

LEGAL ANALYSIS OF THE IMPACT OF OIL EXPLORATION ON THE ENVIRONMENT OF HOST COMMUNITY IN NIGERIA

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ABSTRACT

It is incontrovertible that oil, christened “black gold”, fuels the global economy. Due to the enormous financial resources that can accrue from this product, the discovery of oil in any location, particularly developing countries, is greeted with great excitement. Although the discovery of oil creates a sense of hope and expectation that the revenue would lead to the development of host communities in particular, and countries as a whole, in most cases, this dream has remained illusory as the exploration of the oil resources has led to the destruction of local host communities in oil-producing developing countries. In the face of this hopelessness, access to environmental justice becomes an indispensable beacon of hope to offer both reprieve and reparation to the citizens, as well as deterrence to the violators. Sadly however, as this research will reveal, accessing environmental justice, even as a last resort, is not an easy ride. The paper aimed at analyzing the impact of oil exploration on the environment of host communities in Nigeria. The doctrinal research methodology was employed to achieve the aim of this paper. The finding of the paper revealed that oil exploration activities do not only have health, environmental and social implications but they reduce life expectancy. This paper therefore recommended that the executive and other relevant agencies should rise to the occasion to enforce all environmental laws to ensure that there is environmental justice in host communities in Nigeria.

1.0 INTRODUCTION

The activities of mankind in his pursuit for advancement in every sphere of existence have impacted on the environment in which he lives. The by-products of these activities have led to a reduction in the quality of the land, air and water which makes up the environment.

Man, whose activities pollute the environment or create a disequilibrium needs to be checked in order to prevent the complete destruction of the environment. As a result of this, the concept of environmental justice in Nigeria has become a necessary venture given the increased rate at which the environment has been subjected to all forms of degradation especially as seen in the Niger Delta Region of Nigeria (NDRN).

In the oil rich NDRN, the activities of oil multinationals corporations and its impacts on the environment have been very devastating in affecting the economic base of the people and their source of livelihood. This has engendered poverty and restive situation in the region. For instance the issue of oil spillage has been a recurring one affecting adversely the Niger Delta environment. According to Kingston,³ between 1976 and 2009, an estimated 9, 1911,426 barrels of crude oil were spilled into the environment in the Niger Delta Region with at least 55% into rivers, creeks and shorelines; and, 45% into farmlands, residential villages, communal access roads and sources of drinking water.

Gas flaring too has become a serious environmental malaise. Aside Nigeria losing billions of dollars to this unsustainable practice, studies have also highlighted its impact on the health of the people exposed to it and also its direct relationship to social activism, low agricultural productivity and so on. According to the World Bank Report 2009, Nigeria flares more than million cubic metres of gas per day, resulting to an estimated 70 million tons of carbon dioxide into the Niger Delta environment per day. Consequently, the oil firms in Nigeria account for more greenhouse gas emissions than all other sources in sub-Saharan Africa combined⁴.

This work is therefore concerned with the attitude of the courts towards the enforcement of environmental rights. Beyond highlighting the problems and constrains, it also seeks to bring to fore the prospects and opportunities as well as avenues for the refinement of these prevailing attitudes and will further draw attention to and indeed

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³ K.G. Kingston, 'Pollution and Environmental Responsibility in Petroleum Extraction in the Niger Delta of Nigeria: Modelling the Coase Theorem', Available at SSRN:<https://ssrn.com/abstract=3125786>. Accessed on 18th November, 2017.

⁴ World Bank Report 2009. <http://www.siteresources.worldbank.org/EXTAR2009/Resources>. Accessed on 13th November, 2017.

contrast the judicial thoughts towards the recognition of environmental rights in Nigeria and that of selected climes in other to provoke and engender a progressive approach in Nigeria.

2.0 THE IMPACT OF OIL EXPLORATION ON THE ENVIRONMENTAL OF HOST COMMUNITIES IN NIGERIA

Although the discovery of oil creates a sense of hope and expectation that the revenue generated would lead to the development of local communities and country as a whole. In most cases, this dream has remained illusory as the exploration of oil resources, has led to the destruction of local communities and anarchy in some oil producing countries.

Though the nation Nigeria has grown to be mainly dependent on oil and it has become the center of current industrial development and economic activities, consideration is rarely given to how oil exploration and exploitation processes create environmental, health, and social problems in host communities of oil producing fields.⁵

This is mainly due to the inability to enforce environmental regulations by the Nigerian government in obvious deference to the primitive and capitalist maximization of the economic gains of oil exploration.⁶

3.0 The Impacts on Public Health

A common problem in communities near oil reserves is the relatively poor and dwindling environmental condition and health status of the community members.⁷

In the oil host communities of the Niger Delta Region, health concerns such as respiratory diseases, skin rashes, tumors, gastrointestinal problems, different kinds of cancers and malnourishment are very common in severe degrees.⁸ The health risk in oil producing communities is potentially and usually fatal.

Explosions from pipelines have also resulted in injuries and in some cases deaths of people in the local communities. According to the 2007 UNCTAD Report, because the products of the oil industry are mostly combustibles and explosives, accidents such as fires and explosion can have serious effects⁹. In October 1998, for example, a pipeline leak led to an oil flood in the sleepy village of Jesse in the oil rich Delta State and ultimately resulted in an explosion in which over 1000 people, were reported to have died.¹⁰ Although in some instances, explosions resulting in injuries and fatalities have been caused by defective pipelines, in others, they have been caused by attempts by the local people to siphon some oil through bunkering activities aided by the complacency of the government in protecting its oil infrastructures. Attempts to siphon oil from pipelines, criminal as they may be, are what Marxist criminologists such as Richard Quinney¹¹ define as crimes of accommodation as the poor people of the local communities in response to the destruction of their livelihood attempt to siphon oil to sell in order to make a living.

Oil exploration also has the potential of destroying the health seeking behaviour of local communities. The negative environmental impacts of oil exploration affect plants some of which are used by the local communities near the oil reserves in their health-seeking behaviour. According to the UNCTAD 2007 Report, the construction of pipelines leads to the destruction of medicinal plants used by the local populations. Dadiowei¹² corroborates this by stating that environmental destruction through oil exploration led to the scarcity of medicinal plants used by traditional birth attendants (TBAs) in Nigeria. This problem is compounded by the lack of adequate and fully qualified medical personnel in these communities.

⁵AO Ajugwo, 'Negative Effects of Gas Flaring: The Nigerian Experience', (2013) 1(1) *Journal of Environment Pollution and Human Health*, 6 – 8, 6.

⁶ B Manby, 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities', *Human Rights Watch*, New York, 1999, p. 202.

⁷ S.Bloomfield "The Niger Delta: The Curse of Black Gold".2008. The Independent. <http://www.independent.co.uk/news/world/africa>. Accessed on 4th April, 2019.

⁸A.K.Darkwah "The Impact of Oil and Gas Discovery and Exploration with Emphasis on Women".<https://genderandsecurity.org>. Accessed on 20th November, 2018.

⁹United Nations Conference on Trade and Development (UNCTAD) 'World Investment Report: Transnational Corporations, Extractive Industries and Development', 2007, Geneva, United Nations.

¹⁰ '1998 Jesse Pipeline Explosion'. <en.m.wikipedia.org/wiki/1998>. Accessed on 3rd October, 2018.

¹¹ R. Quinney, *Critique of Legal Order: Crime Control in a Capitalist Society*. Boston: Little Brown & Co.1974, p.48.

¹²T.E.Dadiowei.'Niger Delta Fund Initiative- Women, Environmental Impact Assessment (EIA) and Conflict Issues In the Niger Delta: A Case Study of Gbaran Oil Field Communities in Bayelsa State'. A Paper Presented at The National Workshop on Gender, Politics and Power.Organised by the Centre for Social Science Research & Development (CSSR&D) at the Lagos Airport Hotel, Ikeja, Lagos.July, 2003.

3.1 Environmental Implications

Oil exploration involves severe environmental destructive activities. They entail tree-falling, deforestation, and installation of drilling equipment and pipelines. Among these, seismic activities and drilling constitute the most severe environment-damaging activities. The former involve deforestation and the application of explosives to generate sub-surface maps. In the process, the ecology is impacted: soil structure, vegetative cover, areal fauna and flora populations are critically altered. Additionally, the soil is exposed and consequently its vulnerability to erosion is heightened. Drilling on the other hand, involves “bush clearing” for creating access roads and waste pits. In situations where exploration occur in the mangrove area, dredging (removal of sand, silt and mud) is carried out using a dredging machine to provide access routes. The adverse environmental effects include hydrological changes and ground water pollution. Worse still, oil production activities generally pollute both surface and groundwater with benzene as well as other toxic chemicals which are extremely dangerous to human and ecological lives. The environmental health consequences are far reaching¹³.

Importantly, it must be noted and appreciated in the light of the foregoing that oil exploration and production projects may have impacts on the natural environment long before any oil is actually produced. As already highlighted, these are complex, multi-faceted projects, with many different phases, including: land survey, land clearance for seismic lines, establishment of seismic and drilling camps, site preparation, infrastructure construction, drilling for oil (even when the effort is unsuccessful) and development of transportation infrastructure.

Accordingly, once a facility begins operating other issues have to be dealt with, such as spills caused during oil production and the disposal of water (often salty and known as ‘produced water’) and flaring of gas (produced gas) generated alongside the oil. All of these activities and their effects leave an environmental footprint¹⁴. Oil exploration has destructive environmental impacts or what Watts¹⁵ refers to as engendering ecological violence.

Gas flaring (as part of the oil exploration process) contributes to climate change, which has serious implications for both Nigeria and the rest of the world. The burning of fossil fuel, mainly coal, oil and gas-greenhouse gases- has led to warming up the world and is projected to get much, much worse during the course of the 21st century according to the Intergovernmental Panel on Climate Change (IPCC)¹⁶. Gas flaring contributes to climate change by emission of carbon dioxide, the main greenhouse gas. In spite of advances in technology and the potential to convert the flared gas into a source of enormous national revenue, the practices have continued in Nigeria.

3.2 Livelihood Implications of Oil Exploration

Aside from the health and environmental consequences of oil exploration, the nation also loses billions of dollars’ worth of gas which is literally burnt off daily in the atmosphere through exploration. Much of this can be converted for domestic use and for electricity generation. By so doing the level of electricity generation in the country could be raised to meet national demand. Nigeria has recorded a huge revenue loss due to gas flaring and oil spillage.¹⁷ Though more than 65 % of governmental revenue is from oil, it is estimated that about \$2.5 billion is lost annually through gas flaring in government revenues.¹⁸

The flares associated with gas flaring give rise to atmospheric contaminants. These contaminants acidify the soil, hence depleting soil nutrient. Studies have shown that the nutritional value of crops within such vicinity are reduced.¹⁹ In some cases, there is no vegetation in the areas surrounding the flare due partly to the tremendous

¹³ B. Manby. *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities*; Human Rights Watch: New York, NY, USA, 1999; p. 193.

¹⁴ *Op.cit.* UNEP Report.

¹⁵ Michael Watts. “Petro-Violence: Community, Extraction, and Political Ecology of a Mythic Commodity” in *Violent Environments*, edited by Nancy Lee Peluso and Michael Watts, Pp. 189-212. Ithaca: Cornell University Press. Pp. 189-212., 2001.

¹⁶ <https://www.ipcc.ch/ipccreports/sres/regional>. Accessed on 8th July, 2017.

¹⁷ SA Effiong and UE Etowa, ‘Oil Spillage Cost, Gas Flaring Cost and Life Expectancy Rate of the Niger Delta People of Nigeria’, (2012) 2(2) *Advances in Management & Applied Economics*, 211 - 228.

¹⁸ AA Arowolo and IJ Adaja, ‘Trends of Natural Gas Exploitation in Nigeria and the Implications on the Socio-Economic Stability and Governance’, in 35th Nigerian Statistical Association Annual Conference, 2011, cited in AO Ajugwo, *op. cit.*

¹⁹ AA Imeybore and SA Adeyemi, ‘Environmental Monitoring in Relation to Pollution and Control of Oil Pollution’, (1981)6 *Seminars on the Petroleum Industry and the Nigerian Environment*, 135 - 142.

heat that is produced and the acidic nature of the soil.²⁰The effects on vegetation can also be seen in stunted growth, scotched plants and such other effects as withered young crops.²¹Orimoogunje concluded that the soils of the study area are fast losing their fertility and capacity for sustainable agriculture due to the acidification of the soils by the various pollutants associated with gas flaring and oil exploration in general, in the area²².

Regrettably, these incalculable ravages caused by decades of oil prospecting, has not just significantly affected host communities and their dwellers, but their crippling effect appears not to be abating anytime soon.

3.3.0 Others

3.3.1 Oil and its Connections to Conflict

The evidence to date, particularly, in developing countries, shows that the discovery and exploration of high valued natural resources including oil have plunged countries into anarchy and conflict. The data from Collier and Hoeffler²³ which served as an extension of the resource-curse thesis is further buttressed with a report conducted by the United Nations Environmental Programme²⁴. This report indicates that from 1990 to date, not less than 18 violent conflicts have been sparked by the exploration of natural resources including oil in regions such as Angola, Cambodia, the Democratic Republic of Congo, Darfur in the Sudan and the Middle East. It has been suggested that the Nigeria -Biafra Civil War had connections with oil wealth²⁵.

3.3.2 Oil and its Connections to Human Rights Abuses

The extractive industry, particularly oil exploration, also has serious human rights implications for developing countries. The quest for the much needed foreign exchange from the extractive industries has in most cases, resulted in high government tolerance of firms in these industries regardless of their negative human rights records. The involvement of Transnational Corporations (TNCs) in conflicts in high valued resourcerich developing nations cannot be downplayed. Usually, these corporations, engage in divide and rule tactics where they support some passive rulers or communities against the more radical ones calling for reform.

In their bid to protect their investments and secure foreign revenues, TNCs and governments respectively, have in some cases formed alliances of convenience that expose the population to human rights abuses. In some cases, the national security agenda are determined by the security concerns of TNCs. Thus, the need to provide security for the continued exploration of oil overrides national security. According to a UNCTAD Report of 2007, the participation of transnational corporations in the extractive industries can result in human rights abuses such as the disappearance of people, arbitrary detention and torture and loss of land and livelihoods without negotiation and without compensation.

3.3.3 Oil and its Connections to Politics

Black gold is also noted for its ability to impact negatively on the ways in which politics plays out in host communities or localities close to oil reserves. The discovery and exploration of oil has the potential to, and, in most cases have negatively affected the political system of developing nations.

In Nigeria, Bloomfield opines that just as oil has polluted the environment of the Niger Delta, so has it polluted the politics of Nigeria. According to the Economist, the cash provided by the oil industry has greased Nigerian Politics for decades which in turn "permeate the vote"²⁶.

²⁰ EC Ubani and IM Onyejekwe, 'Environmental Impact Analysis of Gas Flaring in the Niger Delta Region of Nigeria', (2013) 4(2) *American J. of Scientific and Industrial Research*, 246 - 252.

²¹ OI Orimoogunje, AAyanlade, TA Akinkuolie and AU Odiong, 'Perception on the Effect of Gas Flaring on the Environment', (2010) 2(4) *Research Journal of Environmental and Earth Sciences*, 188 - 193.

²² Ibid.

²³ Paul Collier and AnkeHoeffler (2000). Greed and Grievance in Civil War. Policy Research Working Paper 2355. Washington DC: World Bank.

²⁴ United Nations Environmental Programme (2009) 'From Conflict to Peacebuilding; The Role of Natural Resources and Environment' UNEP.

²⁵ ChibuikueUche, 'Oil, British Interests and the Nigerian Civil War'. www.researchgate.net/publication. See also the forceful argument on this issue by; KairnA.Klieman 'U.S.Oil Companies, the Nigerian Civil War, and the Origins of Opacity in the Nigerian Oil Industry'. *Journal of American History*, Vol.99, Issue 1, June 2012, pp.155-165. The author argued that; "New evidence reveals that a tax battle waged by U.S. oil companies contributed to the regional and ethnic tensions leading to the outbreak of war".

²⁶ The Economist, ' Crude Politics- Nigeria's Oil'. <https://www.economist.com/middle-east-and-africa/2015/03/28/crude-politics>. Accessed on 18 January, 2018.

Oil has been a driving force in the body politics of the Nigerian State. It has become a determining factor and a critical issue in Nigeria's body politics. The urge for primitive accumulation of wealth is a factor that is pushing the power elite to undermine the development needs of the people which are appropriated to serve the needs of the elites. The power tussles among the elites led to several military coups and to a civil war. After the Nigerian Civil war, the country's elites, both military and civilian struggled to capture political power at the central and state levels. It became "a do or die affair" because of the oil wealth flowing²⁷.

For instance, Rivers State is the heart of Nigeria's booming oil industry, and its government is among the wealthiest state administration in Nigeria. Due to rising oil prices, the government now earns roughly four times the annual revenues it saw in 1999, and at the local government level revenues have increased tenfold²⁸.

Sadly, the seeming abundance comes with a price. Political violence has grown in stride.

4.0 CHALLENGES OF ENVIRONMENTAL JUSTICE:

As long as oil exploration activities affect the environment as already shown in this work, environmental damage is inevitable. Undoubtedly, such damage affects both the environment itself as well as the living things which inhabit the environment including humans. Environmental damage has been described as the damage to private property, such as farm crops and buildings as well as damage to the physical state of the environment (such as the fouling of water and damage to the fertility of farmlands or soil degradation by oil spillage) particularly as a result of hazardous human activities. Indubitably, this gives rise to a cause of action. In *DG, Bureau of Lands, Kwara State & Anor. v. Alabi & Anor*²⁹, the court held that a cause of action connotes the fact or facts which establish or give rise to a right of action. It is the factual situation which gives a person a right to a judicial redress or relief³⁰. Moreso, the cause of action accruing from the impact of oil related activities on the environment necessitating a judicial redress exist in the realm of tort. In *SPDC v. Farah*³¹ the court held that where tortious act is committed, the injured party is entitled to damages, which damages it must be emphasised, can only be secured (most often) through a judicial process and the concomitant judicial pronouncement.

Thus, central to the concept of judicial redress is the issue of access to justice. It can loosely be said that access to court should guarantee access to justice. It can be said to be co-extensive with access to the law courts and it is in this sense the concept will be approached in this chapter. Without access to justice, it is impossible to enjoy and ensure the realization of any right, whether civil, political or economic.

4.1 Limitation of Action:³²

The general rule is that where there is a right there is a remedy, expressed in the Latinism, *ubi jus, ibi remedium*. That is to say, where there is a cause of action, there is a remedy. This is in keeping with the demands of the law

²⁷Esekumemu Victor Clark, 'The Politics of Oil in Nigeria: Transparency and Accountability for Sustainable Development in the Niger Delta', American International Journal of Contemporary Research, Vol.6, No.4 August 2016.

²⁸Human Rights Watch Report 2008, 'Background: Root Causes of Violence in Rivers State' <https://www.hrw.org/reports/2008/nigeria0308/4>

²⁹ (2018) LPELR - 44487 (CA)

³⁰ See also *Afolayan v. Ogunrinde* (1990) 1 NWLR (pt.127)369.

³¹ (1995) 3 NWLR (Pt.382) 148

³² This clarification is necessary for the purpose of this discourse. Generally, by virtue of Section 251 (1)(n) of the 1999 Constitution (as amended), civil causes or matters arising from mines and minerals, including oil field, oil mining, geological surveys and natural gas are within the exclusive jurisdiction of the Federal High Court. These subjects are also accommodated under Item 39 of the Exclusive List of the same Constitution. Thus, State Limitation Laws cannot apply to matters within the Exclusive List neither can the said provisions be interpreted to any state law. In a nutshell, state limitations law 'generally' do not apply to oil adjudications especially those strictly touching on the subjects listed above and contested at the Federal High Court. See *Benson v. Mobil Producing Nig. Unltd. (2014) 3 CLRN. ; (2012) LPELR-14241(CA)*.

However, more recent decisions of the court appears to have overruled the position in *Benson's Case*.

In *Asaboro v. Pan Ocean Oil Corp. (Nig.) Ltd. [2017] 7 NWLR (Pt.1563) 42*, in a claim for damages and fair and adequate compensation for the wrongful acts of the respondents in the operation of their oil mining lease and exploration, in holding that the action is time barred by the operation of the Limitation Law of Delta State, the Supreme Court upheld the application of Section 4 (1) of Bendel State, 1976 (applicable in Delta State) in a claim bothering on the operation of an oil mining lease. See also *SPDC v. Ikekuroma Syer Digbani, Appeal No. CA/PH/693/ 2014 (Unreported)* delivered on 29/11/2017 where this emerging judicial thought was also applied.

which permits every citizen who perceives that any of his proprietary rights has been violated to approach the Courts for the ventilation of his grievance, either against the government or a private citizen. However, in certain cases, the legislature has prescribed certain periods, called periods of limitation, within which certain actions may be instituted. This is based on a consideration of public policy that, there should be an end to litigation and therefore persons should be vigilant and ensure that their claims are not left to loom in perpetuity. Accordingly demands or claims which have become 'stale', are deliberately suppressed by law, as the law considers it unfair to a person to allow claims against them to be made after a long period has expired, and during which period he may have lost the evidence that might have been available to him to enable him rebut the claim against him. The statutes that prescribes such periods and regulate the subsistence of causes of action are known as 'Statutes of Limitation'³³.

4.2 Locus Standi /Representative Capacity:

The issue of *locus standi* or standing to sue is fundamental in any action in court. The law is trite that in Nigeria's civil jurisprudence, a defendant can impeach the *locus standi* of a plaintiff under Section 6 (6) (b) of the 1999 Constitution³⁴. Once the *locus standi* of a party is challenged by the defendant, the issue must first be resolved before any other consideration of the matter. The issue can be raised at anytime in the course of trial or on appeal because it is a challenge to the jurisdiction of the court³⁵.

In law, *locus standi* denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is a constitutional requirement to enable a person to maintain an action and it is limited to the prosecution of matters relating to the civil rights and obligations of the plaintiff. Put in another way, the term entails the legal capacity for instituting, initiating or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever, including the provision of any existing law³⁶.

Explaining its effect, in *Bewaji v. Obasanjo*³⁷ the court held that a plaintiff who does not have sufficient legal interest in a cause, or ventures to institute an action which has no bearing on him, cannot competently seek or be entitled to redress in a court of law.

The issue of locus standi will not present a problem to a person whose property interests have been damaged in the course of and due to environmental pollution or natural resources depletion. Yet, such a person may very well decide not to sue for any number of reasons. If regulatory agencies are not then informed or where they fail to act there may well be irredeemable damage to the environment, or the offender may go unpunished and similar behaviour undeterred. However, a group of citizens or environmental civil societies have a crucial role to play as monitors of environmental activities, public educators, motivators, and defenders of the environment and are highly organized to mount environmental litigation³⁸.

4.3 Quantum of Compensation as a Disincentive to Judicial Redress:

Judicial attitude towards the award of compensation in environmental litigations arising from oil exploration activities has been a disincentive towards access to justice thus unwittingly constituting a clog and impediment to judicial remedies.

For a society to be well ordered, there must be stability and certainty in the law relating to citizen rights and duties, and the remedies for injuries. The *Polluter Pays Principle* (which was developed in the 1920s as an economic principle in environmental management) governs the scheme of compensation in pollution cases and demands that the cost of pollution should be borne by the person responsible for causing the pollution.

The *1990 International Convention on Oil Pollution Preparedness, Response and Cooperation* in London referred to Polluter Pays Principle (PPP) as '*a general principle of environmental law*'³⁹. Affirming PPP as a general principle of environmental law the United Nations at the **1992 Rio Declaration** adopted it as one of the

³³ F.H.A v.Olayemi & Ors. (2017) LPELR-43376(CA)

³⁴ Agboola v.Agbodemu & Ors. (2008) LPELR -8461 (CA)

³⁵ Ibid.

³⁶ Oyewumi v.Osunbade (2001) FWLR (Pt.82)1919; Elendu v.Ekwoaba (1995) 3 NWLR (Pt.386) 704.

³⁷ (2008)9 NWLR (Pt.1093) 540 at 570,para.B

³⁸ Linda M.A. and Scott P., *Defending the Environment: - Civil Society Strategies to Enforce International Environmental Law*, 2004, Transnational Publisher Inc., New York. p.205-222.

³⁹ The Preamble of the Convention contains the following recital 'Taking account of the polluter pays principle as a general principle of international environmental law'.

principles for achieving sustainable environment and development. **Principle 16** of the **1992 Rio Declaration** of the declaration states:

"National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment".

4.4 Section 11 of the Oil Pipelines Act and its Inhibitive Impact on Environmental Reparation Cases:

It is common for persons who are allegedly affected by installations and maintenance of oil pipelines to bring actions claiming damages for their destroyed properties (like fishing nets, fish ponds, economic trees and so on) and loss of revenue from them. These claims are no doubt derived from the common law doctrines of negligence, nuisance, trespass, strict liability and so on.

To this end, in offering succor to those injuriously affected by oil pipeline installation and related activities, Section 11(5) of the Oil Pipelines Act provides for a regime of compensation, which for purposes of clarity is produced to wit;

"(5) The holder of a licence shall pay compensation-

(a) to any person whose land or interest in land (whether or not it is land in respect of which the licence has been granted) is injuriously affected by the exercise of the right conferred by the licence, for any such injurious affection not otherwise made good; and

(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the licence, for any such damage not otherwise made good; and

(c) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good,

and if the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part IV of this Act".

Regrettably, notwithstanding the provision for a regime of comprehensive compensation for persons whose land or interest have been injuriously affected by the activities of the holder of an oil licence, the interpretation of the statutory provisions by the court has propped up two pronged impediments that appears to circumscribe and curtail the purpose and the intentions behind the statutory provisions, which without doubt is to ameliorate the effect of oil exploration activities on lives and property.

5.0 RETHINKING THE FUTURE OF ENVIRONMENTAL JUSTICE:

5.1 ADR as an Effective Redress Mechanism for Achieving Environmental Justice:

The Rio Declaration of 1992 reaffirms the Declaration of the United Nations Conference on the Human Environment (Stockholm 1972) and adopts the policy of sustainable development, which makes environmental protection an integral part of the development process in order to equitably meet the developmental and environmental needs of present and future generations. In Principle 26, it provides that states shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the UN Charter.

Back home, the use of Alternative Dispute Resolution as a non-judicial mechanism for the settlement of environmental disputes occasioned by oil exploration in Nigeria has become imperative. Ordinarily, the courts serve as the traditional forum for the resolution of conflicts. Disputes, whether environmental or otherwise are resolved through court processes, but due to delays, costs, publicity and technicality associated with litigation, alternative dispute resolution (ADR) mechanisms evolved. There are several bitter complaints from the victims of pollution in the Niger Delta region that the courts, conventionally the last hope of the common man, have not lived up to expectations in environmental litigations thereby justifying their recourse to ADR as a better option. A significant number of environmental cases were lost on flimsy reasons. Today, ADR procedures are considered imperative worldwide, and are used by a wide range of courts, tribunals, organizations and victims of pollution in Nigeria as tools for overcoming environmental impasse, improving the efficiency of difficult negotiations, and achieving durable settlements.

The following has been advanced in support of the application of ADR to environmental cases;

5.2 Expeditious Determination of Cases:

Expedition determination of cases remains one of the attributes of ADR which is unlikely to be available in the courtroom. In Nigeria particularly, litigation is extremely time consuming. It has become a culture that cases must

last several years in the courts before they are determined. Even when a case has lasted up to ten years in the court and the judge handling the matter is transferred or retired, the case has to start *de novo*⁴⁰. As rightly noted by Ogungbe⁴¹;

"Some cases have been pending in our courts for more than ten years as a result of certain constraints like retirement or transfer of judges handling the cases which have been opened and evidence had been taken. Such cases have to start de novo".

The devastation, frustration, and economic stress which litigants undergo are better imagined than experienced. The celebrated case of *Ariori & Ors. v. Elemo & Ors*⁴², for instance, was first instituted in the High Court in the month of October, 1960 thereby coinciding with the month and year Nigeria got its independence and took 23 years to reach the Supreme Court which nevertheless remitted it to the trial court for a trial *de novo*. Other cases like *Atanda v. Ajani*⁴³ took 10 years to reach the apex court which ordered a trial *de novo*.

Sometimes, the oil companies which cause almost 90% of the environmental damage in the oil host communities of Nigeria employ delay tactics deliberately to frustrate the victims of pollution when a court action is pending between them. The case of *Ambah v. SPDC*⁴⁴, for instance, lasted for 19 years in the courts and before its final determination, two thirds of the litigants had died.

5.3 Cost Effective:

No doubt, ADR mechanism is less expensive than litigation. This is an invaluable advantage especially today that the cost of litigation in Nigeria has soared to the extent that many litigants can no longer pursue their cases⁴⁵. Many poor people cannot access the formal legal system because they cannot afford to pay the fees necessary to prosecute cases in the courts. This is because payment of legal fees is probably the largest barrier to formal dispute resolutions for many people in developing countries and in particular by the poor in Nigeria.

ADR promotes the settlement of disputes in a manner that avoids many of the transactional costs associated with litigation. In fact, the monetary savings achieved through ADR processes and the results have been acknowledged in a lot of jurisdictions. In some cases, the cost may be borne either by the government or the multinational companies desirous of sustaining its relationship with the host communities, and not the poor victims of pollution as in litigation.

5.4 Equality in the bargaining power:

Indisputably, one of the factors that undermine the efficacy of the judicial system in Nigeria is the perceived and real inequality in the bargaining power between the parties to environmental reparation claims. This is more common in the Niger Delta region of Nigeria where the parties are most often the poverty-stricken villagers against the multinational oil companies like Shell, Mobil, Chevron, etc. that cause the most serious forms of environmental despoliation.

The often disadvantaged economic status of these victims of oil exploration, makes them susceptible to the whims and caprices of these companies. With the abundant resources at their disposal, these companies are elusive to deal with through legal mechanisms and they do everything possible to influence and obstruct the institution of legal proceedings against them. That has led to the distrust of the legal system which they regard as biased and favourable to these multinational oil companies, by the victims of the environmental despoliation⁴⁶.

5.5 Jurisdictional convenience:

With the ADR regime, the jurisdictional problems of litigation which especially frustrates environmental litigants are tackled. Access to justice is impaired where the courts are located far from the homes of those who need them. Today, about 80% of environmental cases in Nigerian courts are lost particularly on appeal for want of court's jurisdiction⁴⁷, the reason being that only the Federal High Courts, as against the State High Courts, have the

⁴⁰ Starting from the beginning.

⁴¹ Ogungbe MO (2003). Arbitration & mediation: when is either best suited for dispute resolution? Nigerian Law: Contemporary Issues, Essays in honour of Sir. G. O. Igbinedion. P 319

⁴² (1983)1 SC NLR 1.

⁴³ (1989) 3 NWLR pt. 511 at 10

⁴⁴ (1999) 3 NWLR pt.593 SC 1

⁴⁵ Chukwudifu O (1989). Human rights in the political and legal culture of Nigeria in Nigerian Law Publications P 75.

⁴⁶ A.T. Tropill (1991). Alternative dispute resolution in a contemporary South African context, P 260

⁴⁷ Joseph Nwazi, "Assessing the efficacy of alternative dispute resolution (ADR) in the settlement of environmental disputes in the Niger Delta Region of Nigeria". Accessed at; <http://www.academicjournals.org/JLCR>. 26th November, 2019.

exclusive jurisdiction to try almost all the environmental cases⁴⁸, whereas the Federal High Courts are not enough to contain the number of environmental litigants vying for their attention and where it is located in a state, they are found only in the capital city of such state and not proximate and accessible to litigants of rural host communities unlike the state High Courts that are scattered everywhere in various divisions within the states and so more proximate and accessible .

5.6 A Case for Environmental Courts in Nigeria:

Environmental disputes have an impressive history and it's not something novel. For example famous cases such as the *Pacific Fur Seal case (1893)*⁴⁹, the *Trail Smelter case (1941)*⁵⁰ and the *Lac Lanoux case (1957)*⁵¹ can be considered. In all these well known cases, the main reason why a dispute came in to exist was due to the clash between economic interest and ecological interest.

The Judiciary is the crucial partner in bringing about a judicious balance between these two interests and in promoting a culture of compliance with legal norms and standards. Therefore, there is very crucial necessity of striking a balance between these two competing interests. However, with the passage of time, the number of environmental disputes has drastically increased and the dissatisfaction of the general court system due to numerous reasons cannot be overemphasized.

5.7 Access to Environmental Justice through the Fundamental Rights (Enforcement Procedure) Rules, 2009:

The enforcement of the Environmental rights nay fundamental rights of Nigerians have been greatly enhanced by the promulgation of the Fundamental Rights Enforcement Procedure (FREP) Rules by the Chief Justice of Nigeria in exercise of the powers under Section 46 (3) of the Constitution of the Federal Republic of Nigeria, 1999. The FREP Rules which came into force on the 1st of December, 2009 has in many ways enhanced the ability of victims of environmental degradation and other interested persons to directly access the courts for the enforcement of their right to a healthy environment instead of adopting the common law procedure of commencing an action under the common law of torts such as trespass, negligence and nuisance to address environmental issues.

It can be argued that environmental rights directly form part of the fundamental human rights in Nigeria by virtue of the provision of Article 24 of the African Charter on Human and Peoples Rights which has been domesticated in Nigeria.⁵² The fact remains that the fundamental nature of environmental human rights cannot be wished away or merely dismissed by a wave of the hand. This is because apart from the direct recognition offered by the African Charter, decided cases from different jurisdictions have recognized that the right to life, property and dignity of human person includes the right to a safe and healthy environment. If this position is applied in Nigeria, it will therefore mean that actions for breach of human rights in Nigeria (including environmental rights) will be regulated by the FREP Rules 2009.

The FREP Rules 2009 seek to enhance access to justice for persons whose rights including the right to a healthy environment are threatened or infringed. The Rules are therefore essential for the protection of the environment in Nigeria as they afford victims of environmental degradation enhanced access to environmental justice in Nigerian Courts. The justification for the enhanced access to courts is that environmental degradation adversely affect or threaten the right to a healthy environment guaranteed under the Nigerian Constitution and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.⁵³

The objective of the FREP Rules include *inter alia*, a purposive and expansive interpretation of both the provisions of the Nigerian Constitution, as well as the African Charter (Ratification and Enforcement) Act, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by

⁴⁸ See section 251(1)(n) & Second Schedule Part 1 of the Constitution of the Federal Republic of Nigeria, 1999, as amended. See also section 7 of the Federal High Court Act, Cap F12 LFN 2004.

⁴⁹ Which concerned a dispute between the United Kingdom and the United States as to the circumstances in which the United States could interfere with British fishing activities on the high seas.

⁵⁰ Which was between the United States and Canada, concerned with the trans boundary pollution by sulphur deposits originating from Canada to the United States territory.

⁵¹ Which was between France and Spain concerning the circumstances in which one State made lawful use of shared international waters.

⁵² See the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

⁵³ E. P. Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation', 6/3 *Law, Environment and Development Journal* (2010) 12 available at <http://www.lead-journal.org/content/10320.pdf> 329.

them.⁵⁴ The Rules also settled with finality any existing doubt relating to the justiceability of the right to a healthy environment among other rights contained in the African Charter by clearly describing Fundamental Rights as including ‘any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act.’⁵⁵

6.0 CONCLUSION:

From this study, a number of conclusions can be drawn. Oil exploration activities have been ongoing in Nigeria since 1956. For much of this period, communities hosting oil-related facilities have suffered significant hardship as a direct result of the activities of multinational oil companies operating in these areas. The effects of oil exploration have led to considerable setbacks in these communities, as sources of livelihood, income, and occupation have been destroyed, and the ecosystem severely degraded. The study revealed that the hazards and impacts associated with oil exploration are enormous and cannot be overemphasised.

It is therefore imperative that any incidents connected to oil exploration activities be addressed promptly in order to improve both the quality of life and the environmental conditions of host communities.

In examining the Nigerian context with regard to oil-related environmental issues, this study identifies the judiciary as a critical institution in the realisation of a healthy environment, even in the face of ongoing oil exploration. It further argues that, rather than merely lamenting existing limitations, the scope of extant legal provisions should be effectively utilised and progressively expanded to promote environmental justice. Such an approach will help ensure that marginalised groups—including the poor, the illiterate, the uninformed, the vulnerable, the excluded, and the unrepresented—are able to access meaningful legal remedies and obtain redress.

7.0 RECOMMENDATIONS:

The following recommendations have been made by this paper:

- i. There is need for the amendment of the Constitution and other extant laws dealing with oil and gas. The laws referred to in this regard include those that implicate land use, oil operations, oil-related compensation, access to information, participation in decision-making and access to justice in environmental matters.
- ii. State governments maintain the primary responsibility to promote the human development of their citizens. Evidently, a major factor that hampers human development in the region is hindered access to environmental resources caused by the activities of the oil industry. In essence, citizens should be empowered by their states by way of educating them to protect and enforce their environmental rights including provision of legal aid to access administrative and judicial processes to seek remedies in the event of land appropriation, oil-related environmental pollution, amongst other oil-related issues that have negative impacts on them. Indeed, access to environmental resources not only provide the economic basis of the region’s population but also determines their socio-cultural existence. While the hindered access to environmental justice has generally contributed to the violent agitation for resource control in the Niger Delta, providing access to ordinary citizens enables them to use legal processes to assert their right to ‘resource control’.
- iii. The executive and other relevant agencies should work together to enforce all environmental laws to ensure environmental justice in host communities in Nigeria.

⁵⁴ See Preamble to the Fundamental Rights (Enforcement Procedure) Rules, 2009.

⁵⁵ Fundamental Rights (Enforcement Procedure) Rules, 2009 Order 1 (2)