

POLITICAL IMPERATIVE OF MANAGING CLIMATE CHANGE FOR SUSTAINABLE DEVELOPMENT IN NIGERIA'S OIL AND GAS SECTOR

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***Abstract:** Environmental degradation and pollution occasioned by oil spillage and gas flaring have often necessitated governmental intervention in the operations and activities of oil prospecting companies in Nigeria. This paper addresses the following questions in this regards: How coordinated are such governmental interventions? How efficacious are governmental regulatory policies? What impact has the relevant governmental agencies made in pursuit of "green growth" in Nigeria's oil and gas industry? What levels of cooperation and synergy exist among environment-focused agencies of government? An objective assessment of Nigeria's efforts at managing climate change would reveal that the problem has not been well-tackled by extant government's policies; and where some new policies have been enunciated, their implementation have often been pursued unenthusiastically. The management of climate change in the country requires inter-governmental and inter-agency collaboration and coordination. This underlines the salience of political will among the dramatis personae across the three tiers of government in Nigeria.*

Keywords: Climate change, sustainable development, Nigeria's oil and gas sector, green growth, Petroleum Industry Bill, NCCP, NASPA-CCN.

Introduction

Climate change simply means that the climatic condition of the world is becoming hostile to support human existence on earth. For a combination of reasons, the weather patterns in our world are changing, and this situation is affecting human economic and social

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activities and environment.¹ Nigeria has been facing the unfortunate consequences of climate change for quite some time now. Negative impacts include extreme flooding, storms, acid rains, heat wave, drought, and desertification in some Nigerian areas. The causative factors of these varying manifestations of climate change include, inter alia, environmental abuses like gas flaring, oil spillage, improper disposal of industrial wastes, and indiscriminate emission of carbon monoxide and other pollutants by unserviceable vehicles and industrial engines.

In what ways are the oil prospecting companies in Nigeria contributing to climate change? What are the socio-economic and political implications of such untoward development? This paper focuses on some of the unwholesome practices and activities of the oil companies in Nigeria and critically examines the policy responses of the Nigerian government to perceived operational anomalies in the sector. The Petroleum Industry Bill (PIB), which the Jonathan administration believes would create the enabling environment for the development of energy efficiency and clean energy technology in the country's oil and gas sector, is still awaiting the passage of the National Assembly. It is true that the PIB encapsulates all the legal requirements of the petroleum industry in Nigeria, consolidating 16 different Nigerian petroleum laws into a single coherent document. But, the operational utility of the PIB goes beyond its passage by the National Assembly, because a good law cannot implement itself; it has to be distilled into workable and realizable policies by the government.

Ministry of Environment and some extra-ministerial departments and agencies with environment-related mandates have not succeeded in assuaging the palpable fears of Nigerians about the ravaging onslaught of climate hazards across the country. Although the recent approval of the National Climate Change Policy (NCCP) and National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (NASPA-CCN) by the Federal Executive Council inspires hope, a critical examination of the policy

¹ Federal Ministry of Environment, *Nigeria Climate Change Policy Response and Strategy* (Abuja: Federal Ministry of Environment, 2012), 37.

documents in question would reveal their inadequacy as governmental policy guides for combating and mitigating climate change in Nigeria.

This paper is sub-divided into three sections. The first section assesses the relevance of the newly approved policy documents to the management of industrial wastes and emissions in the oil and gas sector. The second section examines the inter-relationship and functional or operational rivalries among some existing environment-related agencies of the federal government. The third section raises constitutional questions on the exclusivity attached to issues regarding the management of climate hazards by the federal government despite the fact that the consequences of climate change do not disaggregate the resultant impact among the three tiers of government.

National Policies and Climate Change

Preceding the recent approval of NCCP and NASPA-CCN by the Federal Executive Council under the Jonathan administration, there had been policy attempts at mitigating the different manifestations of climate hazards. In 1989, there was a National Policy on Environment, which was revised in 1999 in order to incorporate new environmental challenges at that time. Other policy documents on environment included National Policy on Drought and Desertification; Drought Preparedness Plan, National Policy on Erosion, Flood Control and Coastal Zone Management, National Sanitation Policy, National Forest Policy, and National Biodiversity Strategy and Action Plan.² In addition, there are complementary policies in other sectors of the economy aimed at addressing different aspects of environmental hazards bordering on the specific concerns of those sectors. Thus, Nigeria has Agricultural policy, Water policy, Coastal and Maritime Environment policy, Energy policy, Health policy, Transport policy, Culture and Tourism Master Plan, and Vision 2020. Each of these policy documents has some sections devoted to climate-related problems.

² Ibid.

In the case of Energy Policy that establishes guidelines for the protection of the environment in the exploitation of Nigeria's fossil fuels, one can conveniently argue that its ineffectiveness necessitated its subsequent revision. The PIB, which seeks to revolutionize the oil and gas industry in Nigeria, seems to be an improvement on the erstwhile energy policy in several respects. But, it remains to be shown in what significant way it would succeed in eradicating gas flaring and wanton oil spillages by the International Oil Companies (IOCs). In fact, a critical examination of all the aforementioned environment-related policies would reveal some shortcomings, which had their origins in conceptual and analytical limitations. It is because the phenomenon of climate change had not fully evolved, and its various dimensions and manifestations were still unformed and unclear; and therefore, the formulators of these policies lacked the intellectual perspective required for framing policies that would have futuristic import.

The recently approved policy document and action plan for managing climate change (despite palpable attempts by these documents to integrate and harmonize existing environment-related policies with a view to systematize Nigeria's approach to mitigate climate hazards) ended up being a jumble of improperly synthesized theories on climate change. A policy document should not be a bibliographical essay on the subject of its concern, but a declaratory document stating how government intends to solve some identified and clearly stated problems. Most government policy documents in Nigeria lack organization, coherence, focus, and clear understanding of the essence of such documents. It is perhaps convenient for policy drafters to hide their conceptual inadequacies under piles of improperly distilled and digested theories.

On the relevancy issue, the NCCP identified two major challenges of meeting Nigeria's energy needs: (i) producing adequate energy for the country and (ii) minimizing Green House Gas (GHG) emissions in the process.³ This policy document asserts that adequate energy for sustainable rapid socio-economic development without substantially increasing the sector's Green

³ Ibid.

House Gas emissions can be achieved through the following strategies:

- i. Promoting diverse energy mix with increasing proportion from renewable and other sources using clean technologies;
- ii. improving energy efficiency in the various sectors; and
- iii. strengthening private sector participation and use of clean energy.⁴

The same document recommends the review of existing national energy policies, plans, and regulations with a view to mitigate GHG emissions as well as increasing national adaptive capacity to climate change impacts in terms of:

- i. *Elimination of subsidies on fossil fuel*
- ii. Subsidizing the development of renewable and other clean energy sources
- iii. Standardization of energy equipment, vehicles, power generation systems, and consumption in homes, offices, and industries towards achieving higher energy efficiencies
- iv. *Decreasing use of fuel (heavy) oil*
- v. Generating energy from renewable sources to account for a minimum of 20% by 2030
- vi. Re-engineering thermoelectric plants with combined-cycle technology
- vii. Strengthening fiscal and regulatory measures to actively encourage private power companies in the production of electricity (ensuring adequate connectivity of privately generated electricity to national grid)
- viii. Promoting targeted research in low carbon technologies and renewable energies
- ix. *Supporting ongoing initiative to gradually eliminate gas flaring*
- x. *Promoting efficiency in the use of oil and gas, etc.*⁵

⁴ Ibid.

⁵ Ibid., 38; italics added.

This represents in brief the policy prescriptions for achieving energy efficiency devoid of GHG emissions, and thereby, mitigating climate hazards. But, as pointed out earlier, these policy statements lack substance as they do not, in any serious sense, convey any new ideas of managing climate change with specific regards to the energy dimensions of its manifestations. It is not clear how much “support” would be given to “ongoing initiative to gradually eliminate gas flaring” and by which organization, institution, ministry, or agency. The policy document is reticent about the status of the existing initiatives aimed at eliminating gas flaring. The placement of emphasis on gradualism of expected action for terminating gas flaring is even more worrisome. Other prescribed activities, such as elimination of subsidies on fossil fuel; decreasing the use of fuel (heavy) oil; and promotion of efficiency in the use of oil and gas, are as ideological as other prescriptions. This policy rather most policy documents of Nigerian government are not scientific; they are ideological and propagandistic in content and rendition.

In the absence of well-focused and clearly enunciated policy on how to effectively eradicate gas flaring and control oil spillage in the oil producing communities of Nigeria, the agitations by environmental activists in the Niger Delta region of the country will heighten over time, regardless of the current lull in that region. Instead of having an omnibus policy document on climate change, there should be a disaggregation of the recently approved NCCP in such a way as to allow in-depth consideration of each aspect or manifestation of climate change, and on the strength of which several policy documents would be produced for implementation by the relevant ministries or agencies of government. Such disaggregated policy documents would be more scientific and well-focused.

Environment-Focused Agencies: Cooperation or Rivalry?

Nigeria has a good number of environment-focused institutions and agencies at federal level. While some of them are regulatory, others are either interventionist or responsorial in operations. However, the concern here is with the agencies and institutions that have roles to play in ensuring that the oil and gas

industry operates in an environment-friendly way. In this regard, two agencies of the Federal Ministry of Environment are significant: (i) National Oil Spill Detection and Response Agency (NOSDRA) and (ii) National Environmental Standards & Regulations Enforcement Agency (NESREA). In case of the Ministry of Petroleum Resources, it is the Department of Petroleum Resources (DPR) that serves as its technical arm that carries out petroleum processing environment maintenance functions among other responsibilities. But, in order to appreciate the likely areas of convergence of functions and likely areas of conflict among the three agencies, it is necessary to briefly examine the functions of the three agencies.

NOSDRA: The National Oil Spill Detection and Response Agency (NOSDRA) was established under the National Oil Spill Detection and Response Agency (Establishment) Act 15, 2006 as the institutional framework for the implementation of the National Oil Spill Contingency Plan (NOSCP).⁶ The functions and responsibilities of this agency, inter alia, included:

- ✓ To be responsible for surveillance and ensuring compliance with all existing environmental legislations and the detection of oil spills in the Petroleum Sector;
- ✓ receive reports of oil spillages and coordinate oil spill response activities throughout Nigeria;
- ✓ coordinate the implementation of the NOSCP as may be formulated, from time to time, by the federal government;
- ✓ coordinate the implementation of the NOSCP for the removal of hazardous substance as may be issued by the federal government; and
- ✓ encourage regional cooperation among member states of West African Sub-region and Gulf of Guinea for combating oil spillage and pollution in our contiguous waters.⁷

⁶ “Frequently Asked Questions,” NOSDRA website, accessed September 27, 2012, www.nosdra.gov.ng/faq.html.

⁷ Ibid.

NESREA: NESREA was established on 30th July, 2007 by the NESREA Act. The agency has “responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.”⁸ Functions of the NESREA are to:

- ✓ enforce compliance with laws, guidelines, policies and standards on environmental matters;
- ✓ coordinate and liaise with stakeholders, within and outside Nigeria, on matters of environmental standards, regulations, and enforcement;
- ✓ enforce compliance with the provisions of international agreements, protocols, conventions, and treaties on the environment, including climate change, biodiversity conservation, desertification, forestry, oil and gas, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation, and such other environmental agreements as may from time to time come into force;
- ✓ enforce compliance with policies, standards, legislations, and guidelines on water quality, environmental health and sanitation, including pollution abatement;
- ✓ enforce compliance with guidelines and legislation on sustainable management of the ecosystem, biodiversity conservation, and the development of Nigeria’s natural resources;
- ✓ enforce compliance with any legislation on sound chemical management, safe use of pesticides, and disposal of spent packages thereof;
- ✓ enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling, and disposal of hazardous chemicals and waste other than in the oil and gas sector;

⁸ “About NESREA,” NESREA website, accessed September 27, 2012, <http://www.nesrea.gov.ng/about/index.php>.

- ✓ enforce compliance through monitoring the environmental regulations and standards on noise, air, land, seas, oceans, and other water bodies other than in the oil and gas sector;
- ✓ ensure that environmental projects funded by donor organizations and external support agencies adhere to regulations in environmental safety and protection;
- ✓ enforce environmental control measures through registration, licensing, and permitting systems other than in the oil and gas sector;
- ✓ conduct environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- ✓ create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector, and publish general scientific or other data resulting from the performance of its functions; and
- ✓ carry out such activities as are necessary or expedient for the performance of its functions.⁹

DPR: The Department of Petroleum Resources (DPR) is vested with the necessary powers by various legal provisions to discharge the following functions and responsibilities:

- ✓ Supervising all petroleum industry operations being carried out under licenses and leases in the country in order to ensure compliance with the applicable laws and regulations in line with good oil producing practices.
- ✓ Enforcing safety and environmental regulations and ensuring that those operations conform to national and international industry practices and standards.
- ✓ Keeping and updating records on petroleum industry operations, particularly on matters relating to

⁹ “Functions of NESREA,” NESREA website, accessed September 27, 2012, <http://www.nesrea.gov.ng/about/functions.php>.

petroleum reserves; production and exports of crude oil, gas, and condensate; licenses and leases; as well as rendering regular reports on them to government.

- ✓ Advising government and relevant agencies on technical matters and policies which may have impact on the administration and control of petroleum.
- ✓ Processing all applications for licenses so as to ensure compliance with laid-down guidelines before making recommendations to the minister of petroleum resources.
- ✓ Ensuring timely and adequate payments of all rents and royalties when due.
- ✓ Monitoring government indigenization policy to ensure that local content philosophy is achievable.¹⁰

It is noteworthy that all the activities in the upstream and downstream operations are covered by the functions of DPR listed above.

Instances of Conflict of Interests

Rivalry between DPR and NOSDRA: There have been some rivalries between NOSDRA and DPR over the operations of the former in the petroleum sector. In carrying out its functions in the oil and gas sector in accordance with section 6(1) of the NOSDRA Act, which empowers the agency to carryout surveillance on oil exploration and to ensure compliance with all legislations, especially in areas of detection of oil spills in the petroleum sector, the agency is facing stiff opposition from the DPR, which is the inspectorate and technical arm of the Ministry of Petroleum Resources.¹¹

¹⁰ “About DPR: Organization Roles,” DPR Website, accessed September 27, 2012, https://dprnigeria.com/dpr_roles.html.

¹¹ Mr. Hugo Odiogor, “NOSDRA and the intrigues of Oronsaye’s report,” *Vanguard*, May 01, 2012, accessed September 27, 2012, <http://www.vanguardngr.com/2012/05/nosdra-and-the-intrigues-of-orsonyes-report/>.

Preceding the creation of NOSDRA, the Oil and Gas Pollution Control Unit of the DPR in the Ministry of Petroleum Resources combined this environmental responsibility with its primary functions. However, it is noteworthy to point out that President Olusegun Obasanjo in August 2000 directed that “on the issue of oil spill, the overall responsibility for oil spill pollution control and clean-up lies with the Ministry of Environment.”¹² President Obasanjo further directed the transfer of the Oil and Gas Pollution Control Unit of the Department of Petroleum Resources, DPR, to the Ministry of Environment in his government’s quest to remove any overlap in functions between the two contending Ministries with a view to strengthen the Federal Ministry of Environment and enable it perform its assigned responsibility. But, unfortunately, because the Presidential directive was not backed up with corresponding amendment in the enabling Act of the DPR, the officers of DPR’s Oil and Gas Pollution Control Unit who were transferred by presidential fiat to the Federal Ministry of Environment returned to the DPR due to salary disparity.¹³

The recently released report of the United Nations Environment Programme (UNEP), which assessed the environmental condition of Ogoniland, remarked on the overlap in the responsibilities of NOSDRA and DPR and recommended, amongst others, the transfer of oversight on the EGASPIN legislation from DPR to the Federal Ministry of Environment (NOSDRA) with the concurrent transfer of staff from the former to the latter or by recruiting and training new staff.¹⁴

Functional Overlap between NOSDRA and the Nigerian Maritime Administration and Safety Agency (NIMASA): The Federal Ministry of Environment has been claiming that there are overlapping functions between NOSDRA and NIMASA. The NIMASA was created on August 01, 2006, when the National

¹² Ibid.

¹³ Ibid.

¹⁴ Onyebuchi Ezigbo, “NOSDRA Relevant to Environment, Oil Sector,” *THISDAY LIVE*, May 01, 2012, accessed September 27, 2012, <http://www.thisdaylive.com/articles/nosdra-relevant-to-environment-oil-sector/114866/>.

Maritime Authority was merged with the Joint Maritime Labor Industrial Council (JOMALIC). NIMASA is an agency that monitors oil spillage from ocean going vessels.¹⁵ It was reported that both NOSDRA and NIMASA held divergent views over the Bonga Oil Spill incident, which occurred at Shell's deep sea oil field in December 2011. The incident was the worst offshore spill in the country, in which at least 40,000 barrels of oil leaked into the ocean daily.¹⁶ Both agencies felt it was their duty to respond to the disaster and take punitive step against the culprit – Shell Petroleum Development Company (SPDC). NIMASA's claim was premised on the fact that the incident took place in the ocean within the jurisdictional confines of its mandate. Whereas NOSDRA went ahead to slam a fine of \$5 billion on SPDC for the spill, the agency's helmsman admitted that regardless of the proliferation of laws against oil spillage, the country lacked a clear-cut law and policy that check oil companies from abusing the ecosystem. He said:

The current situation of oil spillage and pollution cannot be properly put under control, because we are still waiting for the National Assembly to approve the amendment we requested, which will enable us punish oil companies engaging in oil spillage.¹⁷

Operational disagreements between NESREA and National Communications Commissions (NCC): NESREA's decision to shut down some base stations of some telecommunication firms across the country on grounds that they were not captured in the environmental audit of base stations and that the firms in question failed to meet the environmental standards of 10 meter setback from residential areas has provoked NCC's

¹⁵ Ibid.

¹⁶ "Shell Disagrees with 5b Nigeria Fine," *The Nation*, accessed September 27, 2012, <http://www.thenationonlineng.net/2011/index.php/business/54289-shell-disagrees-with-5b-nigeria-fine.html>.

¹⁷ Paul Obi, "Pollution: NOSDRA Decries Lack of Enabling Law to Punish IOCs," *THISDAY LIVE*, February 19, 2012, accessed September 27, 2012, <http://www.thisdaylive.com/articles/pollution-nosdra-decries-lack-of-enabling-law-to-punish-iocs/109636/>.

scathing criticisms and condemnation. In its reaction, NCC warned the NESREA to stop meddling in the regulation of the telecom industry. NCC argued that NESREA's action was a violation of existing regulations that stipulated just 5 meters setback as a requirement.

Mediating Inter-Agency Rivalries and Conflict of Interests

The aforementioned cases exhibit that there's no doubt that inter-agency rivalries do exist. What is questionable is the seeming ineffectiveness of the federal government in resolving these rivalries. Although the government of President Obasanjo directed the transfer of an environment-focused unit of DPR to the Ministry of Environment as a way of halting the raging rivalries between NOSDRA and DPR, that directive appear to have been countered in the light of some developments consequent upon the exit of that administration.

In the bid to address the recurring phenomenon of overlapping functions among some government agencies coupled with the unwarranted duplication of government institutions, the current administration of President Jonathan set up a presidential panel, headed by the former head of the civil service of the federation, Mr. Steve Oronsaye, to examine the prospects of restructuring and rationalizing the affected federal agencies.¹⁸ But, following the submission of the report of the presidential panel on the restructuring and rationalization of federal agencies, which contains sundry recommendations that are unsavory to some aggrieved agencies, series of rebuttals and criticisms had been made to discountenance the substance of the panel's report and the integrity of its members. It is on record that Oronsaye Panel recommended the scrapping of NOSDRA on grounds that it was a duplication of the functions of the DPR, which it considered well-suited to professionally handle oil spills and associated consequences.¹⁹ Furthermore, the report under reference indicated that the DPR should continue to carry out primary environmental

¹⁸ Odiogor, "NOSDRA."

¹⁹ Ibid.

prevention and conservation functions in the petroleum sector – a recommendation that contradicts the National Policy on Environment and questions the rationale for the Federal Ministry of Environment and NOSDRA.²⁰

Expectedly, NOSDRA condemned Oronsaye Panel’s recommendation as one lacking clear understanding of the agency’s functions. The agency argued that its functions included the prevention of oil spills had the responsibility of ensuring that immediate steps were taken to contain, recover, and clean up oil impacted sites before embarking on post-spill activities.²¹ Such activities, NOSDRA noted, included remediation, certification, post-spill impact assessment, compensation issues, and mediation between oil spiller and the affected communities.²²

The issue here for us is not the legality or morality of any of the positions canvassed by their proponents in the conflict but the political imperative of order and sanity in the management of climate change through the implementation of relevant policies to contain the various manifestations of climate hazards that are starring us in the face. For as long as the rivalries among federal government agencies in charge of environment persist, the goal of checking climate hazards would be a mirage. Since the receipt of Oronsaye Panel’s report by the Jonathan administration in June 2012, there is no government white paper on the panel’s report, and this demonstrates seeming lethargy on the part of the federal government in putting an end to the lingering contest between its agencies that are conflicting over functional jurisdictions.

Managing Environment: Role of State and Local Governments?

One could view the prevalence of environment-focused agencies of the federal government as an indication of the overzealous commitment of the federal government to manage environment. Perhaps, the funding disparity can explain the preponderant roles of the federal government in areas of concurrent

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

constitutional jurisdictions of federal and state governments. The current revenue allocation formula in operation among the three tiers of government is as under:

- i. Federal Government 52.68%
- ii. State Governments 26.72%
- iii. Local Governments 20.60%

The 52.68% share of the federal government is sub-divided as follows:

- i. Federal Government 48.50%
- ii. FGN share of Derivation Ecology 1.00%
- iii. Federal Capital Territory 1.00%
- iv. Stabilization Fund 0.50%
- v. Development of Natural Resources 1.68%

Federal government sets aside 1.00% from its 52.68% for derivation ecology while 1.68% is earmarked for the development of natural resources²³ in addition to some quantum of financial resources that would still accrue to the specific federal ministries and agencies overseeing these functional responsibilities out of the 48.50% assigned to the federal government. There is every indication to believe that the Jonathan administration could have come to the realization that substantial amount of resources being squandered to maintain agencies whose functions are duplicated by another, could be put into better use or saved. It could be this perspective that instigated the setting up of Oronsaye Panel. But, while the federal government is bent on pruning its agencies to cut cost, the state governments which have oversight responsibility over their local government finances are agitating for a revision of the revenue allocation formula on grounds that the extant formula is lopsided in favor of the federal government. It is paradoxical that state governments that have emasculated the local government administration through their strong and overbearing control on local governments' finances are clamoring for increased allocation from the federation accounts without much to show for the funds currently in their possession. By implication, one could safely assert

²³ Federal Civil Service Commission, *Public Service Handbook* (Abuja: Federal Civil Service Commission, 2010), 7–8.

that collectively the state governments receive 47.32% by default, compared to the federal government's 52.68% from the federation accounts.

The ready alibi for state governments' evident lack of interest in issues of climate change is paucity of funds which has also become their usual refrain. A good number of state governments do not have a ministry of environment despite the obvious fact that no state in the country is impervious to the consequences of climate change. Even in the Niger Delta region of the country, where oil exploration and exploitation activities are taking place with negative impact on the environment, only few states have a ministry in charge of environment which can interface with the oil producing companies and relevant environment-focused agencies of government in pursuit of their environmental programmes.

It is possible to predict that in the absence of strong commitment to environmental issues at the state and local levels, especially in the oil producing region of the country, the IOCs will continue to violate and degrade the ecosystems of their host communities without any fear of sanctions from any quarters. This is so because of a combination of reasons alluded to in the preceding sections of this paper. To recapitulate, the absence of a clear-cut policy and law that can criminalize IOCs' violations of the country's ecosystems as well as the unresolved conflict of interests among environment-focused agencies of government constitute a trigger for the raging gas flaring and oil spillage in oil producing areas in Nigeria. There is no constraint on the constitutional right of the legislative body of each of the states from legislating on environmental issues to either complement extant federal laws or plug any loopholes that might exist.

Current Conditions of Oil Spillage and Gas Flaring

With no definite law at the federal level that could actively deter oil spillage and gas flaring coupled with the seeming reluctance of the local and state governments to legislate on this twin problem, the IOCs would appear justified in their defiant

conduct in the Niger Delta region. What is the current situation in this regard?

Oil Spillage: Oil Spills have continued to devastate Niger Delta oil producing communities. Last year, Shell was responsible for two major oil spills in Ogoniland; and despite the clean-up operation to remediate the environment, the spill areas are really not cleaned up.²⁴ Mobil Producing Nigeria (MPN) which was reported to have spilled oil at the Qua Iboe fields this year had to abandon the clean-up exercise which commenced on August 19, 2012, to the chagrin of the affected community.²⁵ Chevron Nigeria spilled oil in the Niger Delta recently too.²⁶ Other IOCs comprising (e.g., Agip, Total, etc.) have experienced oil spillage during the year. At least, thirteen million barrels of oil had been spilled on Niger Delta in the last fifty years with over 250,000 barrels of the spillage deposited in the region.²⁷ But, regrettably, the culprits – IOCs – cannot be prosecuted because there is no enabling law to prosecute them.²⁸ However, there is hope that the Petroleum Industry Bill (PIB) before the National Assembly has relevant provisions that would strengthen NOSDRA and other environment-focused agencies in prosecuting any IOC that spills oil into the environment.

The PIB contains provisions that specifically empower the Minister of Petroleum Resources to make regulations on practically all issues including (i) gas flaring, (ii) distribution of the revenues

²⁴ Heather Murdock, "Nigerians Demand Oil Spill Clean-up," *Voice of America*, September 13, 2012, accessed September 28, 2012, <http://www.voanews.com/content/nigerians-demand-oil-spill-clean-up/1507316.html>.

²⁵ "Oil spill: Community expresses concern over delayed clean-up," *Vanguard*, October 02, 2012, accessed October 06, 2012, http://www.allafrica.com/stories/printable/201210020832.html_10/9/2012.

²⁶ Ibid.

²⁷ Kunle Awosiyan, "National Assembly proposes stiffer penalty for oil spillage," *Nigerian Tribune*, September 22, 2012, accessed October 06, 2012, <http://www.tribune.com.ng/sat/index.ph.p/news/8658-national-assembly/printable/2012>.

²⁸ Ibid.

from the Petroleum Host Communities Fund, and (iii) determining royalties and rentals, as well as sole powers to reform NNPC.²⁹ The envisaged transformation of the DPR into the National Petroleum Inspectorate (NPI) as enunciated in the PIB is believed to be a proactive step in preventing oil spills. The NPI would be an autonomous body empowered with financial and operational independence to regulate the activities in the upstream petroleum sector. Thus, it is believed that through the NPI, the Ministry of Petroleum Resources would be in a position to stem and avert avoidable oil spill and other related pollutants' disasters to a large extent.³⁰ It, however, remains to be seen whether the National Assembly would agree with these provisions and actualize the resultant expectations.

However, the jurisdictional tussle among environment-focused agencies will be complicated if the PIB in its current form is enacted without making effort to spell out the different roles of each of the agencies as they relate to oil spillage. National Assembly needs to critically examine the PIB and ensure that neither DPR nor NPI usurps the responsibilities of any of the extant agencies of government.

Gas Flaring: The oil companies have continued to flare gas recklessly despite the directive given to them by the federal government that gas flaring should end by the end of 2012.³¹ It was recently reported that Nigeria lost ₦99 billion to gas flaring in six months in 2012. The gas flared during the same period was 222.8 million standard cubic feet (mscf), and all the IOCs are guilty in this regard.³² Another source put the volume of gas flared in January

²⁹ Ayisha Osori, "Nigeria: Not Wanted – Surprises on the PIB," *Leadership*, September 18, 2012.

³⁰ *Ibid.*

³¹ "How Nigeria lost N99bn to gas flare in 6 months," *National Daily*, October 09, 2012, accessed October 10, 2012, <http://www.nationaldailyng.com/labour/how-nigeria-lost-n99bn-to-gas-flare-in-6-months-10/9/2012>.

³² *Ibid.*

2012 alone at 30 billion standard cubic feet.³³ Gas flared in the country has reduced; and the reduction could be explained as a consequence of the positive impact of the Jonathan administration's gas master plan, which entails the implementation of projects that would give practical vent to gas flaring. Steps are being taken through these projects to channel gas to fertilizer plants, methanol plants, and thermal plants, thereby creating avenues for the utilization of gas which ordinarily would have been flared. Nigeria does not have accurate data and record on the volume of gas flared or oil spilled. The volume of gas flared at any given time in the country by IOCs is a controversial issue, so it is difficult to determine the exact value of gas flared. Therefore, appropriate fines to be imposed on the culprits to ensure deterrence cannot be easily determined.

Concluding Remarks

So the above discussion makes it clear that Nigeria does not have a comprehensive and coherent policy on climate change. The recently approved NCCP and NASPA-CCN are not well-focused and lack the requisite conceptual and intellectual appreciation of the various manifestations of climate-hazards. The policy document in question is inadequate in several respects and incapable of stemming the ravaging incidents of oil spillage and gas flaring. There should be multiple policy documents that address the different manifestations of climate change. Even, the much-awaited Petroleum Industry Bill, which is still gathering dust in the National Assembly, has its limitations and shortcomings. The National legislators need to x-ray the PIB thoroughly to ensure that whatever responsibilities are assigned to DPR (*vis-à-vis* management of oil spillage and gas flaring in the country) does not overlap in any way with the responsibilities of any other environment-focused agencies of the federal government.

³³ Tim Cocks, "Nigeria oil bill to outlaw gas flaring by end-2012," Reuters, May 28, 2012, accessed September 27, 2012, <http://uk.reuters.com/article/2012/05/28/oil-nigeria-flaring-idUKL5E8GR2IX20120528>.

The recurring incidents of jurisdictional conflicts among environment-focused agencies of the federal government require that the Jonathan administration must demonstrate strong political will by either implementing outright the recommendations of the Oronsaye Panel or setting-up a white paper drafting committee to examine the panel's report. Doing this would mean that the administration is willing and ready to put an end to the jurisdictional rivalries among environment-focused agencies of the federal government, among other benefits derivable from such action.

The management of environment to remediate or reduce the impact of climate change should not be the exclusive responsibility of the federal government; the state and local governments have important roles to play as well. While the case for improved funding of the state and local governments has some merits, these levels of government can make tremendous contributions in the management of climate change with the current level of funding they are accessing from the federal account.

Until all these political issues are resolved, the prospects of ending oil spillage and gas flaring, and indeed managing climate change effectively, will be a mirage. It has to be emphasized that until the phenomena of oil spillage and gas flaring are not put in check it is unlikely that the oil and gas sector of the Nigerian economy would experience any remarkable level of development that would not engender stiff opposition from the oil and gas producing communities in the country. Thus, the issue is not whether the management of climate change is a desirable objective to be pursued by the Nigerian government but whether the Jonathan administration can muster the political will to address all the identified constraints head-on.