.
- C. Environment Canada–Environment Canada is Canada federal environment protection agency it plays a role in preventing and addressing oil spills.
- D. Canadian Coast Guard – The Canadian coast guard is an agency in the department of fisheries and ocean. The coast guard has the primary responsibility for managing and cleaning up oil spills from tanker and ships.
- E. Canadian Wildlife Service – The Canadian wildlife service coordinate the rescue and treatment of migratory birds and endangered species the service also assesses damaged caused by oil spills to wildlife and habitants to help determine whether liable parties should be prosecuted and the costs that they should bear. Studies are also conducted to determine the status of recovery efforts.¹⁰¹
- F. Canada – Newfoundland Offshore Petroleum Board – The Canada Newfoundland and Labrador offshore petroleum board has the responsibility to ensure that offshore oil and gas industrial activities proceed in an environmentally acceptable manner.¹⁰²

¹⁰⁰ Canada Oil and Gas Convention Act;

¹⁰¹ Www Canada “Burnaby Oil Spill Update” Verdena- 19, Human Rights <<http://versenac19.wordpress.com/200/07125wwwf>. ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.31, 2014, access on the 16/05/2020

¹⁰² The Canadian Shipping Act

United States

The recent Gulf of Mexico oil spills flowed undiminished for three months in 2010 due to an explosion of deep-water horizon drilling rig¹⁰³ that was operated by BP (British petroleum).¹⁰⁴ The explosion killed eleven workers and injured sixteen others; another ninety-nine people survived without serious physical injuries. The effect of the explosion was that the deep-water horizon began to sink which started the offshore oil spills in the Gulf of Mexico. Thousands of dead invertebrate like starfish and coral were found. Similarly many dolphin offspring were found dead along the gulf coast. Oyster beds were also devastated by the oil spills and it is said that it could take ten years for the population to reach its former size this incident has been referred to as the second largest environment disaster in the US.¹⁰⁵

Prior to the 2010 Gulf spills, the most notable example was the 1989 Exxon Valdez spills, which released approximately 11 million gallons (260,000 barrels) of crude oil into Alaskan waters. According to BBC news, the oil killed over 250,00 seabirds, 2,800 sea otters, 250 bald eagles¹⁰⁶, 300 harbor seals, and 22 killer whales as well as countless herring and salmon¹⁰⁷. The Exxon Valdez spills played a large role in highlighting the need for stronger legislation and spurred congress to enact comprehensive oil spills legislation, resulting in the oil pollution act (OPA) which was signed into law in august 1990. This law expanded and clarified the authority of the

¹⁰³ The legal framework for the control of oil and gas pollution in the United States is founded on three laws. These are the Oil Pollution Act (OPA) of 1990, the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA), 1980 and the Water Control Act of 1972 otherwise known as the Clean Water Act. In addition to the above Acts is the National Oil and Hazardous Substances Contingency Plan issued by the United States Environmental Protection Agency. The OPA is administered by the United States Guard and provides for liability for oil pollution damage occurring in the navigable waters and the adjoining shoreline or the exclusive economic zone of the United States. The Act also established the Oil pollution Fund for responses and payment of claims where an operator is unable to furnish adequate funds for the purpose. The Act also declares the content of the National Contingency Plan.

¹⁰⁴ Journal of Law, Policy and Globalization www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.31, 2014

¹⁰⁵ Apart from agencies of government, industry associations such as the UKOOA, IADC and OCA work with the DTI to determine the environmental performance of operators

¹⁰⁶ Section 4201, OPA

¹⁰⁷ Section 1012 OPA

federal government and created new oil spills prevention and preparedness requirements.¹⁰⁸

The OPA improved the nation's ability to prevent and respond to oil spills by establishing provisions that expand the federal government ability and provide the money and resources necessary to respond to oil spill.¹⁰⁹ The OPA also created the national oil spill liability trust fund which is available to provide up to one billion dollars per spill incident.¹¹⁰

The government framework for oil spill in the United State remains a combination of federal, state, and international authorities unlike the Nigeria system where the control of mineral resource is highly centralized. Within this framework, several federal agencies have the authority to implement oil spills regulations.

¹⁰⁸ The CERCLA is also known as the "superfund." It makes provisions for the clean-up of sites contaminated by spills and hazardous substances. It provides liability for clean ups and clean up procedures that protect humans and the environment. The Act empowers the president to clean up hazardous substances sites either directly or through a responsible party by enforcement actions. Under the Act, the trustee for the environment may recover Apart from agencies of government, industry associations such as the UKOOA, IADC and OCA work with the DTI to determine the environmental performance of operators

¹⁰⁹ The CERLCA operates retroactively and can be used against those responsible for hazardous wastes before its enactment. The Clean Water Act aims at maintaining and restoring the chemical, physical and biological integrity of the waters of the United States and to apply the best available and economically achievable technology to maintain waters quality so as to ensure protection of fish, shellfish, wildlife and human recreation activities. In a nutshell, it aims at preventing the pollution of the waters of the United States. The United States can therefore be said to have an array of mutually complementing legislations for the prevention and control of oil and gas pollution. Its National Oil Contingency Plans thrive on the existing legislations such that there is a harmony between law and implementation. The United State designates the Environmental Protection Agency (EPA) as the lead agency for inland waters and land based oil spills while the United State Coastal Guards (USCG) is the lead agency for coastal and deep water port oil spills. In summary, though the United State of America has the potential threats for devastating oil spills in view of the large size of its oil industry; it has a sophisticated and effective legal framework to meet these challenges. The 2011 regulations made pursuant to the NOSDRA are patterned after the United States model of oil pollution response mechanism. It is however doubtful whether Nigeria possesses the trained personnel and equipment for the implementation of the regulations. One common feature of the oil and gas pollution prevention mechanism discussed above is their awareness that oil and gas activities are hazardous in nature and their readiness to legally address the situation at all times. This is unlike in Nigeria where all the preoccupation of government is on how to maximize oil output with little or no attention being paid to the damaging effects of oil production on the environment.

¹¹⁰ Restoration, Natural Resources Damage Assessment and Restoration Program 'Laws, Regulations and Authorizing Statutes' at <<http://restoration.doc.gov/laws.html> accessed 19-02-2012

Conclusion

Petroleum exploration and production in the Nigeria and export of oil and gas resources by the petroleum sector have substantially improved the Nigerian economy over the past years. However, petroleum pollution of the environment and human health risks and/or socio-economic problems associated with petroleum exploration and production operations have been attributed to the ineffective government's petroleum development policies, unsustainable operational practices by the multinational oil companies and corrupt practices in the petroleum sector. This article through its comparative legal and institutional survey in the develop countries has further revealed that there are some lapses in the Nigerian environmental laws that have been exploited by the multinational oil companies to their advantage without recourse to the oil-producing host communities as well as the environment. However, it is becoming increasingly apparent to multinational oil companies that pollution prevention pays while pollution does not and under pressure from stakeholders groups, oil companies now routinely incorporate environmental impact assessments into their corporate responsibility. Although severe petroleum pollution and degradation of the Nigeria environment from oil industry activities have been attributed to the absence of justice for the victims, considerable progress has been made at the level of institutional developments, international cooperation accords, and public participation over the last twenty years. In the past forty years, over 24 international environmental protection accords with global implications have been promulgated under the auspices of the United Nations and other international organizations, together with many additional regional agreements. In order to achieve sustainable development of oil and gas resources in the Nigeria, both the government and the multinational oil companies need to adopt environmental sound technologies and cleaner production processes as well as effective implementation of international legal framework to help mitigate the associated problems of environmental degradation and pollution. Adoption of effective sustainable reforms will encourage responsible petroleum exploration and production activities in ways that positively

influence economic development of oil-producing host communities and also preserve human and environmental health in the near and long, environmental principles are critical for sustainable development, good environmental governance, effective environmental management and protection in the Niger Delta region.

Recommendations

Environmental impact of hydrocarbon pollution and its consequential defaced of the Nigeria environment has place a major challenge on the environmental integrity of the Niger Delta communities and the Nigeria socio-economic and political well-being. In view of the above, this article recommends as follows:

- A. Proactive measures and effective environmental legislative and institutional framework in order to improve on petroleum industry regulations. Nigeria go unpunished as operators quickly avail themselves of the avalanche of available defenses. Canada has a detailed and substantial legal framework for the control of oil and gas pollution. It is an environment friendly developed economy and does not permit the exploration and exploitation of oil and gas resources at the expense of the natural environment and biodiversity.
- B. There is a dire need to review various national laws and the 1999 Constitution of the Federal Republic of Nigeria as they affect hydrocarbon pollution, in order to provide effective framework for regulation, sustainable environmental objectives and environmental enforcement as applicable in the constitutional law of the United States, Canada which confers on the citizens the right to live in a healthy non-polluted environment and the principle of subsidiarity.
- C. That Oil Industry should be made to pay or it licence be withdraw for any form of hydrocarbon pollution on the environment whether at the upstream or downstream level of its operational activities.

- D. A total overhauling of the entire cooperate structure of the Nigeria National Petroleum Corporation (NNPC) as this will refocused a goal oriented output.
- E. That Environmental offences which concern the breach of environmental laws and regulations should be made a strict liability offence as practicable in the United Kingdom.