

THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT (SD) AND ITS APPLICATION TO OIL EXPLORATION IN NIGERIA*

Abstract

Crude oil remains the main sustenance of Nigerian economy. Exploitation of crude oil in Nigeria has continued astronomically without commensurable attention to adverse implications on the environment and the principle of sustainable use. This has led to serious environmental degradation, underdevelopment and poverty in the areas where the oil exploration activities are carried out. The principle of sustainable development expresses sustainable use of natural resources. This paper examines the principle of Sustainable development, its evolution, significance, and application to oil exploration in Nigeria. The paper concludes that even though the principle has been given expression in the policies, laws and regulations for oil exploration in Nigeria, its full application remains a mirage. Recommendations are made as to how the principle can be given effect in oil exploration in Nigeria.

Keywords: Nigeria, Environmental Degradation, Oil Exploration, Sustainable Development

1. Introduction

Ours is a threatened world environment that has long moved away from its organic virginity to a most savagely and rapaciously exploited environment. It is not as if the world environment is not subject to wear and tear, but our world environment is made unsafe by deliberate economic industrial and technological activities of man whose perpetual proclivity for positive profit margins has placed the safety of our environment and renewal of its resources behind the commercial and political imperatives. The Nigerian environment has more than a fair share of degrading, exploitative and polluting activities. Deforestation, desertification, bush burning, discharge of effluent and oil exploration and exploitation activities are among the causative factors for sustained despoliation of our environment. The world in an attitude of renaissance is exhibiting remorseful realization that reckless socio-economic activities of which greenhouse emission effects on the ozone layer and acid rains are significant have pushed the world to the precipice of environmental disaster. Buoyed by relentless non-governmental green organizations and a plethora of environment rights activists, the economic conscience of the world has come to terms with its remedy for self-preservation; the concept of sustainable development. The world now realizes that unless something is done urgently to arrest the deterioration, the future opportunities for our progeny to enjoy a qualitative life will be seriously impaired. In Nigeria, oil exploration activities have defined more clearly between the quest for economic growth, and preservation of the environment that is host to humanity and its economic activities. The realization of the harmful and deleterious activities of man which are becoming irreversible has called the world to order, to re-order its priorities; as some learned writers observed¹ the emission of greenhouse gases and CFCs and their impact on the ozone layer, the consequential phenomenon of global warming, the rising sea levels worldwide and the advent of acid rain and increased desertification, are but a few examples of the consequences of laissez faire in the management of nature's resources.²

The purpose of this paper is to examine the concept of sustainable development (hereinafter referred to as (SD) and apply it to oil exploration activities in Nigeria. An attempt will be made to identify the SD implications of oil exploration activities, the operating legal environment, some policies of oil producing companies that demonstrate their awareness and practice of sustainable development and the imperatives of the economics and politics of oil in a mono-cultural Nigerian economy, and whether the government in Nigeria are aware of and also give regard to the principle that 'in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it'.³ Can the world rise beyond the rhetoric's and heed the recent call of Governor of the state of California, Arnold Schwarzeneger that 'What is needed is 'action, action, action.'⁴ In Nigeria, the question may be asked, whether government can let go of easy oil monies in favour of the right of future generations?

2. Concept of Sustainable Development

There are a number of definitions of the concept of sustainable development or sustainability, all of which try to situate a positive relationship between the preservation of the resources of society and the needs of society to use the same resources for orderly development of its inhabitants both now and in future. There are currently over sixty definitions of sustainable development but the standard and original definition is that of the Brundland

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¹ Atsegbua *et al*, *Environmental Law in Nigeria, Theory and Practice*, Lagos: Ababa Press Ltd. 2003, p. 56

² Id.

³ Principle 4, Rio Declaration on Environment and Development

⁴ Speech made at the UN on Monday 24-9-07 as monitored by Cable News Network

{(Brundtland) Commission 1987, set up by the United Nations General Assembly and was headed by Gro Harlem Brundtland} which defines sustainable development as: ‘development that meets the need of the present generation without compromising the ability of future generations to meet their needs’⁵ ‘In other words, sustainable development is about satisfying the need of the present generation without compromising or diminishing the ability of future generations to satisfy their own needs.’⁶ By causing irreparable damage to the natural environment or recklessly depleting available natural resources, we limit the access of future generation to these resources and thereby compromise their ability to meet their own needs.⁷ It is the interplay of economy and environment in a desirable quest for development which is a measure of the qualitative growth of all societies. It is also defined as balancing of the fulfillment of human need with the protection of the natural environment so that these needs can be met not only in the present, but also in the indefinite future.⁸ It has also been defined as ‘the facilitator of balancing the conservation of nature’s resources with the needs of development. In other words, sustainable development means: improving the quality of human life while living within the carrying capacity of supporting ecosystems’⁹

‘Sustainable’ and ‘Development’

The word ‘sustain’ of which sustainable is the adjectival derivation may be defined in a number of ways. It means: ‘to bear the weight of, to give help or strength to; to maintain or keep something going, to suffer or undergo (attack, injuries etc) to show (a claim etc) to be just or true.’¹⁰ Although the definitions are in fragments, when put together, they give meaning to the concept. Bearing the weight of utilization and consumption of available natural resources to give strength to the present as well as future inheritors of the earth’s resources, while maintaining and keeping these resources going in a renewable manner; without bulking under the weight of the attack and injuries caused to the environment by their usage by the present custodians of earth’s resources. In other words, it means using resources ‘... in a way that does not further outstrip the carrying capacity of the planet or produce untenable distribution of opportunity and wealth.’¹¹ On the other hand, the word ‘develop’ literally means to grow bigger or to a more advanced state while development is the process of developing.¹² Development implies qualitative and quantitative growth and utilization of resources resulting from planning and organization for the benefit of the members of a given society. For the purpose of the concept of sustainable development, it means ‘a development which strives for combined economic, environmental and social progress to improve quality of life such as wealth, health, safety, freedom, education for all people – especially, those most in need both now and in the future.

Evolution of the Concept of Sustainable Development: Before the 1980s

In a preface to the book ‘can Britain survive it?’¹³ E.J. Mishan, Professor of Economics at Washington University noted the changing awareness and concern for the environment thus:

Since the war our political leaders have been too busy charting the course of GNP, continually making mankind invidious comparisons with other countries’ GNP, formulating unlikely growth rates, vainly urging the workers on to feats of productivity and whipping up expectations of material hypersensitive to cost of living indices and to their position in the hierarchy of incomes. So preoccupied have our political masters become with playing at index numbers that they have failed to look around them and to observe the impressive growth of pollution – noise pollution, air pollution, water and soil pollution and above all the perverted development of towns, suburbs and villages... Comparable phenomena in the United States, along with the rapid growth over last two decades of annual rates of divorce, suicide, crime, violence and delinquency and drug taking would suggest to an open mind that economic growth per se is not a panacea for all forms of social ill ... The vision of a frontier of unlimited material opportunity, and the prospect of an accelerated exploitation of natural resources implied by the

⁵Shell Petroleum Development Company of Nigeria Ltd. (SPDC), SCiN, Sustainable Development Training, Warr: Shell Documentation Production Services, West, 2004, p. 2

⁶ Ojameruaye, E. O., *Essays from America: Political Economy of Oil and other Topical Issues in Nigeria*, Phoenix: Xlibris Corporation, 2006 at 183

⁷ *Ibid*

⁸ <http://en.wikipedia>: The Free Encyclopedia

⁹ Atsegbua, et al at 54

¹⁰ Kirpatrick, E.M. Ed. *Chambers Universal Learner’s Dictionary, International Students’ Edition*, Ibadan: Spectrum Books Ltd., 1985 at 760

¹¹ SPDC of Nig. Ltd., Op. Cit at 1

¹² Kirpatrick, E.M. Ed. Op. Cit. at 180

¹³ Goldsmith, Edward, ed. *Can Britain Survive it*, London: Sphere Books Ltd., 1972 at 11

conventional goal of self-sustaining economic growth, have begun to be widely challenged.¹⁴

It is this challenge by environmentalist and development experts that served as the academic and theoretical impetus for midway realist to seek for a common ground of the necessity to maintain a balance between the need for rapid economic development and the preservation of the environment that hosts the resources for the much-desired economic development that created a basis for the concept of sustainable development. International conscience was pricked by a realization that notwithstanding thousands of scientific experts out there and vast government department and regulatory agencies dedicated to poking their noses into everybody's business – the accumulation of radioactive dust, the spread of oil pollution, the poisoning of vast lakes, traffic-choked cities, the difficult to breathe air in built up areas, testify to the misery of scientific advancement and a threat to the common home of all humanity on earth. The ominous threat became – unless we can cope successfully with the misery of our economic and scientific growth, we may lose control of our civilization. A global movement of the midway theorists for S.D began to acquire global momentum with the United Nations taking the lead with the organization of Stockholm Conference (the United Nations conference on Human Environment) held in 1972. This marked the beginning of organized international efforts at raising awareness for, and the adoption of legal regimes in various countries aimed at entrenching the principle of sustainability as a cannon of environmental law.¹⁵

Growth of the Concept of Sustainable Development: Since the 1980's

Before the early 1980s, mankind pursued the quest for economic growth without conscious efforts at minimizing its impact on the environment and being cognizant of the right of future generations to meet their needs from the exhaustible and increasingly depleting resources of the environment. In 1977 the United Nation established a commission, the Brandt Commission (under the chairmanship of Mr. Willy Brandt, former German Chancellor), it was the first major independent global panel to examine the connection between the environment and international development. The first report by the Commission was titled 'North-South', if noted for the first time that important harm to the environment occurring in every nation of the world, damaging soil, sea and air, the biosphere is our common heritage and must be preserved by cooperation, otherwise, life itself could be threatened.¹⁶ In 1987, following the publication of the Brundtland Report titled 'Our Common Future,' the World Commission on Environment and Development took a look at the relationship between depleting resources, increasing dependence on these resources and the environment and gave meaning to the concept of sustainable development, and coined the often quoted definition already given above.^{16a} International activities since then have been ceaseless, notable among these are: (1) The 1992 first Earth summit, the Rio Conference (held in Brazil). The summit took the Brandt proposal and the Brundtland Report a step further, by placing the model of 'sustainability' at the centre of all global planning for development. The period between the 1972 Stockholm Conference and the Rio Conference of 1992 represents a marked departure from conservative individualistic attitude of states which placed economic gains and national interest higher than a more realistic acknowledgement of universal dangers arising from environmental policy that is resistant to the concept of sustainability.¹⁷ In 2002, the second Earth Summit (the World Summit on Sustainable Development WSSD, or the Hohannesburg Summit) took place in South Africa to review the progress made since the Rio Summit and record progress made so far on the sustainable development agenda. One of the main recommendations of the conference was for each country to prepare its plan of action for sustainable development, that is, the National Sustainable Development Plan – NSDP.¹⁸ The concept of sustainable development is relatively common place today, with very many organizations formally embracing it and setting up units to ensure that sustainable development principles are ingrained in their activities. Thus economists, environmentalist and development practitioners continue to brainstorm on the synergy of the relationship that will give humanity and the environment optimum sustainable benefits. The promise of intergenerational equity in the use of natural resources, based on the principles of sustainability and combination of economic and environmental reforms has been one of the hallmarks of international development during the past two decades.¹⁹

¹⁴ Id. At 11-12

¹⁵ Atsegbua, et al, Op. Cit. at 56

¹⁶ Opameruaye, Emmanuel O. Loc. Cit.

^{16a} Id. At 183

¹⁷ Atsegbua et al, Op. Cit. p. 57

¹⁸ Ojameruaye, Emmanuel O. Loc. Cit.

¹⁹ Id at 184

Criticism of the term ‘Sustainable Development’

Many environmentalists have criticized some interpretations of the term ‘sustainable development’ as an oxymoron,²⁰ claiming that economic policies based on concepts of growth and continued depletion of resources cannot be sustainable, since that term implies resources remain constant. Some people prefer the term ‘developing sustainability’, as it does not imply that something needs to be created. Another criticism of the term and application is that it effectively constitutes 21st century Western arrogance and imperialism towards the developing world since it impedes development and improvement of the human condition in poorer nations; in a condescending attitude of ‘*we got ours, but we don’t want you to get yours because you’ll pollute too much*’ when the reality suggest that: ‘We know that the 25 percent of the world population who are rich generate 85 percent of the waste ... but the rich will not accept a progressive and meaningful cutback in their emission of carbon dioxide and greenhouse gases because it will be a cost to them and retard their progress’.²¹ The goal of environmental sustainability is to minimize environmental degradation, and to halt and reverse the processes they lead to²² The concept of Sustainable Development is criticised as an ambiguous concept as a wide array of views fall under its umbrella. The concept has included in it notions of weak sustainability, strong sustainability and deep ecology. Different conceptions also reveal a strong tension between econcentrism and anthropocentrism. Thus, the concept remains weakly defined and contains a large amount of debate as to its precise definition and scope.²³

3. Application of Sustainable Development to Oil Exploration Activities in Nigeria

The Processes involved in oil exploration and how they are carried out make it difficult for oil exploration to conform to the principle of sustainable development. The processes include: *Exploration* involves seismographic services – line cutting and shooting and related seismic activities carried out through bushes, farmlands, forests, shrines and sacred groves and fishing ponds with high potential for alteration of the ecosystem and displacement of flora and fauna. There is also implication for affectation of the host local communities by the influx of urbanized oil company workers with implication for reorientation of social values. *Exploitation* involves drilling and extraction of gas, oil and water resulting in immediate impact on the surrounding soil, bushes and farmlands. *Transportation* of the products from drilling to flow stations, storage tanks, refineries and export terminals is a crucial aspect of the business. It has led to the establishment of a network of pipelines criss-crossing the Niger Delta Area. *Refining* (which involves the cracking of crude oil) is the prerogative of the refineries whose operations are equally potentially hazardous as those of other oil companies. *Exportation* of crude oil – from storage tanks and terminals, crude oil is loaded into seagoing vessels for export. *Corporate Social Responsibility*: Although not linked with the technology and processes of oil exploration, a number of oil companies are engaged in extra-corporate objective social activities as an expression of corporate social responsibility. The main activities which constitute the business of oil exploration have implication for balancing the tripod of sustainable development – people, profit and planet.

4. Legal and Administrative Framework

There abound a number of regulatory international and national statutes, guidelines, regulations and standards for the protection of the environment with respect to new developments or upgrade of existing oil facilities in a manner to ensure sustainable development having regard to, among others, principles 1 and 4 of the Rio declaration of 1992. These state as follows: Principle 1: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

5. Sustainable Development, Some Policies and actions of Oil Producing Companies in Nigeria – The SPDC Mode

Against the background of the legal framework discussed above, oil producing companies by the nature of their business are essentially advocates of Sustainable Development in principle. Most of the producing companies have formal units established to ensure that Sustainable Development is engrafted in every project and production process. Some of the policies and practices of the oil producing companies are geared towards sustainable

²⁰ An Oxymoron (plural oxymorons or, more rarely, oxymora) is a figure of speech that combines two normally contradictory terms. *Oxymoron* is a loanword from Greek *oxy* (‘sharp’) and *mos* (‘dull’). Thus, the word *oxymoron* is itself an oxymoron

²¹ Abdul Rasheed, Prime Minister of Malaysia, in a speech at the Rio Conference held in Brazil, 1992

²² An ‘unsustainable situation’ occurs when natural capital (the sum total of nature’s resources) is used up faster than it can be replenished. Sustainability requires that human activity only uses nature’s resources at a rate at which they can be replenished naturally. Theoretically, the long-term result of environmental degradation would be local environments that are no longer able to sustain human populations to any degree. Such degradation on a global scale could imply extinction for humanity.

²³The United Nations Division for Sustainable Development lists the following areas as coming within the scope of Sustainable Development: * Agriculture * Education and Awareness* International Law* Science

development but implementation of the policies is another issue. The policies include: Support of concern over greenhouse gases and the need for action to stabilize the greenhouse gases in the atmosphere; agreement to comply with the Department of Petroleum Resources for Environmental Guidelines and standards for the Petroleum Industry in Nigeria; transparency in disclosing information and making payments to government; Asset Integrity which involves replacement, refurbishment and upgrade of key facilities such as pipelines, manifolds and flow stations; Eliminating routine gas flaring and harnessing associated gas and; Improving Environmental Impact Assessment and Awareness.²⁴

6. Sustainable Development-Some Legal Disputes

A number of legal disputes on sustainable development related cases have been instituted against companies in the oil industry. Although it is too early in the day to say what the judicial attitude will be, the attempt at using the judicial process to ensure environmental sustainability in the conduct of the oil companies is a commendable demonstration of the awareness and consciousness that sustainable development is everybody's challenge and that attitudes are changing for the better.

In *Oronto Douglas v. SPDC*,²⁵ the plaintiff, an environmental right activist challenged the operations of the defendant in relation to the Liquefied Natural Gas (LNG) Project for allegedly failing to comply with the Environmental Impact Assessment Act. He lost the case on the ground that he could not establish locus standi but it shows the increasing agitation and awareness by individuals and organization for a more rule adherent and ultimately a hazard free environment. Of remarkable note is a suit instituted against SPDC, NNPC, Total, Agip, Chevron and the Attorney General of the Federal Republic of Nigeria raising issues which have long been taken for granted. In *Gbemre & Ors v. SPDC & Anor*,²⁶ which was brought by the Iwhrekan Community in Ughelli South Local Government of delta State the Plaintiffs claim that, among other things, the gas flaring activities of the joint ventures (defendants) is in violation of their Fundamental Human Right (to life) under the Nigerian Constitution and African Charter on Human Rights. They also claim that Associated Gas Re-Injection Act, which permits oil companies to flare gas subject to conditions, is an invalid Law. They therefore asked the court to perpetually restrain SPDC and the other major oil companies from further flaring gas. The Federal High Court Benin²⁷ entered judgment for the plaintiffs in Benin City in November 2005 despite SPDC's preliminary and pending appeal on jurisdiction and complaint that the judicial procedure followed by the judge – which did not allow witness testimonies, expert evident or cross-examination was defective and unknown to law. Accordingly, SPDC appealed²⁸ the judgment and also filed for a stay of execution of the judgment. The High Court granted SPDC's motion for a stay of execution.

7. Challenges for Sustainable Development in Oil Production

In their effort to ingrain sustainable development in their operations, oil producing companies are challenged in a number of ways including the following:

Gas Flaring

Notwithstanding acclaimed efforts to stop gas flaring that it has continued unabated. Very recently, the Environmental Rights Action and Friends of the Earth, NGOs, opposed a call by the oil producing companies for the extension of the flare out date to 2010.²⁹

Oil Spills

The menace of oil spills still persists largely due to sabotage but also due to controllable actions of asset integrity and human error.

Integrity of Assets

Poor funding and age of facilities are still of concern.

Law Enforcement

Far from what is desirable, it is sustained by poor funding of the regulatory agencies and corruption.

²⁴ SPDC Ltd., 'Shell Nigeria Annual Report 2006, People and the Environment 2006'

²⁵ Unreported, Suit No. FHC/L/CS/573/93, in Ogiribo, Luke O. 'The Role of Private Organisations in the Protection of the Environment' (2006) Vol. 2 No. No. 2 DLR, 291

²⁶ Unreported, Suit No. PHC/B/CS/153/2005

²⁷ A Similar suit against the same set of defendants seeking identical reliefs was struck out by the Federal High Court in Port-Harcourt in September 2006

²⁸ There is a further appeal to the Supreme Court on the issue in Suit No. SC/91/2005

²⁹ Delta Broadcasting Service, Warri, News of 20 – 11 – 07 at 3.35pm

Surrogate Government Status of Oil Companies

Perception of oil producing companies as unit of government duty bound to develop the host communities has resulted in negative appreciation of sustainable community development efforts of the companies.

Good Governance

Lack of good governance practice has put undue pressure on the modest effect of the oil companies and negated sustainability due to avoidable ostentation and wasteful public expenditure and lack of accountability on the part of public officials leading to absence of sectoral support³⁰ for SD from government and other development actors.

Poor Government Funding of the Joint Venture Partnership

This has been cited by the oil companies as a major source of poor performance in desirable areas. A number of the Associated Gas Gathering projects that would have ensured total flare out of gas by 2008 are not completed due to lack of funds (from the Federal Government).

8. Conclusion and Recommendations

An attempt has been made, in this paper to define the concept of sustainable development, its connotations, the business of oil exploration, some practices of the oil industry that have implications for sustainable development and the challenges faced by oil companies in practicing sustainable development. Reference was made to few cases showing increasing resort to the judicial option in environmental protection. Some key questions to stimulate further academic inquiry may here be asked: Are the laws enough? Is everybody concerned doing enough? Are all stakeholders in sustainable development playing helpful roles in realizing increasing development in a sustained environment? Is the problem of the low level of achievement in sustainable development associated with oil production activities due to inadequate laws, it is a problem of the head or of the heart? The laws, though not adequate are enough for us to attain a higher level of SD if they are properly implemented and with positive societal attitude that the legislative objectives in our laws be realized. The regulatory agencies and the security agencies like many other public bodies are chronically underfunded and understaffed. Often, from frequent interaction, they become overly sympathetic to the technical and economic problems of the industry they are expected to regulate. A situation whereby the regulatory agencies and enforcement officers all depend on the oil companies to provide logistic support do their work leaves much to be desired in the enforcement of compliance. They may become compromised and act under corrupt influences. In addition, there is a low level of awareness to the silent devastation which oil production activities is unleashing on the environment. There are those who are ignorant of the harm they cause to the environment; there are those who are indifferent and callous, who sponsor sabotage and actively support the despoliation of the environment for the financial gains they receive in unjustified compensations claimed. The regulatory agencies, the security agencies, communities, oil companies, government, nongovernmental organizations and environmental right activists must do more than they are presently doing; oil production has devastated and is still devastating our environment.

From the foregoing the following recommendations are made: There should be better conditions of service for the regulating agencies and increase in their working tools so that they can honestly enforce existing laws and regulations. Government must urgently and seriously diversify its sources of revenue and grow other sectors of the economy so as to reduce pressure on the oil producing companies. The issue of the integrity of assets used in oil production where over age lead to oil spill needs to be addressed by the Joint Venture partners. Government should as a matter of policy ensure timely provision of its share of the Joint Venture Cash Calls to ensure adequate funding for projects in the oil sector. Governments at all levels need to demonstrate sustainable life styles by the way they spend public money; so far there is nothing to justify the annual huge budgetary allocations. Only lip service has been paid to poverty eradication, the disparity in the standards of living with majority of the people suffering is contrary to principle 5 of the Rio Declaration on Environment and Development.

³⁰ In a keynote address at a symposium organized by the Nigerian Conservation Fund in September 2007 Prof. A.M.A. Imevbore stated that it is a misconception to say that oil companies are not responsible, especially having regard to the different developmental programmes that oil firm are sponsoring to better the lots of the people of the Niger Delta. That the representatives of the Niger Delta people are the ones depriving their people the right to good living. He noted that the 13% derivation fund from the Federal Government though small has never been accounted for by the leaders of the region. At the same event, Mr. Larry Ossal, Government and Ventures Relations Manager snepco noted that the Nigerian Government that has 95% of the earning of the Joint Venture with oil. He said: 'The money from oil and gas is meant to be used to develop other sectors of the economy like agriculture, education, technology and so on' (The Guardian, Tuesday, 2nd October 2007 at p. 1)