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LEGISLATING ENVIRONMENTAL RIGHTS FOR ENVIRONMENTAL JUSTICE: THE STRAIN OF INTERESTS IN THE NIGER DELTA OF NIGERIA

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1 Introduction

Human rights and their universal features have not been spared criticism on the extent of their protective garb and the imbalance in effectiveness across the global north and global south. The challenge lies in the interaction between the internationally prescribed human rights protection standard and the state's domestic law. When definite steps are taken for a state's recognition, legislation, and enforcement of human rights, related interests compete to influence the actors involved in the processes, namely, legislators, law enforcement officers, judicial officers, and executive authorities. The act of legislation is always the focal point for recognising and adopting human rights law. As anticipated, political concerns are safeguarded and subject to negotiation throughout the legislative process. Still, legislators and lobbyists' ideological alignments contribute much more to what is eventually adopted in the legislative bill. The issue of environmental rights being recognised as a human right is one that legislators in African states have approached differently despite the recognition of environmental rights by the African Charter.¹ Consequently, cases of environmental injustice are treated differently depending on the rights invoked by the claimants.

In resource-rich African countries, agitation for respect for environmental rights as human rights is a common trend. However, some other elements of rights not directly related to environmental rights are often invoked in the context of environmental justice for example, the agitation for resource control in oil-rich regions in southern Nigeria.

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1 Under art 24 of the Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), peoples are specifically guaranteed the right to 'a general satisfactory environment favourable to their development'.

The region occupies a total land area of approximately 112 110 square kilometres, making up about 12 per cent of Nigeria's land area.² Nigeria is the largest oil producer in Africa and the sixth-largest oil producer globally because of its vast oil and gas reserves in the Niger Delta region.³ While the Niger Delta has contributed significantly to the Nigerian economy, the area suffers from hardships, a high poverty rate, and widespread health challenges due to reckless exploration and production of crude oil and natural gas, resulting in horrific consequences for the region's people.⁴ The discovery of crude oil in commercial quantity, which was taunted to the people of the area as a blessing, has been seen by the people over the decades as a curse.

Before exploring and exploiting crude oil in the region, communities in the Niger Delta region lived off their land as farmers, fishermen, palm wine tappers, and sundry professionals.⁵ Their lands were fertile, and their yields were good enough to feed them. They supplemented what they got from the fields with fish from the creeks and rivers. Life was good and straightforward. There may not have been piped water, but the springs and streams supplied the needed drinking water. There may not have been hospitals and clinics, but there was an assortment of herbs and roots to treat common health problems. And the people could move about their communities in their canoes without access to roads.

Between 1999 and 2007, Nigeria earned \$223 billion in oil revenue, of which only one per cent of the population benefited from about 20 per cent of the wealth.⁶ The crude oil flowing from the wet and drylands of the Niger Delta people has been the source of 'oxygen' for the Nigerian economy. Yet, the people are left to weather the elements without succour from the country feasting on their open sores. In light of the strategic importance of the Niger Delta region to the Nigerian nation, it is natural for its citizens to expect that the government of Nigeria and industry operators, particularly multinational corporations, will ensure that they are treated fairly in all environmental actions and that their well-being is prioritised. Unfortunately, rather than use their economic advantage

2 CI Okpara 'Right to a clean and healthy environment: The Panacea to the Niger Delta Struggle' (2012) 5 *Journal of Politics and Law* 1 at 3-8.

3 OPEC 'Monthly oil report' https://www.opec.org/opec_web/en/publications/340.htm (accessed 8 November 2023).

4 R Ekpu 'The oil burden: Rich nation poor people' *Newswatch* 21 June 2004 at 13.

5 R Wumi *Oil resources, hegemonic politics and the struggle for re-inventing post-colonial Nigeria* (1998).

6 B Archibong 'Historical origins of persistent inequality in Nigeria' (2018) 46 *Oxford Development Studies* 325.

and international influence to protect the people's interests, multinational companies have perpetuated themselves as oppressors in ways that cannot be imagined in their countries of origin. In addition, the government has not been providing the communities with the necessities they need to live a dignified life.

Nigerian governments have enacted laws regulating the oil industry since 1958, when commercial exploitation of oil began in the country. The majority of laws made for the industry between 1958 and 2021 focused on how much the government could generate more revenue, giving little consideration to environmental protection or alleviating human suffering. Although the Federal Government has adopted some environmental laws, these laws are not effectively enforced to check the activities of multinational oil companies operating in the Niger Delta region. Oil spills are always occurring due to ageing infrastructure or sabotage, and the gas constantly flares. In January 2008, the Nigeria National Oil Spill Detection and Response Agency claimed that it had found 1 500 oil spill sites abandoned by various oil companies in the Niger Delta.⁷

Despite efforts to check environmental problems in the country in general and the Niger Delta in particular, the legal framework is skewed away from ensuring environmental justice is available to the people. Oil companies' unfriendly environmental practices are ignored by the government at the expense of the Niger Delta people. Legislation is the front-end tool the government has utilised to regulate activities that concern the environment and the oil industry. In reference to specific repealed and existing laws, this chapter examines how the laws have allowed environmental injustice while the few that should provide genuine protection have been made ineffective due to lack of enforcement. In light of the above, this chapter makes a case for the legislative approach of the Government of Nigeria to be focused on actions that will strengthen environmental justice for the people of the Niger Delta region and guarantee its development.

1.1 Environmental rights

The concept of environmental rights refers to the basic human rights that individuals and communities have to live in a safe, healthy, and sustainable environment. These rights are grounded in the recognition that environmental quality is fundamental to the enjoyment of many other human rights, including the right to life, health, and a healthy and sustainable livelihood. According to Maurice Strong, former Secretary-

7 M Peel *A swamp full of dollars* (2009) 27.

General of the United Nations in his opening speech at the 1972 Stockholm Conference,

the environmental crisis points up the need to review our activities, not just in relation to the particular purpose and interest they are designed to serve, but in their overall impact on the whole system of interacting relationships, which determines the quality of human life.⁸

That was the first time reference was made to the right to a healthy environment. Also, Strong pointed out the connection that exists between human activities and their consequences for human life.

Coming from the Stockholm Conference is the Stockholm Declaration which enumerated principles starting with the first one which referred to the right to a healthy environment.⁹ However, in an expanded sense, environmental rights typically include the right to clean air, water, and soil, as well as the right to a safe and healthy workplace, adequate housing, access to information, and participation in decision-making processes related to environmental issues.¹⁰ These rights are often enshrined in national constitutions, international treaties and agreements, and in the policies and laws of governments and organisations around the world.

The recognition of environmental rights has gained increasing importance in recent years as the global community has become more aware of the devastating impacts of environmental degradation and climate change on human health, livelihoods, and well-being. Portugal was the first country to adopt a 'right to a healthy and ecologically balanced environment' in 1976. Spain adopted it in 1978. In the present day, more than 100 states have constitutionally recognised and protected the right to a healthy environment in some form or another.¹¹ Environmental rights are essential for ensuring that individuals and communities have a voice in decisions that affect their environment and for promoting sustainable

8 M Strong '1972 Stockholm Conference opening statement' https://www.mauricestrong.net/index.php?option=com_content&view=article&id=154&Itemid=78.

9 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'. Declaration of the United Nations Conference on the Human Environment in 'Report of the United Nations Conference on the Human Environment' UN Doc A/CONF.48/14/Rev.1 (1973) Principle 1.

10 Special Rapporteur on Human Rights and the Environment 'About human rights and the environment' <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment> (accessed 8 November 2023).

11 UNGA 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' UN Doc A/73/188 (19 July 2018) (Special Rapporteur 2018 Report) para 30.

development and the protection of the natural systems upon which we all depend.

1.2 Recognition of environmental rights

A variety of factors have contributed to the gradual recognition of environmental rights, including scientific research, environmental disasters, and social and political movements. One of the key milestones in the recognition of environmental rights was the adoption of the United Nations (UN) Conference on the Human Environment in Stockholm in 1972. This conference recognised the interconnectedness between human rights and environmental protection and laid the foundation for future international agreements and policies.

Since then, numerous international treaties and agreements have been established, that recognise the importance of environmental rights. For example, the African Charter on Human and Peoples' Rights of 1981 provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development'. In addition to international agreements, many countries have enshrined environmental rights in their constitutions and domestic laws.¹² Also, the Constitution of Ecuador recognises the right to a healthy and sustainable environment, and the Constitution of South Africa recognises the right to an environment that is not harmful to health or wellbeing.

The recognition of environmental rights has also been influenced by social and political movements, such as the environmental justice movement, which advocates for the fair distribution of environmental benefits and burdens across different communities and social groups.

While the recognition of environmental rights is generally seen as a positive development, there are some critical views on the adoption of environmental rights. Here are some examples:

Limited enforceability:¹³ Critics argue that environmental rights lack enforceability and are often not legally binding, making them difficult to implement in practice. They argue that without effective enforcement mechanisms, environmental rights are just empty promises.

12 Article 24.

13 Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/A_HRC_37_59_EN.pdf (accessed 25 March 23).

Conflicts with economic development:¹⁴ Some argue that the adoption of environmental rights can create conflicts with economic development, as environmental protections may be seen as costly or burdensome for businesses and governments. This can create tensions between environmental rights and economic rights, such as the right to work and the right to economic development.

Tensions with other human rights: Environmental rights can create tensions with other human rights, such as the right to property and the right to development. For example, the implementation of environmental protections may require the displacement of communities or the limitation of economic development in certain areas.

Insufficient attention to social justice:¹⁵ Some argue that environmental rights can overlook social justice issues, such as the unequal distribution of environmental benefits and burdens across different communities and social groups. They argue that environmental rights must be coupled with a broader social justice agenda to ensure that all individuals and communities have equal access to environmental protections and benefits.

2 The concept of environmental justice

Scholars and experts have approached the concept of environmental justice from various perspectives. There is, however, one thing that all conceptualisations of environmental justice seem to have in common: they connect the environment with social issues. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income regarding the development, implementation, and enforcement of environmental laws, regulations, and policies.¹⁶

The discourse on the concept of environmental justice could pit the evaluation of justice in a society that demands fairness and protection of fundamental human rights against another society that requires a more robust institutional framework that will guarantee substantive justice even when the resources for distributive justice are not lacking. For example, the people of the Niger Delta region may hold the notion of justice as

14 N Jon & P Hoeller *Economics and the environment: A survey of issues and policy options* (1990).

15 C Wainryb, JG Smetana & E Turiel (eds) *Social development, social inequalities, and social justice* (2008).

16 Environmental Justice as defined by the United States Environmental Protection Agency. See <https://www.epa.gov/environmentaljustice> (accessed 20 April 2021).

having the freedom to decide what their land could be used for, and not a situation where the constitution empowers the government to forcibly take their land from them and allocate it to a corporation in the interest of the national economy. In the context of conceptual justice as a necessary social virtue, there is a universal desire to have an institutional framework that provides the platform for seeking remedies for injury. Therefore, the contemporary issues underline the inherent challenges that are indicative of the injustice people feel when they don't have the medium to express their pains. This, however, may flow from different social strains. For example, victims of environmental harm are those who are harmed by natural processes, by anthropogenic processes mediated by the natural environment, and by restrictions on access to the environment.¹⁷ Providing access to institutional remedies for injustice can justify the thesis of resource control as a form of environmental justice if it accommodates the reasonable demands of the people to redistribute wealth derived from their deprived environment.

The danger of assuming a narrow sense of describing environmental justice is that it undermines the freedom of perception of the people to frame their thoughts along the lines of their cultural values or rights. While the notion that social segregation, passive or actual, may aggravate the general sense of injustice, whether environment-related or not, cannot be denied, the reaction of the people to environmental injustice is more likely to be influenced by the actions of public authorities who see the environment as an entity that can only be protected or defended by the government and not civil movements. But if the thrust of government to perform its duty to protect the environment and guarantee justice for its degradation is conditional upon a favourable economic index, it confirms Ballard's notion that environmental justice is based upon the recognition of the imbalance in the allotment of cost and benefit. By using euphemistic terms to describe civil actions as public disturbances or acts threatening public peace, the government obscures the civility of people who are experiencing environmental injustice. This has been the case in the Niger Delta area, particularly with the communities being affected by the devastating effects of exploiting natural resources.

People in the Niger Delta are traumatised by the destructive effects of oil exploration and exploitation undertaken by multinational oil companies. Since the beginning of oil exploration and extraction, most of the repealed laws governing oil operations were drafted without consultation with the people of the Niger Delta. Under the provisions of which all lands in

17 P Penz 'Environmental victims and state sovereignty: A normative analysis' in C Williams (ed) *Environmental victims* (1998) 48.

Nigeria are presumed to be owned by the government, since its enactment, the Land Use Act has remained very contentious.¹⁸ The situation was different when Nigeria operated fiscal federalism; for instance, Shell Oil Corporation made a contract with the Oloibiri Community in 1956, under which the company obtained the right to 2 138 acres of land for five years for exploration activities.¹⁹

2.1 Intersection of environmental justice with environmental rights

Environmental justice and environmental rights are closely related concepts, as both are concerned with ensuring that all individuals and communities have equal access to environmental protections and benefits.

Environmental justice is a social movement that emerged in the 1980s and seeks to address the unequal distribution of environmental harms and benefits across different communities and social groups. It highlights the ways in which environmental issues are often linked to social and economic inequalities and seeks to empower communities to advocate for their own environmental health and wellbeing.

Environmental rights, on the other hand, are legal or moral principles that recognise the right of all individuals and communities to a healthy and sustainable environment. Environmental rights seek to ensure that environmental protections and benefits are equally accessible to all, regardless of factors such as race, ethnicity, income, or geography.

In practice, environmental justice and environmental rights are often intertwined, as the recognition and enforcement of environmental rights can help address environmental injustices. For example, the recognition of the right to a healthy and sustainable environment can help to ensure that environmental protections and benefits are accessible to all communities, including those that are historically marginalised or excluded.

A key component of environmental justice is addressing the social and environmental inequalities within our society. It is through their combined efforts that they can assist in creating a more equitable and just society where every person and community has access to a safe and healthy environment.

18 PA Oluyede 'Development in land laws and laws of conveyancing' in T Akinola Aguda (ed) *The challenge of the Nigerian Nation: An examination of its legal development 1960-1985* (1985) 94-123.

19 Peel (n 7) 45.

3 Environmental problems of the oil-producing communities

The extraction of hydrocarbons leads to a number of environmental incidents that harm humans and biodiversity constituents, directly or indirectly. Hydrocarbon exploration and exploitation are associated with consequential environmental problems at every stage of the operation. Oil operations in the region have caused the greatest challenges in the Niger Delta in the form of pollution of the air, soil, and rivers. There have been many instances of pollution of the ground, rivers, and atmosphere because of oil spills, and air pollution has been caused by gas flaring and illegal refining. A recurring challenge in the Niger Delta is soil and river pollution caused by oil spills, which has made life difficult for its inhabitants. The defunct Department of Petroleum Resources (DPR) reported that between 1976 and 1996, more than 4 600 barrels of oil were spilled into the environment. Environmental experts have rated the Niger Delta region as the most polluted due to its oil-contaminated environment.²⁰ The continual flaring of associated gas during oil production has contributed to this problem by affecting the natural and human environment and thus posing a danger to local communities.²¹

Governments and oil corporations have long neglected the environment and people of the oil-bearing communities, resulting in violent agitation by militant groups claiming to defend the interests of the Niger Delta's people. Their tactics include shutting down flow stations on oil platforms, turning off flow into wellheads, or holding expatriates hostage in some extreme cases. They believe these are the only ways to make the government and corporations listen to them, negotiate, and agree on environmentally friendly terms of operation. According to Wilson Goddey, the absence of basic infrastructure in the region accounts for the constant agitation for resource control by citizens of the region as a medium to address their socio-economic development demand in the region.²²

During the 1970s and 1980s, various Niger Delta communities launched sporadic protests targeted at the installations of multinational

20 A Ikelegbe 'The economy of conflict in the oil rich Niger Delta region of Nigeria' (2005) 14 *Nordic Journal of African Studies* 208.

21 Flaring is a means of destroying waste gases produced by the oil manufacturing process. The process occurs when crude oil passes through the burners and igniters at the top of a stack or pipe.

22 G Wilson 'Niger Delta Development Commission and Sustainable Development of Niger Delta Region of Nigeria: The Case of Rivers State' (2012) 9 *LWATI: A Journal of Contemporary Research* 254.

oil companies, particularly in 1998, when Ijaw youths representing over four hundred clans and over five hundred communities signed the Kaiama Declaration. In the early 1990s, however, more organised resistance emerged, directed not just at the companies but at the government. A host of community organisations sprang up. The Movement for the Survival of Ogoni People (MOSOP) was the foremost among them, founded in 1990.²³

The principal founder of MOSOP, Ken Saro Wiwa, was a writer, television producer, and business entrepreneur born in Ogoni Land in 1941. In the 1980s, he became increasingly preoccupied with the plight of Ogoni land, an area of no less than 400 square miles in River State with a population of 500 000 Ogonis. The area is the fifth-largest oil-producing community in River State. Since 1958 its wells have produced about 30 billion dollars' worth of oil, yet hardly a trickle has filtered down to the people living there.²⁴

Saro Wiwa blamed the government and Shell, the Anglo-Dutch company that operates most of the wells and pipelines there, for the poverty and environmental pollution in Ogoni lands. In 1990 Ogoni Bills of Rights was published. It was drawn up by the Mosop and approved by the traditional heads of five Ogoni clans. The Bill of Rights demanded political autonomy for Ogoni land, local control of its economic resources and protection from further environmental degradation. Nigeria's military rulers dismissed the demand, but MOSOP's grievances found a most receptive audience abroad, notably among environmental and human rights groups.²⁵

The Ogoni movement became divided between a conservative faction anxious to agree with the government and a radical wing of youth activists led by Saro-Wiwa determined to pursue the campaign. The end of the Movement came in May 1994 after four conservative leaders meeting in the chief's palace of Gokana were killed by a local mob. Saro-Wiwa and other prominent activists were arrested and charged with incitement to murder. He was brought to a special court with no right of appeal. He denied the charges, as there was no credible evidence linking him with the murders. He was nevertheless found guilty of murder, along with eight other defendants. Within eight days, Abacha's provisional ruling council

23 M Meredith *The State of Africa: A history of fifty years of independence* (2006) 576.

24 ES Simpson *The developing world: An introduction* (1994).

25 As above.

confirmed the sentence. Despite worldwide calls for clemency, the Ogoni Nine were executed two days later, on 10 November 1994.²⁶

What happened to the Ogoni Nine made agitators from other ethnic groups maintain a low profile during the military era. Some four years after the emergence of democracy in the country, voices of discontent erupted, particularly within the Ijaw ethnic group. However, the continued denial by the Federal Government of the reasonable demands by Niger Deltans for adequate protection of their lives and property against persistent threats was adjudged 'state terror' by the military junta.²⁷ For example, in 1998, Ijaw activists gave multinational oil corporations up to December 30 of that year to pull out of the Niger Delta until the resolution of the issue of resource ownership and control in the Ijaw area of the Niger Delta. Mujahid Dokubo Asari and other armed fighters forming the Niger Delta People Volunteer Force started their campaign to control the Niger Delta oil in early 2004.²⁸

Unfortunately, this approach has not yielded the expected results. Instead, it caused violent clashes between the militants and security forces deployed by the government to take over occupied oil platforms forcefully. Occasionally, governments and corporations respond to agitators and affected people by providing monetary assistance. As poverty is prevalent in those areas, people often receive such monetary compensation even though what they receive is far below the compensation they deserve for their injuries. Some communities in the Niger Delta enter into agreements with oil companies under which the latter agrees to provide a range of social amenities.²⁹ In his critical analysis of the Government Compensation Scheme, Enebulule stated that the compensatory method of the government being implemented by the Niger Delta Development Commission focuses more on human capacity development, while not much attention is being given to remediation approaches that could address environmental degradation and drive sustainable development.³⁰ The federal government, under the administration of President Olusegun Obasanjo, established the Niger Delta Development Commission (NDDC)

26 As above.

27 Simpson (n 24) 160.

28 Peel (n 7) 3-7.

29 Peel (n 7) 193.

30 O Enabulele 'Mitigating the effects of environmental degradation in the oil industry: An assessment of government compensation scheme in Nigeria' (2020) 16 *Law, Environment and Development Journal* 76 <http://www.lead-journal.org/content/a1605.pdf> (accessed 8 November 2023).

in 2000 as a strategic intervention agency to address the challenges of poverty and underdevelopment in the region.³¹

Several factors have been attributed to the neglect of the Niger Delta region. Some activists and experts mentioned the lack of a cooperative community relationship between the oil companies and the host communities. Most of the communities rely on their respective community development organisations to make representations to the government and the oil corporations. However, the oil companies have indirectly aided the federal government in infiltrating activists and agitators representing disadvantaged communities in Niger Delta.³² While the Federal Government and the oil companies are interested in controlling the land-bearing oil resources to secure an uninterrupted flow of oil to guarantee their revenue and profit, the communities only want their environment and source of livelihood to be restored to them.

When the Nigerian economy depended on the sales of agricultural produce, the British did not take over the land and did not establish plantations. Peasant farmers were the primary productive agents. Peasant production spread the development impact of the colonial cash economy widely.³³ Before discovering mineral oil, small independent farmers in Nigeria accounted for 70 per cent of its exports.³⁴ Indeed, oil accounted for 30 per cent of government revenue in 1963, and by 1982, it accounted for 80 per cent.³⁵ Currently, oil accounts for 90 per cent of Nigeria's foreign exchange earnings.³⁶

4 Evaluation of the former and current legal framework for environmental protection of oil producing communities

Laws relating to the oil industry and the environment were developed at different times and under different circumstances. For the oil industry, the government was more concerned with the inflow of investment needed for exploration and commercial exploitation. Also, because the government wanted to ensure the economic security of the federation, control of the resources was a vital consideration in framing the laws regulating

31 NDDC (Establishment Act) 6 of 2000.

32 Ekpu (n 4) 90.

33 Simpson (n 24) 184.

34 Simpson (n 24) 187.

35 Simpson (n 24) 196.

36 R Dowden *Africa: Altered states ordinary miracles* (2008) 462; In 1966, less than 10 per cent of Nigeria's revenue came from oil, by 1990 oil provided 97 per cent.

the industry. Issues of environmental protection and oil operations' environmental effects were relegated. In 1998, however, the discovery of toxic waste dumped in Koko village in Delta State (then Bendel State) by Italian vessels spurred the then Federal Military Government to promulgate the Harmful Waste (Special Criminal Provisions) Act 1990. Subsequently, other environmental laws were enacted, such as the Environmental Impact Assessment Decree 86 of 1992. Despite the institutional and legal framework established to protect the environment and the population's health, no environmental law had any significant bearing on the oil industry. The Petroleum Act of 1969, the principal statute regulating the industry, empowered the Department of Petroleum Resources (DPR) to regulate all environmental matters relating to oil and gas activities. In the exercise of its statutory powers under the Petroleum Act, the DPR made the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN).

Nonetheless, a significant development occurred with the replacement of the Petroleum Act of 1969, as it was repealed by the enactment of the Petroleum Industry Act (PIA) in 2021. Consequently, the operational legal status of the DPR and its associated regulations has become null due to the enactment of the PIA. In addition, various other legislative measures that historically governed the oil industry have undergone repeal. For the purpose of assessing the intent and consequences of previous legislation and regulations designed to address diverse forms of pollution in Nigeria, this examination focuses on both repealed laws and those that remain active, including the newly enacted PIA. Through this analysis, the deficiencies in legislation safeguarding against environmental injustice are identified.

4.1 Associated Gas Re-Injection Act 1979³⁷

The Act was enacted in 1979, amended in 2004 and repealed in 2021. The gas that comes with oil during exploitation has always been a significant problem with petroleum production. Natural gas and oil are mixed up in their natural state. The gas (the associated gas) must be removed from the oil when refining it. And when it is removed from the oil, it is not stored in reservoirs for subsequent treatment but flared. The provision of the Associated Gas Re-injection Act prohibits this practice; however, it creates a caveat, making the entire Act lose its relevance. The Act requires companies to submit detailed plans for gas re-injection by October 1, 1984, while gas flaring was to stop by January 1, 1985.³⁸ The Act requires

37 Cap A25 Laws of the Federal Republic of Nigeria (LFN) (2010).

38 Section 2 of the Act.

every company producing oil and gas in Nigeria to submit to the Minister in charge of Petroleum a preliminary programme for “(a) a scheme for the viable utilisation of all associated gas produced from a field or groups of the field; (b) project or projects to inject all gas produced in association with oil but not utilised in an industrial project.”³⁹

Under the Act, gas flaring is an illegal act. Gas flaring, however, is not illegal if permission is obtained from the Minister of Petroleum.⁴⁰ Any flaring without the consent of the Minister is therefore illegal, and the company involved in it shall forfeit the concession granted in that field.⁴¹ The Associated Gas Re-injections (Continued Flaring of Gas) Regulations, in Section 1, empower the Minister in charge of Petroleum to issue a certificate for the continuation of flaring of gas in a particular field or fields if certain conditions are satisfied. These are: “(a) where more than 75 per cent of the produced gas is effectively utilised; (b) where the produced gas contains more than 15 per cent impurities, such as N₂, H₂S, CO₂ and the like, which render the gas unsuitable for industrial purposes; (c) where an-ongoing utilisation programme is interrupted by equipment failures (d) where the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilisation point is less than 50,000 SCF/KM, so long as gas is not venting at a level above 3,500 SCF/bbl, and it is not technically advisable to re-inject the gas in that field; or (e) any other condition set by the Minister.”⁴² The above provision implies that the Minister can continue to allow gas flaring in this country if the oil company satisfies one or more of the conditions specified above. The Minister is empowered by the regulation to review, amend, alter, add to or delete any of the provisions of the Regulations.

The Associated Gas Re-Injection (Amendment) Act 2004 was enacted to correct the above flaws; it prohibits gas flaring without the permission of the Minister. The provisions of the Regulations and the amendment to the Act notwithstanding, gas flaring in the Niger Delta continues to this day. Lack of government commitment and political will, as well as economic interest have inhibited the enforcement of this law. However, the Act has been repealed by virtue of Section 310 of the Petroleum Industry Act of 2021.

The issue of gas flaring is indicative of the attitude of the oil and gas companies operating in the Niger Delta of Nigeria. Gas flaring is

39 Section 1 of the Act.

40 Section 3.

41 Section 4.

42 Section 11(1)(3) and (4) of the Oil Pipelines Act.

not done accidentally but is a deliberate act. Unlike oil spillage, which is sometimes blamed on ageing infrastructure or acts of sabotage, the flaring issue indicates that the oil and gas companies are not interested in doing the right thing and are not bothered about the adverse effect flared gas has on the people of the Niger Delta. The oil platforms, commonly called flow stations, where the gas is being burned out, are situated not far from communities. Communities go close to the flaring flame to dry their cassava produce to make cassava starch and other foods produced from cassava. In most oil-bearing communities, heat from flared gas for drying agricultural products is the only benefit of having an oil operation located nearby. Yet, that benefit is doing more harm to their environment and health.

4.2 The Oil Pipelines Act, 1956 (Cap A7 Laws of the Federation of Nigeria, 2010)

The Act gave the holder of an oil pipeline license the right to enter upon, take possession of or use a strip of land specified in the permit, and thereon, thereover and thereunder to construct, maintain, and operate an oil pipeline and ancillary installations. In accordance with Section 11(5) of the Act, the holder of such a license must compensate any person whose land or interest in land is affected by the exercise of the right under the license. Section 11(5) of the Act provides:

The holder of a license shall pay compensation:

- (a) To any person whose land or interest in land (whether or not it is land in respect of which the license has been granted) is injuriously affected by the exercise of the right conferred by the license, for any such injurious affection not otherwise made good; and
- (b) To any person suffering damage by reason of any neglect on the part of the holder, or his agents, servants or workmen to protect, maintain or repair any work, structure or thing executed under the license, for any such damage not otherwise made good; and
- (c) To any person suffering damage (other than on account of his own default, or on account of the malicious act of a third person) as a consequence of any breakage or leakage from the pipelines or an ancillary installation, for any such damage not otherwise made good. If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by the court in accordance with part IV of this Act.

Oil and gas companies operating in the Niger Delta have often relied on the last sub-section to deny liability to pay compensation to those affected by oil spillage. It is always easy to allege sabotage of the affected pipelines. It has been asserted that the burden of proof here lies on the

affected person to prove that it was not sabotaged in order to be entitled to compensation.⁴³ Also, the government has not ensured that the pipelines are regularly maintained. Whenever there is an oil spill and the responsible pipeline operator compensates the people affected, they do so as though they are helping the people with some basic needs and not as if they are liable for negligence.

4.3 The Petroleum Act of 1969

The law has been repealed and replaced with the Petroleum Industry Act of 2021. The Petroleum Act vested ownership of land in the Federal Government of Nigeria. Section 2(3) of the Act grants the power to make schedules. Paragraphs 36 and 37 of the first schedule to the Act provided for compulsory acquisition subject to payment of 'fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased land'. The combined effect of this provision with that of Section 1 of the Land Use Act (LUA) of 1978 produced absolute control of the land and the resources underneath by the Federal Government.

The Niger Delta people see the Petroleum Act and the Land Use Act as the root of the injustice they have been subjected to for decades. The agitation for resource control in southern Nigeria, in general, and the Niger Delta, in particular, has been a focal topic of discussion in the quest for the environment and social justice for the people in the region. Resource control is believed to be in consonance with the practice of true federalism and natural law, in which the federating units express primary control over the natural resources within their borders or landmarks and make agreed contributions towards the maintenance of common services of the government at the centre. The people of the Niger Delta don't believe the interests of their environment and the uneven burdens they are subjected to for the economic sustenance of the nation can be equitably assuaged without them having control over how, who, and where oil resources will be exploited.

Even when there was a provision in the Act that mandates the oil and gas companies to be liable to pay 'fair and adequate compensation' to any landowner whose interest in it has been adversely affected by their operations, in practice, what is paid is never commensurate with the environmental injustice they have suffered.

43 SW Amaduobogha, 'Environmental regulation of Foreign Direct Investment (FDI) in the oil and gas sector' in F Emiri & G Deinduomo (eds) *Law and petroleum industry in Nigeria: Current challenges* (2009) 115 at 119.

5 Current legal framework

5.1 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007

In 2007, the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (referred to as NESREA) was enacted to serve as the primary legal framework for overseeing all environmental activities. This Act grants the necessary legal authority to enforce the regulations and standards outlined by both the Act itself and the Agency. NESREA as an agency, was created as a public institution functioning under the ministerial control of the Ministry of Environment. Section 1(1) of the NESREA Act established the 'Agency' and effectively repealed the erstwhile Federal Environmental Protection Agency Act (FEPA).⁴⁴

The agency's role involves enforcing environmental laws, regulations, rules, standards, policies, and guidelines. Additionally, it bears the responsibility of safeguarding and fostering environmental development, conserving biodiversity, and promoting the sustainable utilisation of natural resources through appropriate environmental technologies.⁴⁵ According to Ladan,

The NESREA Act and Regulations constitute a new dawn because, in both purpose and contents, they aim at addressing the preponderance of obsolete environmental regulations, standards and enforcement mechanisms, which resulted, over the years, in the high rates of non-compliance with environmental laws, regulations and standards.⁴⁶

Achieving effective enforcement was a challenge faced by the now-defunct FEPA; however, the NESREA Act grants the Agency the authority to ensure adherence to laws, guidelines, policies, and environmental standards set forth by the Act and its associated regulations.⁴⁷

Though the agency has its administrative structure under the headship of the Director-General, the Minister of Environment has the legal power

44 NESREA Act <http://www.nesrea.org/nesraact.php> (accessed 25 August 2023).

45 Section 2 of the NESREA Act.

46 MT Ladan 'Review of NESREA Act 2007 and Regulations 2009-2011: A new dawn in environmental compliance and enforcement in Nigeria' (2012) 8 *Law, Environment and Development Journal* 116.

47 Section 7(a) of the NESREA Act.

to make regulations for the proper functioning of the agency in enforcing the Act. The minister can make regulations for areas permitted by the Act. I use the word 'permitted' because one major drawback of the Act is that it does not grant the agency the power to regulate environmental issues that emanate from the oil and gas industry. Section 8(8) grants the agency the power to 'conduct public investigations on oil pollution and the degradation of natural resources except investigations on oil spillage'.⁴⁸ Additionally, the agency lacks the authority to carry out environmental audits pertaining to the Nigerian oil and gas industry.⁴⁹

To enhance the capabilities of the agency in executing its mandated duty of safeguarding and fostering environmental well-being, the NESREA Act was amended in November 2018. This amendment was carried out through the enactment of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Amendment Act (Amendment Act).

5.2 National Oil Spill Detection and Response Agency Act

The Act establishes the National Oil Spill Detection and Response Agency (NOSDRA), which is the institution responsible for implementing the Act and provides a regulatory framework for oil spill detection, control, and response in Nigeria. The law places emphasis on preventing oil and gas pollution, specifically stemming from oil spillages. As a result, the agency's scope does not encompass other dimensions of oil and gas pollution, such as effluent discharge from petroleum refining operations and gas flaring.

Section 1(1) states that NOSDRA is the federal agency with the statutory responsibility for preparedness, detection, and response to all oil spillages in Nigeria. The enactment of this Act and the subsequent establishment of the Agency further support Nigeria's commitment to the 1990 Convention on Oil Pollution Preparedness, Response and Co-operation. Among other responsibilities, the agency is responsible for surveillance and ensuring compliance with all existing environmental legislation, receiving reports of oil spillage, and coordinating oil spill response activities throughout Nigeria. The agency also serves an interventionist purpose in a situation of emergency as a first responder and coordinator of oil spills within the Ministry of Environment. In exercising its mandate, the agency implements the National Oil Spill Contingency

48 Within secs 8(k), (i), (m), (n), and (s), outlining the diverse functions of the agency, the Nigerian oil and gas industry is noticeably excluded from the enumeration.

49 Section 7(k).

Plan (NOSCP).⁵⁰ The NOSCP preceded the NOSDRA in 2003 and was nationally adopted in 2005. The NOSCP is a policy document for ‘cost-effective response mechanisms for oil spills within the territories of the Federal Republic of Nigeria’.⁵¹ The NOSCP delineates the government’s mandate through its relevant agencies in terms of safeguarding the Nigerian environment against oil spills, whether they occur accidentally or intentionally, originating from any scale or origin that poses a threat to the Nigerian ecosystem.⁵² In order to have statutory backing for its implementation, the NOSCP was integrated into the NOSDRA Act.

It is quite commendable that the NOSDRA Act and the Agency are both aimed at tackling the problem of environmental degradation, particularly that resulting from oil pollution. With respect to protecting the environment from oil spillage and pollution, the agency is statutorily positioned to punish spillers, protect the environment, and collaborate with other sister institutions in the event of disastrous spills. An oil spiller is mandated under the Act to report an oil spill timeously and not later than 24 hours after the spill has occurred. Failure to do so attracts a penalty of the sum of five hundred thousand naira for each day of default. Failure to clean up the affected site attracts a further fine of one million naira.

Regrettably, a significant drawback of the law is that it does not include any provisions mandating compensation for victims of oil spillage. Instead, it focuses solely on the punishment of those responsible for the spills and the imposition of fines. While the Act hinges on punitive measures to regulate oil production activities and combat environmental pollution, the language within the Act seems to restrict the imposition of fines to corporate bodies rather than individual spillers. Additionally, there is no legal requirement for an individual responsible for an oil spill to report the incident, manage the clean-up, or perform remediation of the impacted area.

5.3 Petroleum Industry Act

The Petroleum Industry Act (PIA) was signed into law by President Muhammadu Buhari on August 16, 2021. It repeals the outdated Petroleum Act of 1969 and provides a legal framework for the Nigerian oil and gas industry.

50 Section 5 (a-n) of the NOSDRA.

51 National Oil Spill Contingency Plan (NOSCP), para 1.1.

52 Paragraph 2.1 of the NOSCP.

The PIA seeks to reform the Nigerian oil and gas industry by creating an enabling environment for investment and promoting transparency and accountability in the management of the sector. Some of the key provisions of the PIA include the restructuring of the Nigerian National Petroleum Corporation (NNPC) into a limited liability company, the creation of a regulatory agency for the upstream and midstream sectors, and the establishment of a fund for the development of host communities.

The PIA is expected to attract more investment into the Nigerian oil and gas industry, improve the management of the sector, and ensure that host communities benefit from the exploitation of their resources. However, the implementation of the PIA has been met with mixed reactions, with some stakeholders raising concerns about certain provisions of the law.⁵³ The Minister of Petroleum has enormous power under Section 3 of the PIA. The formulation, monitoring, and administration of government policies for the petroleum industry fall under the supervisory authority of the Minister of Petroleum.⁵⁴

The Petroleum Industry Act (PIA) contains provisions that seek to address environmental challenges in oil-producing communities in Nigeria. One of the key provisions in this regard is the establishment of a fund for the remediation of polluted sites and the restoration of the environment in host communities.

It is a comprehensive legal framework that comprehensively reforms the administration and regulation of the oil and gas business in Nigeria. With the operations of the industry classified into upstream, midstream and downstream, the Act outlines various stakeholders' rights, responsibilities, and duties in each of the operational streams. The Act mandates a holder of any of the operating licenses who engages in upstream and midstream petroleum operations to submit an environmental management plan to the Nigerian Midstream and Downstream Petroleum Regulatory Authority, the regulator of the midstream and downstream sectors (the Authority) or the Nigerian Upstream Petroleum Regulatory Commission, the regulator of the upstream sector of the industry (the Commission), for approval before the commencement of any project that requires environmental impact assessment.⁵⁵

53 K Momodu 'Exercise of ministerial powers under Nigeria's Petroleum Industry Act' (2023) 41 *Journal of Energy & Natural Resources Law* 105.

54 Section 3(a) and (b).

55 Section 102 of PIA.

In order to ensure chemicals that are harmful to the environment are not used for oil and gas operations, the Act provides that the storage, application, and transportation of radioactive materials in all aspects of oil and gas operations shall be in compliance with the Nuclear Safety and Radiation Protection Act and other such legislative provisions as may be applicable.⁵⁶

One major departure from the repealed Act included in the PIA is the provision for the establishment of host communities' development trusts to foster sustainable prosperity within communities that host any form of oil and gas project or facilities, amongst other objectives.⁵⁷

6 Conclusion

Persistent violations of human rights in conjunction with inadequate oversight of oil multinational corporations (MNCs) in Nigeria arise from a confluence of factors, including an insufficient legal framework that deprives local inhabitants of land and natural resource rights, inadequate attention to environmental concerns, ineffective enforcement of pertinent environmental regulations intended for safeguarding people and the environment, the Nigerian state's heavy dependence on oil, prolonged periods of military governance, rampant corruption within the oil sector and the broader governance structure of Nigeria, the inability to legally pursue the right to a clean environment, and the fragility of institutions such as the judiciary and the National Human Rights Commission.⁵⁸ Scholars believe that though the government has established laws for protecting the environment from the effects of oil exploration and exploitation, the problem remains that of effective implementation, enforcement, and monitoring by the responsible agencies.⁵⁹ The government has not demonstrated the political will to enforce several deadlines given to oil industry operators to stop gas flaring, despite the possible adverse effects these emissions could have on humans, animals, and the environment. Concerns about the unhealthy impact of gas flaring have been in public debate since 1960. Various ways of ending the unsafe practice were expressed until the government fixed January 1984 as the deadline for ending it. Since then, nothing has been achieved other than creating

56 Section 225 of the PIA.

57 Section 235 of the, PIA.

58 O Oluduro 'Oil exploitation and human rights violations in Nigeria's oil producing communities' (2012) 25 *Afrika Focus* 160 <https://doi.org/10.21825/af.v25i2.4959> (accessed 8 November 2023).

59 CC Ugochukwu 'The negative impacts of oil exploration on biodiversity management in the Niger Delta Area of Nigeria' (2008) 26 *Impact Assessment and Project Appraisal* 139.

moving targets. The deadline was moved to 2007, then 2008, further to 2010, then moved again to 2020, and most recently fixed for 2030.⁶⁰

It has been asserted that the making of the Associated Gas Re-injection (Continued Flaring of Gas) Regulations, 1984, was purely informed by the economic interests of the authorities and companies. The regulations practically reverse the original intention of the Act to put an end to gas flaring.⁶¹ The oil and gas companies are simply comfortable flaring as much gas as they want and paying a nominal fee to the government. Inhabitants of the Niger Delta region have been suffering from the act of gas flaring by oil and gas companies for a long time. The government's continuing to permit this Act shows that it is simply pampering the oil and gas companies and is more interested in their earnings than their citizens' health.

Suppose the essence of protecting the country's economic interests of the country is factored in. In that case, it can comfortably be seen as a major deciding factor dictating government policy direction on environmental protection mechanisms that will guarantee the people of the Niger Delta region's right to environmental justice. The economic factor's implication is the segregation of the interest of justice whenever the interest of the well-being of the people is brought before the custodians of laws. Justice is not meant to speak for those who have the ability to drown out the voices of those who can only whisper. Once the interest of justice is argued to reflect the nation's interest at the expense of the rights of minorities, the notion of 'nationhood' is seen as pretentious and contemptuous. Having control over resources by endowed communities will encourage environmental integrity, whereas having control over resources by the federal administration will continue to cause avoidable environmental damage since oil must flow to ensure earnings.

Government companies and the people should be governed by laws that take into account the sanctity of the well-being of all those it's meant to govern and not in an uneven way across vast swaths of society. Furthermore, this should also apply to entities other than people, such as the environment, whose well-being depends on the individuals who can represent them. Therefore, bearing in mind the enunciation of legal principles that govern the making of laws that dictate the course of

60 'Nigeria to end gas flaring by 2030, under national climate plan' *Climate Home News* 13 August 2021 <https://www.climatechangenews.com/2021/08/13/nigeria-end-gas-flaring-2030-national-climate-plan/> (accessed 2 February 2022).

61 RO Ugbe & A Ekpoudo 'Attainment of zero gas flaring level in Nigeria: Productive legal and policy framework strategies' (2016) 17 *The Calabar Law Journal* 35 at 46.

humanity in a society, it behoves the legislature to ensure that laws made for the people are not maliciously ingrained to expose them to the elements of injustice. According to Fainstein, in assessing the functionality of justice by actors subject to the legal system, consideration should be given to equity, diversity, and democracy factors.⁶²

In making laws for the oil industry, the emphasis was not on protecting the rights of those living in the oil-producing areas. Rather, the corporations' investment, economic interest, and commitment to some international conventions were the main factors that directed regulations. The Petroleum Act of 1969 was Nigeria's first substantive legislation on petroleum operations. The Act did not emphasise preventing pollution from oil exploration and exploitation. It merely granted the Minister of Petroleum the power to make regulations, as and when necessary, to prevent pollution of watercourses and the atmosphere. The issues of gas flaring, spillage, and effluent dumping are indirectly covered, while farmlands and human habitat destruction are left out.

The Petroleum Industry Act was signed into law by the President of the Federation in August 2021 after over ten years of being considered in the Legislature. Some of the provisions in the PIA relate to the issues discussed in this paper: gas flaring and environmental protection. It is hoped that the Act will be thoughtfully implemented to end the adverse environmental problems and environmental injustice in the Niger Delta.

The Petroleum Industry Act (PIA) contains provisions that seek to address environmental challenges in oil-producing communities in Nigeria. One of the key provisions in this regard is the establishment of a fund for the remediation of polluted sites and the restoration of the environment in host communities.

Under the PIA, oil companies are required to pay a percentage of their annual upstream operations expenses to the fund. The funds will be used for the remediation of polluted sites and the restoration of the environment in host communities affected by oil exploration and production activities.⁶³

In addition, the PIA requires oil companies to prepare and submit an Environmental Remediation Plan (ERP) to the regulatory agency for the upstream and midstream sectors. The ERP will outline the measures that the oil company intends to take to remediate any environmental

62 SS Fainstein 'Planning theory and the city' (2005) 25 *Journal of Planning Education and Research* 121.

63 Section 103 of the PIA.

damage caused by its operations and the timeline for implementing those measures.

The Petroleum Industry Act (PIA) has several provisions that address environmental challenges in the Nigerian oil and gas industry. Some of the key provisions in this regard include:

The Environmental Remediation Fund.⁶⁴ The PIA establishes a fund for the remediation of polluted sites and the restoration of the environment in host communities. Oil companies are required to pay a percentage of their annual upstream operations expenses to the fund, which will be used for environmental remediation and restoration.

The Environmental Remediation Plan: The PIA requires oil companies to prepare and submit an Environmental Remediation Plan (ERP) to the regulatory agency for the upstream and midstream sectors. The ERP outlines the measures that the oil company intends to take to remediate any environmental damage caused by their operations and the timeline for the implementation of those measures.

Environmental Permits: The PIA mandates oil companies to obtain environmental permits before commencing any exploration or production activities. The regulatory agency is responsible for ensuring compliance with environmental regulations and standards.

Environmental Audits: The PIA requires oil companies to conduct regular environmental audits of their operations and submit the results to the regulatory agency. The purpose of the audit is to identify and address environmental risks and challenges.

Host Community Development: The PIA requires oil companies to contribute to the development of their host communities by providing basic amenities, social infrastructure, and economic opportunities. The provision is intended to address the socio-economic and environmental challenges faced by host communities in the oil-producing regions.

Furthermore, the PIA mandates that oil companies obtain environmental permits before commencing any exploration or production activities. The regulatory agency is responsible for ensuring compliance with environmental regulations and standards.

64 Section 103(1) of the PIA.

References

Books

Journals and Book Chapters

- Amaduobogha, SW 'Environmental regulation of Foreign Direct Investment (FDI) in the oil and gas sector' in Emiri, F & Deinduomo, G (eds) *Law and petroleum industry in Nigeria: Current challenges* (2009) 115 at 119
- Archibong, B *Historical origins of persistent inequality in Nigeria* (2018) 46 Oxford
- Dowden, R *Africa: Altered states ordinary miracles* (2008) 462
- Enabulele, O 'Mitigating the effects of environmental degradation in the oil industry: An assessment of government compensation scheme in Nigeria' (2020) 16 *Law, Environment and Development Journal* 76 <http://www.lead-journal.org/content/a1605.pdf>
- Ikelegbe, A 'The economy of conflict in the oil rich Niger Delta region of Nigeria' (2005) 14 *Nordic Journal of African Studies* 208
- Jon, N & Hoeller, P *Economics and the environment: A survey of issues and policy options* (1990)
- Ladan, MT 'Review of NESREA Act 2007 and Regulations 2009-2011: A new dawn in environmental compliance and enforcement in Nigeria' (2012) 8 *Law, Environment and Development Journal* 116
- Meredith, M *The State of Africa: A history of fifty years of independence* (2006)
- Momodu, K 'Exercise of ministerial powers under Nigeria's Petroleum Industry Act' (2023) 41 *Journal of Energy & Natural Resources Law* 105
- Okpara, CI 'Right to a clean and healthy environment: The Panacea to the Niger Delta Struggle' (2012) 5 *Journal of Politics and Law* 1
- Okpara, CI 'Right to a clean and healthy environment: The Panacea to the Niger Delta Struggle' (2012) 5 *Journal of Politics and Law* 1 at 3-8
- Oluduro, O 'Oil exploitation and human rights violations in Nigeria's oil producing communities' (2012) 25 *Afrika Focus* 160 <https://doi.org/10.21825/af.v25i2.4959>
- Oluyede, PA 'Development in land laws and laws of conveyancing' in T Akinola Aguda (ed) *The challenge of the Nigerian Nation: An examination of its legal development 1960-1985* (1985) 94-123
- Peel, M *A swamp full of dollars* (2009)

- Penz, P 'Environmental victims and state sovereignty: A normative analysis' in Williams, C (ed) *Environmental victims* (1998) 48
- Simpson, ES *The developing world: An introduction* (1994)
- Ugbe, RO & Ekpoudo, A 'Attainment of zero gas flaring level in Nigeria: Productive legal and policy framework strategies' (2016) 17 *The Calabar Law Journal* 35 at 46
- Wainryb, C; Smetana, JG & Turiel, E (eds) *Social development, social inequalities, and social justice* (2008)
- Wilson, G 'Niger Delta Development Commission and sustainable development of Niger Delta Region of Nigeria: The Case of Rivers State' (2012) 9 *LWATI: A Journal of Contemporary Research* 254
- Wumi, R *Oil resources, hegemonic politics and the struggle for re-inventing post-colonial Nigeria* (1998)

International and National environmental instruments

- African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev 5, 21 ILM 58 (1982)
- Ekpu, R 'The oil burden: Rich nation poor people' *NewsWatch* 21 June 2004 at 13 National Oil Spill Contingency Plan
- NDDC (Establishment Act) 6 of 2000
- NESREA Act <http://www.nesrea.org/nesraact.php>
- OPEC 'Monthly oil report' https://www.opec.org/opec_web/en/publications/340.htm
- Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/A_HRC_37_59_EN.pdf
- Strong, M '1972 Stockholm Conference opening statement' https://www.mauricestrong.net/index.php?option=com_content&view=article&id=154&Itemid=78
- UNGA 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' UN Doc A/73/188 (19 July 2018) (Special Rapporteur 2018 Report) para 30
- United States Environmental Protection Agency. See <https://www.epa.gov/environmentaljustice>

Websites and online papers

‘Nigeria to end gas flaring by 2030, under national climate plan’ *Climate Home News* 13 August 2021 <https://www.climatechangenews.com/2021/08/13/nigeria-end-gas-flaring-2030-national-climate-plan/>