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ENVIRONMENTAL POLITICS AND ENVIRONMENTAL RIGHTS IN NIGERIA: PREFERENCE FOR ECONOMIC GAINS THAN PREVENTION OF GENOCIDE IN THE NIGER DELTA

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ABSTRACT

Environmental politics includes the choices the leaders had to make on the gains from environmental resources exploitation and the preservation of those resources for the future generations; as well as their decision and policies on the protection of the human environment and its remediation in occasions of pollutions. The basic requirements for the enforcement of environmental rights and claims in Nigeria had not been understood by the many laws and jurists alike. The Courts are making it difficult for a robust jurisprudence in the field of enforcement especially when the politics of economic gains are preferred to the prevention of genocide by the executive arm of the federal government. The fears of the collapse of the nation's economy which is largely dependent on oil and gas top priority in the debate for environmental protection against the gains of exploration and exploitation of oil and gas in the Niger Delta region of Nigeria. This paper discussed Environmental politics involves the evolution of environmental movement and parties; public policies analysis on environment at all levels of governance: individuals, local, national and international; ideas generated by the various movement and organisations; and, salient environmental issues. It tends to balance the activities of government with environmental policies available against conservation, protection and remediation issues as raised by environmental movements and organisations. The primary concerns for environmental politics are: the irreversibility or diminution of the earth's life support systems; the consequences of development: ever-increasing need for materials and non-renewable energy sources as means of satisfying public needs or resolving (and or avoiding) conflicts; and, the injustice of uneven distribution of environmental benefits and harm. It examined how sections 104 (1) & 107 of the Petroleum Industry Act 2021 and section 3 of the Associated Gas Re-Injection Act 1979 (for the yet to be converted licence or lease tenures) on one hand are genocidal to the Niger Delta environment and, whether the right to life includes right to unpolluted environment. Critical detailed analyses of municipal and international law provisions on safe environment were examined. The findings of this paper were that development can thrive in line with nature and economic development goals with flare permits on our petroleum laws.

KEYWORDS: Environmental Politics, Environmental Rights Enforcement, Development that makes Economic Sense, Justiciability of Environmental Rights.

1. INTRODUCTION

People and their primary habitat (environment) are inseparable. Humans depend on their environment for economic, social, cultural and health survival which has impart on their existence as humans. Safe and unpolluted environment is one of nature's gift to humanity which ought to be inalienable right protected by municipal and international instruments of governance placed within citizens reach because of their common humanity and not for other consideration against their natural reasonable state. There is no doubt that the enforcement and indeed the litigation of environmental rights and claims in Nigeria will remain an uphill and herculean task to litigants or aggrieved persons unless urgent steps are taken to devise adequate legal mechanisms to protect people and the environment from the hazardous and negative effects of modern technology and civilization. This had to be vide laws made for the prohibition of anti-environmental practices and clear-cut no-flare enactments.

Oil and gas exploration and exploitation account for the many reports on environmental degradation in Nigeria yet the National Assembly (NASS) in the 2018 amendment to the NESREA Act refused to empower the Agency to deal with oil and gas environmental pollution issues defeating the advancement of citizens wellbeing, national economic progress and the provision of basic social amenities which are some of the purposes of environmental regulations. Though the oil and gas environmental protection had been vested in the Commission for upstream petroleum industry¹ or the Authority charged with the midstream/downstream petroleum industry;² it is yet to be noted whether the later development is not a new wine in an old skin.

Government have the responsibility to prevent genocide of a people within its territorial jurisdiction whether in times of war or peace by international law practice. By United Nations Committee's position on the meaning and circumstances that define genocide, government are obligated to refuse and do everything possible to prevent genocide. Judicial precedents are scarce in the areas of compensation for damage done to buildings, crops or profitable trees, disturbances, negligence, injury to the person, loss of livelihood,³ injunctions and enforcement of court orders on pollution prevention and restraints and restoration etc.⁴

The pain in the neck of environmental protection in Nigeria is not only caused by lack of political will to protect the future of children unborn but the damage control mechanism of multinational corporation vide clauses in oil Mining Leases, Joint Venture Agreements, International Petroleum Contracts, Joint

¹ Sections 6 & 7 PIA 2021.

² Sections 31 & 32 PIA 2021.

³ *Shell v Counsellor F.B. Farah & ors* (1995)3NWLR(Pt.382)148.

⁴ CV Odoeme 'Global Environmental Politics and Environmental Law in Nigeria' (2019) *Nile University Law Journal* 44-59.

Venture Service Contract or Production Sharing Agreement made for every business that is carried on within the oil and gas sector. The cure to this could have been the NESREA Act but unfortunately, the makers of that law excluded and later deleted oil and gas from the functions and powers of the Agency in a country where oil and gas is the major contributor to environmental pollution which in itself have assumed a genocidal dimension.

Burden placed on the claimant on the effects and impart of degradation physically palpable on his health and environment as well as survival is herculean and most times beyond his reach. This research discourses the need for a constitutional provision for right to unpolluted environment following the inability of the Minister for Petroleum to exercise restraint from issuing flare licenses in spite of the human rights and environmental abuses that is associated with gas flaring against environmental impact assessment enactment and international best practices and conventions. The proper interpretation to be given to the NESREA Act in view of sections 20 and 33 of the 1999 constitution as amended and other Regional Charters cum International Declaration and Conventions is critically analysed. It is found that gas flaring in Nigeria is an act of genocide committed by the Federal Government through a law like Associated Gas Re-Injection Act and the Petroleum Industry Act 2021.

2. THEORETICAL FRAMEWORK

This paper adopts the natural law theory because it best resolves the environmental politics and rights enforcement examined herein. It is argued that the extant legal regime on gas flare, oil spill remediation and restoration in Nigeria is not autochthonous and are adverse to nature. Natural law theory holds that all human being have some rights, privilege and benefits accruing to them by nature rather than rule of society. It aligns with the rule that he who brings something upon a land which escapes and causes damage shall be held liable for the act. The theory postulates that what might be 'just by nature' may not be 'just by law'. It is just by nature to have a safe unpolluted environment but that is not made possible by laws which authorized the Minister for Petroleum and now the Commission or Authority to permit gas flare in the Niger Delta region.

It was based on the natural law theory that the Supreme Court of Philippines in the case of *Juan Antonio Oposa v. The Honorable Fulgencio S. Factoran, Jr*⁵.held that the right to a balanced and healthful ecology need not even be written in the constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. It is provided in Section 24 of the South African Constitution that:

Everyone has the right:(a) to an environment that is not harmful to their health or well-being; and(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(iii) secure

⁵ G.R. No. 101083, 224 S.C.R.A. 792 (Supreme Court of Philippines, July 30, 1993) reprinted in 33 ILM 173, 187 (1994).

ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The expressed provisions of the Nigerian Constitution on right to life notwithstanding, the Court have not had the boldness to connect damage to the environment by way of pollutions permitted by laws on petroleum industry as an act against the rights to life and dignity of human persons in Nigeria. It had not been popular yet, that right to unpolluted environment would definitely enhance the right to life and dignity to human person. And that any law which licenced or permitted environmental pollutions was directly confrontational to the rights of citizens to have life and live in descent/clean/unpolluted environment.

3. CONCEPTUAL CLARIFICATIONS

3.1 ENVIRONMENTAL POLITICS

Environmental politics involves all decisions made by political heads of government on development through utilisation of environmental resources of the nation. Those laws on environment are made by law makers or executives by way of regulations pursuant enabling laws. The implementations of laws and regulations are adjudged the responsibility of the executive arm of government. They prepare budgets for the development; these budgets are funded to actual its aims and objectives. The sources for the funding are from the natural resources which nature had endowed the environment with. When development is put above environmental sustainability then, the environmental politics is negative and not sustainable but, if the development of a nation is proportionate to environmentally friendly approaches to exploitation and exploration of environmental resources then, the environmental politics is good and environmental friendly. Environmental friendly politics is what this paper intend to advocate in all spheres of decision making regarding development and environment. Therefore, environmental politics involves all the decisions taken by the arms of government which affect or impart the environment one way or another.

Environmental politics involves the evolution of environmental movement and parties; public policies analysis on environment at all levels of governance: individuals, local, national and international; ideas generated by the various movement and organisations; and, salient environmental issues. It tends to balance the activities of government with environmental policies available against conservation, protection and remediation issues as raised by environmental movements and organisations. The primary concerns for environmental politics are: the irreversibility or diminution of the earth's life support systems; the consequences of development: ever-increasing need for materials and non-renewable energy sources as means of satisfying public needs or resolving (and or avoiding) conflicts; and, the injustice of uneven distribution of environmental benefits and harm. It includes the biophysical and social global environmental problems. The issues of biophysical and social problems of environment, a scholar had this to say:

On the biophysical side, environmental politics theory starts with phenomena such as threshold and synergistic effects, and multiple spatial and temporal scales. On the social side, and in parallel to the biophysical problem, studies start with explicit assumptions about human behaviour. These should include the human ability to do the following: deal with limited predictability and, hence, the necessity of accepting limited human control of natural systems; engage the environment as life-support system rather than as amenity (or luxury good); make long-term decisions, projecting into the distant past, both historically and biogeochemically, and into the far future, including ecologically meaningful futures (e.g., those of nutrient, water, and life cycles).⁶

3.2 ECONOMIC CONCEPT TO ENVIRONMENTAL PROTECTION

Pollutions of the environment in Nigeria must be seen first as economic problem if we are going to make progress in solving the problem of pollution.⁷ The views of many economists are that environmental problems are economic problem. They believe that market failure causes these problems: private and social diverge; profit-maximizing decisions, therefore, are socially inefficient. Economists think that the way to correct the market failure is for private decision makers to internalize externalities, that is, to make the price of goods reflect all the economic and social costs of producing them, including the pollution costs.⁸ Any increase in environmental protection from an “optimal” level “would cost more than it is worth,” while any decrease would “reduce benefits more than it would save in costs.”⁹

This, in fact, is what is called market efficiency which tends towards individual welfare as against group or community interest. If we simply follow market efficiency in our environmental policy making, act like group of consumers whose preference is their interest and forget that we are citizens then environmental enactments would continue on the path of market efficiency instead of on safe and unpolluted environment. But if we act as citizens and put the common good of the group and community over ours in our environmental law enactments or policy guidelines, then a nation would evolve which sacrifices private interests for public ends. This is the advocacy of this article. But environmental regime in Nigeria is that of environmental legislations that make economic sense: maximizing profits and satisfying some few individuals’ wants over the life and health of millions of her citizens in the Niger Delta region.¹⁰ This posture of the legislative function is what this article discourages in its entirety. The question is how long shall Nigeria continue on the path that degrades

⁶ AM Olayiwola, Environmental Politics (being a course out line for Pol326) < <https://nou.edu.ng/coursewarecontent/POL326%20ENVIRONMENTAL%20POLITICS.pdf> > accessed 28 July 2022.

⁷ LE Ruff, The Economic Common Sense of Pollution (Mansfield, 1975) 1.

⁸ Mark Sagoff ‘Economic Theory and Environmental Law’ (1981)(7)(79) *Michigan Law Review* < <https://repository.law.umich.edu/mlr/vol79/iss7/4> > accessed 31 July 2022.

⁹ LE Ruff, The Economic Common Sense of Pollution (Mansfield, 1975) 1.

¹⁰ *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. The Federal Republic of Nigeria* (Communication 155/96, October 27, 2001).

our natural environment to serve the wants of self-interest those consumers. To attain sustainable environment, Nigeria must move away from basing its environmental policies on economic theory which tends to correct market failure. Environmental legislations must move away from economic efficiency to social cost efficiency even where the cost of environmental protection outweigh the benefits. National Assembly must not always enact environmental laws to provide economically optimal solutions which are devoid of environmental protection in most enactments like NOSDRA and NESREA.

As will be seen below, these aforementioned environmental legislations are just lip service to the needs for the protection of Nigerian ecological sphere. The National Assembly ought to be motivated by national responsibility for protection of environment, that is, the protection of the natural environment should be a national responsibility owing to the obvious effects and devastations caused by oil exploration and exploitation in the Niger Delta region. This national responsibility is to reverse the motive of generation of cheaper energy at the expense of unpolluted air, water and forest lands. Protection of environment from pollution is one of the minimally required criteria to measure national dignity and self-respect. The cost-benefit analysis for environmental policy and law should be based on what citizens respect rather than the current position of what consumers buy. The enactment for what is the best practicable pollution control technology currently available for agencies must be backed with budgetary allocation that equip the agency for effectiveness. The best technology that is economically achievable is likely to be considerably more expensive than the technology that is economically efficient. The law, therefore, will force industry to spend much more to prevent pollution than it would cost society as a whole to endure it.¹¹ This is farther from the current legislative situation of Nigeria for all environmental enforcement agencies in the country. The development of a country is dependent on her moral convictions about the environment that have nothing to do with economic “common sense.” This is to show that a country is governed by legislation and not market. Therefore, national policy and guidelines for environment should not be economic at the expense of environmental dignity, self-respect for the humanity of those who reside in flare stack communities, the safety of our natural environment and the quality of life of the people.

These are the factors that should top considerations for environmental guidelines or enactment of law. Legislation must reject markets as the indicators of the national will over the life and health of citizens. We must act as citizens and insist on a model of government and a vision of political life that allowed us to posit collective values and to give effect to our common will.¹² The future of environmental policy and law is in the resolution of individual interest against community interest which is that which serves the natural state of environment over that which commercialises our environment.

¹¹ CE Welch Jr. ‘The Ogoni and Self-Determination: Increasing Violence in Nigeria’ (1995)(33)(4) *The Journal of Modern African Studies* 635-650 <

https://www.jstor.org/stable/pdf/161825.pdf?refreqid=excelsior%3Aa01e5504c70130ff03700f91be68076a&ab_segments=&origin= > accessed 31 July 2022.

¹² Mark Sagoff ‘Economic Theory and Environmental Law’ (1981) (7)(79) *Michigan Law Review* < <https://repository.law.umich.edu/mlr/vol79/iss7/4> > accessed 31 July 2022.

3.3 THE CONCEPT OF GENOCIDE¹³

Genocide is the deliberate killing of a large group of people especially those of a particular nation or ethnic group.¹⁴

The word “genocide” was first coined by Polish lawyer Raphael Lemkin in 1944 in his book *Axis Rule in Occupied Europe*. Genocide consist of the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing. Lemkin developed the term partly in response to the Nazi policies of systematic murder of Jewish people during the Holocaust, but also in response to previous instances in history of targeted actions aimed at the destruction of particular groups of people.¹⁵

It is the deliberate and systematic destruction of a group of people because of their ethnicity, nationality, religion or race.¹⁶This is said to be the common ancient way to treat victims of war¹⁷to kill them all either by direct means or through laws made deliberately for the purpose. Genocide is at international law recognised crime whether it is committed in times of war or peace or through legislations. According to Wikipedia¹⁸, “Genocide is the intentional action to destroy a people-usually defined as an ethnic, national, racial, or religious group-in whole or in part”. The United Nations Genocide Convention, which was established in 1948, defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such” including the killing of its members, causing serious bodily or mental harm to members of the group, deliberately imposing living conditions that seeks to “bring about its physical destruction in whole or in part”, preventing births or forcibly transferring children out of the group to another group.¹⁹

Federal Government of Nigeria through its National Assembly enacted that Oil and Gas operators, licensees or lease holders should obtain permit for gas flaring to be granted by the Authority for midstream and downstream petroleum sector or Commission for upstream petroleum sector for reasons exclusively at their discretion or for no reason at all²⁰or for start-ups, testing or safety reasons; with the full knowledge of the impact of gas flaring and its harmful effects on human who reside in the flare stack areas. By the permit granted by these agencies, oil and gas companies mount flare stacks close to residential building destroying not only the means of livelihood for the individuals/people resident in the area, they flare poisonous air that contains cancerous elements and other human organ destroying substances with the permission granted by the Federal Government backed up by a system of laws that violate international best practices and good conscience. What else is systemic destruction of a people?

¹³ Ken Saro-Wiwa, *Genocide in Nigeria: the Ogoni tragedy* (Cambridge University Press 1994) 103.

¹⁴ See Google dictionary.

¹⁵ See www.un.org. see also Article II of the Genocide Convention 1948. Nigeria acceded to the Genocide Convention in July 27, 2009.

¹⁶See www.britannica.com accessed online June 4,2020

¹⁷www.britannica.com ibid

¹⁸ See www.en.m.wikipedia.org accessed online June 4,2020.

¹⁹www.en.m.wikipedia.org

²⁰ Section 3 of the Associated Gas Re-Injection Act, has same effects as sections 104 (1)(b) & 107 Petroleum Industry Act 2021.

Sections 104 and 107 of the Petroleum Industry Act (PIA) 2021 are a deliberate infliction of genocide on the people of Niger Delta of Nigeria, condition of life calculated to bring about its physical destruction in whole or in part; it is an imposition through the instrumentality of law, measures intended to prevent births within the group; those laws are causing (and is scientifically proven) bodily harm on the people and killing gradually all natives and residents of the Niger Delta region.²¹

4. RIGHT TO LIFE: A CASE OF GAS FLARING AT FLARE STACK COMMUNITIES

Chapter four of the Nigerian constitution provides for fundamental rights which include Right to Life²² and Right to own immovable properties like minerals, mineral oils and natural gas.²³ Right to life does not only include right to livelihood²⁴ but right to a pollution free environment satisfactory for human development,²⁵ and inherent in the right to life includes prevention of genocide²⁶ against the intention of the section 3 of Associated Gas Re-Injection Act. Human rights are derived from the inherent dignity of the human person. They are rights accruing to an individual because he is a human being. Human rights are inherent rights to be enjoyed by all human beings of the global village and not gifts to be withdrawn, withheld or granted at someone's whim or will.²⁷ Unhealthy environment could amount to a deprivation of a person's right to life, since a poor and unhealthy environment could put a person's life in danger. Environmental rights are those rights to a decent environment accruing to individual or group of human being free from pollutions and humanicide: (like insecticide) are those emissions into the air that can kill human being or cause bodily harm deliberately discharged into the air to kill a group of human. Government respect for the life of her citizens is determined by her adoption and enactment of laws that creates healthy and life supporting environment.

Environmental rights are visibly enforceable in Nigeria following the article 24 of the African Charter on Human and Peoples Right domesticated by an Act of the National Assembly, when combined with section 20 of the Constitution as amended, and the position of the Supreme Court on *AG Lagos v. AGF*²⁸ supra on the effect of National Assembly by its Act elevating a provision in Chapter 2 of the constitution. This research supports the actualisation of the United Nations Human Rights Council Resolution 26/09 in 2014 which calls for a legally binding Treaty for transnational corporations to account for their human rights violations.²⁹ The Rio Declaration contemplates the entitlement of humans to a healthy and productive life in line with nature. There had been reported scientific findings

²¹ See Article II of the Convention on the Prevention and Punishment of the Crime of Genocide 1948, entry into force: 12 January, 1951.

²² II Onwuazombe 'Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil Producing Communities in the Niger Delta Region' (2017)(22)(1) *Annual Survey of International & Comparative Law* 119.

²³ Section 44 (3) of 1999 Constitution as amended

²⁴ *Shell v. Counsellor FB Farrah* (1995) 3 NWLR (Pt.382)148

²⁵ Article 24 of the African Charter on Human and Peoples Right CAP. A 9 LFN 2004, Section 20 of 1999 Constitution as amended; Sections 1, 2, 7, 27 and 28 NESREA Act 2007; Sections 2 and 3(1) of the Associated Gas Re-Injection Act 1979.

²⁶ II Onwuazombe 'Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil Producing Communities in the Niger Delta Region' (2017)(22)(1) *Annual Survey of International & Comparative Law* 119.

²⁷ See the Universal Declaration of human rights: A magna carta for all humanity (United Nations Department of Public Informaiton) Feb. 1998.

²⁸ *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt.660)228.

²⁹ Connie De La Vega, International Standards on Business and Human Rights: Is Drafting a New Treaty Worth It? 1-38<<https://www.ihrb.org/pdf/G1408252.pdf>> accessed 31 July 2022.

that linked pollutions from oil and gas sector to the health issues including chronic respiratory disease, nervous alimentary and urological disorders, heart disease, infant deformity, cancer and permanent genetic impairment as well as gaseous emissions have been associated with the global problems of acid rain, climate change, transboundary pollution, soil and water contamination;³⁰ faced by the people in the Niger Delta Region. Since most of industrialised countries and indeed developing countries such as Nigeria are unable to hold transnational corporations to account for their excesses in the production process, it becomes imperative to establish a World Environmental Court to address this lacuna or the inclusion of right to unpolluted environment as a fundamental human right under chapter four of the 1999 Constitution as amended.³¹ The challenge of success in litigation against gas flaring and oil pollution permitted under the Petroleum Act and Associated Gas Re-Injection Act is visible following the wide and dangerous discretion vested in the Minister for Petroleum Resource under the Laws.

However, the Environmental Impact Assessment Act provides for impact assessment before or during a project by public or private bodies in Nigeria. So that the powers of the Minister to permit gas flaring against environmental impact results can ground mandamus against the Minister. The EIA when read together with section 20 of the constitution should surpass any powers vested in the Minister to permit gas flaring in Nigeria. *Gbemre v. Shell supra* is an indication that afore proposition may be successful if tested in a court of competent jurisdiction. Hunter David was quoted to have said “initially the right to life was aimed at preventing arbitrary killing by the government. In recent years, the right to life has evolved to extend to address certain environmental harms that directly or indirectly infringe on the right to life”.³² United Nations Human Rights Committee had once observed that the expression “inherent right to life” cannot properly be understood in a restrictive manner and the protection of this right requires that measures be taken to reduce infant mortality, to increase life expectancy and to eliminate malnutrition and epidemic. That United Nation Committee considers the right to life to include duty on Government of members State to prevent genocide.³³ Gas flaring emits several harmful toxins and oil spills constitute a grave threat to human life and existence, despite federal government knowledge on the harmfulness of gas flaring and the gradual wiping out of the people affected, it still authorises gas flaring in the Niger Delta region in violation of the citizens right to life as enunciated by the UN Committee on human rights and gross breach of section 33 of the 1999 Constitution as amended. The right to life will mean nothing to a person who is living in an unhealthy and unprotected environment.

5. RIGHTS TO CLEAN, SAFE AND UNPOLLUTED ENVIRONMENT

³⁰ II Onwuazombe ‘Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil Producing Communities in the Niger Delta Region’ (2017)(22)(1) *Annual Survey of International & Comparative Law* 132.

³¹ *Wiwa v. Shell Petroleum Dev. Co.*, No. 04 Civ. 2665, at 4 (S.D.N.Y. June 7, 2009) <https://www.jstor.org/stable/25691398#metadata_info_tab_contents> accessed 31 July 2022.

³² II Onwuazombe ‘Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil Producing Communities in the Niger Delta Region’ (2017)(22)(1) *Annual Survey of International & Comparative Law* 119.

³³ II Onwuazombe ‘Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil Producing Communities in the Niger Delta Region’ (2017)(22)(1) *Annual Survey of International & Comparative Law* 120.

Environment has been defined as the totality of physical, economic, aesthetic and social circumstances and factors which surround and affect the desirability and value of property or which also affects the quality of people's lives.³⁴ The NESREA³⁵ defines environment to include, water, air, land, all plants and human being or animals living therein and the inter-relationships which exist amongst any of them. The above definitions therefore regard the environment as a state of affairs which is based upon the activities of man in his natural habitat and the relationships he has with his immediate environment in terms of water, air, animals and so on. Environmental rights can therefore be defined as the right of the citizens to have a clean, safe and decent environment and to enforce it in case of violation by the government or private citizens. This definition indicates the need to protect human health, safety and interest. It requires the maintenance of a certain level of environment because of human use and enjoyment of nature. Therefore, healthy and clean environment becomes a human right.³⁶

6. ENVIRONMENTAL RIGHTS AND SUSTAINABLE DEVELOPMENT

Environmental rights are those rights to decent environment accruing to a human being or a group or community, free from pollution of land, air or water and biodiversity. The natural gas currently flared in Nigeria can serve the cooking needs of 320 million people not served by modern fuels. Aside from the health and environmental consequences of gas flaring, the nation also loses billions of dollars-worth of gas which is literally burnt off daily in the atmosphere. Much of this can be converted for domestic use and for electricity generation. By so doing the level of electricity generation in the country could be raised to meet national demand. Nigeria has recorded a huge revenue loss due to gas flaring and oil spillage. Though more than 65 % of governmental revenue is from oil, it is estimated that about \$2.5 billion is lost annually through gas flaring in government revenues.³⁷ Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Even though we have grown to be fairly dependent on oil and it has become the centre of current industrial development and economic activities, we rarely consider how oil exploration and exploitation processes create environmental, health, and social problems in local communities near oil producing fields.³⁸ The term "sustainable development" according to the United Nations World Commission Report on Environment and Development means "the development that meets the needs of the present without compromising the ability of future generations to meet their own needs"³⁹The implication of this principle for this research is not only on preservation of natural resources for generations unborn but for the preservation of the environment in the state of nature unpolluted and preserved from hazards that hinders procreativity in humans and the exploitation of

³⁴ Black's law Dictionary, 6th Edition

³⁵ NESREA Act 2007 ibid

³⁶ Olu Awolowo 'Environmental Rights and Sustainable Development in Nigeria' *OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada.* <www.oidaijsd.com> Accessed 31 July 2022.

³⁷AO Ajugwo 'Negative Effects of Gas Flaring: The Nigerian Experience' (2013)(1)(1) *Journal of Environment Pollution and Human Health* 7.

³⁸ Principle 1 of Rio Declaration 1992

³⁹ World Commission on Environment and Development 1987

natural resources without compromising the environmental rights of the people, the integration of environmental factors into economic and other development programmes. The declaration⁴⁰ states that

in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Sustainable development requires that environmental criteria should be incorporated into the planning and implementation of any public policy and also allows the values of environment and development to be reconciled by calling for the integration of environmental and developmental concerns at all levels of decision making. The Nigerian government has not enforced environmental regulations effectively because of the overlapping and conflicting jurisdiction of separate governmental agencies governing petroleum and the environment as well as because of non-transparent governance mechanisms. The National Environmental Standards and Regulations Enforcement Agency (NESREA), National Oil Spill Detection and Response Agency Act (NOSDRA) nor the Department of Petroleum Resources (DPR) has implemented anti-flaring policies for natural gas waste from oil production, nor have they monitored the emissions to ensure compliance.

7. ACCESS TO ENVIRONMENTAL JUSTICE

Access to environmental justice in Nigeria means the ability of a claim to lie against persons or body or government on environment free from unnecessary legal burdens on the Claimant. A lot of information are required for a successful access to justice some of which are within the purview of the oil and gas companies or the government. The willingness to make available such information may not be readily possible unless by the instrumentality of Freedom of Information Act. Yet relevant information may be denied a citizen in protection of economic gains. Courts make matters worse for litigants whose environmental rights are infringed by the multinational corporations by requirements to prove beyond the scales of probability, the calling of expert witnesses instead of inviting experts *suo motuo* and save the frail nerves of the litigants. Technicalities of subject matter, valid cause of action, locus standi and jurisdiction,⁴¹ sufficient interest in the substance of the case and limitation of time plus pre-action notice all fight the chances of survival of a poor claimant case for the natural environment which he craves to preserve for his children and save the world of climate change.

The Supreme Court, in determining when a cause of action arose for the purposes of limitation of action, have maintained that as long as damage to environment keeps occurring, so causes of action keeps reviving.⁴² The evidential principle that he that asserts must prove has become burdensome to poor litigants (when compared with the Oil Corporations) in the oil and gas environmental rights enforcement because of the insistence on expert witnesses to in claims for specific damages and on

⁴⁰ Principle 4 of Rio Declaration 1992

⁴¹ KK Anele 'Human Rights Class Action against Corporations in Nigeria' (2019) European Journal of Comparative Law and Governance < https://brill.com/view/journals/ejcl/6/3/article-p273_273.xml > accessed 31 July 2022.

⁴² *Areno II v Adekanye* (2004)11 MJSC 11

issues of rate of earning. The proof rests on the claimant on damage to property, loss or destruction of farmland, economic crops and trees by providing the name, nature and numbers of such trees. When nuisance or negligence is alleged, ingredients thereto must also be established.

8. METHODOLOGY

The doctrinal method was adopted in this research as materials were sourced from laws, regulations, constitution, online and offline. Environmental Legal Regime in Nigeria comprises of laws, guidelines, regulations, policy frameworks, plans and programs, decisions of Nigerian courts, ratified conventions and treaties which tend to execute the constitutional expectations for environmental protection were examined, analysed and conclusion drawn.

9. THE HARMFUL EFFECTS OF GAS FLARING ARISING FROM SECTION 3 OF AGRA AND SECTIONS 104 (1)(B) & 107 PETROLEUM INDUSTRY ACT 2021

The implication of gas flaring on human health are all related to the exposure of those hazardous air pollutants emitted during incomplete combustion of gas flare. These pollutants are associated with a variety of adverse health impacts, including cancer, neurological, reproductive and developmental effects.⁴³ Deformities in children, lung damage and skin problems have also been reported.⁴⁴ Haematological negative effects of gas flaring in blood and blood-forming cells resulting in anemia (aplastic), pancytopenia and leukemia⁴⁵ is not just one theory that needs to be proved but scientifically established as afore-sited. It has been reported that acid rain acidifies rivers, lakes, streams as well as other bodies of waters and damage vegetations. Acid rain accelerates the decay of building materials and paints. Prior to falling on the earth, SO₂ and NO₂ gases and their particular matter derivatives, sulfates and nitrates, contribute to visibility degradation and harm public health.⁴⁶ The agricultural harm from gas flare contaminates the atmosphere with oxides of Nitrogen, Carbon and Sulphur (NO₂, CO₂, CO, SO₂), particularly matter, hydrocarbons and ash, photochemical oxidants, and hydrogen sulphide and acidifying the soil hence depleting soil nutrient, reducing the crop value within the vicinity of the gas flare.⁴⁷ The scientific⁴⁸ positions afore-adumbrated agrees with the United Nations Human Rights Committee's observation that the expression "inherent right to life" cannot properly be understood in a restrictive manner and the protection of this right requires that measures be taken to reduce infant mortality, to increase life expectancy and to eliminate malnutrition and

⁴³ Google: effects of gas flaring on human health. Accessed online June 4, 2020.

⁴⁴ SI Ovuakporaye and others 'Effects of gas flaring on lung function among residents of Gas Flaring Community in Delta State, Nigeria' (2012)(4)(5) *Research Journal of Environmental and Earth Sciences* 525-528 < <https://maxwellsci.com/print/rjees/v4-524-528.pdf> > accessed 31 July 2022.

⁴⁵ WD Kindzierski 'Importance of human environmental exposure to hazardous air pollutants from gas flares' (2000)(8) *Environmental Reviews* 41-62.

⁴⁶ A Hassan and R Konhy 'Gas Flaring in Nigeria: Analysis of changes in its consequent carbon emission and reporting' (2013)(37)(2) *Accounting Forum* 124-134.

⁴⁷ AA Imevbore and SA Adeyemi "Environmental monitoring in relation to pollution and control of oil pollution" Seminar on the petroleum industry and the Nigerian environment. (1981) 135-142.

⁴⁸ AO Ajugwo 'Negative Effects of Gas Flaring: The Nigeria Experience' (2013)(1)(1) *Journal of Environment Pollution and Human Health* 6-8 < <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.969.5521&rep=rep1&type=pdf> > accessed 31 July 2022.

epidemic. The Committee also considers that the right to life includes a duty to prevent acts of genocide and other acts causing arbitrary loss of life.⁴⁹All peoples shall have the right to a general satisfactory environment favourable to their development⁵⁰;including the Nigerians living in the Niger Delta area of the country. A satisfactory environment would include unpolluted environment, safe from gas flare, oil pollution and obnoxious laws which tends to favour economic gains over life and livelihood of present and future generations.⁵¹

10. NATIONAL OIL SPILL DETECTION AND RESPONSE AGENCY ACT 2006 (NOSDRA)

The NOSDRA was established in 2006 for preparedness, detection and response to all oil spillages in the Oil and Gas industry in Nigeria. The statute empowers the agency for remediation and damage assessment for oil spills in Nigeria both on the offshore and onshore activities of the actors in the sector especially by the activities of the Oil Companies. The agency is responsible for the surveillance and compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector. It receives reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria. They co-ordinate the implementation of the plan as may be formulated from time to time by the Federal Government. NOSDRA has the objective to co-ordinate and implement the National Oil Spill Contingency Plan for Nigeria. From the foregoing, it is to establish a viable national operational organization that ensures a safe, timely, effective and appropriate response to major or disastrous oil pollution;⁵² identify high-risk areas as well as priority areas for protection and clean up;⁵³ and establish the mechanism to monitor and assist or where expedient direct the response, including the capacity to mobilized the necessary resources to save lives, protect threatened environment, and clean up to the best practical extent of the impacted site.⁵⁴ Subsection d of section 5 of the NOSDRA Act 2006 intends the Agency to the use of available facilities and resources and in collaboration with corporate bodies, their international connections and oil spill co-operatives, that is, Clean Nigeria Associates (CNA) in implementing appropriate spill response.

This is revealing and flowing from the sub-section, the agency could use its statutory powers to remediate oil spillages in Nigeria. It does not need to have all the technological equipment and know-how as some scholars have opined. For instance, Amaka G. Eze, Ted C. Eze (2014) opined “This is unlike the situation in Nigeria where even extant legislations in the oil gas sector do not concern themselves with the issue of pollution. Canada has both the infrastructure and training required to respond to an oil spill. Gas flaring is banned in Canada. In that Country various Acts have established specialized bodies for their administration. In Nigeria, there are no adequate infrastructures for the

⁴⁹ U.N. Office of the High Commissioner for Human Rights [OHCHR], Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, HR/P/PT/9/Add.1 (2008), <<http://www.ohchr.org/Documents/Publications/training9add1.pdf>>accessed 31 July 2022.

⁵⁰ Articles 24, African Charter on Human and Peoples Right, CAP A9 LFN 2004

⁵¹ *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. The Federal Republic of Nigeria* (Communication 155/96, October 27, 2001).

⁵² Section 5(a) National Oil Spill Detection and Response Agency (Establishment) [NOSDRA] Act 2006.

⁵³ Section 5(b) NOSDRA Act 2006.

⁵⁴ Section 5(c) NOSDRA Act 2006.

control of oil pollution and gas flaring is still the rule rather than the exception. Institutional capacity for the administration of extant laws is also weak.”⁵⁵

To strengthen this research position that there are sufficient provisions in the Law for oil spillage remediation within Nigeria, some of the sub-sections of the Sections 5 and 6 of NOSDRA Act is hereunder reproduced. And highlights are placed on the fundamental function of the Agency to take charge of environmental legislations in Nigeria. This includes its powers to prosecute persons corporate or otherwise who violates the provision of this Act or any environmental legislation for that matter: section 5 (e) ensure funding and appropriate and sufficient pre-positioned pollution Combating equipment and materials, as well as functional communication network system required for effective response to major oil pollution;(f) provide a programme of activation, training and drill exercises to ensure readiness to oil pollution preparedness and response and the management and operational personnel;(g) co-operate and provide advisory services, technical support and equipment for purposes of responding to major oil pollution incident in the West African sub-region upon request by any neighbouring country, particularly where a part of the Nigerian territory may be threatened;(h) provide support for research and development (R&D) in the local development of methods, materials and equipment for oil spill detection and response;(i)-co-operate with the International Maritime Organization and other national, regional and international organizations in the promotion and exchange of results of research and development programme relating to the enhancement of the state-of-the art of the oil pollution preparedness and response, including technologies, techniques for surveillance, containment, recovery, disposal and clean up to thebest practical extent;(j) establish agreements with neighbouring countries regarding the rapid movement of equipment, personnel and supplies into and out of the countries for emergency oil spill response activities;(k) determine and preposition vital combat equipment at most strategic areas for rapid response.

NOSDRA Act Section 6(1) The Agency shall: (a) be responsible for surveillance and ensure compliance with all existing Environmental legislation and the detection of oil spills in the petroleum sector;(b) receive reports of oil spillages and co-ordinate oil spill response activities throughout Nigeria;(c) co-ordinate the implementation of the Planas may be formulated, from time, by the Federal Government.

The guiding principle for the agency is to ensure and support a zero tolerance for oil spill incidents in the Nigerian environment up to 200 nautical miles.⁵⁶ It has been argued that since the Agency is created to respond to oil spillages, it is not expressly empowered to look into gas flaring.⁵⁷ A better perusal of the NOSDRA Act especially sections 6 (a) which endows the agency with the function to ensure compliance with all existing environmental legislation, appears to allow it ensure Nigerian

⁵⁵GE Amaka and CE Ted ‘A Survey of the Legal Framework for the Control of Oil and Gas Pollution from Some Selected Countries’ (2014)(31) *Journal of Law, Policy and Globalization* < <https://www.iiste.org/Journals/index.php/JLPG/article/view/17484> > accessed 30 July 2022.

⁵⁶Section 7 NOSDRA Act.

⁵⁷Irekpitan Okukpon, Phasing-Out Gas Flaring In Nigeria: A Critical Assessment of the Regulatory Regime, Dissertation for the award of an LLM degree in Marine and Environmental Law, University of Cape Town assessed on line February 11, 2019.

environment is completely protected and devoid of pollution whether caused by oil spillage or gas flare. The use of the word ‘ALL’ environmental legislation shows the Legislature intendment that the Agency cover the field in all matters of environmental protection in Nigeria. However, the agency, for the protection of Nigerian environment, has established a gas flaring tracking system to detect the volume of gas flared in Nigeria in furtherance of its powers enshrined in section 6 of NOSDRA Act 2006. The 8th National Assembly passed an amendment intended to make this agency more profitable for environmental protection in Nigeria but President Muhammadu Buhari declined assent to the amendment bill because, according to him, it undermines the powers and functions of the Petroleum Minister.⁵⁸ NOSDRA is establish to ensure the co-ordination and implementation of the Plan within Nigeria including within 200 nautical miles from the baseline for which the breath of the territorial waters of Nigeria is measured; undertake surveillance, reporting, alerting and other response activities as they relate to oil spillages; encourage regional co-operation among member states of West African sub-region and in the Gulf of Guinea for combating oil spillage and pollution in our contiguous waters; strengthen the national capacity and regional action to prevent, control, combat and mitigate marine pollution; promote technical co-operation between Nigeria and member states of the West Africa sub-region; among others.

NOSDRA’s National Control and Response Centre is established under section 18 of the Agency’s Act to act as report/processing and response co-ordinating centre for all oil spillage incidents in Nigeria, receives response of oil spillage from zonal and control units and ensures compliance. Inadequate funding and deficient personnel expertise on the core functions of the Agency is a major setback for the agency.

11. NATIONAL GAS POLICY 2017 (APPROVED BY FEC 28/06/2017)

The National Gas Policy 2017 was approved by FEC on June 28, 2017. In that document, the Federal Executive Council admits that Gas flaring affects the environment and human health, produces economic loss, deprives the government of tax revenues and trade opportunities, and deprives consumers of a clean and cheaper energy source. It furthered that effective action on gas flaring would address a long held grievance for the Niger Delta region.⁵⁹ The Federal Government states that it will abide by the provisions of the policy unless and until reviewed or replaced by a formal restatement of policy duly gazetted by the Government (National Gas Policy *ibid*, page 13). The policy also reads that the flaring of natural gas that is produced in association with oil is one of the most egregious environmental and energy waste practices in the Nigerian petroleum industry.⁶⁰ The policy plans a Gas Flare-Out through Gas Utilization Projects.⁶¹ It provides plans for metered electricity to host communities immediately adjacent to flare sites. This is, according to the policy, the best prospects for

⁵⁸AIT International on 14 March, 2019 <<https://placng.org/wp/2019/03/president-buhari-declines-assent-to-nosdra-amendment-bill-2018->>.

⁵⁹ National Gas Policy, approved June 28, 2017.

⁶⁰National Gas Policy 60.

⁶¹ National Gas Policy 62, 6.4.4.

reducing remaining gas flare sites through projects developed by investors and companies with experience in innovation in modest size projects in challenging environments and with strong local engagements plans. A metered electricity to Host Communities, seems to mean strong local engagement in the National Gas Policy, 2017. The vision of the Policy is for a gas-based industrialisation of the Country. It is viewed that the renewal of licences and leases depends on the development of the discovered gas resources within the licence or lease area for domestic or export projects, as applicable, within specific timeframe. This is to say that Operators and Companies will not be licenced nor leased a field or marginal area if they do not possess approved development plans for discovered gas for either domestic or export purposes.⁶² Ownership and title to the gas is intended to remain with the Federal Government entity up to the point of re-gasification and export.

Growing Domestic Gas Markets: The Policy recognises that domestic market has not yielded the expected or forecast results. The government in the Policy, said rather than trying to continue with a centrally planned national market development, the gas policy proposes a project based and market opportunity-led approach as a more effective way to grow gas markets.⁶³

12. ECONOMIC USES OF GAS IN NIGERIA

Two Examples of Economic Uses of Gas In Nigeria:- (1)Anchor Customers: The Policy identifies four large consumption centres where the demand is large enough and which are profitable enough to include: Gas fired power generation; Large industrial customers, like the Ajaokuta Steel; Distribution companies and Industrial parks like Rivers State Pleasure Park.⁶⁴ The studies carried out by the National Gas Policy developers, according to it, reveals poor infrastructure and capacity by Transmission Company of Nigeria. It is anticipated that private sector will develop projects for gas distribution while the Government will provide the environment. It is contended by this research, based on similar proposals of the Government which was not fulfilled, that the private sector think the government wants to shelve responsibility hence increase investment risk. This indeed is not specific enough to warrant investment in the Gas sector which is intended to birth flare-out. It is further thought that the private sector investment projects in the gas sector would focus on Petrochemical plants; Fertiliser plans; Village power plants; Embedded power plants; CNG plants; LPG plants and CNG. Some of these are ambitious following Nigerian development incidence. The aforementioned view is strengthened by the Policy itself which states that “NGVs really take off when there is a determined government push behind the initiative”.⁶⁵ (2) Liquefied Petroleum Gas (LPG): is a by-product form refining crude oil or processing natural gas. It is said to be a clean fuel source. If properly projected it could create jobs for cylinders, autogas and power generation services. LPG is both Fiscal and Environmental beneficial for increased tax revenue and carbon credits for government.

⁶²National Gas Policy 68.

⁶³National Gas Policy 71, 8.3.1.

⁶⁴National Gas Policy 71/72, 8.3.3.

⁶⁵National Gas Policy 73.

13. NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA) ACT 2007

National Environmental Standards and Regulations Enforcement Agency (NESREA) is statutorily saddled with the enforcement of environmental standards, regulations, rules, laws, policies and guidelines.⁶⁶ The agency is responsible for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources and environmental technology, coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.⁶⁷ NESREA is the principal environmental standards enforcement and regulatory agency in Nigeria. This agency replaced the defunct Federal Environmental Protection Agency (FEPA). NESREA is empowered to implement international environmental standards on the Nigerian environment, especially those treaties and conventions that has been domesticated in the Country. Even though International Treaties that addresses gas flaring has not been domesticated by the Nigerian National Assembly, the Agency is empowered by its Act to implement international treaties protocols, conventions and treaties on the environment, including climate change, biodiversity, conservation, desertification, forestry, chemicals, hazardous wastes, ozone depletion, marine and wild life, pollution, sanitation and such other environmental agreements as may from time to time come into force.⁶⁸ By the virtue of section 7(c) NOSDRA Act 2007 as amended, the agency is empowered to enforce compliance with international treaties, protocol, convention; this is enough to for an enlightened agency to keep the Nigerian environment safe from pollution if backed by Executive Will. Corruption, inadequate budgetary provisions have made the functions of the agency to remain a dream that may never come true. Regards should be had to the Title of a Statute when interpreting the scope of such statute. One of the reasons for titling a statute is to portray or show-case the intentions of the framer(s) of the enactment and the mischief the enactment is set out to remedy. Although it may sometimes serve as a key to understanding of the enactment, a title is not strictly part of the enactment but may be resorted to as aid to interpretation except in special circumstances.⁶⁹ The Court of Appeal held that "...It is now settled law that the title of the statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope, and of throwing light upon its construction."⁷⁰ It is the strong contention of this research that the title "National Environmental Standards and Regulations Enforcement Agency (Establishment) Act" is clear enough in the interpretation of the scope and functions of the agency. NESREA has the function to enforce compliance with regulations on the importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in oil and gas sector.⁷¹

⁶⁶ Section 1 NESREA Act 2007.

⁶⁷ Section 2 NESREA Act 2007.

⁶⁸ Section 7(c) NESREA Act 2007.

⁶⁹ *Babalola v. AG Fed.* (2018)LPELR-43808(CA).

⁷⁰ *Chief Eteidung Raymond F. Obot & ors vs SPDC* 2013 LPELR-20704CA" Per TUR, J.C.A. (P. 29, Paras. B-D). See also *Jones vs. Shervington* (1908) 2 K.B. 539; *Fenton vs. J. Thurley & Co. Ltd.* (1903) A.C. 443 and *Fisher vs. Raven* (1964) A.C. 210.

⁷¹ Section 7 (g) NESREA Act 2007.

This provision is obviously limiting the powers or functions of the Agency but was cured by section 6(1)(a) of NOSDRA Act 2006. One will wonder if the act was mutually exclusive to oil and gas sector and not supposed to serve the people's environment regards being had to importation, exportation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector. This very important Agency, enforces compliance with policies, standards, legislation and guidelines on water quality, environmental health and sanitation, including pollution abatement.⁷² It enforces compliance with guidelines and legislations on sustainable management of the ecosystem.⁷³ The deliberateness of the Legislature in the use of the word 'enforce' in the functions assigned to the agency, it appears that the agency can enforce compliance with management of the ecosystem other than in the oil and gas sector, though most oil and gas activities that may jeopardise the environment are done on the ecosystem.⁷⁴ In the interpretation of statutes, the paramount rule remains that every statute is to be expounded according to its manifest and expressed intention.⁷⁵ Enforcement of compliance with legislation on sound chemical management, safe use of pesticides and disposal of spent packages.⁷⁶ Another limitation to the functions⁷⁷ of the agency was embedded in subsection(h) which curbs the enforcement powers of the agency to oil and gas sector in respect of compliance monitoring, environmental regulations and standards on noise, air, land, seas, oceans and other water bodies.⁷⁸ Registration, licensing and permitting in respect of environmental control measure is further function of the agency. It conducts environmental audit and establish data bank on regulatory and enforcement mechanisms of environmental standards; create public awareness and provide environmental education, promote private sector compliance with environmental regulations and publish general scientific or other data results from the performance of its functions and powers.

14. LIMITATION TO ENVIRONMENTAL AGENCIES FUNCTIONS:

Institutional Conflict of Responsibility is another cloak in the wheels of justice in environmental matters in Nigeria following mixture of responsibilities and fusion of functions⁷⁹, duplication or overlap in powers of Agencies in terms of enforcement and regulation. For instance, the Department of Petroleum Resources (DPR) regulates among other things the environment in the oil and gas sector yet the National Oil Spill Detection and Response Agency (NOSDRA) does the same thing with even a wider dimension of involving international corporations who may have both the technical know-how and the equipment needed for damage control and remediation of polluted environment.

Corruption through the loopholes created by the multiple laws on environmental protection enforcement in Nigeria has given oil and gas operator the escape route, they exploit these lacunae

⁷² Section 7(d) NESREA Act.

⁷³ Section 7(e) NESREA Act.

⁷⁴ Section 6 NOSDRA Act 2006.

⁷⁵ Lord Radcliffe in *AG Canada v. Hallett & Carey Ltd* (1952) AC427@449 cited in *UBANI v. Dir.* SSS1999 LPELR-11177CA.

⁷⁶ Section 7 (f) NESREA Act 2007.

⁷⁷ Section 7 NESREA Act 2007.

⁷⁸ Section 7 (h) NESREA Act.

⁷⁹ See sections 5&6 NOSDRA Act and Section 7 NESREA Act.

against unwilling government policy in the affirmation of environmental rights. Some cases like that of *SDPC v Anaro & ors*⁸⁰ can last as long as 30 years. Money exchange hands and a Judge who is perceived to deliver justice for environment is elevated to a higher court and court file of that case disappears⁸¹ into thin air or the Judge declines jurisdiction after Claimant had spent money on expert witness. Civil Right Organizations had accused the government colluding with oil and gas companies to flare gas without certification or authorization of the Minister for Petroleum. Multinational corporations nowadays co-opt civil society and right activists in their social corporate responsibility with juicy contracts to silent them from seeing the abuses and degradation. With the guise of providing technical assistance to Regulators in the industry they roped them in to neglect, refusal and abandonment of enforcement of policy and effective surveillance.

Government of Advanced Economies after assisting in making environmental governance standards operational in their jurisdiction, they acquiesce, collude, advance, encourage and participate in lowering environmental protection standards in developing economies by their romance with the multinational companies indicted for environmental misfeasance in the developing economies.⁸²

Environmental Politics has globally become a challenge to environmental protection not only in the developing economies but in the advanced economies too. The environment is seen by the United Nations as a heritage that ought to be protected for the future generations through conventions, protocols and treaties accounting for the numerous groups, agencies and programs within the United Nations (UN) and the multiplication of international environmental institutions outside and in the UN. This results in inter-agency conflict, inconsistency in rules and norms guiding the various organizations, limited opportunities for cooperation among them thereby creating environmental politics and its technical and market-oriented measures offering undue advantage to multinational corporations to the detriment of the people and the environment it was set up to protect. National government talk green but in practice give attention to commercialization of oil and gas less care for the environmental protection.

15. JUSTICIABILITY OF SECTION 20 OF THE 1999 CONSTITUTION AND ENVIRONMENTAL PROTECTION

Section 6(6)(c) of the 1999 Constitution made provision that fundamental objective and directive principle of state policy shall not be enforceable unless as otherwise provided for in the constitution. Any provision contained in the directive principles of state policy which is legislated upon becomes justiciable, active, moves away from being a mere declaration and can constitute a claim or right

⁸⁰ (2015) JELR 44398 (sc) per Aka'ah JSC.

⁸¹ Like it was reported about the case of *Gbemre v. SPDC* FHC/B/CS/2005 Coram Nwokorie.

⁸² CV Odoeme 'Global Environmental Politics and Environmental Law in Nigeria' (2019)(1)(2) *Nile University Law Journal* 44-59.

litigable in court of competent jurisdiction, whether it be items contained in either the exclusive or concurrent legislative list. The same principle applies to international treaty or convention which had been domesticated.⁸³ Where a subject is not in either list, the State can legislate on it and made subject to federal legislation on the same matter.⁸⁴ The point is that any piece of subject contained in the fundamental objective and directive principle of state policy which is legislated upon has become enforceable in a court of competent jurisdiction. For instance, section 20 provided for environment: ‘The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.’ Environment being an item in the exclusive legislative list can only be legislated upon by the National Assembly which it has done through numerous Acts.⁸⁵ In explaining the rationale behind section 20 of the 1999 constitution as amended, the Supreme Court said:

it has been shown in this judgment what discussions and considerations led to the formulation of the text of section 20 which for the first time in the constitutional history of Nigeria came to be inserted in the Constitution under the Principles of State Policy. The Constitutional Conference Committee’s discussion, recommendation and resolution on the subject make it clear beyond argument that it was after deliberating such purely environmental matters as afforestation, reforestation, devastation through mining activities, desertification, disasters and emergencies commission and the federal environmental protection etc. that the Committee came up with that provision.⁸⁶

In his contribution to that decision,⁸⁷ Kalgo JSC stated that the main objective and essence of section 20 of the 1999 Constitution is to protect the external surroundings of the people and ensure they live in a safe secure atmosphere free from any danger to their health or other conveniences.⁸⁸ The Supreme Court had explained historical background to section 20 of the Constitution and the principles of law derivable from same to the effect that it was made to protect the external surrounding and secure atmosphere free from any danger to the health of Nigerians. This is the rock upon which section 3(2) (a&b) Associated Gas Re-Injection Act must fail for being contrary to and or falling below the expectation of section 20 of the 1999 Constitution which has been elevated to the status of justiciability flowing from National Environmental Standards Regulation and Enforcement Agency (NESREA) and National Oil Spill Detection and Response Agency (NOSDRA) Acts. An international treaty or convention is autonomous and the contracting states to the treaty have submitted themselves to be bound by the provisions thereof, which provision are above domestic legislation, therefore any domestic legislations in conflict with the convention is void.⁸⁹ This research is of the strong view, based on the Supreme Court position adumbrated above, that a provision of an Act which tend to support the spirit, historical background and purpose of a provision in the Constitution should be

⁸³General Sani Abacha and Others v. Chief Gani Fawehinmi(2000) 6 NWLR (Pt. 660) 228.

⁸⁴ *Attorney General of Lagos State v AGF* (2003) 12 NWLR (Pt. 833) 1.

⁸⁵ NESREA Act, NOSDRA Act.

⁸⁶ *Attorney General of Lagos State v AGF* (2003) 12 NWLR (Pt. 833) 1 per Uwaifo JSC @186 D-H.

⁸⁷ *Attorney General of Lagos State v AGF* (2003) 12 NWLR (Pt. 833) 1.

⁸⁸ *Attorney General of Lagos State v AGF* (2003) 12 NWLR (Pt. 833) 1 pages 159-160 H-A; pages 161-162B-A.

⁸⁹*Chief Oshevire v. British Caledonian Airways Ltd* (1990) 7 NWLR (Pt. 163) 507.

favoured against a provision in another Act which tends to negate the spirit, historical background and purpose of a provision of the Constitution. Nevertheless, section 13 of the 1999 Constitution as amended, in my view, has cured the import of section 6(6)(c) of the same constitution. Section 13 provides:

It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution.

The ordinary meaning of this provision needs liberal interpretation by the Court to protect the environment for the health and life of this generation and those of the generations not yet born. That section 13 uses the word 'shall' when describing or ascribing the exercise of legislative, executive or judicial powers, mandating any of such organ of government to apply the fundamental objectives and directive principles of state policy. Section 13 of the constitution when read together with sections 20 and 33 should be clear enough to recognise environmental rights as a constitutional right in Nigeria. The Courts culture of renouncing their jurisdiction over matters that arises from chapter 2 of the Constitution should be reversed on the strength of section 13 of the same Constitution and other domesticated Charters and Conventions made applicable by incorporation into statutes.⁹⁰ Any exercise of judicial powers which disregards section 13 of the constitution would be a deviation from the Courts hallowed jealousy of protecting itself from unnecessary denial of its constitutionally vested jurisdiction. Even regional Courts recognises the right of the indigenous people to an unpolluted environment⁹¹ how much more a constitution that is said to have originated from the people.

16. CONCLUSION

Genocide is intended against the people of the Niger Delta by gas flaring permits/licence in whatever guise; since, it is a systemic approval for air and water poisoning of the people and deliberately imposing living conditions that seeks to bring about its physical destruction in whole or in part as well as causing bodily harm to human and the environment vide acidic rain and reduced productivity of crops. Human rights to life is meaningless if it does not include rights to unpolluted environment devoid of acidic underground water, air infested with chemicals and emissions destructive of reproductive organs of human resident at flare stacks around the Niger Delta region. By section 7 of the NESREA Act, individuals after applying to the Agency, may, by mandamus compel the Agency to make effective section 7 (c) of the NESREA Act for remediation and full restoration of the environment so affected. Sections 104(1)(b) & section 3 of AGRA should be amended to reflect the constitutional intentions of section 20 thereof and preservation of a safe environment for the future generations.

⁹⁰ Section 7 of the NESREA Act 2007 as amended provides inter alia '*Section 7(c)* enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment...'

⁹¹ *Social and Economic Rights Action Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. The Federal Republic of Nigeria* (Communication 155/96, October 27, 2001).

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