TACKLING OIL POLLUTION IN NIGERIA INLAND WATERS: THE EXTANT LAWS AND THE NEED FOR URGENT LEGISLATIVE APPROACH*

Abstract
The susceptibility of the environment to damage and pollution is a global thing, and it is becoming alarming. The resultant effect is devastating situations which threaten the existence of mankind and the entire ecosystem. Pollution resulting from bush burning alone, flood and erosion, desertification and deforestation affects the lives of biotic creatures and thus, threaten survival of biodiversity, since their habitat are affected. In Nigeria, reports abound on daily basis of the dangerous trend arising from the negative influence of technological and scientific expeditions in the space, on the earth, and on internal waters due to high scale mineral exploration and exploitation, industrialization and even the unwholesome activities of the multinational oil corporations. Increasing oil spill and gas flare has adversely affected the inland waters leading to declining fish stock among other things and host diversity. There is an urgent need for the legislature to look into this aspect urgently and holistically. There are some international conventions to this effect, which Nigeria may resort to but some of them are obsolete and are yet to be domesticated. The writer has used his experience in the field using secondary data methodology to explain among others, internal waters, types of pollution, and regulations put in place to arrest the ugly trend.

Keywords: Oil Pollution, Regulation, Inland-waters, Common Law, Legislature Approach.

1. Introduction

It was Kofi Anan, former United Nations Secretary General that said: 'All our effort to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated'.[1] What we learnt from the above words of the elder statesman is that, pollution all over the globe, unwanton abuse of the environment and the consequent inherent danger resulting from the impact of human activities, technological and industrial development is a threat to the very existence of man himself.[2] It goes further to mean, in line with Enyeting's ubmissions, that environmental pollution negates fundamental values and what life stands for. Above all, that we do not in any way need to preach the importance of the right to life as contained in our constitution,[3] because it is clear according to Enyeting,[4] that it has been argued that, though the number of people whose right to life has been deprived through state's apparatuses can be ascertained with mathematical precision, it is however impossible to ascertain human population whose right to life has been deprived through the instrumentality of pollution.

It is on record that with the increased use of heavy machines for the exploration and exploitation of oil in Nigeria, the refineries, automobiles and other products including the scientific breeding of livestock for food, there is today considerable pollution of air, land and sea. It is in recognition of these hazards that the Federal Government of Nigeria as well as various state governments enacted environmental laws to ensure sanitation and safeguard human life from danger and disease caused by pollution either by eating fish from polluted inland waters or by direct drinking of polluted water by humans.[5] In Nigeria both the federal and state legislatures has delved into this very important area out of urgency and necessity, hence the enactment of the various state environmental protection agencies or bodies. For example; the first major effort of the Lagos State Government was the Environmental Sanitation Edict, No 19 of 1978.[6] The Cross River State and the Rivers State Governments respectively enacted environmental sanitation edicts.[7] Consequently, Ebonyi State enacted the Environmental Protection Law, EBSEPA,[8] to mention but a few. At the federal level in Nigeria, the environmental matter is in the residual legislative list of the Nigerian Constitution; hence states are also empowered to legislate on it, provided their provisions do not conflict with any federal enactment. It is observed that the common law has made attempts at this direction but it's provision at the initial stage looked grossly inadequate but was able to withstand the realities of the time when it was made. It is only in recent years that Nigeria awoke from slumber to make statutory provisions to control and regulate oil industry activities because of the dumping of toxic waste at Koko Port in the old Bendel state, (now Delta state). The incidence

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1. Former United Nations Secretary General; In Larger Freedom: Towards Development, Security and Human Rights for all Report for the United Nations sixtieth Anniversary Summit, 2005.
[2] P. Enyeting: Human Rights and the Niger Delta Question (Gabaj Graphics, Lagos, 2009) p.18.
[3] S. 33, Constitution of the Federal Republic of Nigeria, 1999 as amended.
[4] P. Enyeting p. (2) Ibid.
[5] See, for example: Environmental Sanitation Edict of River State 1984 published as supplement to official gazette No. 6a. 169 (1984) and Cross River State Edict Supplement to Gazette No.6, 1986.
[6] published as supplement to Lagos State of Nigeria official Gazette, extraordinary No. 40 vol. 11 of 12th October, 1978.
[7]See, for example, Environmental Sanitation Edict 1984, supplement to official Gazette no 6. (1986).
[8] 1999, Environmental Protection is neither in the Exclusive Legislative List, nor the concurrent, hence, it is in the residual list.

at the Koko Port made the country to open her eyes to safeguard the country against pollutants that can endanger the lives of people of Nigeria and beyond. This gave birth to the promulgation of the Harmful Waste (Special Criminal Provisions Act, 1988.[9]

2. What is Pollution?

Since the discovery of oil in Nigeria, between the pre-independence era[10] and up till recent years, the country shifted from Agriculture to the Production of Petroleum. The shift brought in its wake sophisticated way of life, high technology and industrialization, which in its own way created and is still creating various environmental hazards. The oil boom which earned a huge amount of foreign exchange for Nigeria has resulted in an oil doom as it left in its trail, a catalogue of woes in the areas where oil operations are carried out. The chance of pollution occurring in the oil industry is generally very high and with devastating consequences. According to Kerentse,[11]

> It is generally known that in the oil industry, even in the best oil field practice, that spillage of crude oil and the resultant pollution cannot be completely eliminated. Pollution is one of the prices, which must be paid by any country that is involved in the operation of oil. Oil spill may occur in many ways, such as in the activities of oil explorers who normally employ drilling or explosive method at the exploration stage. It may also, occur at the production stage.

The major type of pollution is oil spillage from exploration and development which may result from blow out and the characteristics of the crude depend on the crude blend. Major spills occur during transportation of crude oil either through accidents or through pipeline rupture and may spill into inland waters causing damage as a result of pollution of the waters. There are also possibilities of the spill of the refined product in operation at the downstream sector. There are other sources of pollution which include sanitary wastes, which consist of domestic wastes emanating from toilets, sinks, showers, laundries and galleys. The volume and concentration of sanitary vary widely with time, facility occupancy and operational situation.[12] Most times, they are oxygen, consuming organic matter, faecal coliform and floating solids. Others are treatment wastes, which are spent fluids that result from acidification and hydraulic fracturing operations made to improve oil recovery. It is on record that there are standards set for exploration and development operations which marginal field and other operators are expected to adhere to strictly, to ensure a safe environment free of pollution.[13]

The guidelines provide that the limitations, standards and monitoring shall regulate and control the quality and quantity of industrial effluents associated with oil drilling activities and operations. They are to ensure that the discharge do not cause any hazard to human health and living organisms (fauna and flora) and do not impair the quality to use adjacent surface waters, inland waters and ground water. The guidelines further provide that it shall be mandatory for a licensee or leasee to conduct an Environmental Impact Assessment (ElA) for every development activity such as:

(a) Onshore and near shore development drilling.
(b) Construction of onshore and near shore flow lines, delivery lines and pipelines in excess of 57 kilometers in length.
(c) Construction of onshore and near shore flow stations and production stations (production platforms),[14]

It is provided that except as otherwise specifically permitted by the Department of Petroleum Resources. (DPR) whole drilling mud/fluids, spent drilling, brine, drill cuttings, well treatment wastes, deck drainage or residues thereof, from water, mud, and drilling activities shall not be discharged directly or incorrectly too:

1. Any inland waters (fresh, brackish, tidal or non-tidal) or reservoir
2. Swamp, coastal or near shore waters.
3. Any pit on land/swamp other than temporary retention pits so designed and utilized that there shall be no overflow, leakage or (seepage).[15]

Pollution has been defined as 'the introduction by man directly or indirectly of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to the living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality of use of sea water, i.e. inland waters and reduction of amenities'. This definition was endorsed by the 1972 Stockholm Conference on the Human Environment; Principle 7 of the Declaration reads: 'States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage

[9] See, Decree No. 42 of 1988.
[10] Between, 1908, 1946 and 1960.
[11] G. Eti Kerense, *Nigerian Petroleum Law*, London: Macmillan, 1985 at p. 62.
[12] See, U. Uguru: Environmental Issues and Liability for Marginal Oil Field Developers under Nigerian Law, *Nigerian Environmental Law Review:* A publication of Nigerian Environmental Law Teachers Society, edited by C.A. Omaka (Kingdom Age Publications, Enugu, 2010) p.22.
[13] See, Part 1, Par, 4, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria.
[14] Op cit, paragraph 5.0-5.1.
[15] See, paragraph 3.0, part II of the guideline, op cit.

amenities or to interfere with other legitimate uses of the sea'.[16] Also, the Organization for Economic Corporation and Development (OECD) Council Recommendation on Equal Right of Access in relation to Frontier pollution, defines pollution as: any introduction by man directly or indirectly of substances or energy into the marine environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystem, impair amenities or interfere with other legitimate uses of the environment. The Joint Group of Experts on the scientific aspect of marine pollution (GESAMP) enumerated the main classes of marine pollutants as follows: halogenated hydrocarbons, petroleum and its derivatives, other organic chemicals, nutrient chemicals, inorganic chemicals, suspended solids, and radioactive substances.

There seems to be a variety of classifications as to the sources of marine pollution,[17] the 1982 Law of The Sea Convention, identifies five such categories: (i) Land based pollution,[18] (ii) Pollution from sea bed activities,[19] (iii) Pollution from dumpings,[20] (iv) Pollution from vessels,[21] and (v) Pollution from and through the atmosphere.[22] It must be emphasized that all these sources as highlighted above affect the totality of the marine environment as the current and the wind ensure the dissemination of all kinds of pollutants all over the oceans. It may also occur through pipeline leakage[23], or from an accidental spill.[24] Oil pollution may occur when there is a leakage at a drilling rig,[25] or used oil may be improperly disposed.[26] The impact of oil pollution on the environment cannot be overemphasized. It has been scientifically proved that:

> When used motor oil is poured onto the ground, it can seep into the groundwater and contaminate drinking water from internal waters. A single quart of oil can pollute 250,000 gallons of drinking water. Also pouring oil in the sewer (or into the street) where it will eventually wash into the sewer is like pouring it directly into a stream or a river, which will adversely affect all the aquatic life in the internal waters or estuaries.

Whatever the source of oil pollution, the effect can be devastating. A good example of this is the Exxon Valdez[27], oil spill of March 24, 1999. Uchegbu holds that:

> Oil pollution has a deleterious effect on human beings and marine life. It constitutes a hazard to organisms. As the oil producing states are usually riverine, oil spills contaminate their water, which is the main source of survival and makes unfertile the little land left for them as their surface rights.[28]

3. Internal Waters of Nigeria

Oyende[29] stated that the marine environment of a nation consists principally of oceans, bays, estuaries and other major water bodies on the seaward side of the mean water mark.[30] In Nigeria, there are in addition to the internal waters, the following maritime zones: Territorial waters,[31] Contiguous zone,[32] and Continental shelf.[33]

Territorial Waters: This is a zone that extends 12 nautical miles (nm) from the coast and over which the state is free to set laws, regulate and use any resource. Vessels from other countries are given the right of innocent passage ie, passing through waters in an expeditious and continuous manner not prejudicial to peace, good order or security of the coastal state. Countries can also suspend innocent passage in specific areas of their territorial sea for security reasons particularly, if there are serious violations of the state's regulations or severe infringement on rules regarding discharge of hazardous waste causing pollution of the state's waters.

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[16] Recommendation 92 of the Action Plan and Annex III to the Stockholm Report (General Principles for Assessment and Control of Marine Pollution) UNCHE Doc. A/CONF. 48/8 & 197.

[17] Churchill and Lowe. *The Law of the Sea*, 2nd ed, Manchester, 1988, Pp 244-246.

[18] Art. 207, United Nations Convention on the Law of the Sea, UNCLOS. 1982.

[19] Ibid. Arts. 208-209.

[20] Ibid, art. 210; this is likely to occur particularly when a ship is in jeopardy or, involved in a collision.

[21] Ibid, Art. 211.

[22] Ibid, Art. 212.

[23] As in the Mobil Oil Pipeline Leakage of January: 1988, when 40, 000 barrels of crude oil was spilled into Nigerian Waters due to a rupture in the pipeline serving the Idoho platform, 13, miles offshore.

[24] This may occur in the process of transportation.

[25] As it occurred in the Funiwa 5 Oil Slow out in Nigeria.

[26] This is a common occurrence of Automobile Service station.

[27] See, the American Bar Association Journal, vol. 77 of February 1991 at p.69, where it was reported that when the Exxon Valdez ran into the Bligh Reef off the Coast of Alaska, it dumped more than 11 million gallons of oil into the Prince William Sound, officials reported that more than 1,000 sea officers, 140 bald eagles and 36, 1000 sea birds died from the effects of the spills.

[28] Uchegbu; Legal framework for oil spill and clean up liability and compensation in Nigeria in the Petroleum Industry and the Nigerian Environment, Proceedings of the 1983 International Seminar, NNPC, Lagos (1984) at page 33.

[29] K. Oyende: *Oil Pollution Law and Governance in Nigeria* (Stirling-Holden publishers Ltd. Ibadan, 2017) p. 109.

[30] See, Dictionary of Military and associated terms, US. Department of Defence (2005).

[31] Territorial Waters Act, Cap T5 LFN 2010, see, also, Art. 3 of the Law of the Sea Convention (LOS) 1982.

[32] See, Art. 33, LOS. See also, Art. 6 of the Geneva Conventions on the Territorial Sea and the Contiguous Zone, 1958. Under the LOS, the contiguous zone is subsumed in the territorial sea.

[33] See, Art. 76 LOS. Coastal States have sovereign rights to explore and exploit the continental shelf, and the shelf can extend up to 200 nautical miles or more under specific circumstances. See also S.l(l) Exclusive Economic Zone Act. Cap 116, LFN 1990.

Contiguous zone: This is a zone that extends a further 12 nautical miles beyond the territorial waters, or 24 nautical miles from the coast. Within the contiguous zone, a state can continue to enforce laws with respect to pollution, taxation, customs and immigration. The idea of a contiguous zone, i.e. (a zone bordering upon territorial sea) was formulated as an authoritative doctrine in the 1920s. Article 24 of the Convention[34] provides that in a zone of the high sea contiguous to its territorial sea, the coastal state may exercise control necessary to prevent infringement of its laws, on customs, immigration, fiscal, pollution and so on, and can punish criminals on acts considered inimical and antithetical to the safety of lives at sea.

Continental Shelf: This has been defined as the natural prolongation of the land territory to the continental margin's outer edge or 200 nautical miles (nm) from the coastal state's baseline, whichever is greater.[35] A state's Continental Shelf may exceed 200 nautical miles (nm) but may not exceed 350 nautical miles from the baseline,[36] over which states also have the exclusive right to harvest minerals and non-living materials in the sub-soil. Above all, the Continental Shelf of Nigeria is an area rich in natural resources including great varieties of fish and abundant oil and gas resources; construction of pipelines and laying of submarine cables, oil and gas platforms and other installations take place in this area and often times, cause serious pollution of the waters, forming part of the continental shelf.

It is observed that Article 5 of the 1958 Geneva Convention and Article 8 and 47 of the 1982 United Nations Convention provided that internal waters are waters on the landward side of normal baseline, straight baseline, and archipelagic baseline from which the territorial sea is measured. Based on this provision of the Conventions, the internal waters of a coastal state may include:

(a) Waters on the landward side of the normal baseline which is low water line along the coast as a mark on large scale charts officially recognized by the coastal state.
(b) Waters on the landward side of straight baselines accepted to calculate the breath of the territorial sea.
(c) Waters of bays to which the breath of the entry does not exceed 24 miles.[37]
(d) Waters considered to be holistic gulfs, bays, inlets and straits even if the breath of entry exceeds 24 miles.[38]
(e) Waters of ports limited by a line passing through the most extended port installations seaward.
(f) Waters in the case of islands, deeply-indented waters, having fringing reefs, mouth of rivers.
(g) Waters of a state considered to be unstable, archipelagic waters which are closed by closing lines.

The Convention provides and allows coastal states to establish their internal waters according to the circumstances of their own coastline. In some cases, however, the establishment of the internal water of states is considered not appropriate with international laws and regulations. The coastal state exercises full sovereignty over its internal waters and foreign ships while on this water must observe the laws and regulations of the state as its land territory.[39]

3. Definition of Marine Pollution under the International Marine Pollution Conventions

The damage caused by marine pollution of the high seas which invariably results in the pollution of the internal waters of nations either by direct, unwanton discharge of oil into the sea, or through indirect oil spillage has in time past became a source of worry to the international community. This led to a number of treaties and Conventions though we shall mention some of them. We have also gone through the Conventions and found out that most of them left the issue of definition unattended to. What some of them did was to merely direct states on what steps to take to avoid causing pollution on the high seas, and for states to ensure that their own ship does not engage in acts that will cause pollution on the seas. Our findings show that the intention of most of the treaties and conventions in avoiding to give a definition to what may constitute pollution, gave rules and directives to states on what to do to avoid pollution of the waters. This to our mind is not unconnected to the principle of the freedom of the sea which states do oblige to an extent. To us, the conventions fall short of acknowledging a more comprehensive duty to prevent marine pollution or protect the marine environment from oil pollution and as such, offer no definition of the term pollution as observed by Oyende in his book.[40] For example, the 1958 Conventions[41] appear to conclude that states enjoy substantial freedom to pollute the oceans, based on the principle that high seas belonged exclusively to nobody (res nullius) and its freedom must be exercised with regard to the right of others.[42] This view was also not contradicted by the 1954 London Convention,[43] which on its own, did not prohibit

[34]Laws of the Sea Convention, 1982.
[35]K. Oyende: *Oil Pollution Law and Governance in Nigeria*, (Stirling-Holden Publishers Ltd. Ibadan, 2017) p. 109.
[36] Article 76 of the Law of the Sea Convention.
[37] Nautical Miles (nm).
[38] Ibid (nm).
[39] M. Kashubsky, Marine Pollution from the Offshore Oil and Gas Industry. Review of Major Conventions and Russian Law (Part I) *Marine Studies* November-December (2006)3. See also, C. Brown, International Environmental Law in the Regulation of Offshore Installations and Seabed Activities: The case for a South Pacific Regional Protocol in M. Kashubsky op.cit.3.
[40] See, K. Oyende: *Oil Pollution Law and Governance in Nigeria* (Stirling-Holden Publishers Ltd. Gaaf Building, Ibadan, 2017) p. 114.
[41]Law of the Sea Convention, (LOS) 1958.
[42] P.A. Boyle & Redgwell, *International Law and the Environment*, (Oxford University Press, 2009) 3rd Edition.
[43] See, the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 as was agreed in London on 12 May, 1954.

discharging of oil from ships at sea. Also, the International Atomic Energy Agency (IAEA)'s regulations permitted the low-level radioactive waste disposal at sea.[44] Fortunate enough, the coming into force of UNCLOS III changed the position.[45] Articles 192(5) of the UNCLOS provided that states have the obligation to protect and preserve the marine environment through regional treaties and multilateral agreements negotiated progressively since 1954.[46] Same UNCLOS III, appear to be different from other conventions mentioned above, for it only proffered a working definition of the word, 'pollution' as:

> The introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or, is likely to result in deleterious effects as harm to living resources, and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction in amenities.[47]

This definition aptly portrays that most of the substances that could be said to pollute the marine environment must have been introduced to it by man and must have altered its natural state.

4. Source of Marine Pollution

In the Nigeria oil industry, pollution of inland waters occur at various stages of oil production activities. Pollution caused by oil, or its derivatives in both oil and allied industries may be occasioned by activities beginning at the exploration stage during which explosives[48] or the drilling method,[49] may be employed. It may also occur at production stage during which the discovered oil is tapped and as a consequence of which unused derivatives such as gas may be flared into the atmosphere. Pollution is also common at the state of transporting crude or refined oil through pipelines[50] and its carriage by oil tankers[51] and other vessels. It may also occur at the refining stage during which wastes[52] and effluents are discharged into unauthorized and authorized places. The cumulative effect of the pollution sources in the oil operation activities constitutes great damage to all natural resources and human beings namely:

Marine Sources:

This type is from sources resulting from shipping, navigation and offshore prospecting and mining activities affecting both internal and coastal waters. It includes accidental discharges from vessels of fuel or cargo as a result of navigational or maritime accidents and the carriage of hazardous goods.[53] It could also result from operational discharge from vessels, like ship in the course of cleaning or ballasting operation or pollution resulting from the exploration of oil and other mechanical devices in the course of mining operation and from other installation devices operating in the marine environment or sea bed. There may be deliberate disposal of garbage like plastics or sewage dumped directly into the sea or inland waters.

Land based Sources of Pollution

Pollution of inland waters under this category could be either land based, such as the release of toxic or harmful substances into the waters in the course of transportation; or in the form of storm water runoff, excessive flooding into the inland waters in both rural and urban areas which are contingent to the seas, or wastes carried down by rivers, deliberate dumping of industrial waste arising from effluent discharged from industries and sewage treatment plants.[54]

Atmospheric Pollution

This type include, gas exchange and particulate disposition found in the trace of metals in vehicle exhaust fumes. It include flaring of gas in oil producing areas which combine with certain elements in the atmosphere to produce acid rain, which are easily washed down into internal waters, seas and oceans.

Tipping into the Sea or River

Hitherto, a process called pulverization is a valuable process preliminary to composing, but a means of reducing the volume of refuse before tipping into the sea or inland waters. The purpose is that pulverized refuse is less offensive to humans, less attractive to flies and rodents than ordinary refuse. Ordinarily, direct tipping of refuse into the sea or inland waters was restricted to coastal cities like Lagos, Calabar and Port Harcourt. The danger is that the method pollutes territorial waters, inland rivers and lagoons. The method therefore came under serious criticism and was abolished because the refuse

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[44] Ibid
[45] Law of the Sea Convention (LOS) 1982.
[46] Ibid
[47] Art. 1(4) LOS. 1982.
[48] See, *Chief Otutu and Ors. v. Shell BP Ltd* 1985, unreported suit No. BHC/183 of 15/1/83 and Smith v. Great Western Railway (1926). T.LR. 391 at 392.
[49] Nigerian Funiwa, 0.7 well Blowout of Jan. 17, 1980.
[50] See, *Onyin and Anor. v. Shell B.P. and others,* 1982, unreported suit No. FCA/B/1/8 of 7th December, 1982.
[51] The Torrey Canyon, an Ocean Tanker which grounded off, the Coast of England on 18th March, 1987.
[52] *Edhemowe v Shell B.P. Limited* (1971) (unreported) Suit No. UHC/12/70 of 29th February, 1971.
[53] No. 27 of 2007.
[54] See, K. Oyende, Op. cit. p. 116.

materials are later found deposited at the shores of rivers, beaches by the wind and tides, thereby exposing coastal states to inhale toxic stench inform of toxic acid which when inhaled causes diseases to humans and the aquatic life.

5. Oil Spill-in Inland Waters, Oceans and Seas

The effect of oil spill on the seas, oceans and inland waters can be better felt if we put forward, the words of a leading environmentalist in the United States of America, Mr. Al Gore,[55] when he said: 'One of the most visible contaminants in the oceans and in some inland waters is oil spill, particularly, large oil spill like the one intentionally released by late Saddam Hussien into the Persian Gulf'. There are far more numerous oil spills that take place unnoticed every year that do more cumulative damage to the ocean and inland waters. In the third world countries, the effects of oil pollution on inland waters, seas and oceans are tragically and keenly felt in the form of high rate of death from cholera, typhoid fever, dysentery, diarrhoea and from bacteriological sources. Ali[56] speaking about the evil menace of oil spill said that: 'As a result of oil spill, vast tracts of agricultural land have been laid waste, thus becoming unproductive. Surface water are polluted rendering the water undrinkable and the aquatic life destroyed'.

6. The International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) 1954

It is very germane at this stage to talk about an embracing and important Convention which was the first Convention to deal with international discharge of oil into the sea. The conference was born out of a conference of the coastal nations through their representatives in London in 1954.[57] Because of the importance and urgent need for this Convention, the Nigerian government through its National Assembly domesticated the Convention by the enactment of the Oil in Navigation Waters Act.[58] The highlight of this Convention as adopted in Nigeria was the prohibition of the discharge of oil and oily mixtures by tankers within an area of about 50 miles of land within certain prohibited zones.[59] It is hereby submitted that the effect of the OILPOL did not last long before it was superseded by the MARPOL[60], which is not discussed in this work.

7. Statutory Laws on Oil Pollution of Inland Waters of Nigeria (a) Oil in Navigable Waters Act

This Act,[61] when enacted created the following offences and they are all anti-pollution offences which do not in any way support discharge of oil into inland waters of Nigeria as follows: (a) Discharge of oil into prohibited sea areas (b) Discharge of oil into inland waters of Nigeria (c) Failure to install oil pollution equipment on ships (d) Failure to keep record of oil matters (e) Failure of the harbor authority to provide oil reception facilities (f) Failure to report the presence of oil in harbour waters.[62]

It is important to state that in consonance with the OILPOL, the highlight of the Nigerian version of the OILPOL/MARPOL, vide the enactment of the Oil in Navigable Waters Act was very significant as it focused on making it a statutory offence to discharge oil from a ship into any part of the sea that is a prohibited area within 50 miles from Nigeria's coastlands. Another statutory regulation of the Oil in Navigable Waters Act that is worthy of note, is the Minister's Powers under the regulation to keep records relating to the transfer of oil to and from vessels while vessels are within the sea ward limits of the territorial waters of Nigeria.[63] There are also, the provisions for the oil water separators on board ships to separate oil from a mixture of oil and ballast water[64], the provision of oil discharge records, and oil transfer records.[65] There are also detailed regulations specifying necessary precautions to be taken when loading, discharging or, bunkering oil.[66] It is observed that these regulations under the Act do not apply to vessels of the Nigerian Navy or to any government ship in the service of the Nigerian Navy.[67] Another good provision of the act is the prescription of penal sanctions for any violation of the provisions prohibiting discharge of oil.[68] The amount prescribed under the act as could be seen is no longer reasonable to the realities of the time and we recommend an amendment of the law. Another legislation is the Harmful Waste (Special Criminal Provisions) Act which also deal with dumping of toxic waste into inland Waters of Nigeria, and the violations under the Act are prosecuted before a Magistrate who shall exercise jurisdiction for the trial of any offence and shall impose

[55] A.I. Gore, *Earth in the Balance, Ecology and Human Spirit*, (Houghton M. Company, 1991) p. 108.
[56] Prof. Ali: Ceremonial Opening Address, In an International Seminar on Petroleum Industry and the Nigerian Environment held in Port Harcourt, 1981, p.4.
[57] The OIL POL was adopted in London on 12th May, 1954, but was entered into force on 26th July 1958 and was amended in 1962.
[58] See, The Oil in Navigable Waters Act, Cap. 06 LFN 2010.
[59] Art. Ill Annex. A.
[60] International Convention for the Prevention of Pollution from Ships, 1973.
[61] See Par. 2. Op.cit.
[62] See, S.I of the Oil in Navigable Waters Act. Op.cit.
[63] S.7(2).
[64] Regulation 2(1)
[65] See, Reg. 3(1).
[66] According to Kayode Oyende in his book, op.cit. at page 126, bunker oil is defined as hydrocarbon mineral oil, including lubricating oil used for the operation or propulsion of ships or any residue of such oil.
[67] S.16.
[68] See, K. Oyende, Op.cit p.174

penalties as prescribed under the Act. The sanction under the Harmful Waste (Special Criminal Provisions) Act is more realistic and in tandem with the realities of the time than that of the Oil in Navigable Waters Act.[69]

8. Regulation of Oil Pollution in the Inland Waters of Nigeria

Nigerian government at recognizing the importance of the oil industry to the nation's economy as submitted by Oyende,[70] cannot outright ban the exploration of oil just because of the effect of oil pollution on its inland waters.[71] What it did is to tackle the menace of oil pollution of inland waters through the instrumentality of the law as shown above. The Protocol to the London Dumping Convention,[72] in its definition of the 'sea' included internal waters, territorial sea and Exclusive Economic Zone. Under the Marine Pollution (Control and Civil Liability) Act,[73] internal waters definition agrees with the definition given in section 1, of the Marine Traffic Act.[74] Same section was amended by section 3 (l) of the Maritime Zone Act of Nigeria,[75] which defined internal waters as-The internal Waters of the Republic, which shall comprise: (a) All waters landward of the baselines, and (b) All harbours. There is absolutely no International Convention that dealt with nor cover inland waters, *stricto-sensu*. This area of the law is however, regulated by national legislation. In the Nigerian Statute books, there are: (a) Petroleum Act and its Regulations[76] (b) Oil Terminal Dues Act[77] and (c) Oil Pipelines Act.[78] There are also Regulations, thereon: (a) Petroleum (Drilling and Production) Regulations,[79] (b) Petroleum (Mineral Oils and Safety Regulations),[80] Under the Regulations, the holder or lessee of petroleum licence is to adopt all practicable precautions for the prevention of pollution of all water courses[81], and under the Petroleum Act, the minister is empowered to make regulations for the oil industry.[82]

Apart from the laws and Regulations, there are certain governmental Agencies or institutions which are created mainly for the enforcement of the laws and other functions related to the regulation of inland water pollution in Nigeria mainly :-

National Environmental Standards and Regulations Enforcement Agency (NESREA) and its Regulations: This prohibits the discharge of any effluent into the inland waters or land of Nigeria,[83] and which require industry facilities to have anti-pollution equipment for the treatment of effluents. The agency also carries out the duty of prohibiting the release of hazardous substances into the air, land or water of Nigeria beyond approved limits set by the Agency.[84]

Department of Petroleum Resources: This is a governmental Agency or parastatal that is responsible for the regulation of production and inland transportation of crude oil through a network of pipelines. Marine transportation and export of crude oil is also regulated by the Directorate, the Navy and the Nigeria Customs Service; the NPA, and the Federal Ministry of Transport.

National Water-Act: This statute contains a number of provisions relating to preventing marine pollution emanating from substances on the land.[85] It has as one of its objectives, the reduction and prevention of pollution and degradation of water resources. One of the noticeable advantages of this Act is the strategies adopted by the drafters of the Act to ensure that any person who has control over land on which something is carried on which involve the use of substances, solid, liquid, vapour or gas or combination thereof, capable of causing water pollution must take steps to ensure that such act does not cause pollution to water resources, and must also take reasonable steps to prevent pollution or degradation of the environment from occurring.

9. Is the Common Law adequate to Address Pollution of Inland Waters in Nigeria?

It is observed that the statutory provisions which we mentioned above are a compendium to the common law to arrest the unwanton craziness to pollute our inland waters. Apart from that, the so called statutory provisions and the International Conventions we mentioned are not without imperfections. As one commentator puts it, there were many loopholes in the Conventions which made their enforcement difficult. Also, there are exceptions in the Conventions which made some of them practically useless in combating pollution of the internal waters by oil. For example, some of the amendments and arrangements adopted for the limitation of tanker size by the OILPOL[86], never came to reality until the OILPOL was

[69] Op. Cit.
[70] See, K. Oyende, Op. Cit P.174.
[71] In Nigeria, environment concern started with the Koko incident in Delta state mentioned earlier.
[72] 1996.
[73] No. 6 of 1981 as amended by s.27 of the Shipping General Amendment Act, No. 23, 1997.
[74] No. 2, 1981.
[75] No. 15 of 1994.
[76] Cap. P10 LFN 2010, and the Mineral Oils Safety Regulation.
[77] Cap. O7 LFN 2010.
[78] Cap. 06 LFN 2010.
[79] Ibid.
[80] Reg. 37.
[81] Ibid.
[82] The above mentioned regulations are the outcome of the minister's powers to make Regulations.
[83] See, Reg. l (l) of the National Effluent Limitation Regulations, made pursuant to the FEPA Act.
[84] See, S.I. of the Pollution Abatement in Industries and Facilities Producing Waste Regulations, 1991.
[85] See, S. 2(h).
[86] 1954.

superseded by the MARPOL.[87] Again, under the OILPOL Convention[88], the accidental spillage of crude oil into navigable waters was not punishable and this is a big lacuna. One therefore, wonders why amidst clear deficiencies and imperfections of the Conventions and some statutes the common law is said to be adequate in solving the problem of pollution of inland water. The statutes and the conventions are inadequate in their various applications. For example, apart from the statutory enactments, there are also the traditional law principles which apply in oil pollution cases. These statutory and common law provisions in some cases have made it difficult to apply them in certain circumstances. At times, when these provisions are applied, they are ineffective and therefore render the effort of the relevant authorities in curbing the menace fruitless. It is discovered that some of the legislation enacted impose lenient fines, rather than heavier fines which have greater deterrent effect. To ask a multi-national oil company to pay a fine of $41,000.00 is every ridiculous and archaic. The imposition of fines as it is merely exculpates the polluter from additional liability of cleaning up. Also, the imposition of prison terms does not benefit a victim of pollution of inland waters. It is submitted that what is necessary is the amelioration of the damage occasioned by the pollution of the internal waters or the environment, and a return to the *status quo ante.* Again, some of the common law rules of liability in tort applicable to oil pollution include, trespass to land, nuisance, negligence and the rule in *Rylands* v. *Fletcher.*[89] Under these rules, there are possible remedies and defences as well as assessment of damages. In respect of civil liability under common law principles, the major issue is the fault principle. This has to do with the burden to proof. Here, the burden shifts to the person who alleges that he has suffered damages occasioned by the pollution of the environment by an oil company. It is for the victim to prove that the oil company is responsible for the loss or damage suffered by him. He must prove that the accused owe him a duty of care. In the area of internal water pollution, no satisfactory guidelines have been evolved in relation to proof of the existence of duty of care. Despite Lord Atkins effort at evolving a duty of care through the use of neighbour and reasonable foreseeability test, it is clear that, the duty to be careful, only exist where the wisdom of our ancestors have decreed that it shall exist.[90] The tort of negligence, nuisance and the rule in Ryland v. Fletcher has not been of much assistance to the victims of oil pollution.[91] The result is that the innocent victim of oil pollution lacks the requisite technological knowledge or expertise to prove that the Oil Company or oil tanker caused the spillage of oil into inland water.

Therefore, from the above analogy, the issue of the inadequacy of the common law and the advantage of the statutory or municipal laws in the curtailment of pollution of inland waters of Nigeria, lie where they fall. None of them has fared better than the other. Both share in the inadequacies and incompetence to the realities of the time as regards internal water pollution in Nigeria.

10. Conclusion and Recommendations

Over the years, since the discovery of oil, the country has been going through negative environmental consequences of oil pollution. The growth of the country's oil industry combined with a population explosion and lack of environmental regulation led to substantial damages as submitted by E. Udok[92] in his work. The late 1960's witnessed a growing concern over environmental abuse, exhaustion of natural resources and the alteration of natural balances. This gave rise to the international concern as was expressed in the Stockholm Conference on the environment which was held from the 5th to 6th June 1972. The Conference confirmed the genesis of a new world order, the emergence of the legal protection of the world environment as a new focus of worldwide legal activity. It brought the industrialized and developing nations together to emphasize the right of this human family to a healthy and productive environment. After this, many countries took steps to increase the scope of their legal horizon towards environmental protection to curb the increasing malaise and abuse of the environment.

In Nigeria, there are many existing laws for curbing environmental degradation and Pollution which are peculiar to the Niger Delta of Nigeria. It is not an overstatement when one states that the laws which are both statutory and the common law have not been effectively applied by relevant agencies to curb environmental degradation due to the technicalities inherent in its application and it needs urgent review, to cope with modern realities. It is observed that, environmental incidents have unique characteristics; and the environment being a system of air, water, land and living things must exist, harmoniously and symbiotically too. What happened in one simultaneously affects the other with time. The most comprehensive legislation in this regard have been the abrogated and repealed (FEPA Act) which was supplemented by the common law remedies in nuisance, negligence, trespass, in rule in *Rylands v. Fletcher*, damage or injunctions.[93] Perhaps, serious awareness and consciousness on the need for environmental protection and enactment of major environmental laws in Nigeria came up after the dumping of toxic substances in Koko, Delta State in 1987. Apart from

[87] See, K. Oyende, Op. cit, p.122.
[88] Ibid.
[89] Ibid.
[90] *Donoghue v. Stevenson* (1932) AC 562 at 579.
[91] See O. Oluduro. *Liability and Compensation for Environmental Damage in Nigeria, Essays in Honour of Hon. Justice Adabiri Ibitila Sojuminu*, Legal Research and Biological House, 2003p.4.
[92] U.E. Udok. Environmental Degradation in the Niger Delta: A Critique of Existing Laws curbing Degradation: *Nigerian Environmental Law Review*, A publication of Environmental Law Teachers Society; edited by C.A. Omaka, 2007, p.64.
[93] Federal Environmental Protection (Amendment) Act, 1993 herein referred to as (FEPA).

FEPA, there are other statutory instruments and statutes which provide for compensation for oil pollution victims in Nigeria. For example, for the determination of either civil or criminal liability under sections 1, 2, 3, 4, 5, 6, 7, 8, 12, and 14 of the Harmful Waste (Special Criminal Provision etc) Act, 1990, the prohibited offences must have been committed within the specified place or places under the Act. Such places are, any land or territorial waters, or contiguous zone or, Exclusive Economic Zone or inland waters of Nigeria. The offence is completed once a dumping, depositing, discharging or carrying of any harmful waste or hazardous substance, without lawful authority, takes place within the prohibited zones, and the prohibited places fall within the maritime zone. Therefore, for liability to be established, the court must find that the offence was committed within those places under the law as stated above. The court does this by first of all establishing the exact boundary of the area comprised within the place where the offence(s) was committed, and that is, the seaward limit of land delimitation of the territory of the place, on whether it falls within its land, contiguous zone, inland waterways, territorial water or the Exclusive Economic zone of Nigeria. It thus became clear that for a successful determination of any case arising under the sections of the Acts stated above, the plaintiff or the prosecution may rely on the Territorial Waters Act, Exclusive Economic Zone Act, Sea Fisheries Act and other relevant legislations, *ejusdem generis* as very relevant for the purpose of determining either on land and or on the sea. Also, in the early English common law which Nigeria inherited, it is a prevalent view that people who cause injury to others should pay for the harm done by their activity and it was not a defence that the injury inflicting activity was neither intentional nor, not negligent. Liability was simply strict. This is a very important role played by the rule in, *Ryland v. Fletcher* principle.

Howbeit, there appears to be very few cases in which the principle has been invoked or discussed. For example, looking at the case of *Umudje v. Shell BP Petroleum Development Company of Nigeria Ltd.*[94] The action in this case arose out of certain activities which the defendant carried out in the course of oil exploration in the former Mid-Western State now, (Delta State). The plaintiffs, who owned land adjacent to the area of exploration complained inter alia; that:- (i) In the course of road building, the defendants had blocked and diverted a natural stream, thus interfering seriously with the plaintiffs fishing rights and, (ii) That the defendants had accumulated oil waste on the land under their control and that oil escaped onto the plaintiffs land and caused damage.
It is observed that with respect to the first complaint, the Supreme Court held under rule in *Rylands v. Fletcher:* that,

> It is not generally accepted that a person who diverts a natural stream or causes the same to become blocked and in this way diverts its natural course, does so, at his peril, and is liable for any damage caused by the blocked streams, although there was no negligence on his part.[95]

In the present case, the defendants were not liable because the blocking of the stream had not caused flooding of the plaintiffs land, but merely caused starvation of water on the fish. There was in actual fact no escape of water from the defendants land to that of the plaintiff. With regard to the second complaint, the defendants were held liable under the rule, since there was clear proof that crude oil waste, which they had accumulated in a pit on land under their control had escaped on the plaintiffs land and killed the fishes thereon. The rule in *Ryland v. Fletcher* has played a significant role under common law in the development of the law of civil liability in Nigeria because of the central place of the oil industry and the fast developing oil industry in the country. It is therefore crystal clear that the country has benefited immensely from the common law as well as from the statutes some of which we have mentioned. Apart from situations where negligence can be actually established or effectively presumed, the rule in Ryland v Fletcher has provided the most reliable basis for liability in situations involving destruction from oil, petroleum and chemical accumulations on our waters. It is therefore not germane to state that the common law has played no role and that it was because of its paucity that statutory or municipal laws were put in place. This is not true. Both the common law, the statutes including the International Conventions in one way or the other are fraught with irregularities, imperfections as well as their good effects; including certain irreconcilable legal logjams that made their implementation difficult. Today, an accused or the defendant can cite the common law principles as guide or authority to prove his case. Similarly, they on the other hand can cite legal authorities as contained in the statutes or municipal laws or Conventions to buttress their complaints or to show that certain offences occurred outside the prohibited zones, subject to, proof beyond reasonable doubts or, on the balance of probability. No longer should the common law be seen as inadequate or entirely lacking on its merits. Prior to the enactment of the Oil in Navigable Waters Act, the liability of any person for oil pollution in Nigeria's territorial waters was not covered under any statutory provision, but by the international law. The remedy for an individual affected by damage caused by oil pollution from ships hitherto rests with the common law, in nuisance, trespass and or negligence.

We hereby state that this is not the time to apportion blames on the stakeholders the legislature, the state actors, the courts or the laws, whether common law or statutory. The laws whether statutory or common law had fared very well within the scope of their powers. However, where there are noticeable lacuna in the laws, the legislature has to brace up to revisit and review existing environmental, oil pollution and oil drilling laws in Nigeria with a view to updating them to international and environmental friendly standards. The government assisted by the Federal Ministry of Environmental Protection, Directorate of Petroleum Resources (DPR), all stakeholders through the legislature should strengthen the existing legislations, review the licence of the oil companies and also review the miniature and obsolete lenient fines attached to

[94] (1957) 11, S.C. at 155. See, also, *Ige v. Taylor Wooden (Nigeria) Ltd.* (1963) L.L.R. at 140.
[95] P. 159 Per Idigbe, J.S.C.

various offences on oil pollution of our inland waters on defaulters. The problem of oil pollution on our internal waters is one that has been with us and we have to grapple with it timeously and all hands must be on deck to achieve this. The problem is not paucity or inadequate legal regime. There is the need for the government not only to enact several environmental laws, as we already have in Nigeria. The problem, *mutatis mutandis* lies with lack of effective implementation and enforcement mechanisms. This can be achieved by putting necessary environmental pollution enforcement structures in place to curb the spate of environmental pollution, and pollution of our waters by oil through ships or intentional discharge. This calls for a new legislative approach to law making. Our laws should be fine-tuned to make our government to change its attitude, ineptitude, deliberate inaction and lackluster of robbing Peter to pay Paul. This should be achieved by amending obsolete statutes and the legislatures should double their efforts in this regard, if Nigeria would make appreciable achievement towards achieving the much touted Millennium Development Goals by the end of 2050.

The government should ensure strict compliance to environmental pollution by oil laws regardless of whose ox is gored. This is both necessary and mandatory in creating a new regime of environmental management and sustainability in Nigeria. We therefore recommend strict compliance and quick response which will foster strict enforcement and effective monitoring of the activities of polluters, checkmating their performance in comparison with international standards and as contained in our relevant laws.

With respect to treaties, the most helpful development for victims of environmental harm would be a binding environmental rights treaty that creates a corresponding judicial forum with full enforcement authority. The forum would have jurisdiction not only over state parties, but also non-state parties or petitioners and defendants. The global treaty if domesticated should include all aspects of human rights including the right to basic necessities such as basic health, food and water as well as criminalizing activities of transnational corporations and their CEO's including owners and shippers of goods who consistently connive with those at the corridor of power to evade payment of adequate compensation and make consistent decisions that are inimical to safety of lives at sea.

Constant Environmental Impact Assessment (EIA) and evaluation should be adopted to always determine the level of damage (periodic assessment) that is done by gas flaring, oil pollution and other pollutants on our internal waters.

Finally, we advocate for environmental justice which has been highly frustrating since very little has been achieved in this regard. The yet to be defined word, adequate compensation by our extant laws and lax judicial system has put our Courts in dilemma as the highly placed multi-national corporations always have their way through the Courts to the detriment of the helpless communities whose inland waters has been displaced by oil. The fact that the judiciary is not totally independent is not in doubt, hence the need for a World Environmental Court to address and guarantee access to justice for all.