

Nigerian Environmental Regulations and Environmental Degradation in Niger Delta

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Abstract: - This article analyses Nigerian environmental laws and how effective they are in regulating the activities of oil multinational companies (MNC's) in the NDR, and protecting the environment and the people of the region. Right to environment is gaining increasing prominence globally. In some jurisdiction's this right is guaranteed and enforceable constitutionally. The article presents an argument in favour of making the right to environment enforceable. The article examines the Constitution of the Federal Republic of Nigeria and the environment, Nigeria laws on oil and gas as well as the environment, common law and the problems militating the effective enforcement of environmental laws in Nigeria.

Key Words: - Environmental Degradation, human rights, oil, Gas, law.

I. INTRODUCTION

The exploration of oil and gas by multinational corporations (MNC's) have culminated in series of human right violations and environmental degradation across the globe.¹ MNC's in concert with host governments are often involved in the human rights violations and environmental injustice, the situation is most times much more deplorable and prevalent in developing States, where economic interest is given priority over human rights, peace and sustainable development.² Most times '[t]he worst victims of environmental harm tend to be those with the least political clout, such as members of racial and ethnic minorities, the poor, or those who are geographically isolated from locus of political power within their country.'³ In Nigeria, the indigenous people of Niger Delta are the victims of the exploration activities of the oil MNC's, their sustainable lifestyle has been considered improbable to sustain as their ancestral land and natural resources have been severely devastated.

Multinational corporation is 'a national company in two or more countries operating in association with one controlling

the other or in part'.⁴ Oil MNC's have evolved to become too powerful that some states especially developing ones find it challenging to regulate their activities.

The Niger Delta region (NDR) is located at the top of the Gulf of Guinea on the west coast of Africa⁵ and situated in the South-South geopolitical zone in Nigeria.⁶ The region occupies 7.5 percent of Nigeria's total land mass with an area of 75, 000 km. The region is made up of nine oil-producing states.⁷ The NDR is house to over 900 producing oil wells and other petroleum exploration facilities and over 800 oil producing communities.⁸

The ecology of the NDR can be broadly categorised into tropical rainforest and mangrove forest.⁹ The region is regarded as the 'largest mangrove forests in Africa and the third largest in the world and as the riches part of Nigeria in terms of petroleum resources and diverse natural ecosystems supportive of numerous species of terrestrial and aquatic fauna'.¹⁰

The NDR is made up of five linguistic and cultural groups, namely: Ijaw, Edo, Yoruba, Igbo and Cross River with each having a handful of sub-groups.¹¹ The Ijaws which have the longest 'settlement history' have been described to be the most complex and largest group in the region. The group is found in 6 states out of the 9 in the region.¹²

In Cross River part of the NDR, there are Odua, Ogoni, Ogba, Abua and others in Rivers States, the Andoni/Obolo in both Akwa Ibom and Rivers State, and the Ibibio, Ibeno, Oron and

⁴ T Doanaldson, *The Ethics of International Business* (Oxford University Press 1989) 30.

⁵ H Doust, *Petroleum Geology of the Niger Delta* (Geological Society London Special Publications 1990) 365.

⁶ A E Ite *et al*, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) 4 AJEP 80.

⁷ Namely Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Ondo, Imo and Rivers.

⁸ L C Osuji and C M Onojake, 'Tracr heavy Metals Associated with Crude Oil: A Case of Ebocha-8 Oil-Spill Polluted Site in Niger Delta, Nigeria' (2004) 1 CB 1708-1711.

⁹ C N Ugochukwu and J Ertel, 'Negative Imoacts of Oil Exploration On Biodiversity Management in the Niger Delta Areas of Nigeria' (2008) 26 IAPA 139-147.

¹⁰ Ite *et al* (n 6) 80.

¹¹ Constitutional Rights Project (CRP), *Land, Oil and Human Rights in Nigeria's Niger Delta Region* (CRP 1999) 7.

¹² Niger Delta Human Development Report (UNDP Publications) 21.

¹ R Sykes, 'Oil and Gas Industry Efforts on Behalf of Human Rights and Sustainable Development' <www.spe.org/twa/print/archives/2008/2008v4n2/twa2008_v4n2_Pillars.pdf> 'accessed 11th July 2016'.

² O Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities* (Intersentia 2014) 2.

³ C Dommen, 'Claiming Environmental Rights: Some Possibilities Offered by the United Nations Human Rights Mechanisms' (1998) 11 GIELR 1.

others in Akwa Ibom.¹³ The communities connected to Edo can be found at Engenni and Degema in Rivers State, to the Isoko, Urhobo Erowha and Okpo in Delta State. Also in this region is the Itsekiri.¹⁴

The major Yoruba groups are Ilaje and Ikale of Ondo State and the Itsekiri of Delta State. The communities affiliated to the Igbo's include Ika and Ukwuani in Delta State, Ndoni, Ogba, Ikwere, Egbema and Ekpeye of Rivers State, Ohaji and Aguta of Imo State and Asa in Abia State.¹⁵

The population of the region is estimated to be over 31 million,¹⁶ the region is described as having one of the highest population densities in Nigeria.¹⁷

The region comprises of several ethnic groups with various traditional and cultural institutions.¹⁸ The region is known for celebrating her lofty marine heritage with series cultural events.¹⁹ The people of the region are known to be religious and for having diverse myths and believe about God and gods or minor deities, ancestors and spirits.²⁰ The NDR people do engage in series of festivals and activities in furtherance of their religious inclinations.²¹

The geographical location and its resources have influenced the occupation of the NDR people. Primarily the people engage in subsistent fishing and farming, secondary occupations in the region include forestry boat carving, textile weaving, gin distillation among others. The people of the region are involved in tertiary occupations like transportation, trade and commerce.²²

Nigeria's economy is anchored on its rich oil region 'the Niger Delta.' It is regarded as the largest oil producer in Africa and the fifth largest in the Organization of Petroleum Exporting Countries (OPEC).²³ Oil has evolved to become the main stay of the country's economy after years of political instability, the petroleum or oil sector accounts for 95 percent of foreign exchange earnings, 20 percent of the GDP and over

60 percent of budgetary revenues.²⁴ Petroleum and its products 'make up' over 90 percent of export commodities.²⁵

'The Nigeria oil industry is dominated by six joint-venture operations managed' by multinational corporations; Shell, Mobil, Chevron-Texaco, AGIP and Elf-Aquitaine.²⁶ The Nigerian Constitution vest ownership of all oil in the federal government of Nigeria.²⁷ Thus, the MNC's above are in partnership with the Nigeria federation's Nigeria National Petroleum Company (NNPC).²⁸ The Petroleum Act regulate oil operations in Nigeria.²⁹

Despite the immense revenue generated by the oil and gas exploration in the NDR by the Nigerian government, the people of the indigenous communities of the oil rich NDR have been subjected to environmental degradation and human right abuses. The reason for this anomaly is the fact that the process of exploring and harnessing the natural resources in the NDR by the oil MNC's is done without due consideration to the environment and its inhabitants.³⁰ It has been submitted that the Nigerian oil industry is known for its poor environmental practices and the culminating environmental degradation.³¹ The major devastating environmental practices, are oil spill and gas flaring.

'Gas flaring is the practice of burning natural gas, a by-product of oil extraction.'³² Oil MNC's in Nigeria flare gas as it is saves them the cost of re-injecting it into the subsoil or

²⁴ Central Intelligence Agency, The World Fact Book, 2005: Nigeria, available at <www.cia.gov/cia/publications/factbook/geos/ni.html> 'accessed 9 June 2016.'

²⁵ *ibid*.

²⁶ Nigerian Oil and Gas, <www.nigerianoil-gas.com/upstream/index.htm> 'accessed 9 JUNE 2016.'

²⁷ S. 44(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) 'Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.'

²⁸ Nigerian Oil and Gas, (n 26) (formed in 1977, NNPC regulates and supervises the Nigerian oil industry on behalf of the government).

²⁹ Other relevant legislation includes the Oil in Navigable Waters Decree No. 34 (1968), the Oil Pipelines Act Decree No. 31 (1956), the Associated Gas Act (1979), and the Petroleum (Drilling and Production) Regulations (1969). From 1988, the Federal Environmental Protection Agency Act Decree No. 58 (1988) vested the authority to issue standards for water, air, and land quality in a Federal Environmental Protection Agency (FEPA), and regulations made by FEPA under the decree govern environmental standards in the oil and other industries. The Department of Petroleum Resources (DPR) has also issued a set of Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (1991), which overlap with, and in some cases, differ from those issued by FEPA.

³⁰ C I Okpara, 'Right to a Clean and Healthy Environment: The Panacea to the Niger Delta Struggle' (2012) 5 JPL 4.

³¹ A L Shinsato, 'Increasing the Accountability of Transnational Corporations for Environmental Harms: The Petroleum Industry in Nigeria' (2005) 4 NUJIHR 192.

³² Environment, Canada, Oil and Gas Flaring, General Info, available at <www.ec.gc.ca/energy/oilgas/flaring/flaring_general_e.htm> 'accessed 10 June 2016.'

¹³ Constitutional Rights Project (n 11) 8.

¹⁴ *ibid* 7.

¹⁵ *ibid* 7-8.

¹⁶ Nigeria News census 2006, available at <www.nigerianews.com/census/census2006.htm> 'accessed 11 July 2016'.

¹⁷ Social Development Integrated Centre (Social Action) (2009).

¹⁸ Oluduro (n 2) 20.

¹⁹ *ibid*.

²⁰ S Azaiki, *Inequities in Nigerian Politics: The Niger Delta, Resource Control, Underdevelopment and Youth Restiveness* (Treasure Books 2003) 47.

²¹ W A Moore, *History of Itsekiri* (Frank Cass and Company Limited 1970) 214, 215.

²² Oluduro (n 2) 21.

²³ S B Owaduge, The Politics of Oil Production Among the Federal Government, Oil Producing Companies and Oil Producing Communities of the Niger Delta Area of Nigeria, available at <www.greatestcities.com/users/owaduge> 'accessed June 9 2016.'

collecting it for consumption.³³ It has been asserted that this flares have been on 24 hours and for over 40 years in some places in the NDR.³⁴ A report funded by the International Union for the Conservation of Nature and Natural Resources (IUCN)³⁵ and produced by Environmental Rights Action on the Niger Delta suggest that Nigeria flares over 70 percent of its gas, this alarmingly exceeds any other country's allowable flaring limits.³⁶ In the year 2000, over 90 percent of gas was flared in Ogoni land, a part of the Niger Delta,³⁷ in sharp contrast to the 0.4 percent flared in the United States.³⁸

Oil spill is another major environmental problem in the NDR, this pollutes water and devastate animals and plants. Extensive spills are recorded at least three times monthly,³⁹ over 4000 oil spills were recorded between 1976 and 1996.⁴⁰ Pipelines used for transporting crude oil and refined petroleum products run for over 7200 kilometres across Nigeria,⁴¹ and usually pass through residential homes and valued arable lands.⁴² Most of the pipes are old, rusty and worn-out.⁴³ Oil leakages from poorly maintained pipelines and blow-outs of poorly maintained wells further compound the crude oil pollution.⁴⁴

Regardless of the fact that Shell carry out oil exploration in twenty-eight countries between 1982 and 1992, 40 percent of its overall oil spills occurred in the Niger Delta.⁴⁵ A World Bank study revealed that hydrocarbon pollution⁴⁶ in Ogoni land water was more than sixty times US limits.⁴⁷ Project Underground in a similar vein asserted that hydrocarbon

pollution in a water source in the NDR was over 350 times 'the limit of the European Community.'⁴⁸

Environmental degradation in the NDR have led to loss of land, health problems, destruction of the regions ecosystem, air pollution as well as pollution of water resources. It has made it seemingly impossible for the indigenous people of the oil rich region to sustain their subsistence lifestyle which is predominantly fishing and farming.⁴⁹

Oil is the anchor of the Nigerian economy, nonetheless, pollution and environmental degradation resulting from exploration of oil and gas in the oil rich Niger Delta region (NDR) have occasioned untold hardship on the region and its inhabitants.⁵⁰ The role of legal mechanisms to balance right to healthy environment and economic development becomes fundamental.⁵¹ In Nigeria, certain laws exist aimed at regulating the exploration of oil and gas, these laws provide remedies for individuals whose rights may be violated as a result of environmental pollution.⁵²

This article critically examines Nigerian environmental laws and how effective they are in regulating the activities of oil multinational companies (MNC's) in the NDR, and protecting the environment and the people of the region.

II. OIL EXPLORATION AND NIGERIAN ENVIRONMENTAL LAWS

Prior to 1988, there was lack of environmental protection consciousness in Nigeria.⁵³ The priority then was economic development and encouragement of industrialization. Most legal frameworks in existence then on environmental pollution were defective and inchoate.⁵⁴ The discovery of dumped toxic waste in Koko village in present day Delta State, from Italy by some ships marked the beginning of new era in the development of environmental law in Nigeria.

In a bid to correct the anomaly, the Nigerian Government established a Ministerial Task Force to dispose the toxic waste and further promulgated a plethora of laws on pollution abatement.⁵⁵ This research will now proceed by analysing some of these laws.

³³ Essential Action and Global Exchange, *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta* 4 (2000), available at <www.essentialaction.org/shell/Final_Report.pdf> 'accessed 10 June 2016.' [hereinafter Essential Action and Global Exchange].

³⁴ *ibid.*

³⁵ Commission on Environmental Law of IUCN, *Draft International Covenant on Environment and Development* (2nd edn., International Union for the Conservation of Nature and Natural Resources 2000) xi.

³⁶ N Ashton-Jones, S Arnott and O Douglas, *The Human Ecosystems of the Niger Delta* (Environmental Rights Action 1998) 158.

³⁷ Essential Action and Global Exchange (n 33).

³⁸ US Non-proliferation Policy After Iraq: Hearing Before the H. Comm. on Int'l Relations., 108th Cong. 104-31 (2003) (statement of John R. Bolton, Under Secretary for Arms Control and International Security, US Dept. of State); accompanying graphs and maps available at <www.state.gov/t/us/21782.htm> 'accessed 10 June 2016'

³⁹ *ibid.*

⁴⁰ Environmental Resources Managers Limited, *Niger Delta Environmental Survey Final Report, Phase I 249* available at <www.ermil.net> 'accessed 10 June 2016.'

⁴¹ Central Intelligence Agency (n 24).

⁴² Essential Action and Global Exchange (n 33).

⁴³ *ibid.*

⁴⁴ Human Rights Watch, *Africa, Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in South Eastern Nigeria*, available at <www.hrw.org/reports/1995/Nigeria.htm> 'accessed 10 June 2016.'

⁴⁵ S Crayford, 'The Ogoni Uprising: Oil, Human Rights and a Democratic Alternative in Nigeria' (1996) 43 AT 183.

⁴⁶ See Global Marine Oil Pollution Information Gateway, available at <www.oils.gpa.unep.org> 'accessed 10 June 2016.'

⁴⁷ Project Underground, *The Flames of Shell: a Fact Sheet*, Berkley 1996, available at <www.thirdworldtraveler.com/Boycotts/Flames_Shell.html> 'accessed 11 June 2016.'

⁴⁸ Project Underground and Rainforest Action Network, *Human Rights and Environmental Operations Information on the Royal Dutch/Shell Group of Companies: 1996-1997, Independent Annual Report (1997)*, available at <www.ran.org/ran/merch/shell_report> 'accessed 10 June 2016.'

⁴⁹ K S A Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues* (Rudiger Koppe 2006) 144- 145.

⁵⁰ A Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Evans Brothers Nigeria Limited 1991) 180.

⁵¹ O Oluduro, *Oil Exploitation and Human Rights Violations in Nigeria's Oil Producing Communities* (Intersentia 2014) 133.

⁵² A Bello, 'Environmental Rights in Nigeria: Issues, Problems and Prospects' (2006) 4 IJLJ 60-95.

⁵³ L Atsegbua *et al*, *Environmental Law in Nigeria: Theory and Practice* (Ababa Press 2004) 2-6.

⁵⁴ *ibid.*

⁵⁵ *ibid.*

2.1 The Constitution of the Federal Republic of Nigeria and the Environment

The Constitution of the Federal Republic of Nigeria of 1999 (as amended) makes protection of the environment a state objective.⁵⁶ Precisely section 20 provides as follows: ‘The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.’

The essence of this constitutional provision is to ensure a healthy and viable environment for Nigerians.⁵⁷ The protection of the environment is indispensable for the actualization of human rights because human rights can only be enjoyed in healthy and conducive environment, free from pollution and degradation.⁵⁸ However, as commendable as the above provision is in protecting the Nigerian citizens, especially the people of Niger Delta from all forms of environmental pollution and degradation, it is rendered totally impotent by the provision of section 6 (6)(c) of the Nigerian Constitution, which provides as follows:

The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

Section 20 is contained in chapter II of the Nigerian constitution, which contains Fundamental Objectives and Directive Principles of State Policy. The provision of section 6 (6)(c) has been interpreted as ousting the power of the courts to adjudicate on issues pertaining to enforcement of section 20 of the Constitution.⁵⁹ The Court in the case of *Okogie (Trustees of Roman Catholic Schools) and Others v Attorney General of Lagos State*,⁶⁰ held that the provisions of section 6 (6)(c) makes it clear that no court has jurisdiction to pronounce as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy.

It has been argued that the fear of multiple suits against the Federal government of Nigeria is the rationale behind section 6 (6)(c),⁶¹ this argument has been criticised to be untenable as it serves as an obstacle to the protection of the rights of the citizens to a healthy environment and exposes the people to human rights abuses.⁶² This article recommends that the right

to healthy and viable environment be made enforceable under the Nigerian Constitution, also the wordings should be amended to provide for clear State responsibility to ensure the enforcement and protection of such right.

2.2 Nigerian Laws on Oil and the Environment

The Nigerian legal framework regulating oil and gas operations in Nigeria is set out by the Petroleum Act,⁶³ Associated Gas (Reinjection) Act,⁶⁴ Department of Petroleum Resources (DPR) Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), Criminal Code,⁶⁵ Harmful Waste (Special Criminal Provisions, etc) Act,⁶⁶ Environmental Impact Assessment Act,⁶⁷ Land Use Act,⁶⁸ National Environmental Standards and Regulations Enforcement Agency (NESREA) Act,⁶⁹ National Oil Spill Detection and Response Agency (Establishment) Act,⁷⁰ among others.

Under the Nigerian Constitution the Federal government owns all minerals, mineral oils and natural gas under or upon any lands in Nigeria, or in, under or upon the territorial waters and the Exclusive Economic Zone (EEZ).⁷¹ Section 1 of the Petroleum Act provides that the entire ownership and control of all petroleum in Nigeria shall be vested in the State.

Section 1(2)(a) of Harmful Waste (Special Criminal Provisions, etc) Act provides that any person who without legal authority dumps any harmful waste on any land, territorial waters, contiguous zone or EEZ of Nigeria shall be guilty of a crime under the Act. The Environmental Impact Assessment Act provides that an environmental impact assessment (EIA) be carried out ‘where the extent, nature or location of a proposed project or activity is such that it is likely to significantly affect the environment.’⁷² Private and public actors are enjoined to participate in the consideration of environmental effects of any activity before it is embarked upon,⁷³ and the EIA’s is to be overseen by Federal Environmental Protection Agency (now Federal Ministry of Environment (FME)).

The EIA Act has been criticised for having many gaps inhibiting its protection of the environment, section 15 of the Act for example, empowers the President to exclude some projects from the purview of the EIA Act, this can easily be abused for political and economic reasons. The Act failed to state the extent to which private and public actors (this includes local Niger Delta communities) participate in the

⁵⁶ A B Abdulkadir, ‘The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria’ (2014) 3 ABUSJDL 122.

⁵⁷ G Ogbodo, ‘Environmental Protection in Nigeria: Two Decades After Koko Incident’ (2010) 15 ASICL 1-18.

⁵⁸ A B Abdulkadir and A O Sambo, ‘Human Rights and Environmental Protection: The Nigerian Constitution Examined’ (2009) JFDHL 61-73.

⁵⁹ M A Olong, ‘Human Rights, the Environment and Sustainable Development: Nigerian Women’s Experiences’ (2012) 5 JPL 100-108.

⁶⁰ [1981] 2 NCLR 337.

⁶¹ Olong (n 10).

⁶² Abdulkadir (n 7) 125.

⁶³ Cap P10, LFN 2004.

⁶⁴ Cap A25, LFN 2004.

⁶⁵ Cap C38, LFN 2004.

⁶⁶ Cap H1 LFN 2004.

⁶⁷ Cap E12, LFN 2004.

⁶⁸ Cap L5, LFN 2004.

⁶⁹ Federal Republic of Nigeria Official Gazette, Government Notice No. 61, Act No.25.

⁷⁰ Act No. 15 of 2006 A.407 Acts and Subsidiary Legislation 2006 Vol. 1.

⁷¹ S.44(3) of the Constitution of the Federal Republic of Nigeria 1999.

⁷² S. 1 of the Environmental Impact Assessment Act.

⁷³ *ibid* s. 2.

EIA's. This article recommends free, prior and informed participation on the part of the local communities as they are most affected by the impact of oil operations in the NDR.

Another major environmental protection law is the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act of 2007. After the Koko incident of 1988, the Nigerian Federal Government promulgated the Federal Environmental Protection Agency (FEPA) Act (Decree No. 58 of 1988),⁷⁴ this law established the Federal Environmental Protection Agency (FEPA), this agency was saddled with the responsibility of developing and protecting the environment. In 1999, FEPA and other related departments and Ministries were amalgamated to form the Federal Ministry of Environment (FME), however, there was no enabling law to ensure enforcement by the FME.⁷⁵ To cover this gap, NESREA was established, by the NESREA Act.⁷⁶

FEPA Act was repealed by the NESREA Act,⁷⁷ nonetheless, authorisations, regulations and directions made pursuant to the FEPA Act are still in force and effective.⁷⁸ NESREA is responsible for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources. Section 7 of NESREA Act provides authority to ensure compliance with environmental laws, local and international, on environmental sanitation and pollution prevention and control through monitoring and regulatory measures. Also, worth noting is section 8 (1)(k) which empowers the Agency to make and review regulations on air and water quality, effluent limitations, control harmful substances and other forms of environmental sanitation and pollution.

The Act also prohibits, without legal authority, the discharge of hazardous substances into the environment. This offence is punishable with a fine not exceeding, N1000,000 (One Million Naira) and an imprisonment of term of 5 years. For derogations by a company, there is an additional fine of N50,000 (Fifty Thousand Naira) for every day the offence persists.⁷⁹

In spite of the commendable provisions of the Act, it has a handful of flaws. The health sector is not protected under the Act, as it is excluded in its Governing Council.⁸⁰ This is inimical to addressing the health implications of environmental pollution and efforts to develop environmental

health.⁸¹ This agency is also faced with the problem of 'lack of awareness.'⁸² This article advocates that regular sensitization and public awareness be done about the existence and the functions of the Agency and the Act especially in the Niger Delta, in doing this there is need to liaise with the Non-Governmental Organizations (NGO's), the local chiefs and the people especially the youths in the NDR.

Other challenges bedeviling the Agency are: inadequate budgetary provision, inadequate baseline and necessary information, insufficient human and institutional capacity, lack of public awareness and sensitization and poor information exchange and feedback mechanisms between the relevant stakeholders and the Agency.⁸³ It is submitted here that another problem of the Agency is excluding the local communities that are affected by environmental degradation, on this note this article recommends that host communities in the Niger Delta affected by pollution be included to participate in the regulatory mechanism of the Agency. This can be achieved by an amendment in the NESREA Act to provide for regular dialogue between host oil communities in the NDR, the Agency (NESREA) and oil MNC's operating in the area.

Another vital environmental legislation is the National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act. This Act established NOSDRA, as an institution for the implementation and regulation of the National Oil Spill in Nigeria.

NOSDRA Act and the Agency are quite laudable as both attempt to tackle the issue of environmental degradation especially the one resulting from oil pollution. An oil spiller is mandated under the Act to report an oil spill timeously and not later than 24 hours after the spill has occurred, default to do the above attracts a penalty of the sum of Five hundred thousand naira (N500, 000) for each day of default. Failure to clean up affected site, attracts a further fine of One million naira (N1000, 000).⁸⁴ This sanctions have been criticised to be inadequate to ensure compliance with the law, especially as cost of clean-up and remediation will most likely exceed the mandated fines or penalties.⁸⁵

Another major problem with the Act is lack of compliance and total disregard by the oil MNC's operating in the NDR. For example, Chevron delayed to report and clean-up a spill

⁷⁴ Cap F10, LFN 2004.

⁷⁵ S Okenwa, Nigeria: Odey wants Reversal of CITES Ban as NESREA Raises Stake in Wildlife Protection, Daily Champion, 4 February 2010.

⁷⁶ Oluduro (n 2) 144.

⁷⁷ S.36 NESREA Act.

⁷⁸ The International Comparative Legal Guide to: Environmental Law 2008, available at <www.iclg.co.uk/khadmin/Publications/pdf/2032.pdf> 'accessed 28 July 2016.'

⁷⁹ S.27 of the NESREA Act.

⁸⁰ Oluduro (n 2) 146.

⁸¹ W Onwizu, 'Tackling the Public Health Impact of Climate Change: The Role of Domestic Environmental Health Governance in Developing Countries' (2009) 43 IL1311-1335.

⁸² Oluduro (n 2) 146.

⁸³ M Suleiman, NESREA Highlights achievements, Challenges, Daily Trust, Thursday, 19 November 2009, available at <www.news.dailytrust.com/index.php?option=com_content&view=article&id=9823:nesrea-highlights-achievements-challenges&catid=34:environment&Itemid=30> 'accessed 29 July 2016.'

⁸⁴ S. 6(2) and (3) of NOSDRA Act.

⁸⁵ O Oluduro, 'Environmental Rights: A Case Study of the 1999 Constitution of the Federal Republic of Nigeria' (2010) 4 MLJ 261.

caused by it at Abite-Escavos in Delta state and Ilaje in Ondo in 2006.⁸⁶

Another problem faced by NOSDRA is the multi-agency approach to environmental protection especially spill detection and clean-up, this leads to unnecessary delay, clash of duties among the agencies especially NOSDRA and Department of Petroleum Resources (DPR). DPR is responsible for supervising the Nigerian petroleum industry operations, including safety and environmental regulations. On this note, there is need to amend NOSDRA Act and other relevant laws to provides for harmony between these agencies, it has been recommended that a single agency be created to handle all matters of oil spills.⁸⁷

Another challenge of NOSDRA is lack of up-to date facilities to monitor and detect oil spills in the oil rich region.⁸⁸ This research recommends regular up-grading of the equipment of the Agency. It is submitted here that another major pitfall of the NOSDRA Act is that the oil MNC's are to report to the Agency on spills and remediation, this is not ideal, this research recommends the amendment of the Act to allow the Agency to regularly carry out independent assessments in the oil rich region and call the erring oil MNC's to order. Affected communities and individuals by spills should be allowed to report oil spills.

Another important legislation is the Associated Gas Re-Injection Act of 2004 and its Regulations. This Act was earlier promulgated in 1979, this was aimed at ending gas flaring in Nigeria, the 1979 Act required all oil exploration MNC's to cease gas flaring by January 1984.⁸⁹ However, at the end of the 1984 the set date for the end of gas flaring in Nigeria, evidence on ground indicated that there was non-compliance by the oil MNC's operating in the Niger Delta, and no attempt was made whatsoever to ensure compliance. It has been argued that the reason for this was protection of the national economic interest, as it could have adverse effects on oil and gas production.⁹⁰

Instead of taking steps to ensure compliance with the Act and end gas flaring, the FME Minister made the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984, this exempted the initial prohibition on flaring.⁹¹ In 1985, Associated Gas Re-Injection (Amendment Decree)⁹² came

into being, this permitted flaring of gas on the payment of some derisory fee of 2 kobo (US \$ 0.0009 as at then in 1985) prescribed by the Minister. The 1984 Regulations and the 1985 Decree tend to nullify the intent and purport of ending gas flaring, the paltry sum did not deter the oil MNC's companies from flaring gas, as such gas flaring has continued unabated in the NDR.⁹³

To curb this anomaly, the Associated Gas Re-Injection (Amendment) Act 2004 was enacted, this prohibit flaring of gas without the authorization and permission of the FME Minister, despite this gas flaring has continued till date in the NDR. Lack of government commitment and political will as well as economic interest have inhibited the enforcement of this law. This article recommends that the Act be amended to place compliance in the courts or other neutral body, the FME Minister is an appendage of the Nigerian government and will only act to protect the interest of its principal (the government). It is also submitted here that the Act be amended and the penalty sum be increased to an extent that will have deterrence effect on the oil MNC's operating in the NDR.

Another important law is the Land Use Act (LUA) of 1978, this law vests all the land in the territory of each State in Nigeria, and the State Governors are to hold the land as trustees of the Federal government and Nigerians in accordance with the Act.⁹⁴ Section 28 of the LUA, empowers the Governor to revoke a right of occupancy for 'overriding public interests', this is defined to include the 'requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith'. Udombana opined that 'overriding public interest' definition under the LUA is so wide that it vitiates the guaranteed proprietary rights,⁹⁵ this also gives the Governors of States excessive power that can be easily abused.⁹⁶

LUA denies the people of the oil rich region the right to be adequately compensated, section 29(2) of the Act provides that where land is revoked by the Governor for oil operations the Minerals Act or the Petroleum Act or any superseding legislation shall apply. As earlier noted both the Minerals Act and Petroleum Act vest all natural resources including oil and gas in the Federal Republic of Nigeria. It is submitted here that the implication of the LUA is that the people of the Niger Delta do not have any say on what happens on their land and the resources beneath their land, this excludes the people from participating in decisions concerning their land, resources and their welfare, this also serves as an obstacle to their right to

⁸⁶ E Onwubiko, Environmental Friendly Oil Industry: How Feasible? Available at <www.pointblanknews.com/artopn1147.htm> 'accessed 29 July 2016.'

⁸⁷ Oluduro (n 2) 153.

⁸⁸ Amnesty International, Nigeria: Petroleum, Pollution and Poverty in the Niger Delta Report 2009, available at <www.amnesty.de/files/Amnesty_Bericht_Niger_Delta_09.pdf> 'accessed 25 July 2016'.

⁸⁹ S.3(1) of the Associated Gas Re-Injection Act 1979.

⁹⁰ M Kassim-Momodu, 'Gas Re-Injection and the Nigerian Oil Industry' (1987) 7 JPPL 83; K S A Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues* (Rudiger Koppe 2006) 206.

⁹¹ R.1 Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984.

⁹² Decree No.7 of 1985.

⁹³ Oluduro (n 2) 141.

⁹⁴ S.1 of the Land Use Act.

⁹⁵ N Udombana, 'Weighed in the Balances and Found Wanting: Nigeria's Land Use Act and Human Rights' in I O Smith (ed), *The Land Use Act-Twenty Five Years After* (Department of Private and Property Law, University of Lagos 2003) 80.

⁹⁶ R T Ako, 'Nigeria's Land Use Act: An Anthithesis to Environmental Justice' (2009) 53 JAL 297.

access to justice and fair hearing as well as right to property guaranteed under the Nigerian Constitution.⁹⁷

III. COMMON LAW

Common law remedies in nuisance, negligence and the rule in *Rylands v Fletcher*⁹⁸ (strict liability) are additionally available to victims of environmental pollution in the NDR, apart from the statutory provisions earlier examined. Common law forms part of the received English law, and is so essential where there exist gaps in the provisions of existing laws on the protection of the environment.⁹⁹ It affords individuals the chance of obtaining redress against the perpetrators of acts caused 'in the context of injury suffered in respect of the individual's right to enjoy his property and immediate environment free from interference or disturbance.'¹⁰⁰

Despite the potential of common law as a veritable pathway to seeking redress for violations of their rights by the oil MNC's, the elements required to establish and the numerous defences of which the defendant may plead have made these torts ineffective against polluter(s).¹⁰¹ According to Emole, 'the remedies offered by common law under the law of tort are ill-suited for the purpose of contending with oil pollution.'¹⁰² For example, in the case of negligence, which is regularly used against the oil MNC's, the plaintiff to succeed must prove that the defendant was careless in the exercise of his duty of care. Additionally, he must also establish that the damage occurred as result of the defendant's negligence and not something else.

In oil and environmental degradation cases, it is a herculean task for indigent victims, given the technical nature of oil and gas operations as well as the cost, most individuals will not be able to compete with the oil MNC's who have what it takes to hire the best experts and attorneys to justify their claims.¹⁰³

In a handful of oil pollution cases involving NDR communities, especially nuisance cases attributable to seismic surveys and gas flaring, the courts have found it challenging to attribute liability to the oil MNC's.¹⁰⁴ For example in *Seismograph Service Limited v Onokposa*,¹⁰⁵ a case concerning seismic survey, the claims of the victims of oil pollution failed as a result of the challenging nature of establishing causation. Nonetheless, in certain situations, the claimant may shift the burden of proof to the defendant by pleading *res ipsa loquitur* (facts speak for themselves).

⁹⁷ S.36 and s.44 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁹⁸ [1868] UKHL 1.

⁹⁹ *Oluduro* (n 2) 166.

¹⁰⁰ K Nnadozie, 'Environmental Regulation of the Oil and Gas Industry in Nigeria' in B Chaytor and K R Gray (eds), *International Environmental Law and Policy in Africa* (Kluwer Academic Publishers 2003) 115.

¹⁰¹ *Oluduro* (n 2) 167.

¹⁰² C E Emole, 'Regulation of Oil and Gas Pollution' (1998) 28 JEPL 108.

¹⁰³ *Chinda and others v Shell B P* (1974) 2 RSLR 1.

¹⁰⁴ K Omeje, 'The Rentier State: Oil-Related Legislation and Conflict in the Niger Delta Nigeria' (2006) 6 CSD 223.

¹⁰⁵ [1972] 1 All NLR 343; similar decisions were also re-echoed in *Seismograph Service Limited v Akporuovo* [1974] 1 All NLR 104 and *Seismograph Service Limited v Saturday Mark* [1993] 7 NWLR Pt 304, 203.

In *Rylands v Fletcher*, Lord Blackburn held that 'that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all damage which is natural consequence of its escape.'¹⁰⁶ The principle of strict liability applies here, this connotes that the polluter is liable for any damage that occurs as a result of his activities, whether or not fault is established. Nevertheless, one factor that may likely affect the claimant's claim is that he must establish non-natural use of the land by the defendant polluter, a requirement which no universal or objective test is applicable.¹⁰⁷ Another defence or exception to the rule is statutory authority, this defence applies where the defendant polluter can establish that he is empowered by statute to perform the acts that result in the harm, in *Sam Ikpede v Shell-BP Petroleum Development Company Nigeria*¹⁰⁸, it was held that strict liability was not applicable because the defendant's fell under the exception of statutory authority as they had a licence to lay pipes which led to the harm to the plaintiff.¹⁰⁹

Another challenge with tortious claims for environmental degradation is even where the claims succeed, the damages granted are most times inadequate and derisory,¹¹⁰ for example in *R. Mon and Another v Shell B P*,¹¹¹ the court awarded the sum of N200 as damages to the plaintiffs. Nonetheless, the court has been generous and liberal at times in awarding damages, for instance, the court awarded over 4 million naira to the plaintiffs, who were victims of oil pollution in *F B Farah and others v Shell B P Petroleum Company of Nigeria*.¹¹² This research recommends that the courts be more generous in awarding damages to victims of oil pollution, this will help in restoring the people of the oil region in Nigeria to the position they were but for the damage or harm and also serve as deterrence against the unwholesome and unsustainable oil exploration activities of the oil MNC's in the NDR.

IV. PROBLEMS MILITATING AGAINST THE EFFECTIVE REGULATION OF THE ENVIRONMENTAL PRACTICES OF OIL COMPANIES IN NIGERIA

Despite the plethora of environmental laws in existence to curb environmental pollution, the menace has continued unabated. This research at this juncture will examine some of the problems militating against the effective regulation of the activities of the oil MNC's operating in the NDR.

The Nigerian Judiciary tend to prioritize the nation's economic interest over the environment and the people, this affects the regulation of the environmental practices. For

¹⁰⁶ *Rylands case* (n 49)

¹⁰⁷ *Nnadozie* (n 51) 116.

¹⁰⁸ [1973] MWSL 61.

¹⁰⁹ *ibid*.

¹¹⁰ Y Omeregbe, *Oil and Gas in Nigeria* (Malthouse Press 2000) 156.

¹¹¹ [1972] 1 RSLR 71.

¹¹² [1995] 3 NWLR Pt 382, 148.

example, in *Allar Irou v Shell BP*,¹¹³ the justification given by the judge for refusing to grant an injunction in favour of a plaintiff whose land, fish pond and creek had been polluted by the defendant's mining operations was because '[T]o grant the order... would amount to asking the defendants (Shell BP) to stop operating in the area... It is needless to say that mineral oil is the main source of the country's revenue.' The implication of this ruling is that the influence of the oil MNC's and the paternalistic attitude of the judiciary in environmental degradation cases, have adversely affected the enforcement of environmental laws in Nigeria.¹¹⁴

Another major challenge is the delay in the Nigerian judicial process. For example, in *SPDC v HRH Chief Tiebo VII and others*,¹¹⁵ it took four years for the suit filed at the High Court to get to the Appeal Court. Also in *Elf Nigeria Limited v Opeme Sillo and Daniel Etseni*,¹¹⁶ another case on environmental degradation against Elf, it took twenty years to be heard at the High Court in 1987, though the damage was suffered in 1967, the Court of Appeal in 1990, and the Nigerian Supreme Court in 1994. This unnecessary delay, will lead to death of vital witnesses, more cost for the plaintiff among others, it makes the people lose hope in the judiciary, thus resorting to self-help and criminality.¹¹⁷

The Nigerian Courts took a human rights approach in *Gbemre v Shell*, in given judgment in favour of the applicant, the court ordered Shell and the Nigerian government to take steps to end further flaring of gas as it violated the claimants right to life, which was interpreted to include right to live in a clean and healthy environment.¹¹⁸ This decision has been hailed for its purposive approach to the right to environment in Nigeria, however, since the decision was reached by a trial court (High Court) it cannot be said to establish a binding precedent. The decision was appealed and is yet to be determined.¹¹⁹

This research on this recommends the establishment of environmental courts to handle issues on environmental degradation and related issues, additionally it is submitted here that a special Court Practice Direction be promulgated for the Court wherein at the Court of first instance the suit must be dispensed with within 180 days, and appeal must not exceed 90 days. This will provide for timely adjudication of environmental pollution cases against the oil MNC's.

However, potential challenges to this recommendation include the cost of training new judges, building new courts among others. Another likely issue is the lack of political will on the

part of the Nigerian government to invest in a venture likely to affect its economic interest.

Another major challenge of effective regulation of oil MNC's in Nigeria is the forceful influence and position of the oil companies in terms of financial, human and technical resources. They have what it takes to hire the best experts and attorneys, to get the best information in their interest.¹²⁰ The influence of the MNC's have resulted in them getting away with non-compliance with Nigerian environmental laws and regulations and the continuous environmental degradation in the NDR.¹²¹

Furthermore, Nigerian environmental laws lack preventive mechanisms, as the emphasis is on the outcome of pollution.¹²² Nigerian laws as earlier examined is devoid of measures targeted at ensuring the prevention of environmental pollution, this is so necessary considering the grave and far reaching consequence of environmental pollution on the NDR people and the environment. It is very difficult and most times impossible to restore the environment to its former position in the aftermath of oil spill and pollution. It is recommended here that there is need to amend the existing laws on the environment in Nigeria to provide for pragmatic precautionary measures in line with the precautionary principle, to make adequate provisions for actions aimed at anticipating, preventing and curtailing environmental devastation.¹²³

Additionally, most of the existing laws fail to provide for the 'polluter pays' principle to address the issue of removal of pollution.¹²⁴ This principle presupposes that the polluter bears the financial burden of cleaning up of pollution resulting from its actions or operations, there is need to include this in environmental legislations as it will deter oil MNC's from polluting the environment to avoid the ensuing cost.¹²⁵ This will have two prong positive effects, firstly, it will culminate in a pollution free as well as healthy environment and secondly, it will relieve victims of environmental pollution the hurdle and stress of establishing pollution, harm and fault on the part of the polluter.¹²⁶

Another challenge is the poor enforcement system of the existing environmental regulations, as earlier observed most government agencies involved with the regulation of environmental practices lack technical know-how, trained personnel, adequate information and analytical capacity to

¹¹³ Unreported Suit No. W/89/71.

¹¹⁴ M A Ajomo, 'An Examination of Federal Environmental Laws in Nigeria' in M A Ajomo and O Adewale (eds), *Environmental Law and Sustainable Development in Nigeria* (NIALS and British Council 1994) 22-23.

¹¹⁵ [1996] 4 NWLR Pt. 445, 657.

¹¹⁶ [1994] 6 NWLR Pt 350, 258.

¹¹⁷ *Oluduro* (n 2) 179.

¹¹⁸ Suit No: FHC/b/CS/53/05 (Judgment of 14 November 2005), available at <www.climatelaw.org/cases> 'accessed 12 June 2016.'

¹¹⁹ K S A Ebeku, 'Constitutional Right to a Healthy Environment and Human Approaches to Environmental Protection in Nigeria: *Gbemre v Shell Revisited*' (2007) 16(3) *RECIEL* 318.

¹²⁰ E Emeseh, *The Limitation of Law in Promoting Synergy between Environmental and Developmental Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria*, available at <www.web.fu-berling.de/ffu/akumwelt/bc2004/download.htm> 'accessed 6 August 2016.'

¹²¹ A A Adedeji and R T Ako, 'Hindrances to Effective Legal Response to the Problem of Environmental Pollution in Nigeria' (2005) 4 *IBJ* 21.

¹²² E O Nwosu, 'Petroleum Legislation and Enforcement of Environmental Standards in Nigeria' (1999) 7 *NJR* 104.

¹²³ *ibid.*

¹²⁴ *Olududu* (n 2) 180.

¹²⁵ *ibid.*

¹²⁶ R O Ugbe, 'The "Polluter Pays Principle": An Analysis' (2003) 6-7 *CLJ* 127-154.

ensure compliance with environmental laws.¹²⁷ For example in 1995, World Bank noticed that the Regional office of FEPA in Rivers State had only 25 staff, despite the fact that the State has suffered immensely from environmental degradation resulting from oil exploration.¹²⁸

Furthermore, the regulatory bodies are not adequately funded, this has affected the bodies as they do not have the necessary facilities and equipment to regulate effectively environmental standards. In some instances, they rely on the facilities of the MNC's they are to monitor and regulate.¹²⁹

Another major hurdle of effective regulation of oil-related environmental activities in Nigeria is the unnecessary proliferation of environmental laws and regulations.¹³⁰ This makes it difficult for the common man especially in the NDR to know some of these laws and to effectively take actions towards enforcing his or her right, in other words this has culminated in denying the local inhabitants of the oil rich region access to justice.¹³¹ It is recommended that a single Act be promulgated to cover all oil related environmental practices, this will provide some form of coherence and will make access to justice easier for the people of the NDR. The Petroleum Industry Bill (PIB) of 2008, which is presently before the Nigerian National Assembly was meant for the above purpose,¹³² however, it is unfortunate that the bill is yet to be passed into law.

Most of the environmental laws in Nigeria contain inadequate sanctions and most times do not enable private right of actions. There is need to make statutory provisions for individual right of action and stiff sanctions to deter environmental degradation.¹³³

Other problems include corruption, lack of accountability by the government and weak governance mechanisms. Corruption has led to government officials ignoring violation of Nigerian environmental laws.¹³⁴ For example, Jim Brown, a former employee of an oil servicing firm (Willbros Group) confessed in a United States court that he paid the sum of \$1.5 billion bribe to officials of the Federal Inland Revenue Service

and the Nigeria National Petroleum Corporation to get contracts and manipulate tax figures.¹³⁵

Lastly, the Nigerian government over-dependence on oil revenue, have led the government to direct its policies towards maximizing revenue generated from oil, to the detriment of environmental and human rights protection.¹³⁶ This research recommends that the government direct its policies towards ensuring a balance between economic interest and the environmental and human rights protection. All these factors have cumulatively affected the effectiveness of the regulation of oil related environmental practices in the NDR.

V. CONCLUSION

It has been highlighted from the foregoing that the indigenous people (IP) of the Niger Delta region (NDR) have suffered untold hardship, as a result of the exploitative operations of oil multinational corporations (MNC's) in the region. This article also examined the Nigerian environmental legal framework and the regulation of oil MNC's in the Niger Delta. Furthermore, analysis on the factors that affect the effectiveness of the laws were considered, some of this factors include: lack of political will and reliance on oil as the mainstay of the Nigerian economy, the influence of MNC's, the paternalistic attitude of the court towards oil MNC's, gaps in the existing laws, lack of effective enforcement mechanisms, the unenforceability of the rights to healthy environment under the Nigeria Constitution, among others.

This article recommends reform of environmental laws in Nigeria, and strengthening of the capacity of environmental agencies to effectively regulate the exploitative activities of oil MNC's in Niger Delta, sanction and prevent environmental degradation. This article also recommends the enforcement of the right to healthy environment, and the recognition same into the bulwark of the Nigerian laws.

This article also recommends enactment of laws that impose liability on MNC's for environmental degradation, human rights violations, civil wrongs as well as criminal acts, these will aid the effective regulation of oil MNC's operating in the Niger Delta.

It is recommended here that the 1999 Constitution of Nigeria be amended to expressly recognise and enforce the right to environment as many states have done in the past, for example Angola.¹³⁷ On this note, the right to healthy environment should impose a duty on the state to take measures to

¹²⁷ Environmental Resource Management Limited, 'Niger Delta Environmental Survey Final Report' (1998) 1 NDES 763.

¹²⁸ K S A Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues* (Rudiger Koppe 2006) 238.

¹²⁹ A N Egbu, 'Constraints to Effective Pollution Control and Management in Nigeria' (2000) 20 E 15.

¹³⁰ Social and Economic Rights Action Centre (SERAC), *Perpetuating Poverty, Consolidating Powerlessness: Oil and the Niger Delta* (SERAC 2005) 49.

¹³¹ *ibid.*

¹³² Oluduro (n 2) 181.

¹³³ K Edu, 'A Review of the Existing Legal Regime on Exploitation of Oil and the Protection of the Environment in Nigeria' (2011) 37 CLB 326.

¹³⁴ U I Idemudia, 'Corporate Partnership and Community Development in the Nigeria Oil Industry: Strengths and Limitations' (2007) 2 UNRISDMBRPP 21.

¹³⁵ This Day News Editorial, 'An Oily Business' This Day News, 28 September 2006, available at <www.allafrica.com/stories/printable/200606230473.html> 'accessed 9 August 2016.'

¹³⁶ C O Ikporukpo, 'The Management of Oil Pollution of Natural Resources in Nigeria' (1985) 20 JEM 199-206.

¹³⁷ Art. 24 of the Constitution of the Republic of Angola provides that 'All citizens shall have the right to live in a healthy and unpolluted environment. The State takes requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance. Acts that damage or directly or indirectly jeopardize conservation of the environment is punishable by law.'

guarantee and protect the right to environment. The Nigerian judiciary is encouraged to rise to the defence of Indigenous People's rights by adopting a dynamic and purposive approach by adopting a human approach to environmental protection. This can be achieved by interpreting especially enforceable rights under the constitution like right to life, right to own property, dignity of human person to include right to health, as it is done in other jurisdictions like India.¹³⁸

This article proposes the establishment of an environmental court to handle issues on environmental degradation and related issues, this court should be constituted by a body of judges with specialised training, experience and expertise in environmental principles and otherwise equipped to provide workable answers to environmental degradation suffered by the local inhabitants of Niger Delta. Additionally, it is submitted here that a special Court Practice Direction be promulgated for the Court wherein at the Court of first instance the suit must be dispensed with within 180 days, and appeal must not exceed 90 days. This will provide for timely adjudication of environmental pollution cases against the oil MNC's.

Nigeria laws on the ownership of land and natural resources need to be amended and where necessary repealed to accommodate the rights and concerns of the indigenous people of Niger Delta, some of those laws that require reforms include; Land Use Act, Petroleum Act and Minerals Act. On this note it is proposed that the laws should recognise the interest and connection between the indigenous people and their land for subsistence by providing for reasonable fines for compulsory acquisition and relocation to another land and territory. It is also recommended that the laws should be amended to ensure that affected communities are reasonably compensated and relocated when their land is compulsorily acquired by the government for public purpose.

This research recommends that the Petroleum Industry Bill (PIB) which seeks to amend the Minerals Act, Petroleum Act and other related legislations must recognize and protect the rights of IP to freely dispose their natural resources. On this note this dissertation advocates transparency, public participation and consultation via Free, Prior and Informed Consent (FPIC) be entrenched Nigeria's environmental, petroleum as well as property law framework. This will ensure that indigenous communities which are the first and most affected by oil exploration activities are informed and carried along in the development process taken place on their ancestral land.

This research also recommend that Nigerian government put a conclusive end to gas flaring, this can be done by amending the existing Associated Gas Re-Injection (Amendment) Act 2004. Compliance and enforcement of the Act should be vested in the courts or other neutral body, not the Federal

Ministry of Environment (FME) Minister. It is also submitted here that the sanction for gas flaring should be revocation of exploration licence as well as payment of a hefty punitive fine, these will have deterrence effect on the oil MNC's operating in the NDR.

There is need to streamline and harmonize Nigeria's existing regulatory, legislative and administrative environmental framework on the environmental degradation in the Niger Delta. This will ensure coherence and ease enforcement. Government must show commitment to respect and implement existing laws.

There is need to strengthen compliance and enforcement system of existing environmental regulations. This can be achieved by strengthening the capacity of existing environmental agencies and regulations. The agencies should be legally empowered and properly financed to carry out independent assessment and inquiries on the activities and compliance with laws of MNC's.

This research also proposes the amendment of existing environmental laws to impose criminal and civil liability on oil MNC's, this will go a long way in checking the excesses of the oil corporations. It is also recommended that existing laws on the environment be amended to vest right of action in individuals and corporate entities affected by environmental degradation, this will further ensure access to effective remedies against the oil MNC's, against what is obtainable in most environmental law wherein right of action is vested in the Attorney-General of the Federation, a Minister of the Federal Republic of Nigeria.

The existing environmental laws should be amended to provide for pro-active measures towards preventing environmental degradation. This is much more desirable than taking steps to clean-up the environment, in most situation, the environment cannot be restored to its original state. This is further complicated by the lengthy duration of clean-up.¹³⁹

¹³⁸ In *Francis v Union Territory of Delhi*, AIR (1981) SC 746, the Indian Supreme Court held that 'the right to life includes the right to live with dignity and all that goes along with it.'

¹³⁹ According to United Nations Environmental Programme (UNEP), the Ogoni land clean-up exercise will take at least 30 years, see Nigeria Newspaper Today, available at <<http://www.nigeriannewspapers.today/2016/06/10/ogoniland-clean-up-exercise-will-take-up-to-30-years-says-unep/>> 'accessed 14 September 2016.'