

**ENVIRONMENTAL DEGRADATION AND OIL SPILLAGE: AN INDICTMENT TO  
HUMAN RIGHT AND ENVIRONMENTAL LAW**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,  
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## **CERTIFICATION**

I, **Christian Osawese BRIGHT**, with Matriculation Number **LAW2002846**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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## **APPROVAL**

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## **DEDICATION**

I dedicate this project to my lover, my Creator and the very reason for my existence, God Almighty for the priceless gift of life and for making all of this possible, for without Him, nothing would be. I also dedicate it to my beloved parents, Mr. and Mrs. Bright, whose constant love, encouragement, and unwavering support have carried me throughout my LLB journey.

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## LIST OF ABBREVIATIONS

**AG-** Attorney-General

**ANPG-** National Agency for Petroleum, Gas and Biofuels (Agência Nacional de Petróleo, Gás e Biocombustíveis – Angola)

**Cap-** Chapter (used in legal citation for statutes)

**CERCLA-** Comprehensive Environmental Response, Compensation, and Liability Act (USA)

**CFC-** Chlorofluorocarbon

**DPR-** Department of Petroleum Resources (Nigeria)

**EEA-** European Environment Agency

**EIA-** Environmental Impact Assessment

**EIONET-** European Environment Information and Observation Network

**EPA-** Environmental Protection Agency

**FEPA-** Federal Environmental Protection Agency (repealed Nigerian agency)

**GCLME-** Guinea Current Large Marine Ecosystem

**GEF-** Global Environment Facility

**GI WACAF-** Global Initiative for West, Central and Southern Africa

**HRLRA-** Human Rights Law Reports Annotated

**IHME-** Institute for Health Metrics and Evaluation

**JSC-** Justice of the Supreme Court

**LFN-** Laws of the Federation of Nigeria

**MASOP-** Movement for the Survival of the Ogoni People

**MMH-** Ministry of Mines and Hydrocarbons

**MPN-** Mobil Producing Nigeria (ExxonMobil affiliate)

**NCLR-** Nigeria Constitutional Law Reports

**NESREA-** National Environmental Standards and Regulations Enforcement Agency

**NNPC-** Nigerian National Petroleum Corporation

**NOSCP-** National Oil Spill Contingency Plan

**NOSDRA-** National Oil Spill Detection and Response Agency

**NWLR-** Nigeria Weekly Law Reports

**OPEC-** Organization of the Petroleum Exporting Countries

**SPDC-** Shell Petroleum Development Company

**UN-** United Nations

**UNCED-** United Nations Conference on Environment and Development (Earth Summit)

**UNCHR-** United Nations Commission on Human Rights

**UNEP-** United Nations Environment Programme

**WHO-** World Health Organization

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## **CHAPTER ONE**

### **1.1 BACKGROUND**

Environmental Degradation refers to the deterioration of the environment through the depletion of natural resources, pollution, and destruction of ecosystems, often resulting from human activities. It encompasses a wide range of issues including soil erosion, water pollution, deforestation and climate change.

After the advent of civilization, the constant quest for rapid growth and development motivated by man trying to make lives better for mankind by exploring natural resources has been met with more severe consequences mostly to the people who live within the area of exploration.

One contributor to environmental degradation in oil producing regions is oil spillage which has shown to have severe ecological, social and economic consequences.

The environment encompasses the natural world where humans, animals, and plants coexist. According to Black's Law Dictionary, it includes the collective physical, economic, cultural, aesthetic, and social factors that influence property value and people's quality of life. Under Nigerian law, the term "environment" covers water, air, land, all living organisms, and their interconnections. Environmental degradation refers to the decline of the environment through the depletion of resources like air, water, and soil, the destruction of ecosystems, and the extinction of wildlife.

Recognized as one of the ten major threats by the United Nations' high-level threat panel, environmental degradation underscores the critical importance of the environment. It is a complex, delicate system that, when well-managed, supports productive, aesthetic, and spiritual benefits. However, poor management can lead to severe consequences, threatening not only human survival but all life forms. Thus, the environment serves as the foundational physical basis for all survival.

The claim that more than 30,000 people die each day globally due to environmental degradation and pollution translates to approximately 10.95 million deaths annually. The statement further asserts that 108 million people die each year from these causes, which appears exaggerated when compared to more reliable estimates. For instance, the World Health Organization (WHO) and World Bank estimate that air, water, and soil pollution cause around 7–9 million premature deaths annually, with air pollution alone accounting for about 7 million deaths each year. These figures, while still alarming, are significantly lower than the 108 million deaths claimed, suggesting a potential error or misinterpretation in the provided data.

The assertion that 7.3 million people died worldwide due to environmental degradation and pollution between 1990 and 2009 is also inconsistent with annual estimates. If 7.3 million deaths occurred over 19 years, this would average to approximately 384,000 deaths per year, which is far lower than the WHO's estimate of 7–9 million deaths annually from pollution-related causes. It's possible the 7.3 million figure refers to a specific subset of deaths (e.g., from a particular type of pollution or region) or is derived from outdated or context-specific data. For example, air

pollution alone caused an estimated 5.5 million deaths in 2013, according to a joint World Bank and Institute for Health Metrics and Evaluation (IHME) study. This discrepancy highlights the need to critically assess such figures for accuracy and context.

## **1.2 PROBLEM STATEMENT**

Oil spillages, often caused by leaking pipelines and faulty equipment, devastate marine ecosystems and contaminate drinking water sources. Tanker collisions and drilling blowouts accidentally release oil, coating beaches and wildlife. Human errors, such as mishandling infrastructure, trigger spills that pollute rivers and farmlands.

Environmental degradation and its consequences could be avoidable if it explorers had taken certain necessary precautions and in some situations the degradation is caused by vandals in the aggrieved society. In regions like the Niger Delta, vandals deliberately damage pipelines, causing widespread environmental harm. Natural disasters, like hurricanes, damage oil rigs, leading to massive spills that disrupt ocean ecosystems. Oil spills suffocate aquatic life by reducing oxygen levels in water and render soil infertile, impacting agriculture. Seabirds and fish suffer high mortality rates as spills destroy their habitats, threatening biodiversity and earth itself.

## **1.3 AIM AND OBJECTIVE OF THE STUDY**

The main objective of the study is to create a sense of awareness to the severe consequences of oil spillage and environmental degradation, thereby appealing to both excavators, oil producing

society, vandals and government of it danger and and necessary precautions in avoiding environmental degradation.

Evaluate the legal effectiveness of the Nigerian law regulating the exploration and excavation of it natural resources

Environmental degradation been an Indictment or violation of human rights

To mitigate the environmental impact of oil spillages on ecosystems.

To prevent oil spillage caused by operational error and human failure

#### **1.4 RESEARCH QUESTION**

To what extent do oil spillages undermine the right to a healthy environment, and how can environmental law be strengthened to ensure accountability and prevent future violations.

What are the combined impacts of oil spillages on environmental degradation and human rights in vulnerable communities, and how do failures in environmental law exacerbate these effects.

How do oil spillages contribute to environmental degradation and violate human rights, and what gaps in environmental law enforcement enable these impacts to persist.

How do oil spillages exacerbate climate change and violate human rights, and what role do international environmental laws play in mitigating these interconnected challenges.

## **1.5 SIGNIFICANCE OF THE STUDY**

This research investigates the consequences of environmental degradation, particularly oil spillage and gas flaring, in Nigeria's Niger-Delta region, focusing on their detrimental effects on local communities, including the destruction of natural habitats, resource depletion, and biodiversity loss. The study evaluates how environmental degradation violates human rights and environmental laws, providing a theoretical basis for reviewing and aligning relevant local and legal frameworks. It also examines the role of Nigerian and international laws in addressing environmental degradation and the obstacles to their enforcement. The study underscores the necessity for a unified legal framework and the active participation of international organizations and corporations to combat environmental degradation in the Niger-Delta.

## **1.6 SCOPE OF THE STUDY**

The study will focus exclusively on the Niger-Delta region of Nigeria, encompassing states affected by oil spillage and gas flaring, such as Delta, Bayelsa, Rivers, and Akwa Ibom. It will examine specific communities or ecosystems within this region to provide a detailed analysis.

The research will concentrate on environmental degradation caused by oil spillage and gas flaring, exploring their direct and indirect impacts and how this is an impediment and Indictment to human rights.

The study will analyze the interplay between environmental degradation and human rights violations, focusing on how these issues contravene Nigerian environmental laws (e.g.,

Environmental Impact Assessment Act, NESREA Act) and international frameworks (e.g., UNEP guidelines, African Charter on Human and Peoples' Rights). It will assess the effectiveness and enforcement challenges of these laws.

## **1.7 METHODOLOGY**

This Study will attempt a doctrinal approach, examining:

- Statutes and subsidiary legislation
- Judicial decisions (notable Nigerian and comparative cases)
- Reports of panels of inquiry
- Academic literature, legal commentaries, and international instruments

## **1.8 INTRODUCTION**

Since the advent of civilization, humans have been driven by the desire to advance and improve the quality of life by engaging with and utilizing the natural environment. Before environmental degradation<sup>1</sup> became widespread, the environment offered abundant opportunities for development and economic well-being. However, the rise of environmental degradation has stripped communities of these benefits, plunging many into severe poverty.

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<sup>1</sup> Environmental degradation comprises gas flaring, oil spillages, excessive exploitation or exploration of natural resources in the environment

Aware of the threats posed by environmental degradation<sup>2</sup>, both the international community and the Nigerian government have established various laws aimed at addressing the problem. These national and international legal instruments were designed to promote environmental sustainability and produce positive outcomes. Yet the persistent non-compliance by those who degrade the environment, together with the indirect complicity of government bodies that fail to enforce the laws, has weakened the effectiveness of these measures.

The current legal frameworks have achieved little in eliminating the scourge of environmental degradation. The problem continues to expand daily and globally, with no clear solution in sight to curb this ongoing violation.

This thesis therefore seeks to examine how environmental degradation represents a breach of human rights and environmental laws. It also aims to provide a theoretical foundation for reviewing and harmonizing relevant national and international legal instruments. Moreover, the role of international agencies and corporations in addressing environmental degradation will also be assessed.

Accordingly, it is necessary to begin with a brief description or definition of environmental degradation.

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<sup>2</sup> This research shall focus on the degradation cause by environmental pollution (gas flaring and oil spillages) in Niger-Delta region of Nigeria.

## 1.9 Environmental Degradation

To understand environmental degradation, it is essential first to define what is meant by environment. The environment refers to the natural world in which humans, animals, and plants exist. According to Black's Law Dictionary<sup>3</sup>, it encompasses the full range of physical, economic, cultural, aesthetic, and social conditions that influence the value of property and affect people's quality of life<sup>4</sup>. Nigerian law further defines the environment as including water, air, land, all plants and animals including human beings living within it, as well as the interrelationships among these elements<sup>5</sup>.

Environmental degradation, therefore, refers to the decline in environmental quality resulting from the depletion of natural resources such as air, water, and soil, the destruction of ecosystems, and the disappearance of wildlife species.

The United Nations' high level threat panel identifies environmental degradation as one of the world's ten major threats. This underscores its critical importance. The environment is a fragile and complex system which, when effectively managed, can provide immense domestic, aesthetic, and even spiritual benefits. However, when mismanaged, it can become dangerously harmful, threatening not only human survival but the existence of all living organisms. It follows that the environment forms the very foundation upon which life depends.

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<sup>3</sup> Oxford Advanced Learner's Dictionary, 6th Edition.

<sup>4</sup> Ibid

<sup>5</sup> National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007. This act repealed Federal Environmental Protection Act (FEPA) Cap 131 LFN, 1990.

Unfortunately, over the years, the environment has come under increasing threat, with severe and devastating consequences for human survival, as reflected in World Bank reports. Globally, more than 30,000 people die each day prematurely due to environmental degradation and pollution<sup>6</sup>. Annually, this amounts to about 108 million deaths. Research further indicates that between 1990 and 2009 a span of 19 years approximately 7.3 million people worldwide lost their lives as a result of environmental degradation and pollution. Clearly, this phenomenon poses a significant threat to humanity's continued existence and demands urgent action from nations and international organizations across the globe.

#### **1.10 The Emergence of Environmental Degradation**

Environmental degradation traces its origins to the biblical Garden of Eden, where God crafted a flawless world for humanity. Yet, Adam and Eve's defiance prompted their expulsion to labor on the earth from which they were formed<sup>7</sup>. In the account of Noah, divine directives led to the construction of a massive ark, sealed with tar a petroleum derivative for waterproofing. Similarly, Babylon's streets were laid with bitumen, and Jericho's walls were fortified using it. Hence, petroleum, natural gas, and various energy sources predated the Christian era<sup>8</sup>, implying that environmental exploration, extraction, and contamination likewise originated before then. The petroleum age commenced in 1859 when Edwin L. Drake, a former railroad conductor, bored the

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<sup>6</sup> Idowu, A. A. "Environmental degradation and Human Rights Violation", (quoting World Bank Development Report, Washington) (1999), Vol. 3, No. 1, MPJFIL, p. 125.

<sup>7</sup> Holy Bible (Revised Standard Version), Genesis 3:23, see also Okorodudu Fubaba M. T. Law of Environmental Protection, p. 15

<sup>8</sup> Atsegbua, L. A. 92nd Inaugural Lecture Series University of Benin 20th December 2007, p. 11

inaugural oil wells near Titusville, Pennsylvania, in the United States. The critical role of crude oil amid Europe's industrial revolution spurred the establishment of numerous multinational petroleum firms dedicated to crude oil prospecting. This expansion resulted in oil well development across nearly every corner of the planet, as noted by Professor A. L. Atsegbua<sup>9</sup>:

"Oil is found and produced in particularly all parts of the world: in North and South America, the Caribbean, the Middle East, the Far East, Australia, Europe, the Former Soviet Union, North and West Africa."

Environmental degradation manifests through the ruin of natural habitats, the exhaustion of resources, or the overall decline of the surroundings via the depletion of essentials like air, water, and soil; the dismantling of ecosystems; and the eradication of wildlife<sup>10</sup>. It follows logically that oil exploration and extraction invariably entail environmental degradation.

Though it assumes diverse forms, oil spills and gas flaring pose profound risks to human life, plant and animal species, and the broader ecosystem. For instance, more than eight decades after the Wallaroo Mines in Kadina, South Australia, were deserted, moss persists as the sole vegetation in certain areas of the site. Consequently, pollution and degradation whether from oil spills, gas flaring, or the processes of exploration and exploitation represent a grave peril to humanity, flora, fauna, and the environment at large.

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<sup>9</sup> Ibid

<sup>10</sup> Ibid

### **1.11 Emergence of Environmental Degradation in the Niger-Delta Region of Nigeria**

The predominant cause of environmental degradation in Nigeria's Niger-Delta region stems from oil and gas exploration and production, although other degradation types exist nationwide. Commercial oil discovery began in 1956 at Oloibiri (now in Bayelsa State) and Afam in Rivers State. Since then, petroleum reserves have been identified and extracted across all Niger-Delta states, driven by the region's vast crude oil deposits. To accelerate exploration and reduce reliance on a single operator, the government issued licenses to multiple international oil companies concurrently. Beneficiaries included Nigerian Gulf Oil Company, Shell Petroleum, Texaco, Mobil Producing, Chevron, Agip, and Elf, among others.

As Professor L. A. Atsegbua accurately observed<sup>11</sup>:

"Oil exploration and production has a high environmental cost on the oil-producing areas of the Niger-Delta. Oil spills kill fish and agricultural crops and pollute water with serious effects for the communities and families affected."

The Niger-Delta, encompassing one of the world's largest wetlands and Africa's most extensive, has suffered severe exploitation by these multinational firms, exacerbated by Nigeria's lenient environmental regulations. Consequently, many local communities view oil and gas as a curse rather than a blessing. According to NNPC official data derived from reports submitted by operating companies approximately 2,300 cubic metres of oil spill across about 300 incidents

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<sup>11</sup> Atsegbua, L. A. "Environmental Rights, Pipelines Vandalisation and Conflict Resolution in the Niger Delta, 2001", IELTR cited in Ibid, 16 at p. 12

each year. However, under-reporting likely inflates the true volume significantly; conservative analyses suggest it could be up to ten times greater<sup>12</sup>.

Reports indicate that many international oil companies, particularly Shell Petroleum, employed obsolete and outdated equipment during operations in Ogoniland, thereby jeopardizing the safety of residents, plant and animal life, and the broader ecosystem. Data from the Department of Petroleum Resources (DPR) reveal that from 1976 to 1996, 4,835 spill incidents released at least 2,446,322 barrels of oil, with approximately 1,896,930 barrels 77 percent escaping into the environment. Nigeria's most catastrophic spill occurred in January 1980, when an offshore Texaco well blowout discharged at least 200,000 barrels (per industry sources) into the Atlantic Ocean, devastating 340 hectares of mangroves. DPR estimates placed the volume above 400,000 barrels. Mangrove ecosystems are especially susceptible to oil contamination, as the soil absorbs it like a sponge and releases it anew with each rainy season. Two significant spills marked early 1998<sup>13</sup>. On January 12, over 40,000 barrels of crude oil escaped from a pipeline connecting Mobil's Idoho platform to its Qua Iboe terminal in Akwa Ibom State. Although Mobil claimed more than 90 percent had dispersed or evaporated naturally, the oil spread far beyond projections; by late February, around 500 barrels had reached shorelines, prompting roughly 140,000 compensation claims totaling about US \$100 million. Approximately twenty communities, home

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<sup>12</sup> The Price of Oil, 1998, cited in Atsegbua, L. A. in 92nd Inaugural Lecture Series University of Benin, December 20, 2007, p. 13

<sup>13</sup> Kalu, V. E., "Toxic Waste and the Nigerian Environment: An Appraisal", (2006), 9 (1) UBLJ at p. 60

to one million people, suffered the heaviest impacts, particularly near the Pennington River estuary.

On October 17, 1998, amid acute fuel shortages, residents of Jesse in Delta State exploited a vandalized NNPC pipeline to siphon petrol for profit, ignoring repeated safety warnings. The ensuing explosion killed over 1,000 people including women, children, and infants and burned for days, releasing toxic smoke and gases while annihilating all life in the immediate area. To this day, Jesse and its surroundings have not fully recovered from the disaster.

Similarly, Local and international media extensively covered the NNPC pipeline explosion in Ilado village on Friday, May 12, 2006, which claimed over 200 lives, with some victims' bodies drifting into waterways. No oil spill whether caused by multinational corporations or the state-owned NNPC has ever been fully remediated. Oil spills in the Niger Delta are rampant, with unreported incidents far exceeding documented ones. Case studies confirm spills across nearly every part of the region, including Lagos. According to The Nation, independent probes attributed pipeline failures to neglected maintenance, leading to crude oil leakage that contaminated host and neighboring communities. Over twelve years after a 1992 spill in Opobo, residents report ongoing environmental decline. They assert that the oil industry has never properly cleaned any spill, severely disrupting traditional livelihoods farming and fishing have become nearly impossible. The Ministry of Petroleum Resources recorded 2,676 reported spills in the Niger Delta from 1976 to 1990. Greenpeace estimates nearly 3,000 incidents between 1976

and 1991, averaging 700 barrels each<sup>14</sup>. It is evident that persistent, unremediated oil spills have profoundly damaged and degraded the Niger Delta's ecosystem and environment.

Gas flaring represents a major driver of environmental harm linked to oil company operations. In the tiny Orugbiri settlement spanning less than 100 metres two active flare sites operate in direct violation of regulations requiring such facilities to be distant from human habitation due to their health hazards. Medical studies confirm that proximity to flare sites heightens the risk of respiratory illnesses. Shell Petroleum has additionally engaged in canalization across Ogoniland, excavating channels to drain sites for drilling and pipeline installation or to ease equipment access to extraction areas. These artificial waterways disrupt local ecology by introducing saline intrusion into freshwater zones, killing salt-intolerant vegetation and aquatic species. In Ikoriba, Rivers State, a four-kilometre canal built by Shell continues to imperil the surrounding freshwater forest. Overall, canalization has reshaped the Niger Delta's hydrology, triggering chronic flooding in previously well-drained lowlands. Dogo<sup>15</sup> noted that in 1995 alone, communities across Sagbama, Ekeremai, Yenagoa, Southern Ijaw, and Brass Local Government Areas in Rivers and Bayelsa States remained inundated for three months. Oil spills constitute another critical pollutant in Ogoniland. Spills typically erupt from corroded, aging wells and pipelines under extreme pressure, unleashing crude at high velocity across adjacent terrain and

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<sup>14</sup> "Liability for Oil Pollution in Nigeria (1999), Vol 3., No. 2 MPJFIL at p. 329, referenced by Dr. Akpo Mudiaga-Odje in "Niger-Delta Region and the Principle of Self – determination", being a paper delivered at the University of Benin Law Students Association, Distinguished Graduates Award Ceremony on October 8, 2008, at p. 7.

<sup>15</sup> See Dogo, Isuwa, B., "Transnational Corporations being the text or a paper presented at the 1967 Annual Conference of the Nigerian Society of International Law in Lagos on August 5th 1997, p. 6

submerging vast tracts. A 1970 spill in Ejamah-Ebubu devastated kilometres of pristine land, rendering the area infertile. The Funiwa blowout involving Texaco released 400,000 barrels into coastal waters. Likewise, ruptures along the Brass-Ogada pipeline in 1983, 1991, and 1995 ignited fires that killed several NNPC workers.

Gas flaring is another source of environmental degradation brought about by the activities of oil corporations. In Orugbiri a small settlement not larger than 100 metres in length, two flaring sites exist therein. This location contradicts the rule that flares are to be located far from villages to avoid gas flaring which is dangerous to health. More especially medical research has confirmed that those living near gas flaring sites stand the risk of developing respiratory diseases.

The Shell Petroleum has also been involved in the practice of canalization in Ogoniland. Canals are created to drain an area from drilling and pipe laying or to facilitate the access of drilling and other production equipment to mining sites. These channels alter the ecology of the areas by flooding fresh water with saline water, which destroys plants and aquatic animals which cannot stand the salinity<sup>16</sup>. It was reported that in Ikoriba, Rivers State of Nigeria, a four kilometer canal constructed by Shell Petroleum has been threatening the fresh water forest in that area.

Canalization has generally altered the flood pattern of the Niger-Delta area, resulting in the perennial flood of the plains, which has been well drained before the flooding.

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<sup>16</sup> Salinity is the saltiness or amount of salt dissolved in a body of water

Dogo<sup>17</sup> recounted that in 1995 alone, most communities in Sagbama, Ekeremai, Yenagoa, Southern Ijaw and Brass Local Government Areas of Rivers and Bayelsa State were under flood for three months.

Another prominent source of environmental pollution in Ogoniland is oil spillage. Oil spillage often occurs when some weak and outdated wells and pipelines, which have been under intense pressure blow-out and cause oil to escape in furious speed to adjoining lands, thereby leaving large areas submerged. It has also been reported that there was an oil spillage in Ejanmah Ebubu Community in 1970 which destroyed kilometers of virgin land in Ogoniland and turned the area into a barren land<sup>18</sup>. There was also the Funlwa oil spillage, which involved Texaco, one of whose oil wells blew out and led to the spilling of 400,000 barrels of crude oil into the coastal waters<sup>19</sup>.

Similarly, there had also been spillage along Brass-Ogada oil pipeline, 1983, 1991 and 1995 in which fire erupted, claiming the lives of some workers of the Nigerian National Petroleum Corporation.

Gas flaring has elevated local temperatures in oil-producing communities, decimated ecosystems, and released industrial emissions that erode the ozone layer the planet's shield against ultraviolet

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<sup>17</sup> See Dogo, Isuwa, B., "Transnational Corporations being the text or a paper presented at the 1967 Annual Conference of the Nigerian Society of International Law in Lagos on August 5th 1997, p. 6

<sup>18</sup> Idowu, A. A., "Environmental Degradation and Human Right Violations" (1999) Vol, 3 No. 1. MPJFIL, p. 127

<sup>19</sup> Ibid

radiation. This depletion is compounded by rising global heat and chlorofluorocarbons<sup>20</sup> from aerosols and refrigerants. Atmospheric carbon dioxide from flared gas, power stations, and vehicles is driving worldwide temperature increases. Acid rain, a direct byproduct of flaring, devastates nearby populations and corrodes infrastructure. Globally, over 11 million hectares of forest vanish annually to this phenomenon, rendering agriculture and fishing the bedrock of Niger Delta livelihoods nearly impossible. Effluents discharged into waterways poison aquatic species and taint crops irrigated downstream. Deliberate dumping of hazardous chemicals similarly exterminates fish and threatens human health. Nigeria's oil zones are now classified as high-risk pollution hotspots. Birth defects and cancer rates are surging in the Niger Delta, linked to toxic gas emissions from routine flaring. In summary, gas flaring through acid rain, climate disruption, and oil contamination has obliterated farming and fishing, slashed life expectancy, and imperiled the survival of Niger Delta residents.

### **1.12 Classification of Environmental Degradation**

As previously noted, environmental degradation specifically refers to the decline of the environment via resource depletion (air, water, soil), ecosystem collapse, and wildlife extinction.

It is thus categorized into three types:

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<sup>20</sup> Chlorofluorocarbons (CFCs) are synthetic organic compounds containing carbon, chlorine, and fluorine that were widely used as refrigerants, aerosol propellants, and solvents before their negative impact on the ozone layer was discovered.

### **1.12.1 Air Degradation**

Gas flaring by oil companies contaminates the atmosphere. In Orugbiri a community under 100 metres long two flare sites operate in defiance of safety distances. The resulting acid rain taints water sources, erodes soil fertility, triggers skin conditions, and corrodes building foundations.<sup>21</sup> Medical evidence links proximity to flare sites with heightened respiratory illness risks.

### **1.12.2 Land Degradation**

The Niger Delta suffers chronic land loss from repeated oil spills, which have obliterated over one million hectares of forest. Abandoned wells, indiscriminate waste disposal, and Shell's canalization have disrupted natural drainage, causing perpetual flooding in once-stable lowlands. This inundation leaches <sup>22</sup>essential soil nutrients. A 1970 spill in Ogoniland, for instance, scorched kilometres of pristine terrain, leaving it barren.

### **1.12.3 Water Degradation**

Spills in freshwater wetlands decimate aquatic ecosystems and threaten fish farms. Local populations rely entirely on these rivers for potable and cooking water, now rendered unsafe. Nigeria's worst incident an offshore Texaco blowout in January 1980 released at least 200,000 barrels into the Atlantic. Environmentalist Al Gore observed,<sup>23</sup>

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<sup>21</sup> Idowu, A. A., "Environmental Degradation and Human Right Violations" (1999) Vol, 3 No. 1. MPJFIL, p. 127

<sup>22</sup> Leaching is the watching down of the soil nutrient in solution down the profile beyond the reach of most plant roots, (see Omoruyi, S. A. et al (2000), p. 68

<sup>23</sup> In "Earth in the Palace, Ecology and the Human Spirit" sited in Ibid 126, at p. 339

"It is in the Third World where the effects of water pollution are most keenly felt death from cholera, typhoid, dysentery, and diarrhea from both viral and bacteriological sources."

Professor Ambrose Alli added:<sup>24</sup>

"As a result of oil losses... surface water and river courses are invariably contaminated and polluted, rendering water undrinkable and destroying aquatic life. The result is great hardship for inhabitants who become impoverished and deprived. The unfortunate citizens are therefore compelled to emigrate to other towns and villages in search of a decent life."

In summary, the classifications above reveal that the Niger Delta residents' lives are gravely endangered, while the Nigerian government abandons them to their plight, prioritizing the revenues and advantages derived from the region's oil.

### **1.13 Historical Forms of Environmental Degradation**

Environmental degradation encompassing oil spills, gas leaks, and flaring represents a global issue that can be managed. Notable international incidents include: The 1979 Ixtoc I exploratory well blowout in the Gulf of Mexico, releasing 500 million litres.

A 1983 platform well blowout in the Persian Gulf, spilling 300 million litres.

The deliberate 1991 discharge in the Persian Gulf, totaling 900 million litres.

Oil transport has also triggered disasters, such as tanker collisions and sinkings. For instance, the oil tanker Erika foundered off Penmarch Point, France, on December 13, 1999. Nigeria's Niger

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<sup>24</sup> Professor, A. F. Alli, "Ceremonial Opening address" in the Petroleum Industry and the Nigerian Environment proceedings. Sited in Ibid 126 at p. 339

Delta, the hub of its oil and gas industry, hosts one of the planet's largest wetlands Africa's most expansive spanning over 20,000 square kilometres. This biodiverse swamp and forest ecosystem supports numerous endemic plant and animal species. Oil and gas operations impose severe ecological tolls on the region. Nigeria's gas flaring accounts for a significant share of global greenhouse gas emissions; inefficient flares release substantial methane volumes. NNPC official figures, drawn from company reports, indicate annual spills of about 2,300 cubic metres. Under-reporting likely elevates the actual amount considerably conservative projections suggest up to tenfold. DPR records from 1976 to 1996 document 4,835 incidents spilling at least 2,446,322 barrels, with roughly 1,896,930 barrels (77 percent) escaping into the environment. The country's worst event a January 1980 offshore Texaco well blowout discharged at least 200,000 barrels (industry estimate) into the Atlantic, ravaging 340 hectares of mangroves; DPR assessments exceeded 400,000 barrels. Mangroves are acutely susceptible, absorbing oil like sponges and leaching it back during rains.

Two major spills occurred in early 1998. On January 12, a pipeline rupture between Mobil's Idoho platform and Qua Iboe terminal in Akwa Ibom State released over 40,000 barrels of crude. Mobil claimed more than 90 percent dispersed or evaporated naturally, yet the oil spread hundreds of kilometres beyond forecasts, with around 500 barrels reaching shorelines. By late February, approximately 14,000 compensation claims totaling about US \$100 million had been filed. Twenty communities, home to roughly one million people, suffered the greatest damage, particularly near the Pennington River mouth.

Gas flaring and leaks represent additional pollution vectors from oil company operations. In the compact Orugbiri settlement under 100 metres long two flare sites operate, flouting mandates to site them far from residences and, ultimately, to eliminate flaring entirely due to its health risks. Nigeria, despite ratifying international treaties prohibiting the practice, continues widespread flaring in the Niger Delta<sup>25</sup>. Medical studies affirm elevated respiratory disease risks for those nearby.

Acid rain induced by gas flaring contaminates water, triggers skin ailments, and corrodes roofing materials. As far back as 1998 eleven years prior to the report acid rain was destroying over 11 million hectares of forest annually<sup>26</sup>. The Niger Delta exhibits pronounced accumulation of carbon dioxide (CO<sub>2</sub>) and trace gases, including nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>, or natural gas), tropospheric ozone (O<sub>3</sub>), and fully halogenated chlorofluorocarbons (CFCs).

Researchers warn that human-induced escalation of greenhouse gases could soon reach concentrations dangerous to all life on Earth. Nigeria already endures a hot climate; further warming from heightened CO<sub>2</sub> and trace gas emissions intensifying the greenhouse effect would severely threaten human, animal, plant, and aquatic survival Okorodudu – Fubara, M. T., Law of Environmental Protection, p. 526. Niger Delta communities already face elevated temperatures, disrupted rainfall patterns, and rising sea levels, all harming residents. What Jehovah God intended as a blessing oil and gas has become a curse for locals, while proving a boon for the

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<sup>25</sup> Kalu, V. E., "Toxic Wastes and the Nigerian Environment: An Appraisal", (2006), 9 (1)UBLJ, 58 – 60.

<sup>26</sup> See Newswatch Magazine, June 26, 1988, 14 for details.

Nigerian Federal Government and multinational oil firms, who act like greedy overlords poised to destroy the very source of their wealth.

#### **1.14 Challenges Posed by Environmental Degradation in Nigeria**

Upon oil's discovery, Nigerian leaders scarcely foresaw its potential to spark a pervasive upheaval—one ripe for criminal exploitation and catastrophic environmental ruin—necessitating rigorous regulatory oversight. Over time, crude oil extraction in the Niger Delta, coupled with relentless pollution and ecological decay, has intensified dramatically. Key repercussions of this degradation include:

**Youth Restiveness:** Multinational oil firms' disregard for standard practices and neglect of local youth have fueled militancy, marked by rampant kidnappings and fatalities.<sup>27</sup> Devastated ecosystems—rivers poisoned by spills, fisheries collapsed have driven some young people to crime, their once-rich inheritance obliterated.

**Unemployment and Economic Hardship:** The region's economy has cratered, with joblessness soaring to intolerable heights<sup>28</sup>. Oil giants routinely flout agreements mandating Nigerian training and hiring, importing foreign labor for basic roles that locals could master swiftly. Graduates are abandoned to fend for themselves.

**Rural-Urban Migration:** Residents flee degraded homelands farmlands barren, waters toxic, vegetation scorched forcing mass exodus to cities in search of livable conditions. In recent

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<sup>27</sup> Eze J., "FG must be sincere in its dealing in the Niger-Delta", Vanguard (Lagos), April 16, 2006, p. 2

<sup>28</sup> Ibid

decades, fit men and women have increasingly abandoned Niger Delta wetland villages for urban centers.<sup>29</sup> Environmental degradation has triggered widespread fatalities from pollution-linked illnesses<sup>30</sup>; projections from 1990 to 2009 estimated seven million global deaths by year-end, with a substantial share logically attributable to the Niger Delta one of the world's largest wetlands prompting residents to relocate to cities seeking safer, healthier lives for themselves and their families.

**High Mortality Rate:** Oil contamination and gas flaring have sharply curtailed life expectancy in the Niger Delta, driving up child and adult death rates. Locals have repeatedly demanded that the Nigerian government and multinational firms halt these practices, identified as sources of lethal diseases. This urgency fueled the Movement for the Survival of the Ogoni People (MASOP).<sup>31</sup> Degradation has also sparked internal violence, exemplified by the May 1994 Giokoo<sup>32</sup> killings and the destruction of millions of naira in property.

**Inter/Intra-Community Crisis:** Oil-hosting Niger Delta communities endure frequent clashes—inter-community disputes over funds or perceived betrayals, and intra-community strife—resulting in deaths and massive property losses. Environmental ruin has exacerbated poverty and desperation, worsening these conflicts. The May 1994 Giokoo incident saw four prominent Ogoni leaders killed amid widespread vandalism costing millions of naira.

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<sup>29</sup> See Atsegbua, L. et. al., *Environmental Law in Nigeria*, 2004, Abala Press, p. 70.

<sup>30</sup> <http://www.wikipedia.org/wiki/environmental.degradation>

<sup>31</sup> Ogoni is a community or town in the present day River State. Which is one of the state make up Niger-Delta

<sup>32</sup> Giokoo is a community in Ogoni

**Poverty:** Visiting Niger Delta oil communities reveals stark destitution. Oil spills and gas flaring have rendered farming and fishing—the locals’ mainstay livelihoods—utterly unviable.

**Pollution of Underground Water:** As a result of oil spillages and gas flaring, the underground water has been polluted through leaching<sup>33</sup> and as a result the health of the inhabitants have been placed in jeopardy.

**Global Warming:** This denotes rising atmospheric temperatures and sea levels, threatening to erase coastal settlements. The low-lying Niger Delta, site of the world’s most severe oil pollution and flaring exacerbated by Nigeria’s lax laws and indifferent enforcement faces escalating risks. Reports warn of wetland submersion and saline intrusion into freshwater reserves.<sup>34</sup>

**Ozone Layer Depletion:** Gas flaring by multinational firms, plus bush fires ignited by spills, undermines the ozone shield against ultraviolet radiation. These emissions also generate acid rain, a persistent scourge for Niger Delta inhabitants.<sup>35</sup>

Additional fallout includes ecological collapse, species extinction across flora and fauna, wildfires, and flagrant violations of environmental statutes and human rights.<sup>36</sup>

At present, environmental devastation, oil spills, and gas flaring rage unchecked across the Niger Delta both offshore and onshore triggering widespread alarm. Gas flaring alone has, since as far

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<sup>33</sup> Leaching means the washing down of acidic or poisonous chemicals in solution down the profile of the soil to the underground water.

<sup>34</sup> See Awake, August 2008, p. 3 – 8.

<sup>35</sup> For detail see Newswatch Magazine, 26th June, 1988, p. 14

<sup>36</sup> Ibid

back as 1988, triggered acid rain that wipes out over eleven million hectares of forest annually. The fallout is severe: Nigeria now wears the ignominious crown of world's worst gas-flarer, earning international censure and blacklisting. Billions of dollars in potential revenue literally go up in flames or seep away through leaks, depriving the treasury of funds that could transform lives. While industrialized nations the United States, United Kingdom, Canada, and others have enacted robust laws and cleanup programmes that safeguard ecosystems and uphold citizens' rights, Nigeria lags far behind. The burning questions remain: Why has Nigeria failed to wield its own human-rights and environmental statutes to halt oil spills and gas leaks?

What concrete steps has the federal government taken to confront this crisis?

It is precisely this governmental paralysis its inability to curb the menace that stands as a damning indictment of Nigeria's commitment to both human rights and environmental justice.

## CHAPTER TWO

### HUMAN LAW AND ENVIRONMENTAL LAW CONCEPT

#### 2.1 THE CONCEPT OF HUMAN RIGHTS

Human right are entitlements of which are fundamentally inherent to every person simply for being human, ensuring dignity, liberty, and equality regardless of races, gender, nationality or personal characteristics.

Human rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status<sup>1</sup>. These include rights to life, liberty, freedom from slavery and torture, freedom of opinion and expression, education, and more. They are universal, inalienable, and indivisible. The essence of human rights are predicated on the basis that all people deserve respect and protections to live a dignified life. Human rights, as against common belief, are not granted by government but are fundamentally inherent and often codified to ensure accountability and gaining the force of the law. In this light, Arnold Lien defined human right as universal right attaching to the human being wherever he appears without regard to time, place, colour, sex, percentage or environment.<sup>2</sup>

Kayode JSC, in the case of *Ransome Kuti & ors v AG of the Federation & ors*<sup>3</sup> noted that human rights are those rights that adhere to human beings as such as they stand tall above the

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<sup>1</sup> International Law: United Nation Commission on Human Rights (UNCHR)

<sup>2</sup> L Atsegbua, and others, *Environmental law in Nigeria Theory and Practice*, P.128

<sup>3</sup> (1985) 2 NWLR (Pt.221) 230.

ordinary law of the land. This rights applies to everyone irrespective of his status in the society that can not be taken away, except in specific legal contexts such as lawful imprisonment , curfews etc which the court in the case of *onuoha Kalu v The State*<sup>4</sup> stated rights are so fundamental that they can not be taken away except with the procedure established by law. Human rights are classified into civil, political, economic, social and cultural rights which are interconnected and equally important.

In *Enahoro & Ors v Abacha & Ors*<sup>5</sup>, a distinction was properly drawn between the two terms. In that case, the court postulated that due to the development of constitutional law, differences have emerged between fundamental rights and human rights. Human rights were developed from and out of the wider concept of natural rights. They are rights, which every civilized society must accept as belonging to each person as a human being. According to the court, fundamental right remains in the realm of domestic law. The court also reiterated the above in the case of *Director of State Security State v Agbakoba*<sup>6</sup> that fundamental right are rights that are basic, inalienable and guaranteed by the constitution.

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<sup>4</sup> (1998) 13 NWLR (Pt. 583) 531.

<sup>5</sup> (1998) 1 HRLRA

<sup>6</sup> (1999) 3 NWLR (Pt. 395) 314

## 2.2 CLASSIFICATION OF HUMAN RIGHTS

Human rights are often classified into three generations: first, second, and third generation rights.

The first generation encompasses traditional civil and political liberties. These include freedoms such as speech, religion, press, and protection from torture. Their primary function is to guarantee individual autonomy by imposing a duty of non-interference on the state. They are regarded as the “classical” human rights and are entrenched in the bills of rights of many constitutions.

The second generation consists of social and economic rights, which generally demand positive action from the state to ensure their realization. These are sometimes described as “group rights” or “collective rights,” as they focus on the well-being of society as a whole rather than individual entitlements. Examples include the rights to education, work, social security, food, self-determination, and an adequate standard of living.

The third generation represents the most recent category of rights. Unlike the first and second generations, their realization depends not only on state duties but also on the conduct and cooperation of individuals and communities. Rights in this category include the right to development, the right to peace, and the right to a healthy environment.

In *Enahoro & Ors v Abacha & Ors*<sup>7</sup>, the court clarified that when these human rights are expressly incorporated into the constitution, they are referred to as fundamental rights. What makes them “fundamental” is not their inherent nature, but the fact that the constitution explicitly

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<sup>7</sup> Ibid

designates them as such. Consequently, fundamental rights are best understood as a subset of human rights and must be distinguished accordingly.

### 2.3 THE ENVIRONMENTAL CONCEPT

Environmental rights are often described as a new generation of rights. They include the right to a clean, safe and healthy environment, which falls under the third category of human rights. According to Black's Law Dictionary, the environment refers to the totality of physical, economic, aesthetic, and social circumstances and factors that influence the desirability and value of property, as well as the quality of people's lives.

In the same vein, *Section 37 of the NESREA Act*<sup>8</sup> defines the environment to encompass water, air, land, all plants, animals, and human beings within it, together with the interrelationships that exist among them. This definition expressly shows the necessity of protecting the environment not only for present generations but also for future generation. It also highlights the importance of safeguarding human health, safety, and welfare, which can only be achieved through the maintenance of minimum environmental standards to ensure the sustainable use and enjoyment of nature. Consequently, the right to a clean and healthy environment has come to be recognized as a fundamental human right.

This right complements other guaranteed rights by ensuring that individuals can effectively enjoy the fundamental freedoms set out under *Sections 33 to 44 of the 1999 Constitution of the Federal* are therefore indispensable to the realization of these rights.

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<sup>8</sup> National Environmental Standards and Regulation Enforcement Agency (establishment) Act 2007

The NESREA Act serves as Nigeria's principal legislation on environmental protection. However, it is important to note that the powers of the agency are expressly excluded from matters relating to environmental degradation caused by the oil and gas sector. ***Section 8(g), (k), (n), and (s) of the NESREA Act***<sup>9</sup> specifically ousts the agency's jurisdiction in this area, which is largely dominated and controlled by foreign oil companies. This limitation forms a crucial focus of the present study. Section 8 empowers NASREA to be the chief enforcement agency for environmental protection in Nigeria.

It is safe to say the act has failed the essence and effect of its creation, its effect which ought to have embodied laws that will compel sustainable development of environment, protect legal rights of the inhabitants of the Niger Delta region, punish persons and organisations who are found guilty for the cause of oil spillage and gas flaring leading to environmental degradation as well provided by ***section 8 of the Nasrea Act***.

Building on the preceding discussion, this section explores further legislative measures designed to foster sustainable environmental management, protect the legal rights of Niger-Delta residents who suffer disproportionately as victims and impose sanctions and compensation obligations on perpetrators, primarily multinational oil corporations.

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<sup>9</sup> Ibid

## 2.4 The Nigeria Constitution and Environmental Right

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) <sup>10</sup>remains the supreme law, overriding all other legislation. In **Adisa v. Oyinlola**<sup>11</sup>, Onu JSC affirmed that no statute or enactment may subordinate constitutional provisions unless the Constitution itself explicitly permits such subordination. In essence the constitution have supremacy over every other laws made or to be made, as it is referred to as the grundnorm of all other laws. **Section 20 of the Constitution**<sup>12</sup>, widely referred to as the environmental objective, stipulates:

The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria

Found within Chapter II (Fundamental Objectives and Directive Principles of State Policy), this provision is rendered non-justiciable by a strict reading of **Section 6(6)(c)**, which limits judicial powers as follows:

The judicial powers vested... shall not... extend to any issue or question as to whether any act or omission... or any law or judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

Professor Atsegbua<sup>13</sup>, citing the Constitution Drafting Committee, explains that the non-justiciability clause was inserted because second and third generation rights demand

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<sup>10</sup> Hereinafter refers to as the Constitution

<sup>11</sup> (2002) 10 WRN 125

<sup>12</sup> Chapter II of the Constitution of the Federal Republic of Nigeria 1999, is on the fundamental objectives and directive principle of state policy which includes section 20

<sup>13</sup> L Atsegbua, and others, Environmental law in Nigeria Theory and Practice, P.128

affirmative state action and resource commitment, unlike first-generation rights that merely restrain government power. It is deeply regrettable that the explicit guarantee of environmental protection in **Section 20** is relegated to a non-enforceable policy directive. This creates a constitutional contradiction, the supreme law simultaneously proclaims an environmental right and denies its judicial enforcement. The answer to whether the Constitution approbates while reprobating through Sections 20 and 6(6)(c) is unequivocally yes. The only viable solutions are constitutional amendment or bold judicial activism to confer justice ability.

## **2.5 Statutory Regulations Addressing Oil-Related Environmental Degradation**

The National Assembly has enacted several laws to tackle the persistent challenges of oil spillages and gas flaring, including:

**Associated Gas Re-Injection Act, Cap A26 LFN 2004**

**Oil in Navigable Waters Act, Cap O6 LFN 2004**

**Harmful Waste (Special Criminal Provisions, etc.) Act, Cap H1 LFN 2004**

**Environmental Impact Assessment Act, Cap E12 LFN 2004**

These statutes collectively criminalise harmful practices, mandate gas re-injection, regulate discharges into navigable waters, prohibit toxic waste dumping, and require prior environmental impact assessments for major projects.

### **2.5.1 Associated Gas Re-Injection Act**

The Associated Gas Re-Injection Act of 1979 regulates the management and conservation of natural gas produced alongside crude oil. It prohibits routine flaring and mandates the re-injection of associated gas into reservoirs. Non-compliance attracts severe sanctions, including forfeiture of an oil prospecting licence or oil mining lease.

### **2.5.2 Oil in Navigable Waters Act**

Widely regarded as Nigeria's most comprehensive statute on oil pollution<sup>14</sup>, the Oil in Navigable Waters Act establishes several anti-pollution offences, including:

Discharging oil into prohibited sea areas

Discharging oil into Nigerian territorial waters

Failure to install approved oil-pollution prevention equipment on vessels

Failure to maintain proper records of oil-related matters

Failure to provide oil reception facilities at harbours

Failure to report oil presence in harbour waters

Sections 5, 7, and 10 prescribe penalties for discharging oil into prohibited areas or territorial waters and for operating vessels without required pollution prevention equipment.

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<sup>14</sup> For details See Idowu, A. A. "Environmental Degradation and Human Rights Violations" (1999), MPJFIL, Vol. 3, No. 1. p. 130.

### 2.5.3 Harmful Waste (Special Criminal Provisions, etc.) Act

Enacted to criminalise the carriage, deposit, dumping, or possession of harmful waste for such purposes, this Act imposes stringent penalties. **Section 15** defines “harmful waste” as any injurious, poisonous, toxic, or noxious substance particularly nuclear waste emitting radioactive substances that, in sufficient quantity, endangers human life, causes fatal injury, or leads to incurable physical or mental impairment. The mere presence of such waste in a container does not negate its inherent risk.

Contravention carries a mandatory life imprisonment sentence, **Section 8(1)**. Additionally, Similarly **section 6(a)(6)** of this Act provided also that any person found guilty of a crime under **section 1 to 5 of the Act** that a convicted person faces life imprisonment, forfeiture of any aircraft, vehicle, container, or other means used to transport or import the waste, and forfeiture of any land on which the waste was deposited or dumped. Oil and gas pollutants clearly fall within the definition of harmful waste due to their hazardous and toxic properties.<sup>15</sup>

Where harmful waste deposited or dumped on land, territorial waters, contiguous zone, exclusive economic zone, or inland waterways causes damage, the person responsible is liable.<sup>16</sup> “Damage” is broadly defined to encompass death, personal injury, disease, or any impairment of physical or mental health.<sup>17</sup>

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<sup>15</sup> Idowu A. A. “Environmental Degradation and Human Rights Violations” (1999) Vol 3. No. 2, MPJFIL, p. 132

<sup>16</sup> Section 12(1)

<sup>17</sup> S. 12 (2)

The environmental devastation in the Niger-Delta, marked by high mortality and alarming disease rates, has led some commentators to describe oil as a curse rather than a blessing. This writer firmly rejects that view. Oil remains a divine blessing to the people of the Niger-Delta; it is the combined failure of the Federal Government and multinational oil companies that has transformed this resource into a curse for the region's inhabitants.

The environmental degradation caused by oil and gas activities in the Niger Delta, as highlighted at the outset of this study, has resulted in numerous deaths and a sharply rising incidence of diseases in the region. This situation has prompted some scholars to argue that oil is a curse rather than a blessing to the local population. However, the present author rejects this view and firmly maintains that oil remains a blessing to the people of the Niger Delta. It is the combined actions of the Federal Government of Nigeria and foreign multinational oil companies that have transformed this God-given resource into a curse for the Niger Delta communities, rather than the blessing it was intended to be.

#### **2.5.4 The Nigerian Environmental Impact Assessment Act (EIA Act) 24 <sup>18</sup>**

The Environmental Impact Assessment Act (EIA Act) of Nigeria was enacted to ensure that oil and gas exploration, mining, dredging, and other similar activities are not undertaken without a thorough evaluation of their potential environmental consequences. The Act contains numerous provisions that impose fines and penalties to guarantee strict compliance. *Section 2(1)* of the Act provides that,

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<sup>18</sup> See S. 2 (2)(3)(4)

The public or private sector of the economy shall not undertake, embark or authorize projects or activities without prior consideration, at an early state, of their environmental compliance.<sup>19</sup>

**Section 4 of this Act** outlines the essential components that must be included in an Environmental Impact Assessment (EIA) report.<sup>20</sup> The core objective of the EIA process, as widely recognized, is to identify and mitigate potential adverse environmental impacts of proposed developments before they are commenced and implemented.<sup>21</sup> The Act mandates public participation by requiring that, prior to any decision on the proposed activity, relevant government agencies, members of the public, interest groups, and experts in pertinent fields be given the opportunity to review and comment on the EIA. The Act establishes a Mandatory Study List, detailed in its schedule, which identifies projects requiring a compulsory EIA in line with the Act's provisions and any regulations issued thereunder. Nineteen categories of activities are specified under Section 13, including petroleum development and mining operations. Consequently, no oil or gas project, or mining activity, may proceed without a prior EIA designed to foresee negative environmental effects and either prevent them or establish effective remedial measures. Section 14 specifies the circumstances under which an environmental assessment is mandatory, while **Section 15** clarifies the cases in which it is not required. Based on the foregoing provisions of the EIA Act that are pertinent to this study, it is evident that all oil and gas operations in the Niger Delta must be preceded by a comprehensive environmental

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<sup>19</sup> 5 For details See S. 4 (a) to (h)

<sup>20</sup> Ibid

<sup>21</sup> S. 7

impact assessment, the findings of which must be treated with utmost seriousness and responsibility.

## **2.6 Impediments Confronting Judicial Enforcement of Environmental Laws in Nigeria**

The basic problems with the judicial enforcement of environmental laws include:

- A) Absolute dependency on oil and gas sector
- B) The issues of non-justiciability
- C) The interest issue
- D) The futility of environmental laws
- E) Legislative Indifference

The oil and gas industry holds immense significance due to its substantial global market value.

Nigeria ranks as the fifth-largest oil producer within OPEC. Courts have sought to safeguard this vital national resource that sustains the entire country; however, such protection should have been accompanied by measures compelling multinational oil companies to compensate affected communities and restore degraded environments.

### **2.6.1 The issues of non-justiciability**

The Problem of Non-Justiciability Section 20 of the 1999 Constitution of the Federal Republic of Nigeria mandates the state to protect and enhance the environment while safeguarding the nation's water, air, land, forests, and wildlife<sup>22</sup>. Known as the "Environmental Objective," this provision imposes a clear duty on the government to ensure environmental protection for the benefit of all citizens. Unfortunately, because Section 20 falls within Chapter II of the

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<sup>22</sup> S. 20 1999 constitution of the Federal Republic of Nigeria

Constitution, it is rendered non-justiciable by virtue of Section 6(6)(c). The constitution states that judicial powers do not extend to any question regarding whether any act, omission, law, or judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy contained in Chapter II.<sup>23</sup> This clause effectively bars Nigerian courts from enforcing Section 20. Unless **Section 6(6)(c)** is repealed, Section 20 and the other provisions in Chapter II will remain unenforceable. In **Archbishop Olubunmi Okogie & Ors v. Attorney-General of Lagos State**<sup>24</sup>, the court ruled that provisions in Chapter II of the 1979 Constitution<sup>25</sup> identical to those in the 1999 Constitution are non-justiciable, meaning citizens cannot seek judicial redress for their violation.

### **2.6.2 The futility of environmental laws**

**The Ineffectiveness of Environmental Legislation** The commercial discovery and exploitation of oil prompted the enactment of various laws and regulations aimed at preventing environmental pollution. These include the Associated Gas Re-Injection Act (Cap 26, LFN 1990), the Oil in Navigable Waters Act (Cap 337, LFN 1990), the Harmful Waste (Special Criminal Provisions) Act (Cap 165, LFN 1990), the Environmental Impact Assessment Act of 1992, and the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007. With the exception of the NESREA Act, these statutes address only narrow aspects of environmental protection and are riddled with technical complexities that render them largely

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<sup>23</sup> Section 6(6)(c)

<sup>24</sup> (1981) 1 NCLR.337

<sup>25</sup> Ibid

unenforceable in courts. The NESREA Act currently serves as Nigeria's principal legislation on environmental protection. However, Section 8(g), (k), (n), and (s) explicitly exclude the agency's authority from covering environmental matters arising from the oil and gas sector. Consequently, NESREA lacks jurisdiction over oil spills and gas flaring despite widespread recognition that these constitute some of Nigeria's most severe environmental problems.

The stringent locus standi rules in Nigerian environmental litigation constitute a direct assault on both the NESREA Act and the judiciary's ability to deliver justice. Despite the abundance of environmental protection laws in Nigeria, the state of the environment has not improved. A common weakness in the administrative enforcement of these statutes is the persistent failure to implement effective mechanisms that would make the laws operational. Compounding this is the absence of political will to enforce them, coupled with penal sanctions that are far too mild to serve as a credible deterrent.<sup>26</sup>

### **2.6.3 The interest issue**

In environmental cases, courts demand an extraordinarily high threshold of personal interest before awarding damages to victims. This requirement that a plaintiff must demonstrate a specific interest distinctly affected beyond that shared by the general public severely restricts access to justice for those suffering from oil and gas degradation. The principle was starkly illustrated in **Amos v. Shell-BP Petroleum Development Company of Nigeria & Anor**<sup>27</sup>,

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<sup>26</sup> Akeem Bellow "Environmental Rights in Nigeria: Issues, Problems and Prospect", (2006) 4 IULJ, p. 76 to 77.

<sup>27</sup> (1977) S. C. 109

where plaintiffs, acting in a representative capacity, sought general and special damages after the defendant's operations blocked a creek. The blockage flooded farms, halted transportation of goods, and paralysed the community's commercial and agricultural life. Although the court recognised the act as a public nuisance, it ruled that without proof of harm greater than that suffered by the public at large, the plaintiffs could not recover damages. This rigid requirement must be relaxed to grant Niger Delta victims unimpeded access to justice, as is already the practice in jurisdictions such as the United States, the United Kingdom, and India. Denying redress on technical grounds effectively tells victims to abandon hope in the judicial system while simultaneously condemning them to live or die in an environment rendered hostile by multinational oil companies, turning the Niger Delta and its people into what can only be described as a "friendly enemy" of those same corporations.

#### **2.6.4 Legislative Indifference**

Nigeria's legislature, comprising the Senate and the House of Representatives, bears primary responsibility for law-making. Yet the National Assembly has demonstrated profound indifference through its enactment of the NESREA Act, which explicitly excludes the agency's jurisdiction over oil and gas-related environmental issues under **Section 8(g), (k), (n), and (s)**. This deliberate exclusion means NESREA has no authority over oil spills and gas flaring problems universally acknowledged as Nigeria's most pressing environmental challenges, particularly in the Niger Delta. By passing legislation that directly and indirectly endangers citizens, the National Assembly has confirmed the widespread perception that Nigerian

lawmakers have little interest in safeguarding the nation's God-given environment. These ouster clauses prevent courts from entertaining cases brought under the NESREA Act concerning oil spills or gas flaring. Consequently, the legislature itself stands as the single greatest obstacle to the judicial enforcement of environmental laws in Nigeria.

## **CHAPTER THREE**

### **ENVIRONMENTAL DEGRADATION AS AN INDICTMENT OF HUMAN RIGHT AND ENVIRONMENTAL LAW**

Prior to the recent escalation of environmental devastation in Nigeria's Niger-Delta region driven by rampant oil spills and unchecked gas flaring a series of domestic laws had long existed to prohibit such degradation and impose penalties on violators. Yet these statutes remained largely dormant, confined to the pages of law books, with minimal genuine efforts at enforcement. Acknowledging the grave threats posed by environmental harm, the global community has established numerous treaties, conventions, and regulatory frameworks aimed at curtailing it, many of which Nigeria has ratified. Nevertheless, Nigeria's characteristic pattern of weak, unenforceable environmental legislation and lax oversight has effectively granted multinational oil corporations operating in the Niger-Delta a free pass to flout both national and international obligations with impunity. These companies continue to prioritize profit maximization over the long-term health of the ecosystem.<sup>1</sup>

#### **3.1 ENVIRONMENTAL DEGRADATION AS AN INDICTMENT OR VIOLATION OF HUMAN RIGHTS**

From a legal perspective, pollution or environmental degradation constitutes the unlawful contamination of air, water, or soil in a manner that causes tangible harm or damage to the rights

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<sup>1</sup> Stewart, N F, "Deprivations, Environmental Degradation and Armed Conflicts: Need for Sustainable Development of the Niger-Delta Wetlands", referencing Dernbach, J C, "Achieving Sustainable Development: the Centrality and Multiple Facets of Integrated Decision-Making" (Globalization and Governance: The Prospects for Democracy) Indiana Journal of Global Legal Studies (Serial Online) [2006]9 (1) UBLJ 173

or property of individuals residing in the affected area.<sup>2</sup> Such degradation is a violation of the human right to a clean, safe, and healthy environment. Every person, as a living being, is entitled to an environment free from pollution, including contamination arising from oil spills, gas leaks, flaring, or other industrial wastes. Environmental degradation arises from various human activities, particularly the exploration, extraction, and utilization of petroleum and its derivatives. These activities inflict severe damage on marine ecosystems, wildlife habitats, farmlands, sacred sites, community amenities, and, ultimately, human health and livelihood. When any activity so profoundly disrupts the environment that it fundamentally alters the lifestyle, economic well-being, or health of local inhabitants, it crosses the threshold into a breach of fundamental rights specifically the rights to life, to a clean environment, and to freedom from discrimination. In the Niger-Delta region, unchecked environmental degradation directly or indirectly infringes upon several provisions of Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which enshrines fundamental human rights. The rights most gravely violated include:

Right to life<sup>3</sup>

Right to dignity of the human person <sup>4</sup>

Right to freedom from discrimination<sup>5</sup>

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<sup>2</sup> 2 Atsegbua, L A, “A Critical Appraisal of Environmental Rights under the Nigerian Constitution”, referencing Akanle, O, ‘Pollution Control Regulation in the Nigerian Oil Industry’.

<sup>3</sup> section 33 of the 1999 Constitution

<sup>4</sup> section 34

<sup>5</sup> section 42

Right to acquire and own immovable and movable property anywhere in Nigeria<sup>6</sup>

### 3.1.1 Right to Life

Section 33(1) of the 1999 Constitution provides:

“Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”

The enjoyment of this right<sup>7</sup> is based on access to basic environmental essentials such as clean air, potable water, safe food, and adequate shelter. The state bears the primary duty to safeguard the environment and, by extension, to prevent circumstances that endanger human life. Consequently, when oil spills, gas leaks, or flaring destroy ecosystems and lead to loss of life, the right to life is violated. The Constitution explicitly lists the only permissible circumstances under which life may be taken. Execution of a court sentence for a criminal offence, lawful use of reasonable force in self-defence, defence of others, defence of property, effecting lawful arrest, preventing escape of a detained person, or suppressing riot, insurrection, or mutiny.

Applying the interpretive principle of *expressio unius est exclusio alterius* (the express mention of one thing excludes all others)<sup>8</sup>, no other cause of death is constitutionally sanctioned. Therefore, deaths and life-threatening conditions resulting from oil spills, gas flaring, or leaks in

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<sup>6</sup> section 43

<sup>7</sup> right to life, section 33

<sup>8</sup> Okogeri, G O, “Interpretation of Statutes” (lecture note), p. 12; see also Aderamola, F, Basic Jurisprudence, second edition, Lagos: Nayee, 278

the Niger-Delta none of which fall within the permitted exceptions represent a flagrant breach of the right to life guaranteed under Section 33 of the 1999 Constitution.

### **3.1.2 Right to Dignity of the Human Person**

Section 34 of the 1999 Constitution guarantees every individual the right to respect for the dignity of their person, explicitly prohibiting subjection to torture, inhuman treatment, or degrading punishment. When read alongside Section 33, this provision is clearly breached by the operations of multinational oil companies in the Niger-Delta<sup>9</sup>, whose routine oil spills and gas flaring inflict profound environmental harm. Such degradation strips affected communities of their humanity, forcing them into conditions of extreme poverty, ill-health, and social exclusion conditions that unmistakably constitute degrading treatment. Compounding this violation, the Federal Government's 2003 creation of the "Joint Task Force" (code-named "Operation Restore Hope") a security outfit comprising army, navy, paramilitary, mobile police, and regular police personnel intended to maintain peace degenerated into an instrument of terror. Far from restoring hope, the unit razed entire villages, brutalized residents, and inflicted widespread physical and psychological trauma, directly contravening the constitutional safeguard against inhuman and degrading treatment enshrined in Section 34.

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<sup>9</sup> The activities we refer to here is oil and gas exploration and exploitation which often result to oil spillages and gas leakages or flaring.

### 3.1.3 Right to Freedom from Discrimination

Despite constitutional protections and governmental rhetoric aimed at eliminating inequality, environmental discrimination remains a pervasive affliction across the Niger-Delta. Section 42(1) of the 1999 Constitution stipulates that no citizen shall, solely by reason of their community, ethnic group, place of origin, sex, religion, or political opinion, be subjected whether by law or through executive or administrative action to disabilities or restrictions not imposed on others<sup>10</sup>. Despite still numerous government policies<sup>11</sup>, alongside practices of multinational oil corporations and other entities, flagrantly violate this guarantee. Communities in the Niger-Delta endure neglect, their region generates the petroleum wealth that fuels Nigeria's economy and funds the development of major cities such as Abuja, Lagos, Kano, and Kaduna, yet they receive negligible infrastructural investment or remedial attention. Corporate headquarters are located in these distant metropolises, while the degraded oil-producing areas are abandoned. The extraction of resources without commensurate provision for local welfare, infrastructure, or robust environmental mitigation programmes amounts to deliberate discrimination. Victims predominantly poor, marginalized, indigenous, or minority groups are often too preoccupied with daily survival or too unaware of their legal entitlements to challenge these injustices. This unequal burden of environmental harm, imposed exclusively on Niger-Delta inhabitants while

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<sup>10</sup> for details on the full provisions, see section 42(1) to (3)

<sup>11</sup> See Olugbenga Oke-Samuel, "The Constitution of the Federal Republic of Nigeria, 1999 as a cornerstone for Environmental Protection in Trends in Nigerian Law: Essays in Honour of DVF Olateru Olagbegi III" (Ibadan: Constellation 2007), 588

the benefits accrue elsewhere, constitutes a clear breach of the constitutional right to freedom from discrimination.

#### **3.1.4 Right to Acquire and Own Immovable Property Anywhere in Nigeria**

In consideration of Section 43 of the 1999 Constitution, references will be made to the whole of Section 44. The general provision under the constitution is that:

(1) Every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria

(2) No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things

The combined effect of Sections 43 and 44 is as follows:

(a) The right of every Nigerian citizen to own immovable property like houses, farmlands, etc, is well recognized by the Constitution.

(b) It is wrong to deprive any Nigerian of the enjoyment of their immovable property without their consent;

(C) It is however possible to acquire a citizen's immovable property, where such acquisition is in conformity with existing laws;

(d) The existing laws, must amongst other things, ensure the following:

Prompt payment of compensation to the owner;

Access to justice by any person claiming such compensation for the determination of his interest in the property and the amount of compensation;

The Constitution<sup>12</sup> provides for instances when it may be possible to compulsorily acquire an immovable property by the government. This is not to be done in a way that will dehumanize or impoverish the inhabitants of the community that own the land or wet land where oil and gas is exploited or explored. In Niger Delta the reverse is the case, oil spills into the farmland, ponds etc of the inhabitant of the region, no compensation is paid, no cleaning up is done by the multi national oil companies or the Federal Government of Nigeria. All these abysmal acts of the multi national oil companies violate the fundamental right to acquire, own and enjoy without unlawful interference with immovable property anywhere in Nigeria as provided in *Section 43* of the 1999 constitution of Nigeria. Thus, the other fundamental human rights not considered are indirectly violated by virtue of the fact that the above considered ones are directly violated by the multi national oil companies.

### **3.2 ENVIRONMENTAL DEGRADATION AS AN INDICTMENT TO ENVIRONMENTAL RIGHTS IN NIGERIA**

There are several statutes designed to ensure the protection of the Nigerian environment from environmental degradation from Oil and Gas sector of Nigeria. These laws are:

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<sup>12</sup> section 44(2) of the 1999 Constitution

## **NESREA Act 2007<sup>13</sup>**

Associated Gas Re-Injection Act Cap 26 LFN 1990

Oil in Navigable waters At Cap 337 LFN 1990.

Harmful Waste (Special Criminal Provisions) Act Cap 165 LFN 1990

Environmental Impact Assessment Act 1992

### **3.2.1 NESREA ACT 2007**

NESREA Act repealed the flagship Law on the environment (i.e. the Federal Environmental Protection Agency At “FEPA Act”). Thus, the NESREA Act has become the primary law on environmental protection where the new Agency has replaced the old Agency, but unfortunately the NESREA Act indirectly aids and abate the degradation of the environment by the oil and gas industry by virtue of its provisions in Section 8(g) (k), (n), (s) which unambiguously ousts the jurisdiction of NESREA from environmental issues arising from the oil and gas sector. This is why environmental degradation through oil and gas sector has continued unabated in the Niger Delta region of Nigeria. It can therefore be gleaned from the above that the NESREA Act itself is a violation of the intendment of its making. Thus, urgent step should be taken by the legislature to amend the ousting Section 8(g), (k), (n), (s), of NESREA Act. If this is done, the continuous oil spillages in Niger Delta communities that have led many of the inhabitants to their early grave will definitely be abated if not totally stopped.

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<sup>13</sup> NESREA stands for National Environmental Standards and Regulations Enforcement Agency Act. (S.36, NESREA Act expressly repealed the FEPA Act Cap F 10 LFN, 2004).

### **3.2.2 Associated Gas Re-injection Act Cap 26 LFN 1990**

The Associated Gas Re-injection Act contains sections which govern the utilization and conservation of natural gas by laying down penalties for the violation of these provisions, so that Gas flaring will be abated. Contrary to the abatement intention of these provisions of the Associated Gas Re-injection Act, it is lamentable that in the Niger Delta region of Nigeria, gas flaring is still a recurring decimal.<sup>14</sup>

As I have stated in chapter two of this work, Oil in Navigable Waters Act Cap 337 LFN 1990 created anti-pollution offences,<sup>15</sup> Sections 5, 7, and 10 provides a number of penalties for a person found guilty of offences of discharging oil into prohibited seas, discharging oil into Nigerian territorial waters and failure to equip a ship with the approved pollution prevention or reduction equipment, thus the continuous occurring or reoccurring of oil spillage, escape or blowout is an assault on this Act.

### **3.2.3 Harmful Waste (Special Criminal Provision) Act Cap 165 LFN 1990**

It can be gleaned from Section 15<sup>16</sup> that defines harmful waste that oil and gas pollution apparently come within the definition of “harmful waste” under the Act by virtue of their harmful, hazardous and toxic capabilities. Section 7 (a) (b) of this Act provided also that any person found guilty of a crime under Section 1 to 5 of the Act shall on conviction be sentenced to imprisonment for life, and in addition forfeit any carrier, including aircraft, vehicle container and

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<sup>14</sup> Atsegbua L.A. 92nd Inaugural Lecture Series of University of Benin, 20th December, 2007, p. 12.

<sup>15</sup> For details see chapter two.

<sup>16</sup> Harmful Waste (Special Criminal Provisions) Act Cap 165 LFN 1990.

any other thing whatsoever used in the transportation or importation of the harmful waste; and any land on which the harmful waste was deposited or dumped will also be forfeited. Section 8 (1) further provides life imprisonment for the contravention of the above provisions. The ever continuing environmental degradation through oil spillages and gas flaring or escape violate the provisions of this Act and therefore indirectly encourage the multi national oil companies to degrade the environment with impunity.

#### **3.2.4. The Environmental Impact Assessment Act, 1992 (EIA Act)**

The EIA Act was enacted to compel both public and private entities to evaluate the environmental consequences of proposed projects particularly oil and gas exploration, mining, dredging, and similar activities before any work begins.<sup>17</sup> Section 2(1) explicitly mandates that no project or activity may be undertaken, approved, or authorized without prior, early-stage consideration of its environmental effects.

The primary purpose of the Act is to foresee and mitigate adverse impacts at the planning phase.<sup>18</sup> It requires that draft Environmental Impact Statements be circulated for review and comment by relevant government agencies, experts, affected communities, and the public before final approval.<sup>19</sup> Section 13 establishes a Mandatory Projects List, which includes petroleum development and mining operations, meaning these activities must undergo a full EIA in strict compliance with the Act and its regulations. Sections 14 and 15 further clarify when assessments

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<sup>17</sup> S. 4 (a) to (h) of the EIA Act.

<sup>18</sup> S.7 of the EIA Act.

<sup>19</sup> See S.7 EIA Act 1992

are compulsory or exempt. In essence, no oil or gas operation in the Niger-Delta may lawfully proceed without a properly conducted EIA that identifies risks and institutes binding mitigation measures.

The persistent failure of multinational oil companies to conduct or to meaningfully honour these assessments before drilling, laying pipelines, or flaring gas represents a brazen and systematic violation of the EIA Act. Incidents such as the December 4, 2009, oil spill at the Qua Iboe Oil Field in Ibeno, Akwa Ibom State by Mobile Producing Nigeria (MPN)<sup>20</sup> which prompted the community to demand 500 million dollars in compensation for cumulative damage between February 2008 and December 2009 stand as damning evidence of this impunity. Each unreported or unremedied spill is not merely an environmental disaster; it is a deliberate breach of Nigeria's flagship law on preventive environmental governance.

### **3.3 ENVIRONMENTAL DEGRADATION AS AN INDICTMENT TO INTERNATIONAL ENVIRONMENTAL LEGAL INSTRUMENTS**

Recognising the global threat of ecological harm, the international community has forged numerous treaties, conventions, and protocols to safeguard the environment. Nigeria is party to several pivotal instruments, including:

*Convention on the prevention of Marine Pollution by Dumping of Waste and other matters, 1992* which Nigeria ratified on the 18<sup>th</sup> April, 1973. The treaty seeks to prevent the dumping of waste

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<sup>20</sup> MPN is an affiliate of the U.S. Oil firm, Exxon Mobil

and other pollutants into the Marine environment. In *Article 1*, of this treaty for example, the contracting parties pledged individually and collectively:

....to promote the effective control of all services of pollution of the marine environment, and... take all practicable steps to prevent the pollution of the sea by dumping of waste and other matter that is liable to create hazard to human life, damage amenities or interfere with other legitimate uses of the sea.<sup>21</sup>

*International convention for the prevention of pollution of the sea by oil 1954 (as amended in 1962 and 1969)* – Nigeria acceded to this treaty on the 22<sup>nd</sup> April, 1968. This convention is aimed at preventing or curtailing the pollution of the sea. It prohibits the discharge of oil or oily mixture in the stated zones.<sup>22</sup> It is note worthy that this law strictly prohibited the pollution of the sea and it led to the promulgation of the Nigeria's *Oil in Navigable Waters Act*<sup>23</sup>

*The convention on the High Sea, 1958* – Nigeria acceded to this treaty on 30<sup>th</sup> September, 1962. It is aimed at codifying rules of international law relating to the high sea.<sup>24</sup> *Articles 24 and 25* which relates to environmental protection provides as follows:

*Every state shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines, or resulting from the exploitation and exploration of the sea bed and its subsoil, taking account of existing treaty provisions on the subject – Article 24.*

*Vienna Convention for the protection of the Ozone Layer, 1985*, this convention came into force on 22<sup>nd</sup> September, 1988. Its objective is to protect the human health and environment

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<sup>21</sup> Atsegbua A.L. et al Environmental Law in Nigeria, theory and practice, p. 12-13

<sup>22</sup> See Annexure A to the convention

<sup>23</sup> Cap 337 Law of the Federal Republic of Nigeria, 1990

<sup>24</sup> By Article 1, "High Seas" means All parts of the Sea that are not included in the territorial sea or in the internal water of State.

from the adverse effects resulting from modification of the ozone layer. Nigeria ratified this agreement on 29<sup>th</sup> January, 1989.

*Montreal Protocol on Substances that Deplete the Ozone Layer*, this came into force on 10<sup>th</sup> August, 1992. The objective is to protect also the ozone layer by taking precautionary measures to control global emissions of substances that deplete it. It was ratified by Nigeria on 1<sup>st</sup> January, 1989.<sup>25</sup>

Professor Atsegbua has observed, at least 82 international environmental agreements apply to Nigeria, yet the country has signed just 30, leaving 52 unsigned.

The unrelenting oil spills and gas flaring in the Niger-Delta exemplified by the 2009 Akwa ibom<sup>26</sup> incident constitute flagrant violations of these treaties. Nigeria's failure to enforce its obligations erodes global confidence in multilateral environmental governance. Increasingly, the United Nations is perceived not as a deliverer of solutions but as an assembly of lofty declarations devoid of tangible outcomes. When member states like Nigeria routinely flout the very instruments they have ratified, the international environmental legal order is reduced to mere good intentions rather than enforceable commitments, betraying both present generations and the sustainable future promised to those yet unborn.

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<sup>25</sup> Ibid

<sup>26</sup> See the Nigerian Observer 31 December, 2009

## **CHAPTER FOUR**

### **GLOBAL EFFORTS AT COMBATING ENVIRONMENTAL DEGRADATION**

The threats that environmental degradation poses to human life globally prompted the United Nations<sup>1</sup> to convene the landmark 1972 Stockholm Conference on the Human Environment. This gathering not only affirmed environmental protection as an urgent new frontier for law making to avert impending crises but also underscored the inseparable link between ecological health and sustainable development. However, many nations particularly developing ones continue to treat environmental safeguards with indifference, often owing to governmental and societal unawareness of the catastrophic risks involved. <sup>2</sup>Since Stockholm, the international community has organised numerous conferences and summits to reinforce the imperative for the betterment of the environment.

Notwithstanding the progress remains uneven: of the 82 international environmental conventions applicable to Nigeria, the country has ratified only 30, leaving 52 unsigned and unaddressed. This persistent inaction highlights a broader failure to translate global consensus into meaningful national commitment.

#### **4.1 ENVIRONMENTAL DEGRADATION AS AN INDICTMENT TO ENVIRONMENTAL LAW IN The UNITED KINGDOM and U.S.A**

##### **4.1.1 The United Kingdom**

In the United Kingdom, the cornerstone of environmental protection is the Environmental Protection Act 1990. This statute criminalises any treatment, storage, or disposal of controlled

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<sup>1</sup> United Nations Organisation is a form of organization which comprises almost all the countries of the world “as members”.

<sup>2</sup> Atsegbua L.A. et al Environmental Law in Nigeria, Theory and Practice, Chapter 5, p. 63-64.

waste in a manner likely to pollute the environment or endanger human health<sup>3</sup> a provision that explicitly encompasses oil and gas contamination. The Act imposes a statutory duty of care on everyone who produces, handles, or disposes of waste, mirroring the common-law neighbour principle established in *Donoghue v Stevenson*: a legal obligation to avoid foreseeable harm through acts or omissions. In practice, UK regulators enforce rigorous international safety standards, such as maintaining a minimum one-kilometre buffer between oil and gas installations and residential areas. Furthermore, no petroleum project may proceed without a comprehensive Environmental Impact Assessment (EIA). For example, when Shell proposed a pipeline from Stanlow in Cheshire to Mossmorran in Scotland, multiple independent environmental studies were commissioned and scrutinised long before any ground was broken. The marked reduction in environmental degradation in the United Kingdom stems directly from the consistent, uncompromising enforcement of these laws and standards. Strict compliance, proactive oversight, and genuine accountability have transformed statutory obligations into tangible ecological safeguards.

#### **4.1.2 The United States of America**

In the United States, oil pollution triggers strict liability under a robust trio of federal statutes: the Federal Water Pollution Control Act (as amended in 1977), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, and the Oil Pollution Act of 1990. These laws hold polluters accountable regardless of fault or negligence, ensuring that responsibility cannot be evaded through claims of due care. The U.S. also pioneered mandatory environmental oversight with the National Environmental Policy Act (NEPA) of 1969, which requires detailed Environmental Impact Statements for all major federal actions and significant

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<sup>3</sup> S.33 of Environmental Protection Act of 1990, United Kingdom.

private projects, setting a global benchmark for preventive environmental governance. Backed by an assertive judiciary and rigorous enforcement, these frameworks have delivered measurable results. In fiscal year 1992 alone, the Department of Justice secured convictions in 64 environmental cases, resulting in 99 defendants convicted and 44 imprisoned. Penalties are severe: first-time violators face fines of US\$5,000–US\$50,000 per day and up to three years in prison, while repeat offenders risk fines of up to US\$100,000 per day and six years' incarceration. Confronted with such formidable deterrents, oil and gas operators in the U.S. invest heavily in spill-prevention technology, contingency planning, and rapid-response systems to avoid both financial ruin and criminal sanctions. The federal government has further demonstrated commitment by allocating billions of dollars to remediate the nation's most contaminated sites, restoring habitats and safeguarding public health so citizens can live in a clean, safe environment. In stark contrast, while U.S. law treats oil pollution as a strict-liability offence with swift and certain consequences, Nigeria's environmental statutes riddled with loopholes, weak enforcement, and jurisdictional exemptions effectively license multinational oil companies to ravage the Niger-Delta's richly endowed ecosystem with impunity.

#### **4.2 ENVIRONMENTAL DEGRADATION IN OTHER AFRICAN COUNTRIES AND THEIR COMBATING MECHANISMS**

While the Niger Delta region of Nigeria exemplifies the acute environmental toll of oil and gas extraction in Africa, similar challenges plague other oil-producing nations across the continent. These countries, often concentrated in West and Central Africa along the Gulf of Guinea, face oil spills, gas flaring, and ecosystem disruption that mirror Nigeria's plight, increasing poverty, health crises, and biodiversity loss. However, regional and national responses bolstered by African Union (AU) and Economic Community of West African States (ECOWAS) frameworks

offer comparative insights into combating these issues. This section examines key examples from Angola, Ghana, Gabon, and Equatorial Guinea, highlighting degradation patterns and the legal, institutional, and regional mechanisms deployed to mitigate them. These efforts underscore a continent-wide push for sustainable resource governance, though enforcement gaps persist due to weak institutional capacity and multinational corporate influence.

#### **4.2.1 Angola: Offshore Spills and Institutional Reforms**

Angola, Africa's second-largest oil producer after Nigeria, has experienced significant environmental degradation from offshore oil activities in the Cabinda enclave and the Lower Congo Basin. The 1991 ABT Summer tanker explosion off the Angolan coast released approximately 250,000 tonnes of oil, devastating over 400 km of coastline, mangroves, and fisheries, with long-term impacts on marine biodiversity and local livelihoods.

Smaller spills, estimated at over 10 annually, stem from operational discharges, pipeline leaks, and flaring, contaminating coastal waters and contributing to acid rain and soil acidification. Gas flaring remains rampant, with Angola ranking among the top global flarers, releasing methane and CO<sub>2</sub> that accelerate climate vulnerability in this low-lying coastal nation.

To combat these threats, Angola's legal framework centers on the General Environment Law (Law 5/1998), which mandates environmental impact assessments (EIAs) for all petroleum projects and prohibits pollution from oil operations.

Decree 39/2000<sup>4</sup> specifically regulates environmental protection in the oil sector, requiring operators to submit EIAs to the Ministry of Mineral Resources, Petroleum, and Gas

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<sup>4</sup> General Environment Law

(MIREMPET) and implement mitigation measures like spill contingency plans. The National Oil Spill Contingency Plan (NOSCP), developed under the Global Initiative for West, Central and Eastern African Regional Marine Spill Response (GI WACAF), coordinates multi-stakeholder responses to spills, including sensitivity mapping for vulnerable ecosystems.

Institutionally, the National Agency for Petroleum, Gas and Biofuels (ANPG), established in 2019, enforces flaring reductions through authorizations tied to technical-economic evaluations, while the Environmental Fund (Presidential Decree 9/11 of 2011) finances remediation and monitoring.

Regionally, Angola participates in the Abidjan Convention (1981), a UNEP-led framework for West and Central African coastal states that promotes transboundary pollution control and marine resource conservation.

Despite these mechanisms, challenges include underreporting of spills and limited enforcement, with civil society groups calling for stricter penalties and community involvement to align with AU Agenda 2063's sustainable development goals.

#### **4.2.2 Ghana: Emerging Deepwater Risks and Preemptive Regulations**

Ghana's oil sector, operational since the 2010 Jubilee Field discovery in the Gulf of Guinea, has introduced environmental pressures akin to Nigeria's, including potential deepwater spills and gas flaring in the Western Region's coastal communities. While major incidents have been limited, exploratory drilling has led to localized pollution from effluents and seismic activities, threatening fisheries and mangroves that sustain over 2 million people.

Flaring during testing phases has raised concerns over air quality and greenhouse gas emissions, with projections estimating increased risks as production scales to fields like TEN and Sankofa.

Ghana's proactive approach contrasts with Nigeria's reactive one, anchored in the Petroleum (Exploration and Production) Act 2016 (Act 919), which imposes strict liability for pollution and mandates EIAs under Section 82<sup>5</sup>, enforced by the Environmental Protection Agency (EPA).

The Petroleum Commission (PC) Act 2011 (Act 821) regulates upstream activities, requiring environmental permits and local content plans that prioritize spill prevention technologies. The EPA's Environmental Assessment Regulations (LI 1652) ensure public consultations for high-risk projects, while the National Oil Spill Detection and Response Agency (NOSDRA) inspired framework coordinates responses.

Ghana integrates international standards via ratification of the Bamako Convention (1991) on hazardous waste bans and the Libreville Declaration (2008) on health environment linkages, fostering regional air pollution controls under ECOWAS.

Challenges include enforcement gaps in remote offshore sites, but successes like the Jubilee Field's zero major spill record demonstrate the value of preemptive EIAs and stakeholder engagement.

#### **4.2.3 Gabon: Balancing Biodiversity<sup>6</sup> and Extraction in the Congo Basin**

Gabon, with its vast rainforests and offshore fields in the Cap Lopez Basin, grapples with oil-related degradation that threatens 22% of Africa's tropical forests. Pipeline leaks and flaring have

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<sup>5</sup> Petroleum (Exploration and Production) Act 2016

<sup>6</sup> Biodiversity is the variety of life on Earth, encompassing the diversity within species, between species, and of ecosystems

contaminated the Ogooué River and coastal wetlands, leading to fish stock declines and soil erosion, while exploratory activities in Loango National Park risk biodiversity hotspots.

Gas flaring contributes to regional haze and acid deposition, impacting indigenous communities reliant on eco-tourism and subsistence fishing.

Gabon's combating mechanisms emphasize conservation, with the Environment Code (2016) requiring EIAs for oil projects and prohibiting flaring without reinjection feasibility studies. The Ministry of Environment and Sustainable Development oversees the National Climate Change Strategy, which targets flaring reductions through incentives for gas utilization, aligned with the AU's Multilateral Environmental Agreements (MEAs) Sub-Unit for policy harmonization.

As a signatory to the Abidjan Convention and the Central African Forest Convention (2005), Gabon collaborates on transboundary marine protection via the Gulf of Guinea Commission, including joint spill response drills.

The National Parks Agency enforces buffer zones around extraction sites, but illegal bunkering and aging infrastructure pose ongoing risks, highlighting the need for enhanced monitoring via satellite technology.

#### **4.2.4 Equatorial Guinea: Deepwater Flaring and Regional Integration**

Equatorial Guinea's Bioko Island fields suffer from chronic gas flaring over 90% of associated gas is flared, ranking it among Africa's top emitters and occasional spills from platforms like the Zafiro Field, polluting Bioko's beaches and marine turtle habitats.

This has led to respiratory illnesses and fishery collapses, disproportionately affecting small island communities. The Hydrocarbons Law (2006) mandates EIAs and strict liability for spills,

with the Ministry of Mines and Hydrocarbons (MMH) regulating via production-sharing contracts that include environmental clauses. Flaring permits require economic justifications, supported by the Economic and Monetary Community of Central Africa (CEMAC) competition laws promoting regional standards.

As a Guinea Current Large Marine Ecosystem (GCLME) member, Equatorial Guinea engages in the GEF-funded project for pollution reduction and habitat restoration across 16 states, including SAP development for fisheries sustainability.

Bilateral MOUs, such as with the Democratic Republic of Congo (2022), enhance cross-border gas infrastructure to curb flaring. Enforcement remains uneven due to limited transparency, but LNG investments signal a shift toward cleaner utilization. Regional Mechanisms: A Continental Backbone

African responses transcend national borders through frameworks like the Abidjan Convention, which binds 17 Gulf of Guinea states to marine pollution controls, including oil spill protocols and joint monitoring.

The AU's MEAs Sub unit facilitates harmonization across sectors like hazardous waste and biodiversity, while ECOWAS's Environmental Policy (2006) targets transboundary oil pollution via shared early warning systems.

The GCLME initiative, supported by GEF, promotes ecosystem-based management, with SAPs addressing living resource depletion and coastal erosion.

Challenges include funding shortfalls and varying enforcement, but these mechanisms foster knowledge sharing, as seen in GI WACAF's capacity building for spill response.

In comparative terms, these countries' experiences reveal that while degradation patterns echo Nigeria's rooted in multinational operations and weak oversight preemptive EIAs, regional cooperation, and flaring penalties offer pathways to mitigation. Lessons for Nigeria include adopting Ghana's strict liability model and Angola's contingency planning, integrated with AU led harmonization to ensure equitable, sustainable oil governance across Africa.

#### **4.3 GLOBAL INABILITY TO ENFORCE LAWS AGAINST ENVIRONMENTAL DEGRADATION**

Recognising the existential threat that environmental degradation poses to humanity, the United Nations representing virtually every nation on Earth has forged an extensive array of treaties, conventions, and legal instruments aimed at halting or drastically reducing pollution, including oil spills and gas flaring. As previously noted, Nigeria is party to numerous such agreements, some global in scope, others regional. Yet the central concern here is the glaring failure of these international environmental regimes to safeguard Nigeria's environment, particularly the Niger-Delta, from relentless oil-related devastation. This section critically evaluates key global instruments that Nigeria has ratified agreements that, in theory, should have prevented the catastrophic spills and flaring now endemic to the region. The urgency of collective action was first crystallised at the United Nations Conference on the Human Environment, held in Stockholm in 1972. Driven by the sobering forecast that the planet would become uninhabitable within decades without immediate and robust protective measures<sup>7</sup>, the Stockholm Conference marked a watershed moment, it enlighten the international community to treat environmental stewardship as an imperative for survival, laying the foundation for the modern framework of global environmental law. Some of the highlights of the conference include the following:

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<sup>7</sup> Atsegbua, L.A. et al Environmental Law in Nigeria, Theory and Practice. Ababa Press p. 12-13.

1. There were 26 Declarations of principles.
2. There was an action plan, which contained 106 recommendations, which included the proposal to set up the earth watch.
3. There was the setting up of an environmental fund, which would be funded by member states on a voluntary basis.
4. Setting up of a UN environmental Programme whose aim is to develop international environmental law and a number of treaties and guidelines have been concluded with its support.<sup>8</sup>

The Stockholm Conference of 1972 produced several landmark outcomes, but none more pivotal than Principle 21, which declares:

States bear the sovereign duty to ensure that activities under their jurisdiction or control do not inflict environmental harm on other states or on areas beyond national boundaries.

Principle 22 urges nations to strengthen international law on liability and compensation, ensuring that victims of transboundary pollution or environmental damage receive redress for harm caused by activities originating within another state's jurisdiction. Beyond Stockholm, Nigeria has committed to several key international instruments dedicated to environmental protection, preservation, and conservation, including:

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention), 1972 – Ratified by Nigeria on 18 April 1973. This treaty prohibits the deliberate disposal of wastes and other harmful substances into the marine environment.

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<sup>8</sup> Ibid

The Convention on the High Seas, 1958 – Nigeria acceded on 30 September 1962. Designed to codify customary international law governing the high seas<sup>9</sup>, it contains explicit environmental safeguards in Articles 24 and 25.

Article 24 provides that every state must enact regulations to prevent marine pollution from oil discharged by ships or pipelines, or arising from seabed exploration and exploitation, while respecting existing treaty obligations. While Article 25(1) also provides that every state shall adopt measures to avert sea pollution from oil discharges or the dumping of radioactive waste, in line with standards set by competent international organisations.

These provisions collectively impose clear, binding obligations on Nigeria to prevent oil-related marine contamination obligations that remain consistently breached amid the ongoing spills and unchecked discharges ravaging the Niger-Delta and its coastal waters.

International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), 1954 (amended 1962 and 1969) – Nigeria acceded on April 22, 1968. This pioneering treaty bans the discharge of oil or oily mixtures into designated maritime zones<sup>10</sup>, directly inspiring Nigeria's own Oil in Navigable Waters Act—the sole domestic legislation enacted in its spirit.<sup>11</sup>

Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, 1963 – Ratified by Nigeria on 17 December 1967, aligning with UN disarmament goals under strict international oversight.

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<sup>9</sup> By Art. 1, “High Seas” means “All parts of the sea that are not included in the territorial sea or in the internal water of a state”.

<sup>10</sup> See Annexure A to the convention

<sup>11</sup> Cap 337 Laws of the Federal Republic of Nigeria, 1990

Vienna Convention for the Protection of the Ozone Layer, 1985 – Entered into force 22 September 1988; Nigeria ratified 29 January 1989. Its purpose is to shield human health and ecosystems from harm caused by ozone-layer depletion.

Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 – Entered into force 10 August 1992; Nigeria ratified 1 January 1989. It mandates precautionary global controls on emissions of Ozone depleting substances. These agreements represent only a fraction of the ever-growing body of international environmental law dedicated to planetary protection.<sup>12</sup>

The most recent major milestone was the Kyoto Protocol 1997,<sup>13</sup> adopted between December 1-11, 1997 in Kyoto, Japan, under the UN Framework Convention on Climate Change. It imposed legally binding greenhouse-gas emission reductions on industrialized nations, with differentiated targets (similar burdens for the EU, Japan, and the United States). Over 170 countries, including the US, initially signed. Yet in March 2001, President George W. Bush abruptly withdrew the United States, dealing a severe blow to collective climate action.<sup>14</sup>

Despite the series of treaties and protocols, environmental destruction persists unchecked. Powerful states flout their own commitments: the permanent members of the UN Security Council many of whom form the exclusive “nuclear club” continue stockpiling and modernising nuclear arsenals capable of annihilating life on Earth in moments. The club has even expanded to include India and Pakistan, while nations such as Israel are widely believed to possess undeclared weapons.<sup>15</sup> Industrialised countries<sup>16</sup> also routinely dump toxic waste into

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<sup>12</sup> For details see Atsegbua L. A. et al Environmental Law in Nigeria: Theory and Practice, Ababa Press, p. 12 to 16.

<sup>13</sup> ILM 31(1992) 818.

<sup>14</sup> See for details Atsegbua L.A. Environmental Law in Nigeria: theory and Practice, p. 193-196.

<sup>15</sup> For details see “The Nuclear Threat How Real is it?” Awake March 8, 2004. 3-7.

<sup>16</sup> The Countries that formed the Nuclear Club are also the industrialized countries of the world.

international waters and coastal zones, openly disregarding the very instruments they helped craft. In developing nations like Nigeria, multinational oil giants headquartered in these same industrialised states ravaged the Niger-Delta with spills, flares, and unchecked pollution. Neither these corporations nor the nuclear powers face prosecution before the International Court of Justice or any other global tribunal. The result is a bitter irony: the architects and strongest advocates of international environmental law are often its most flagrant violators, rendering solemn treaties little more than paper promises while the planet and its most vulnerable communities bear the devastating cost.

The foregoing discussion leads inescapably to one conclusion: the world's industrialised powers, which also form the core of the exclusive "Nuclear Club," have emerged as the primary violators of the very international environmental agreements they helped create. By wielding overwhelming economic, military, and diplomatic influence particularly through their permanent, veto-armed seats on the UN Security Council these nations systematically evade the obligations they once championed. Their persistent breaches render the treaties mentioned above effectively unenforceable, transforming what should be binding global law into little more than aspirational rhetoric. This stark reality has profoundly eroded public trust in the United Nations. As a UN press release candidly acknowledged, young people worldwide are increasingly disillusioned, viewing the organisation not as a decisive force for change but as a repository of "good intentions" lacking in "good results."<sup>17</sup> The UN's repeated failure to curb rampant environmental degradation, resolve protracted conflicts, or hold powerful states accountable for their transgressions lies at the heart of this disillusionment. Until the most influential members choose

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<sup>17</sup> UN Press Release GA/SHC/3694 (Fifty-seventh General Assembly Third Committee 9th Meeting (PM) p. 1.

to honour rather than undermine the rules they profess to uphold, the international community's noble frameworks for planetary protection will remain paralysed, leaving future generations to inherit a world diminished by preventable catastrophe.

#### **4.4 THE INDUSTRIALISED COUNTRIES AS VIOLATORS/ CULPRITS OF ENVIRONMENTAL DEGRADATION**

The world's leading industrialised nations exemplified by the United States, United Kingdom, Russia, France, Canada, China, Japan, and others routinely flout with impunity the international environmental treaties established under the United Nations to safeguard, conserve, and restore the planet. These same powers have placed the Earth's very survival in peril through their development and stockpiling of nuclear weapons, each arsenal possessing the catastrophic potential to obliterate the global environment in an instant.<sup>18</sup>

A striking illustration of this disregard occurred in late March 2001, when President George W. Bush declared the United States' withdrawal from the Kyoto Protocol. The stated rationale that compliance would stifle industrial growth and devastate employment exposed a prioritisation of short-term economic gain over long-term planetary survival, delivering a devastating setback to multilateral climate efforts and undermining the UN's credibility.

In Nigeria's Niger-Delta, the multinational oil giants dominating the region are overwhelmingly owned and directed by citizens and governments of these industrialised states. Shell Petroleum Development Company (SPDC) is controlled by Dutch and British interests, while Agip<sup>19</sup> is an arm of the Italian state. At home, these corporations adhere scrupulously to rigorous environmental standards. In the United Kingdom, for instance, Shell commissioned exhaustive

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<sup>18</sup> For details, see again "The Nuclear Threat How Real is it"? Awake March 8, 2004, 3-7.

<sup>19</sup> Agip means Alianda General Italiana Petroli.

environmental impact studies before laying a single metre of pipeline from Stanlow in Cheshire to Mossmorran in Scotland. Yet in the Niger-Delta, the same companies routinely bypass such safeguards, dispensing with mandatory assessments and employing outdated, high-risk infrastructure that would never be tolerated in their countries of origin. The infamous 1988 dumping of toxic waste at Koko, Delta State orchestrated by Italian firms in collusion with local accomplice Sunday Nana (now deceased) stands as a chilling example of state-sanctioned environmental sabotage. In essence, every industrialised nation whose corporations extract Nigeria's oil bears direct culpability for the systematic degradation of the Niger-Delta. Their double standards impeccable compliance at home, reckless abandonment abroad lay bare a calculated exploitation that sacrifices vulnerable ecosystems and communities on the altar of profit, rendering hollow the very international laws these nations claim to champion.

#### **4.5 INTERNATIONAL AGENCY / CORPORATION IN COMBATING ENVIRONMENTAL DEGRADATION**

The concept of sustainable development in the management of natural resources gained worldwide traction with the United Nations Conference on the Human Environment, convened in Stockholm in 1972. Among its landmark achievements were the adoption of the Stockholm Declaration comprising 21 guiding principles for the preservation and improvement of the human environment and the establishment of the United Nations Environment Programme (UNEP). These milestones signalled the dawn of coordinated global action to heighten awareness and spur nations to embed sustainability as a cornerstone of environmental governance through robust legal frameworks. A decade later, in 1982, UNEP convened a special session to reignite the Stockholm spirit and reinforce governmental pledges to protect, conserve, and restore the environment. The pinnacle of these efforts arrived with the United Nations

Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992 commonly known as the Earth Summit. This gathering crystallised sustainable development as the foundational principle for shaping environmental policy worldwide. The two decades separating Stockholm (1972) and Rio (1992) witnessed a profound shift: states moved away from narrow, self-centred pursuits of economic growth and national sovereignty toward a broader recognition of the shared, existential threats posed by unsustainable practices. In Europe, the drive to institutionalise environmental protection led to the creation of the European Environment Agency (EEA) in 1994. Its establishment stemmed from Council Regulation (EEC) 1210/90, adopted by the Council of Ministers in May 1990. After extensive deliberations, Copenhagen was selected as its headquarters. The EEA's core mandate includes the following functions:<sup>20</sup>

(a) To provide the member states with objective, reliable and comparable information about the environment.

(b) To ensure that the public is properly informed about the state of the environment.

The EEA's<sup>21</sup> Management Board comprises one representative from each member state, two from the European Commission, and two appointed by the European Parliament. Notably, membership extends beyond the European Union; non-EU countries are also eligible to participate. Supporting the EEA is the European Environment Information and Observation Network (EIONET), a collaborative framework that coordinates data collection across member

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<sup>20</sup> Susan *et al* *Principles of Environmental Law*, 3<sup>rd</sup> Edition, 50.

<sup>21</sup> EEA means European Environment Agency

states, seamlessly integrating national environmental monitoring systems into a unified, continent-wide information grid.

The primary critique levelled against the EEA in its present form is its lack of enforcement powers. Its mandate is confined to compiling, analysing, and distributing environmental data, leaving the actual implementation and policing of laws to other institutions.

On the African continent, regional treaties have similarly served as instruments to embed sustainability in resource governance. A pioneering step was Article 24 of the African Charter on Human and Peoples' Rights (1981), which was adopted almost unanimously by African states many of whom initially viewed environmental threats as a by-product of industrialisation and thus alien to the continent. This was swiftly reinforced by the Bamako Convention (1991), which imposed a total ban on the importation of hazardous wastes into Africa. The Lomé IV Convention between African, Caribbean, and Pacific (ACP) states and the European Economic Community, along with the Lagos Plan of Action, soon followed in the same vein.

In summary, these concerted global and regional initiatives have compelled nations to recognise the urgent necessity of enacting robust domestic legislation. Such laws are essential to manage natural resources responsibly, ensuring that environmental stewardship delivers enduring benefits for present and future generations alike.

## CHAPTER FIVE

### CONCLUSION AND RECOMMENDATIONS

#### 5.1 CONCLUSION

The essence of this thesis, extensive efforts have been devoted to examining how environmental degradation manifesting as oil spillages, blowouts, gas flaring, and leakages represents a serious violation of human rights and environmental law in Nigeria's Niger Delta region. Comparative references have been drawn to similar degradation in other jurisdictions, including the United States, Australia, and beyond. The discussion has also highlighted global initiatives, their shortcomings, and the role of industrialized nations as primary perpetrators of environmental harm. It is indisputable that the scale and alarming pace of environmental destruction in the Niger Delta, driven by oil blowouts, spillages, gas flaring, and leakages, demand robust, enforceable environmental legislation to curb this crisis not only in the Niger Delta but across Nigeria as a whole. Regrettably, the National Assembly has demonstrated a conspicuous lack of political will and commitment to safeguarding the Niger Delta's richly endowed environment through effective and implementable laws. A critical examination of the NESREA Act<sup>1</sup> provides in Section 8(g), (k), (n), and (s) explicitly exclude the Agency's jurisdiction over pollution arising from oil spillages, blowouts, gas flaring, and leakages the very issues at the heart of this thesis. This deliberate exclusion suggests that the Act, passed by a National Assembly dominated by northern representatives, was crafted with little regard for the Niger Delta's plight, largely

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<sup>1</sup> NESREA

because the northern region remains unaffected by such oil-related devastation, a product of partisan and divisive politics. Through this work, I seek to remind those in authority particularly northern members of the National Assembly of the concept of “otherness,” as articulated by Sir Shridath Ramphal, former Commonwealth Secretary-General. “Otherness” describes the mindset of those who, enjoying temporary privilege, view others as outsiders deserving of indifference or harm. History teaches unequivocally that those who inflict injustice on others eventually become victims themselves. A poignant illustration is the experience of Pastor Martin Niemöller in Nazi Germany, who remained silent as the regime targeted Jews, communists, trade unionists, and Jehovah’s Witnesses (then known as Earnest Bible Students), believing “it was not me.” When the regime finally came for him, no one remained to speak on his behalf.<sup>2</sup> The lesson is clear: oppressive laws directed at specific groups, regions, or communities such as those affecting the Niger Delta are often enacted by those in power, yet the architects of such laws frequently become their eventual victims. Who can rule out the discovery of oil in northern Nigeria? If oil and gas reserves can be found in the deserts of Saudi Arabia, advanced technology could well uncover similar deposits in northern Nigeria.<sup>3</sup> Therefore, the National Assembly must abandon negative politicking in law-making, as it ultimately causes more harm than good, and no one can predict where the next major oil or gas strike will occur.

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<sup>2</sup> Chianu E. 91 Inaugural lecture Series. University of Benin, 2007. 57 to 59 for details.

<sup>3</sup> Nkem Jika et al Oil Exploration in Northern Nigeria Problems and Prospects. 36 to 41 for details.

## 5.2 RECOMMENDATIONS

Oil blowouts, spillages, gas flaring, and leakages inflict severe and lasting damage on flora, fauna, and the broader environment. Addressing this crisis requires more than mere legislation; the government must ensure that environmental laws are practical, enforceable, and effectively implemented. A priority reform must be the amendment of Nigeria's principal environmental statute, the NESREA Act. The exclusionary clauses in Section 8(g), (k), (n), and (s) which bar the Agency from addressing oil and gas-related degradation should be repealed without delay. Only then can the Act fulfil its intended role in promoting sustainable environmental management and resource exploitation throughout Nigeria.

All environmental legislation whether in Nigeria or globally intended to promote sustainable development during resource extraction and management must adopt a comprehensive, all-encompassing approach. It should simultaneously address the impacts of multinational oil corporations, industrial activities, mining, forestry, urban and rural communities, inland waterways, marine ecosystems, flora and fauna, air quality, atmospheric pollution, soil contamination, and subsoil resources. Only through such holistic coverage can the law unlock its full potential for the benefit of present and future generations. To achieve this, environmental laws must be structured to create a domino effect: a single, well-designed regulatory framework that triggers positive outcomes across multiple sectors of environmental protection and control.

Environmental degradation caused by oil blowouts, spillages, gas flaring, and leakages must be classified as a strict liability offence in Nigeria, removing the need to prove negligence.

Furthermore, Chapter II of the 1999 Constitution<sup>4</sup> (which contains Fundamental Objectives and Directive Principles of State Policy, including the right to a healthy environment) must be made justiciable by repealing Section 6(6)(c), which currently renders it unenforceable in courts.

Combating oil-related environmental destruction demands a holistic strategy. Imposing harsher penalties, public awareness campaigns, or draconian directives will yield little result if the root causes both historical and ongoing are ignored. Can these persistent degradations be separated from endemic corruption across society? From the severe economic hardship in the Niger Delta and Nigeria as a whole? From rampant unemployment? As former U.S. Secretary of State Colin Powell<sup>5</sup> observed:

“Nigeria is a nation of 120 million people with enormous wealth. And what they could have done with that wealth over the last twenty years they just pissed it away. They just tend not to be honest. Nigerians, as a group frankly are marvelous scammers. I mean, it is in the national culture.”

At every level of government, Nigerian leaders compromise the protection, preservation, and conservation of the nation’s God-given environment for personal financial gain derived from the oil sector. The widespread disregard for the rule of law, coupled with chronic lack of transparency and accountability in governance, only exacerbates the problem. Although the Nigerian Constitution does not expressly guarantee an environmental right, courts can derive one

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<sup>4</sup> 1999 Constitution of the Federal Republic of Nigeria.

<sup>5</sup> Former US Secretary of State (1995) quoted in Prof. Patrick Igbinovia, “The Criminal in All of US: Whose ox have we not Taken?” Inaugural lecture delivered at the University of Benin on Thursday, November 27, 2003.

through expansive and liberal interpretation of existing provisions particularly the right to life.<sup>6</sup> The right to life loses its meaning if that life is constantly threatened by environmental hazards and pollution arising from oil and gas exploration and exploitation, including spillages, blowouts, gas flaring, and leakages. Thus, an inseparable and interdependent relationship exists between the constitutional right to life and the right to a clean, safe, and healthy environment.

It is therefore evident that the right to a clean and healthy environment can be inferred from the constitutional guarantee of the right to life in Nigeria. Nigerian courts would do well to draw inspiration from the bold and creative judicial interpretations adopted by the Supreme Court of India. In *Francis Coralie Mullin v. Union Territory of Delhi*<sup>7</sup>, the Indian Supreme Court held: “The fundamental right to life, which is the most precious human right and forms the bedrock of all other rights, must be interpreted in a broad and expansive manner so as to infuse it with enduring significance and vitality. We hold that the right to life encompasses the right to live with human dignity and all that accompanies it namely, the basic necessities of life such as adequate nutrition, clothing, and shelter.”

In the same progressive vein, the Court in *Shanti Star Builders v. Narayan Khimalal Totame & Ors*<sup>8</sup> aptly stated:

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<sup>6</sup> S. 33 (1) of the 1999 Nigerian Constitution.

<sup>7</sup> Air 1981 SC 746

<sup>8</sup> 1990 (1) S.C. 106 Appeal No. 2598 of 1989. See also the cases of *Rural Litigation & Entitlement Kendra and Ors v. State of Up* AIR 1985 SC. 652, and *Shri Sachidan and Pandey v. The State of West Bengal* AIR 1987 S.C. 1109 where in public interest Litigation cases it was held that the right to life included a right to live in a clean environment.

“The traditional basic needs of humankind have always been food, clothing, and shelter. The right to life... must therefore include the right to food, the right to clothing, the right to a decent environment, and reasonable accommodation. For a human being to truly live, shelter must mean a suitable home that enables growth in every dimension physical, mental, and intellectual.”

By embracing such expansive jurisprudence, Nigerian courts can breathe new life into the long-suppressed hopes and opportunities of the Niger Delta’s environmentally devastated communities. The Nigerian Government, working in genuine partnership with multinational oil companies, must urgently accelerate comprehensive development initiatives across the Niger Delta region. Finally, Nigeria’s environmental agencies and authorities should persistently pursue bilateral and multilateral cooperation with other nations to continually refine and strengthen implementation strategies. Only through sustained global collaboration between the Global North and South can we safeguard the planet’s future and ensure the effective use of law as a tool for progressive environmental policy and sustainable development.<sup>9</sup>

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<sup>9</sup> See Belgore, S.M.A., “The Need for Environmental Protection Law in Nigeria”. In the Law and the Environment in Nigeria, Shyllon, F. ed., (Ibadan: Vantage Publishers, 1989), p. 1.

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