ISRG Journal of Arts, Humanities and Social Sciences (ISRGJAHSS)

ISRG PUBLISHERS
Abbreviated Key Title: ISRG J Arts Humanit Soc Sci
ISSN: 2583-7672 (Online)
Journal homepage: https://isrgpublishers.com/isrgjahss
Volume – III Issue -V (September-October) 2025
Frequency: Bimonthly

APPROACHES TO MINIMIZING ENVIRONMENTAL AND SOCIAL IMPACTS OF OIL EXPLOITATION IN NIGER DELTA REGION OF NIGERIA

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| **Received:** 10.08.2025 | **Accepted:** 16.08.2025 | **Published:** 07.10.2025

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Abstract

It is no more news that oil production activities have disastrous consequences on human lives and ecology in the Niger Delta region rather than enrich same. Oil exploration is the major revenue earner in Nigeria's economy, all thanks to the Niger Delta region, which is richly blessed with the black gold in large quantities. The dependency of the economy on the juicy gains of oil and gas leading to increased exploration, mining, refining, transportation and other related endeavours, has had disastrous social and environmental impacts on the people of Niger Delta and its environment.

Consequently, the Nigerian Government over the years has responsively evolved necessary legal and institutional frameworks to minimize the socio-economic and environmental impacts of oil and gas production on the Niger Delta region. In the light of the above, this project examines the various legal and institutional framework put in place to minimize the impacts of oil exploration in the Niger delta region and it is structured into five chapters. Chapter one is the introduction with a brief history and definition of fundamental terms. Chapter two looks at the diverse impact of oil exploitation in the Niger Delta region ranging from environmental to socio-economic issues. Chapter three reviews the legal framework put in place to minimize the impact of oil exploitation in the region. Chapter four examines the institutional framework put in place to minimize the impacts of oil exploitation in the region, including the role of the Judiciary in environmental protection. Chapter five concludes the analysis with some recommendations for better and more organized approaches to minimizing the environmental and social impact of oil exploitation in the Niger Delta region of Nigeria.

DOI: 10.5281/zenodo.17283702

1.0. INTRODUCTION

Crude oil, one of the greatest blessings God has showered on Nigeria has turned out to be a curse of some sort sounding the death knell of such key principles of governance as democracy[1]. It is no news that Nigeria is one of the leading oil producers in the world and that the Niger Delta region is the hub of oil and gas production of the nation.

From crude oil alone, Nigeria has generated about 300 billion U.S. Dollars between 1970 and 2000, amounting to 96% of the country's foreign earnings[2].

Generally, instead of crude oil serving as a blessing to Nigeria, the reverse has far been the case. The situation is much worse in the Niger Delta region, which shoulders the burden of oil exploration and exploitation on the much limited land space. The most devastating effects of oil exploitation on the region are the increasing threats of environmental and social damage in the area, which manifest in various forms. Due to incessant oil spillages the people of the region have been deprived of their main sources of livelihood, which is farming and fishing. This is because oil spills have inflicted unimaginable levels of damage on farmlands and rivers such that soil nutrients and aquatic resources could hardly be sustained.[3]

Premo captures the negative impacts of oil exploitation on the Niger delta citizens rather than the reasonably expected dividends of black gold when he stated thus:

> ***"World attention shifted to the Niger Delta as oil rigs, wells and exploration activities eroded the territory, the initial excitement that greeted the discovery of oil in commercial quantity in the modest community of Oloibiri, soon died down. Exploration came with exploitation and like early colonialists into Africa, the Western oil companies noticed the Euphoria of the rural populace. For a little carrot of a ferry terminal or jetty, millions of dollars' worth of oil was taken from their land. And then one day, the people woke-up to the reality that rather than peace and joy, the black gold had brought sorrows and tears to their land... their dreams died in their strides"[4].***

1.1. BACKGROUND OF STUDY

Over the years, given the government's awareness of the environmental and social impacts of oil exploitation in the Niger Delta region and in response thereto, legislative frameworks and institutional structures have been put in place, in order to minimize the impacts of oil exploitation in the region.

The legal framework includes the Constitution of Nigeria[5] which is the grundnorm of the country, the National Oil Spill Detection and Response Agency (Establishment) Act[6], the Oil in Navigable Waters Act[7], Petroleum Regulations[8], Environmental Impact Assessment Act[9].

The institutional framework for minimizing the impact of oil exploitation include:

The Niger Delta Development Commission, The Ministry of Niger Delta, The National Oil Spill Detection and Response Agency, Nigerian Maritime Administration and Safety Agency, Nigerian Ports Authority, The Amnesty programme of the Federal Government of Nigeria for Niger Delta activities, among others.

1.2. STATEMENT OF PROBLEM

The Niger Delta region is faced with environmental and social problems as a result of oil exploitation. The region, which should reasonably display a lot of positive societal benefits, ironically seems to be the least developed despite the fact that the nation depends solely on it for its wealth.

1.3. OBJECTIVE OF STUDY

The objective of this research is to review and appraise the different approaches put in place to minimize environmental and social impacts of oil exploitation in the Niger Delta region of Nigeria.

1.4. SIGNIFICANCE OF STUDY

The study exposes the problems associated with oil exploitation in the Niger delta region. It will create an awareness of the laws and respective government and corporate strategies put in place for the protection of the region from the impacts of oil exploitation.

1.5. SCOPE AND LIMITATION OF STUDY

The scope of this research revolves around the legal and institutional framework put in place to minimize the environmental and social impacts of oil exploitation in the Niger Delta region of Nigeria.

1.6. DEFINITION OF TERMS

A. APPROACH

The Oxford Advanced Learner's Dictionary[10] defines approach as a way of dealing with somebody or something. It is also defined as ideas or actions intended to deal with a problem or situation[11].

B. ENVIRONMENT

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[1] Human Rights Violations Investigation Commission, Synoptic Overview of HRVIC Report:
Conclusions and Recommendations, Abuja: HRVIC, May 2002.

[2] Okonjo-Iweala, Ngozi, Soludo, Charles C and Muhtar, Mansur , 'Introduction: The Debt trap in
Nigeria: Towards a sustainable Debt Strategy" Trenton, NJ: Africa World Press, 2003, P. 1.

[3] Between 1976 and 1999 about 3,000 oil spill incidents were reported by the oil companies operating in
Nigeria, which is over 2 million barrels of oil spilled into the country's marine environment.
Agbu, Osita, "Oil and Environmental Conflicts", in Saliu, Hassan A. (ed.), Nigeria under Democratic
Rule, 1999-2003, volume 2, Ibadan University Press, 2005,Pp82-83.

[4] Premo, D., "Niger Delta Seating On a Time Bomb", 1978.

[5] Constitution of Federal Republic of Nigeria (as amended) 1999.

[6] National Oil Spill Detection and Response Agency (Establishment) Act, 2006.

[7] CAP 06, Laws of the Federation of Nigeria LFN 2004.

[8] LFN 71 of 1967.

[9] CAP E12, LFN, 2004.

[10] Hornby, A.S et al (Ed), Oxford Advanced Learner's Dictionary of Current English (Sixth edition),
Oxford University Press. 2000, P. 47.

[11] <www.freeonlinedictionary.com>. Accessed 27th April,2016.

DOI: 10.5281/zenodo.17283702

The environment has been defined as the surrounding or conditions in which a person, animal or plant lives or operates.[12] It is also defined as including water, air, soil, flora and fauna.[13] The New Zealand Environment Act of 1986 defines the environment as including:

a. ecosystems and their constituent parts;

b. all natural and physical resources

c. the social, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment.[14]

C. ENVIRONMENTAL IMPACT

This is the possible adverse effect caused by a developmental, industrial or infrastructural project or by the release of a substance on the environment.[15] It is also the effect that the activities of people and businesses have on the environment.[16]

D. SOCIAL IMPACT

This could be defined as the effect of an activity on the social fabric of the community and wellbeing of individuals and families.[17]

E. MINIMIZE

According to Oxford Advanced Learner's Dictionary, Minimize means to reduce something especially something bad, to the lowest possible level.[18]

F. OIL EXPLORATION

This is the search by petroleum geologists and geophysicists for hydrocarbon deposits beneath the earth's surface such as oil and natural gas.[19]

G. NIGER DELTA REGION OF NIGERIA

The Niger Delta region is situated at the apex of the Gulf of Guinea on the west coast of Africa[20] and on the Nigeria's South-South geopolitical Zone. The Niger Delta, which is home to about 31 million people,[21] occupies a total area of about 75,000km^2 and makes up 7.5% of Nigeria's land mass.

The Region's environment can be broken into four ecological zones: costal barrier islands, mangrove swamp forests, fresh water swamps and lowland rain forests. The ecosystem contains a high concentration of biodiversity. It has arable terrain that can sustain a wide variety of crops and economic trees. It also has more species of freshwater fish than any ecosystem in West Africa. The region has the largest mangrove forests in Africa and the third largest in the world.

Historically, the Niger Delta consists of present day Bayelsa, Delta and Rivers States. However in the year 2000, the Nigerian Government redefined the Niger Delta Region to include Abia, Akwa Ibom, Cross River, Edo, Imo and Ondo States. Therefore this region consists of nine (9) oil-producing states namely Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Imo, Ondo and Rivers.[22] The region is made up of 185 Local Government Areas, with about 40 different ethnic groups speaking some 250 dialects.

1.7. HISTORY OF OIL EXPLORATION IN NIGER DELTA

Oil exploration in the Niger Delta region of Nigeria commenced in 1946 after World War II and Shell D'Arcy drilled a number of oil exploratory wells in 1951. At the initial stage, Shell D'Arcy (later Shell – British Petroleum) enjoyed a complete monopoly of oil exploration for a considerable long period (1938-1955). Thereafter, Mobil Producing (Nigeria) Limited, a subsidiary of American Socony – Mobil Oil Company, obtained license to explore for oil and began operations in Nigeria in 1955 under the name Mobil Exploration Nigeria Incorporated (which was later incorporated as Mobil producing Nigeria on June 16, 1969). The first commercial oil discovery in the region was discovered at Oloibiri, in the present day Ogbia Local Government Area of Bayelsa State in January 1956 by Shell D'Arcy and a second oil field was later discovered at Afam in Rivers State. In February 1958, Shell British Petroleum (now Royal Dutch Shell) started exporting crude oil produced from Oloibiri and Afam.[23]

The Bomu Oil Field which is presently in Khana Local Government Area of Rivers State was discovered in 1958. It produces an estimated recovery of 311 billion of barrels (BB) of oil and a total of 608 billion of barrels of oil equivalence (BBOE) including gas.[24] Following the dominance of the Nigerian economy by the petroleum sector, the concession policy was abandoned and

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12 Available at< http://www.oxforddictiionaries .com/definition/English/environment>. Accessed 27 April 2016.

13 Section 1(2) of the English Environment Protection Act 1990, defines the environment as consisting "of all, or any, of the (media) the air, water and land, and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground".

14 Thomas, P. "International Bar Association (IBA), Environmental Liability". Environmental Audit: Insurance; Indemnities and Proposals for Reform in New Zealand Environmental law, P. 355.

15 <http://www.businessdictionary.com/definition/Environmental -impact.html.> Accessed 27th April, 2016.

16 <http://dictionary.cambridge.org/dictionary/english/environmental impact.> Accessed 27th April, 2016.

17 <http://www.Businessdictionary.com/definition/social-impact.html. >Accessed 27th April, 2016.

18 *ibid* p. 747.

19 <http://en.m.wikipedia.org/wiki/Hydrocarbon-exploration.> Accessed 27th April, 2016.

20 Doust, H., "Petroleum geology of the Niger Delta", Geological Society, London Special Publications 1990, p. 365.

21 Tom, O., "Curse of the black Gold: Hope and Betrayal on the Niger Delta".< National Geographic online, ngm. National geographic com/2007/02/Nigerian-oil/oneil-text>. Accessed 28th April, 2016.

22 Section 30 Niger Delta Development Commission (Establishment) Act 2000.

23 Pearson, S. R., "Petroleum and the Nigerian Economy". Stanford University Press, 1970.. <http://pubs.Sciepub.com/env/1/4/2> Accessed 27th April, 2016.

24 Vassiliou, S., "The A to Z of the Petroleum Industry". Scare crow Press, 2009. <http://pubs.Sciepub.com/env/1/4/2> Accessed 27th April, 2016.

DOI: 10.5281/zenodo.17283702

exclusive exploration right was introduced to encourage other multinational oil companies aimed at accelerating petroleum exploration and production. Other multinational oil companies joined oil and gas exploration in Nigeria in 1961, and these include Agip, Mobil, Safrap (now ELF), Texaco and Chevron. Some of the multinational oil companies recorded considerable successes in oil and gas exploration and production in both onshore and offshore fields in the Niger Delta.[25]

1.8. METHODOLOGY

The methodology is basically research based. The primary sources of information are textbooks of Nigerian and foreign authors, Newspapers, relevant statutes, law journals, law reports and judicial decisions while secondary sources of information are online articles.

2.0. INTRODUCTION

Oil exploration and exploitation has been on-going for several decades in the Niger Delta. It has had disastrous impacts on the environment in the region and has adversely affected people inhabiting that region. The oil industry located within the region has contributed immensely to the growth and development of the country but unsustainable oil exploration activities has rendered the Niger Delta region one of the five most severely damaged ecosystems in the world. The region has also been facing social and ecological risks, which have found expression in the people's struggle and in the violence that has characterized the region in recent times[1].

Oil exploitation has a serious implication on the immediate environment as it impoverishes both ecological and socio-economic environments causing environmental devastation, economic poverty and constant conflict and so on[2]; which has eroded on the quality of life of people in the Niger Delta region. This chapter reviews the various impacts of oil exploration in the Niger Delta region ranging from environmental economic, health and socio-cultural impacts respectively.

2.1. ENVIRONMENTAL IMPACT

The World health Organization noted that "the environment is considered polluted when it is altered in composition or condition directly as a result of the activities of man so that it becomes less suitable for some or all of the uses for which it would be suitable in its natural state".[3] Environmental impact of petroleum investments is noticeable in all the phases of oil and gas exploration.[4] The specific environmental effects of oil exploitation in the region is discussed here under:

A. OIL POLLUTION

Oil pollution is a pollution caused by a leak or discharge of oil, typically from a ship. Oil spillage is the most common incidence of oil pollution. Constitutional Rights project defines oil spills as uncontrolled releases of any product relating to oil production including crude oil, chemicals or waste caused by equipment failure operation mishaps, human error, or intentional damage to facilities.[5] Oil spillages occur during the drilling of oil wells; as a result of oil pipeline leakages, and during the loading of oil into tankers.[6] A report records that a total of 6,817 oil spills occurred between 1976 and 2001, with a loss of approximately three million barrels of oil.[7] Massive oil spills occurring in the riverine areas of the Niger Delta region have done untold damage to the aquatic ecosystem, particularly in the mangrove swamp forest zone.[8]

The region has experienced a number of catastrophes from oil blow outs and examples of oil spillage in the region include blowouts and pipeline leakages from the Shell – British Petroleum Bomu II well blow out of 1970 and the Nigerian Agip Oil Company Oyakama pipeline leakage of 1980.[9]

Oil spills discharge in the Niger Delta have resulted in adverse effects on land, freshwater swamps and the marine environment as well as potential threats to human health in the affected host communities.[10]

Defoliation and mortality of the mangroves have been observed in swamps affected by oil spills.[11] When oil spillage occurs onshore or near shore, the soil and other components of the terrestrial ecosystem are inevitably affected.[12]

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[25] Nigerian National Petroleum report, 2005, p.1-2.

[1] Ashton – Jones, N.S.A & Douglas O. "The Human Ecosystems of Niger Delta". An Environmental Risk Assessment (ERA) handbook, Benin City. 1998.

[2] Human Rights Watch: "The Price of Oil Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", London.1999.

[3] Fekumo, J. F., "Oil Pollution and the Problems of Compensation in Nigeria". F & F publishers, Port Harcourt, 2001, p.1.

[4] Worika, I. I., "Environmental Law and Policy of Petroleum Development". Ampez Centre for Environment and Development, Port Harcourt. 2002, p.36.

[5] Constitutional Rights project (CRP): "Oil and Human Rights in Nigeria's Delta", Lagos, 1999.

[6] Adewuyi, A. O. "The Implications of Crude Oil Exploration and Export on the Environment and Level of Economic Growth and Development in Nigeria". A paper presented at Nigerian Economic Society Annual Conference. See proceedings, 2001, Pp 119-145.

[7] United Nations Development Programme (UNDP): Niger Delta Human Development report Garki, Abuja: UN House, 2006.

[8] Orubu, C. O., Odusda, A. and Ehwarieme, W., "The Nigerian Oil Industry: Environmental Diseconomies Management Strategies and the Need for Community Involvement". Humanities and Ecological, 2004, Volume 16, No.3, Pp 203 – 214.

[9] Daniel-Kalio, L. A., and Solomon, A. B., "The Impact of Accidental Oil Spill on Cultivated and Natural Vegetation in a Wetland Area of Niger Delta, Nigeria". Ambio, 2002 volume 31, No:5, Pp 441 – 442.

[10] Aniefiok, E. I. et al, "Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta". American Journal of Environmental Protection, 2013, Vol. 1, No. 3, pp. 78-90. <http://pubs.Sciepub.com/env/1/4/2/index html. > Accessed May 23, 2016.

[11] Linden, O., and Jernelev, A., "The Mangrove Swamp: an ecosystem in danger", Ambio (Sweden) 1980, Volume 9, No:2, Pp 81 – 88.

[12] Osuji, L. C., and Opiah, U., "Hydrocarbon Contamination of a Terrestrial Ecosystem: The case of Oshire 2 Oil Spill in Niger Delta, Nigeria", The Environmentalist, 2007, Volume 27, No. 3, Pp – 337 – 340.

DOI: 10.5281/zenodo.17283702

Oil pollution have disastrous implications on the agricultural productivity of the affected area and multiplier effects on the socio-economic wellbeing of the people of the Niger Delta.[13]

B. GAS FLARING (ATMOSPHERIC IMPAIRMENT)

Gas flaring is the deliberate burning of natural gas. Natural gas is a naturally occurring hydrocarbon gas mixture consisting primarily of methane, but commonly including varying amounts of other higher alkanes, and sometimes a small percentage of carbon dioxide, nitrogen, hydrogen sulfide, or helium.[14] The World Bank shows that gas flaring has been known to be the singular highest contributor to the problem of global warming or global climate change.[15]

Flaring of associated gas mainly emits carbon dioxide (Co_2), carbon monoxide (Co) and a variety of air pollutants such as nitrogen oxides (Nox), sulphur dioxide (So_2), toxic heavy metals and black carbon soot.[16] Gas flaring in the Niger Delta region contributes to atmospheric pollution in the region.[17]

Nigeria has over 123 flaring sites in the Niger Delta region and has been regarded as one of the highest emitter of greenhouse gases in Africa.[18] About 45.8 billion kilo watts of heat are discharged into the atmosphere of the Niger Delta from combustion of 1.8 billion cubic feet of gas everyday.[19]

Gas flaring has negative impact on the environment as it affects plant growth, wildlife and human begins. In the case of GBEMRE v S.P.D.C & ORS,[20] JUSTICE C. V. NWOKORIE ruled in Benin City that the damaging and wasteful practice of gas flaring by all the major companies including Exxon Mobil, Chevron, Texaco, Total and Agip, as well as Shell, in Joint Ventures with the Nigerian National Petroleum Corporation, cannot lawfully continue and must stop.

The suit was brought by Mr. Jonah Gbemre, on behalf of himself and the Iwerekan community in Delta State to stop the defendant companies from flaring gas in the community.

According to the Court the toxic substances that have been emitted in the flares for over 50 years, including benzene and particulates have exposed Niger communities to health risks and property damage, with attendant human rights implications.

This exposure is a violation of the constitutionally guaranteed human rights i.e. - the right to life[21] and right to dignity of person.[22]

It also violates the rights guaranteed in the African Charter on Human and people's Rights, for instance, the right of every individual to enjoy the best attainable state of physical and mental health[23] and the right of all peoples to a general satisfactory environment favorable to their development.[24]

C. LAND DEGRADATION AND DEFORESTATION

Vegetation in the Niger – delta is comprised of mangrove forests, brackish swamp forests and rain forest. The large expanses of mangrove forests are estimated to cover approximately 5,000 to 8,580km^2 of land.[25] Mangroves remain very important to the indigenous people of Niger Delta as well as to the various organisms that inhabit the ecosystems.

Oil exploitation activities have destroyed the extensive mangrove forest in the Niger Delta region. It has depleted biodiversity and extensive land degradation and forest deforestation are caused by oil induced fire and pollution on the environment.

A number of oil induced fire outbreak has occurred in the Niger Delta leading to deforestation and destruction of farmland such as the Jesse fire incident that occurred in October 17,1998 which not only destroyed farm lands but killed people of the community.[26] Also another fire incident occurred in September, 2004 in Okrika Community, Rivers State which lasted for three days destroying plants and animals inhabiting the affected area.[27]

2.2. ECONOMIC IMPACT

The alluvial soil of the Niger Delta region coupled with an abundant stream of fresh and salt-water bodies provide the necessary livelihoods for the people of the region who are mainly, farmers and fishermen.[28] LOUBSER defined livelihood as the totality of means by which people secure a living, have or acquire in one way or another, the requirements of survival and the

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13 Osuji, L. C., and Adesiyan S. O., "Extractable Hydrocarbons, Nickel and Vanadium contents of Ogbodo Isiokpo Oil Spill Polluted Soils in Niger Delta, Nigeria." Environmental Monitoring and Assessment, 2005, Volume 110, No:3, Pp. 129 – 139.

14 < http://en.wikipedia.org/wiki/natural_gas>. Accessed May 23, 2016.

15 World Bank "Defining an Environmental Development for the Niger Delta", World Bank Washington D. C. 1995.

16 Aniefiok, E. I. et al, *op cit.*

17 Ajao, E. A., Anurigwo, S., "land-based Sources of Pollution in the Niger Delta, Nigeria," Ambio: A Journal of the Human Environment, 2002, Volume 31, No:5, Pp 442 – 445.

18 Uyigue, E., Agho, M., "Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria", Community Research and Development, Centre Benin City, 2007.

19 Agbola, T., and Olurin T., "Land Use and Land Cover Change in the Niger Delta", Excerpts from a Research Report Presented to the Centre for Democracy and Development, 2003.

20 (2005) AHRLR 151.

21 Section 33 of Constitution of the Federal Republic of Nigeria 1999 (as amended).

22 *ibid* Section 34.

23 Article 16 of the African Charter on Human and Peoples Rights, CAP 10 LFN 1990.

24 *ibid*. Article 24.

25 Oil Spill Intelligent Report "How does it spill", Arlington, M. A. U.S.A, 1978 Available at <(www.waa.doo.org).>

26 Eregha, P. B., Ikighe, I. R. "Oil Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects". Journal of Sustainable Development in Africa, 2009, Volume 11, No. 4, p. 165.

27 Zabbey, N., "Impacts of Extractive Industries on the Biodiversity of the Niger-delta Region, Nigeria". Eleme. Centre for Environment, Human Rights and Development. 2005.

28 Zabbey, N., "Impacts of Oil Pollution on Livelihoods in Nigeria" – paper presented at the Conference on Petroleum and Pollution – How does that Impact Human Rights? Co-organised by Amnesty International, Forum and Friends of the Earth, Sweden, Stockholm, 27th April, 2009, p. 3.

DOI: 10.5281/zenodo.17283702

satisfaction of needs as defined by the people themselves in all aspects of their lives.[29]

According to a report on Niger Delta Human Development[30], the environment is very important for the Niger Delta people where most of the populace depend on the natural environment whether living or non-living for livelihoods. Following environmental pollution and degradation caused by oil exploration activities such as drilling, oil spillage and gas flaring, farming activities of the people have been disastrously affected. This has resulted in poor income revenue yield to the people of the region.[31]

Arable farmlands have been lost to oil pollution as sizable farmlands in the region have been rendered, barren due to oil spillage and leakages.[32] Cash and subsistent crops have had a fair share of defoliation as a result of constant oil spillage and toxicity of the soil.[33] As a result of this the food chain has been partially truncated by hybrid crops that are an imitation of their former selves.[34] Thus, yam tubers have become unusually small and even sweet varieties of yam have become everything but sweet.[35]

Aquatic life has not fared much better, certain species of fish have migrated and others have become nearly extinct as a result of oil spillage and industrial waste effluents that are indiscriminately disposed in the swamps and bodies of water in the region.[36]

When oil spillage occurs, it has to be cleaned up using some designated chemical, while the use of this chemical is legal, reckless use of it renders the soil infertile for agricultural purpose and damages crops and marine life.[37] Extensive mangrove area in the region have been converted for one form of oil facility or the other and even degraded by oil pollution. The region has the largest mangrove in Africa and mangroves in the region provide coastal communities with ecosystem goods like sea food and fire wood.[38]

Mangroves are strong livelihood support base for the people of Niger Delta.[39]

With the destruction of the main source of income and productive activities of the region, one of the economic concerns of the region is the increased rate of unemployment,[40] which has led to migration.

There is also a high level of poverty in the region. This is because the means of livelihood of the Niger Delta people, which is basically farming and fishing has been severely affected therefore leading to unemployment, which means the people cannot afford basic necessities of life.

Poverty can be defined as the inability of certain persons to attain a minimum standard of living.[41] Poverty means that significant numbers of people are living in intolerable conditions in which starvation is a constant threat, sickness is a familiar companion and oppression becomes a fact of life.[42]

The people in this region are poor and hungry not because there is no food but because they cannot afford to buy it[43] due to oil exploration activities.

The cost of living in the region is relatively high. A practical example is Rivers State which has one of the highest cost of living in Nigeria.[44]

Based on the World Bank Report,[45] the GNP per capita in the Niger Delta region is below the national average of US $280 which is described as poor. The incidence of poverty in the region has tremendously increased after the oil boom. Poverty has become a way of life due to economic stagnation, malnutrition poor quality of life, unemployment as well as unhealthy environment in the region.

There is also the problem of underdevelopment in the region. Underdevelopment can be defined as:

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29 Loubster, J. "Sustainable Livelihoods: a Conceptual Exploration" paper Presented at the workshop of Civil Society, Sustainable Livelihoods and Women in Development. Malaysia, 6 – 9 November, 1995.

30 United Nations Development Programme: Report on Niger Delta human Development, Abuja 2006. Available at <Undpifoundation.org/images/research reports/reports/Economic – opportunities – Reports. Pdf.> Accessed 19th May, 2016.

31 Ogbonnaya, U. M. "Environmental Law and Underdevelopment in the Niger Delta Region of Nigeria" International Multidisciplinary Journal, Ethiopia, Volume 50, No: 22, October 2011, p. 75.

32 Nick, A. J. et al, "The Human Ecosystems of the Niger Delta". Environmental Rights Action Handbook, Lagos, 1994, p.44. Available at < http://www.essential action.org/shell issues.Htm.> Accessed 19th May, 2016

33 Oshwofasa, B. O., Anuta, D. E., Aiyedogbo J. O.,"Environmental Degradation and Oil Industry Activities in the Niger Delta Region". African Journal of Scientific Research, Volume 9, No. 1, 2012, p. 449.

34 *ibid*.

35 *ibid*.

36 *ibid*.

37 Amadi, S. N. and Tamuno, S. O., "Oil Exploration in Nigeria; It's Socio-Economic Impact on the Oil Bearing Communities". Tiber, 1999 Volume 3 No. 1.

38 Zabbey, N. *op cit*

39 Zabbey, N., "Shrimp Farming in Nigeria: Implications for Mangroves and Rural Livelihood in the Niger Delta". In ERA (quarterly magazine of Environmental Rights Action/Friends of the Earth Nigeria) May – August 2008, p. 19 – 21.

40 Okoh, R. N. and Egbon, P. C. "Fiscal Federation and revenue Allocation: The Poverty of the Niger Delta in Aigbokan. Fiscal Federalism and Nigeria's Economic Development Selected papers of the 1999 Annual Conference of the Nigerian Economic Society Ibadan.

41 World Bank Development Report, 1995 – Available at <http://siteresources. Worldbank.org/INTPOVERTY/Resources/WDR/Stiglitz/Oduro.pdf.> Accessed 20th may, 2016.

42 Available at < Unstats.un.org/unsd/methods/poverty/evolution of Thinking-about. Poverty % 20 Kanbure % 20 Sept % 20 1999. Pdf.> Accessed 20th May, 2016.

43 Eregha, P. B. "The Socio-Economic Effects of University Graduates in Nigeria". Unpublished B.Sc (ed) Project. University of Ado-Ekiti, Nigeria. 2001.

44 Available at <www.nairaland.com/1813194/8-most-expensive-cities-nigeria> Accessed 20th May, 2016.

45 World Bank Report "Defining an Environmental Development Strategy for the Niger Delta". Vol. 2, 1995. Available at <www.focusnigria.com/niger-delta.htm.> Accessed 20th May, 2016.

DOI: 10.5281/zenodo.17283702

*"**Inability, failure, refusal or structural prevention of a people to use existing mental, physical and material resources available to society at a given time and space to bring about both qualitative and quantitative improvement in standard of their lives**".*[46]

The World Bank in its 1995 Report, depicted the height of the peoples' problems when it described the region in the following words.

> ***"The Niger Delta has been blessed with an abundance of physical and human resources, including the majority of Nigerian's oil and gas deposits, good agriculture land, extensive forests, excellent fisheries as well as developed labour force, and a vibrant private sector. However, the region's tremendous potentials for economic growth and sustainable development remains unfulfilled and its future is threatened by deteriorating economic conditions that are not being addressed by present policies and actions.***
>
> ***Education levels are below the national average and are particularly low for women. While 76 percent of Nigerian children attend primary schools, this level drops to 30% in some parts of the Niger Delta".***[47]

The Niger Delta region paints a picture of a region suffering from chronic underdevelopment in the midst of wealth. This situation is also captured by the United Nations Development Programme in the following words:

> ***"Life expectancy is falling in an age of blockbuster oil prices. Energy availability is poor in a region that provides one-fifth of energy needs of the United States. There is an almost total lack of roads in a region whose wealth is funding gigantic infrastructural development in other parts of Nigeria and expensive peace keeping activities in other parts of Africa".***[48]

The Niger-Delta region remains the most deprived region in the nation lacking in basic infrastructure such as good road network, good schools, potable water and health care facilities. The lack in basic social amenities or infrastructure has led to low life expectancy, high infant mortality rate, high level of illiteracy and unemployment among the people of the region.[49]

2.3. HEALTH IMPACTS OF OIL EXPLOITATION

The World Health Organization in 1948, defined health as a state of complete physical, social and mental wellbeing and not merely the absence of disease or infirmity. In most traditional societies, people are said to be healthy when their spiritual, physical, mental, social or moral wellbeing are properly blended, permitting them to carry out their day to day activities according to the customs and traditions of their community.[50]

The health effects associated with oil exploration and exploitation activities include:

- Exposure to drilling wastes;
- Oil spillages; and
- Gas flaring.

A. THE HEALTH IMPACT OF EXPOSURE TO DRILLING WASTES

Drilling waste and other waste products of oil exploitation activities have been found to contain aromatic hydrocarbons, including heterocyclic chemicals that can mimic hormones, bactericides, soluble chromates, mercury and naturally occurring radioactive materials commonly found in underground geologic deposits and frequently brought to the surface during the drilling of oil well.[51]

Health impacts of exposure to the chemicals contained in drilling wastes include:

increased risk of spontaneous abortion,[52] increased risk of infertility,[53] menstrual irregularities due to exposure to endocrine disrupters such as polyaromatic hydrocarbons and alkyl phenols.[54] There is also the increased risk of cancer.[55]

B. HEALTH IMPACT OF GAS FLARING

The disposal of natural gas through flaring is disastrous to human and animal health. Gas flaring within the Niger Delta region generates heat, which is felt over an average radius of 0.5km, thereby causing thermal pollution in the region.[56] The high temperatures around the gas flares sites are indications that gas

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46 Ekanem, O., "The Dialectics of Underdevelopment and Instability in Africa", Calabar journal of Politics and Administration 2001, Volume 1, p. 53.

47 World Bank Report "Defining an Environmental Development Strategy for the Niger Delta" 1995. Vol 2, Available at < www.focusnigeria.com/niger-delta.htm.> Accessed 20th May, 2016.

48 United Nations Development Programme: Niger Delta Human Development Report, Abuja, 2006. Available at <Unpifoundation.org/images/research reports/Economic – Opportunities – reports.Pdf> Accessed 20th May, 2016.

49 Ogbonnaya, U. M., *op cit*

50 Best O.,: "The Health Impact of Oil Exploration and Exploitation in the Niger Delta Region" – A Lecture delivered at the 2008 Annual General Meeting of the National Association of Resident Doctors of Nigeria, Port Harcourt. P.20. ISBN 978 – 900 2108.

51 *ibid*. P. 21.

52 San, S. M., Armstrong M., Stephens C., "Outcome of Pregnancy among Women Living in the Proximity of Oil Fields in the Amazon Basin of Ecuador". International Journal Occup Environment Health. 2002. Vol 8, P. 312 -319.

53 Obidike P. R., Maduabuchi I. U., Olumuyiwa S. S., "Testicular Morphology and Cauda Epididymal Sperm Reserves of Male Rats Exposed to the Nigerian Qua Iboe Brent Crude Oil". Journal of Vertinary Science, 2007, Vol 8, P. 1-5

54 Epstein P. R., Selber J., Oil: "A Life Cycle Analysis of its Health and Environmental Impacts". Boston M. A. The Centre for Health and the Global Environment, Haward Medical School, 2002.

55 Hurtig A. K., San S. M., "Geographical Differences of Cancer Incidence in the Amazon Basin of Ecuador in Relation to Residency Near Oil Field". International Journal of Epidemiol 2002, Vol 31, P. 1021 – 1027.

56 Ikelegbe, O. O., "Pollution in Nigeria Causes, Effects and Control: The Case of Delta State" Paper presented at the 30th Annual Conference of the Nigerian Geographical Association held at the Federal University of Technology, Minna, Nigeria on 18-22 April, 1993. P. 7.

DOI: 10.5281/zenodo.17283702

flaring has created a distinct microclimate.[57] Some of the gaseous pollutants released into the atmosphere such as carbon monoxide, chlorine, nitrogen, sulphur oxides, acid across, beryllium are noted for causing headaches, heart problems depending on the pollutants.[58]

The leaders of Warri Women Protest of 2001 traced the prevalence of respiratory diseases and eye abnormalities to unrestrained gas flaring by oil companies in the region.[59] Gas flaring can cause skin damage, bronchial systems in children and has been implicated in the pathogenesis of skin tumours as well as chromosomal disorders.[60]

C. HEALTH IMPACT OF OIL SPILLAGE

The discharge of oil and gas into the environment often expose human population around the contaminated area of the Niger Delta region to potentially dangerous toxic substances.

Acute exposures to aromatic carbons, which are common constituents of oil, are known to cause respiratory symptoms.[61] Increasing evidence mainly from oil spill, suggests that human population exposed to risks may experience long term respiratory effects and chromosomal damage.[62]

Gas flaring can cause skin damage, bronchial symptoms in children and has been implicated in the pathogenesis of skin tumours as well as chromosomal disorders.

Evidence of acute exposure to oil spill around the world demonstrate the potential adverse health effects associated with petroleum.

Some host communities like the Ogoni people have suffered from significant environmental degradation and health impacts including increase in respiratory diseases and cancer cases.[63]

According to United Nations Environment Programme,[64] the health of several Ogoni Communities has been severely compromised as a result of surface and groundwater contamination associated with petroleum exploration and production operations.

There is high probability for a wide range of toxic responses in the region including behavioural abnormalities, respiratory diseases, suppressed growth, induced or inhibited enzyme, adverse physiological responses, blood disorders, negative reproductive outcomes, reduced immunity to disease and parasites and cancers of the various organs.[65]

Research has shown that pollution caused by oil spillage does not end with the mopping up of the spilled oil.

Health risk is not averted by abstinence from fish killed by spilled oil. Some of the fishes and animals that escape instant death from pollution are known to have taken in some toxic substances, which in turn get into human beings that eat them. This will in turn cause infections on man coupled with other side effects, which are in form of genetic mutations.

2.4. SOCIO-CULTURAL IMPACT

The Niger Delta Region has experienced a multitude of conflicts ranging from intra-community to inter-community as well as communities and oil company conflicts. Social unrest is the order of the day in the region and most of the conflicts lead to loss of lives and destruction of properties of the people.

The region is also experiencing various forms of hostage taking for financial and political gain which is as a result of the rise of various militant groups, which in their bid to obtain a share of the dividends of oil wealth have resorted to acts of adduction, hostage taking, sabotage against oil installations, kidnapping and extra-judicial killings.

The apparent disregard which greeted the feelings of expression by the citizens requests to have a fair share in the oil explored and exploited in the region led to agitations by the Niger Delta people. At first, the people began with peaceful protests and demonstrations, media and publicity and litigation.[66]

Beginning from the 1990s, the struggle for environmental security and the development of the region began to assume horrendous magnitude as it was effectively radicalized.[67] The Ogoni uprising championed by the Movement for the Survival of the Ogoni People (MOSOP) could be taken as the first major attempt to radicalize the struggle.[68] The MOSOP struggle was predicated upon the Ogoni Bill of Rights issued in 1990 the main demand of which was the political control of Ogoni affairs by Ogoni people.[69]

Also, on December 11, 1998, youths meeting at Kaiama, Bayelsa State, formed an Ijaw Youth Council **(**IYC) and adopted a declaration on the struggle for the control of oil mineral resources

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57 Alakpodia, I. J. "Effects of Gas Flaring on the Microclimate and Adjacent Vegetation in Isoko Area of Bendel State", (Unpublished M. Sc Thesis, University of Ibadan) 1990

58 Kaladumo, C. O. K., "The Implications of Gas Flaring on the Niger Delta Environment", Paper presented at the 8th International Seminar on the Petroleum Industry and the Nigerian Environment, Port Harcourt, 18-21 November 1996, P. 29.

59 Oshwofasa, B. O., Anuta, D. E., Aiyedogbon J. O. *op cit.*

60 Aniefiok, E. I., et al. *op cit.*

61 Lyons, R. A., Temple, J. M., Evans D., Fone, D. L., and Palmer S. R., "Acute Health Effects of the Sea Empress Oil Spill" Journal of Epidemiology and Community Health, 1999, P. 306-310.

62 Zock, J. P., et al "Prolonged respiratory Symptoms in Clean-up Workers of the Prestige Oil Spill" American Journal of Respiratory and Critical Care Medicine, 2007. Pp. 610-616.

63 Blankson, I., "Public Relations in Sub-Saharan Africa," Global Public Relations: Spanning Borders, Spanning Cultures, A. R. Freitang and A. Q. Stokes (eds) London, Pp 178 – 205.

64 United Nations Environment Programme: Environmental Assessment of Ogoni Land, Nairobi, Kenya, 2011. Available at < http://pubs. Sciepub.com/env/1/4/2.> Accessed 29th April, 2016.

65 Nriagu, J., "Oil Industry and the Health of Communities in the Niger Delta of Nigeria", Encyclopedia of Environmental Health, O. N. Editor-in-chief. Jerome, ed. 2011. Pp 240-250.

66 Omotola, S. J., "Oil and the Litigation Issues in Nigeria" in Jimoh, Ibah H. (ed). Oil and the Nigerian Environment, IIorin, 2006.

67 Shola O., "The next gulf? Oil Politics, Environmental Apocalpse and Rising Tension in the Niger Delta". Occasional paper series: Vol 1, No: 3,2006, p. 12.

68 *ibid* P. 13.

69 Osaghae, E. E., "The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State", African Affairs, Vol 94, No: 376, Pp 323 – 344.

DOI: 10.5281/zenodo.17283702

while asserting that the degradation of the environment of Ijaw Land by Transnational oil companies and the Nigerian State arise mainly because Ijaw people have been robbed of their natural rights to ownership and control of their land and resources.[70] This is known as the Kaiama Declaration.

The Niger Delta people have seen little benefit from the revenue derived from the export of about two million barrels of oil a day, and yet they have suffered the adverse consequences of oil production, including environmental degradation,[71] this has led to the emergence of militant groups in the region.[72]

The activities of the militant groups have been very violent. This violence has been aggravated by the availability of deadly weapons such as AK-47 rifles.[73] In the words of PROFESSOR GEORGE J. FRYNAS, a specialist on oil and environmental politics in Nigeria, "the Niger Delta is awash with weapons".[74]

The region has also become a harbour for the proliferation of small arms and light weapons which the militants have used on different occasions.

On 24 January 2006, gunmen dressed in police uniforms killed nine people in a raid on an oil company's offices in Port Harcourt,[75] this was followed by a demand for huge amounts of money as ransom before nay hostages could be released.

Another dimension of conflicts or violence in the Region is inter and intra community conflicts. This may have resulted from the divide and rule tactics of the government of Nigeria in its attempt to manage crisis situations.[76] This was the government's approach to the Ogoni uprising when it succeeded in polarizing the Ogoni into two, one for and the other against the struggle.[77] For MOSOP, those opposed to the struggle were "vultures," "saboteurs", "collaborators" and "sell-outs".[78] Opponents viewed Ken Saro-Wiwa and his MOSOP not as defenders of "an oppressed people but an opportunists who after series of government sinecures belatedly championed a cause that incited violence".[79]

This trend has not changed and has generated conflict among Niger Delta communities, with a lot of deaths, injuries and wanton destruction of properties into the bargain.[80]

These have led to unprecedented migration of the people to foreign lands as refuges.[81] In March 1996, the UN High Commission for Refugees (UNHCR) reported that 1,000 Ogoni's had fled to Benin since Ogoni Day. [82]

Migration is also caused by the high rate of unemployment in the region. People in the rural communities in search of greener pastures have migrated to major urban cities.[83] Others are searching for opportunities to re-establish trading activities as a result of the loss of farmland and water bodies to oil spill and gas flaring.

In the words of ADENIYI "Nigeria's Oil boom has turned the petroleum producing areas to centrifugal centers of oil doom where people leave rather than live." [84]

There is also the problem of displacement of certain villages in the region which has seriously affected their socio – cultural lives. For example, the forceful displacement of Igolu Village in Isoko land as a result of massive oil spillage in 1973 at Shell's location 13 and 18 has posed for the villagers problem of social and cultural adjustment.[85]

The region has also lost societal values and traditional authority structures as militant groups now increasingly challenge traditional structures. In 2003, at Irri, Isoko local Council in Delta State, a traditional ruler was alleged to have compromised the rights of the community to Nigerian Agip Oil Company. This sparked off violence.[86]

Asides, the conflicts, migration, displacement of persons and loss of societal values and traditional authorities, there is also an alarming evidence of the drop in morality in the region which hitherto used various taboos to check social miscreants.[87] The

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70 Available at < http://www.hrw.org/reprts/1999/Niegria2/Ngria993-02.htm.>

71 Human Rights Watch, "The price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", New York, February, 1999.

72 Movement for the Emancipation of Niger Delta, Niger Delta People's Volunteer force, Niger Delta Liberation Force, Egbesu Boys of Africa.

73 Shola O., *op cit.*

74 Frynas, G. J., Interview with BBC's World Today 21st, January 2006. Available at <http//www.oca-online.co.uk/docs/marsh.> Accessed 21st May, 2016.

75 "Security Risk: Niger Delta", Available at <http://www.oca-online.co-uk/docs/marsh.> Accessed 21st May, 2016.

76 Shola O., *op cit.*

77 *ibid.*

78 *ibid.*

79 Roberts, N. Y., "The State, Accumulation and Violence: The Politics of Environmental Security in Nigeria's Oil producing Area", Nigerian Institute of Social and Economic Research (NISER), Monograph Series No:17, P.39.

80 *ibid.*

81 *ibid.*

82 Human Rights Watch/Africa, "Nigeria: Permanent Transition", Human Rights Watch Africa, Volume 8, No. 3, September, 1996, P.42.

83 Legborsi, S. P., "The adverse Impacts of Oil Pollution on the Environment and Wellbeing of a Local Indigenous Community: The experience of the Ogoni people of Nigeria 2007. Available at <http"//www.un.orR/esg/unpfil/…/workshop/PPE pyagbara.doc.> Accessed 21st May, 2016.

84 Adeniyi, E. O. "Environmental and Socio-economic Impacts of Oil Spillage in the Petroleum Producing areas of Nigeria" paper presented at the proceedings of the 1983 International Seminar on the Petroleum Industry and the Nigerian Environment, Lagos.

85 Eniola, O. A., Olusule, R. Agaye, G. "Environmental and Socio-Economic Impact of Oil Spillage in the Petroleum Riverine Areas of Nigeria". A paper presented at the International Seminar on the Petroleum Industry and the Nigerian Environment 1983, Lagos, Available at <http://Afrreyjo.net/journals/multidiscipline/vol-3-num-% 20art – 9.Pdf.> Accessed 21st May, 2016.

86 United Nations Development Programme: Niger Delta Human Development Report, Abuja, 2006.

87 Victor, O., Isike, C. A., "Oil Politics in Nigeria's Niger Delta". LAP Lambert Academic Publishing 2006, P. 130.

DOI: 10.5281/zenodo.17283702

influx of wealthy and alien workers from the oil firms has elevated prostitution in previously remote and stable communities.[88]

Teenage girls are attracted and seduced with steady flow of cash from aliens and oil workers and they subsequently ignore going to school as pursuit of education is seen as time wasting.[89]

There is also the prevalence of HIV/Aids in the region which is among the highest in the country, higher than the average for Nigeria.[90] The region has an average prevalence rate of 5.3 percent compared to the National average of 5 percent.[91] This is due to the fact that the region is flooded with people from all over the world as a result of oil activities in the region.

In view of the socio-cultural impact of oil exploration activities, the deep sense of community morality, social cohesion and solidarity enjoyed by the people has been eroded.

2.5. CONCLUSION

In the last five decades, the Niger Delta region has experienced increased activities in the area of oil exploration and exploitation, refining and products marketing operations. While these activities have created tremendous wealth for the country, it has led to environmental and socio-cultural hazards to the Niger Delta region.

LEGAL FRAMEWORK FOR MINIMIZING ENVIRONMENTAL AND SOCIAL IMPACTS OF OIL EXPLOITATION IN THE NIGER DELTA

3.0. INTRODUCTION

This chapter undertakes an analysis of the principal statutes in Nigeria that constitute the legal framework for addressing the impact of oil exploitation in the Niger Delta region.

3.1. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA[1]

The Constitution is the grundnorm[2] of a country. The Constitution is the national legal order which organizes a State and it's government.[3] The Constitution recognizes the importance of protecting and improving the natural environment and makes provision for it. Section 20 provides thus;

> ***"The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria".***

Section 17(2) of the Constitution declares that:

> ***"exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented"***.

The above provisions are not legally enforceable rights by virtue of S. 6 (6) (c) of the Constitution and therefore not binding obligations, being provisions under Chapter II of the Constitution, which are fundamental objectives and directives principles of state policy.

However, Chapter IV of the Constitution, which are enforceable fundamental human rights can be used in bringing actions against environmental pollution in the Niger Delta region. [4]

3.2. ASSOCIATED GAS (RE-INJECTION) ACT[5]

The Act[6] came into operation in 1979 and is designed to compel every company producing oil and gas in Nigeria to submit preliminary programmes for gas re-injection[7] and detailed plan for implementation of gas re-injection.[8]

The purpose of the Act is to eliminate gas flaring through re-injection and viable use of all produced associated gas.

Pursuant to S. 1(b) of the Act, all gas produced in association with crude oil should be re-injected.

Given the negative impacts of gas flaring, Section 3 prohibits gas flaring as follows:

> ***"Subject to subsection 2 of this section, no company engaged in the production of oil and gas shall after 1st January, 1984 flare gas produced in association with oil without the permission in writing of the Minister".***

However, by the wordings of the above section, it automatically creates a window for non- observance of the gas re-injection law since the Minister can permit in writing the flaring of gas.

A person guilty of the offence as provided under the aforesaid section looses the right granted to him in the particular field.[9] The Minister may seize all or part of any entitlements of any person towards the cost of completion and implementation of a good re-injection scheme or the repair and restoration of any reservoir in the field in accordance with good oil field practice.[10]

However, the provisions of this Act with particular reference to section 4[11] has not been complied with as gas flaring is still being carried on with impunity in oil fields throughout the Niger Delta

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88 Anikpo, M.., Onyige, P. U: "Dynamics of Socio-Cultural Exchange in Nigeria's Oil Producing Communities: The case of Izombe",(Longman, 1996, Lagos).

89 Teilanye D., "Bayelsan Notes on Oil Pains", The Guardian, Thursday, February 20, 1997.

90 Federal Ministry of Health (Nigeria) "National HIV/AIDS and Reproductive Health Survey", Ministry of Health, Abuja, 2003.

91 *ibid*.

1 1999 (as amended) hereinafter referred to as the Constitution. S. 1 (1) (3) of the Constitution makes it supreme among all other laws.

2 Dias, R. W. M. *Jurisprudence* 5th edition, (Butter Worth & Co. (publishers) Ltd, London, 1985), P. 361; Section 1(1) & (3) of the Constitution.

3 Nwabueze, B. O., *The Presidential Constitution of Nigeria*,(Hurst and Nwamife publishers, London and Enugu, 1982) p. 7.

4 In Gbemre's case (supra), it was held that Sections 33 and 34 of the Constitution ineluctably guarantee "the right to clean, pollution – free, Healthy Environment" and accordingly, the respondent Company was restrained from flaring gas in the applicant's community.

5 CAP A25, LFN 2004 (Hereinafter referred to as the AGA).

6 *ibid*.

7 Gas re-injection of Natural gas into an underground reservoir, typically one already containing both Natural gas and crude Oil in order to Increase the pressure with the Reservoir and Thus Induce the f low of Crude Oil or Sequester that cannot be exported.

8 See the Long title, AGA.

9 *ibid. Section 4(1).*

10 *ibid. Section 4(2).*

11 Associated Gas Re-injection Act, CAP A25 LFN, 2004.

DOI: 10.5281/zenodo.17283702

region causing drastic effects on the environment and ecology of the region.

It is submitted therefore, that due to the adverse consequences of gas flaring on the environment, stronger statutory laws which will be enforced are desirable. For instance, in Gbemre's case,[12] the court held that S. 3(2) (a) and (b) of the Associated Gas Re-injection (continued Flaring of Gas) Regulations of 1984 prohibits gas flaring in Nigeria and are inconsistent with the applicant's right to life and dignity of person as enshrined in S. 33 (1) 34 (1) of the Constitution of the Federal Republic of Nigeria, 1999 and articles 4, 16 and 24 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.[13]

3.3. ENVIRONMENTAL IMPACT ASSESSMENT ACT[14]

The EIA is an assessment of the potential impacts whether adverse or beneficial, of a proposed project on the natural environment.

The EIA Act primarily deals with the early considerations of environmental impacts as it concerns public and private projects.[15] The EIA Act requires an environment impact assessment of oil and gas related projects.[16]

As regards the Niger Delta region, an environment impact assessment is required before and after commencement of oil exploitation. Failure to comply with this is an offence for such corporate body or individual who wants to undertake the project of oil and gas exploration and exploitation in the region. On conviction, such corporate body would be liable for fine not less than ₦50,000.00 but not more than ₦1,000,000.00 while the individual is liable to a fine of ₦100,000.00 or five years imprisonment.[17]

3.4. HARMFUL WASTE (SPECIAL CRIMINAL PROVISIONS) ACT[18]

The Harmful Waste Act (Special Criminal Provisions) is designed to prohibit the carrying, dumping or depositing of harmful waste or obnoxious waste on the land, air or waters of Nigeria without lawful authority.

S. 1 (1) (2) HWA prohibit oil spillage on land, gas flaring in the air and also the pollution of the waters by obnoxious and harmful substances which are dumped in the process of oil exploitation in the Niger Delta region. This is to checkmate the many catastrophes done in the process of oil exploitation in the region.

A person liable of an offence under HWA is liable to a sentence of life imprisonment as well as the forfeiture of land or anything used to commit the offence.[19]

Primary offenders include the person doing the act or conniving with another person to do the act or giving his consent to carry, dump or deposit harmful waste on the land, air or waters of Nigeria.[20]

Where the offence is committed by a body corporate, every conniving, consenting or negligent officer would be jointly liable with the corporate body.[21]

Section 12[22] defines the civil liability of any offender. He would be liable to persons who have suffered injury as a result of his offending act.

3.5. HYDROCARBON OIL REFINERIES ACT[23]

The primary aim of the HCRA is the licensing and control of refining activities. It prohibits any unlicensed refining of hydrocarbon oils in places other than the refinery.[24] It also requires refineries to maintain pollution prevention facilities. [25]

A default of these provisions is an offence and any one guilty is liable to a fine of not less than two hundred or more thousand naira in respect of any particular offence or to imprisonment for two years or both. [26]

The laws put in place by the Hydrocarbon Oil Refineries Act would minimize the environmental and ecological impacts of oil exploitation in the Niger Delta region if they are strictly followed. It would reduce environmental pollution. However, the punishment for default of the above provision is too mild and should be made more stringent so that the provisions of the Act would be complied with.

3.6. PETROLEUM REFINING REGULATIONS[27]

These regulations enact the procedures for the operation and establishment of hydrocarbon refineries in Nigeria. With regard to environmental protection, regulation 38 stipulates that;

1) ***Any unprogrammed spillage, of crude, products or chemicals inside the Refinery shall immediately be notified to the inspector.***
2) ***Such notice shall be followed within seven days after the spillage shall have occurred by a written report describing the cause and nature of the spillage, the amount of spillage recovered, precautionary measures taken since the spillage to prevent any hazard that may arise there from and precautionary measures taken to prevent such spillage in future***.

The manager who is in charge of the construction or operation of a refinery[28] has the duty to take measures to prevent and control the pollution of the environment.[29]

Any person who contravenes the above requirement is guilty of an offence and is liable on conviction to a fine of ₦1000.00 or imprisonment for a term of six months.[30]

3.7. MINERAL OIL SAFETY REGULATIONS[31]

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12 Supra

13 CAP A9, Vol. 1 LFN 2004.

14 CAP E12, LFN 2004 (hereinafter referred to as the EIA).

15 *ibid. Sections 1(a) and 2(1) & (4).*

16 Paragraph 12 of the Schedule to the EIA Act.

17 Ibid. Section 60.

18 CAP HI, LFN 2004 (hereinafter referred to as the HWA).

19 *ibid. Section 6.*

20 *ibid. Section 2 (1).*

21 *ibid. Section 7.*

22 Harmful Wastes special criminal Provision Act, CAP HI, LFN 2004.

23 CAP H5, LFN 2004 (hereinafter referred to as HCRA).

24 *ibid. Section 1.*

25 *ibid. Section 9.*

26 *ibid. Section 28.*

27 (L.N 45 of 1974) made pursuant to section 9(1) of Petroleum Act, CAP P10, LFN, 2009.

28 *ibid. Reg. 4(1) and (5).*

29 *ibid. Reg. 43(3).*

30 *ibid. Reg. 45.*

DOI: 10.5281/zenodo.17283702

The Regulations prescribe precautions to be taken in the production, loading, transfer and storage of oil and gas products to prevent environmental hazards. In relation to environmental protection all petrol, diesel or Liquefied Petroleum Gas (L.P.G) tanks shall be cited at least 100 feet from the centre of all well being drilled or worked over or any dangerous area in a direction downwind from the prevailing wind where possible, and all noxious or inflammable gases vented from storage tanks shall be carried a safe distance from regular operating areas and properly disposed of.[32] Provisions for fire extinguishment must be adequately made available for emergency use.[33]

3.8. NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (ESTABLISHMENT) ACT[34]

The NOSDRA Act is a principal and specialized legislation on environmental protection in the oil and gas industry which is involved in oil exploration and exploitation in the Niger Delta region. The NOSDRA Act established the National Oil Spill Detection and Response Agency with responsibility for preparedness, detection and response to all oil spillages in Nigeria.[35] The NOSDRA Act also established the advisory, monitoring, evaluating, mediating and coordinating arm of NOSDRA known as the National control and Response centre.[36]

Section 6 (1) of the NOSDRA Act stipulates that;

" "(a) The Agency shall be responsible for surveillance and ensure compliance with all existing environmental legislation and detection of oil spills in the petroleum sector; (b) receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria; (c) co-ordinate the implementation of the Plan as may be formulated, from time to time, by the Federal Government; (d) co-ordinate the implementation of the Plan for the removal of hazardous substance as may be issued by the Federal Government; (e) perform such other functions as may be required to achieve the aims and objectives of the Agency under this Act or any Plan as may be formulated by the Federal Government pursuant to this Act."

3.9. NIGER DELTA DEVELOPMENT COMMISSION (ESTABLISHMENT) ACT[37]

The Act[38] is to provide for the repeal of the Oil Mineral Producing Areas Commission Act 1998, and among other things, establish a commission a new commission with a re-organized management and administrative structure for more effectiveness; and for the use of the sums of received from the allocation of the Federation Account for tackling ecological problems which arise from the exploration of oil minerals in the Niger-Delta and for connected purposes.[39]

The functions of the commission are stipulated in S. 7 (1) (a-j) of the Act and include:

a) To formulate policies and guidelines for the development of the Niger Delta area,
b) To conceive , plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger Delta area in the field of transportation including roads, jetties and waterways, health, education employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications,
c) To prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes,
d) To implement all the measures approved for the development of the Niger Delta area by the Federal Government and the member states of the commission,
e) To cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development
f) To identify factors inhibiting the development of the Niger Delta area and assist the member states in the formulation and implementation of policies to ensure sound and efficient management of resources of the Niger Delta,
g) To tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger Delta area and advice the Federal Government and the member states on the prevention and control of oil spillage, gas flaring and environmental pollution.

3.10. OIL IN NAVIGABLE WATERS ACT (ONWA)[40]

A primary process that comes from oil and gas exploration and exploitation is the transportation to overseas users through the sea as well as the need for the discharge of waste oil. The ONWA is a primary statute of environmental protection in Nigeria as well as the Niger Delta region. The principal purpose of ONWA is to enforce the term of the International Convention for the Prevention of Pollution of the Sea by Oil 1954 to 1962 and to make provisions for such prevention in navigable waters of Nigeria.[41]

The ONWA prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines.[42] It makes it an offence for a shipmaster, occupier of land, or operator of apparatus for transferring oil to discharge oil into Nigerian waters. It also requires the installation of anti-pollution equipment in ship. A person guilty of discharging oil waste is to pay a fine of ₦2,000.00.[43]

Section 7 requires the records of occasions of oil discharge.[44] This is to ensure clean-up of such oil discharge.

The Niger Delta region has experienced countless oil discharge on its waters and land. The provisions of this Act would have a far reaching effect, if the provisions of the Act are strictly enforced. However, the penalties for the breach of the provisions of this Act are extremely mild and should be reviewed.

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31 (L.N. 45 of 1963). Made under Section 9 of The Petroleum Act CAP P10 2004 LFN.
32 *ibid. Regulation 17.*
33 *ibid. Regulation 21.*
34 CAP N157, LFN, 2006 (hereinafter referred to as NOSDRA ACT).
35 *ibid. Section 1.*
36 *ibid. Section 18.*
37 No. 6, LFN 2004.
38 *ibid.*
39 *ibid. see Long Title.*
40 *ibid. Long Title.*
41 *ibid. Section 1(1).*
42 *ibid. Section 3.*
43 *ibid. Section 6.*
44 Oil in Navigable Waters Act, CAP 06, LFN 2004.

DOI: 10.5281/zenodo.17283702

3.11. OIL PIPELINES ACT (OPA)[45] AND THE OIL AND GAS PIPELINES REGULATIONS (S. 1. 14. of 1995)

The OPA was enacted in 1956 as one of the first laws on oil pollution and contains important provisions that can be effectively used to protect the Niger Delta people and their environment from the negative impacts of oil exploitation.

The holder of an oil and gas pipeline license is civilly liable to pay compensation to any person who suffers physical or economic injury as a result of a break from his pipeline or an ancillary installation.[46]

Grant of licenses are subjected to regulations concerning public safety and prevention of land and water pollution.[47] The oil and gas pipelines regulations[48] are a subsidiary regulations made under the oil pipelines Act. The regulations make provisions for the guidelines for the design, construction, inspection, maintenance and operation of oil and gas pipelines. As regards environmental protection, it establishes the requirement of environmental emergency plans.[49]

A person who breaches any of the regulations is guilty of an offence and is liable on conviction with a fine of ₦500,000 or an imprisonment term of six months or both.[50]

3.12. PETROLEUM ACT[51]

The Petroleum Act empowers the minister of petroleum Resources to make regulations relating to licenses and leases granted under the Act and operations carried out there under and this include the prevention of pollution of water bodies and atmosphere[52] during oil exploitation. The regulations made under the PA would help in saving the environment and ecology of the Niger Delta region from the adverse impacts of oil exploitation in the region which includes pollution of the air and water bodies.

3.13. PETROLEUM (DRILLING AND PRODUCTION) REGULATIONS[53]

The regulations make provision for drilling and production of petroleum, safety, oil field practice and prevention of pollution. It places restrictions on oil producers from using land within fifty yards of any residential building, dam or public road.[54] This regulation can be used to safeguard the residents of the Niger Delta region from oil exploitation by activities.

The regulation also prohibits, the felling down of trees in forest reserves without lawful authorization.[55] This regulation can be used to secure the ecology of the Niger Delta environment as there are prohibitions on indiscriminate felling of trees.

Regulation 25 states that:

> *"**The licensee or lessee shall adopt all practicable precautions, including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluid or substances which might contaminate the water, bank or shore line which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible end it**."*

This is an important provision on environmental protection. The above provision protects the Niger Delta region from environmental pollution in any form whether on water bodies such as rivers, seas and creeks, on land and even in the air. If any pollution occurs, the licensee or lessee is mandated to take appropriate and prompt steps to control or if possible end the pollution.

However, the shortcoming of this regulation is that it does not stipulate punishment for breach of these regulations thereby making it unenforceable.

3.14. CRIMINAL LIABILITY FOR OIL AND GAS POLLUTION

The word 'crime' may be described as an act, default or conduct prejudicial to the community, the commission of which by law renders the person responsible liable to punishment by fine or imprisonment in special proceedings.[56] S. 2 of the Criminal Code defines a crime which is also interchangeably referred to as offence, as an act or omission which renders the person doing the act or making the omission liable to punishment under the code, or any Act or Law.

Several legislation governing oil and gas operations make it an offence to do anything or omit to do a thing that result in environmental pollution[57] and exclusive Jurisdiction to hear such matters is vested in the Federal High Court.[58]

Nevertheless, the scale of penal sanctions in environmental legislation for the oil and gas industry is usually very mild in relation to the environmental risks involved in oil and gas exploration and exploitation carried out by the oil and gas industry in the Niger Delta region. It is therefore evident that the criminal liability for oil and gas pollution has not done enough to minimize the environmental impacts of oil and gas exploration in the Niger Delta region.

3.15. CIVIL LIABILITY FOR OIL AN GAS POLLUTION UNDER COMMON LAW

Nigeria accepted the English Common law as one or its statutes of General Application.[59] Civil Liability is the potential responsibility for payment of damages or other remedies enforceable in a law

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45 CAP 07 LFN 2004 (hereinafter referred to as OPA).

46 *ibid. Section 11 (5)(c).*

47 *ibid. Section 17(4).*

48 (S.1. 14 of 1995) made pursuant to Section 33 of the Oil Pipelines Act.

49 *ibid. Reg. 9(1)(b).*

50 *ibid. Reg. 26.*

51 CAP P10 LFN, 2004 (hereinafter referred to as P.A).

52 *ibid. Section 9(1)(b)(iii).*

53 (L.F. 69 of 1969).

54 *ibid. Reg. 17(1)(b).*

55 *ibid. Reg. 23 and 27.*

56 Mick, W. (ed), *Osborne's Concise Law Dictionary*, (Thomon Reuters (Legal) Ltd, 2011) p.125 ISBN 9789381082140.

57 Section 6 of the HWA Act (Supra); Section 6 of the ONWA; Reg. 26 of OPA Section 245 of the CCA; Section 60 EIA Act. (Supra).

58 Section 251(1) and (3) of the CFRN; Section 13, HWA (Supra)

59 Section 13(1), the High Court Law, CAP 62, Laws of Rivers State of Nigeria, 1999; Section 32(1), the Interpretation Act, CAP. 123, LFN, 2004.

DOI: 10.5281/zenodo.17283702

suit.[60] The civil liability for oil and gas pollution under common law has its foundation in the law of Torts.[61]

The specific tortuous liability for oil and gas pollution is set in the torts of negligence, nuisance and the Rule in **Rylands v. Fletcher.**[62]

A. NUISANCE

A nuisance is any conduct that interferes with the convenience, and comfort of the public or a section of it.[63]

Nuisance may be public or private. A public nuisance is a civil liability and also a crime.[64] A private nuisance only gives rise to civil liability. Private nuisance includes interference with personal convenience, use or enjoyment of land.

In **AMOS v SHELL BRITISH PETROLEUM DEVELOPMENT COMPANY**[65], the Court held that Oil and gas pollution falls within the purview of public nuisance as it generally affects the whole public. However, an individual can maintain an action against the polluter if he can show that he has suffered special damage over and above that suffered by the general public.[66] Where the pollution affects the claimant's interest in land, for example oil is spilled on the claimant's land; a case of private nuisance is established. The claimant must show that the interference is substantial and reasonable.

B. NEGLIGENCE

Negligence can be defined as the omission to do something, which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.[67] It is also a duty of care owed by the defendant to the plaintiff; breach of that duty by the defendant and damage to the plaintiff arising from the breach.[68]

A holder of oil license owes a duty of care[69] to the public or a section of it as can reasonably be had in consideration as capable of being affected by his oil exploration activities, which can cause pollution.[70] Where the claimant shows that the holder of the oil license or operator is in breach of his duty of care, and that the breach has caused damage to him, he would be entitled to damages as seen in **NWADIARO v SHELL PETROLEUM DEVELOPMENT COMPANY**[71]

C. THE RULE IN RYLANDS v. FLETCHER

The rule states that:

> *"**The person who, for his own purposes and in the course of non-natural user of his land, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape**".*[72]

The requirements for the application of this rule are:

1) Accumulation on the defendant's land,
2) A thing likely to do mischief if it escapes,
3) Escape of the thing likely to do mischief,
4) A non-natural user of land,
5) The damage must not be too remote.

The claimant is often confronted with the near impossible task of successfully advancing before the courts the above requirement in an oil spill case as oil multinationals have employed both legal and industrial expertise to fight the claims of oil and gas pollution victims under the Rule. Also, the defenses of common benefit,[73] for example where the licensee or lessee works for the Federal Government who is the owner of the oil and gas for the benefit of all Nigerians and act of third party.[74]

Therefore, it is reasonable that since oil and gas pollutions are disastrous and hazardous to the environment, Nigerian courts should move towards the principles of strict liability[75] to do justice in cases of oil and gas pollution in the Niger Delta region.

3.16. CIVIL LIABILITY FOR OIL AND GAS POLLUTION UNDER STATUTES

Statutes also provide for civil liability against environmental pollution in the oil and gas industry. Civil liability for oil and gas pollution is usually in the form of payment of compensation to the victim, payment of remediation or removal costs and preventive measures.

Reg. 16 of the Oil Spill Recovery, Clean up, remediation and Damages Assessment Regulations 2011 made pursuant to S.26 of NOSDRA Act provides:

*"**Owners or, operators of production facilities from which oil or oily wastes are discharged into or upon land or navigable waters***

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60 Available at <http://Legal-dictionary the free dictionary.com/civil+liability.>

61 A Civil wrong involving a breach of duty fixed by the Law such duty being owed to persons generally and its breach being redressible primarily by an action for damages – Kodilinye G., et al. *The Nigerian law of Torts*, 2nd edn. spectrum books, (Ibadan, 1996) P. 1.

62 (1868) L. R. 3 H L. 330.

63 Tebite v. Nigerian Marine & Trading Co. (1971) 1 ULR 432; Ejowhomu v. Edok-Eter Mandilas (1986) 5 NWLR, (pt. 39) P. 1.

64 Ese Malemi: *Law of Tort*, (Princeton Publishing Company, Second edition, 2013) P. 453.

65 (1974) 4 E C S L R 86.

66 Kodilinye, G., et al, *the Nigerian Law of Torts*, 2nd edn. (spectrum publishing, Ibadan, 1996) P. 106.

67 Anderson B. in Blyth v. Birmingham Water work Co. (1856) II Ex 781 at 784.

68 Onasanya v. Western Nigeria Marketing Board (1975) 5 CCHCJ 825, at P. 835 per Gomes J.

69 Donoghue v. Stevenson (1932) 1 ER 809.

70 Chukwuemerie, A. L, *New Dimensions in Commercial and Oil and Gas Laws*, (Law-house books, Port Harcourt, 2007) P. 661.

71 (1990) 5 NWLR (Pt. 150) 322.

72 (1864) L.R. 1 Exch 265. This rule has been applied in the following Nigerian Oil Pollution cases: Otuku & Ors v. Shell B P, Suit No: BHC/83 (unreported Bori High Court, 15 January, 1985; Edhemowe v. Shell BP Suit No. UHC 12/70 (unreported) Ughelli High Court, 29 February, 1971; Umudje v. Shell – BP (1975) II SC 155.

73 Gill v. Edouin (1894) 72 L. T. 597.

74 Rickards v. Lothian (1913) A. C. 263.

75 Farah & ors v SPDC (1995) 3 NWLR (pt. 382) 148, where the Respondent Company was strictly held liable for an oil blow-out from Bomu Oil well destroying the ecosystem of K-Dere Community in Ogoniland in Rivers State.

DOI: 10.5281/zenodo.17283702

of Nigeria are liable for specific damages resulting from the discharged oil, and the removal costs incurred in a manner consistent with the National Oil spill contingency plan*".*

Reg. 26(1) also enacts that,

"An owner or operator of an oil spill facility shall pay compensation to an oil spill victim for damage caused to the victim's person, business or property".

In addition, the International Convention on Civil Liability for Oil Pollution Damage 1969 as amended in 1976 and 1992 has been domesticated in Nigeria as the International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act.[76]

Among others, it makes the owner of a ship at the period of an event, or where the event consists of a series of occurrences, at the time of the first such event, liable for any polluting damage.[77]

GOVERNMENT AND CORPORATE STRATEGIES TO MINIMISE ENVIRONMENTAL AND SOCIAL IMPACTS OF OIL EXPLOITATION IN NIGER DELTA

4.0. INTRODUCTION

This chapter concentrates on the statutory roles of institutions set up by the government and other programmes strategies adopted to checkmate the environmental and social impacts of oil exploitation in the Niger Delta region of Nigeria.

PART I: INSTITUTIONAL FRAMEWORKS AND PROGRAMME

4.1. THE NIGER DELTA DEVELOPMENT COMMISSION[1]

The Niger Delta Development Commission was established in 2000 under President Olusegun Obasanjo administration. The mission of the commission is to facilitate the rapid, even and sustainable development of the Niger Delta into a region that is economically prosperous, socially stable, environmentally regenerative and politically peaceful.[2]

The functions of the Commission are as follows:

a) To formulate policies and guidelines for the development of the Niger Delta area,
b) To conceive , plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger Delta area in the field of transportation including roads, jetties and waterways, health, education employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications,
c) To prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes,
d) To implement all the measures approved for the development of the Niger Delta area by the Federal Government and the member states of the commission,
e) To cause the Niger-Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development
f) To identify factors inhibiting the development of the Niger Delta area and assist the member states in the formulation and implementation of policies to ensure sound and efficient management of resources of the Niger Delta,
g) To assess and report on any project being funded or carried out in the Niger Delta area by oil and gas producing companies and any other company including non-governmental organizations and ensure that funds released for such projects are properly utilized,
h) To tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger Delta area and advice the Federal Government and the member states on the prevention and control of oil spillage, gas flaring and environmental pollution,
i) To liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control,
j) To execute such other works and perform such other function, which in the opinion of the commission, are required for the sustainable development of the Niger Delta area and its people. [3]

The commission has its head office in Port Harcourt, Rivers State and shall establish an office in each member state of the Commission.[4]

4.2. THE MINISTRY OF NIGER DELTA AFFAIRS

The Ministry of Niger Delta Affairs was created on September 10, 2008 by President Umaru Musa Yar' Adua, to formulate and co-ordinate policies for the development and security of the Niger Delta Region.[5]

The existing Niger Delta Development Commission was to become a parastatal under the Ministry.[6] The creation of the Ministry was a direct response to the series of agitations by the people of the Niger Delta region on the perceived sense of exclusion, environmental degradation, poverty and unemployment facing the region.[7]

The functions of the Ministry are to:

a) Supervise the implementation of government policies on the development and security of the Niger Delta Region,
b) Co-ordinate the formulation of the development plan for the Region,
c) Formulate policies and programmes for youth mobilization and empowerment in the Niger Delta,

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[76] No. 7 of 2006.

[77] *ibid. Article 3(1).*

[1] S.1 of the Niger Delta Development Commission (Establishment) Act 2000: 1999 No. C45 Established the Commission as a body corporate with perpetual succession and a common seal, which can sue and be sued in its corporate name.

[2] < www.nddc.gov.ng>. Accessed 1st July, 2016.

[3] S.7(1)(a) – (g) of the Niger Delta Development Commission (Establishment) Act, 2000.

[4] i*bid* S.1(3).

[5] < www.nigerdelta.gov.ng>. Accessed 1st June, 2016.

[6] Juliana Taiwo: "Yar'Adua creates Ministry of Niger Delta", This Day, 11 September, 2008.

[7] Julian Taiwo *op.cit.*

DOI: 10.5281/zenodo.17283702

d) Advise government on security issues concerning the region,
e) Liaise with relevant government, non-government and private organization,
f) Formulate and co-ordinate policies for environmental management in the region,
g) Liaise with host communities for the enhancement of the welfare of the people and the development of the region,
h) Facilitates private sector involvement in the development of the region,
i) Plan and supervise public education enlightenment programmes,
j) Liaise with oil companies operating in the region to ensure environmental protection and pollution control,
k) Organize human capacity development as well as skill acquisition programmes for youths and women, and
l) Take adequate measures to ensure peace, stability and security with a view to enhancing the economic potential of the region.[8]

4.3. NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY (THE NOSDRA)[9]

The National Spill Detection Response Agency was established as an institutional framework to implement the National Oil Spill Contingency Plan, which was set up in 2006.[10] The National Oil Spill Contingency plan is a blue print for checking oil spill through containment, recovery and remediation. It is a strategy for preventing loss of lives, assets and natural rsources.[11]

The general and special functions of NOSDRA include the following;

a) Responsibility for surveillance and ensuring compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector,
b) Receipt of reports of oil spillages and coordinating oil response activities throughout Nigeria,
c) Coordinating the implementations of the plan as may be formulated, from time to time by the federal government,
d) Coordinating the implementation of the plan for the removal of hazardous substance as may be issued by the federal government.
e) Undertaking surveillance, reporting, adverting, and other response activities as they relate to oil spillage,
f) Encouraging regional co-operation among member States of West African sub-region and in the Gulf of Guinea for combating oil spillage and pollution in our contiguous waters,
g) Strengthening the national capacity and regional action to prevent, control, combat and mitigate marine pollution,
h) Promote technical co-operation between Nigeria and member States of the West African sub-region.[12]

4.4. NIGERIAN MARITIME ADMINISTRATION AND SAFETY AGENCY (NIMASA)[13]

The NIMASA is an agency[14] created by statutes by the Nigerian Maritime and Safety Agency Act. With respect to the protection of the environment in the oil and gas industry, the provisions of the NIMASA Act granted NIMASA jurisdiction to regulate and promote maritime safely, security marine pollution and maritime labour.[15]

In pursuit of the objectives of the agency, the Act provides that the agency shall among others:

a) Establish maritime training and safety standards,[16]
b) Provide directions and ensure compliance with vessel security measures,[17]
c) Carry out air and coastal surveillance,[18]
d) Control and prevent marine pollution,[19]
e) Inspect ships for the purpose of marine safety, marine security, marine labour and prevention of pollution,[20]
f) Generally to perform any other duty for ensuring marine safety and security or do all matters incidental to.[21]

4.5. NIGERIAN SECURITY AND CIVIL DEFENCE CORPS

The Nigerian Security and Civil Defence Corps Act[22] established the Nigerian Security and Civil Defense Corps. With respect to the functions of the Civil Defense Corps relating to the protection of the environment in the oil and gas industry, the Act provides that the Corps shall have power to arrest with or without a warrant, detain, investigate and institute legal proceedings by or in the name of the Attorney-General of the Federation against any person who is reasonably suspected to have committed an offence under this Act or is involved in any chemical poisoning or oil spillage or oil pipelines vandalization. [23]

4.6. NIGERIAN PORTS AUTHORITY

The Nigerian Port Authority Act[24] established the Nigerian Ports Authority (NPA)

The functions of the NPA in relation to environmental matters in the Niger Delta include:

a) To control pollution arising from oil or any other substances from ships using the ports limits or their approaches,[25]

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8 < http://www.nigerdelta.gov.ng/index.php/the-ministry/history-of-mnda>. Accessed 1st June,2016.

9 S.1 of the National Oil Spill Detection and Response Agency (Establishment) Act, 2006 established the Agency as a body corporate with perpetual succession and a common seal, which can sue and be sued in its corporate name.

10 *ibid S.5.*

11 < https://cdnet.ng.org/?q=node/3164>. Accessed 1st June,2016.

12 *ibid* S.7(b) – (e).

13 Act CAP N161 LFN, 2007.

14 *ibid.* S.3. creates the Agency.

15 *ibid.* S.1(ii).

16 *ibid.* S.22(1) (d).

17 *ibid.* S.22(1) (g).

18 *ibid.* S.22(1) (h).P

19 *ibid.* S.22 (1) (i).

20 *ibid.* S.22 (1) (2) (a).

21 *ibid.* S.22 (2) (f).

22 CAP N146, LFN, 2007.

23 *ibid.* S.3 (1) (f) (ii).

24 CAP N126, LFN, 2004.

25 *ibid.* S.7 (i).

DOI: 10.5281/zenodo.17283702

b) During loading or discharge, any leakage of oil developing in the shores piping system shall be reported immediately to the chief fire officer. If the leakage is of such character that in the opinion of the chief fire officer, it constitutes a hazard. The loading or discharge shall be suspended until repairs have been made. [26]

c) In the event of any oil spillage on the wharf, immediate action shall be taken by the person on the shore who is loading or discharging oil to recover the oil and to prevent its escape on the harbour waters; and the harbour master and the chief fire officer shall be notified immediately any spill takes place[27].

4.7. NIGERIA POLICE FORCE

The Nigeria Police is the principal Law Enforcement Agency in Nigeria[28]. The Nigeria Police Force is established by two statutes namely the Constitution of Nigeria[29] and the Nigerian Police Force Act[30]. The role of the police includes the detection and prevention of crimes, arrest of offenders and the protection of law and order.[31] The Police force has the power to arrest and prosecute a polluter of water or air by oil or gas.[32]

The Police are also to cooperate with the NOSDRA in a case of a major and disastrous oil spill and to keep order, and protect property and equipment at the scene.[33]

4.8. ROLE OF THE JUDICIARY IN ENVIRONMENTAL PROTECTION

The Nigerian Judiciary is an arm of the government. It is vested with judicial powers to adjudicate over matters brought before it subject to defined jurisdictions as provided in the Constitution.[34] By virtue of S.257(1) of the Constitution, all matters relating to minerals, mines, oil and seismic operations are within the exclusive jurisdiction of the Federal High Court to hear and determine same.

This position has been judicially recognized in EMEJURU v. ABRAHAM,[35] the plaintiff sued the defendant for great destruction to his plants, farmland, ancestral land marks and building during the laying of gas pipeline by the Defendant. The High Court in which the action was instituted found in favour of the plaintiff. However, on appeal, the Court of Appeal; held that the High Court had no jurisdiction to try the matter.

The court's jurisdiction with respect to environmental protection could be invoked either by private litigation or public litigation.

Private litigation is in two aspects;[36]

a. Actions relating to injury to private property and other personal rights and
b. Public interest litigation or citizen standing.

Most of the actions in the Nigerian courts with respect to environmental law with particular reference to oil pollution are founded on the injury to private or communal property and other personal rights. However, there is an insufficient number of public interest litigation in the country. **Justice Uwais** attributes this to a number of factors as follows:

> ***"Some of them because the greater proportion of the citizenry are obvious of the environmental damage surrounding them especially when the damage is caused by intangible process. The cost implications of legal action including the cost of procuring technical evidence and the remoteness of institutions for redress deter even those who are aware of damage. Environmental damage palliatives, which now exist, and the belief that actions instituted against polluting facilities, in which government has an interest, is perceived as an action against government itself"***[37]

Public litigation is conducted by the State Prosecutors on behalf of the Attorney General in the enforcement of environmental laws.[38] This is undertaken in the interest and benefit of the general public.[39]

It is common knowledge that Judges interpret and do not make the law. However Judges can and do greatly shape the essence of the law in their interpretative role. According to **Lord Denning:**

> ***"In theory the judges do not make law, they merely interpret it. But as no one knows what the law is until the judges interpret it, it follows that they make it"***[40]

The goal of the judiciary should be aimed at not just interpreting the law but in doing so with a view of achieving social Justice. The Judiciary is important for the peaceful and orderly development of the society.[41] The Courts have a duty to interpret and apply environmental legislations for the protection of the Niger Delta region, which has suffered serious degradation due to the impacts of oil exploitation activities in the region.

In the words of Late Justice Chukwudifu Oputa of the Supreme Court of Nigeria (as he then was):

> ***"Legislators make laws in the abstract but the court deals with the day-to-day problems of litigants and***

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26 Reg. 17, Nigerian Ports Authority Petroleum Wharf (Apapa) Bye-Laws, a subsidiary legislation to the NPA Act CAP N126, LFN 2004.

27 *ibid.* Reg. 18, Reg. 43 and 74 Nigerian Ports Authority (port) Reg., a subsidiary legislation to the NPA Act CAP N126, LFN 2004 prohibits the discharge or escape from a ship or a place on land of oil or any dangerous or offensive liquid into the waters of a port.

28 < http://www.intepol.int/member countries/Africa/Nigeria>. Accessed 1st June, 2016.

29 S. 214(1) Constitution of the Federal Republic of Nigeria 1999 (as amended).

30 S.3 of the Nigeria Police Force Act, CAP p19, LFN 2004.

31 *ibid.* S.4.

32 S.245 CCA.

33 Paragraph 15(a) & (b) of the Second schedule of the NOSDRA Act.

34 S.6(1) of the CFRN 1999 (as amended)

35 (2008) 3 NWLR (PT 1075)

36 Uwais, M., " Recent Development in Nigeria: Strengthening Legal and Institutional framework for Protecting the Environment from damage", paper presented at the Global Judges Symposium, Johannesburg, South Africa, 18-20 August, 2002.

37 *ibid.*

38 S.150 of CFRN 1999 (as amended) .

39 *ibid.*

40 *ibid.*

41 Chianu E., "The Horse and Ass Yoked: Legal Principles to Aid Weak in a World of Unequals" Inaugural Lecture series, 91, University of Benin, September 20, 2007.

DOI: 10.5281/zenodo.17283702

attempt to use the laws to solve these problems in such a way as to produce Justice"[41]

The Court should protect the environment of the Niger Delta region from environmental degradation caused by oil exploitation in the region as environmental abuses are abuses on the fundamental human rights of the people of the region.

4.9. THE PRESIDENTIAL AMNESTY PROGRAMME

The word amnesty is a Greek word derived from "amnestia" which is an act of grace by which the supreme power in a state restores those who may have been guilty of any offence against it, to the position of innocent persons and it includes more than pardon, in as much as it obliterates all legal remembrance of the offences.[42]

It has also been defined as:

> ***"A guarantee of exemption from prosecution and pardon from punishment for certain criminal, rebel and insurgent actions hither to committed against the state. It indemnifies affected persons in terms of safety and protection from punitive actions, retributions and associated losses. An amnesty is usually within specific time which offenders admit crime and takes advantage of the general pardon".***[43]

The presidential amnesty programme was initiated by the late President Yar'adua Administration. In a bid to address the agitations of militants in the Niger Delta regions of Nigeria, the late president granted unconditional amnesty to the militants in the regions hoping that the gesture would efficiently end the ranging restiveness in the region. The amnesty programme was announced on 25th June, 2009 with an expiration of 60 days period which was expected to run from August 6 to October 4, 2009.[44] The proclamation was a chance for militants in the regime to embrace amnesty and surrender their arms and ammunition in exchange for Presidential pardon.

The Federal Government through the Presidential Amnesty is to manage, supervise and implement the Amnesty programme. At the end of the 60 days period on October 4, 2009, a total of 20, 192 repentant militants surrendered their arms and ammunitions to the Federal Government and accepted the programme.

In November 2010, another 6, 166 ex-militants were enlisted into the Presidential Amnesty programme, this constituted the second phase and brought the number of persons enlisted to 26, 358. In 2012, the Federal Government also approved the inclusion of 3, 642 ex-militants bringing the total numbers of ex-militants that have embraced the Amnesty programme to 30,000.[45] In support of the Amnesty Programme, the Federal government created Disarmament, Demobilization and Reintegration (DDP) programme for as many who accepted the amnesty on or before the deadline.

- Disarmament is the collection, documentation, control and disposal of both small arms, explosive, lights and heavy weapons from militants.[46] The process is primarily conducted by the Nigerian army.
- Demobilization involves conducting biometrics for ex-militants who were in designated camps for the programme. The Amnesty programme made available monthly stipends for each militant.
- Reintegration involves the process off transformational training. These training include vocational skills, entrepreneurial training and development, technical capabilities, formal education and an opportunity for them to be employed as many ex-militants were offered to work as change agents in a larger community.[47]

In the light of the above, the programme gave opportunity to those who have the interest of going back to do so. It helped about 711 ex-militant to pursue careers in various universities and college around the world. 2,922 ex-militants have graduated from off shore centres. 5,145 ex militants had already completed vocational training within the shores of the country ranging from welding boat building, sea safety, safety management, and information communication technology, oil drilling and marine related courses.[48]

PART II: CORPORATE STRATEGY

4.10. CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility (CSR) refers to a business practice that involves participating in initiatives that benefit society.[49] It is also initiatives to assess and take responsibility for the company's effects on environmental and social wellbeing.[50]

The increasing power of transnational corporations within the global economy has brought with it corresponding awareness of the need for an international regime that places direct responsibilities on these companies.[51]

At the 1997 shareholders meeting of the Shell- British Petroleum, the company published the first annual report on the operations of SPDC looking at the issues of environmental standards and human

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[41] 10 of Agenda 21 in principles 20 of the Rio Declaration 1992.

[42] Imongan, E.O: "Amnesty Programme in Nigeria: Understanding Justice and equity in the Niger Delta Region, International Journal of Public Administration and Management Research, December 2015. vol.3, No.2, P.40.

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[44] <http:// the vanguard newspaper, Yar'adua grants militants unconditional amnesty… Frees Henry Okah on June 25, 2009>. Accessed 3rd June, 2016.

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rights, and the first group wide report on health, safety and the environment. At the same time, Shell took steps to integrate its commitment to "express support for fundamental human rights" into its internal management procedure requiring directors of Shell group companies to make annual statement to Shell headquarters requiring its compliance.

Shell has embarked on different projects to ensure its corporate social responsibility.[52]

Shell has embarked on scholarship schemes for secondary school students and university under graduate students. In the same vein, Agip Oil Company and Chevron has also embarked on scholarship schemes for students and youths of the Niger Delta regions.

Oil companies in the Niger Delta regions have also committed itself to the building of Roads, schools and rural health centres in the host communities. In order to employ youths in the region, Shell has initiated the Youth Development Scheme which has trained over 800 youths and provided them with tools and facilities to be self employed[53]. Oil companies operating in the Niger Delta region have come together and formed the clean Nigeria Associates to combat oil spillage of great magnitude.

5.0. RECOMMENDATIONS AND CONCLUSION

5.1. RECOMMENDATIONS

From the findings in the course of this legal research with respect to the legal and institutional framework in place to address the impacts of oil and gas exploitation in the Niger Delta region, certain actions, measures and improvements are imperative. Those imperative measures are proffered below as recommendations for minimizing the impacts of oil exploitation in the Niger Delta region.

5.1.1. STATUTORY ABSOLUTE LIABILITY FOR THE OFFENCE OF OIL

Pollution in the oil and gas sector should be made a statutory strict liability offence in Nigeria. This will aid the recovery of compensation by victims of oil pollution easier and will exact clean up and remediation by the polluter and make oil companies more careful, responsible and environmental conscious. Also the plurality of defenses, protections and exceptions availing the oil and gas sector polluter in the statue books should be repealed to make a polluter strict liable once a spill occurs.

5.1.2. CODIFICATION OF ENVIRONMENTAL RIGHTS AS ENFORCEABLE FUNDAMENTAL HUMAN RIGHTS IN THE CONSTITUTION.

The right to a clean pollution free healthy environment and a generally satisfactory environment favourable to human growth and development should be entrenched as a fundamental human right under Chapter IV of the Constitution as an enforceable right against any violating party.

5.1.3. IMPOSITION OF STRICT PUNISHMENT FOR OIL AND GAS POLLUTION

The government should impose fines on oil companies for breach of regulations and take measures to punish the companies accordingly.

The government should also investigate the roles that oil companies and others have played and continue to play in the environmental pollution of the region and vividly publish the outcome of any such investigation.

5.1.4. JUDICIAL ACTIVISM FOR ENVIRONMENTAL PROTECTION

The judiciary is regarded as the last hope of the common man. The Nigerian judiciary should live up to expectations and see itself as a protector of the environment. Judicial disposition to the interpretation and application of relevant laws and statutes relating to the protection of the environment in the petroleum industry in Nigeria should be reformed, advanced and socially responsive.

Strict liability principle, tougher penalties and emblematic damages ought to be resorted to.

5.1.5. HUMAN CAPACITY BUILDING

The ministry of Niger Delta and Niger Delta Development Commission should work hand in hand to bring about even development in the Niger Delta region. More projects should be embarked upon to protect the environment and general well-being of the citizens of the region. These agencies should embark on human capacity building through investment in the education, health and skills of people in this region.

5.1.6. CONTINUATION OF THE AMNESTY PROGRAMME

The amnesty programme of the federal government has no doubt helped the Niger Delta youths. It has helped to pay stipends, enroll ex-militants in vocational training and entrepreneurial development. It has also helped to curb youth unrest in the region. Termination of the programme may pose a serious threat to the nation as there may be a relapse of the conflict.

5.1.7. REVIEW OF ENVIRONMENTAL LAWS

The relevant laws and statutes put in place to protect the environment should be reviewed and more stringent fines and punishment should be enacted to address environmental crimes against the environment and citizens.

5.1.8. REGULATION OF COMPENSATION ALLOCATION

Government and oil firms should devise regulatory mechanism to ensure that allocation and compensation to the oil bearing communities actually get to the victims.

5.1.9. REGULATION OF CORPORATE SOCIAL RESPONSIBILITY

The practice of corporate social responsibility should be regulated through a legal framework and the oil companies should be enjoined to observe and practice same in all their dealing along international minimum standards.

5.2. CONCLUSION

The Niger Delta oil exploitation tale is synonymous to the aphorism that goes thus:

The hen lays the golden egg but not fed, allowed to be in hunger perpetually.

The citizens of Niger Delta while facing the demand of development in their environment are also shouldering the impact

[52] *ibid.*

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DOI: 10.5281/zenodo.17283702

of oil exploration in the environmental degradation of the land, the economy, health as well as the socio-cultural well-being of the citizen of the host communities. The situation has induced the inhabitants of the host communities' emotional, physical and psychological frustration.

The Federal Government of Nigeria taking cognizance of these facts have created legal and institutional framework to curb the impacts of oil exploitation in the Niger Delta region. The Federal Government has set up legal instruments to protect the environment and preserve social well-being of the citizens of the Niger Delta area. The Associated Gas (Reinjection) Act which is designed to compel companies producing oil and gas in Nigeria to undertake gas-reinjection and stop gas flaring in the region. These institutional bodies have the mandate to oversee the growth and development of the region.

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