

The Law and Multi-Agency Response to Oil Spill Incidents in Nigeria.

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Abstract

The devastating effects that a single oil spill incident has on the environment and humans can be overwhelming. Effects such as loss of life, forced displacements, loss of property and serious health risks cannot be overlooked. Also, the long term damage to the ecosystem, sea life and biodiversity are some of the long term consequences of an oil spill incident. Thus, a swift response to oil spill incidents is always necessary in order to minimise these effects. Multi-agency response, involving several related institutions and entities, is vital in order to ensure that adequate response is given to any category of oil spill incident. The roles and responsibilities of each agency involved in response situations must be provided for and their duties must be clearly spelt out under relevant legislations. These agencies are to be empowered so that they can carry out their responsibilities efficiently. The multi-agency approach seems to be already embedded in the relevant legislation on oil spill control and containment in Nigeria but its operationalisation has been less impressive. This paper appraises relevant legislations providing for multi-agency response to oil spill control and containment in Nigeria, highlights the weaknesses of the current regulatory arrangement, and suggests remedies to make the multi-agency response approach more efficient and effective in Nigeria.

Keywords: Law, Multi Agency Response, Oil Spill, Nigeria.

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1. Introduction

Oil spill incidents are common occurrences in Nigeria especially in the Niger-Delta area of Nigeria. Prominent oil spill incidents include the Bonga (2011), GOCON's Escarvous (1978); Idoho (1998); Shell Petroleum Development Company (SPDC)'s Forcados Terminal (1978); and Texaco Funiwa 5-Blowout (1980). The Niger-Delta area is the hub for oil and gas activities in Nigeria and it is plagued with so many problems that make incidents of oil spill rampant. Vandals, militants, saboteurs, oil companies and the government have all contributed in one way or the other to this situation in the Niger-Delta. In order to protect lives, properties, the environment, and businesses investments, drastic actions have to be taken to curb incessant oil spills.

Multi-agency simply means '...several different organizations that work together for a shared aim...'². In this context, multi-agency refers to those organizations that work together to respond to oil spill incidents in Nigeria. To a large extent, relevant legislations, regulations and guidelines have been put in place to strengthen multi-agency response to oil spill incidents in Nigeria. Such legislations (and Guidelines) include the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act No.15 2006; the National Oil Spill Detection and Response Agency (Amendment) Bill 2012³; the National Emergency Management (Establishment, Etc.) Act Cap N34 L.F.N. 2004; and the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) 2002. All of these are germane to any discourse on the issue of multi-agency response to oil spill incidents in Nigeria.

Oil spills have negative effects on the environment. The ability to deal with oil spill incidents over time requires immediate response and effective coordination of all agencies and parties to avoid devastating damage to the environment. A single spill can cause unimaginable harm to the surrounding communities and even further afield than the immediate spill site, hence the need for a rapid and coordinated response action. However, there are several stakeholders involved for any single spill incident, all of which have roles and responsibilities with respect to the response plan. Such stakeholders include the government, oil companies, oil industry associations and residents of the affected community. It is therefore imperative to have a well-organized and effective multi-agency response in order to avert huge losses. A well-coordinated response among the relevant agencies is crucial to a successful oil spill response.

In the case of Nigeria, some specific government agencies are crucial to any discussion on the multi-agency oil spill response model. The Federal Ministry of Environment and State Ministries of Environment (especially in the Niger Delta region) are important in this discussion. Agencies here include the National Oil Spill Detection and Response Agency (NOSDRA), National Oil Pollution Management Agency (NOPMA),⁴ National Emergency Management Agency (NEMA), Department of Petroleum Resources (DPR), and the Nigerian Maritime Administration and Safety Agency (NIMASA). Other critical stakeholders

² Macmillan Dictionary, 'Multi-Agency' <http://www.macmillandictionary.com/dictionary/british/multi-agency> accessed 14 February, 2015.

³ This bill is yet to be passed into law.

⁴ This Agency is yet to be established. It is to be created by the National Oil Spill Detection and Response Agency (Amendment) Bill 2012 which is yet to be passed into law.

including oil companies and the Clean Nigeria Associates⁵ also play a major role in the response to oil spill incidents in Nigeria.

The purpose of this paper is to appraise relevant legislations providing for multi-agency response to oil spill control and containment in Nigeria. This paper will also discuss possible solutions to make the multi-agency response approach more efficient and effective in Nigeria.

2. The Current State of Multi-Agency response to oil spill incidents in Nigeria

An observatory examination of the oil and gas industry in Nigeria would reveal that there are numerous provisions in the existing laws that provide for the multi-agency response model. However, it is discovered that effective operationalization of the multi-agency response concept is absent. This conclusion may be drawn from the frequent occurrences of oil spills reported in the Nigerian oil and gas industry. This does not suggest that the concept is inapplicable but the practical operationalization of the concept as a model of response to oil spill incidents is being seriously called to question.

Response to an oil spill incident ought to start immediately the spill is detected or reported.⁶ In Nigeria, response to oil spill incidents is based on the tiered response system.⁷ The tiered response system ensures that spills are responded to according to their category. Response to an oil spill incident also involves an investigation of the incident by a joint investigation team.⁸ This team investigates the cause of the oil spill and it is expected to jointly agree and sign a report that confirms the cause of the spill and it also includes other key information such as the volume of oil spilt and the area affected.⁹

The agency at the forefront of response to oil spill incidents is the National Oil Spill Detection and Response Agency (NOSDRA). NOSDRA is the federal agency with the statutory responsibility for preparedness, detection and response to all oil spillages in Nigeria.¹⁰ However, in many cases, it is observed that oil spill investigations are usually led by oil companies' personnel and NOSDRA does not initiate oil spill investigations.¹¹ The agency is thus seen to be dependent on the company involved in an oil spill incident, whether it involves conveying NOSDRA staff to oil spill sites or supplying technical data about spills.¹² Furthermore, the process of joint investigation is heavily reliant on the oil companies.¹³ The oil companies often decide when the investigation will take place, they

⁵ Group of oil companies with the mandate to combat oil spills in Nigeria.

⁶ This is in line with the provision of the Nigerian Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) which provides in paragraph 2.6.3, 'Containment Procedures and Clean-up of oil spills' that clean-up of an oil spill must commence within 24 hours of the occurrence of the spill.

⁷ This categorization is spelt out in section 9.0 of the National Oil Spill Contingency Plan (NOSCP) for Nigeria, May, 2009. Tier 1: Operational type spills (less than or equal to 7 tonnes [50bbbls]); Tier 2: a large spill (greater than 7 tonnes [50bbbls] but less than 700 tonnes [5000bbbls]); Tier 3: the large spill (greater than 700 tonnes [5000bbbls]).

⁸ See Paragraph 5.1.1.1, 'Spill Prevention and Counter Measures Plan', EGASPIN, 2002.

⁹ Amnesty International, 'Bad Information: Oil Spill Investigations in the Niger Delta' (2013) www.amnesty.org accessed 25 November, 2014.

¹⁰ See section 1 (1), National Oil Spill Detection and Response Agency (Establishment) Act, 2006.

¹¹ Amnesty International, 'Bad Information: Oil Spill Investigations in the Niger Delta' (2013) www.amnesty.org accessed 25 November, 2014.

¹² Ibid.

¹³ Ibid.

usually provide transport to the site and they provide technical expertise which the regulatory agencies such as NOSDRA and the DPR do not have.¹⁴

The problem with this arrangement immediately becomes apparent where the polluter (or party responsible for the operation of the polluted site) wields so much influence, takes leadership and controls the flow of information. A poorly equipped government agency, as NOSDRA is however, has little or no choice but to make the best of such a situation.¹⁵ In the next section, a brief review of relevant legislation and regulations which provide for the operation of the multi-agency response model to oil spill incidents is undertaken.

3. Review of Laws providing for Multi-Agency Response to Oil Spill Incidents in Nigeria

3.1 The National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006:

This is the principal legislation as regards response to oil spill incidents in Nigeria. It established the National Oil Spill Detection and Response Agency (NOSDRA).¹⁶ NOSDRA is statutorily empowered to coordinate and control response to oil spill incidents in Nigeria. The objectives, functions and special functions of the agency are enumerated in section 5, 6 and 7 respectively of the agency's establishing Act (the National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006). The agency is saddled with the responsibility of coordinating and implementing the National Oil Spill Contingency Plan for Nigeria.

The objectives of NOSDRA as regards spill response are provided for specifically in sections 5 (c) – (k) of the Act, and point to its primacy in oil spill response. Two of these objectives are relevant to the discussion on the existence and leadership of the multi-agency response to oil spill incidents in Nigeria viz:

- i. To 'establish the mechanism to monitor and assist or where expedient direct the response, including the capability to mobilize the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site'.¹⁷
- ii. To 'maximize the effective use of the available facilities and resources of corporate bodies, their international connections and oil spill co-operatives, that is Clean Nigeria Associates CNA) in implementing appropriate spill response'.¹⁸

From (i), the aim of establishing NOSDRA is to have an agency that has the ability to organise and direct response activities and also to have an agency that has the ability to

¹⁴ Ibid.

¹⁵ For example, Amnesty International in 'Bad Information: Oil Spill Investigations in the Niger Delta' (2013) www.amnesty.org accessed 25 November 2014 reports that oil spill investigations are organized and led by oil companies and not NOSDRA. An example of this situation was given of a NOSDRA director (Rivers State) that was notified by text message by an oil company of a joint investigation visit to an oil spill incident. Amnesty International reports that NOSDRA is told when a joint investigation visit will be done either by text or a letter.

¹⁶ Section 1 (1).

¹⁷ Section 5 (c).

¹⁸ Section 5 (d).

mobilise resources which may include resources from other institutions or even other countries. From (ii), NOSDRA will be an agency that will manage different agencies'/organisations' resources in order to ensure an appropriate response to oil spill incidents. The two provisions above envisage that NOSDRA will be an agency that will imbibe the multi-agency response concept. However, these provisions do not explicitly put NOSDRA as lead agency, as it is only subtly referenced in (i).

The function of NOSDRA is clearly spelt out in sections 6 and 7 of NOSDRA's Act. From its name, and the various interpretations of the two sections above, it can be inferred that NOSDRA's main responsibility is the detection of oil spills and coordination of response to oil spill incidents in Nigeria. However, as regards its leadership role in a multi-agency response to oil spill incidents, section 7 (g) (ii) of NOSDRA's establishing Act provides that:

'The Director-General shall have the power to co-opt all the Government, Ministries and Agencies mentioned under the Second Schedule to this Act, in the management of a Tier 3 or a major Tier 2 oil spill.'

The above section empowers NOSDRA to utilise the multi-agency approach to oil spill incidents in Nigeria. The provision gives the Director-General of NOSDRA the power to coordinate a multi-agency response of governments, ministries and agencies listed in the second schedule of the Act to manage a tier 3 or a major tier 2 oil spill. The governments, ministries and agencies referred to here are the Nigerian Institute of Oceanography and Marine Research, Federal Ministry of Works, Federal Ministry of Health, Federal Ministry of Transport, Federal Ministry of Information, Federal Ministry of Water Resources, Federal Ministry of Agriculture and Rural Development, Ministry of Communications, Federal Ministry of Aviation (NIMET), Ministry of Science and Technology, Ministry of Defence, the Nigerian Police Force as well as the National Emergency Management Agency. Others include Oil Producers Trade Section/Lagos Chamber of Commerce (OPTS); Non-Governmental Organizations, Industrial Groups and Academic Organizations. The duties of each of these agencies during a Tier 2 or Tier 3 spill are also provided for under the second schedule to the Act. It is instructive to note here that section 7 (g) (ii) does not make multi-agency response applicable to a Tier 1 oil spill incident.

Other important sections to note here are section 18 and 19 of the Act. Section 18 provides for the establishment of the National Control and Response Centre. This centre is tasked with the duty to 'report processing and response coordinating centre for all oil spillage incidents in Nigeria'.¹⁹ It is also empowered to 'serve as the command and control centre for compliance monitoring of all existing legislation on environmental control, surveillance for oil spill detection and monitoring and coordinating responses required in plan activations.'²⁰ Section 19 further emphasises the multi-agency concept and NOSDRA's leadership. It provides that NOSDRA shall act as the lead agency for all matters relating to oil spill response management and shall work with other agencies when it comes to major or disastrous oil spills as spelt out in Schedule 2 of the Act.²¹ In that section, NOSDRA is made the lead

¹⁹ Section 18 (a).

²⁰ Section 18 (c)

²¹ Section 19 (1). The 2nd schedule directs that NOSDRA work with other agencies during Tier 2 and Tier 3 oil spill incidents. The 2nd schedule also provides for the roles of each agency NOSDRA is to work with.

agency for matters relating to oil spills response management.²² NOSDRA is also expected to liaise with other agencies for the implementation of the plan contained in the 2nd schedule.²³

3.2 The National Oil Spill Detection and Response Agency (Amendment) Bill 2012:

The National Oil Spill Detection and Response Agency (Amendment) Bill 2012 (NOSDRA Amendment Bill) seeks to amend the National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006. It is still at the stage of Second Reading before the Nigerian Senate.²⁴ Under this Bill, NOSDRA will become National Oil Pollution Management Agency (NOPMA).²⁵ NOPMA will take on the responsibilities of NOSDRA with additional functions.²⁶ NOPMA is saddled with the ‘responsibility to prevent, detect, minimize and respond to all oil spillages and pollution as well as gas flaring and leakages and other hazardous and obnoxious substances in the petroleum sector...’²⁷

NOSDRA Amendment Bill puts NOPMA in charge of the coordination of response activities throughout Nigeria of oil spill and gas leakages.²⁸ Thus, NOPMA will eventually be the agency responsible for multi-agency response to oil spill incidents in Nigeria when the Bill is passed into law. Also, this Bill intends to add the Federal Fire Service, Nigerian Customs and the Immigration Service to the list of multi-agency response organisations provided for in the second schedule of the National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006 that will respond to an oil spill incident in Nigeria.²⁹

3.3 The National Oil Spill Contingency Plan (NOSCP)³⁰:

The NOSCP is a document for ‘cost-effective response mechanism for oil spill incidents within the territories of the Federal Republic of Nigeria.’³¹ This document details the Nigerian contingency response plan towards oil spill incidents in Nigeria. The NOSCP spells out the role of the government as regards its responsibility towards protecting the Nigerian environment from oil spillages (accidental or deliberate) of any size and from any source which threaten the Nigerian environment.³²

As regards multi-agency response to oil spill incidents in Nigeria, the NOSCP aims to:

1. ‘Establish the mechanism to either monitor and assist or if necessary to direct the actual response, including the capability to swiftly mobilize the necessary

²² Section 19 (2).

²³ Ibid.

²⁴ Lynda Dunkwu, ‘A Review of the National Oil Spill Detection and Response Agency (Amendment) Bill 2012: Identifying Loopholes for Improvements’ https://www.academia.edu/8732244/A_Review_of_the_Nigerian_Oil_Spill_Detection_And_Response_Agency_Amendment_Bill accessed 4 February, 2015.

²⁵ Section 1 (2) NOSDRA Amendment Bill.

²⁶ Section 6 NOSDRA Amendment Bill.

²⁷ Section 1 (2) NOSDRA Amendment Bill.

²⁸ Section 6 (c) NOSDRA Amendment Bill.

²⁹ The Federal Fire Service is expected to deal with fires resulting from an oil spill incident while the Nigerian Customs ensures easy access and egress of oil spill equipment out of Nigeria and the Immigration Service ensures experts can come in and out of Nigeria.

³⁰ Revised Edition May, 2009.

³¹ Paragraph 1.1 National Oil Spill Contingency Plan (NOSCP).

³² Paragraph 2.1 NOSCP.

resources to save lives, protect threatened environment, and clean up to the best practical extent of the polluted site.³³

2. ‘Maximize the effective use of the available facilities and resources of individual companies, their international connections and oil spill cooperatives in implementing appropriate spill response.’³⁴

The above provisions show that the NOSCP aims to have a multi-agency response to oil spill incidents in Nigeria.

Furthermore, paragraph 7.1 of the NOSCP specifically highlights key government ministries and agencies which have important roles to play in the event of a major oil spill disaster³⁵. The roles of these organisations and bodies are contained in paragraph 8.0 of NOSCP. Here again, NOSCP makes the National Oil Spill Detection and Response Agency (NOSDRA) the lead agency for all matters relating to oil spill response management.³⁶ NOSDRA is also expected to liaise with the Federal Ministry of Petroleum Resources for the implementation of NOSCP.³⁷ NOSCP also mandates the National Emergency Management Agency (NEMA) to work alongside NOSDRA in coordinating oil spill emergencies.³⁸

3.4 National Emergency Management (Establishment, Etc.) Act Cap N34 L.F.N. 2004:

The National Emergency Management (Establishment, Etc.) Act Cap N34 L.F.N. 2004 (NEMA Act) establishes the National Emergency Management Agency (NEMA).³⁹ NEMA is responsible for formulating policies on activities relating to disaster management and also the coordination of plans and programmes on response to disasters (natural and otherwise) in Nigeria.⁴⁰ According to the NEMA Act, oil spillage is among the disasters NEMA can respond to.⁴¹ Thus, NEMA can, by virtue of its enabling law participate in multi-agency response effort to an oil spill incident in Nigeria. The NEMA Act does not specify the category of oil spill incident NEMA can participate in but it provides that NEMA is in charge of educating and informing the public on disaster prevention and control measures⁴², coordinating and facilitating provision of resources for search and rescue and other types of disaster curtailment activities⁴³; distributing emergency relief materials to victims of natural disasters⁴⁴; liaising with international bodies for the reduction of natural and other disasters⁴⁵ among other important functions of the agency.

³³ Paragraph 6.1.1.3 NOSCP.

³⁴ Paragraph 6.1.1.4 NOSCP.

³⁵ 25 main groups. Some of the ministries and agencies mentioned here includes: the Federal Ministry of Environment; Ministry of Defence; Ministry of Petroleum Affairs; Nigerian Police and the National Emergency Management Agency (NEMA).

³⁶ Paragraph 8.2 NOSCP.

³⁷ Ibid.

³⁸ Paragraph 8.19 NOSCP.

³⁹ Section 1 (1) NEMA Act.

⁴⁰ Section 6 (1) (a) NEMA Act.

⁴¹ Section 6 (2).

⁴² Section 6 (1) (e).

⁴³ Section 6 (1) (f).

⁴⁴ Section 6 (1) (j).

⁴⁵ Section 6 (1) (m).

3.5 Nigerian Maritime Administration and Safety Agency Act No. 17, 2007:

Nigerian Maritime Administration and Safety Agency Act, 2007 (NIMASA Act) establishes the Nigerian Maritime Administration and Safety Agency (NIMASA).⁴⁶ One key aim of NIMASA is to ‘regulate and promote maritime safety and maritime labour’,⁴⁷ and ‘control and prevent marine pollution’.⁴⁸ The Act makes the Agency one of the federal agencies that can participate in multi-agency response to oil spill incidents in Nigeria especially in the prevention and control of marine pollution. However, the NIMASA Act does not elaborate on how the agency will control and prevent marine pollution.

3.6 Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)⁴⁹:

This guideline was issued by the Department of Petroleum Resources (DPR) as a result of rising concern for adverse environmental impacts arising from oil related pollution.⁵⁰ EGASPIN aims to establish guidelines and standards for environmental quality control of the petroleum industry in Nigeria⁵¹ and to achieve the standardisation of environmental pollution abatement and monitoring procedures in the Nigerian oil and gas industry.⁵² EGASPIN also seeks to provide a comprehensive document on pollution abatement technology, guidelines and standards for the Nigerian petroleum industry.⁵³

Moreover, EGASPIN provides that all crude oil/chemical/oil products spillages shall be reported to the Director of Petroleum Resources (Department of Petroleum Resources) according to the Oil Spillage/Notification Reporting Formats.⁵⁴ Thus, all oil spillage incidents are expected to be reported to the DPR. The above provision also puts the DPR at the forefront of response to oil spill incidents and allows it to coordinate response to oil spill incidents in Nigeria. In relation to multi-agency response, EGASPIN provides that within 24 hours of oil spill notification to the DPR, a ‘Joint Spillage Investigation’ (JSI) team which comprises of the Licensee/Operator/Spiller, Community and the DPR shall be constituted.⁵⁵ This provision does not specifically provide that the DPR will lead the JSI team but as the sole government agency in this team and the agency which receives notification of any oil spill, the DPR is in the lead as regards response efforts towards oil spill incidents.

Furthermore, EGASPIN provides that an ‘Oil Spill Contingency Plan’ (an organised and predetermined course of actions to be pursued in the event of a spill) shall be compiled in a document by all operators in the petroleum industry for the approval of the Director of Petroleum Resources.⁵⁶ This provision of the EGASPIN, gives the DPR the authority to approve all Oil Spill Contingency Plans of all operators in the petroleum industry. Thus, the

⁴⁶ Section 3 (1) NIMASA Act.

⁴⁷ Section 1 (1) (i) NIMASA Act.

⁴⁸ Section 22 (1) (i) NIMASA Act.

⁴⁹ Revised Edition 2002.

⁵⁰ Paragraph 3, part 1, ‘Introduction’, EGASPIN 2002.

⁵¹ Paragraph 4 (a), part 1, ‘Introduction’, EGASPIN 2002.

⁵² Paragraph 4 (c), part 1, ‘Introduction’, EGASPIN 2002.

⁵³ Paragraph 4 (b), part 1, ‘Introduction’, EGASPIN 2002.

⁵⁴ Paragraph 5.1.1, ‘Spill Prevention and Counter Measures Plan’, EGASPIN 2002.

⁵⁵ Paragraph 5.1.1.1, ‘Spill Prevention and Counter Measures Plan’, EGASPIN 2002.

⁵⁶ Paragraph 1.0, part B, ‘Contingency Planning for the Prevention, Control and Combating of Oil and Hazardous Substances Spills’ EGASPIN 2002.

DPR has a crucial role to play in terms of dictating the type of response given to oil spill incidents in Nigeria.

4. Challenges hindering Multi-Agency Response to Oil Spill Incidents in Nigeria

Based on the above review, a number of pertinent issues that constitute challenges to the operationalization of the multi-agency response model in Nigeria can be identified as follows:

4.1 Conflicts in responsibilities between the National Oil Spill Detection and Response Agency (NOSDRA) and the Department of Petroleum Resources (DPR):

The first challenge identified here is the apparent conflict between NOSDRA and DPR. NOSDRA is the statutory institution saddled with the responsibility of coordinating response to oil spill incidents in Nigeria. From the provisions of the National Oil Spill Detection and Response Agency (Establishment) Act No.15, 2006 (NOSDRA Establishment Act),⁵⁷ this important responsibility is laid out. The Act also provides that NOSDRA is in charge of the coordination and implementation of the Plan (the National Oil Spill Contingency Plan) for Nigeria.⁵⁸ From these provisions, it is expressly clear that NOSDRA is the agency in charge of oil spill response. However, the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN) provides that all oil spillage incidents shall be reported to the Director of Petroleum Resources.⁵⁹ The foregoing provision of EGASPIN therefore conflicts with section 6 (1) (b) of the NOSDRA Establishment Act. These conflicting provisions make room for ‘double reporting’ which amounts to waste of time and defeats the essence of an efficient multi-agency response to oil spill incidents which is to provide quick and effective response. Conflicting provision such as this should not be in laws governing the industry.

4.2 Inadequate resources by the National Oil Spill Detection and Response Agency (NOSDRA) and the Department of Petroleum Resources (DPR):

The National Oil Spill Detection and Response Agency (NOSDRA) and the Department of Petroleum Resources (DPR) are the two major agencies involved in multi-agency response to oil spill incidents in Nigeria. Lack of adequate funding, requisite technology and trained manpower are the recurrent problems faced by NOSDRA and the DPR. These government agencies are involved in the joint spillage investigation team that investigates the cause(s) of an oil spill incident.⁶⁰ This joint investigation process can be seen as one response to oil spill incidents. The joint spillage investigation team is expected to be constituted within 24 hours of spillage notification to investigate the spillage.⁶¹ The Joint investigation team investigates the cause of the oil spill and it is expected to jointly agree and sign a report that confirms the cause of the spill, and other key information such as the volume of oil spilt as well as the area affected.⁶² It is however noted that the process of joint investigation is heavily reliant on the oil companies by essentially placing the burden of reporting on the companies.⁶³ The oil

⁵⁷ Section 6 (1) (b).

⁵⁸ Section 6 (1) (c) and Section 7 (a).

⁵⁹ Paragraph 5.1.1, ‘Spill Prevention and Counter Measures Plan’, EGASPIN 2002.

⁶⁰ Amnesty International, ‘Bad Information: Oil Spill Investigations in the Niger Delta’ (2013) www.amnesty.org accessed 25 November 2014.

⁶¹ Paragraph 5.1.1.1 of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), 2002.

⁶² Amnesty International (n60).

⁶³ Ibid.

companies decide when the investigation will take place; they usually provide transport to the site and they provide technical expertise which the regulatory agencies such as NOSDRA and the DPR do not have.⁶⁴ To this extent, the ‘spill detection’ responsibility of NOSDRA is largely absent or, at best, weak.

4.3 Inadequate Enforcement of Environmental Laws and Guidelines:

From the analysis of the relevant laws above, it is evident that provisions relating to multi-agency response to oil spill incidents abound. However, there is always the problem of strict enforcement of laws due to one inadequacy or the other on the part of the relevant agency or the government as a whole. Thus, provisions of the National Oil Spill Detection and Response Agency (Establishment) Act No.15 2006 and the National Oil Spill Contingency Plan (NOSCP) as regards multi-agency response may not be strictly adhered to. The benefits of well-coordinated multi-agency response to oil spill incidents in Nigeria cannot be realised without strict enforcement and implementation of existing environmental laws and guidelines relating to multi-agency response to oil spill incidents by relevant support agencies.⁶⁵

4.4 Insecurity:

This is a major issue in Nigeria and in the Niger-Delta especially as regards multi-agency response to oil spill incidents in Nigeria. Insecurity is caused majorly by an upsurge in the activities of militants and terrorists. Nowadays, the state of insecurity in the Niger Delta is such that anyone can be kidnapped.⁶⁶ Insecurity in Niger-Delta is observed to ‘...always emerge as a result of resistance campaigns through the kidnapping of expatriates and demonstrating the inability of Nigerian Security Forces to stop attacks, as well as the sabotage of oil installations and the effective use of the global news media’.⁶⁷ The result of this state of insecurity is that no one is entirely safe in the Niger-Delta. Thus, those saddled with the responsibility of responding to oil spills can be kidnapped and then an oil spill incident is left unattended to or immediate investigations into the cause (s) of the spill are left undone for days/weeks or months until those held hostage are freed.

Moreover, oil spill cases are not attended to immediately as required by EGASPIN. It may take days or even weeks for a particular oil spill incident to be attended to as opposed to the 24-hour requirement by EGASPIN.⁶⁸ Securing the pipelines and other oil and gas assets in Nigeria is a heavy burden on the government because it is noted that with the problem of the insecurity, Nigeria loses about 120,000 to 150,000 BPD to smugglers.⁶⁹

4.5 Incessant Pipeline Vandalism and Oil theft:

This is another major challenge hindering the multi-agency response model in Nigeria. Pipeline Vandalism and oil theft are common occurrences in the Niger Delta region. It was stated that in the year 2010, the Nigerian National Petroleum Corporation (NNPC) reported about 5000 cases of vandalisation in the Niger Delta as opposed to about seven cases reported

⁶⁴ Ibid.

⁶⁵ Support agencies here encompass the agencies involved in multi-agency oil spill response.

⁶⁶ P Oromareghake, R Arisi, M Igho, ‘Youth Restiveness and Insecurity in Niger Delta: A Focus on Delta State’ (2013) 13 Global Journal of Human Social Science Political Science 5.

⁶⁷ Ibid.

⁶⁸ Paragraph 2.6.3, ‘Containment Procedures and Clean-Up of Spills’, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), 2002.

⁶⁹ P Oromareghake (n66) 5.

to have occurred in the year 1993.⁷⁰ As regards oil theft, it is also reported that Nigeria loses about \$3.65 million annually to oil theft.⁷¹ The above statistics on both oil theft and pipeline vandalism show the enormity of these acts. Oil thieves are always at work siphoning crude oil from oil pipelines and selling it illegally on the international trade market.⁷² Pipeline vandalism and oil theft make multi-agency response difficult and complex because these acts occur regularly and remediated oil spill sites are revisited by vandals and destroyed again leading to further oil spills. Such spills may eventually result in pipeline explosions and even the death of perpetrators of these acts.⁷³

5. Options for improving the implementation of multi-agency response to oil spills in Nigeria

Given the necessity of dealing with any oil spill incident because of the attendant consequences and the numerous benefits of dealing with an oil spill incident through an effective multi-agency response, drastic solutions are imperative in order to have a successful multi-agency response to oil spill incidents in Nigeria. In this regard, the following recommendations are made:

1. Areas of conflict between NOSDRA Establishment Act and EGASPIN should be amended so that NOSDRA and not the DPR is fully and legally empowered to be responsible for leadership of the multi agency response to oil spills in Nigeria. This will ensure that the multi-agency response model is not just provided for in Nigerian laws but it is efficient and seen to be so.
2. The relevant laws relating to multi-agency response to oil spill incidents in Nigeria by NOSDRA and relevant support agencies should be strictly implemented and enforced.
3. A workable operational guideline on multi-agency response to oil spill incidents in Nigeria should be drawn up by NOSDRA and implemented by it and all relevant support agencies in the multi-agency process in order to ensure success of the multi-agency response model.
4. The Nigerian Government must be sincere and committed to dealing with oil spill incidents by strengthening NOSDRA and making the Agency more independent so that the Agency can independently undertake its responsibilities and duties as provided by the enabling Act of the agency. Adequate funding, technology and manpower are required for this to be successful.
5. Government at all levels must tackle the problem of insecurity by dealing decisively with corruption, vandalism and oil theft incidents using existing legislation.
6. Oil companies (both international and indigenous) must ensure that they remain committed to utilising international best practices in their operations in Nigeria.

⁷⁰ David Alabi, 'Militancy, Amnesty and Peace in Nigeria's Niger Delta' <http://motresource.com/wp-content/uploads/2014/01/Militancy-Amnesty-and-Peace-in-the-Niger-Delta,-2.pdf> accessed 24 November 2014 6.

⁷¹ Goddey Wilson, 'The Nigerian State and Oil Theft in the Niger Delta Region of Nigeria' (2014) 16 *Journal of Sustainable Development in Africa* 59, 70.

⁷² P Nwilo and O Badejo, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas' https://www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf accessed 3 December 2014.

⁷³ Ibid. Here, it was reported that in July 2000, a pipeline explosion occurred outside the city of Warri, Delta State where 250 people died. Also, it was reported that an explosion in Lagos State in December 2000 killed 60 people.

Efforts such as the Clean Nigeria Associates must be encouraged and continuously implemented.

7. All stakeholders in the industry must promote transparency and inclusiveness by ensuring that the most impacted stakeholder i.e. the communities where oil and gas operations are taking place, are carried along in the multi-agency process by developing a workable framework to engage those communities.

6. Conclusion

The importance of an effective, efficient and successful multi-agency response to oil spill incidents in Nigeria cannot be overemphasised. This is because the multi-agency response model will go a long way in ameliorating the damage done to the Niger-Delta environment. Cases of oil spill incidents will be swiftly investigated and dealt with, scarce resources (both human and material) will be maximally utilised and deployed, and the Nigerian environment (especially the Niger-Delta environment) will not suffer incurable damages as it has suffered in the past. Various stakeholders in the Nigerian oil and gas industry can, and must, work together to ensure that that multi-agency response to oil spill incidents is a reality and not a mirage.

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