

# THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

## Environmental Protection from Oil Spillage in the Niger-Delta Region of Nigeria: Ogoniland in Perspective

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### **Abstract:**

*Environmental protection from oil spillage challenges, encapsulates the mechanism put in place by governments for effective and enforceable legislation, to preserve the environment from wanton destruction arising from anthropogenic activities. Individuals, organizations and other stakeholders contribute immensely towards environmental protection, being a practice for all mankind to ensure the environment remains habitable even for future generations. The doctrinal method of research was adopted, utilizing published materials and literature extract from books, journals and data base to identify the challenges of oil spillage in the region and identify specific gaps in Nigeria's environmental legal framework. The objective of environmental protection includes conservation of the natural environment, mitigation of afflictive conditions as well as restoration and reparation of affected or already damaged areas. Three major factors influence environmental protection: legislation, ethics and education. It is important for societies to develop each of these areas, which together should inform and drive environmental decisions in the Niger Delta region of Nigeria. Having addressed oil spillage issues and attendant laws in the region, it is evident that environmental protection in the region can become a reality. It is recommended that the time to address this situation is now, so as to give the people of the Niger Delta better hope and a brighter future. In this connection, holistic reforms of relevant laws on the integral oil spillage subject matter should help in providing the necessary solutions.*

**Keywords:** Environment, protection, environmental law, oil spillage, Niger delta

### **1. Introduction**

Nigeria is Africa's largest producer of crude oil and the sixth largest exporter of oil within the Organization of Petroleum Exporting Countries (OPEC) with a daily output of about 2.5 million barrel per day. Nigeria's economy is primarily dependent on oil, although in recent time's diversification to other areas such as agriculture, mining has become an alternative route for income generation in Nigeria. Petroleum products account for more than 90% foreign exchange of the Federation.

The history of oil exploration in the country's Niger Delta region dates back to 1938, when oil was discovered in the region. In 1956, oil was discovered at Oloibiri, in the present Bayelsa State of the country. The Niger Delta is located in the Southern Nigeria and it is Africa's Largest Delta, covering about 20,000km<sup>2</sup> within wetlands of 70, 000 square kilometers with about one third of it made up of wetlands, and the third largest world mangrove forest. This oil rich area of Bayelsa state is occupied by the Ogoni people.

The Ogoni people are a distinct indigenous minority living in an area of 404 square miles (about 1,050km<sup>2</sup>) on the south eastern part of the Niger Delta River. They number about over two million people. They have a well-established social system that place great value on the environment. Their means of livelihood is agriculture and fishing, producing not only their own consumption but also for distribution to neighbors on the Niger Delta. The Ogoniland is affectionately referred to as the "food basket of the Niger Delta". It is estimated that Ogoni land has five major oil fields with 110 oil wells. Land to the people is viewed as the abode of their ancestors who are responsible for overseeing the well-being of the land and the lives of the people. The land is also perceived as god and they revere it as such; making them to protect and preserve the environment for generations. Grave consequences usually follow any erring human conduct or action desecrating the environment. Hence the custodians of the community protected the environment from desecration, until the era of oil exploration and exploitation.

Sources of oil pollution in Ogoni include;

- Oil spills
- Gas flares – involves burning of hydrocarbon gas
- Effluent and waste discharges

Today, The Niger Delta has become a region threatened by oil spillage as a result of activities of oil explorers who in turn are blaming saboteurs of oil pipelines, which still does not exempt the explorer in any way. Government heavy reliance on oil has put the area at a high environmental risk, while disregarding the livelihood and health conditions of the

Niger Delta populace. This has made Ogoni area one of the most polluted areas in the world. Mind boggling report of United Nations Environmental Programme (UNEP) reveal that the public health of the Ogoni people was endangered in at least 10 communities where people were drinking water contaminated with high levels of hydrocarbon. Some communities have been identified where families were drinking from wells contaminated with benzene, a known carcinogen.

The irony about this region is that it provides the country's national cake but gets to eat the crumbs of the cake, a situation that is akin to the proverbial goose that lays the golden egg. This region is the most under developed part of Nigeria; with little or no infrastructural development, worrisome level of poverty and no environmental protection of any meaningful sort.

There are visible economic, socio-political and ecological problems within the region. Oil exploration activities have left untold hardship on the inhabitants of the Niger Delta Region. Their very existence is being threatened, they are being ravaged by various diseases emanating from oil pollution in their environment ranging from respiratory diseases, and blood related diseases, cancer, skin disorders and eye problems; starvation as a result of destruction of their farmland which is their mainstay of livelihood and records of death. According to a Monday 6th November 2017 report in the Guardian weekly (international edition), a study led by Roland Hodler, an economics professor from the university of St Gallen in Switzerland found out that babies in Nigeria were at double risk of dying before reaching a month old when spills were within 10km of a mother's place. Spills which occur even 5 years before conception doubled the neonatal mortality rate from 38 deaths to 76 deaths for every 1,000 births. The streams and rivers are being polluted and the people make use of the water, for drinking and fishing activities. Issues such as oil spillage, gas flaring, water pollution, sewage and waste water pollution, deforestation, soil infertility are challenges that threaten their right to a protected environment in that region.

In Nigeria, a major source of pollution in the Niger Delta region, are the prospecting activities by oil companies. The effect and problems of oil pollution are now well known. Recent reports show that about one quarter of the available land in Delta Area has been rendered barren, due to spillage and leakages of oil. Roads are now constructed through farmlands, water is polluted, gas flare generates inconvenient noise, and heat. The destruction of farm produce and land are daily occurrences. Oil spill occurs, when oil meant for a flow station or other evacuation point through pipelines or tankers are discharged into the surroundings; marine and land environment due to accident or due to acts of omission or commission by man. Oil spill can be of two categories- the land spillage and the aquatic spillage, but both have negative impact on the environment and the society at large. Studies have shown that the quantity of oil spilled in the Nigerian environment in five decades was at least 9 and 13 million barrels equivalent to (50) Exxon Valdez oil spill of March 24, 1989 (260,000 bbl.) barrels, 10.8 million US gallons or 37,000 metric tonnes of crude oil. Annual spill is estimated at 240,000 barrels of crude oil spilled in the Niger Delta region. Corrosion of pipelines and tankers account for about 50% of oil spillages recorded in Nigeria. Sabotage accounts for about 28% of the incidents of oil spillage. 21% of the spill are caused by recklessness and carelessness towards the environment in the process of oil production and the remaining 1% is due to defective or non-functional equipment being used by the oil companies. Records exist of a major spill which occurred in Idoha in South Eastern Nigeria, where about 40,000 barrels of oil spilled into the environment as a result of corroded pipes and tanks. Such disastrous spills threaten public health and welfare.

Recently in Nigeria, precisely on the 1<sup>st</sup> of March 2019, more than 50 people were declared missing after a leaking oil pipeline exploded and caused a stampede in Southern Nigeria, causing massive oil spillage in the Nembe Kingdom in Bayelsa State. Also, the guardian weekly (international edition) of Saturday 12<sup>th</sup> January 2019, reported that an overturned oil tanker in Odukpani in Cross River exploded while people were scooping up the leaking fuel. 12 bodies were recovered by the police and several persons were injured says Irene Ugbo, a police spokeswoman. Residents estimate up to 60 dead people, claiming the police recovered only a few dead bodies. Some of the pipes with a maximum life span of fifteen years have been used for over fifty years.

Many countries have enacted laws and regulations to control and prevent environmental degradation by oil and gas companies, however the persistent question is how effective have been these regulations in controlling environmental degradation in Nigeria? Some countries such as Canada, USA, Venezuela and a host of others have made tremendous progress controlling environmental degradation and other related environmental problem caused by the industry, while in Nigeria environmental degradation is on the increase.

## 2. Impact of Oil Spillage on the Environment

Incidence of oil spill has eroded an estimated portion of 5 – 100 % of the mangrove ecosystem in Nigeria. The rain forest which used to measure about 7,400 km<sup>2</sup> is fast disappearing due to oil spillage.

When spills occur, tidal forces aid the hydrological power of the river to transport the oil into the communities' vegetation. The organisms that depend on each other within the mangrove environment, suffer when oil is spilled into the mangrove environment, cutting off the supply of recycled nutrients, clean water sunlight and proper substrate to the floral communities within the mangrove.

The result is that such flora communities cannot survive in such an environment that has been grossly altered.

The death of these flora organisms in turn affect the habitat structure by acidifying the soil, halting cellular respiration and starving the roots of plants of vital oxygen. When an area of the mangrove has been destroyed by oil, such an area can no longer be supportive of the growth of native plants species until bacteria remediation has taken place. One particular useful plant that is prevalent in the Niger Delta which is threatened by Soil toxification as a result of oil spills is *Rizophora Racemosa* this has been over taken by another plant species called *Nypa fruticans* which is not well – known to

the Deltans. This invasive species impedes navigation and reduces the overall biodiversity of the ecosystem by destabilizing the banks of the waterways. Loss of forest reserves; this means destruction of some rare endangered species such as pygmy hippopotamus. The fishing industry is not spared. The water of the creeks is used by the local communities for bathing, cleaning and cooking; these water bodies are now being polluted by oil spills and discharges of different kinds of effluents emanating from petroleum activities.

The spread of water hyacinth across the Nigerian coast has been attributed to oil spillage and other invasive species which live there in polluted water now compete with other natural plants for energy. They are non-essential species and can be classified as parasites. Environmental abuses practiced in the Niger Delta region thrive with impunity. Most of the communities have no pipe borne water, electricity, schools or clinics, in the oil producing area, pipelines evidently scare the earth, oil slicks shimmer on rivers, blazing flares burn off gas that gush to the surface along with the crude oil. In the face of poverty, hopelessness and debasement of human lives and environmental degradation, the Nigerian Government decided to enact environmental policy and framework legislation on the environment.

### 3. Environmental Legislation Framework Enacted to Promote Environmental Protection from Oil Spillage in Nigeria

The Environmental Impact Assessment Act 1992 (EIA), was enacted to check the massive environmental degradation caused by the development and in the oil producing areas. Although the EIA Act aims at protecting the Nigerian environment like the National policy on the environment, it is particularly directed at regulating the industrialization process with regards to the environment. There must be prior consideration of the environmental consequences of such proposed action of oil exploration activities in the form of environmental impact assessment. Section 36 [Cap E12 Laws of the Federation of Nigeria] 2004 in the spirit of prevention principle urges oil operators to take responsible steps to control the flow and prevent the escape of petroleum discovered in the course of prospecting, from damaging or polluting the environment. This aspect of preventive principle has been addressed in the area of torts of negligence and nuisance under the common law applicable in Nigeria. The primary goal and objectives of the EIA Act are the protection and preservation of the environment and should be adhered to. It was reported that the ALUMINIUM SMELTING COMPANY OF NIGERIA (ALSCON) ignored an environmental impact assessment report on the proposed dredging of Imo River which resulted in one of the worst ecological disasters in recent history.

Tracing back to history, as a result of the public outcry from the Koko incidence (where hazardous transboundary waste was dumped in the Koko area in Nigeria, by an Italian vessel the government put in place environmental legislation to protect the environment.

They include:

- Environmental Impact Assessment Act 1992, which is now Cap. E 12, LFN 2004.
- 1999 Constitution Section 20, in Nigeria states that:
- "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria". See also, Section 17 (2) (d) of the constitution.
- National Environmental Standards Regulations Enforcement Agency Act (NESREA), 2007 charged with the responsibility for the protection and development of the environment, biodiversity natural resources in general including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. The functions of the Agency include the enforcement of compliance with policies, standards legislation and guidelines on water quality, environmental health and sanitation, including pollution management.

In addition, the agency is mandated to enforce compliance with guidelines and legislations on sustainable management of the ecosystem biodiversity conservation and development of Nigeria's mineral resources.

National Oil Spill Detection and Response Agency Act (NOSDRA), 2006.

This Agency is charged with the responsibility for preparedness, detection and response to all oil spillages in Nigeria. The objective of the Agency includes the co-ordination and implementation of the National oil spill contingency plan for the country. It is also responsible for surveillance and ensures compliance with all existing environmental legislations and detection of oil spills in the petroleum industry. See Section 6 National oil spill Detection Response Agency Act 2006 (NOSDRA) as well as received reports of oil spillage and co-ordinate oil spill response activities throughout Nigeria. The Agency also undertakes surveillance, reporting, alerting and other response activities as they relate to oil spillage, See section 7 (NOSDRA)

Others include;

- Oil in Navigable Waters Act 1968: Now Cap 06 Laws of the Federation of Nigeria (LFN) 2004.
- Harmful Waste (Special Criminal Provisions) Act 1988: Cap H1 Laws of the Federation of Nigeria (LFN) 2004.
- Oil Pipeline Act: Cap 07 Laws of the Federation of Nigeria (LFN) 2004.
- Petroleum Act Cap P10 Laws of the Federation of Nigeria (LFN) 2004.
- Associated Gas Re – Injection Act, 1979 Cap A25 Laws of the Federation of Nigeria (LFN) 2004.
- Petroleum (Drilling and Production) Regulation Laws of Nigeria No. 69 of 1969.
- Criminal Code. 77, LFN 1990: Cap C 38, LFN 2004 (sec 245)
- And all international environmental laws to which Nigeria is a signatory.

#### 4. Adverse Effect of Oil Spillage in the Niger Delta (Ogoni)

Adverse impact on biodiversity; extinction of rare species, distortion of functional ecosystem which affects fauna and flora.

Socio - economic impact; loss of economical earnings in agriculture as a result of massive destruction of farmland and pollution of estuarine bodies by spilled oil.

Physical – health impact – pollution of underground water. Cases of skin ailment, rash and dermatitis, gastro intestinal disorder, water borne disease, cancer, and respiratory diseases.

- Nutritional style and food shortage
- Destruction of traditional means of livelihood
- Migration and rise of environmental refugees
- Negative impact on cultural value and spirituality. (The Law precludes those with mining license from sacred forest) See section 17(1) (a) Petroleum drilling and production regulation Laws of Nigeria No. 69 of 1969. But this is still flouted by the oil companies.
- Damage to the ecosystem
- Health hazard to the Aquatic Animals and depletion of fish population.
- Pollution of the atmospheric ambient
- Acid rain and corrosion of houses.
- Severe poverty, hunger which can lead to loss of lives
- Youth restiveness, hostage taking and militancy
- Problem of food security
- Negative effects on Education (children of school age have no accessibility to education)

In Shell Petroleum Development Co. Nigeria Ltd, V. Ambah, Supreme Court held that the plaintiff/respondent were entitled to the market value of the property destroyed by the activities of the respondents/defendants during their dredging activities. Most cases in Nigeria fail due to the issue of locus standi to bring the case. Noteworthy is the fact that the right to livelihood was declared enforceable as a right to life as enunciated in *Yakye V. Paraguay* by the Inter-American court of Human Rights.(2005).

In summary, oil pollution in the Niger Delta Specifically Ogoni Region is responsible for series of destruction of soil, ground water, surface water, air land and so on. It has impacted negatively on the livelihood, health, politics, agriculture, education, morality and policy of the people. United Nations report announced that shell and other firms contaminated 1,000sq km (386sqmiles) area of Ogoniland, in the Niger Delta, with disastrous consequences for human health and wildlife. Nigeria has been made to pay the high price for economic growth brought by the oil industry, said the United Nations environmental protection Executive Director. Even with the various environmental laws, government has failed to enforce the relevant laws for environmental protection in this region leaving poverty, sickness, death to thrive without recourse to justice. The issue of locus standi as earlier discussed poses a serious barrier to enforceability of rights when prosecuting environmental cases.

In a country like Nigeria, faced with daunting challenges of oil pollution as a consequence of the oil producing activities, the importance of a vibrant judiciary becomes crucial.

Judges must be willing to shed their conservative toga of judicial restraint in favour of judicial activism. Environmental protection should be taken very seriously by regarding Environmental pollutions as a breach of right to Life because life is Sacrosanct as entrenched in the Sec 33(1) of the 1999 constitution, see also *Gbemere V. Shell BP Petroleum Development Company of Nigeria Limited*.

Most of the food and water being consumed have now been contaminated by toxic wastes which are harmful to the body; the inhalation and consumption shorten life span of the people.

#### 5. Conclusion

The role of legal regime in regulating oil spillage activities cannot be relegated to the background. Law is an effective tool to control and manage social problems and economic growth and exigencies should not be sacrificed on the altar of healthy environmental protection to promote environmental sustainability. Our rich, clean and healthy habitat as at the time of creation has suddenly become "a land of vanishing beauty, of increasing ugliness, of shrinking open space and of an overall environment that is diminished by pollution, noise and light". There are various environmental laws national and international laws regulating the environment yet environmental issues seem not to be abated. These laws appear to be inadequate and lack enforcement capability. They also lack the deterrence effect relative to the scale of offences committed by oil operators and other groups. Although Nigerians legal regime on environmental protection has mitigated oil spillage and other environmental problems there is need for an over haul of the legal framework so that they do not remain mere paper tigers.

The Federal Government of Nigeria established the Niger Delta Development Commission (NDDC) in 1999 in a bid to address developmental problems in the region yet these problems havenot been solved. This can be attributed to lack of political will by stakeholders and even the Federal government to give finding of the (NDDC) consideration owing to the fact that the Niger Delta region contributes to federal revenue even though they have been excluded from direct access to oil revenue except through federal and ethnic majority benevolence.

In Nigeria, on the 7<sup>th</sup> of August 2017 the Nigerian Vice -President Yemi Osibanjo on behalf of the President, Muhammadu Buhari set in motion a \$1billion clean up and restoration programme of the Ogoni region in the Niger Delta. This laudable move to mitigate challenges of oil spillage in the Niger Delta region of Nigeria is still being bedeviled by

beaurocracy and bottleneck. Noteworthy, is the approach of the Exxon Valdez oil spill in the United States of America, even months after the spill, Exxon employees, federal responders and more than 11,000 Alaska residents worked to clean up the oil spill. Exxon paid about \$2 Billion in cleanup costs and \$1.8 billion for habitat restoration and personal damages related to the spill. This is a most welcome initiative for Nigeria to emulate, even though oil companies claim to respond timely to oil spills and blame most spills on oil theft and sabotage to facilities, there is still a lot of work to be done to address environmental challenges and make environmental protection issues in the Niger Delta region important issues.

Promulgation of environmental laws is a step in the right direction to ensure environmental protection in Ogoni land, a further step is to strengthen the laws and ensure that the judiciary is truly independent, to ensure strict enforcement mechanisms of the various environmental laws. Multinationals should be held accountable for environmental degradation activities in the region. On 30 January 2013, a Dutch court held that shell can be held accountable for the pollution in the Niger Delta

## 6. Recommendations

- The governments of Nigeria and oil related companies should involve community members in decision making on mitigation, protection and compensation. This would help give an insight to vital needs of the community which would be embedded in the structure of infrastructural compensation.
- Already initiated cleanup of the Ogoni region should not be treated with levity. Such initiative should be viewed as a serious national issue which should be addressed timely to prevent further escalation of already prevalent environmental challenges.
- Taking full responsibility for oil spills and addressing various related oil and non-environmental problems that have drained communities from the wealth of their environment, their tradition and humanity, and closing the gaps left open through oil exploitation to rape a people from its land, further impoverishing them without recourse to environmental protection and justice.
- Establishment of environmental courts to specially handle environmental degradation issues and ensure speedy trials and adequate compensation to victims and commensurate punishment to offenders according to the magnitude of their pollution activities is strongly recommended.
- Positions which currently hold contrary views that environmental rights to a healthy and well protected environment and access to equitable justice are not human rights should be vehemently challenged and if possible discarded.
- In reality, a person who pollutes the environment with harmful substance and such a substance percolates into water bodies and kills a number of persons has committed murder consciously or unconsciously; hence environmental degradation and pollution should be seen as a serious crime, just the way other criminal offences like manslaughter are handled
- Environmental education and participation should be encouraged to enlighten people about the importance of the environment and give them avenue to participate towards proper environmental protection.

Environmental protection is a mandate given to man from the beginning in Genesis 1 vs. 28 when God gave man dominion over all he had created which of course is the earth and its endowment. This means that man has a number one role to play in ensuring the protection and perseverance of his environment before looking for alternatives and help in protecting the environment.

When everyone focuses on building a world which was first initiated in the Garden of Eden before man's crave for technological advancement desecrated the environment, man would enjoy a better and healthier life. Environmental protection cannot be, achieved by legislations alone man's co-operation is needed to achieve effective conservation.

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