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## **Oil Pollution in Nigerian and the Issue of Human Rights of the Victims**

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### ***ABSTRACT***

One of the major environmental problems in Nigeria today is that of oil pollution in the oil producing areas of the country. The country has suffered environmental degradation as a result of the oil pollution in the last of five (5) decades. The causes of this oil pollution were oil spillage, gas flaring, and effluent discharge from the refineries. These have caused untold hardships on the people living close or near the oil installations or facilities and have affected their lives, wellbeing, means of livelihood and the environment generally. Oil pollution activities have also affected their right to good and decent life, human dignity and lots. Unfortunately, the victims seem to be unable to assert their human right. The reason being that there are no constitutional and statutory provisions on environmental right to those who suffer such except common law remedies such as negligence, nuisance etc which require strict and technical proofs. The constitutional provision on the right to environment in chapter II of the 1999 constitution is lax and not justifiable. The only available redress is recourse to the human rights in Nigeria is a recourse to chapter 4 of the Constitution. This situation has caused untold hardship on the people because they have no way of seeking redress when their rights are being violated. As a result of this ugly development, this work has recommended that Nigeria should borrow a leaf from other jurisdictions such as India, South Africa etc. where human rights and environmental rights are practiced together.

Keywords: Indigenous people; Natural Resources; Nigeria.

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### **INTRODUCTION**

Pollution can be defined as the addition to the natural environment of substances or energy (e.g. heat or sand) at a rate that result in higher than natural concentration of the substance and therefore, causes an adverse effect (Hilson 2003). It is also, the introduction by man into the environment of substances or energy liable to cause hazard to human health, harm to living resources and ecological system, damage to structure or human amenities with legitimate use of the environment (Holdgate 1980). Activities in the oil and gas industry in Nigeria have caused a lot of environmental damage to human and plants. The impact of pollution on the environment rights from when oil was discovered in Nigeria is far-over reaching as it affects the delicate balance which exists in the interaction of the various key factors at play in the environment (Akahalu 2014; Adoga-Ikong & Inyang 2017; Adoga-Ikong

2019). Thus, the increase in human and industrial activities including oil and gas activities has increased the chances of pollution elements in the environment. Pollution therefore affects the land, water and air of the people of Niger Delta as a result of these activities.

This work seeks to examine, the cause of oil pollution impact on the people which affects the human rights of the victims. This work makes comparative analysis of other jurisdictions where environmental rights are protected.

## CAUSES OF OIL POLLUTION IN NIGERIA

### a. Oil spillage:

This is one of the ways in which the activities in the oil industry could contribute to pollution of the environment. Oil spillage or oil spill is a situation whereby the liquid petroleum (hydrocarbon) is released into the environment as a result of human activity. Oil spillage is categorized into four (4) groups: minor, medium, major and disaster (Chinedu & Chukwuemeka 2018). The minor spill takes place when the oil discharge is less than 25 barrels in land waters or less than 250 barrels on offshore and coastal waters. For the medium spill, it must be 250 barrels or less in the land, or 250-2,500 barrels, offshore and coastal waters. Disaster refers to any uncontrolled well blow out, pipeline rupture or storage tank failure. Oil spillage may occur by accidents, equipment failure, lack of maintenance, blow out, sabotage etc., natural disaster, collisions and human errors in transportation (Kadafa et al., 2012).

### b. Gas flaring

This is as a result of the burning of the unwanted natural gas released during production (Udok & Akpan 2017). In other words it is the controlled burning of natural gas trapped within the place of oil reserves in the ground. In Nigeria, this is an intentional act by the oil multinational companies in order to save costs (Udok & Akpan 2017). The pollution associated with these flares can affect man and his environment. Gas flaring on a large scale is an extremely wasteful and environmentally harmful practice which is a contributor of greenhouse gas (Hassan 2020). Gas flaring has caused a lot of environmental hazard to life, property and the land of the oil producing areas of Nigeria. Gas flaring releases huge quantity of methane which is capable of high global warming. Gas flaring has a potentiality of harmful effects on the health and livelihood of the communities in vicinity. This is because it releases a variety of poisonous chemicals, which may include nitrogen sulfide and carcinogens such as benzapurene and dioxin. It is a known fact that when humans are exposed to such substances they can suffer from a variety of ailments. Those chemicals can aggravate asthma, cause breathing difficulties and pain as well as chronic bronchitis (Cipolla et al., 2018).

A study carried out by climate justice estimates that exposure to banezene can be responsible for eight new cases of cancer in Bayelsa state alone (Omagu 2012). Gas flares are often located close to local communities. In Rumuola (a community in Port Harcourt capital of Rivers State) for instance, a shell company flare is situated about 30 metres away from the nearest dwelling house. Due to non- adequate protection such as fencing around the place, inhabitants of the villages around may run the risk of their lives working near the place as a result of the heat (Udok & Akpan 2017). Gas flaring causes acid rain which affects the skin and hair of humans and animals. It corrodes cars and roofs and raises body temperature beyond the limit that the heart can sustain for longevity. It leads to blur vision, foul smells, ozone layer depletion draught and desertification.

In the 1970s, government recognized the potential of the natural gas industry, thus, enacted legislation banning gas flaring in Nigeria. According to the legislation (Associated Gas Re-injection Act, 1979), all companies were mandated to submit gas utilization preliminary programmes by 1<sup>st</sup> of April, 1980 and furthermore, detailed programmes on utilization or reinjection by 1<sup>st</sup> January, 1980 (Eweje 2006). No company was to flare gas after 1<sup>st</sup> January, 1984 without the authorization and permission of the Minister. The punishment of non-compliance which is a forfeiture of concession (Eweje 2006).

The deadline was shifted a couple of times to April, 1984 and to January 1985. After this instead, the Association Gas Reinjection Continuing flaring of gas regulation 1984 came into force and provided for exemptions to the general ban of flaring. As a result of this, the ministry had to exempt 55 out of 84 shell's fields, 10 out of mobil's 15 field, 4 out of Agips 22, 7 out of Gulf's 17, 3 out of Texeco's 5, 4 out of ELF's 6, 1 out of Ashland's 3 and 1 each for Tonneco and Pan Ocean (Omorogbe 2009). A total of 86 out of 155 fields thereby remained exempted from the anti-flaring provisions. The remaining fields were subject to fairly insignificant penalties, which made it far more economical for the companies to flare than to utilize or reinject (Omorogbe 2009).

It must be noted here that the above provision did not in any way ban gas flaring in Nigeria absolutely, hence neither the government nor the oil companies are desirous of bringing gas flaring to an end. The reason being that the flare-out target date was shifted severally from 1984 to 2004 and then to 1<sup>st</sup> January 2008. The government of Nigeria also informed the United Nations in November 2003 that it come out with a deadline for all oil and gas companies to stop flaring by the year 2021 (Fagbohun 2010). Many Nigerians do not see the flare out targets and deadline realistic because uptill today gas flaring has not been stopped despite the gas master plan to utilize and conserve gas in Nigeria.

#### c. **Effluent Discharge**

This has to do with the release of liquid waste or sewage into a river or the sea. It is also an overflowing of water or gas from a natural body of waste or from man-made activities. Refinery wastes have characteristics which constitute the main potential for pollutants. For instance, the constant discharge of waste and untreated substances into land, creeks, rivers and sea causing pollution. These aqueous refinery effluents generally contain a variety of organic and inorganic pollutants such as oxide of nitrogen, carbon, sulphur, drilling fluid and mud which kill living resources.

The effect of effluent discharge mainly has to do with health-related disease. The high oil and greases concentration observed in effluent recurring water bodies can be responsible for the depletion of fish and other aquatic life (Agrios 1997). As a result of increase in petroleum activities in Nigeria, effluent are discharged with little regard to the aquatic environment and the contents of effluents have serious toxicological effects on aquatic environment and humans (Agrios 1997). Refining effluents containing oil when discharged into water bodies cause depletion of dissolved oxygen due to transformation of organic components into inorganic compounds, loss of biodiversity through a decrease, in amphipod populations that are important in the food chain and entrophication.

### **IMPACT OF OIL POLLUTION ON THE ENVIRONMENT**

Since the discovery of oil in Nigeria, the country has suffered negative environmental consequences of the exploitation (Aigbedion & Iyayi 2007). Oil pollution either oil spillage, gas flaring or effluent discharge has its impact on the Nigerian environment in many ways. Oil

spillage for instance destroys vegetation, rendering farmlands barren and unproductive. Oil spillage can also damage agriculture land and affect soil fertility. Oil is capable of killing plant and animals, and can settle on beaches and kill organism that live there like fish. Nigeria has suffered the consequences of the destruction of its mangrove ecosystem as a result of oil spillage. Instances, are as follows: One, the overflow of the waste pit at Benibay (Escravas) which destroys the environment, the vegetation at Ogharefe was destroyed as a result of oil spillage (Amadi & Abdullah 2012). The Idoho oil spill extended from Akwa Ibom state to Lagos state dispersing oil through the coastal states up to Lagos coast. This culminated in the presence of spilled oil along the coastal areas of Cross Rivers State, Akwa Ibom State, River State, Bayelsa, Delta State, Ondo State and Lagos State (Kadafa 2012).

It is a fact that in many villages near oil installations, even after a long time spills, an oily sheen can still be seen on the water, this usually in fresh water communities is the same water that the people living there use for drinking and domestic use. In April 1997 for instance, samples taken from water used for drinking and washing by local villagers in Luawil in Ogoniland where there had been no oil production for four years, were analyzed in the U.S.A. and thus had 18 ppm of hydrocarbons in the water, 350 times the level allowed in drinking water in the European Union (EU). Again a sample from Ukpaleide, Ikwerre, contained 34ppm, 680 times the EU standard (Nrior & Jirigwa 2017). Following the major Texaco spill of 1980 the report indicated that 180 people lost their lives in one community as a result of the pollution. On several occasions, people interviewed by human rights watch said that spills in their areas made those who drink the water sick, especially children (Nrior & Jirigwa 2017).

Gas flares cause acid rain which affects the skin and hair of humans and animals, corrodes roofs and cars and raises body temperature beyond limits that the hearts can sustain. The quality of air inhaled by the people in the immediate vicinity is greatly reduced by the introduction of excessive smoke, suspended particles and carbon monoxide into the atmosphere. In Ifie-Ikporo, an Itsekiri community near Warri, gas flaring inflicts the natives with heat rashes and damages their farms. In Ebocha-Egbema the people complained of serious health problems and environment issues caused by gas flaring. Huge flares accumulates in the air and above them, black clouds leap into the sky. The air around them is usually hot and has a smell due to the gas flare. Water in this area is also as black as charcoal and the effects and hardship is meted on them, thus depriving them of their right to life and healthy environment (Obiechina & Rimande 2018). In Bodo West in Bonny Local Government Area, an increase artisanal refining between 2007 and 2011 has been accompanied by a 10 percent loss of healthy mangrove cover or 397,381m<sup>2</sup>. If this is left unchecked may lead to irreversible loss of mangrove habitat in this area (Obiechina & Rimande 2018).

#### 1. **The issue of human rights of the victims of oil pollution in the oil producing areas**

- 1) Human rights under the 1999 constitution of the Federal Republic of Nigeria (as amended) – section 33 of the constitution provides for right to life and it states in section 33(1) that:

Every person has a right to life and no one shall be deprived internationally of his life, save in execution of the sentence of a court in respect of a criminal offence which he has been found guilty in Nigeria.

Also Section 34 of the constitution provides for the right to human dignity and it states: 34(1) – every individual is entitled to respect for the dignity of his person, and accordingly:

- a) No person shall be subjected to torture or inhuman or degrading treatment
- b) ...
- c) ...

- 2) Human right provision under the International Covenant on Economic, Social and Cultural Right (1966) enjoys state parties to recognize the right of everyone to an adequate standard of living for himself and his family...
- 3) Universal Declaration of Human Right under Article 25 provides that, everyone has the right to a standard of living, adequate for health and wellbeing of himself and his family (Loveless & Holman 2006).
- 4) African Charter on Human and People's Right – Articles 4, 16 and 24 of the charter provides for human right. Article 4 provides – human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right. Article 16-Every individual shall have the right to enjoy the best attainable and satisfactory condition... Article 24 – All people shall have the right to a general satisfactory environment favourable to their development.

Despite the above provisions that confer human right on every person in Nigeria especially the victims of oil and gas pollution, how practical has this been today? One thing to note here therefore is the provision of section 20 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The section states that: “The state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria”. Looking at this provision there is no constructive and enforceable rights spelt out. In otherwords, the provision creates no binding obligation or legally enforceableright, it merely directs the state on its polices and does not act as a positive source of any right for anybody who feels that the provisions have been infringed upon.

The other provision of the law is that of section 33(1) and 34 of the constitution as regards the right to life and integrity of human person respectively. Section 33(1)of the constitution which expressly provides for right to life does not appear to be adhered to in Niger Delta in relation the oil pollution and the sufferings of the inhabitants of the areas.

The case of *Jonah Gbemre v. Shell Petroleum envelopment Company Nigeria Ltd & Ors.* Is instructive in that case the court held that...

The constitutionally guaranteed fundamental rights to life and dignity of human person provide in sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 reinforced by articles 4, 16 and 24 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, vol 1 laws of the federation of Nigeria2004, inevitably includes the right of clean poison free, pollution free and healthy environment... the action of the 1<sup>st</sup> and 2<sup>nd</sup>respondents in continuing to flare gas in the course of their oil exploitation and production activities in the Applicant's community is a violation of their fundamental rights to life (including healthy environment) and dignity of human person guaranteed by section 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Articles 4, 16 and 24 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 vol 1, Laws of the Federation of Nigeria, 2004 (Obutte & Idiaghe 2018, p. 64).

The facts of the above case is that the claimant a native of one of the oil producing communities in Delta State, Nigeria where the respondent was flaring gas went to court for himself and for his community to stop the oil company from flaring gas in the said community. At the court of first instance, the court held that gas flaring constitutes a breach of fundamental rights therefore ordered the defendants to stop it. The case was affirmed by the Appeal Court but the issue is that until now the company has not stopped flaring there which violates the right of the people to life as stated above.

In another case of *Ikechukwu Opera & Ors v. Shell Petroleum Development Company of Nigeria Limited & Ors* which has similar facts with that of Jonah Gbemre, the Federal High Court, Port Harcourt Division was of the view that gas flaring was not covered by the rights under Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (Obutte & Idiaghe 2018).

Yet, in another case of *Social and Economic Right Action Center for Economic and Social Right v. Nigeria* (Nwobike 2005). a matter brought against Shell's Operations in Orniland, the Commission could only urge Nigeria as to what to do and no more even though Nigeria was found to have breached a number of provisions of the Charter including: Articles 2,4,16,18,21,22 and 24.

In a further development, thousand of Ogonis were detained or assaulted by the Rivers State Interactional Security Taskforce for exercising their fundamental rights. In 1994, Ken Saro-wiwa and several others were accused of the murder of traditional leaders in Oganiland and subsequently executed by the military government on November 10, 1995 after a trial which violated International Standards. The execution of Ken Saro-wiwa followed by other repressive actions by the government of Nigeria designed to coerce or silence the oil producing communities against any kind of agitation in furtherance of their human right (Nixon 1996).

## 2. Human Rights Practice in other Jurisdictions

### a. South Africa

The Constitution of the Republic of South Africa in Section 24 of entrenches a substantive environmental right which among other things provides (du Plessis 2018):

- Everyone has the right to an environment that is not harmful to their health or well beings; and
- To have the environment protected, for the benefit of present and future generations, through reasonable, legislative and other measures that:
  - Prevent pollution and ecological degradation
  - Promote conservation; and
  - Secure ecologically sustainable development and use of natural resources while promoting justifiable and social development.

To this extent therefore, it is pertinent to say here that the provisions of section 24 of the South African Constitution above makes it possible for individuals to assert their rights against the state and any individual whose activities may negatively affect their rights. The provision has empowered the citizens to enforce their environmental rights to life and dignity (du Plessis 2018). Section 24(a) particularly has provided a classical or traditional fundamental right that guarantees the right to life and human dignity. Even though environmental rights are traditionally classified as 3<sup>rd</sup> generation rights, section 24a) is rather an individual justiciable right which may be invoked by individual where this right is breached by the state or private person or corporate body's activity. In other words, the constitution does not only guarantee a right to environment but makes this right legally enforceable by the courts. There are no indeed noouster clauses that prohibits the jurisdiction of the court from deciding whether or not this rights has been violated (du Plessis 2018).

Also, the South African courts have taken the issue of human rights to the next level. The Grootbooms case decided by the South African Constitutional courts which is the highest court on environmental matters sets out an unprecedented and promising approach to judicial protection of environmental rights (Schellack et al., 2018). The facts of this case is that, 900 plaintiffs who were citizens of South Africa by birth, for a long period of time spanning over 80 years lived in an informal squatter settlement more particularly known as Wallacedene. Most of

the people were desperately poor living from hand to mouth. All of them lived in squatter shacks without water, sewage system or refuse removal services. Only 5% of the shacks had electricity. The named plaintiff Irene Grootboom lived with her family and that of her sister in a shack of about twenty square metres (Schellack et al., 2018).

Many of those at the wallacedine settlement had applied for low-cost housing from the municipality. They were placed on waiting list where they remained for a number of years. In late 1998, they became frustrated by intolerable and deplorable conditions of wallacedine and decided to move out and put up shacks and shelters on vacant land that was privately owned and earmarked for formal low-cost housing.

A few months later, the owner obtained an ejectment order against them, but Grootboom and others refused to leave. They contended that their former sites were now occupied and that there was nowhere else to go. Eventually they were forcibly evicted with their homes burnt and bulldozed. Their possession were all destroyed. They found on a sportfield in wallacedire under temporary structures consisting of plastic sheets. Their conditions was even worst here.

It was at this point that they contended that their constitutional rights had been breached, the constitutional court held inter alia, first that the right to health of the plaintiffs was justiciable. Second, the court held that the right to adequate housing under Section 26(1) of the Constitution was enforceable. The court found finally that Section 26 of the Constitution was breached.

#### b. **India**

India is arguably one of the most progressive countries that has given due attention to judiciary awareness and application of contemporary concepts including environmental rights and notions of sustainable development (Smithers 2015). The constitution imposed on obligation to protect the citizens of India. Part IV of the Constitution called the Directive Principles of State Policy has imposed certain fundamental duties on the state to protect the environment. Article 47 particularly imposed on the state to raise the level of nutrition and the standard of living of its people and improve public health. Article 48(a) expressly directs the state to protect and improve the environment and to safeguard forests and wildlife (Smithers 2015).

One interesting thing to note is that Indian courts have breathed life into the above provisions by linking and enforcing these and related issues to the constitutionally guaranteed rights to life contained in Article 21 (Smithers 2015). Indeed, since 1990s the supreme court of India has stated on unequivocal terms that issues of human rights and environment must and shall receive the highest attention. Thus it laid down new principles, reinterpreted old ones, create new institutions and structures and conferring additional powers all aimed at protecting human and environmental rights. In *M. C. Mehta v. Union India*, the supreme court of India held that these directive principles (Article 39(b), 47 and 48(a) individually or collectively impose a duty on the state to create conditions to improve the general health level in the country and to protect and improve the natural environment (Mehta 1988). In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, the supreme court held that the people of Dehra dun have the right to live in a healthy environment, thus ordered the mining operation in the area to cease despite the amount of money and time the company had invested (Singh 2019). In *Vellore Citizen Welfare Forum v. Union of India*, the supreme court of India noted that although the leather industry is a major foreign exchange earner of India and provided employment, it does not mean that this industry has the right to destroy the ecology, degrade the environment or create health hazards (Shamim 2015).



## CONCLUSION

Amidst the current and global trends on human right today, Nigerian has not fully embraced it particularly in the area of the victims of oil pollution. In other jurisdictions like India and South Africa human rights especially the environmental right has come to stay. In India for instance, the constitution imposed an obligation to protect the citizens of India. This is seen in Part IV, Article 47, 48(a) especially. Also, in the Indian case of *Olga Tellis & Ors v. Bambay Municipal Corp. & Ors*, the Indian Supreme Court held to the effect that the right to livelihood is a necessary component of the right of life. On the other hand in South Africa the issue of human rights as well as environmental rights is taken seriously. Section 24 of the South Africa Constitution for instance provides that: Everyone has the right, to an environment that is not harmful to their health as well as wellbeing and to prevent pollution and economical degradation... The implication and interpretation of this Section 24 is to the effect that individuals can asserts their right against the state and against any individuals whose activities may negatively affect their rights. Also in South Africa, the Popular Grootbooms case where the court held *inter alia* that the right of health of the plaintiff was justiciable, is very instructive.

Looking at the positive happening in the other jurisdictions above, where both the constitution as well as the courts have taken proactive move to ascertain the right of the individuals, it is suggested that Nigeria should follow suit in this 21<sup>st</sup> century. This is because a situation where the victims of oil pollution in Nigeria are left with little or no human rights to enforce in the case where their rights to life is infringed upon is not imagined let alone condoned (Archibong et al., 2016; Adoga-Ikong & Takim 2017).

In the light of the above, it is recommended that Section 20 of the 1999 Constitution dealing with the right to environment be removed from Chapter II to where it can be made justiciable or the Section is interpreted by the court to be justiciable. Again, it is suggested that Nigeria follow the current trend in South Africa, India, Ghana, Bangladesh etc. where their courts have applied their interpretative jurisdictions to inject justiciable life into their fundamental objectives and directive principles.

Nigerian government should embark on creating environmental courts which will handle environmental issues separately and speedily too. This will enhance the right of victims of oil pollution access to justice. Finally, it is suggested that the right to life under Section 33 and 34 of the Constitution of Nigeria incorporate the right to environment. This will enable the victims of oil pollution assert their rights adequately.

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