

AN APPRAISAL OF THE Ogoni REMEDIATION EXERCISE AND THE PARADIGM SHIFT IN ENVIRONMENTAL LAW

By
Munonye, Ivy*

Abstract

The United Nations Environment Programme (UNEP) released its Environmental Assessment of Ogoniland in August 2011 after series of protests of oil spillage in the community that culminated to the death of Ken Sarowiwa and eight others. The report commissioned by Federal Government of Nigeria, made recommendations to the government, the oil and gas industry and communities to begin a comprehensive cleanup of Ogoniland, restore polluted environments and put an end to all forms of ongoing oil contamination in the region. The paper aimed at examining the Ogoni remediation exercise and the paradigm shift in environmental law. The findings of this paper revealed that little has been done by Nigerian Government to encourage or promote environmental rights protection; this is as a result of the lack of political will to protect the environment due to prioritization of economic development over environmental protection, there bureaucratic processes that have slowed the pace of the Ogoni remediation exercise. It concluded that Environmental justice in Nigeria is still at its lowest ebb. A major factor that contributes to the dearth of environmental justice in Nigeria especially in the Niger Delta and Ogoniland in particular is the fact that the engines of the nation's economy are run by multinationals who in their quest for profit get so involved in the reckless degradation of the natural environment with impunity. The paper equally recommended that the Ogonis and the Niger Delta people should be adequately informed about every stage of the implementation of the UNEP report on Ogoniland.

1.0. Introduction

Over the last 50 years, Nigeria has witnessed serious environmental degradation occasioned by oil exploration and exploitation, refining, and product marketing.¹ Exploration activities have extended from the Niger Delta Basin to the Lake Chad Basin in the north-eastern part of the country, and the south-east Niger Delta. Nigeria currently produces about 2.6 million barrels of crude oil per day, making it the twelfth largest oil producer in the world. According to the Nigerian Ministry of Petroleum Resources, there are 150 oil fields and 1,481 oil wells in the Niger Delta region making it the largest oil reserve in Africa and tenth largest in the World. The country earns over \$28 billion US dollars from oil revenue annually, as reported by the

*LLB(Hons)(Niger Delta University), BL (Abuja). Email: ivyrichard720@yahoo.com, Mobile: 08037769484

¹ D A Idiege, 'Politics of Energy Exploitation and Environmental Degradation in the Niger-Delta Region of Nigeria' [2017] (5) *Journal of Pollution Effects and Control*, 55.

Central Bank of Nigeria² and yet there are no coherent policies from the government to deal with the growing environmental problems.

Nigeria's main environmental challenges result from oil spills, gas flaring and deforestation. Oil spills in Nigeria have been a regular occurrence, and the resultant degradation of the surrounding environment has caused significant tension between the people living in the region and the multi-national oil companies operating in those areas.

It was reported by the Department of Petroleum Resources that there have been over 4,000 oil spill incidences in Nigeria over the last 50 years,³ ranging from minor spills involving just a few hundred barrels to over half a million barrels in one single incidence. It is only in the past decade that environmental groups, the government, and the foreign oil companies began to take steps to mitigate these events. The perceived indifference of both the government and the oil companies to the environment in the Niger Delta region has been exacerbated by Nigeria's lack of coherent environmental control policy.

In view of the of the rapidly deteriorating condition of the environment, due to oil exploration and exploitation in Nigeria, there is now an urgent need to protect and preserve this environment. The country needs to align itself with the global movement towards the preservation of the country's environments; and this can only be achieved by means such as environmental impact assessments and strict adherence to regulations. This dissertation investigates the framework of the existing regulations and legislation, and critically assesses their efficiency in managing Nigeria's oil and gas industry. The findings will be targeted towards generating real solutions to the serious environmental problems in the country.

Environmental policies and management strategies have advanced in the Nigerian petroleum industry. The allegations of involvement of communities and other local interests in the destruction of oil facilities resulting in large-scale environmental hazards in the Niger Delta, particularly in Ogoni, adds a new dimension to the resolution of the environmental question.

While the local people may suffer from the constraints of incomplete scientific knowledge about long-term welfare, implications of environmental degradation, and events particularly in the 1990s indicates that environmental awareness among the people in the oil producing Niger Delta has been on the increase.⁴

The importance of Nigerian oil to the economy was realized as far back as 1971, one year after the Nigerian civil war, when the Nigerian National Oil Company (NNOC) was established to maintain governmental control in the oil industry⁵ (Amu, 1997). In 1971 Nigeria joined the

Organization of Petroleum Exporting Countries (OPEC) as the eleventh member. In 1977, the NNOC was merged with the Ministry of Petroleum Resources under Decree, No. 33. The former name, NNOC was thus changed to Nigerian National Petroleum Company (NNPC).

² CBN annual report, 2009

³ DPR handbook, 2010

⁴ E E Okon, 'The Legal Status of Sustainable Development in Environmental Law' <<http://www.nials.edu.ng>> accessed 12 March 2021.

⁵ *Ibid.*

The same Decree, No. 33, also established the Petroleum Inspectorate as an integral part of the NNPC. Its sole responsibility is the statutory control and regulation of all industry activities - upstream and downstream. The creation of the NNPC from the former NNOC meant the NNPC combined the commercial functions of the NNOC and additional functions for supervision of exploration, production, transportation, processing and petroleum refining. The United Nations Environment Programme (UNEP) released its Environmental Assessment of Ogoniland in August 2011 after series of protests of oil spillage in the community that culminated to the death of Ken Sarowiwa and eight others.

The report commissioned by Federal Government of Nigeria, made recommendations to the government, the oil and gas industry and communities to begin a comprehensive cleanup of Ogoniland, restore polluted environments and put an end to all forms of ongoing oil contamination in the region. Findings in the Report underline that there are, in a significant number of locations, serious threats to human health from contaminated drinking water to concern over the viability and productivity of the ecosystems.

In addition, that pollution has perhaps gone further and penetrated deeper than many may have previously supposed. Pollution of soil by petroleum hydrocarbons in Ogoniland is extensive in land areas, sediments and swamp land. In 49 cases, UNEP observed hydrocarbons in soil at depths of at least 5 metres. At 41 sites, the hydrocarbon pollution has reached the groundwater at levels in excess of the Nigerian standards permitted by National Laws at Nisisioken Ogale, in Eleme LGA, close to an NNPC product pipeline where an 8 cm layer of refined oil was observed floating on the groundwater, which serves the community wells.⁶ Hence, Hydrocarbon Pollution Remediation Project (HYPREP), was initiated by the Federal Government to clean up contaminated Ogoni land in Rivers State.

Since the Federal Government flagged off the remediation of contaminated sites in Ogoni Land in 2016 not much has been done in that direction. The wellbeing of the people in Ogoni and the Niger Delta at large is to say the least pathetic. Life expectancy has dropped to 40, livelihoods destroyed; inhabitants consume contaminated water 900 times above the World Health Organisation (WHO) standards.

2.0. Environmental Democracy in Global Fora

The debate over the recognition and enforcement of a right to a healthy environment and the extent to which this right is guaranteed in national constitutions and regional and international instruments is a never-ending debate.⁷ Where the ecosystem is not preserved for sustainable development, it affects the right of the people to a healthy environment.

⁶ The Guardian 6th Jan, 2020

⁷ O Anaebo and E Ekhatior, 'Realizing Substantive Rights to Healthy Environment in Nigeria: A case for Constitutionalization [2015](17)(2) *Environmental Law Review*, 82.

Globally, within the framework of international Treaties and Conventions, there appears to be an undisputed right to a healthy environment. Generally speaking, International and Regional Treaties give credence to this right.⁸ From the Stockholm Conference,⁹ to the Rio Declaration,¹⁰ the Johannesburg Summit,¹¹ Africa Charter¹², Aarhus Convention,¹³ etc the jurisprudence appears to allude to this right globally¹⁴.

The United Nations Human Rights Commission provides thus:

All persons have the right to a secure [d] healthy and ecologically sound environment including that which is adequate to equitably meet the need of the present generations and at the same time does not impair the rights of future generations to equitably meet their needs¹⁵.

It has been posited that five factors are responsible for the current globalization of environmental rights. These factors have been identified to include transplantation, harmonization, integration, convergence and elite networking.¹⁶ Accordingly, over 130 constitutions in the world made provisions to include a state's obligation to protect and preserve the environment or a right to live in a healthy environment.¹⁷ A good example is the French Constitution that was amended in 2005 to include a charter for the environment which affords all French citizens which affords all French citizens the right to live in a balanced environment favourable to human health.¹⁸ Again, and most importantly is the apparent constitutional recognition of an enforceable right to a healthy environment in the South African Constitution.¹⁹

Section 24 of the South African Constitution provides in clear terms the right of everyone.

(a) To an environment that is not harmful to their health or well-being; and

⁸ Lewis, 'Environmental Rights or a Right to the Environment: Exploring the Nexus between Human Rights and Environmental Protection [2012] (8) *Macquarie Journal of International and Comparative Environmental Law*, 36

⁹ Stockholm Conference Cited in P Sands, *Principles of International Environmental Law* (2nd Edn. Cambridge University Press, 2003) 294.

¹⁰ United Nations Conference on Environment and Development, held in Rio Brazil, 1992 [Otherwise called the Rio Declaration]

¹¹ World Summit on Sustainable Development, Johannesburg 2002.

¹² The Universal Declaration of Human Rights 1948, The Bill of Rights 1791, The Magna Carta 1215; The African Charter on Human and Peoples' Right 1986; The European and Peoples' Right 1986; The European Convention on Human Rights 1950.

¹³ The Aarhus Convention 1998; The African Charter on Human and Peoples' Right 1986, Art. 24.

¹⁴ Anaebo and Ekhaton (n 7).

¹⁵ UN ESCOR Sub-Commission on Prevention of Discrimination and Protection of Minorities, ESC Res 1990/43, UNC Doc E/CN.4/1990/94, 104.

¹⁶ Yang and Others 'The Emergence of Global Environmental Law [2009](36)(3) *Ecology Law Quarterly Journal*, 615.

¹⁷ D Anton and D Shelton, *Environmental Protection and Human Rights* (Cambridge University Press 2011) 1.

¹⁸ Legifrance, Charter for the Environment, Art. 1, <<http://www.legifrance.gouv.fr/html/constitution/constD3.htm>> accessed 3 August 2021.

¹⁹ The Republic of South African Constitution, 1996 S. 24 (a).

- (b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - i. Prevent pollution and ecological degradation;
 - ii. Promote conservation; and

Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.²⁰ The South African Constitution, it appears has alluded to the principle of sustainable development by not only making provisions for the present generation but also preserving the environment for future generations²¹. Accordingly, the South African courts have recognized that socio-economic rights that are set out in their constitution are vital to the enjoyment of the other constitutionally guaranteed rights²². The inclusion of environmental rights in the South African Constitution gave rise to the formulation of subsidiary legislations to conform to the provisions of the Constitution²³.

These include National Environmental Management Act²⁴, Promotion of Access to Information Act,²⁵ Draft National Policy Framework for Public Participation of 2005, Waste Management Bill of 2007²⁶ etc. The NEMA remains the major legislation in South Africa and makes a number of provisions recognizing some environmental law principles including biodiversity, mining air quality and protected areas, etc.²⁷

The right to a healthy environment is therefore recognized in South Africa in cases involving land development, mining, air pollution, nuclear, energy, waste incineration and toxic substances.²⁸ In *BP South Africa v MEC for Agricultural Conservation, Environment and Land Affairs*,²⁹ the court held that by the singular act of elevating the environment to a justiciable human right, South Africa has positively embarked on a mission that will lead to the preservation, protection and attainment of a protected environment by integrated approach while also taking cognizance of socio-economic concerns and principles. Thus, it is evident Africa has a positive right to a healthy environment that is enforceable by courts and recognized in the constitution and subsidiary legislations. S. 27 (1) (b) of the South African Constitution³⁰ affirms the right of everyone to have access to sufficient food and water and, there is a corresponding duty on the state to prevent pollution and ensure conservation of water

²⁰ The Republic of South African Constitution, 1996 s 24 (a) & (b).

²¹ *Ibid* s 24 (b) (iii).

²² *Government of the Republic of South Africa and Others v Grootboom and Others* [2011] 1 SA 46; [2000] 11 BCLR 1169 CC.

²³ *Anaebio and Ekhatior* (n 7) 87.

²⁴ NEMA [107] 1998.

²⁵ Promotion of Access to Information Act [PAIA 2] 288 [2004] 03/16337, ZAG PHC 18.

²⁶ *Anaebio and Ekhatior* (n 7).

²⁷ *Ibid*.

²⁸ *Director Mineral Development, Gauteng Region and Another v Save the Vaal Environment and Other* [1999]. 133/98 2 all SA 381 in *Anaebio and Ekhatior* (n 7).

²⁹ [2004] 03/16337, ZAGPHC 18.

³⁰ The Republic of South African Constitution, 1996, S. 24 (a).

resources.³¹ We note one of the most remarkable conclusions of the Ksentini Report³² to the effect that there has been “a shift from environmental law to the right to a healthy environment” and that this right forms part of existing international law capable of immediate implementation by human rights bodies as are presently constituted. The report elaborates the right to a healthy environment to encompass right to life, health, development, public participation, access to information and judicial remedies³³.

The jurisprudence of case law and legislation on environment in South Africa is overwhelming and highly commendable.³⁴ India, just like Nigeria has no positive substantive constitutional right to a healthy environment. The only mention of environmental right is in Article 43 A of the Indian Constitution³⁵ and that provision, save for the positive and pragmatic radical approach of the Indian courts is generally unenforceable³⁶. However, the overwhelming jurisprudence of case law in India tilts towards the positive recognition³⁷ and enforceability of environmental rights as being implicit in the right to life³⁸, etc. as contained in the Indian Constitution³⁹. The Supreme Court of India noted in *Tarun Bharat Sangh Alwar v Union of India*⁴⁰, that “issues of environment must and shall receive the highest attention from this court”.

Accordingly, environmental rights issues have received serious attention from the courts in India. In *Mathur v Union of India*⁴¹, the Supreme Court of India again used the right to life guaranteed in Art. 21 of the Indian Constitution as a yardstick for placing emphasis on the need to take drastic steps to combat air and water pollution.⁴² This is the position in Pakistan. Thus, in *Mohiveddin Farooque v Bangladesh*⁴³, the question before the court was whether the fundamental human rights in the constitution include the protection and preservation of the environment etc. The court held, per Hon. Justice BB Roy Choudhury that, ‘Rights to life encompass within its ambits, the protection and preservation of the environment, ecological balance free from pollution of the air and water and sanitation, without which life cannot be enjoyed’.

³¹ Razzaque, ‘Human Rights and the Environment in South Asia’ [2002](32)(2) *Journal of Environmental Policy and Law*, 99.

³² F Z Ksentini, Sub-Commission for the Promotion and Protection of Human Rights, 1994 UN Doc E/CN.4/Sub.2/1994/9.

³³ Anaebio and Ekhaton (n 7) 90.

³⁴ *Ibid.*

³⁵ Constitution of India (Ninety-Eight Amendment Act) 2012.

³⁶ Anaebio and Ekhaton (n 7) 94.

³⁷ *Ibid.*

³⁸ R Temitope, ‘The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India’ [2010](3) *NUJS Law Review*, 424 440.

³⁹ Constitution of India (Ninety-Eight Amendment Act) 2012, Art. 24.

⁴⁰ [1992] 2 Supp SCC 448.

⁴¹ [1996] 1 SCC 119.

⁴² Temitope (n 38).

⁴³ *Dr. Farooque v Bangladesh & Ors* [1997] 49 Dhaka Law Reports 1 Para 101

In *Zia v Wapda*⁴⁴, the Indian Court, interpreting Art. 9 of the Indian Constitution noted that the right to life includes the right to a healthy environment. This is also the attitude and decision of the Indian court in *Mehta's case*.⁴⁵

As a matter of fact, these basic rights need not even be written down in the constitution for they are assumed to exist from the inception of human kind.

Although, there is no positive enforceable right to a healthy environment in the Indian Constitution, Indian Courts have taken a progressive and pragmatic approach to the question of environmental right⁴⁶. The attitude of Indian courts towards the provisions of Art. 51 of the Indian Constitution is highly commendable.

The said Art.51 deals with fundamental objectives and directive principles of state policy. Thus, in *Minerva Mills v Union of India*⁴⁷, the Supreme Court of India held inter alia that the:

Directive principles in Part IV of the Indian Constitution are not more show-pieces in the window dressing but they are fundamental in the governance of the country. In appropriate cases therefore, whenever the court is called upon to give effect to the directive principles and fundamental objectives, it should not shrug its shoulder and say that priorities are matters for policy making authorities to decide and not the court.

Although Indian Constitutional provision on the environment is analogous to that of Nigeria, Indian Courts have taken a pragmatic and progressive interpretation of the subject matter⁴⁸. The jurisprudence of environmental rights cases in India has substantially come from the Indian Supreme Court and the High Courts. Apart from the decision of the Federal High Court, Benin, in *Gbemre's case*,⁴⁹ there is no other positive and direct decision on the right to a healthy environment in Nigeria.⁵⁰ Until the Supreme Court of Nigeria makes a progressive pronouncement on the above subject matter, one cannot assert or pontificate that such a right exists as an independent right or as being implicit in the right to life by virtue of hierarchy of courts or judicial precedent.⁵¹

3.0. The Ogoni Remediation Exercise and the Paradigm Shift in Environmental Law

The Ogonis, as one of the indigenous peoples (ethnic group) located in the Niger Delta region of the Southern part of Nigeria who hosts some chunks of the nation's oil facilities (Oil wells) owned by Shell B.P now Shell Petroleum Development Company of Nigeria Limited,

⁴⁴ *Shehla Zia v WAPDA* (1994) PLD 693 SC.

⁴⁵ *MC Mehta v Union of India* (2002) 4 SCC 356.

⁴⁶ R Temitope (n 32) 440.

⁴⁷ [1980] AIR SC 1789

⁴⁸ O Anaabo and E Ekhaton (n 38) 94.

⁴⁹ *Mr. John Gbemre v Shell Petroleum Development Company Nigeria Limited* [2005 reported] Judgement of the Federal High Court, Benin FHC/B/CS/53/05.

⁵⁰ R Temitope (n 38).

⁵¹ C T Emejuru, 'Human Rights and Environment: Whither Nigeria?' [2004] (30) *Journal of Law Policy and Globalization*, 23.

complained of the flagrant degradation of their environments which are visible in the pollution of their air, lands and water source, particular attention was drawn to the unfair use and distribution of the oil wealth acquired from their land, as they benefit little or none, while they are left alone to bear and suffer the perilous circumstances caused by oil mining in the area.

In 1970, a terrible oil blowout resulting from oil well facility failure occurred in K. Dere (Ogoni) that attracted the visit of the then Military Head of State of Nigeria, General Yakubu Gowon. The blow out had wide impacts rendering vast hectares of lands practically unfit for farming and other economic activities by the people.⁵² Several other spills in places like Korokoro, Yorla and so on have so devastated their lands, including the continuous gas flaring in the area which causes respiratory and terminal health problems to the people.⁵³

The indifferent posture of the Oil Mining Companies and the Nigerian Government to the precarious state of the Ogoni people and their environments caused by oil mining, informed the formation of the Ogoni socio-political and cultural organization called 'Movement for the Survival of the Ogoni People (MOSOP)' by their leaders with the renowned Environmental Rights' Activist Ken Saro-Wiwa as the architect and spokesman of the Organization MOSOP, a non-violent organization comprises all groups and classes in Ogoniland and has overwhelming support and acceptance by the Ogoni people making it an umbrella body of the Ogonis.

The leaders of Ogoni, as fronted by MOSOP signed the Ogoni Bill of Right in August 1990 and presented same to the Federal Government of Nigeria (FGN) in October 1990. In December 1992, MOSOP sent a demand notice to Shell Nigeria, Shell International and the Nigerian National Petroleum Corporation (NNPC) claiming forty billion dollars (\$40bn) as compensation for the damage of Ogoni environment and sixty billion dollars (\$60bn) for unpaid oil royalties, within 30 days or stop all oil activities in Ogoniland.

The Ogoni Bill of Right seeks for the control of Ogoni political affairs by the people of Ogoni, the control and use of a fair share of the economic resources (Oil Wealth) from Ogoniland for the development of Ogoni area, equitable representation as of right for Ogoni people in the country's national institutions and the right to protect and forestall further damage to the environment of Ogoni and its ecosystem.⁵⁴

The complaint of the Ogonis hits the fore when the Ogoni Bill of Rights presented to the FGN in 1990 by the frontiers of MOSOP and the demand notice served on the multi-national oil companies in 1992 respectively, yielded no response. On the 4th day of January, 1993, a date that was afterwards known as Ogoni Day. The leadership of MOSOP during a mass rally declared Shell a *persona non grata* in Ogoniland. The succeeding event was devastating, as there was total military occupation of Ogoniland with the outpouring of social violence and mayhem against the defenseless Ogoni people, not sparing women, children and the aged. A calamity that led to the brutal hanging (murder) of the famous Environmental Rights' activist,

⁵² *SPDC Ltd v. Councilor F.B. Farah & Ors* (1995) 3 NWLR (pt 382) 148

⁵³ K. Alayuka et al, Harmful Effects of Oil Pollution in the Niger Delta [2004] (14) (*Nigerian Quarterly Journal of Hospital Medicine* in Hard Truth Newspaper (Hard Truth Communications May 5-11, 2005) 6.

⁵⁴ MOSOP, *Ogoni Development Blue Print* (Dorbarine Press 2002) 14

playwright and leading voice of the Ogonis, Ken Saro-Wiwa with eight (8) other prominent Ogoni sons by the Federal Government of Nigeria on November 10, 1995.

In a bold attempt to squarely address the environmental issues in Ogoniland and mitigate some of the harms inflicted on the people, the Federal Government of Nigeria felt the need to engage a neutral body having the requisite expertise to carry out an assessment of the polluted Ogoni environment. In consultation with the relevant stakeholders and actors, UNEP was invited to consider the task of undertaking an assessment of the environmental pollution of Ogoniland caused by oil exploration. In spite of several odds, UNEP accepted the offer as a way of rebuilding the confidence of the people and to remedy the multiple health environmental and sustainable development issues faced by the Ogonis.

On the strength of the foregoing, UNEP carried out field observations and scientific investigations which revealed that there is a severe widespread of oil contamination of Ogoniland affecting various components of the Ogoni natural environment.⁵⁵ The dissertation found that even though oil exploration has ceased in Ogoni for a fairly long period of time, the area still suffers continuous oil spills, indicating that the Ogonis necessarily live with oil pollution every day of their lives.⁵⁶ This dissertation briefly presents a summary of the assessments.

3.1. Assessment of Contaminated Soil and Water Ground

According to the report, pollution of the soil by petroleum hydrocarbons in Ogoniland is massive in land areas, sediments and swamplands.⁵⁷ The contaminations are mostly from crude oil, although there are also indications of refined products at some locations.

The report also reveals that there is no continuous clay layer across Ogoniland, thus exposing the ground water in the region and beyond to hydrocarbons spilled on the surface. UNEP discovered that in 49 cases, there are hydrocarbons in soil depths of at least 5m.⁵⁸ The report states that this finding has serious implications for the type of remediation that may be required.⁵⁹ From the report, a detail assessment of two-thirds of the affected lands close to the oil industry facility reveals that the soil contamination exceeds the Nigerian National Standards, as provided in the Environmental Guidelines and Standards for Petroleum Industries in Nigeria (EGASPIN)⁶⁰ legislation. The report further has it that the ground water contamination in the entire Ogoniland has reached such extent that is far above the standard stipulated by EGASPIN.

A notorious case, according to the report, is the contamination of ground water at Nsisioken (Ogale) in Eleme LGA, close to the NNPC product pipeline where it was found that an 8cm

⁵⁵ UNEP, *Environmental Assessment of Ogoniland* (UNEP 2011) 9

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ *Ibid*

⁵⁹ *Ibid*, 10

⁶⁰ *Ibid*

layer of refined oil was floating on the ground water which happens to be the very water source to the community wells from where the people got their drinking water.⁶¹

3.2. Assessment of the Pollution on Vegetation

The UNEP report disclosed that many intertidal creeks pollution in Ogoniland have left the mangroves bereaved of leaves and root stems thereby leaving the root coated in a bitumen – like substance that is sometimes 1cm or even more thicker. From the study, it was observed that since mangrove are the breeding areas for fish and nurseries for juvenile fish, the massive pollution experienced in these areas adversely impact on the life-cycle of the fishes.⁶²

The plants in the area which are affected by the pollution are destroyed. Root crops such as cassava, yam, and so on become unusable, and when planting resumed on such lands, there are signs of stress showing on the crops making the yield poor, when compared with areas not affected by the pollution.

Also, the dissertation found that a major problem to the vegetation is the fact that when there is oil spill on the farmlands, fires usually break out due to the gas component of the crude thereby burning off the vegetation and afterwards creating a thick hard layer over the land surface, thus making it difficult for plants to rejuvenate on such lands and to carry out remediation on such affected land becomes pretty hard.

3.3. Assessment of the Aquatic Environment

The UNEP report reveals that virtually all surface water in all creeks throughout Ogoniland contain hydrocarbons and stream of floating layers of oil ranging from thick black oil to sparkling sheens.⁶³ From the study, it was found that as a result of pollution of the aquatic habitat, fishes migrate into high seas in search of cleaner water. The Ogoni fishermen therefore labour so much on the river to make a sizeable catch. The report stated further, that although the Ogonis are concerned about the quality of the fish having high level of hydrocarbons accumulation, but most disturbing is that the fisheries sector is suffering as a result of the destruction of the mangroves which is the fishes' natural habitat.

The report further disclosed that even the fish farms set up by entrepreneurs close to the creeks for easy access to natural source of water, are ruined due to steady inflow of floating oil into the fish farms.'

The UNEP report has it that, indeed the wetlands around Ogoniland are highly degraded, leading towards disintegration. However, the assessment concludes that it is technically possible to restore the effective functioning of the regions' ecosystem, but this can only be attainable if an effective technical and genuine political initiatives are deployed in this regard.

3.4. Assessment of Ogoni Public Health

⁶¹ *Ibid*

⁶² UNEP, Environmental Assessment of Ogoniland (UNEP 2011) 9

⁶³ *Ibid*

According to the UNEP report, Ogoni communities are exposed to petroleum hydrocarbons in both outdoor air and drinking water at higher concentrations. The inhabitants of the area are also said to be exposed by way of dermal contacts from contaminated soil, sediments and surface water. The report also has it that, in Nigeria, since the average life expectancy is below 50 years, it is fair to state that most of the present generation living in Ogoniland live with chronic pollution ailments all through their lives.

The report went further to reveal that the people of Nisisioken Community in Ogale (Eleme L.G.A) are consuming water from wells that are contaminated with benzene known to be carcinogenic at a level beyond 900 times over the World Health Organization (WHO) guidelines which calls for urgent action ahead of all other restoration measures.

It was also reported that benzene was found to be present in all air samples at concentrations ranging from 0.155 to 48.2 Ug/m² approximated to be 10 percent.⁶⁴ of benzene concentration in Ogoniland, which is far above the concentrations that WHO and the United States

Environmental Protection Agency (USEPA) reported as corresponding to a one (1) in 10,000 cancer risks.⁶⁵

3.5. Institutional Issues

According to the UNEP report, it was discovered that the Department of Petroleum Resources (DPR) and National Oil Spill Detection and Response Agency (NOSDRA) show different interpretations of the Environmental Guidelines and Standards for Petroleum Industries in Nigeria, making the oil industries to close down remediation process even before the contamination has been eliminated.

Of particular note, according to the report is the fact that, the Nigerian Government Agencies charged with the responsibility of spill detection lack qualified technical experts and resources, thus, the agency has no proactive capacity for oil spill detection. The report further discloses that in Ogoniland, oil field is interwoven with the community which portends great danger as well as an indication of loss of control on the part of the pipeline operators and government regulator as the community people have put up houses and farms along right of ways.

4.0. Oil Industry Practice

According to the UNEP report, the control, and maintenance and decommissioning of oil fields facilities in Ogoniland are grossly inadequate. The report stated that SPDCs' own procedures and industry best practices have not been applied thereby creating public health issue. The report further has it that from the fifteen (15) investigated sites shown on SPDCs' records to have been completely remediated, ten (10) still have pollution that far exceed SPDC (and government) remediation closure values. Consequently, in eight of those sites, contamination has penetrated into the ground water.

⁶⁴ UNEP, *Environmental Assessment of Ogoniland* (UNEP 2011) 11

⁶⁵ *Ibid.*

The report revealed further, that a recent Remediation Management System (RMS) was adopted for all SPDC exploration and production firms in Nigeria by January 2010. However, it was stated in the report that while the new system shows an improvement, they still fall below the local regulatory requirement or international best practices.

Over and above the issues arising from the Ogoni remediation exercise, it can be argued that the exercise serves as a paradigm shift in environmental law. This is because for the first time, a remediation exercise is carried out in Nigeria by the Federal Government of Nigeria in partnership with international oil companies. The Hydrocarbon Pollution Remediation Project (HYPREP) was set up solely to remediate the environment, restore the livelihood of the people and also engage the people of Ogoni in the exercise.

The remediation project is described as the biggest remediation project in the world and it continues to attract both national and global attention. Sometime in 2018, the procurement processes commenced for remediation in line with the Public Procurement Act, 2007. To further give momentum to the exercise, the Federal government has done so much in the following areas:

- i. Sensitization of the people;
- ii. Community Engagement;
- iii. Job Creation/Training;
- iv. Health (Medical Mission);
- v. Assessment of Water;
- vi. Training of the people

This is indeed commendable and will serve as a model to other regions or areas that have suffered oil pollution and other environmental degradations. Fundamentally, it can be argued that the remediation exercise would have huge impact on Nigeria's environmental laws particularly the Environmental Impact Assessment Act. It is also a wake-up call on the legislature to amend the relevant environmental laws to make remediation exercises mandatory in oil polluted areas. It can be however, argued that the remediation exercise is without challenges both from the Federal Government and the affected areas.

5.0. The Role of Regulatory Institutions in Ensuring a Sustainable Environment in Nigeria

In Nigeria, there are many institutions that regulate, monitor and enforce gas flaring activities in the oil and gas industry. These institutions state the nature and extent of their powers and functions, though with limitations, which invariably have hindered the smooth and efficient running of these institutions.⁶⁶

Oil exploration and exploitation activities in Nigeria have relatively improved the lot of the nation. However, it has also worsened the living conditions of the people in the oil producing

⁶⁶ B A Abdulkadir and Z D Yusuf, 'An Evaluation of the Institutional Frameworks on Environmental Protection in Nigeria: Promises and Challenges' [2014] (4)(1) *Journal of Private and Property Law*.

states.⁶⁷ Given that the development of oil and gas resource is bound to bring with it associated environmental problems, the need for stiffer enforcement of existing laws is required to ensure a safer environment for Nigerians. The current regime for the enforcement of oil spills has been questioned as to its efficacy in combating the enormous environmental challenge associated with oil and gas pollution. The nature of the oil and gas industry operations necessitates appropriate enactment to regulate every activity relating to the development of oil and gas resources.⁶⁸

Department of Petroleum Resources which has always been there from the inception of its creation till date was the main institutional agency that formulated and implemented environmental policies and strategies within the first generation of environmental policies and strategies development for the oil and gas industry in Nigeria. The DPR as a foremost regulator of the oil and gas industry in Nigeria is still very much relevant in discharging its statutorily assigned role of ensuring adequate compliance by operators to environmental guide lines and standards.⁶⁹

By the creation of the Federal Ministry of Environment it could be said that the Nigerian government had accorded environmental matters as it relates to the oil and gas sector and all the rest sectors indeed, the highest institutional status and priority. This meant that issues of environmental legislations, policies and strategies were considered at the highest administrative organ of the country, which is the Federal Executive Council. This enhances environmental policy and strategy issues especially in the oil and gas industry.⁷⁰

However, over the years it was realized that the Federal Ministry of Environment was bugged down with a lot of bureaucratic bottlenecks that made effective implementation and enforcement of environmental legislations cumbersome and highly inefficient. Consequently, the National Oil Spill Detection and Response Agency and the National Environmental Standards Regulatory and Enforcement Agencies were created in 2006 and 2007 through Acts No. 15 and 12 respectively.⁷¹

Whereas NOSDRA was to focus exclusively on regulatory functions of the oil and gas sector as regards spill detection/response and other environmental pollution arising from oil production, NESREA was focused on ensuring standards and enforcement of relevant environmental laws in all facets of Nigeria socio-economic life. The creation of these agencies under the supervision of the Federal Ministry of Environment has helped tremendously in ensuring that the content of environmental policies and strategies in Nigeria is not only enriched, but also that its implementation has become greatly enhanced over the recent past

⁶⁷ I Akhakpe, 'Oil-Environmental Degradation and Human Security in the Niger-Delta Region of Nigeria: Challenges and Possibilities', [2012] (8) *European Scientific Journal*, 82.

⁶⁸ O Duru, 'An Appraisal of the Legal Framework for the Regulation of Nigerian Oil and Gas Industry, with Appropriate Recommendations' <<http://ssrn.com/abstract=2137979>> accessed 6 June 2021.

⁶⁹ E I Elenwo and J A Akankali, 'Environmental Policies and Strategies in Nigeria Oil and Gas Industry: Gains, Challenges and Prospects' [2014] (5) *Natural Resources*, 886.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

years.⁷² Nigeria Maritime Administration and Safety Academy also has as one of its core mandates the protection of the Nigerian Marine Environment.

6.0. Conclusion/Recommendations

Environmental Justice in Nigeria is still at its lowest ebb. A major factor that contributes to the dearth of environmental justice in Nigeria especially in the Niger Delta and Ogoniland in particular is the fact that the engines of the nation's economy are run by multinationals who in their quest for profit get so involved in the reckless degradation of the natural environment with impunity. The trend is further exacerbated by the Federal Government's policy of expropriation of oil mineral resources under various laws which work severe hardship on the people whose lands produce oil in the country. The situation therefore, has been that any act or attempt of civil disobedience by the people to seek for a fair treatment, involvement in the implementation and enforcement of environmental laws, policies and regulations and or a demand for their environmental rights is treated with stiff penalty by the Federal Government, thus showing insensitivity to the plight of the people.

The pathetic nature of the Ogoni case aptly epitomizes the degree of environmental injustice in Nigeria which helps to highlight the insensitivity and complicity of the Federal Government of Nigeria and oil companies (Shell consortium) in the perpetration of social injustice and violation of the environmental rights of the people. By necessary implication, this violation includes the violation of their fundamental rights. The foregoing argument is hinged on the fact that it has been rightly said that in the hierarchy of rights, the right to safe environment embodies all other rights and would rank highest. It is man's first right to existence and it is on it that all other rights depend. For instance, the violation of the environmental right of the people by the ravaging effect of a deadly pollutant extinguishes the enjoyment of all other rights. It is only a person who is alive and living in a safe environment that can pursue the enjoyment of his or her rights. For this reason, a more genuine and pragmatic step by the Federal Government towards the full implementation of the UNEP report in Ogoniland becomes an urgent need.

The following recommendations have been made by this paper:

- i) Though the right to environment is recognised in international environmental laws, most countries do not recognise them. Therefore, it is recommended that states should make their laws in a way where such laws are enacted in response to a perceived international legal obligation.
- ii) The provision of section 20 of the CFRN 1999 makes environmental right non-justiciable. Therefore, it is recommended that this section should be amended. Amending the Constitution to fit the right to a healthy environment within the fundamental rights found in Chapter IV of the Constitution would solve the issue of the onerous burden of proof on the victims.
- iii) It is submitted that Nigerian judges should be more progressive and broadminded on the issue of the enforcement and interpretation of environmental rights and not restricting

⁷² *Ibid*

themselves to the provisions and letters of the CFRN 1999, after all laws are made for man and not otherwise. Nigerian judiciary must take more proactive roles, which involves widening *locus standi* requirements, not allowing technicalities to stand in the way of substantive environmental issues and also preventing gold digging applications that stand on the path of serious environmental cases. Nigerian judges should protect environmental rights.

- iv) Though economic growth is important in any nation, Nigeria government should make concerted effort in diversifying the economy instead of emphasizing the economic importance of oil and the government's interest in the exploitation of the resource to the detriment of the affected individuals, communities and the environment.
- v) Most countries have succeeded in domesticating international treaties on environmental right in their Constitutions. Thus, it is recommended that Nigeria should take proactive step and follow the international best practices on recognition of environmental right, protection and access to justice.
- vi) The Nigerian government should establish and enforce effective regulations such as Oil Spill Accountability Regulation that will hold the oil industry to account when spills occur.
- vii) Finally, there is need for awareness creation and mass education of the citizenry on environmental protection, environmental rights and opportunities for public participation in environmental matters directly affecting their communities.
- viii) The Ogonis and the Niger Delta people should be adequately informed about every stage of the implementation of the UNEP report on Ogoniland. It is the view of the paper that given the present situation, the Ogonis as the primary beneficiary of the UNEP report appears not to know much about the plan for the implementation of the report.