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LINGERING OIL POLLUTION IN THE NIGER DELTA: A CASE FOR ENFORCING ENVIRONMENTAL LAWS AND POLICIES

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Abstract

It is an axiomatic fact the nature of oil pollution crisis devastating the Niger Delta region of Nigeria. For the past seven decades, oil exploration activities have disproportionately affected this region through environmental degradation, contamination of drinking water, destruction and extinction of wildlife habitat, creeks, farmlands, other property and means of livelihood of the inhabitants, depletion of forests and severe chronic health hazards for residents of the region. This poses existential threats to both the present and future generations within the region, and obviously, inconsistent with the global pursuit of sustainable development goals and intergenerational equity. The residents are persistently seeking justice but it is far-fetched. The authors therefore argued the efficacy of the relevant legal framework in protecting the rights of these victims and the succeeding generations. Consequently, the authors maintained that the catastrophic impacts of the pollution in this area and the failure of the government and the legal frameworks to accord them the protection they deserve leave much to be desired. The paper concluded by recommending strict enforcement of the relevant local and international legal frameworks to safeguard not only the lives of the residents of the region but also their ancestral lands and future generations.

Keywords: Environmental degradation, Niger Delta region, oil pollution, environmental justice, generational equity

1. Introduction

The presence of oil industry in the Niger Delta region of Nigeria which ordinarily would have been a blessing to the host communities has rather become a curse and source of pain. The impact of the abundant oil wealth in the region is never felt as the people are impoverished due to destruction of their sources of livelihoods.¹Persistent oil spillage in massive scale results in water contamination and destruction of farmlands and local ecosystems. Many of the reported oil leakages result from the corrosion of oil pipelines due to lack of regular inspection and maintenance by the oil industries. Others result from structural/equipment failure and delayed pipeline integrity management systems.²Experts have asserted that restoration of the oil impacted areas could take up to half a century of concerted efforts thereby extending into the future and jeopardizing the rights of the present and the incoming generations.³

Decades of gas flaring has caused unimaginable health hazards such as cancer and respiratory diseases to the residents of the region and uncountable premature deaths in clear violation of the people's rights to life as guaranteed under the 1999 Constitution of Nigeria.⁴Gas flaring is the major source of greenhouse gas emissions which cause of climate change and global warming which subject the lives of the present and future generations into jeopardy.⁵The catastrophic effects of the oil activities in the region is ongoing despite all the numerous laws and policies put in place to their control. This undermines the global sustainable development goals geared towards safeguarding the lives of both the present and future generations. Even the privately initiated environmental litigations for protection of the environment and the rights of the people in this region are faced with a lot of challenges such as burden of proof, locus *standi*, jurisdiction, poverty and high cost of litigations which frustrate genuine claims and make the victims feel helpless and cheated. Many who pursued genuine claims for damages and

¹ S. E. Chang, *et al*, 'Consequences of Oil Spill: A Review of Framework for Informing Planning' (2014)19 (2) *Ecology and Society* 26.

² Odoh Augustine Eje, 'Reducing Incidents of Oil Spills and Leaks by Monitoring Conditions of Oil Pipeline in Nigeria' (2024)3 (2) *Journal of African Resilience and Advancement Research* 192.

³ Reginald W. Gbasam, 'Socio-Economic Effect of Oil Pollution on Niger Delta Environment' (2025)9 (1) *Journal of Health Applied Sciences and Management* 118.

⁴ Section 33, CFRN

⁵ Adelaja Odutola Odukoya, 'Oil and Sustainable Development in Nigeria: A Case of Study the Niger Delta' (2006)20 (4) *Journal of Human Ecology* 252.

compensation lost their cases on flimsy excuses. The frustrations suffered by the victims of pollution encourage the multinational oil companies to operate in the region with limited or no accountability. This not only compounds the plight of the local vulnerable populations but also poses a devastating risk for both the present and future generations in the region.

The after effect is self-help, violence and oil bunkering which undermine not only the security of the region but also the global sustainable development goals.⁶ That is why this paper examines the adequacy of the relevant legal frameworks in Nigeria for environmental protection and sustainable development, including the laws that regulate the operations of the oil industry. Strict enforcement of these laws and policies is highly relevant to the realities on ground in the Niger Delta region of Nigeria. This is in addition to the widely advocated shift toward sustainable off-grid power solutions to control the heavy reliance on fossil fuel.⁷ Today, in light of environmental degradation resulting from heavy reliance on fossil fuel, the whole world is shifting toward cleaner and more sustainable sources of energy. That is what the country should emulate rather than sole reliance on oil and gas that have become resource curse to the country.

2. Oil Pollution Crisis in Nigeria

Oil is a major source of revenue but has become a source of environmental pollution of monumental magnitude in Nigeria. Oil pollution in the Niger Delta region of Nigeria occurs in various ways such as pipeline leakage, blow-outs, mechanical failure, oil tanker accidents and bunkering. These have led to the degradation of the environment, contamination of drinking water, destruction and extinction of wildlife habitat, plants, creeks and marine life, fire outbreak, destruction of farm lands, depletion of forests, flora and fauna and destruction of the means of livelihood of the inhabitants of this region.⁸ Since 1956 when oil was first discovered in Nigeria, there have been records of massive ecological damage to the environment of the host communities by the

⁶ I. Olusiyi, 'Socio-Economic Implications and Environmental Effects of Oil Spillage in Some Communities in the Niger Delta' (2009)6 (1) *Journal of Integrative Environmental Sciences* 7-23,

⁷ Jonas N. Onah, 'Transitioning to Sustainable Energy: The Promise of Solar Power – A Review' (2025)21 (2) *Arid Zone Journal of Engineering Technology and Environment* 573.

⁸ Akinola S. Akinwumiju, *et al*, 'Geospatial assessment of oil spill pollution in the Niger Delta of Nigeria: An evidence-based evaluation of causes and potential remedies' (2020)267 *Environmental Pollution* 202.

multinational oil companies such as Shell and Chevron.⁹ An average of 240,000 barrels of crude oil spilled in the Niger Delta region annually result from unknown causes while over 1,500 communities in the region have been abysmally affected.¹⁰ The incidents are habitually underreported by the government which is a beneficiary of the oil exploration and exploitation activities.

The former Minister of Environment in Nigeria, Mr. John Odey, disclosed that between 2006 and 2010, Nigeria has had 3,203 oil spillage cases across the country¹¹ and between 1998 and 2008 more than 200 people have perished as a result of pipeline disasters in different parts of the country. It may result from accidental discharge of oil or its products on land or sea. It may also spill in the process of transportation¹² while in some cases, it may occur as a result of sabotage through destruction of oil pipelines. Nwilo and Badejo reported that 50% of the oil spill is due to corrosion of pipelines, rupturing or leakage of production facilities that are too old and lack regular inspection and maintenance. They added that 28% of the spill is caused by sabotage while 21% is due to oil production activities. One percent results from engineering drills and inability to effectively control oil well, failure of machines, and inadequate care in loading and unloading of oil vessels.¹³ Many of the pipelines, for instance, are as old as twenty to twenty-five years. Even Shell admitted that most of their facilities were contracted between 1960s and early 1980s in conformity with the then required standard and so obsolete.¹⁴

9 Zephaniah Osuyi Edo, *et al*, 'Environmental laws and the politics of environmental enforcement in Nigeria oil-rich Niger Delta Region (2023)72 (2) *Innovation Journal* 258

¹⁰ S. I Omofonmwan & L. O Odia, 'Oil Exploration and Conflict in the Niger-Delta Region of Nigeria' (2009)26 (1) *Journal of Human Ecology* 25-30

¹¹ See Florence Lawrence *et al*, 'Nigeria Records 3, 203 Oil Spillage Cases in Four Years' (2011) *The Guardian* 24 August 2011, 25

¹² For instance, most major oil spills of the past were caused by oil tanker accidents. This has become a common phenomenon in Nigeria. Many lives have been lost and property worth millions of naira were destroyed as many of the incidents resulted in fire outbreak. On 7 May 2005, for instance, a fully loaded oil tanker derailed from its track and crashed at Alamuyo within the region, spilling the content of 12 loaded coaches. The spilled oil polluted the entire community and spoilt property, food stuffs, farms and other valuables. The air, land and water sources were polluted. The community was devastated and the residents subjected to untold hardship. See CO Opukri and IS Ibaba, (2008): Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta' (2008)10 (1) *Journal of Sustainable Development in Africa* 173-190.

¹³ See Peter Nwilo and Olusegun Badejo, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas' <<http://www.fig.net/pub/figpub/pub>> accessed 26 March 2016.

¹⁴ Ibid

An investigation once revealed that these oil companies do not employ best available technology and practices that they use elsewhere in the world which is a double standard and when the reports of incidents are brought to their attention, they either remain aloof or make fake promises.¹⁵ In May 2025, for instance, multiple oil spills reportedly occurred in Oshika and Ikata communities of the Ahoada West Local Government Area of Rivers State causing much environmental damage and all the efforts to draw the attention of the Renaissance Africa Energy Company Limited were unsuccessful.¹⁶ Experts revealed that the spills and the devastating impacts were mainly attributable to the careless attitudes of the oil companies operating in the region.¹⁷ Over 100 litres of oil spilled into the creeks per hour within the region result from ruptured pipelines which are still being used by the companies for production at high capacity.¹⁸ This is compounded by inadequate remediation by both the company and the government.

Oil spillage poisons water sources and results in systemic health issues, premature deaths and infant mortality.¹⁹ Nigeria's largest oil spill incident occurred as a result of a blow-out at Funiwa 5 offshore station in January 1980. This resulted in the loss of about 200,000 barrels of oil and a fire incident. Four villages were displaced while the fish town of Funiwa and the Sagama river were polluted, leaving 350 hectares of mangroves dead.²⁰ 180 people were reported dead as a result of the pollution. On different occasions when the inhabitants of the affected communities were interviewed by the Human Rights Watch, they said the spills affected them abysmally through sickness and death especially children that drank the polluted water.²¹ Describing the effects of oil spill on the region, M.K. Mowoe stated that;

It also destroys the soil, farmland, crops and economic trees and dislocates human settlement which may be burnt... It pollutes and

¹⁵ See the *Report of the Niger Delta National Resource Damage Assessment and Restoration Project* <<http://cmsdata.iucn.org/downloads/nigerdelta>> accessed 5 August 2010.

¹⁶ SI Omofonmwan and LO Odia, *supra*, at p. 27

¹⁷ Kaniye Ebeku, 'The Right to a Satisfactory Environment & the African Commission' (2003)3 *African Human Rights Law Journal* 158

¹⁸ Ekemini Simon, 'Fresh oil spill hits Rivers community as Trans Niger pipeline ruptures' *Premium Times*, February 14, 2026 <<https://www.premiumtimesng.com/regional/south-south/>> accessed 30 May 2026.

¹⁹ Best Ordinioha & Seiyefa Brisibe, 'The human health implications of crude oil spills in the Niger delta, Nigeria: An interpretation of published studies' (2013)54 (1) *The Nigerian Medical Journal* 10–16.

²⁰ M K Mowoe, 'Quality of Life and Environmental Pollution and Protection' (1990) *Environmental Laws in Nigeria, Including Compensation* 176

²¹ Atlss RM, "Petroleum Biodegradation and Oil Spill Bioremediation" in *Marine Pollution Bulletin* 31 1995, p.180

poisons fresh water, streams and springs making them unusable by humans and animals....As a result, it affects the health, emotion, aesthetic sensibilities, and means of livelihood and sometimes the homestead of the people and thus the quality of their life.²²

The effect of this spill is not transient but can last for years thereby depriving the citizens the use of their resources for a very long period without any alternative arrangement or compensation. In April 1999, for instance, water sample was taken from Luawii Community in Bayelsa State and analysed in the United States. The water contained 18 ppm of hydrocarbons, 360 times the level allowed in any drinking water in the European Union. A sample from a given Ikwere Community in Rivers State, contained 34 ppm which is 680 times the European standard despite that there had been no spillage for the four years preceding the analysis, whereas the inhabitants have been using the water for their domestic purposes – cooking, drinking, washing, bathing, etc.²³ Even when there is any plan to clean up spilled oil in this region, the processes are too slow and in some cases inadequate. For instance, in Ogbodo community where a massive spill occurred in 2001, clean-up of the site was delayed for months and even after it was done, it was still inadequate. Two years after when Amnesty International visited the site, it was discovered that oil still remained on the water and land and people were still using them. Many people claimed that they could no longer fish or hunt.²⁴ When the fishes ingest the oil pollutants, they are poisoned and dangerous for human consumption. A fisherman described the condition in the following words: ‘If you want to go for fishing, you have to paddle for about four hours through several rivers before you can get to where you can catch fish.... Some of the fishes, when you open the stomach, smell crude oil.’²⁵

All the creeks and drinking water within the region smell oil. Even when the people bath in the waters, they have scratches all over their bodies and rashes on their skins.²⁶ The prevailing situation was better summed by a journalist in the following words;

²² Mowoe, *supra*

²³ Peter Nwilo & Olusegun Badejo, *supra*

²⁴ See Amnesty International, June 2009, Index: AFR 44/017/2009
<<http://www.amnesty.org/en/library/asset/AFR>> accessed 5 August 2010).

²⁵ Katie Hamann, *Environment and Health Laid Waste in Nigeria* <www.amnesty.org/en/library/asset> accessed 28 September 2009.

²⁶ See the *Handbook on Environmental Rights Action (ERA) Survey* 1994, Ogoni, Rivers State 150.

About ten persons have been admitted at various hospitals in Sapele, Delta State, as a result of the side-effects of crude oil spillage which occurred at Ugborikoko village, near Sapele. The Oil spillage occurred on a Shell Petroleum Development Company (SPDC) facility located on the Mayuka creek on the river Ethiope, adjacent to Sapele gas station. The victims, our sources revealed, were rushed to hospitals because of the complications arising from the consumption of polluted water from the adjoining rivers.²⁷

Although, everyone suffers the effects of pollution, global warming and resource exploitation, poor people are especially more vulnerable since they live closer to the margin of survival and are less able to afford cushions from environmental ills. At the same time, poor communities often face disproportionately heavy burdens from environmental degradation.²⁸ It is this class of people, that is to say, low-income urban and rural communities around the world that are struggling for environmental justice - that is, for more equitable access to natural resources and environmental quality, including clean air and water. The failure of both the government and the multinational oil companies to adopt measures for the clean-up of the degraded environment or prevent further escalation of the pollution not only infringes on the rights of the present people abysmally but also transfers significant environmental burden to the future inhabitants of the region.

3. Regulatory and Policy Responses to Oil Pollution

It is important that we render account of our environmental stewardship. Every human being is a tenant on this earth given to us by nature. Therefore, we should not live according to our own terms but in a manner that ensures sustainability. The environment is not our own. As it was inherited from the past generations so shall it be bequeathed to the incoming generations. That was the philosophy behind the Millennium Development Goals (MDGs) which after the year 2000 was succeeded by Sustainable Development Goals (SDGs) requiring a holistic and prudent management of the planet's resources to meet our present needs without compromising the ability of the incoming generations to

²⁷ See *Oil Spillage Occurs in Sapele*, *The Vanguard*, 18 February 2004, 32.

²⁸ Krista Harper & S. Ravi Rajan, *International Environmental Justice: Building the Natural Assets of the World's Poor*, a paper presented at the International Conference on Natural Assets, Tagaytay, Philippines, January 2003, 2.

meet their own needs. This involves safeguarding the land, water, air, forests and wildlife to ensure sustainability of the ecosystems for the benefits of the present and future generations.²⁹ Safeguarding the environment is not only about satisfying our immediate needs but also guaranteeing a future where humans and ecosystems can thrive together. That is one of the most pressing issues of our time. Therefore, we must guard our environment jealously against degradation as a precondition for ensuring food security, happiness, peace and progress both locally and internationally.³⁰

The issue of environmental sustainability is very imperative in the Niger Delta region of Nigeria where the adverse effects of oil and gas extraction are well pronounced. Since the beginning of oil exploitation in Nigeria in the late 50s, the government has put a lot of laws and policies in place to ensure environmental sustainability in the region. However, these laws and policies have contributed little or nothing in improving the conditions of the Niger Delta region. Notable among these was the establishment of agencies in the region to address environmental problems, concomitant poverty, youth restiveness and to empower the communities that generate revenue to the federal government.³¹

It started with the Niger Delta Development Board of 1961 established to advise the governments on how to address, among others, the unique ecological challenges facing the region. The Niger Delta River Basin Development Authority (NDRBDA) was established by the Federal Military Government under Decree No. 37 of 3rd August 1976 to harness the water resources efficiently and impact on the development craves of the region.³² The expected impact of the Authority failed to materialize due to underfunding and corruption.³³ Under Shagari's regime, 1.5% of the Federation Account was allocated to the region in conformity with the Allocation of Revenue (Federation Account, etc.) Act of 1981. The Fund was administered by the Presidential Task Force for the Development of the Oil Producing Areas for compensation of the oil producing states due

²⁹ Lucretia Dogaru, 'The Importance of Environmental Protection and Sustainable Development' (2013)93 *Social and Behavioral Sciences* 1346

³⁰ Gwilim Diouf, 'Millenium Development Goals (MDGS) and Sustainable Development Goals (SDGs) in Social Welfare' (2019)1 (4)*International Journal of Science and Society* 17-24.

³¹ Francis A. Ikenga, et al, 'Good Governance and the Sustainable Development of the Niger Delta Region of Nigeria: Assessing the Impact of the Interventionist Agencies' (2022)12 (1) *Journal of Danubian Studies and Research* 253.

³² Ogundele A. Tunde, 'River Basin Development Authorities in Nigeria: The Neglected Tools for National Development' (2019)5 (3) *International Journal of Advanced Academic Research* 39.

³³ Ibid 42

to environmental degradation.³⁴In 1992, the Babangida's regime established the Oil Mineral Producing Areas Development Commission (OMPADEC) with the primary objective of addressing the ecological devastation in the region. The Commission was later dissolved for failure to achieve its objectives due to corruption, underfunding, political interference and high level of mismanagement.³⁵

Obasanjo's regime established the Niger Delta Development Commission (NDDC) in the year 2000 to replace the OMPADEC and take up its responsibilities and liabilities. The NDDC operates in the 9 oil producing states of the country which are Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo, and Rivers with the precise responsibility of addressing the environmental problems and spearheading the socio-economic development of these oil-rich states.³⁶Historically, the Agency has made significant efforts to deliver on its mandate but the level of environmental degradation in the region was still degenerating thereby defeating the primary essence of the Agency. Some scholars attributed the failure of the agency to high-level financial irregularities and other institutional bottlenecks.³⁷Speaking about the deep-rooted corruption and poor performance of the NDDC, Nfam, *et al*, stated unequivocally that;

It is unfortunate and regrettable that the Commission over the years has been given trillions of naira for the development of the Niger Delta region but this money found its way to the private pockets of corrupt politicians, government officials and community leaders in the region. Nigerians and the people of the Niger Delta have no confidence even in the so-called forensic audit of the commission, because they believe that the findings of the forensic audit will not see the light of day.³⁸

The Government of Yar' Adua established the Ministry of the Niger Delta Affairs (MNDA) in 2008 and charged with the responsibility of formulating and overseeing

³⁴ Edet J. Tom & Harrison O. Ataide, 'Revenue Allocation in Nigeria: Challenges and Prospects' (2021)11 (2) *Journal of Public Administration and Governance* 229.

³⁵ Amakievi Gabriel, 'OMPADEC and Educational Development in Nigeria: 1992 – 1997' (1999)1 (1) *International Journal of Engineering Research and Development* 94.

³⁶ Olatunbosun SE Odusanya, *et al*, 'An In-depth Analysis of the Role and Effectiveness of the Niger Delta Development Commission' (2025)13 (2) *International Journal of Innovative Development and Policy Studies* 58

³⁷ See Solomon Alabi, 'Corruption and public policy failure in Nigeria: A critical appraisal of Niger Delta Development Commission (NDDC)' (2021)1 & 2 (1) *International Journal of Public Policy* 111-120.

³⁸ . Odeigah T Nfam, Garuba Tosho & Ajayi O Raymond, 'The Niger Delta Development Commission and the Underdevelopment of the Niger Delta Region of Nigeria, 1959-2023' (2025)9 (5) *Wukari International Studies Journal* 421

policies for environmental protection, infrastructural development and youth empowerment in the region, including the supervision of the operations of the NDDC.³⁹ It was particularly conferred with the responsibility of ensuring that the activities of the multinational oil companies do not cause environmental damage in the region. The Ministry was criticized for failure to deliver the expected results and calm nerves in the region due to corruption, financial mismanagement and funding of phantom projects.⁴⁰ It was eventually transferred to the Ministry of works to avoid frictions and overlap with the NDDC.⁴¹

This is in addition to the series of legal frameworks for the protection of the environment in Nigeria. Notable among them is the 1999 Constitution which makes it obligatory on the state to protect and improve the environment, safeguard water, land, air, forest and wildlife of Nigeria.⁴² The National Oil Spill Detection and Response Agency (NOSDRA) Act of 2006 is a national framework for oil spill response and environmental remediation in the oil-rich region. The Environmental Impact Assessment Act of 1992⁴³ makes it mandatory for preliminary assessment of the impact of certain projects on the environment. The primary purpose of the Petroleum Industry Act of 2021 is to protect the environment and give the host communities sense of belonging in the operations of the Nigerian oil industry. The Criminal Code Act of 1916⁴⁴ criminalizes fouling water as an offence punishable with 6 months imprisonment. The impact of these laws in safeguarding the environment for the interest of the present and future generations has not been realized due to unwillingness of the government to enforce them.

I. The 13% Derivation Fund

The 13% derivation fund is another measure introduced by the federal government to cushion the effect of crude oil production in the Niger Delta region. It is a form of compensation to the oil producing communities for the oil being extracted from their soil

³⁹ Fidelis AE Paki, 'The Ministry Of Niger Delta Affairs (MNDA), 2009-2015: Achievements and Challenges' (2017)9 (4) *Journal of Social Sciences and Public Policy* 138.

⁴⁰ Idorenyin F. Esikot & Matthew Akpan, 'The Niger Delta Crisis in Nigeria: Some Moral Lessons' (2013)1 (1) *International Journal of History and Philosophical Research* 6.

⁴¹ Sampson Obiam & Okechukwu S Amadi, 'The Nigerian State and Development in the Niger Delta Region' (2022)14 (1) *World Journal of Advanced Research and Reviews* 129.

⁴² Section 20

⁴³ Cap E12 LFN 2004.

⁴⁴ Cap C38 LFN 2004, section 245.

and for the damage to the environment in the course of oil exploration and production activities.⁴⁵ It is a constitutional device as section 162(2) of the 1999 Constitution (as amended) requires that not less than 13% of revenue from natural resources should be allocated based on the principle of derivation. There is no specific mention of oil or Niger Delta region in the provision but the region generates more than 90% of the revenue from natural resources in Nigeria.⁴⁶ That is why the 13% is paid to the treasuries of the 9 oil producing states in Nigeria. It is paid in trillions of naira to the concerned state governments for onward transmission to the oil producing communities.⁴⁷ The fact that the funds are remitted directly to the state governments rather than the oil producing communities has defeated the essence of the 13% derivation as the governors and their representatives spend the money at their own will without any transparency or accountability.⁴⁸ There is little or no evidence of any environmental remediation, compensation or coastal protection in the region. The people are still suffering not only degradation resulting from oil pollution but also destruction of their sources of livelihood without compensation or viable options. In the words of Etchie and Udowa;

There is no doubt that several trillions of naira have been paid to successive governments in Delta State for the development of these areas but with no commensurate level of development as the people are still where they were before the payment of the fund. Instead, state governors, government officials and politicians at both federal and state levels take advantage of the vulnerability and gullibility of these oil communities to divert these benefits to their preferred locations, leaving the core oil communities to their fate.... No accountability.⁴⁹

⁴⁵ S Ashwe, 'Revenue Allocation and the Principle of Derivation in Nigeria' (2016)85 (40) *African Affairs* 299

⁴⁶ Edet Joshua Tom, *et al*, 'The Derivation Principle and Its Impact on the Development of Oil-Producing Communities in Akwa Ibom State' (2025)5 (2) *International Journal of Humanities Social Science and Management* 141

⁴⁷ Peter T Etchie & Emily O Udowa, '13% Derivation Fund and Development of Oil- Producing Communities in Delta South Senatorial District Of Delta State' (2024)12 (1) *International Journal of Innovative Social Sciences & Humanities Research* 55.

⁴⁸ PO Oviasuyi & J Uwadie, 'The Dilemma of Niger Delta Region as Oil-Producing States of Nigeria' (2010) *Journal of Peace, Conflict, and Development* 122

⁴⁹ Peter T Etchie & Emily O Udowa, *supra*

II. Host Communities Development Trust

The whole of Chapter 3 of the Petroleum Industry Act 2021⁵⁰ is devoted to the Host Communities Development Fund (HCDF). Under this provision, it is mandatory for the oil companies operating in the region to annually contribute 3% of their ‘actual annual operating expenditures of the preceding financial year’ into the community trusts for infrastructural and sustainable developments of the host communities.⁵¹ Section 239(3)(f) of the Act is emphatic about the use of the trust funds for protection of the environment of the host communities. The essence is to ensure that the host communities benefit from the presence of the multinational companies on the communities’ ancestral lands. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) are charged with the responsibility of monitoring compliance with these provisions. While the NUPRC monitors the remittances by the Upstream,⁵² the NMDPRA monitors the Midstream and the Downstream.⁵³ It has been revealed that up to N373 billion has so far been remitted into the trust funds since 2021 when the Act came into force.⁵⁴ Despite the good intentions behind the establishment of the HCDF and the compliance by the oil companies, it is worrisome that the impact is yet to be felt in the region five years after. The environmental condition and the plight of the host communities are worse today than the pre-HCDF era. There are serious concerns about the transparency in the management of the funds.⁵⁵ In the words of Omodu;

While the PIA aims to usher in a new era of transparency and community-led development, preliminary observations and anecdotal evidence suggest that the implementation of the HCDF is not without its challenges. There are lingering questions about the transparency of fund management, the accountability of the Host Community Development Trusts (HCDTs) to their

⁵⁰ Sections 234 – 257 of the Petroleum Industry Act, No. 6 of 2021

⁵¹ Section 240(2) of the Act. See also section 239(1)(a) of the Act.

⁵² Section 235(2) of the Act

⁵³ See also section 32 of the Act.

⁵⁴ Fatai O Adesanmi, ‘Fiscal Federalism and Oil Derivation Fund in Nigeria: The Challenges of Effective Utilization’ (2023)20 (1) *Journal of Administrative Science* 174-190.

⁵⁵ Nwachukwu Martin Chijioke, *et al*, ‘Causes and Effects of Environmental Degradation in the Niger Delta and the Mitigation Measures that can be Implemented’ (2024)10 (2) *Saudi Journal of Humanities and Social Sciences* 45-55

constituents, and the equitable distribution of benefits among various community segments.⁵⁶

4. Environmental Litigations initiated by Citizens

Oil related litigations in Nigeria are not even better for the victims of pollution. It is a herculean task to win cases in Nigerian courts against the multinational oil companies. Many of the victims whom have genuine cases lost on the grounds of technicality, want of jurisdiction or *locus standi*. Some are frustrated by protracted litigations. The case of *Abel Isaiah v. Shell*⁵⁷ was frustrated due to want of jurisdiction in a situation of immense concern. The case against Shell was already pending at the Rivers State High Court when Babangida's regime promulgated the Decree 107 of 1993 which deprived the State High Courts the jurisdiction over federal government agencies. At the end, the Rivers State High Court awarded the victims of pollution the sum of N22 million damages. On appeal, the Supreme Court held that even when a case had started before a decree ousts the court's jurisdiction, the court loses its jurisdiction to continue with the hearing. That is how the victims of massive oil pollution went home empty handed after many years of litigation.

This case is a typical example of the challenges faced by the victims of oil pollution in Nigeria. If it is so, one wonders the philosophy behind the provisions of the Federal High Court Act⁵⁸ which allows the transfer of matters between the Federal and State High Courts to prevent the courts from striking out genuine claims for want of jurisdiction. By section 22 of the Act, the Federal High Court can remit a case to the state High Court and vice versa. Section 22(2), for instance, provides that; No cause or matter shall be struck out by the High Court of a State or of the Federal Capital Territory, Abuja on the ground that such cause or matter was taken in the High Court instead of the Federal High Court, and the Judge before whom such cause or matter may cause such cause or matter to be transferred to the appropriate judicial division of the Court in accordance with such rules of Court as may be in force in that High Court

⁵⁶ Happy Pere-ela Omodu, 'Sustainable Development in the Niger Delta Region of Nigeria: An Evaluation of the Petroleum Industry Act's 3% Host Community Development Fund' (2025)10 (3) *Journal of Law and Global Policy* 22.

⁵⁷ (2001)11 NWLR (Pt. 723) 168

⁵⁸ Cap F12 LFN 2004.

Many victims of oil pollution in the Niger Delta region of Nigeria never benefitted from these provisions of the Federal High Court Act. The case of *Abel Isaiah v. Shell* demonstrates the injustice and difficulty facing victims of oil pollution in Nigeria. It also underscores how legitimate claims can be ignored on the ground of technicality thereby undermining environmental discipline and integrity in the Niger Delta region.⁵⁹ The case of *Abel Isaiah v. Shell* is just a tip of an iceberg. The case of *C.G.G. (Nig.) Ltd v. Ogu*⁶⁰ was also lost by the victims of seismic operations due to want of jurisdictions despite the glaring and pronounced damage to the plaintiff's farms, creeks, fish ponds and economic trees by the seismic activities of the defendant company. In this case, the trial court had already awarded the victims the damages they sought but the Supreme Court stated unequivocally that the state High court has no jurisdiction to entertain the matter.

The case of *Seismograph Services Ltd. v. Ogbeni*⁶¹ was lost to the company because the poor victim of pollution could not procure the services of an expert at the cost of one million naira to buttress his claim. The company procured the services of an expert who asserted that the activities of the company were not the cause of the damage to the plaintiff's property. The plaintiff lost because he could not procure the services of an expert to counteract the evidence of the company's expert. He went home empty-handed after many years of litigation. The case of *Oronto Douglas v. Shell*⁶² was lost due to want of standing. The plaintiff filed a suit and required the defendant to comply with the Environmental Impact Assessment Act of 1992⁶³ by conducting preliminary assessment before laying oil pipelines. The court held that he has no locus standing to institute the action. The case of *Tiebo VII v. Shell*⁶⁴ was lost due to failure to prove special damages. Due to the level of damage done to the plaintiff by the oil pollution, the first court of instance granted general damages in lieu of special damages which the plaintiff was unable to establish. The Supreme Court held that it was wrong for a court to grant general damages once the plaintiff failed in proving special damages. The case of *Shell v.*

⁵⁹ Fagbohun Olanrewaju, 'Jurisdiction of Nigerian Courts in Environmental Matters: a Note on Shell v Abel Isaiah' (2015)24 (2) *Journal of Energy & Natural Resources Law* 209-220.

⁶⁰ (2005)8 NWLR Pt. 927, 386

⁶¹ (1976)4 SC 85

⁶² (1999)2 NWLR Pt. 591, 466

⁶³ Cap E12 LFN 2004.

⁶⁴ (2005)4 FWLR Pt. 283, 674

*Ambah*⁶⁵ lasted 19 years in the courts and the plaintiffs went home with N27,000.00 after the 19 years of litigation. In the words of Owolab and Okonkwo;

In many cases, years are spent in court to get oil companies to accept responsibility and even when they do, it takes another phase and time to agree on the amount. It took the people of Ebubu Community of Ogoni 40 years to get judgment to be compensated for the massive oil spills that affected about 255.369 hectares of their land in 1970 (Vanguard newspaper, July 6, 2010). This is not justice in our opinion as “justice delayed is justice denied”⁶⁶

5. Conclusion

In this study, formidable attempt has been made to examine the lingering oil pollution crisis in the Niger Delta region of Nigeria and the series of efforts made by the successive governments in ensuring that justice is done to the host communities. From the foregoing analysis, it is obvious that the government has done a lot towards addressing the environmental problems of this region but the impact is never felt. The Niger Delta is still among the worst places to live on earth due to environmental degradation and persistent agitations for justice. Widespread poverty, unemployment, marginalization and persistent unrests in this region are enough to spur the government into action. When a state fails in its obligation to protect its own environment, the multinational companies operate with impunity. The question now is how do we enforce all the well-made laws and policies to impact the lives of the people and the environment in this region? The time is now. The government should wake up from slumber and act decisively. Those mismanaging the 13% derivation fund and the Host Community Development Trust should be brought to book to serve as deterrent to others. The above suggestions would go a long way to improve the environmental state of the region by consolidating the gains of all the laws and policies put in place by the successive administrations.

⁶⁵ (2003)6 NWLR Pt. 815, 116

⁶⁶ Toyosi OS Owolabi & Eloamaka C Okonkwo, ‘Compensation For Environmental Pollution and Justice Procurement in the Niger Delta Area of Nigeria: The Mass Media Role’ (2014)16 (7) *Journal of Sustainable Development in Africa* 41.



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