

**AN APPRAISAL OF HUMAN RIGHT AND ENVIRONMENTAL  
DEGRADATION OF OGONI LAND IN NIGERIA**

**BY**

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**BEING A RESEARCH PROPOSAL SUBMITTED TO THE FACULTY OF LAW,  
AHMADU BELLO UNIVERSITY ZARIA, IN PARTIAL FULFILLMENT FOR  
THE AWARD OF MASTER DEGREE (M.A)**

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## **DECLARATION**

I declare that this project report entitled “An Appraisal of Human Right and Environmental Degradation of Ogoni Land in Nigeria” has been carried out by me in the Department of Public Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this project report was previously presented for another Degree or Diploma at this or any other institution. It is hoped that this Project research work would be of immense contribution to knowledge.

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**Signature**

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**Date**

## CERTIFICATION

This Project Report entitled: “An Appraisal of Human Right and Environmental Degradation of Ogoni Land in Nigeria” by Hadiza MOHAMMED ISA meet the regulatory governing the award of the MA in Public Law of the Ahmadu Bello University, and is approved for its contribution to knowledge and Literary presentation.

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## DEDICATION

I humbly dedicate this project to Allah (SWA) for giving me the life and strength and also my lecturers in the department of public law for their dedication to duty and the encouragement they gave me in the course of the conduct of this research.

I also dedicate the project to my immediate family especially my husband Engineer Yusuf Abdulkadir for providing me with all the necessary things needed for an intensive intellectual work of this nature.

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I wish to thank my able supervisor Dr. Ibrahim Shehu for his tremendous help, guidance in writing this project. A man with a kind heart, may the Almighty continue to bless, guide and protect you Sir. Amen.

I am indebted in no small measure to Ahmed Yusuf Jibril Institute of Education A.B.U Zaria, Dr., M.B. Dalhat, Aisha Salihu, Suleiman Musa, Hauwa Ladan, Auwal Imam, Maryam Abdulkadir also indebted to the Faculty of Law Library Ahmadu Bello University for allowing me to make use of the library and helping to access relevant materials.

Finally, I would like to acknowledge Nura who typed the manuscript and effected all necessary corrections

## TABLE OF CASES

1. Oranto Douglas vs. Shell Petroleum Development Ltd
2. Umudje vs. Shell-BP
3. Shell-Bp vs. Usoro
4. Seismograph Service vs. Mark
5. Shell-Bp v Isaiah
6. Shell PDCN V Farrah
7. Okechukwu v Etukokwu
8. Amos & Ors Vs Shell-Bp Ltd
9. Gbembre v Shell PDCN Ltd and Ors
10. Attorney General of Ondo State v Attorney General of the Federation of  
Nigeria
11. Ransome Kuti and Ors v Attorney-General of Federation
12. Federal Republic of Nigeria v Amachi
13. Ratlam Municipality v.Vadhi
14. Shell Bp v Osoro
- 15 .Arrondelle v United Kingdom

13. Budayeva v Russia

14. Taskin v Turkey

## LIST OF ABBREVIATION

FEPA	-	Federal Environmental Protection Act
NESTREA	-	National Environmental Standards and Regulations Agency Act
FHC	-	Federal High Court
NWLR	-	Nigerian weekly Law Report
PH	-	Port Harcourt
SCN	-	Supreme Court of Nigeria
LFN	-	Laws of the Federation
MOSOP	-	Movement for the Survival of Ogoni People
WCED	-	World Commission on Environment and Development
MDGS	-	Millennium Development Goals
UDHR	-	Universal Declaration of Human Right
ICESCR	-	International Covenant on Economic, Social, and Cultural Right
EMA	-	Environmental Management Act

- FRN - Federal Republic of Nigeria
- UNCED - United nations conference on Environment and Development
- EHCR - European Commission of Human Right
- JSC - Justice of the Supreme Court
- UN - United Nation
- NGO - . Non Governmental Organization
- EGASPIM - Environmental Guidelines and Standards for Petroleum  
Industry in Nigeria
- HYPREP - Hydro Carbon Pollution Restoration Project
- IUCN - International Union for the Conservation of Nature

## ABSTRACT

*The right to healthy environment is closely integrated in the basic concept of human right, namely the 'dignity inherent to all members of the human family'' But an environment depredated by pollution and defaced by the destruction of all beauty and variety as in the case of Ogoni land in Nigeria ,is harmful to physical and moral health There is of course an integrals link between the right to healthy environment and other human right in general .oil development has been going on in the Niger Delta area of Nigeria since 1957 and it comes at certain cost to the oil communities ,the magnitude of which remains highly debatable .the task of assessing the precise impact of oil development in the Niger Delta region is daunting and often an impossible one. For most of the studies done so far including the UNEP report commissioned August 2011 are highly controversial. As they appear to largely influenced. Thus a study undertaken by environmental or human rights ,NGOS for example, will lump most of the social and environmental problems in the are on oil development ,while report of the oil companies always insist that their operation are conducted with the highest environmental standard and that oil development is not responsible for most of the environmental problems .Another most popular factor for the inability to determine the impact of oil development in the area, are farming ,fishing ,forestry and other activities .these activities combined with oil and gas development and the fragile nature of Niger Delta environment, pose great environmental dangers to the area and which in turn affect the socio-economic life of the people ,which affect the right to life, health, work, dignities of human person ,privacy of the home ,education, among other rights .however it is sad to know that the right to healthy environment is yet to be enforceable in Nigeria ,as well as some other jurisdictions. In this project the writer intend to show the in evitable interrelationship between the right to a healthy Environment, which in the broader sense includes the right to information ,right to participate in decision making by people likely to be affected by such decision and right to available and effective demostic remedies to victim (such right is not yet understood and entrenched in the Bill of right of many jurisdiction) the attainment of all the entrenched right ,such as right to life, dignity of human person, right to health etc, that may be expressly guaranteed under the Bill of right in some jurisdiction .It is intended to show that since 1972 Stockholm conference and all the conventions, protocol and treaties signed pursuant thereto. .It can be shown that not many jurisdiction have it entrenched in their bill of right, the courts have to a very large extend recognize and upheld the right to a healthy environment as a basic fundamental human right without which all other right Cannot be enjoyed. The project examine the impact of non inclusion of right to environment in the fundamental right in section of the 1999 constitution as amended.*

## TABLE OF CONTENTS

Title page	-	-	-	-	-	-	-	-	-	-	i
Declaration	-	-	-	-	-	-	-	-	-	-	ii
Certification	-	-	-	-	-	-	-	-	-	-	iii
Dedication	-	-	-	-	-	-	-	-	-	-	iv
Acknowledgment	-	-	-	-	-	-	-	-	-	-	v
List of Abbreviation	-	-	-	-	-	-	-	-	-	-	vi
List of Cases	-	-	-	-	-	-	-	-	-	-	vii
Abstract	-	-	-	-	-	-	-	-	-	-	x
Table of Contents	-	-	-	-	-	-	-	-	-	-	ix

## CHAPTER ONE: GENERAL INTRODUCTION

1.1	Background to the Study	-	-	-	-	-	-	-	-	-	1
1.2	Statement of the Problem-	-	-	-	-	-	-	-	-	-	5
1.3	Aims and Objectives-	-	-	-	-	-	-	-	-	-	6
1.4	Scope and Limitation of the Research-	-	-	-	-	-	-	-	-	-	6
1.5	Research Methodology-	-	-	-	-	-	-	-	-	-	6
1.6	Literature Review-	-	-	-	-	-	-	-	-	-	6
1.7	Justification-	-	-	-	-	-	-	-	-	-	9
1.8	Organizational Layout-	-	-	-	-	-	-	-	-	-	9

**CHAPTER TWO: CONCEPT AND DEVELOPMENT OF ENVIRONMENTAL  
LAW**

2.0	Introduction-	-	-	-	-	-	-	-	-	11
2.1	The Concept of Environmental Rights-	-	-	-	-	-	-	-	-	13
2.2	Environmental Degradation and Human Rights -	-	-	-	-	-	-	-	-	15
2.3	Development of Right to Environment-	-	-	-	-	-	-	-	-	17
2.4	Recognition and Affirmation of Human Rights and Environment relating to Ogoni Land-	-	-	-	-	-	-	-	-	-
										20
2.5	Statutory Provision of Human Rights-	-	-	-	-	-	-	-	-	24

**CHAPTER THREE: THE ENFORCEABILITY AND RELEVANT LAW TO  
ENVIRONMENT**

3.0	Introduction-	-	-	-	-	-	-	-	-	27
3.1	Right to Health Environmental and the Rationale for it-	-	-	-	-	-	-	-	-	28
3.2	International Legal Framework on Right to Environment-	-	-	-	-	-	-	-	-	31
3.3	Justiceability and Enforcement of Environmental Right-	-	-	-	-	-	-	-	-	35
3.4	Law relevant to Environmental Policies on Nigerian State -	-	-	-	-	-	-	-	-	39

**CHAPTER FOUR: ENVIRONMENTAL LEGISLATION AND ENFORCEMENT**

4.0	Introduction-	-	-	-	-	-	-	-	-	45
4.1	Impact of Environment Policies on Nigeria, especially the Ogoni Land -	-	-	-	-	-	-	-	-	46
4.2	Need for Fundamental Right to Environment-	-	-	-	-	-	-	-	-	52

4.3	Enforcement Mechanisms on Environmental Degradation-	-	-	-	-	-	-	-	56
-----	--	---	---	---	---	---	---	---	----

## **CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATION**

5.1	Introduction-	-	-	-	-	-	-	-	60
5.2	Summary-	-	-	-	-	-	-	-	61
5.3	Conclusion -	-	-	-	-	-	-	-	69
5.4	Findings -	-	-	-	-	-	-	-	72
5.5	Recommendations-	-	-	-	-	-	-	-	75
	Bibliography -	-	-	-	-	-	-	-	77

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the Study

Ogoni people are one of the many indigenous people in Nigeria, in the region of Southeast Nigeria shared common related Environmental problems with the Ijaw people of Niger Delta. But Ogonis are not listed in the list of people historically belonging to Niger Delta. They number about one million (1,000,000) people and live in a 404 square-mile (11050km<sup>2</sup>) referred to Ogoni land.

They rose to international attention after a massive public protest campaign against Shell Oil, led by the Movement for the Survival of the Ogoni People (MOSOP).

Ogoni land sits between Port Harcourt, the oil capital of Nigeria and home to Shell Nigeria and Bonny Island where the main oil-export terminals are located-most Ogoni settlements are near the main river that connects Port Harcourt to the Atlantic Ocean or along other tidal creeks.

Traditionally, the Niger Delta was a fertile region important for food production. The Ogoni were a thriving ethnic nationality. Shell had to leave Ogoni land in 1993 and has not been there since. In early 2011, the Nigerian National Petroleum Corporation (NNPC) announced it planned to restart oil production in Ogoni land on behalf of the Shell Joint Venture. The Ogoni made clear that NNPC is not welcome either.<sup>1</sup>

As anger in Delta grew, government and oil companies became convinced that action should be taken to prevent a real uprising; they turned to UNEP, an independent,

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<sup>1</sup> [www.UNEP.org/cp/briefs/2010 August 24](http://www.UNEP.org/cp/briefs/2010 August 24). accessed on the 14<sup>th</sup> June, 2014

outside institution. State and federal governments agreed on the project plan. The project was started in 2010. The aim was to map all polluted sites in the land so that a plan for clean-up could be constructed. The project was paid by Shell as a UN institution.

The people have been victims of human Right violations for many years. In 15 years period from 1976-1991, there were reportedly 2,976 oil spills of about 2.1 million barrels of oil, the once alluvial soil of Niger Delta is no longer viable for agricultural use and attributes to wide spread land degradation and groundwater tested high levels of hydrocarbons or contaminated with benzene.

In May 1994, nine activities from the movement, among them Ken Saro-Wiwa were denied due process, upon found equity were hanged, the trail were criticized by human Right; as violation of their Rights under chapter IV 1999 constitution of the Federal Republic of Nigeria.

In Nigeria, though Environmental protection is provided for in chapter II of the 1999 constitution (under fundamental objectives and directive principles of state policy) and not in chapter IV. The Federal High Court Benin has interpreted the constitutionality guaranteed Right to life<sup>2</sup> to include the Right to clean, poison-free, pollution-free, healthy environment. *In Gbemre v Shell Petroleum Development Company Nigeria Limited and Ors*<sup>3</sup> the court elevated the status of the Right to environment, to that of a fundamental Right.

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<sup>2</sup> See section 33(1) of the constitution. 1999 LFN 2004

<sup>3</sup> Suit no. FHC/CS/B/153/2005 Unreported, decision given on November 14, 2005.

Africa has made the most outstanding contribution to legal recognition and enforcement of Environmental Rights, this is done through the African Charter on human and people's Rights<sup>4</sup>. It has provided a basis for national legal activity within the African sub-region as held in the case of *Fawehinmi v Abacha*<sup>5</sup> (*Per Ogundare JSC*) that;

*The charter gives to citizens of member states of the Organization of African Unity<sup>6</sup> Rights and obligations which Rights and obligations are to be enforced by our courts if they must have a meaning.*

The charter is a useful tool in Nigeria in achieving the objective of enforcement of the Right to a healthy environment. The basis for Environmental Right enforcement is the 1999 constitution. The constitution under section 20 provides that the state shall protect and;

*Improve the environment and safeguard the water, air and land, forest and wild life of Nigerians<sup>7</sup>*

Though the provision is non-justifiable by section 6(6)<sup>8</sup> (c) Nigerian Constitution. The Supreme Court held in *Attorney-General, Ondo State v Attorney-General of the Federation*<sup>9</sup> that the National Assembly could legislate on any of the fundamental objectives and Directive principle of State Policy to make it enforceable.

When the United Nations reasons that there must be environmental concern to obtain a good and clear environment to facilitates a high quality life, therefore, the United

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<sup>4</sup> The African charter came into force on October 21, 1986.

<sup>5</sup> (2000) FWLR (pt 4) 557.

<sup>6</sup> Now African Union.

<sup>7</sup> Section 20 CFRN 1999.

<sup>8</sup> 1999 (Amended) LFN 2004

<sup>9</sup> (2002) a NWLR (pt 772) 222, 272.

Nations Conference on Human Environment and Development held in Stockholm in 1972, attended by 113 nations gave international approval to the principle of sustainable development as a concept that articulates interdependence of environment and development.<sup>10</sup>

The outstanding impact of the Stockholm Conference was principle 21 stating that:

*“States have responsibility to ensure that activities within jurisdiction and control do not cause damage to the environment of other states or areas beyond the limits of their national jurisdiction”.*<sup>11</sup>

Thus the key national legislations including the federal environment protection Act FEPA which has been repealed and replaced by the National Environmental Standards and Regulations Agency (Establishment) Act<sup>12</sup>. Also by the enactment of the African Charter on human and people’s Right Act by the national Assembly, Environmental Rights as provided in section 20 of CFRN 1999 have become enforceable in Nigeria. There are challenges with the enforcement mechanisms, and are provided as follows:

- 1. Public Interest Litigation:** The problem with this mechanism is the technical issue of locus standi.
- 2. Fundamental Right Enforcement Procedure:** Here people may encountered technical difficulties in bringing actions in representative capacities.

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<sup>10</sup> Ladan, M. T. Biodiversity, Environmental Litigation, Human Rights and Access to Environment, Faith Printers and Publishers, 2007, p.20

<sup>11</sup> Usman, A. K. Environmental Protection Law and Practices, AJaba Press, Ibadan, 2012, p.136

<sup>12</sup> 1990 and 2007 respectively.

**3. Judicial Intervention:** The authority of *Gbemre and Shell PDCN Ltd and Ors*, is only persuasive as the Federal High Court is a court of coordinate jurisdiction with the other High Court.

**4. Pressure Group:** The problem here is pressure groups depend mainly on persuasion for success and this is not always very effective.

It is therefore the Hallmark of this research to analyze and provide solutions to the above challenges in Nigeria.

## **1.2 STATEMENT OF THE PROBLEM**

The writer intends to tackle the following problems:

1. Lack of effective mechanism to ensure the representation and participation of minorities and indigenous people in policy and decision making at all level including development projects and programmes.
2. Absence of reviewing in existing land and Environmental legislation, including the mineral Act of 1958, land use Act Decree 1978, and the petroleum Decree of 1969. And the issue of the damaged regions not rehabilitated as provided in article 21.2 and 2.4 of the African Charter on Human and People's Rights.
3. The reluctance of Nigerian courts to grant injunctions against companies causing pollution, considering rather the economic impact on the companies and government instead of the need for protection of the environment, property, individual health and, life.

### **1.3 AIMS AND OBJECTIVES**

Having recourse to the problem of this research as mentioned above, the aims and objectives of this research is to appraise and in addition analyze the concept of fundamental human Right and Environmental degradation addressing and proffering solutions to the identified issues and challenge as to the enforcement of the fights of the Ogoni people.

### **1.4 SCOPE AND LIMITATION OF THE RESEARCH**

The area of coverage for this research as stated above is to analyze the fundamental human Right enforcement and Environmental degradation (case study on Ogoni land). It will also cover recent cases.

### **1.5 RESEARCH METHODOLOGY**

Doctrinal method and also empirical shall be mainly adopted in this research which will entail the consideration of statutes, textbooks of both foreign and local authors, journals, case laws conferences, materials form, collection of facts and data through questionnaires, internet and other relevant materials will be consulted.

### **1.6 LITERATURE REVIEW**

Writers and Authors vary in their approaches of Environmental Degradation and Human Rights. Whether Environmental protection is considered as aiming at preservation of the Environmental, or humans are to be protected indirectly as components of the environment which they cannot be isolated.

*Ehusani A. Jonathan*<sup>13</sup> in his appraisal, Fundamental Human Right and a Healthy Environment. He explains how Environmental Degradation Violate Civil and Political Rights. Especially in Ogoni land in Nigeria, where companies, such as Texaco, Agip, Chevron, Shell and Exxon have operations<sup>14</sup>. But the learned writer did not cite Nigerian cases to illustrate the hardship on the aggrieved parties thereby creating a vacuum which this writer intends to fill in.

Another writer *Akinsola Ruth B., Chijioke Chinewubeze*<sup>15</sup> states that the Nigerian Constitution provides for a fundamental Right to life in its Section 33 (1). This constitutionally guaranteed Right to life has been interpreted to include Right to clean, poison-free, solution-free, healthy environment. That is encouraging and it is expected that Court of Appeal and Supreme Court will now this line of reasoning provided different mechanisms that may be adopted in enforcement of Environmental Rights, which include public interest litigation, fundamental Right Enforcement procedure, judicial intervention, and pressure groups it is therefore, the intention of the writer to add more mechanisms to be adopted in the enforcement of Environmental Rights.

The need for constitutional provision of fundamental Right to environment cannot be overemphasized, for *Gbemre's*<sup>16</sup> case is not yet a binding authority in Nigeria, therefore cannot be relied upon though may be argued that the Right may be enforce under the African Charter on Human and People's Right, but the Right does not enjoy a fundamental Right statute in Nigeria, since not provided for under chapter iv of the 1999

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<sup>13</sup> Fundamental Human Right to Healthy Environment ABU 2011 Vol. 2 P.158

<sup>14</sup> Ibid p.161

<sup>15</sup> Ibid p.191

<sup>16</sup> (1985) 6SC 245-277, (1985) 5 NWLR (pt. 10) at 299-230

Constitution. In Chief (Mrs.) *Olufunmilayo Ransome-Kuti & Ors v. Attorney-General of the Federation*<sup>17</sup>. The court considered the nature of fundamental Right when it said;

This is no doubt a Right guaranteed to everyone including the appellant by the constitution. But what is the nature of a Fundamental Right? It is a Right, which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution, since independence, starting with the independence constitution, that is the Nigeria (Constitution) order in councils 1960, up to the present constitution, that is the constitution of the Federal Republic of Nigeria, 1979. (The later does not infact apply to this case; It is the 1963 constitution that applies) is to have these Rights enshrined in constitutions, so that the Rights could be “immutable” to the extent to the “non immutability” of the constitution itself.

The effect of the Act ratifying the charter is that it domesticates, the provisions of the charter by making the part of ordinary laws of the land, creating ordinary Rights. Until a constitutional provisions of a fundamental Right to environment. The argument that the provision of a substantive Right toe environment in the constitution will lead to a proliferation of Rights, cannot stand as there is no evidence to substantiate the assertion. The courts are to be commended for being able to enforce fundamental Right though not provided for in the 1999 constitution.

On the other hand, another scholar (*Maduka, 1998*) catalogued major Environmental problems affecting the Niger Delta region in particular where a compendium of major Environmental problems cut across the entire natural environment, livelihood, aspiration and the entire socio-economic spectrum of the Niger

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<sup>17</sup> Ibid

Delta region of Nigeria. These damages can hardly be quantified in Naira and Kobo and the impacts are of very serious consequences. The situation as of today may likely remain the same or even worse.

The environment through all these laws and regulation are commendable indeed. This writer's next task is to examine what various impacts all these legislations have had on the Nigerian State.

### **1.7 Justification**

This work is done with the interest to the understanding that everything and anything that influence our environment directly influence our human conditions, and a violation of our environment is a violation of our human right. It is justified to examine the nexus between the environment and human rights, particularly environmental degradation, protection, enforcement and realization of fundamental rights of a citizen with reference to the Ogoni land in Nigeria.

### **1.8 Organizational Layout**

For a clear exposition of this long essay, this work has been divided into five chapters.

Chapter one deals with the general introduction which comprised of the background of the study, the statement of the problem, the objective of the research, the research methodology, literature review, justification and organizational layout.

Chapter two states the concept of environmental law and development. The environment is outlined as well as the development of environmental law before 1988 and the period after. It also deals with the concept of environmental rights,

environmental degradation and human right, recognition and affirmation of human right, environment relating to Ogoni land and statutory provision of human.

Chapter three states the enforceability and relevant laws to environment which starts with the definition of pollution, right to health, legal framework on the right and also deals with policies on environmental law.

Chapter four deals with environmental legislation and enforcement, which includes the establishment of the National Environmental Standard and Regulation Enforcement Agency, the establishment, composition, structure, staffs and enforcement powers of the agency.

Chapter five deals with summary, recommendations and conclusion.

## **CHAPTER TWO**

### **CONCEPT AND DEVELOPMENT OF ENVIROMENTAL LAW**

#### **2.0 INTRODUCTION**

The right to healthy environment is closely integrated in the primary concept of human right, namely “dignity inherent to all member of the human family. Since the early days of proclamation of human rights at international level, the subject matter has been the recognition of the inherent dignity and equal inalienable rights of all the members of the human family”, as basis of freedom, justice and peace in the world. The human right have foundation b in the right of each individual person to stay alive, as physically healthy animal. There is linkage between human biology, human socio-economic systems and natural non-human processes and resources. And that affects the nature of environment or quantity or quality of the resources to which the individual has access.

The deterioration of the environment affect the right to life, health, work, dignity of human person, privacy and education among other right, also right to healthy environment in broader sense include right to information to participate in decision making by people likely to be affected by such decisions.

The environment was taken for granted until industrialization started in England, far before the advent of industrialization, economic activities of man were basically agrarian and has no serious adverse effect on environment. Due to that there were holding of so many international conferences and conventions on environmental health

and safety; such as 1972 United Nations (Stockholm) Conference on Human Environment,<sup>18</sup> the World Commission on Environment and Development (WCED). It can be understood that since the 1972 Stockholm conference and other conventions, protocols and treaties signed, there has been an international consensus on the issue of right to a health.

Human rights and international environment law have intertwined objectives and are all aim to produce better conditions of life; they both seek to tackle universal challenge that must be solved at individual and global level. It is necessary to link both fields is due to the different, complementary and partial approaches each has attempted to follow. Environmental law seeks to nature for itself and for the benefit of human kind on local and global scale. The inclusion of an environmental dimension in the human rights debate has become necessary in view of the recognition of pervasive influence of local and global environmental condition on realization of human rights.<sup>19</sup>

The international theory is all human rights represent universal claims necessary to grant every human being a decent life that are part of the core morals codes common to all societies. Since the inception of international human rights on the premise that should not be seen as another manifestation of imperialism but a reorganization that all human beings aspire to a life in dignity.<sup>20</sup>

The linkage between human and environmental right has so far been envisaged mostly in terms of the protection or conservation of a clean or healthy environment for

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<sup>18</sup> Thornton, J. M. A. and Beekwiths (1997) Environmental Law, London Sweet and Maxwell, 31

<sup>19</sup> <http://www.ielrc.org/content/99502.pdf> accessed 05-05-2014

<sup>20</sup> Preamble to Universal Declaration of Human Rights (UN.DOC.ST/HR/1/Rev.4 (Vol.1 Part 1)

individual whose conditions of life are threatened e.g. by noise, disturbances, air pollution from airport or motorways and industrial pollution.

The adoption of the Millennium Development Goals (MDGs) and the ongoing pursuit by the global community further emphasize the importance of sustainable environment management to enduring socio-economic development. The need to ensure that the world's environment is managed in a manner that guarantees our ability to meet the present day demands and most importantly ensure that future generations would be able to meet their own demands, on which the national strategy for sustainable environmental management revolves, implicit in this is the global fact that environmental issues do not recognized boundaries, sectors and does not distinguish between various stakeholders. It is for this reason that the creation of partnerships in environmental management had been central to Nigeria's strive for returning the environment to its pristine state.

## **2.1 CONCEPT OF ENVIRONMENTAL RIGHT**

Human beings are at the centre of the causes or activities that adversely alter the environment, though it does not appear that the effects are under man's control. Man's right and obligations to environment reached acknowledgement in the 1972 Stockholm Declaration and other media. In 1974 Hague Academy lecture, it was advocated that existing concepts of human rights should be extended in order to include the right to healthful and decent environment, free from pollution.

Most human rights treaties make no explicit reference to environment at all such as the European Convention on Human Right or they do so only relatively, narrow terms focused on human health.<sup>21</sup>

It is doubtful whether the latter agreements add anything to the case law derived from the right to life. The one notable exception is the Aarhus Convention on Access to Information, Public Participation, in Decision-Making and Access to Justice in Environmental Matters, whose preamble not only recalls Principle 1<sup>22</sup> of the Stockholm Declaration but also that adequate protection of environment is essential to human wellbeing and enjoyment of basic human rights, including right to life itself.

However, the focus of the Aarhus Convention is strictly procedural in content, limited to public participation in environmental decision-making, access to justice and information.

## **2.2 ENVIRONMENTAL DEGRADATION AND HUMAN RIGHTS**

Do we to continue to think about human right and the environment within the existing framework of human right law in which the protection of humans is the central focus-especially greening of rights to life, private life and property, or a right to have the environment itself protected, do we transcend the anthropocentric in favour of the ecocentric.

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<sup>21</sup> Article 12 International Convention on Economic, Social and Cultural Rights 1961

<sup>22</sup> Principle 1, Stockholm Declaration on the Human Environment (1973), p.451-5

The issue is not a new one. Thirty five years ago at the United Nations Conference on Human Environment held in Stockholm, international community declared that:

*Man has the fundamental right to freedom equality and adequate conditions of life in an environment equality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generations*

The above statement provided the basis for subsequent elaboration of human right to environmental quality. Indeed an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and personality development, as the breakdown of fundamental ecological equilibrium is harmful to physical and moral health as in the case of Ogoni land. There is of course, an integral link between the right to healthy environment and other human rights. The deterioration of the environment affects the rights to life, health, work, dignity of human person, privacy of home, education.<sup>23</sup>

Among human right treaties only the 1981 African Charter on Human and People's Right proclaims environmental rights in broadly qualitative terms. It protects both the right of peoples to the best attainable standard of health.<sup>24</sup> And their right to general satisfactory environment favourable to their development.<sup>25</sup> It was held inter alia, that Article 24 of the Charter imposes an obligation on the state to take reasonable

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<sup>23</sup> Op.cit, Ehusani; A. P. 160

<sup>24</sup> African Charter (1981) Article 16

<sup>25</sup> Ibid Article 24

measures to prevent pollution and ecological degradation, and also promote conservation, to secure ecologically sustainable development and use of natural resources.<sup>26</sup>

Article 21<sup>27</sup> regarding Ogoni Land is a remarkable decision that goes further than any previous human right case in the substantive environment obligations it places on states. It is unique in applying the right of people to dispose freely of their own natural resources. When combined with the evidence of severe harm to lives, health, property and wellbeing of the local population, the decision can be seen as a challenge to the sustainability of oil extraction in Ogoni Land where companies such as Mobil, Texaco, Agip, Chevron, Exxon, Royal Dutch/Shell have operation. These companies build massive oil-wells and pipelines that intersect at indigenous communities, where most of the drinking water in Ogoni Land is contaminated, deep layers of oil from leaking wells and pipelines have covered fertile farmland living many with no means of livelihood.<sup>28</sup> And often in many cases where industrial development and resource extraction impact communities, those who question the negative effect of the developmental activities are subject to harassment or suppression by government or project authorities. The companies take little or no responsibility for oil spills, air and land pollution from their operations, and also refuse to inform people fully about environmental impact of their operations. Instead they rather turn communities against each other, pay and provide logistic and arms for Nigerian military to suppress indigenous unrest and tribe witness to

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<sup>26</sup> Social and Economic Right Action and Center for Economic and Social Right v Nigeria ACHPR (2002) Para 52-53

<sup>27</sup> Op.cit

<sup>28</sup> See Tell Magazine, No. 47 November 20<sup>th</sup> 2000 p.12-16

testify against environmental activities. In November 1995 the military government executed Ken Saro Wiwa and eight of his colleagues. In a controversial judgement that was confirmed by the provisional ruling council (PRC) and what were later known as the Ogoni Nine. To my mind the execution can be seen as a total violation and the fundamental human rights provisions, that is why its attracted a lot of National and International criticism of the country including Common Wealth Association. They struggled to make international community aware of how societies impose the brunt of their ecological damage on people unable to cope with.<sup>29</sup>

Scholars both nationally and internationally hold that the basic human right is the right to life and closely behind it is the right to make a living. Human survival depends on the integration of that individual within a productive biological ecosystem that can maintain its living members in a tolerable habitat. The principles behind right to adequate food or right to health and safe environment often stated as basic human rights raise difficult questions. Much literature have emanated on the consequences of environmental problems affecting Niger Delta regions of Nigeria. Odogbor (2005) enumerated the effect of oil spillages and industrial wastages on cultural, religious, economic and political live to the people, and pointed out serious negative implications on people on all spheres of lives of the people in the affected communities in Nigeria.

### **2.3 Development of Right to Environment**

Environmental protection is intrinsically related to a number of other human rights and as both a precondition and an outcome of the enjoyment of many rights. A

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<sup>29</sup> Op.cit p.162

right to environment should not be classified as a synthesis right, because it embodies specific characteristics that can be distinguished from other rights and does not constitute a 'shell right' aimed at enhancing the realization of other rights.<sup>30</sup> The widespread criticism of this right stems mainly from the incapacity we have to mould it into one of the old categories of human rights. The right cannot be categorized as civil, political, economic, social, cultural, or solidarity right because it transcends the distinctions and embodies elements found in each of the three categories.

There were attempts to develop international law to produce environmental law in the 19<sup>th</sup> century (focused on the conservation of wildlife) it was not until the Stockholm Conference in 1972<sup>31</sup> that the right to a healthy environment was recognized in an international environmental law document. The conference is considered an important starting point in developing the right to a healthy environment at national and global levels.

In most instances, the right to a healthy environment or an environment conducive to wellbeing and higher standards of living, that centered on the quality of life throughout the world; some bolder formulations speak of the right to a decent environment encompassing social and cultural aspects that take into account the suitability of a given environment to individuals according to social and cultural needs. According to Alexandre Kiss the right to environment also completes other rights guaranteed to each human being in another way. It contributes to equality among citizens, or at least to the reduction of inequalities. Environmental degradation aggravates the differences between

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<sup>30</sup> Downs, J. A. A Healthy and Ecologically Balanced Environment 1993, pp.351-485

<sup>31</sup> Held from 5-16 June 1972

the richest class that can escape degraded conditions such as polluted air, noisy or unhealthy areas while the most disfavoured group must accept to live in human and heavily polluted areas. The requirement of a healthy and balanced environment becomes a condition for implementing other fundamental rights guaranteed to everyone.

The principle of the Stockholm Declaration linked environmental protection to human right norms and draws a further link between human rights and environmental conservation. Human right must be guaranteed for the future generations, and that implies the management of natural resources with the objective of not exhausting them. No state shall be allowed to behave in a manner that may deprive future generations from achieving their objectives these rights represent at the moment.

In most of the recent documents, what is meant by development is not the comprehensive process involving social, economic and cultural elements that was outlined in the Declaration on the right to development, but mainly economic growth, moreover in the discussion on sustainable development, economic development tends to take precedence over environment protection.<sup>32</sup>

The above wouldn't have being that if people may have been able to speak of environmental protection for itself at the 1972 Stockholm Conference on human environment, everything tends to be put today under the heading of sustainable development that reflects the integration of development and environmental concerns. The concept of sustainable development however, welcome, maybe allowing all

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<sup>32</sup> UN General Assembly Resolution 41/128 Declaration on Right to Development (1986) V1 P2

countries, officials, and private agencies to speak the same language and share same rhetoric, but not well defined and clearly ambiguous in its orientation.

The Stockholm conference influenced legal and institutional development since then on right to environment through the United Nation Environmental Programme (UNEP) and various conferences, treaties and conventions contain a comprehensive framework for establishment of global rules protection of right to healthy environment. One of such conferences is the United Nations Conference on Human Environment and Development (UNCHED) adopted 27 Principles of which Principle One states that:

*Human beings are at the centre concern for sustainable development. They are entitled to a healthy and productive life in harmony with nature*

In Nigeria the United Nations Environment Programme (UNEP) at the request of Nigerian government is conducting an environmental assessment of the impacts of oil spill in Ogoni Land, in Niger Delta for the region's sustainable development. The UNEP study represents an unprecedented effort to examine the location, nature, extent and implications of oil contamination in Ogoni Land, this is part of the longer term global to clean up contaminated sites for the benefit of local communities.<sup>33</sup>

#### **2.4 RECOGNITION AND AFFIRMATION OF HUMAN RIGHTS AND ENVIRONMENTAL RELATING TO OGONI LAND**

The International Conference on Civil and Political Rights and the International Conference on Economic, Social and Cultural Rights conducted under the UN

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<sup>33</sup> Op.cit 23rf August 2010

recognizes also that every human being has the inherent right to life<sup>34</sup> and right of everyone to the enjoyment of the highest attainable standard of physical and mental health, through the improvement of all aspects of environmental and industrial hygiene.<sup>35</sup> Thus a direct link was established between health and environmental hygiene, and the right to health was described in a legal system, whereby state action could be scrutinized by the UN commission on human rights. In 1968 the Teheran Conference, held to promote the establishment of a balance between scientific and technical progress, intellectual, spiritual, cultural and moral development of mankind. The general assembly adopted the declaration on social, progress and development, drawing attention to the interdependence between environmental protection and human right.<sup>36</sup>

The international human rights protection system is based on the United Nations Charter of 26 June 1945 which proclaims the promotion of respect for human rights as one of the fundamental aim of the UN.<sup>37</sup> But the term human right is not defined in the Charter. Therefore, the concept must be interpreted in an evolutive way taking account of constant extension in the scope brought about by environmental, political and cultural changes, together with technical and scientific process.

Though the Charter enjoins members to pledge themselves to cooperate in solving international economic, social, health and related problems, in promoting respect for and observance of human rights. However, the link between health, the primary

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<sup>34</sup> ICCPR, Article 6

<sup>35</sup> ICESCR, Article 12, see also Article 52

<sup>36</sup> UNGA Res 2542 (XXVI) 11 Dec 1969

<sup>37</sup> UN Charter, Articles 55 & 56

element of the human right to environmental and the environment only appears through the concept of wellbeing.<sup>38</sup>

The 1972 Stockholm Conference, the then Secretary General to the UN stated that the conference would dwell on the struggle for a decent environment as a demand that man should be able to develop more fully. The world Charter for Nature<sup>39</sup> states that:

*All persons in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means to redress when their environment has suffered damage of degradation*

## **AFRICA**

The African Charter on Human and Peoples Rights, adopted in Nairobi on 28 June 1981, is particularly important because its preamble refers to “the values of African civilization, while Article 24 states that people shall have right to a general satisfactory environment favourable to their development”. For the first time, the right to environment was included in a treaty drawn by developing communities, for which it is particularly difficult, in the short term to reconcile environmental protection with development. Premised on the background of environmental protection, are other important provisions of the Charter, e.g. Article 9 which states that every individual shall have the right to receive information, also Article 13 provides for right to

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<sup>38</sup> UNGA UN Doc A/811 (1948) Article 3, 22 and 25

<sup>39</sup> UNGA Res 37/7/ 28 October 1982

participate and more importantly Article 16 provides that “every individual shall have the right to enjoy the best attainable state of physical and mental health”.

The function of implementing and protecting these rights is entrusted to the African Commission on Health and People Rights. Article 15(XII) further reiterates the right and mandates the competent authorities to take measures to guarantee the right. The Indonesia Environmental Management Act (EMA) also recognizes the right to a healthy environment. Article 5(1) states

Every person has the same right to an environment which is  
good and health

This is accompanied by a provision that guarantee a right to environmental information and the right to participate in environmental decision making process. In order to assist victims and NGOs to fight for the right to a healthy environment in Indonesia. EMA also guarantees various environmental procedural rights, e.g. the right of NGOs to bring law suit as a class or representative actions, as a result of the pressure from the pro-democracy and pro-reform activists in Indonesia, the special session of the people’s National Assembly held in October 1998 promulgated the National Human Rights Charter which includes “every person has a right to a good and healthy environment”.<sup>40</sup>

In the 21<sup>st</sup> century life on the planet in which people are no longer living as consumers but exchangers. The right to exchange resources and energy will have to be defended as a collective right, as well as individual (fundamental) right. The problem of

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<sup>40</sup> Circle of Rights, A Publication of International Human Rights Internship Programmes (2000) p. 292

the dilemma of individual and collective rights to natural resources and a healthy environment versus the right of humans as individuals to reproduce has to be solved through instrumentality of human right protection. The deteriorating environmental conditions of parts of the planet, plus the social, political stresses and injuries that are not likely soon to be eradicated in the Ogoni land, is creating a new class of distressed humans-environmental refugees. Their numbers are growing and the problem has not only a human rights dimension but also an environmental right dimensions.

## **2.5 STATUTORY PROVISION FOR HUMAN RIGHTS**

The international concern for the basic rights of man originated in the treaties which terminated the religious wars that enraged in Europe in the 16<sup>th</sup> and 17<sup>th</sup> centuries. The religious right was extended at the 1815 congress of Vienna was to guarantee to specified communities civil and political right.

The 1956 treaty led the Sultan of Turkey to accord religious freedom to each sect within his domain. At the end of the First World War 1914-1918, the minority's treaties guaranteed equalities of treatment of racial, religious and linguistics minorities in new and enlarged states of Yugoslavia.

Between the two World Wars, individual European organizations mounted campaigns for both customary and conventional international laws for guarantee individual fundamental rights. That lead to Atlantic Charter declared by US president and Prime Minister in 1941 in which the right of all peoples to choose the form of government under which they wish to live was declared. The International Movement

for Human Rights also inspired the Human Rights Provisions of the United Nations Charter. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 extended the frontiers beyond the traditional civil and political right. It included the basic economic, social and cultural rights inherent in the concept of social justice.

Three regional Conventions on Human Rights have subsequently emerge. They are the European Convention (1950) the inter-American Convention (1969) and the Africa Charter<sup>41</sup>. It can be attached that the right to environment may be enforced under the African Charter on Human and peoples rights. The right under the Charter does not enjoy a fundamental rights status in Nigeria, since not provided under chapter iv of the 1999 constitution in Chief (Mrs) Olufunmilayo Ransome Kuti and Ors v Attorney- General of the Federation<sup>42</sup> The court consider the nature of fundamental rights when it said:

This is no doubt a right guaranty to every one including the appellant by the constitution but what is the nature of fundamental rights, it is a rights, which stands above the ordinary laws of the land and which infact is antecedent to b political society its self. It is a primary condition to a civilized existence and what has been by our constitution, since independence, stating with the independence constitution..... is to

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<sup>41</sup> Ambif @skanet. Com accessed on the 20<sup>th</sup> December 2013

<sup>42</sup> (1985) 6SC 245 at 276-277

have these rights in enshrined in constitutions so that rights could be “immutability” to the extent of the “non-immutability” of the constitution itself.

The effect of the Act ratifying the Charter is that it domesticate the provisions of the Charter by making the Charter part of the ordinary laws of the land, creating ordinary rights<sup>43</sup>. Until a constitutional provision of fundamental right to environment, the Court will continue to enforce the right as ordinary right especially as Gbemre’s case is not yet a binding authority in Nigeria. The argument is the provisions of a substantive right to environment in the constitution will lead to proliferation of right cannot stand as there is no evidence to substantiate the assertion.

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<sup>43</sup> Okon E.E. the Environmental Law Perspective in 1999 Nigerian Constitution Rev. 5 (2003) Vathek Publishing 271.

## CHAPTER THREE

### THE ENFORCEABILITY AND RELEVANT LAW TO ENVIRONMENT

#### 3.0 Introduction

The United Nations Environment Programme (UNEP) at Nigeria government request is conducting an environmental assessment of the impacts of oil spills in Ogoni Land in Niger Delta, and options for remediation. With the world's gaze focused on the dangers of oil spills, attention turned to a relatively overlooked environmental calamity, oil spills in Ogoni Land. For the spills have been a slow bleed; the result of forty years of pollution at local fields and pipelines, majority of which are owned by Royal Dutch Shell.

In 2007, the Nigerian government invited the United Nations Environment Programme (UNEP) to undertake an environmental study into damage in the region. Shell agreed to fund the \$10million study. The work was stated October 2009 and report is due out in December.

The UNEP study exonerated Royal Dutch Shell in its report, claiming that only 10% of oil pollution in Ogoni Land has been caused by equipment failures and company negligence and the remainder come from local people illegally stealing oil and sabotaging company pipelines.

Mike Cowing<sup>44</sup> at the press briefing in *Geneva*, said that 90% of the 300 known oil spills in the region had been caused by “bunkering” gangs trying to steal oil. With

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<sup>44</sup> Head of a 100 study UNEP investigative team

606 oil fields, the Niger Delta supplies 8.2% of the crude oil imported by US. While UNEP's release backed down from assigning blame for the oil spills.

### **3.1 RIGHT TO HEALTH ENVIRONMENTAL AND THE RATIONALE FOR IT**

The evolution of human rights protection and environmental protection discloses evident affinity between the two just as there have been serious concerns for the violation of human rights of some certain groups (e.g. refugees, stateless people, women and children) so also is the concern for the violation of the environmental rights of indigenous people (especially in the Niger Delta). The awareness of this interrelatedness, in recent years, has contributed in a decisive fashion to the evolution of both human rights protection and environmental protection and obviates the need to integrate the two. Just like the evolution of human rights protection, the evolution of environmental rights at the international level bears witness of the emergence of obligations of an objective character without reciprocal advantage for state.<sup>45</sup>

The 1972 Stockholm Declaration refers expressly to the common good of mankind.<sup>46</sup> Rules of the protection of environment are adopted and obligations to that effect are undertaken in the common superior interest of mankind.

The right to life is basic or fundamental, because the enjoyment of right to life is a necessity condition of the enjoyment of all other human rights. As indicated by the

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<sup>45</sup> Op.cit, p.172

<sup>46</sup> Principle 18

Inter-American Court of Human Rights in its Advisory Opinion on Restriction to the Death Penalty (1983) the human right to life encompasses a substantive principle whereby every human being has an inalienable right to have his life protected and preserved, as well as a procedural, whereby no human being shall be arbitrary deprived of his life. The starting point for any discussion of human rights and environment is that failure by any state to regulate or control environmental nuisances or to protect the environment may interfere with individual right, as in the case of *Lopez Ostra v Spain*,<sup>47</sup> *Fadeyeva v Russia*,<sup>48</sup> *Taskin v Turkey*,<sup>49</sup> *Tatar v Romania*,<sup>50</sup> and *Budayeva v Russia*.<sup>51</sup> All these cases have common features, first there is an industrial nuisance—a chemical plant, smelter, tannery, mine or waste disposal site. Secondly there is a failure to take adequate preventive measures to control these known sources of serious risk to life, health, private life or property. The European Convention may not directly require states to protect the environment but the court decisions do require them to protect anyone whose rights are or may be seriously affected by environmental nuisances. As provided in *Fadeyeva's* case.<sup>52</sup> That the state's responsibility in environmental cases may arise from a failure to regulate private industry. For it has a duty to secure rights under the convention, in *Lopez Ostra* and *Taskin* the National Court had ordered the closure of the facility in question but the decisions had been ignored or overruled by political authorities. There is the need that a right to have the law enforced and judgment of court

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<sup>47</sup> (1994) 20 EHRR 277

<sup>48</sup> (2005) ECHR 376

<sup>49</sup> (2004) ECHR Paras 113

<sup>50</sup> (2009) ECHR Para 88

<sup>51</sup> (2008) ECHR

<sup>52</sup> Op.cit Para 89

upheld. As held in *Taskin* where the Inter-American Court of Human Right has taken same view pursuant to Article 25 of the American Convention. Thus

*The court would emphasize that the administrative authorities from one element of a state subject to rule of law for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay, doing so, the guarantees enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose*

Also the below suggestion is made in *Taskin's* case like in the case of Ogoni Land. What existing international law has most to offer with regard to environmental protection and sustainable development is the empowerment of individuals and groups must affected by environmental problems, and form whom the opportunity to participate in decisions is the most useful and direct means of influencing the balance of environmental, social and economic interest, also that the individuals concerned must be able to appeal to court against any decision, act, or omission where they consider that their interests or their comments have not been given sufficient weight in the decision making process. Following Rio Principle 10, Article 9 of the Aarhus Convention make provision for individuals to challenge breaches of national law relating to environment when either their rights are impaired or they have a sufficient interest.

Article 12 of the United Nations Conference on Economic, Social and Cultural Rights set a detailed guidelines for the implementation of the right to health which include the improvement of the environment and industrial hygiene. This pave way for the subsequent development in the area of right to a healthy environment. At the 1978

Colloquy of the Hague Academy of International Law, the issue of human right to salubrious environment was raised. *P. M. Dupuy* after warning about the menace of current degradation, advocated that human right to salubrious environment be recognized as the “supreme guarantee of the right to health.

The interdependence of the other rights and the right to environment can be exemplified by the fact that damage to the environment can be a basis for a cause of action for the enforcement of some other rights such as life, private, family life, property, health etc. classical example of this is the case of *Arrondelle v United Kingdom*<sup>53</sup> brought before the European Commission on Human Rights in 1976. The commission declared that the applicant’s right to private and family life, health, property as provided by the Articles were violated.

### **3.2 INTERNATIONAL LEGAL FRAMEWORK ON RIGHT TO ENVIRONMENT**

Oil development cut across a wide range of activities which could be broadly classified into exploration and production stages and each of these activities involve some environmental risk, either as part of normal operations or coming as a result of accidental or deliberate act or omission.

**Exploration State:** Seismic surveys are meant to collect geophysical information about the oil in a particular area by the use of explosives to send sound waves into the earth crust or into the river systems.<sup>54</sup> This process is usually the first physical contact the oil

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<sup>53</sup> (No. 7889/77) (June 1982) 26 Eur. comm HRDR p.5-12

<sup>54</sup> Jahn, F. et al Hydrocarbon Exploration and Production (Elsevier Science B. V. Amsterdam 1998) pp.15-27

companies have with environment. It starts by line cutting which involves the clearing of at least one meter width of the land surface. This may cause the destruction of forests, farmlands or aquatic life where the operation takes place in water bodies. Although in some areas in Niger Delta line-cutting may have insignificant effect on the environment as revegetation normally occurs within one year, uncial in the mangrove areas where it takes 30 or more years to fully recover from line-cutting.

According to the 1995 World Bank study, seismic lines of few meters that were cut over a decade ago were still visible by air.<sup>55</sup> This potential threat is very real in the Niger Delta area because it is delicate ecology. Apart from the destruction of vegetation, the detonation of explosive can yet be another cause for environment concern in seismic operation. The detonation of explosives can affect the soil structure and where the holes for the explosives are improperly drilled, a detonation can cause a crater, where the operation takes place in the rivers, and it constitutes serious threats to marine life. The Niger Delta is currently in a difficult situation, as fishing and farming are problematic and there is a lot of anger towards oil companies, bunkering and attacks on oil installations continue, causing more oil pollution. Clean up and development are therefore essential for the prevention of new spills, in addition to proper maintenance monitoring of pipelines, carrying out integrity checks and guarding of pipelines.

According to World Bank report about 2.300m<sup>3</sup> of oil an average of 300 spill incidences were recorded annually between 1991 and 1993 in Rivers and Delta States,

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<sup>55</sup> World Bank, Defining an Environmental Development Strategy for the Niger Delta (Washington DC 1995) Vol. p.35

with Shell accounting for about 75 percent of the spills. These figures do not include the daily small spills which in aggregate contribute a large volume to the total number and volume of the spills. This combined with the problem of under reporting will place the real figures substantially higher, estimated as to times figures reported with the current system of reporting and monitoring, which largely depends on what the companies reported, it is difficult or impossible to find out the actual figures. According to a recent study, statistics from the DPR shows that between 1976 and 1996 a total of 4,835 incidences of spills resulting in the spillage of over 2.4 million barrels of oil with about 77 percent of the spillage lost to the environment.<sup>56</sup> An international industry sources-based report however estimates that between 1960 and 1997 only about 1.07mbls of oil were spilled in Nigeria.<sup>57</sup> Whatever the figures may appear to be, one important fact remains that oil spills constitute the most worrisome environmental impact of oil development in Nigeria.

Nigeria is worst oil spill occurred in 1979 when a Shell storage tank at forcados terminal collapsed in which about 570,000 of crude oil was spilled into the environment.<sup>58</sup> And that was soon followed by *Funiwa v Blow* out in 1980n where a Texaco offshore blew out and spewed an estimated 200,000 barrels of oil into the Atlantic ocean, according to Texaco and about 400,000 barrels according to DPR estimates.<sup>59</sup> The incident destroyed about 340 hectares of mangrove forest. There was dispute between the Rivers State Government report and the Texaco's, the government

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<sup>56</sup> Ibid note 1, see V p.4

<sup>57</sup> International oil spill statistics 1997 at <http://online.aspenbubs.com> 26<sup>th</sup> September, 2002

<sup>58</sup> Oil spill intelligence report (Arlington, Massachusetts) white paper series Vol. 1 No. 7 November 1997

<sup>59</sup> Ibid note 3, Vol. 1 p.49

set panel of consultants to review the impact of the spill, according to the report 421,000 barrels of oil was spilled by incident, polluting 3.119km<sup>2</sup> of coastline, mangrove swamps, rivers and creeks with extensive damage caused to the ecology, fishing and water resources, that 321 villages with a total population of 230,000 people were affected, contaminated drinking and bathing waters in these villages led to the outbreak of diseases resulting in hospital treatment of about 3,000 people and 180 death directly or indirectly.<sup>60</sup> In *Shell BP v Usoro*,<sup>61</sup> the plaintiffs alleged at the trial court that explosives detonated near his building by Shell in the course of seismic survey caused substantial damage. *Nwadiaro v Shell* (1990) 5 NWLR (Pt. 150) 322.<sup>62</sup>

As the anger in Delta grew government and companies became convinced that action should be taken to prevent a real uprising, they turned to the UNEP, an independent institution, that took over a year before the state and federal government agreed on the project plan, that took up 2010. The aim was to map all polluted sites in Ogoni Land. The UNEP worked with foreign experts and trained local sample-takers and liaison officers, the project was paid for by Shell and as a UN institution, *UNEP* reports to the Nigerian government.

Britain and the Netherlands as home countries of Royal Dutch Shell have responsibilities to support and motivate Nigerian government in dealing with oil pollution and oil companies.

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<sup>60</sup> Environmental Resources Manager Ltd "Niger Delta Environmental Survey" Final Report Phase 1 Vol. 1 p.249

<sup>61</sup> (1990) 5 NWLR (Pt.150) 322

<sup>62</sup> (1960) SCNLR 121

### **3.3 JUSTICEABILITY AND ENFORCEMENT OF ENVIRONMENTAL RIGHT**

Several issues have to be addressed in this regard because a number of controversies have arisen. First some opponents of the recognition of a right to environment have claimed that the claim is too wide-ranging, cannot be judicially enforced and thus not a human right. It must be noted that human rights are by themselves confrontational rights. Hence, the possibility to bring a claim to court is not a fundamental characteristic of a right given that a large part of the realization of human rights relates for instance to domestic policy making by state, and some rights may be not or partially enforceable before a tribunal.

Another reason to distinguish enforcement and existence of the norm stems from formulation of human rights on a universal level. Most rights can be formulated either as obligation of fulfillment (the right to food) or obligation of abstention (the right to be free from hunger) one should not examine only the wording but also the substance of the right. Eventually, justiceability depends on whether a specific meaning can be attributed in a particular case.

One should not overlook fundamental differences between human rights and environmental law, the perceived necessity to bring environmental considerations into the human rights sphere stems from the need to assert environmental preoccupations as a fundamental consideration and to benefit from the more elaborate machinery offered to citizens by the human rights instruments. The contents of a right to environment

embrace fundamentally the whole of environmental law and represent the fundamental tenets on which international environmental law has been built.

The Indian courts have long regarded environmental protection as a fundamental human right, and have through case law, protected the fundamental right to a pollution free environment. In *Ratlam Municipality v Vadhi Chad*,<sup>63</sup> the residents of a locality within limits of *Ratlam Municipality* tormented by stench and stink caused by open drains and public excretion by nearby slum dwellers moved to court under Section 133 of Criminal Procedure Code to require the municipality to perform its duty towards members of the public. On appeal to Supreme Court, the court held that public nuisance caused by pollutants being discharged by big factories to the detriment of the poorer section is a challenge to the social justice component of rule of law. Also the Indian court in another case treated right to pollution free environment as part of right to life guaranteed in Article 21 of the Constitution of India in *T. Damodhar Rao v Municipal Corp of Hyderabad*.<sup>64</sup> The land in question was reserved under the approved development plan for purposes of recreational park, the life insurance corporation and the income tax department claimed rights to use the land for residential purposes. The court held that:

*The very purpose of preparing and publishing development plan is to maintain an environmental balance. The object...would be utterly defeated if private owners of land in the area allowed to build residential houses therein. And this contrary to Article 21 of the Constitution*

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<sup>63</sup> Ramani Abah & Co, Report on Texaco Apoi 20 Oil blowouts Rivers State (2 Vols) Port Harcourt 1980

<sup>64</sup> 67 A.I.R.S.C.P 1622 (1980)

The court also held that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 embraces the protection and preservation of nature's gifts without which life cannot be enjoyed.

Some judicial organs in the field of human rights have striven to interpret some of the established right in relation to environmental protection. In this way environmental conservation evolves into a new interpretative element to right that were established.

Unlike the current trend and awareness of human right nature of environmental protection in all above mentioned jurisdictions as seen in both statutory provisions and case law, the situation in Nigeria is very far behind. The human right concept of environmental protection has not gained much awareness and the level of enlightenment in the direction is still very low.

The peculiar nature of oil prospecting, spillage and pollution in Nigeria as well as other African countries and its adverse toll on environmental rights of the indigenous of those areas obviates the need to make environmental right a justiceable right, whether or not the plaintiff is able to prove damage under any of the common law tortuous theories.<sup>65</sup>

Yet it is surprising that after over 50 years of oil exploitation and environmental degradation even from other industries, the 1999 Constitution in Nigeria is still couched in this sour terms. Our case law has not also recognized the need to elevate the environment to its proper place as the umbrella right, under which the right to life, dignity of human person, health and all other right finds their feet. Even in cases that

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<sup>65</sup> Op.cit Ehusani A. Jonathan p.188

actually gets to court apart from the issue of locus standi, the courts just decide on the basis of common law theories of nuisance, negligence or trespass without any attempt to draw the nexus. Not to talk of seeing an infringement of environmental quality as an infringement of the guaranteed rights of the victims that demands redress under the fundamental rights enforcement provisions.

### **3.4 LAW RELEVANT TO ENVIRONMENTAL POLICIES IN NIGERIAN**

African has made the most outstanding contribution to legal recognition and enforcement of environmental rights. This has done through the African Charter on Human and Peoples Right. The Charter provide that, “all people shall have right to a general satisfactory environment favourable to their development”.<sup>66</sup>

The above is a major breakthrough as it links the right to a healthy environment clearly with development. It has provided a basis for national legal action within the African sub-region. The Supreme Court of Nigeria held in the case of *Attorney-General Ondo State v Attorney-General of Federation*,<sup>67</sup> and *FRN v Amache*<sup>68</sup> that the National Assembly could legislate on any of the fundamental objective and directive principles of state policy to make it enforceable. Thus, the key national legislations including the Federal Environmental Protection Act (FEPA) which has been repealed and replaced by the National Environmental Standards and Regulations Agency Establishment Act (NESREA).<sup>69</sup>

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<sup>66</sup> Article 24

<sup>67</sup> (2002) 9 NWLR (Pt. 772) 222, 272

<sup>68</sup> (2004) Vol. 14 WNR 1 (SC)

<sup>69</sup> 1990 and 2007 respectively

The Constitution provides for a fundamental right to life in its Section 33(1) and the right has been interpreted to include the right to clean, poison-free, pollution free and healthy environment.

The below tables 1 and 2, is to indicate environmental policies enacted between 1930s-1990s, and the second table indicates ranking of major environmental problems, social issues and priorities.

**Table 1: Environmental Policies Enacted Between 1930s and 1990s**

S/No	Policy	Year of Enactment
1	<i>The Forestry Ordinance</i>	1937
2	<i>The Eastern Region Forest Law</i>	1955
3	<i>The oil pipeline act</i>	1958
4	<i>The wild animals preservation law (western region)</i>	1959
5	<i>The forestry ordinance with amendment (northern Nigeria)</i>	1960
6	<i>The wild animals law (northern region)</i>	1963
7	<i>The wild animals law (eastern region)</i>	1965
8	<i>The forestry amendment edict (western state)</i>	1969
9	<i>The petroleum drilling and production act</i>	1969
10	<i>The sea fisheries decree</i>	1971
11	<i>The sea fisheries regulation</i>	1972
12	<i>The wild animals preservation (law, Lagos state)</i>	1972

13	<i>The forestry amendment edict (Western state)</i>	1973
14	<i>The wild animals law amendment edict (North-Eastern state)</i>	1975
15	<i>The wild animals law amendment edict (Kano state)</i>	1978
16	<i>Exclusive economic zone decree</i>	1978
17	<i>The Kanji Lake national park decree</i>	1979
18	<i>The endangered species decree</i>	1985
19	<i>National conservation strategy for Nigeria</i>	1986
20	<i>The Natural Resources Conservation Council Decree</i>	1989
21	<i>Federal Environment Protection Decree</i>	1989
22	<i>National Parks Decree</i>	1991

Source: Cited from *Rober Dibia (2000)*<sup>70</sup> Understanding Policy in Nigeria:

**Table 2: ranking of Major Environment Problems, Social Issues and Priorities.**

<b>Problem Type</b>	<b>Problem Subset</b>	<b>Priority Ranking</b>
Natural Environment	Coastal/River band erosion	Moderately High
	Flooding	Moderate
	Sedimentation/Silt	Low
	Substance	Low
	Exotic (Water Hyacinth)	High
	Land Degradation/Soil Fertility Loss	High

<sup>70</sup> A Twenty-First Century Approach. Lagos: Nigeria, Mbeyi and Associates (Nig) Ltd. P. 133

Development Related	Agricultural Decline/Shortened Follow	High
	Delta Forest (Mangroves)	High
	Bio-diversity Depletion	High
	Fisheries Decline	High
	Oil spillage	Moderate
	Gas flaring	Moderate
	Sewage and Waste Water	High
	Other chemicals	Moderate
Socio-Economic Problems	Poverty	High
	Unemployment	High
	Communities-Oil Company Conflict	High
	Intra-Community Conflicts	High
	Intra-Community Conflicts	Moderate
	Conflicts over Land	High
	Inadequate Compensation	High
	Displacements	Moderate
	Decay in Societal Values	High
	Poor Transportation/High cost of Fuel	High
	Housing Pressure/Infrastructure Decay/Crime	High

Source:<sup>71</sup> *Maduka W. O. "evolving Vibrant Communities for Development". (1998)*

<sup>71</sup> *Maduka W. O. "evolving Vibrant Communities for Development". (1998)*

There is no doubt that the Nigerian government during the pre and post independence era, have attempted to enact various environmental policies geared towards the regulation and control of the activities of both the public and private sectors, such as pollution disposal of hazardous and toxic wastes which affects the health of the people directly and indirectly. The passage of these laws clearly show that, the government has been serious in the protection, conservation and safety of important natural resources including plants, animals and other living things in the river, seas and oceans.

Again, the seriousness in the enactment of these laws has been clearly demonstrated by the passage of many other laws such as the Minerals Act of 1958, Mineral Oil (Safety) Regulations Act 1963, Oil in Navigable Waters Act of 1968, Endangered Species Act 1990, Quarries Act 1990, Sea Fisheries Act Cap of 1990. The creation of the Environmental Protection Agency (EPA) by Decree 58 of 1988 as an overall agency with the responsibility of protecting the Nigerian environment, further demonstrate the seriousness of the Nigerian government. However, it is clear that effectiveness of all these laws is in doubt due to poor implementation strategies and other logistic problems which may be numerous.

Environmental degradation connotes the deterioration of the physical environment through the activities of man by the displacement of natural landmarks and the introduction of pollutants, which in turn foul the air, water and land; thereby endangering the life of organisms including human lives.

Much literature have emanated on the consequences of environmental problems particularly as they affect the Niger Delta region of Nigeria due to the activities of oil exploration and exploitation. Odogbor (2005) enumerated the effects of oil spillages and industrial wastages on the cultural, religious, economic and political live of the people. He then pointed out the serious negative implications these effects have had on the people on all the spheres of lives of the people in the affected communities in Nigeria.

In view of the Nigerian government's recognition of the damaging effects of the environment through floods, droughts, forest fires, technological accidents such as oil spills, industrial chemical effluents, dumping of toxic wastes and contamination of rivers, lakes, soil, air and other forms of pollutants of the environment. Consequently, the Nigerian government enacted various environmental policies between the 1930s and the 1990s. The table below shows the various enactments of the Nigerian government concerning its environment within the stated periods.

On the other hand, another scholar (Maduka, 1998) catalogued major environmental problems affecting the Niger Delta region in particular where a compendium of major environmental problems cut across the entire natural environment, livelihood, aspiration and the entire socio-economic spectrum of the Niger Delta region of Nigeria. These damages can hardly be quantified in Naira and Kobo and the impacts are of very serious consequences. The situation as of today may likely remain the same or even worse.

The environment through all these laws and regulations are commendable indeed. The writer's next task is to examine what various impacts all these regulations have had on the Nigerian state.

## CHAPTER FOUR

### LEGISLATION AND ENFORCEMENT

#### 4.0 INTRODUCTION

Following the dumping of toxic waste in Koko in the former Bendel State in 1987, the Federal government promulgated harmful wastes decree to provide legal framework for the effective control of disposal of toxic hazardous waste into any Environment, within the confines of Nigeria. This was immediately followed by the creation of Federal Environment Al Protection Agency (*FEPA*) in 1988, charged with the overall responsibility of protecting and developing the Nigerian Environment.

Apart from the *FEPA Decree* of 1988, the Nigerian government through Decree 86 of 1992 promulgated a law on Environment al impact assessment (*EIA*) which aimed at protecting the Nigerian Environment, by making it compulsory for any project that may have adverse effects on the Environment. It sought to assess the likely or potential Environment al impact of proposed activities, including direct or indirect cumulative, short-term and long-term effect on Environment.<sup>72</sup>

By virtual of section 6, of the Environmental impact Assessment Act, Environmental impact assessment (*EIA*) means “in respect of a project, an assessment of

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<sup>72</sup> Nwilo & Badejo, 2008

the Environmental effect of the project that is conducted in accordance with this Act any regulations made there under”<sup>73</sup>

#### **4.1 IMPACT OF ENVIRONMENT POLICIES IN NIGERIA, ESPECIALLY THE OGO NI LAND**

Environmental impact assessments are usually conducted on proposed project before they are implemented. However this does not foreclosed subsequent application of the process on that same projects. The process commence from the initial stage of the proposal of the project through implementation to commissioning and operation. The Environmental impact assessment may include studies on the vegetations, animals, soil erosion, water contamination, the weather, urban migration, human health and labour including the biological, physical and socio-economic impact of the proposed developmental action. It equally seeks to discover means to prevent, mitigate or compensate for the negative impact of the development on the Environment.

The objectives and significance of Environmental impact assessment is to ensure that development projects are Environmentally friendly and sustainable. Section 1 of the *EIA* Act set the objectives as follows;

- a. To establish before a decision is taken by any person, authority, corporate body or unincorporated body, including the government of the federation,

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<sup>73</sup> Usman A. K. Environmental Protection Law and Practice Ababa Press Ibadan, 2012

- state or local government intending to undertake or authorize the undertaking of any activity. Those matters may likely or have an Environment or an Environment al effect on those activities on which shall first be taken into account;
- b. To promote the implementation of appropriate policy in all Federal lands (however acquired) states and local government areas, consistent with all laws and decision making process;
  - c. To encourage the development of information exchange, notification and consultation between organs and persons when proposed activities are likely to have significant Environment al effects on boundary or trans-state or on the Environment of bordering town and villages.

The protection and preservation of the Environment is now perceived as being of crucial importance's to future of the country section 20<sup>74</sup> in the case of *Oranto Douglas Vs Shell Petroleum Development Company Ltd*<sup>75</sup>. An effort to put the EIA permissibility of public participation through judicial means was aborted by the federal high court Lagos. The Plaintiff *Oranto Douglas* sought a declaration that the Defendants cannot lawfully commission, carryout and operate their liquefied natural gas (LNG) product without complying with the provision of the Environmental impact assessment Act 1992 and further sought a restraining injunction against the Defendant, Court dismissed the case and held that:

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<sup>74</sup> 1999 constitution FRN laws of federation 2004

<sup>75</sup> Unreported suit No. FHC/CS1573193

*“The claim is baseless and that the Plaintiff has shown no prima facie evidence that his right was affected nor any direct injury caused to him”*

The holding of the above case may not be unconnected with the fact that right to clean Environment is not expressly provided for under the Nigerian constitution. However the African charter on Human and people’s rights which Nigerian has ratified and domesticated her *corpus juris* by enacting in 1983 the African charter (Raticification and enforcement) Act.<sup>76</sup> By the provision of this act the right to clean Environment is now part of Nigerian law, premised on the background of Environmental protection, are other important provisions of the charter, the article 9 which states that every individual shall have the right to receive information, also article 13 provides for right to participate, and more importantly article 16 provides that “every individual shall have the right to enjoy the best attainable state of physical and mental health”.

The function of implementing and protecting these rights is entrusted to the African commission on Human and people Rights. Article 15 (xii) further reiterates the right and mandates the competent authorities to take measures to guarantee the right. The Indonesia Environmental Management Act (*EMA*) also recognizes the right to a healthy Environment. Article 5(1) state;

*“Every person has the same right to an Environment which is good and healthy”.*

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<sup>76</sup> Now ACHIR Cap A9 LFN 2004

This is accompanied by a provision that guarantee a right to Environmental information and the right to participate in Environmental decision making process. In order to assist victims and NGOs to fight for the right to a healthy Environments, in Indonesia, *EMA* also guarantees various Environmental procedural rights, e.g. the right to *NGO's* to bring law suits as class or representative actions, as a result of the pressure from pro-democracy and pro-reform activists in Indonesia, the special session of the people's national assembly held in October, 1998 promulgated the National Human Rights charter which includes "every person has a right to good and healthy Environment"<sup>77</sup>.

Despite the elaborated and comprehensive laws and regulations passed by the government over the fears. It is uncertain whether much has been done in terms of implementation and enforcement of these laws by the appropriate agencies. As Nigerian government is usually good at formulating public policies but grossly fall short when it comes to implementation.<sup>78</sup>

It is very unfortunate to state that paternalistic attitude of some Nigerian judges towards matters relating to Environmental hazards created by the companies have rendered the enforcement of Environmental law ineffective. Some members of the judiciary as noted by *Ebeku* (2003) have been reluctant to give orders compelling companies, whose operations are damaging to the Environment , between 1990 and 2004 *Osho* (2008) asserted that there have been several oil related cases filed in the Nigerian

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<sup>77</sup> Circle of rights, a publication of international human rights internship programmes (2000) pg 292.

<sup>78</sup> Op – Cit p. 427

court by affected Nigerians ranging from pollution from oil exploration, loss of incomes, loss of properties, contaminations of drinking water, etc. few cases need to be mentioned here *Umudje V. Shess-BP*<sup>79</sup> here the plaintiff alleged that overflow of an oil waste pit constructed by the Defendants caused damage to their farms, ponds and fishing lakes. The trial court found in favour of the Plaintiffs and the Supreme Court on appeal confirmed the judgment. *Shell-BP V. Usoro*<sup>80</sup> Plaintiffs alleged with success at the trial court that explosives detonated near his building by shell in the course of seismic survey caused substantial damage to the building. Also in *Seismograph Service V. Mark*<sup>81</sup> at the High court of appeal, the decision of the lower court was overturned on the ground that Plaintiffs could not prove negligence on the part of the defendants.

This and several other cases shows the difficulties which litigants face in proving causation or damage to their property resulting from oil operation. *Shell-BP V. Isaiah*<sup>82</sup> the Plaintiffs claimed damages for the pollution of their swamp land due to spill from shell pipelines. Court of appeal held the defendants liable and awarded damages in favour of the Plaintiffs. Also in *Shell V. Farrah*<sup>83</sup> the plaintiffs – community brought an action against Shell because of damage to their farmland resulting from the Bomu II brow out. The trial court awarded compensation to the plaintiffs for economic loss from the incident. The court of appeal confirmed the award.

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<sup>79</sup> (1975) 9-11 sc p. 155

<sup>80</sup> (1960) SCLR p, 121

<sup>81</sup> (1993) 7 NWLR (Pt. 304) p. 203

<sup>82</sup> (1997)3 NWLR (P. 508) p. 236

<sup>83</sup> (1995) NWLR (P. 382) 148

In most of these cases and similar ones, the courts are said to have refrained from making a decision on how to remedy the situation of oil spillage claim, lost of income from fishing and farming, pollution of drinking water and crops, damage to health. Instead of making orders to address the complaints in terms of damages due to the physical Environment al of these communities, they settled for compensation of the affected complaints. Therefore the Environment al laws that were meant to protect human beings and other living things are thrown to the dogs<sup>84</sup>. However hope is not completely lost as it is hoped in some circles that, the judiciary may in future begin to base cases of Environment problem brought to court not merely to award monetary compensation without addressing the preservation of a healthy Environment. This type of thinking could be regarded as a mere speculation of things that may likely or not likely to be. The multinational oil companies who are normally being complained against by oil communities on gas flaring more likely will always win. Cases against them on legal grounds as they have a lot of financial capacity to fight their cases instead of obeying Environment al laws and Environment al problems in the area, while the report of oil companies always insist that their operations are conducted with the highest Environment al standard and not responsible for most of the Environment al problems in the area. The third and probably the most important factor for the inability to determine the impact of oil development, is that oil development is one of the several human activities in the area affecting the Environment, other activities include farming, fishing, forestry and industrial activities. These activities, combined with oil and gas development and the

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<sup>84</sup> Op – Cit p. 427

fragile nature of Niger Delta Environment post great Environmental dangers to the area. The World Bank Environmental study identified three major Environmental problem in Niger Delta Area<sup>85</sup>. Thus;

1. Land resource degradation as a result of erosion, flooding, sea-level rise and agricultural and degradation.
2. Renewable resource degradation, resulting from intensive fishing, habitat degradation, forestry and biodiversity loss.
3. Environmental resources degradation as a result of oil development, industrial pollution, gas flaring and poor solid

#### **4.2 NEED FOR FUNDAMENTAL RIGHT TO ENVIRONMENT**

Rapid development connotes the situation where the attention accorded to Environmental protection is insignificant compared to the rate of exploitation of the Environment unfortunately the presumption in favour of development has been the pattern followed by your policies.

Nigeria had for long embraced the concept of rapid industrial growth as the vehicle for the overall economic development. Since independence, various national development plans have consistently emphasized industrialization as the means of achieving rapid increase in the nation's productivity capacity as well as improving the standard of living of the citizens. Environmental degradation has been on the increase

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<sup>85</sup> Act, Cap A 9 LFN 2004

with the advent of the oil industry in Nigeria. The world today is a global village owing to accelerated development measures, but any nation that jumps on board just for development sake without consideration for its Environment would surely meet her Waterloo.

The need for constitutional provision of a fundamental right to Environment cannot be over emphasized. As has been discussed earlier in *Gbemre's* case not yet abiding authority in Nigeria and therefore cannot be relied upon. Though it may be argued that the right to Environment may be enforced under the African charter on human and people's rights.<sup>85</sup> it is sad to know that much of the world water and land are now partially poisoned by chemical waste for instance in the Ogoni land of Niger Delta of Nigeria. It is pathetic that our approach towards building and implementing our Environmental laws has been rather dismal. Despite the known negative effects of industrial pollutions. Our Environment remains constantly bombarded by factory smoke, smoke from cars and aircraft etc. the smoke combines with naturally occurring fog to form smog which has long been recognized as a potential cause of death for those with respiratory problem.<sup>86</sup>

In the Niger Delta Area which includes the Ogoni land recent industry source reports indicates little or no positive changes both in terms of the number of incidents and volume of oil spilled. Between 1998 and 2001 a total number of eight major spills were reported by the oil spill intelligence report with over 67,045 barrels (over 2.8 million us

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<sup>86</sup> World Bank, Note 1, vol. 1 pp 47 – 48

gallons) of oil spilled into the Environment.<sup>87</sup> The reports indicate that 1998 was the worst year within the period in terms of both the number and volume of oil spilled. This incidence was soon followed by another devastating leakage caused by pipe line failure of the line linking shell's Jones Creek to its terminals in forcados, which caused the spillage of about 19,992 barrels (840,000 us gallons) of oil. That caused substantial Environment al damage by polluting the brackish water creeks and mangrove forest.<sup>88</sup> However a number of scientific studies have been conducted on the impact of hydrocarbon pollution on the Environment has allayed some of the worst fears o the impact of oil spill on the marine Environment. The summarized studies by the World Bank report<sup>89</sup> indicates that oil pollution caused irrevocable damage to the marine Environment and under tropical and subtropical conditions, a significant part of the acutely toxic substances in oil is degraded through weathering within 36 to 48 hours. This made the companies to argue that the effects of oil spill are largely temporary and localized.<sup>90</sup> However this conclusion cannot be supported in view of the fragile nature of the mangrove Environment and impact of the mobil Idoho spill. The World Bank report acknowledged that inspite of the weathering effect on the oil spill, many of the properties of the oil will remain and may cause Environment al consequences particularly in plant in the tidal zone, such as mangrove, the Environment impact of spill is also determined by the quality and how quickly the cleanup operations is conducted by the oil companies and

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<sup>87</sup> [www.nelson.com](http://www.nelson.com), accessed on 14<sup>th</sup> January, 2014

<sup>88</sup> Compiled from oil spill intelligence report various issues. 1998

<sup>89</sup> 2001 4 ibid, vol. 21, Nos. 14 & 17, 1998

<sup>90</sup> ibid

this is sometimes affected by the restiveness in the Ogoni land area which often hampers clean up operations.

Scientific research so far has shown that gas flaring undoubtedly contributes significantly to the green house emissions and atmospheric pollution that cause global warming, currently affecting the world at large. Nigerian gas flares as of 1995 is estimated to be releasing annually 35 million tons of carbon dioxide and methane (main greenhouse gases responsible for global warming).

Within the local Environment, gas flares is said to cause high noise level and air, surface soil and heat, temperature increase within 110m of gas flares.<sup>91</sup> According to studies this caused the soil surrounding to be scorched with parched vegetation and farm lands. In the absence of comprehensive study on local impact of gas flaring in Niger Delta, negative Environmental impacts of gas flare has become a difficult or impossible task. Looking the above one can clearly see why the need for fundamental right to Environment. For it become clear that a good Environment and development that facilitates a high quality of life could be obtained and sustained only through development that has Environmental concern. Which was reflected in the United Nation's conference on human Environment and development held in Stockholm in 1972.

The relevant outcome of the conference was an action plan which contain 106 recommendations, but the most outstanding impact of it was principle 21 which states:

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<sup>91</sup> ibid note 3, p 8

*“States have responsibility to ensure that activities within jurisdiction and control do not cause damage to the Environment of other states or areas beyond the limits of their national jurisdiction”.*<sup>92</sup>

Since the Stockholm conference various governments and development agencies have taken various institutional, legal and technical measures to ensure that development projects have the Environment in contemplation.

The federal government of Nigeria on December 10<sup>th</sup> 1992 promulgated the E. I. A. decree number 86 of 1992 which made the application of the process of E. I. A. decree on all major development projects mandatory throughout the country. The Environmental impact assessment act originally came into being after the earth summit held in Rio de Janeiro Brazil in 1992.

### **4.3 ENFORCEMENT MECHANISM ON ENVIRONMENTAL DEGRADATION**

Different mechanisms may be adopted in the enforcement of Environmental rights. Some of such enforcement mechanism which are applied indifferent jurisdiction with different level of effectiveness, will now be highlighted.

#### **4.3.1 PRESSURE GROUPS**

Pressure groups like Non-Governmental Organizations (NGO's) can help in the enforcement of Environmental rights. This takes the form of media campaigns,

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<sup>92</sup> Akinbami J. A. K et al., impact of Environmental degradation in Nigeria 1996 NRF vol. 20, No. 4 pp 319 – 331

publication and distribution of leaflets, magazines and books, presentation of bills of Environmental rights to the legislature and even instituting actions to enforce Environmental rights. The tissue here is that pressure groups depend mainly on persuasion for success, and that is not always effective.

#### **4.3.2 FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE**

Where the Environmental right of a person has been breached, a person may institute an action by way of fundamental rights (enforcement procedure) rules. The Environmental rights enforcement may be achieved through the procedure by enforcing the fundamental right to life guaranteed by the constitution. The main problem the procedure is that many people many people encounter technicalities in bringing action in a representative capacities.

*Okechukwu v. Etukokwu*<sup>93</sup> in that case technicalities prevailed over justice and the matter was struck out on preliminary objectives, without looking into the merit of the case. The court ruled that the suit could not be maintained in a representative capacity and also that for wrong joinder of cause of action. The suit could not be maintained. That is very unfortunate and can constitute a major hurdle in enforcing Environment al right via the fundamental rights enforcement procedure. Especially the issue with ogoni land where Environment al pollution is usually colossal and widespread in effect, affecting many people and a community, action are usually brought in a representative capacities to avoid multiplicity of actions and also to minimize cost, as victims are often poor and

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<sup>93</sup> A. K. Usman op – cit p 136.

helpless. An Environmental rights suit should therefore be seen as belonging to a special class and not to be defeated by unnecessary technical rules.

### **4.3.3 PUBLIC INTEREST LITIGATION**

Where the collective Environmental right of a citizen is breached, it is for the individual to bring an action to enforce the right. The problem is the technical issue of *Locus Standi*, for a person to succeed in this form of litigation, he has to show that he has suffered injury over and above other members of the public. As held in the case of *Amos & ORS V. Shell BP PDCN Ltd & Amor*<sup>94</sup> otherwise only the attorney-general is entitled to institute an action. However, the Supreme Court of Nigeria held that section 6(6) (b) of the constitution has the effect of empowering a private person to sue in the public interest without obtaining the consent of the Attorney-General or joining him as a party.<sup>95</sup>

### **4.3.4 JUDICIAL INTERVENTION**

The judiciary is said to be the last hope of a common man, for its role of interpreting laws and the constitution. The judicial intervention often comes to the aid of the oppressed citizens by creative interpretation of laws. The courts in Nigeria have done creditably in this aspect.

The creative intervention of the judiciary to interpret the right to life to include the right to a healthy and safe Environment in the different jurisdictions discussed is an

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<sup>94</sup> (1998) 8 NWLR (Pt. 562) 511

<sup>95</sup> (1974) I.R.S.L.R at p 23-24

illustrative of the point made here. In Nigeria is the authority of *Gbmre and Shell PDCN Ltd & Ors.*<sup>96</sup>

Is only persuasive as the federal high court is a court of coordinate jurisdiction with other high court of states. The Juris prudential value could have been a lot higher if it has been a decision of the court of appeal or decision of Supreme Court of Nigeria in keeping with the hierarchical order and the operation of judicial precedent. Another contributing problem is that judges are often influenced in their interpretation of laws by their backgrounds, orientations and beliefs. This informs the character of judges as either strict and conservative or liberal and progressive.

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<sup>96</sup> See *Adediran and Amor V. Inter-land Transport Ltd* (1991) 9 NWLR (PT. 214) 155

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATION

#### 5.1 INTRODUCTION

Ogoni land is part of the federal republic of Nigeria, which was established by the British and become independent after the Second World War. Ogoni land been an oil rich territory within the river state with an approximate population for five thousand (5.000) people. However, tension in the area began to mount, when in 1990 leaders Ogoni Ethnic Group founded the movement for survival of Ogoni people (Mosop) to highlight the grievances of the community, centered on the exploration and exploitation of oil in the area over the years. In August 1990 they sent the ‘Ogoni Bill of Right’ to the Federal Government, and received no response.

A colonial power profiting from oil in the Delta region without bringing benefits to the region. The Ogoni turned out to be the most organized ethnic group and inspired by poet *Ken Saro Wiwa*, organized mass demonstrations against shell, forcing it out. A few years later on 10 November 1995, *Ken Saro-Wiwa* and eight others were hanged by Nigerian Military government.

There is a lot of skepticism regarding the willingness of the state and federal governments, the oil companies to spend money on cleaning up the Delta. Corruption and lack of independent institutions make it difficult to embark on a successful clean-up project including monitoring studies.

In 2010 the UNEP (United Nations Environment program) started a study to get a clear image of oil pollution in Ogoni land, a region where oil production has been on hold for over 18 years, now Ogoni people forced shell out of their region after years of protests against pollution and lack of social development. Ever since, shell and the Nigerian authorities have been looking for a way to appease the region, that is so important for oil production and oil transits, and also flow to shell and the Nigerian state.

The Niger Delta is currently in a difficult situation, as fishing and farming are problematic and there is a lot of anger towards oil companies bunkering and attacks on oil installations continue, causing more oil pollution, clean-up and development are therefore essential for the prevention of new spills, Ogoni land is an important and heavily polluted part of the Delta region.

## **5.2 SUMMARY**

Our discussions so far show that Ogoni land area faces enormous Environmental and socio – economic problems. Particularly the Environmental problems, pre – dates oil development in the area and have emanated from difficult ecological terrain in the region. The socio – economic factors, particularly the Ogoni crises that took the centre state, both nationally and internationally, among the numerous crises in the oil rich Niger Delta. Like many other ethnic groups in the area, the Ogoni’s have been engage in the intra-communal conflict and inter-communal clashes with their neighbouring ethnic groups, particularly the *Andonis* and the *Okrikas*. And that have been with the region way before the commencement of oil production in the area. However oil development brought about a

new dimension to the Environmental and socio-economic crises in the region. Today most of the problems in the Ogoni land and the Niger Delta are attributed to oil activity. It is acknowledged that while oil development has inherent capacity to affect the Environment and social life of the oil communities, the situation in Ogoni land is worsened by deliberate act of sabotage to oil installations by some members of oil communities and the several conflicts persuading the area, generally attributed to the drive by Nigeria to attain nationhood. The oil companies are usually caught up in the middle of these conflict<sup>97</sup>.

The courts are to be commended for being able to enforce environmental right though not provided for in the fundamental rights chapter of the 1999 CFRN in the case of *Gbemre and Shell PDCN ltd* (supra) the resort to inter protective innovations in the enforcement of the fundamental right to life is a way of bridging the lacuna created by the non-induction of the right to a healthy environment in the constitution. Applying the African charter on human and people's rights. (ratification and enforcement) Act<sup>98</sup> court has also provided a basis for environmental rights enforcement. But some judges still sacrifice justice for technicalities, and this is a major hurdle in environmental rights enforcement in Nigeria.

The basis for environment rights enforcement in Nigeria is the 1999 constitution of the federal republic of Nigeria. The constitution provides that: the state shall protect and improve the environment and safeguard the water, air and land forest and wild life of

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<sup>97</sup> Buk journal of comparative law, faculty of law vol. 1 No 1 fall 2005

<sup>98</sup> vol. 1 cap ag LFN 2004

Nigeria.<sup>99</sup> Though this provision is non-justifiable<sup>100</sup> it is submitted that where a law imposes a duty here is a corresponding right enjoyable by the beneficiary of the duty, in this case citizens of Nigeria.

The supreme court in the Attorney-General Ondo State V. Attorney-General of federation<sup>101</sup> that the national Assembly could legislate on any fundamental objective and directive principles of state policy to make it enforceable. Thus the key national legislations including the federal environmental protection Act (FEPA). Which has been replaced by the national environmental standards and regulations agency (Establishment) Act (NESREA)<sup>102</sup> have found constitutional for their operations. Also by enactment of the African charter on human and people's rights, environmental rights as provided in section 20 of the CFRN 1999 have become enforceable in Nigeria. Also section 33(i) of the same constitution guaranteed right to life, which has been interpreted to include the right to clean, poison free, pollution-free, healthy environments.

Environmental and conservation matters fall within the ambit of public international in a number of instances. First, many recourse and environmental questions can only be properly addressed if a number of states adopt common rules for the solution of problems posed. The most frequently cited example being those affecting the entire global community (e.g. high seas, atmosphere). The World Bank, government by public international law, undertakes its operations in compliance with applicable public

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<sup>99</sup> Section 20 CFRN 1999

<sup>100</sup> Section 6(6)(c)

<sup>101</sup> Supra

<sup>102</sup> 1990 and 2007 respectively

international law principles. These are commonly reflected through legal instrument as treaties, conventions or other legally binding multilateral, regional or bilateral agreement. More than 300 multilateral treaties and formal agreement relevant to environmental protection have been adopted since 1869 and many of these carry substantive obligations for the state that are parties to the treaty. In August 2011, the United Nations environment programme published an environmental assessment of Ogoni land a study of oil pollution in Ogoni land in Rivers State.

### **5.2.1 UNEP FINDINGS AND RESPONSE OF SPDC**

The UNEP report contained a number of findings regarding SPDC practices and performance. SPDC reviewed these findings and has taken the following specific actions since the report was published:

- Completed a comprehensive review of its Remediation Management System (RMS) and made a number of changes in line with best industry practice
- Reviewed its clean up and remediation practices and confirmed that SPDC uses Bioremediation as the principal techniques for soil and groundwater contamination. Other methods are used singly or in combination for different contaminant streams, this includes thermal methods, physical methods (fixation), and biochemical methods. Used the same independent third party as UNEP (Fugro) to re-sample the 15 sites identified in the report and has confirmed that the soil remediation is in compliance with regulatory limits. SPDC has since contracted professional service providers to assess ground water impacts at each of these sites and six of these

sites, 24-inch TNP at Bera, Bomu well-8, Yola well 4/5, Yorla well- 8, Yorla well- IO and Sibari - Gbe Bomu well-33 had some shallow groundwater contamination as a result of re-pollution from sabotage activities. Corrective action is ongoing.

- Re-trained contractors and their supervisors on clean up and remediation techniques and assigned dedicated clean up and remediation supervisors to a number of project sites to ensure daily and effective supervision and compliance;
- Convened meetings with relevant government regulators to discuss and clarify aspects of the Environmental Guidelines and Standards for Petroleum Industry in Nigeria (EGASPIN). EGASPIN is currently being reviewed by the regulators in conjunction with oil companies (including SPDC) and an updated version is expected to be published by the regulators;
- In 2012 SPDC completed an inventory of its assets in Ogoniland and initiated on-site physical verification of assets. This exercise, which is a precursor to developing a decommissioning plan will be completed in 2013.<sup>103</sup>

## **IMPLEMENTING THE UNEP RECOMMENDATIONS**

The UNEP report was commissioned by and delivered to the Federal Government of Nigeria. Many of the most important UNEP recommendations — such as the creation of an Ogoniland Environmental Restoration Authority and an Environmental Restoration Fund for Ogoni land — are directed at the government and require the government to take the lead to co-ordinate the activities of the many stakeholders involved.

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<sup>103</sup> [www.shellnigeria.com](http://www.shellnigeria.com) accessed on the 14<sup>th</sup> February 2014.

The Presidential Committee established to review the report, delivered its recommendations to President *Goodluck Jonathan* in May, 2012. Subsequently, in July 2012, the Minister of Petroleum Resources announced the creation of the Hydrocarbon Pollution Restoration Project (HYPREP), with a pledge to fully implement the UNEP report. SPDC welcomes this announcement and has expressed its willingness to support HYPREP in realizing its objectives in Ogoni land.

### **SPDC Action**

Prior to the establishment of HYPREP, SPDC had undertaken a number of activities in Ogoni land, which addressed some of the emergency issues raised by UNEP. For example, SPDC and its joint venture partners are working with the Rivers State Government (RVSG) in financing the emergency supply of 250,000 liters a day of clean drinkable water (one of the UNEP recommended emergency measures) to the most affected communities: Ogale, Okrika and Ebubu. These supplies started two weeks after the report was published. The water, sourced from the Rivers State water corporation, is being trucked to villages by the State Government (RVSG). SPDC and the RVSG have also embarked on a project to construct permanent water distribution facilities to Eleme local government area (IGA) in Ogoni land. Some 25km of new pipelines have been constructed that will provide running water to local residents. The facility is expected to

be commissioned in the later part of 2013. The work is being executed by local contractors, ensuring that economic benefits of the project remain in the community.<sup>104</sup>

In June 2012, SPDC launched a community health outreach programme ‘Health in Motion’ — in Ogoni land. Under this initiative, delivered in partnership with the Rivers State Government, communities and local governments, medical teams toured towns and villages across Ogoni land providing primary health care services direct to communities, including eye testing, dental care, blood sugar testing and cancer screening, HIV/AIDS and malarial tests and minor surgeries. About 35,000 adults and 15,000 Ogoni children benefitted from the health outreaches. In addition to the direct benefits of health care provided, the programme generated valuable health data for the RVSG. Similar health events are extended to other host communities.

Where communities grant SPDC access, the company cleans up and remediates oil spills from SPDC facilities, irrespective of the cause of the spill. SPDC has remediated over 140 impacted sites across Ogoni land covering over 110 hectares since 2004. In Ogoni land, clean up and remediation is ongoing at several locations along our right of way, where we have access, including sites such as 8-dere, Yola Well 10, Akpajo, Biara, Gio and the Ejama Ebubu spill site. The cooperation of communities to grant permission to access the sites has been and will be key success factors in making progress. As UNEP indicated, a thorough clean up of

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<sup>104</sup> Ibid

Ogoni land, which includes large areas not associated with SPDC facilities, will take many years. Before it can be effective, ongoing sources of oil contamination including crude oil theft and illegal refining must come to an end. Otherwise, cleaned up areas will be re-impacted by further contamination, particularly in riverine and swamp areas where water-borne oil can spread from elsewhere causing re-contamination as well as new pollution.<sup>105</sup>

### **Strengthening environmental performance and transparency**

Since UNEP published its report, SPDC has also started working with two organizations to strengthen and provide further transparency around SPDC's environmental performance:

1. In March 2012, Bureau Veritas — an independent international standards verification agency — began reviewing SPDC's emergency spill response and initial clean up practices. Under a contract signed earlier in 2012, Bureau Veritas visited the Niger Delta for a number of weeks once every quarter alongside SPDC and representatives of civil society and NGOs — visited spill sites to verify ongoing work. Tier 2 risk assessments of spill sites are being undertaken in areas where tier-1 assessment indicates impacts greater than 2m below the ground surface. In this way, a complete picture of the depth of impact is known, and remediation is designed as appropriate for both soil and groundwater.

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<sup>105</sup> Ibid

2. SPDC invited the International Union for the Conservation of Nature (IUCN) — a body of academics and environmental NGOs amongst others, to set up an independent scientific panel to advise the company and make recommendations to help restore the biodiversity and habitats at spill sites related to SPDC's facilities. The panel began work in January 2012. SPDC will work closely with IUCN to put into practice those recommendations which relate specifically to SPDC and are appropriate for SPDC to implement.

## **5.2 CONCLUSION**

The UNEP report will provide the first comprehensive overview of the environmental situations in the Ogoni land and region. U.N. environmental programs project coordinator, Michael cowing says this is the largest scientific investigation, that the oil spills have been going on for 10 years, and have not received the kind of attention received by the spill in the Gulf of Mexico, also state that there is a fundamental difference between the two situations. He says the oil spills in Gulf of Mexico and Amaco Cadiz are operational accidents. That what they finding in the Ogoni land is the proliferation of oil spills through criminal activity, through bunkering, theft of oils, by sabotaging oil wells and also sabotaging the main pressurized supply lines.

Nigerian based advocacy group, environmental right action, says UNEP assessment essentially gives Royal Dutch Shell and the Nigerian government a clean bill of health; it

accuses the agency of siding with shell.<sup>106</sup> Besides recourse to such judicial organs as the court of Human rights, various other (non-judicial) means of implementation are often resorted to, to ensure guaranteed human rights e.g. friendly settlements, conciliations, fact-finding. Formal justifiability or enforceability is by no means a definitive criterion to ascertain the existence or otherwise of a right under internal human rights law. Many of these level of elaboration, in order to render them justifiable does not mean they simply do not exist. The existence or otherwise of a right should not therefore be confined to the justifiability of its,<sup>107</sup> attention is to be focused on the nature of obligations for the observance of the rights.

For instance it is certain that obligation under the UNCSCR were drafted in such a way they cannot be easily made justifiable. However, the obligation exists and cannot in any way be neglected. Regarding justifiability, there are right which simply cannot be properly vindicated before a tribunal by their active subjects. However in the specific case of right to a healthy environment, if interpreted as the right to conservation, then it can be implemented like any other individual right, it is therefore taken to be a “procedural” right, the right to due process before a competent organ right and thus assimilated to any other right guaranteed to individual and groups of individuals. This entails the corollaries, such as right to be informed, right to participate and right to available and re-effective domestic remedies.

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<sup>106</sup> <http://www.viabews.com>

<sup>107</sup> A. Eide – realization of social and economic rights and the minimum threshold approach

There is the need for Nigerians in general to take environmental issues with all seriousness. Both the environmental impact assessment act and the UNEP and other enactment are designed to enable us live in a well planned, healthy and a protected environment. It is our nonchalant attitude towards our environment that resulted to recent flooding of some our major cities in Nigeria.<sup>108</sup> It is therefore very important for Nigerians to abide by the provisions of the environmental Act and laws to have provisions of the healthy environment. So far the regulatory regime and the political structures in Nigeria today have failed to provide the necessary answers to the numerous problems in the ogoni land and the Niger Delta that might be attributable to oil development. It is hope that government, the oil company and the oil communities would gear more efforts to finding realistic solutions that will minimize the adverse impact of oil development on the communities while enhancing the benefits of the resource development to the communities and to the country at large.

The right to environment as well as the right to development has both individual as well as collective (group) dimensions, as far as implementation is concerned, all rights be it individual or collective dimensions as far as implementation is concerned all rights whether individual “or” collective are exercised in a social context. They all have social dimensions since their vindication requires intervention in varying degrees of public authority.

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<sup>108</sup> Ibrahim A. an overview of the scope of environmental impact assessment (E.I.A.) (A.B.U.J.P.C) Vol. 1 No. 5 2011 p. 8

### 5.3 Findings

Limited facilities and resources for education and training of professionals and technical personal.

Lack of commitment to environmental laws and policies

Lack of support in terms of equipment, technical information, and continuing education

Informal process that allows circumvention of formal requirement in E A and development decision

Absence of environmental concern in national policy formulation

- limited facilities and resources for education and training of professional and technical personnel
- Inadequate salary scales, benefits and incentives
- Lack of career paths for technical and professional staff
- Lack of support in terms of equipment, technical information, and continuing education
- Civil inadequate operating budgets
- Informal process that allow circumvention of formal requirement in EA and development decision-making
- “hands off” public administrators, lacking in local knowledge

- Lack of commitment to environmental laws and policies
- Weak leadership in institutions, caused by lack of autonomy and accountability

#### Environmental policy

- Absence of environmental concerns in national policy formulation
- Lack of clear environmental policies and/or commitment to them
- Weak or nonexistent environmental laws regarding resource use, resource protection environment quality, pollutant discharge, waste disposal, facility siting, occupational safety and health
- Lack of legal authority for community involvement in development decisions
- Unrealistic regulations to implement the laws that exist
- Weak enforcement of laws and regulations
- Lack of incentives for compliance

#### Organizational structure

- Lack of entities of perform one or more key function
- Vertical or horizontal fragmentation of environmental responsibility and authority
- Environmental agency (ies) isolated, not integrated into economic development planning and decision-making
- National environmental agency limited in authority to influence resource development decisions by individual line agencies or to resolve conflicts among them

- Structure not conducive to intersectional coordination
- No agency to perform objective review of EA
- Implementing agencies without EA capabilities
- Implementing agencies not well-staffed for operation, maintenance and monitoring over life of project
- Inadequate provision for collection, analysis and utilization of monitoring data

#### Environmental assessment

- Lack of procedures for project screening, EA preparation and review
- Lack of effective monitoring programs to provide baseline data for EA
- Lack of national and international information exchange
- No procedure to identify and resolve intersectional issues or pursue integrated planning across sector or within regions
- No feedback of results of monitoring and supervision to agencies responsible for taking remedial action or to those who could use the information to improve future projects
- Deficient planning processes
- No comprehensive environmental education programs

#### Financial issues

- Lack of funding for the EA process and for follow-up functions (supervision, monitoring measurement of impacts, feedback)

- Environment not given priority in economic planning and budgets
- Unreliable or ineffective cost recovery systems for public infrastructure and service projects.

Inadequate provision for project operating and maintenance costs in planning and budgeting processes.

#### **5.4 Recommendations**

Where multiple projects are anticipated in a sector or region or where a project is an increment of a larger one, such as a segment of a high way or oil of several waste water treatment plants. The T.M and EA specialist should explore optional for strengthening local capacity to undertake the EAs, and implement their findings. One option is to be evaluated is the creation of an environmental unit with EA capability within the implementing agency.

Regardless of the option chosen, the T.M. should ensure that the institution responsible for implementing the project has personnel assigned during the unep exercise on Ogoni land and design phases to work on the preparation, review, and application of environmental documentation, otherwise they will miss the opportunity any project provides for invaluable on the job training in the unep. The concept of twinning creating a working partnership between institutions can be applied to unep and other aspects of environmental management for it provide the opportunity for staff of a developing country institution to participate in the work of a similar organisation thus exchanging not

only skills but also management and organizational experience. It is also more flexible than technical assistance by consultant. National policies, laws, sanctions and incentives should be consistent, a situation in which there are strong incentives for industrial expansion, inadequate laws to conserve sensitive natural areas, and weak penalties for failure to implement E. A. recommendation or control pollution is one in which it will be difficult to effect compliance with environmental policy and standards.

Healthy Environmental is one of the numerous issues raised in the national condense 2014 been vital, in line with that the constitution of niens should be around to provide for environmental right in chapter IV and that will make the right directly enforceable by the people. Judges too should de-emphasize procedural technicalities in the interest of environmental justice.

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