

2001/02

LEGISLATIVE DRAFTING PROJECT SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF DEGREE OF
MASTER OF LAWS (LL.M) INTERNATIONAL MARITIME LAW

2001/2002 ACADEMIC SESSION.

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AN ACT TO IMPLEMENT INTO THE LAWS OF THE
FEDERAL REPUBLIC OF NIGERIA THE INTERNATIONAL
CONVENTION ON OIL POLLUTION PREPAREDNESS,
RESPONSE AND CO-OPERATION, 1990.

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EXPLANATORY NOTE

(This Explanatory Note does not form part of the Act)

The pollution of the marine environment by oil has been a source of deep concern to all nations and in recent times there have been numerous incidents of pollution of the ocean by oil that have resulted in massive damage to the marine environment. A few examples are the incidents of the Torrey Canyon in 1967, Amoco Cadiz, Exxon Valdez and more recently in 1999, the Erica just to mention a few. Cases that have made headlines and captured our imagination are those that have caused tremendous damage to the marine environment. There are myriad incidents of pollution that have not been so dramatic, but have also equally proved to have devastating effect on the marine environment.

This concern has translated into the adoption of a series of legislative instruments both nationally and internationally in an attempt to combat this menace and has led to the establishment of measures to prevent the occurrence of these incidents where and whenever possible.

The International Maritime Organization in keeping with its motto of cleaner oceans and safer seas has spear headed the fight against pollution of the seas through the adoption of various international Conventions with a view to regulating and enforcing measures for the prevention of pollution by oil, establishing liability and compensation regimes in dealing with the problem and the maintenance of safety standards for ships. The following Conventions and many others came into being as a result, the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL), International Convention on Civil

Liability for Oil Pollution Damage (CLC) 1969, and the I.O.P.C Fund Convention 1971.

Following the incident of the Exxon Valdez, a diplomatic Conference was convened by leading industrial nations and called upon the International Maritime Organization to develop further measures to prevent pollution of the marine environment from ships. The culmination of that conference was the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990. The purpose of the Convention is to provide a global framework for International co-operation in combating major incidents or threats of marine pollution. States parties to the Convention will be required to establish measures for dealing with pollution incidents either nationally or in co-operation with other countries on a regional basis.

Ships belonging to State parties and foreign ships calling at the ports of states parties are required to carry a shipboard oil pollution emergency plan.

The oil pollution emergency plans are subject to inspection by Port Authorities. The Convention also requires operators of Ports, harbours and Off shore units under the jurisdiction of States parties are also required to have oil pollution emergency plans which must be coordinated with established national systems for responding promptly and effectively to oil pollution incidents. This is necessary because a major oil spill occurring within or in close proximity to ports and marinas could have far reaching physical and economic effects. The potential for serious economic consequences is high. Ships are required to report incidents of pollution to coastal authorities. Under the Convention there is also the requirement to carry out such reports in accordance with stipulated procedures and failure to make a report constitutes an offence under the Convention. There is provision also for the stockpile of oil spill combating exercises and the development of detailed plans for dealing with pollution incidents.

States are also required to provide assistance to other States in the event of an oil pollution emergency and provision is made for the reimbursement of any assistance provided.

Nigeria being one of Africa's leading maritime nations and having its principal export as crude oil has the propensity for oil spillage. Since oil was discovered in the early 1960s it has accounted for more than 51% of the nations export earnings. In 1995, alone the country's total crude oil export earning amounted to \$10.64 million Dollars 57% of the total Federal Government earnings. With the size of the crude oil export trade it is inevitable that incidents of oil spillages will occur. Oil spills may be recorded especially when ships are bunkering and through the operations of the oil terminals and off shore exploration activities. It is thus imperative that these facilities and the tankers which service them be well equipped to handle incidents of oil pollution when ever they may occur. The Torrey Canyon incident in 1967 alerted the International community to the dangers of exacerbating the effects of a major spill by poor response. Needless to say it is the duty of the Federal Government to ensure that all measures necessary to be taken in the prevention of pollution by oil spills need to be complied with but it should be prepared to ensure that clean up activities are carried out with precision and ease when called upon to do so. According to the United Nations Charter, States have the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or of areas beyond the limits of their natural jurisdiction. The degree of a State's preparedness for an oil pollution incident will clearly affect the efficiency and success of the clean up operation, if the sort of equipment and the people with the right skill to operate it are not readily available at the time of a spill, the oil is more likely to reach the shorelines and once there is more likely to stay longer and inflict more damage than if a well trained response team goes into action at the start. It is for this reason that it has become necessary to implement the OPRC Convention into our

domestic legislations to enable the country be prepared in the case of any oil spill incident.

This legislation in keeping with the provisions of the OPRC Convention seeks to nominate the Minister of Transport as the designated Authority on behalf of the Federal Government to carry out and implement the provisions of the Convention. The legislation also vests in him the power to make regulations as he deems necessary for the implementation of this Act. The legislation also establishes the Marine and Environmental Agency which will be saddled with the management of the nation's oil contingency plan and combat of oil spill anywhere it may occur in the coast and territory of Nigeria.

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SCHEDULE I

SCHEDULE II

**THE MERCHANT SHIPPING (OIL POLLUTION
PREPAREDNESS, RESPONSE AND CO-OPERATION) ACT,
CHAPTER XXIV OF THE LAWS OF THE FEDERATION OF
NIGERIA, 200xx.**

long title

WHEREAS at the International Maritime Organisation Conference held in London the delegates at the conference agreed to recommend their respective governments to adopt the International Maritime Organisation Convention on Oil Pollution Preparedness, Response and Co-operation due to the conscious need to preserve the human environment in general and the marine environment in particular and recognizing the serious threat posed to the marine environment by oil pollution incidents involving ships, off shore units, sea ports and oil handling facilities;

Preamble

And whereas the Federal Republic of Nigeria having recognized the need to establish a national oil pollution contingency plan in order to minimize the damage which may result from such oil pollution incidents and to deal effectively and promptly with event of an oil pollution incident anywhere whether on the high seas, territorial waters and internal waters is desirous of implementing the provisions of the said International Maritime Organisation Convention on Oil Pollution Preparedness, Response and Co-operation.

And whereas it is expedient that the provisions of the Convention and the schedule thereto be given the force of law in the Federal Republic of Nigeria.

BE IT THEREFORE ENACTED by the National Assembly of the Federal Republic of Nigeria in this present Assembly and by the authority of the same as follows:

enactment

1. This Act may be cited as **The Merchant Shipping (Oil Pollution Preparedness, Response and Co Operation) Act 200X.**

Short title

2. This Act shall come into force on a day to be appointed by the Minister of Transport and published by legal notice in a Gazette.

commencement

3. -(1) The provisions of this Act shall apply to all Nigerian ships except the following:

- (a) war ships
- (b) naval auxiliary ships
- (c) ships owned by the Federal Government but used only on none commercial service.

Savings

(2) Without prejudice to the preceding sub-section all ships belonging to the Federal Government and not engaged in commercial service shall adopt appropriate measures for combating oil pollution incidents as prescribed by the Minister in furtherance of the provisions of this Act.

4. In this Act unless it is otherwise expressly provided or the context otherwise requires, the following shall have the meaning herein stated:

“Federal Government” means the Government of Nigeria

Interpretation

“Federation” means the Federal Republic of Nigeria

“Lighter Terminal” means the Ikorodu, Kirikiri, Federal and Ocean Lighter Terminals at Onne, Port Harcourt.

“oil” shall mean petroleum in any form including crude oil, sludge, oil refuse and refined products.

“Minister” means the Federal Minister of Transport.

“MEA” means the Marine and Environmental Agency a special agency of the Ministry of Transport responsible for all pollution matters in the Federation.

“Nigerian Ship” means any ship registered in the Federal Republic of Nigeria.

“Ports Authority” means the Nigerian Ports Authority.

“oil pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interest of one or more states, and which requires emergency action or other immediate response.

“organization” means the International Maritime Organization.

“oil pollution emergency plan” means contingency plans required to be formulated and adopted by all ships, Ports,

“oil handling facilities and off shore units” means any facility used for the bunkering of crude oil within the territory of Nigeria.

“Port” means all Ports, harbours, piers, jetties, Federal and Ocean Lighter Terminals.

“Port Limit” means all defined borders of the ports and their approaches.

“off shore installation” means any fixed or floating installation or structure engaged in gas or oil exploration, exploitation or

production activities, loading or unloading of oil.

“standard reporting requirements” means the requirements stated in sections 3.1, 3.2 and 3.3 of part 3 (Guidelines for Detailed Reporting Requirements) an appendix annexed to Resolution A.648(16) adopted by the Assembly of the International Maritime Organisation on 19th October, 1968.

“Territory of Nigeria” means the territorial waters and Exclusive Economic Zone of the Federal Republic of Nigeria as declared in the Territorial Waters Act Cap. 428, Exclusive Economic Zone Act Cap. 116 Laws of the Federation of Nigeria, 1990.

5. -(1) An oil pollution emergency plan shall be established by:

(a) all Ports;

Pollution plans

(b) every oil handling facility

(a) every off shore oil installation

(2) All Nigerian ships or any ship within Nigerian territorial waters shall be required to have a ship board oil pollution emergency plan in accordance with section 1 to schedule I hereto.

shipboard plan

(3) All port plans to be so established shall take into consideration the provisions of section...of schedule I

(a) There may be joint plans established between a Port, operators of oil handling facilities and operators of offshore installations for a particular area or zone.

joint plans

(b) Subject to section 5(1) and (2) every Nigerian ship, port, oil handling facility and offshore installation shall submit an oil pollution emergency plan to the Marine and Environmental Agency for approval within 18 months from the entry into force of this Act.

(c) The Marine and Environmental Agency shall within 1(one) month of the submission of a plan grant its approval for the implementation of the plan.

(d) The oil pollution plans submitted shall take into account guidelines and requirements approved by the Marine and Environmental Agency which said guidelines shall be in accordance with the specifications provided by the organization.

guidelines

6. -(1) All Nigerian ships, Ports, oil handling facilities and offshore installations shall carry out a review of their oil pollution emergency plans every 3 years.

review of plans

(2) The reviewed plans shall be submitted to the Marine and Environmental Agency for approval and such approval shall be granted within 2 weeks of submission of the plans.

(3) The Marine and Environmental Agency shall have the power to withhold its approval or direct that a plan submitted to it be altered for any of the following reasons:

approvals

(a) To make the plan conform with any recommendations it may make.

(b) If the plan is incompatible with the national contingency plan approved by the Minister.

(c) If in the opinion of the Marine and Environmental Agency a plan is not appropriate or is not adequate for dealing with an oil pollution incident which may occur in the particular area where it is required.

(4) Where the Marine and Environmental Agency has withheld its approval of a plan for any reason stated above or recommended alterations to be made to a plan, it shall be the duty of the Authority in charge of such plan to carry out the recommendations or alterations as directed. Failure to comply with any directive for alteration shall constitute an offence under this Act.

(a) All Nigerian ships, ports, oil handling facilities and Offshore Installations shall be required to implement their oil pollution emergency plans as approved or altered by the Marine and Environmental Agency in the event of an oil pollution incident in their particular area or Whenever requested to do so in the manner provided by the national contingency plan.

implementation

7. -(1) When the master of a Nigerian ship whilst within the territory of Nigeria observes any discharge of oil from his ship, oil facility or off-shore installation into the sea or anywhere within the territory of Nigeria, he shall report such oil discharge to the Marine and Environmental Agency immediately.

discharge of oil

(2) Where the discharge of oil observed by the master of the Nigerian ship is from any ship, oil handling facility or off shore installation outside the territorial water of Nigeria, he shall make the report to the nearest coastal State.

Reports

(3) The master whilst making the reports required under sub-sections (1) and (2) above shall comply with the standard ship reporting procedure contained in section 2 of Schedule I hereto.

(4) In the case of an oil discharge observed within the Port limit, oil handling facility or off shore installation, it shall be the responsibility of the Port Manager (in the case of a Port) and the official in charge of the oil handling facility and off shore installation to report the incident to the Marine and Environmental Agency through its National Report Centre.

(5) All reports to be made by Ports, oil handling facilities and off shore oil installations under this Act shall be in accordance with the standard reporting requirement and shall only be made where the emergency plans for the facilities prove inadequate to handle the incident.

8. -(1) It shall be the responsibility of the Ports Authority through the Port Managers of the various ports to take all necessary steps contained in the port plan to control any oil discharge or presence of oil observed within the Port limits and approaches to the Ports.

pollution
in port
area

(2) The officer in charge of an oil handling facility and off shore installation shall be charged with the responsibility of putting into operation the local plan for the facility in the event of a discharge of oil or presence of oil in that area.

Execution
of port plan

9. -(1) Subject to the provisions of sections 6 and 7, all reports made there under shall be received by the Marine and Environmental Agency and on receipt of report on any pollution incident from any source whatsoever, shall promptly take the following actions:

Actions
to be taken
in the event
of pollution

(a) Assessment of the event to determine whether the incident amounts to a major pollution incident.

(b) Assessment of the nature, extent and possible consequences of the oil pollution incident; and

(c) Inform without delay all parties likely to be affected by such pollution incident. locally, nationally and internationally.

(2) Where a national pollution incident exceeds the management capability of the Marine and Environment Agency, it shall request the approval of the Minister to inform the organization for assistance.

(3) In making a report referred to in sub-section 2 the Marine and Environmental Agency shall include detailed report on the effort made to combat such pollution incident.

(4) All reports made under this section shall comply with the standard reporting requirement for oil pollution incidents as adopted by the organization.

10. -(1) The Minister shall make all rules and regulations for the establishment of the Marine and Environmental Agency which is the Authority responsible for management of the environment, oil spill preparedness, response and co-operation on behalf of the Ministry of Transport.

Establishment
of MEA

(2) The duties and responsibilities of the Marine and Environmental Agency shall be as follows:

Duties

(a) To prepare and define the national policy on oil spill response and co-operation. This will also involve the co-ordination and implementation of ministerial policies and directives on oil spill response .

(b) To define the objectives of the national contingency plan and all arrangements at various levels.

(c) To define adequate pollution response strategies and make proposals for improvement of subsisting response strategies.

(d) The establishment of a National Reporting Centre which shall be the focal point for receiving all reports on oil spill incidents or any observed pollution within the territory of Nigeria.

(e) Make proposals and recommendations for the legal, financial implications of future contingency arrangements.

(f) Preparing guidelines and instructions for the preparation of national and district contingency plans.

(g) Conducting activities related to international co-operation and assistance in the event of an oil pollution incident.

(h) The establishment of a national oil spill response Authority which shall be responsible for the operational response to all oil spill incidents caused or likely to be caused within the territory of Nigeria. This body shall be headed by an on scene Commander.

(i) To ensure proper and efficient co-ordination of the national contingency plan with the emergency plans made by the Ports, harbours, oil handling facilities and off shore installations for the efficient and smooth operation of all the plans in the event of an oil pollution incident.

(j) To ensure that contingency plans submitted by the Port, harbour, oil handling facilities and off shore installations and grant approval if the plans are in compliance with the recommended standard for such a facility.

(k) In order to ensure strict compliance with this Act to make recommendation for alteration of plans which do not meet the required standards.

11. -(1) The Marine and Environmental Agency shall render assistance when requested to do so in the event of an oil pollution incident and where it lacks the capability to handle such an incident, it shall request for assistance from any other competent International agency for the purpose of carrying out its responsibility under this Act.

Assistance

(2) In order to fulfill its obligations under sub section 2, it shall seek the approval of the Minister before making the request for assistance from the international agency.

12. -(1) The Minister shall grant approval for a substantial sum of money to be made available as subvention on a quarterly basis for the operation of the Marine and Environmental Agency.

Finance

(2) Where additional unforeseen expenses are incurred in the execution of the functions of the Marine and Environmental Agency an application for additional fund shall be made to the Minister for approval.

Additional
Finance

13. -(1) The Minister shall make regulations by order of gazette for a national contingency plan for preparedness and response in accordance with guidelines recommended in section 4 to Schedule 1 of this Act.

National
contingency
Plan

(2) The contingency plan to be formulated shall seek for contributions and memorandum from both the private and public sectors on the manner of co-ordination and execution and it shall take into consideration guidelines developed by the organization.

memorandum

(3) In furtherance of the objectives of this Act in combating oil pollution incidents at every level, Ports, harbours, oil handling facilities and off shore installations are required to establish in their various locations the following:

Combat
Equipment

(a) a minimum level of pre positioned oil spill combating equipment, commensurate with the risk involved and programmes for its use;

(b) a programme of exercises for oil pollution response and training

exercise

of relevant personnel;

and training

(c) detailed plans and communication capabilities for responding to an oil pollution incident. Such capabilities are to be continuously available.

(d) a mechanism to co-ordinate the response to an oil pollution incident with, if appropriate the capabilities to mobilize the necessary resources.

(4) The national contingency plan shall be subject to review every 3 years by the Marine and Environmental Agency and updated when necessary. The approval of the Minister shall be obtained before any review of the plans are carried out.

review
of contingency
plan

14.-(1) The Marine and Environmental Agency shall have the right to board a ship, enter any port, oil handling facility and off shore installation to carry out inspection of any ship or port, oil handling facility and off shore installation to determine compliance with the provisions of this Act.

Inspection

(2) The pollution control inspectors as certified by the Marine and Environmental Agency to carry out the inspections on its behalf shall have the power to direct any ship to provide reasonable information on the shipboard oil pollution emergency plan that the ship is required to have.

(3) The pollution control inspectors shall also direct any oil handling facility and off shore installation to provide reasonable information on their response plan.

(4) The inspectors shall have the right to detain any ship which does not comply with the provisions of this Act

15. -(1) The Minister shall grant approval to the Marine and Environmental Agency when necessary and subject to its capabilities and availability of resources for co-operation and provision of advisory services, technical support and equipment for the purpose of responding to an oil pollution incident.

(2) The above mentioned approval shall be granted subject to the severity of the pollution incident and upon the request of the affected State or States.

(5) The financing of such services mentioned in (1) above shall be as set out in the schedule to this Act.

(6) In the event of providing the services referred to in (1) above the Minister shall make regulations for;

(a) arrival, departure and utilization from the country of ships, aircrafts and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and

(e) expeditious movement into, through and out of the country of personnel, cargoes, materials and equipment referred to in sub paragraph (a).

16. The Marine and Environmental Agency shall establish links through the organization with developed countries research institutions for information and assistance on current developments on research and development in the field of response and co-operation in oil pollution. Research

17. The Marine and Environmental Agency in furtherance of co-operation in response and co operation in oil pollution incidents shall promote international symposia on recent technological advances made in the field of oil pollution response and co operation for the enlightenment of its personnel and to keep abreast with development in the field. Symposia

18. The Marine and Environmental Agency shall through the organization request for assistance from other countries in acquiring information on latest equipment in combating oil pollution and practical knowledge on their use. information

19. The Marine and Environmental Agency shall through the organization request for technical assistance in the training of its personnel in the following: Technical Assistance

(1) measures for combating and response to oil pollution incidents;

(2) use of equipment for combating oil pollution incidents.

(3) recent developments in the field of oil pollution response and co operation.

20. -(1) Any Nigerian ship, port, operator of an offshore installation or oil handling facility who; Offences

(a) Fails to prepare its oil pollution emergency plan in contravention of section 5 shall be guilty of an offence under this Act punishable on summary conviction to a fine not exceeding N1,000,000. 00 (One Million Naira).

(b) Fails to submit an oil pollution plan within 6 (six) months of the entry into force of this Act in accordance with section 5 (2) (b) shall be guilty of an offence and on conviction shall be liable to payment of a fine not exceeding the sum of N800,000.00 (Eight hundred Thousand

Naira).

(c) Fails to carry out its oil pollution emergency plan as approved by the Marine and Environmental Agency in the event of an oil pollution incident shall also be guilty of an offence and shall be liable on conviction to a fine of N2,000,000.00(Two Million Naira).

(2) Any person, master of a ship, or officer in charge of an offshore installation or oil facility required under this Act to make a report and fails or neglects to do so shall be guilty of an offence and on conviction will be liable to the payment of a fine of the sum of N1,000,000.00 (One Million Naira only).

21. The Federal High Court of Nigeria shall be the competent court conferred with jurisdiction to entertain matters under this subject matter. jurisdiction

22. The Minister may make regulations in addition to those specified in this Act for the effective implementation of this Act. Regulations

SCHEDULE – I

Sections

1. The shipboard oil pollution plan shall be made in accordance with IMO guidelines for the development of shipboard oil pollution emergency plans.

2. The shipboard oil pollution emergency plan shall consist of:

(a) The procedure to be followed by the master or other persons to report an oil pollution incident;

(b) The list of authorities or persons to be contacted in the event of an oil pollution incident;

(c) A detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following the incident.

(d) The plan should be written in the working language of the master and officers.

3. The Port Plans to be established shall be in accordance with the following:

(a) The plan should take into consideration the type of incident which it intends to deal with.

4. The National Contingency Plan shall be prepared in accordance with the following considerations:

(a) The plan should cover the entire sea shore and adjacent waters of the territory of Nigeria.

(b) It will define government policy and responsibilities in the area of oil pollution response and co-operation.

(c) Designated Authority shall be the Ministry of Transport.

(d) Appointment of the On Scene Commander

(e) Responsibility and organization for response

(f) Preparedness and planning

- (g) Duties of the On Scene Commander
- (h) Notification and Reporting Systems
- (i) Area Plans, Port Plans and Oil handling and off shore installation Plans.
- (j) Drills and exercise programmes
- (k) Response Patterns
 - (i) Command Structure
 - (ii) Communications/ Command Facilities
 - (iii) Specialist Teams
 - (iv) Health and Safety
 - (v) Response Technology
 - (vi) Administration Logistics
 - (vii) Funding, reimbursement, claims
- (l) Post Incident Review
- (m) Equipment.

5. The shipboard oil pollution reporting procedure shall be that provided for ships under Article 8 of the International Convention for the Prevention of pollution from ships, 1973 as amended by Protocol of 1978. Marpol 73/78

6. The reporting procedure to be adopted for the purpose of this Act shall be that stated in Article 6(1) Section II of the IMO Manual on oil Pollution.

SCHEDULE II

REIMBURSEMENT OF COSTS FOR ASSISTANCE

1. -(1) Where an oil pollution incident has been undertaken in conjunction with any state, each party shall be responsible for any cost incurred in the process.

(1) Where the Minister has approved that assistance should be rendered to any state which makes a formal request for assistance in tackling an oil pollution incident, the requesting state shall be responsible for costs incurred in performing the operation.

(2) The provisions stated in section 1 to this schedule shall not apply where there is an agreement existing between the country and the requesting state.

2. The Minister shall make regulations for the method of calculating the cost and expense incurred in assisting a requesting state in combating an oil pollution incident. Provided that the regulation so made will not apply where the parties have an agreement between them which makes provision for the manner of calculating such cost.