



Environmental Degradation And Oil Spillage: An Indictment To Human Rights And Environmental Law

Faith Monday*

ABSTRACT

From the inception of mankind and civilization, human beings has always had this inherent desire to explore its environment either for the acquisition of their daily livelihood or for the exploration of natural resources like crude oil in other to better their economic, cultural and social welfare. This act of persistence exploration has often caused harm to the environment, this harm is generally seen as environmental degradation. However, Environmental degradation is discussed in this paper, as the deterioration of the environment through the depletion of soil, air, and water. It is often observed that this depletion of the soil, water is rampant in the oil industries were oil spillage is seen to be the order of the day. In the recognition of the dangers posed by environmental degradation and oil spillage, both the international communities and the Nigerian government has put in place various laws to combat the issues of environmental degradation and oil spillage. This paper shall appraise how this environmental degradation cause harm to human beings and how the individual, corporation, found guilty of such degradation and deterioration of the environment should be held accountable or be indicted under the auspice of environmental law and Human Right. This paper will make recommendations.

Keywords: Environmental Degradation, Oil Spillage, Indictment of Human Rights, environmental laws.

1) INTRODUCTION

Human lives and survival are rooted in, and dependent on the environment. In the oil-producing communities, toxic waste, water and effluents from the storage facilities of the oil corporations and oil wells are frequently discharged into the environment leading to contamination of farmlands, rivers, creeks and fish ponds in the delta area. It is often observed the depletion of the soil, water and air is rampant in the oil industries were oil spillage is seen to be the order of the day. Oil spills also pollute even the underground water table whereas continuous open-air flaring of gas discharges toxic particulates and soot into the atmosphere some of which eventually come down as acid rain to contaminate the sources of water supply. Like every other Niger Delta inhabitant, “human beings by their very nature are highly susceptible and of many has been tragically affected by hydrocarbon pollution, for instance, every Ogoni person is a potential cancer patient.”¹

2) The Adverse Effect of Oil Spillage on Human Health.

The inhabitants of these oil-producing communities suffer from diseases like leukemia, cancer, chronic bronchitis and cardiovascular diseases which have resulted in their deaths. The pervasive water-related diseases (malaria, dysentery, tuberculosis, typhoid, and cholera) in the oil-producing communities are linked to environmental pollution/degradation caused by the activities of the oil companies. In 2011, the Council of Ogoni Traditional Rulers lamented the apparent neglect of the federal government and disclosed that, “thousands of children in the community are found to be

* LL.B, B.L. the author is a postgraduate student of the Rivers State University, Port Harcourt. This Work forms part of the LL.M dissertation submitted to the postgraduate school, and he can be contacted with faith_al_Monday@yahoo.com, +234(0)8109245021.

¹ E Anuforo, ‘Ogoni Leaders Meet with Jonathan, Seek Action on UNEP Report’, Guardian Nigeria, Sept. 4, 2012. Available at <<http://odili.net/news/source/2012/sep/4/22.html>> accessed December 2 2019.

suffering from cancer and other deadly diseases from exposure to contaminated air, water and food from oil spill and gas flaring in the area.²

According to a Vanguard news report, medical experts have claimed that: Hydrocarbon pollution can cause body mutations; deformities, cancer and fetal mutations. In particular, because of the high levels of exposure to benzene, the Ogoni people for instance, are at the risk of hematological problems, which can affect the tissue responsible for producing blood cells.³

Some other problems in the report include excessive bleeding, immune system deficiencies and aplastic anemia.

Further, the medical experts noted that: Benzene is also linked with an increased risk of many types of leukemia (blood cancer). Larger doses of this chemical can result in vomiting, dizziness and convulsion and ultimately lead to death. Dermal exposure to this chemical can result in reddening and blistering of skin, and exposure to vapor and liquid form can cause irritation to the eyes, skin, and results in respiratory problems.⁴

Besides, they observed that, “females that are exposed to benzene can suffer a decrease in the size of their ovaries, and menstrual problems.”⁵ Some studies although not yet conclusive have suggested that the high level of exposure to the chemical could also affect fertility in women.⁶ Also, life expectancy in the Niger Delta rural communities, half of which have no access to clean water, has been reported to have fallen to a little more than 40 over the past two generations.⁷

The right to health encompasses the right to a healthy and pollution free environment, adequate food/nutrition, shelter, clothing and adequate standard of living. It is guaranteed by municipal laws and many international instruments. However, in Nigeria, the right to health is under the Fundamental Objectives and Directive Principles of State Policy as non-justiciable right. Article 25 of the UDHR and articles 11 and 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR) provides for health. Also, the ACHPR provides for the right to health,⁸ and mandates the States Parties to protect the health of their citizens,⁹ as well as provide an environment conducive for their development.¹⁰

The Constitution of the World Health Organization (WHO) equally provides for health¹¹ and other rights that relate to conditions necessary for health. Such conditions range from ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. Similarly, the UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, adopted a General Comment on the Right to Health in 2000.¹²

According to the General Comment, the right to health also has a “core content” referring to the minimum essential level of the right, this include essential primary health care, “minimum essential and nutritious food; sanitation; safe and portable water and essential drugs form part of the core content.”¹³

The inhabitants of the Niger Delta region lack access to clean portable drinking water. It has been asserted that less than 22% of rural Nigeria has access to safe water and most of the communities in the oil-producing area are in this category.¹⁴ By extension, lack of access to safe and portable drinking water impacts the health of the people adversely.

Also, speaking on the health of the communities as a result of polluted water, Ekpu noted that: The intake by human beings of some of these contaminants poses grave health hazards, since they have been proven to be toxic . . . Refinery effluents . . . cause metabolic malfunction in humans. Many of the chemicals derived from crude oil, like benzene, toluene, butylene and others are proven

²O Onwuemenyi, ‘Oil Spill: Cancer Is Ravaging Our Land’. Available at <<https://www.vanguardngr.com/2011/09/oil-spill-%E2%80%98cancer-is-ravaging-our-land%E2%80%99/>> accessed December 2 2019.

³*Ibid.*

⁴ Onwuemenyi (n 5).

⁵*Ibid.*

⁶*Ibid.*

⁷P Ohia, ‘UN to Exonerate Shell from Pollution in Niger Delta’. Available at <<http://odili.net/news/source/2010/aug/23/253.html>> accessed December 2 2019.

⁸ ACHPR, art. 16(1).

⁹*Ibid.*, art. 16(2).

¹⁰*Ibid.*, art. 24.

¹¹World Health Organization, ‘The Right to Health’. Available at <<http://www.who.int/mediacenter/factsheets/fs323/en/>> accessed December 2 2019.

¹²*Ibid.*

¹³*Ibid.*

¹⁴A O Ekpu, ‘Environmental Impact of Oil on Water: A Comparative Overview of Law and Policy in the United States and Nigeria [1995] (24)*Denver Journal of International Law & Policy*, 62.

carcinogenic, mutagenic and tetra genic . . . The high incidence of respiratory disorders, cancer, and asthma and birth deformity in most of the oil-producing communities has been attributed to oil pollution.¹⁵ In the celebrated decision of the African Commission on Human and Peoples' Rights in *Social and Economic Rights Action Centre (SERAC) v. Nigeria*,¹⁶ the Nigerian Government was indicted for its complicity as well as implicated the oil corporations and state security forces in the violation of the rights of Ogoni people.¹⁷

The Commission's verdict in *SERAC v. Nigeria*¹⁸ shows that the judiciary in some instances stand firm and uphold justice against the oil MNCs for gross human rights violations. The communication was taken against the Nigerian government and stated that the government of Nigeria was involved in oil production through NNPC and alleged that:

1. The operations of SPDC caused environmental degradation and despoliation of their land with serious health problems resulting from contamination of (water, soil and air) the environment and living environment of the Ogoni people.
2. The oil consortium exploited oil reserves with no regard for the health or the environment of the local communities, disposing toxic wastes into the environment and local water-ways in violation of both national and international standards. This practice contaminates food resources, water, ruin living environment, and destroy houses thereby had serious short-and long-term impacts on the people. The activities of SPDC, according to the communication, led to the contamination of water, soil, and air. The complainants accordingly submitted that this situation constituted a violation of their rights to health and clean environment.
3. The Nigerian government condoned and facilitated the violations by placing legal and military powers at the disposal of the oil companies. The government further participated in the violations by executing some Ogoni leaders and by the use of security forces, killed many innocent civilians and destroyed their villages, homes, crops and farm animals.
4. Also, the communication accused the government of failing to monitor the activities of the oil companies, failing to conduct environmental impact studies, preventing independent scientists from doing environmental impact studies and keeping information from the local communities in respect of oil production in the area. The complainants accordingly submitted that this situation constituted a violation of their rights to health and to a clean environment.¹⁹

In a relatively well-articulated landmark decision, the African Commission held that:

1. These conditions violated rights to health and environment. The African Commission on Human and Peoples' Rights underscored the first line of responsibility of states in the protection of human rights by holding that African governments have a duty to monitor and control the activities of MNCs.²⁰
2. The right to health at the minimum required the government 'to desist from carrying out or sponsoring or tolerating any practice, policy or legal measures violating the integrity of individuals' (para. 52). Further it held that the right of the people to a healthy environment, which it said was linked to economic and social rights, required the State 'to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources (para. 52).
3. African states should also ensure respect for economic, social and cultural rights. Relying on its earlier decision in *Union des Jeunes Avocats/Chad*²¹ and the decision of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras*,²² as well as that of European Court of Human rights in *X and Y v. Netherlands*,²³
4. The governments have the duty to protect their citizens through appropriate legislation and effective enforcement, and to protect them from damaging acts that may be perpetrated by private parties.²⁴

¹⁵ Ekpu (n17) 112.

¹⁶Case No. ACHPR/COMM/A044/1.

¹⁷*Ibid.*

¹⁸*Ibid.*

¹⁹SERAC v. Nigeria(n 19).

²⁰*Ibid.*

²¹*Union des Jeunes Avocats v. Chad*, AHG/207, Afr. Comm'n on Hum. & Peoples' Rts.,Comm. 74/92 (1995/96).

²²*Rodriguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 19, 1988).

²³*X and Y v. Netherlands*, 91 Eur. Ct. H.R. (ser. B) at 32 (1985).

²⁴SERAC, Case No. ACHPR/COMM/A044/1 para. 111.

The Commission criticized the way in which the Nigerian government related to the MNC, finding that the government failed to exercise the necessary degree of care required in the circumstances.²⁵

According to the Commission: Contrary to its obligations and despite such internationally established principles, the Nigerian Government has given greenlight to private actors and the oil companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of the African Charter.²⁶

The Commission thus laid the responsibility for all the violations that had been committed by the non-state actor on the Nigerian state.²⁷ The state was found liable for violations of rights protected under the African Charter by Shell.

In the final analysis, violations of the right to health and well-being in the oil-producing communities are indictments to human rights and have equally been attributed to the failure of the Federal and State governments in the Niger Delta region over the years to articulate an effective healthcare policy for the area or provide accessible healthcare facilities, clean portable drinking water, adequate shelter and food in the region despoiled by the extractive industry's operations. The pathetic health care delivery and gross violation of the right to health and adequate standard of living in the Niger Delta cannot be ascribed to lack of resources but is mainly due to massive corruption among the political leaders in oil-producing area.

Although the Constitution under its social objectives provides that, "the State shall direct its policy towards ensuring that, there are adequate medical and health care facilities for all persons,"²⁸ there has never been any serious healthcare program or project designed and implemented by the government to cater for the peculiar healthcare needs of people in the Niger Delta region. The Federal Government of Nigeria, by its lukewarm attitude, has literally sacrificed the health, safety, well-being of citizens and protection of their environment on the altar of petrodollars. There is an overwhelming consensus that the pollution of land, air and water in the Niger Delta violates the right to safe water and free from substances harmful to human health and therefore, the right to a healthy environment is virtually non-existent in the region.

3) The Concept of Environmental Degradation as an Indictment to Environmental Rights in Nigeria.

In the words of Williams and Conley, "we expect companies to create wealth while respecting the environment and exercising responsibility towards the society and the local communities in which they operate . . ."²⁹

On the contrary, the oil corporations in the Niger Delta do the reverse of this positive expectation of companies as responsible members of their host communities by creating mass poverty, hardship, misery, unemployment, underdevelopment and violation of rights. All the oil corporations operating in the Niger Delta oil-producing communities for over five decades have directly and indirectly violated the rights of the inhabitants of the region with impunity.

Oil spill/environmental pollution is a frequent occurrence and gas flaring is continuous. According to Okorodudu-Fubara, energy production processes in the energy industries like petroleum, coal, gas, electricity etc., generate diverse sorts of land, air and water pollution as well as hazardous waste disposal problems which degrade the quality of the environment resulting in adverse health implications for man and threatens the immediate and future potential of the ecosystem.³⁰

Oil and toxic effluent water is freely discharged into the environment in the region. Oil spills of any magnitude pollute the environment upon which human existence and survival is dependent on and is equally harmful to human health. It has been reported that:

Scientific findings have linked pollutants from the energy industries to several diseases such as chronic respiratory diseases, nervous alimentary and urological disorders; heart disease; infant deformity; cancer and permanent genetic impairment. Moreover, gaseous emissions have been

²⁵*Ibid*, para. 59.

²⁶SERAC v. Nigeria(n 19).

²⁷ J Oloka-Onyango, 'Reinforcing Marginalized Rights in an Age of Globalization: International Mechanism, Non-State Actors, and the Struggle for Peoples' Rights in Africa' [2003] (18) *American University Law Review*, 851.

²⁸ CFRN 1999, S 17(3)(d).

²⁹ C A Williams and J M Conley, 'An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct' [2005](38) *Cornell International Law Journal*, 439.

³⁰ O Fubara, 'Statutory Scheme for Environmental Protection in the Nigerian Context: Reflections of Legal Significance for Energy Sector [1996] *Nigerian Current Law Review*, 1-39.

associated with the global problems of acid rain, climate change, trans-boundary pollution, soil, and water contamination.³¹

Similarly, gas-flaring creates health problems that have led to the death of many people in the oil-producing communities. It has been associated with reduced crop yields and plant growth as well as the disruption of wild life in the immediate vicinity.³² Also, it pollutes the air, injects particulates and other substances that are known to cause cancer and other terminal diseases into the air and has been affirmed by judicial pronouncements to violate peoples' right to life as illustrated in the case below.

In *Gbemre v. Shell Petroleum Development Corp. of Nigeria Ltd*³³, a suit brought by Jonah Gbemre on behalf of himself and the Iwhereken Community in Delta State, in the Niger Delta region against Shell Petroleum Development Company Nigeria Ltd., the Nigerian National Petroleum Corporation (NNPC) and the Attorney General of the Federation under the Fundamental Rights Enforcement Rules in the 1999 Nigerian Constitution alleging violations of the provisions of both the Constitution and the African Charter that has been domesticated as part of the nation's municipal law – the plaintiffs claimed that:

1. Oil exploration and production activities of Shell which led to incessant flaring of gas had violated their rights to life and dignity of the human person under Sections 33(1) and 34(1) of the Constitution and articles 4, 16 and 24 of the African Charter.
2. The continuous gas-flaring by the company had led to poisoning and pollution of the environment which had exposed the community to the risk of premature deaths, respiratory illnesses, asthma and cancer. The pollution had affected their crop production thereby adversely affecting food security and further claimed that many of the natives had died and many more were suffering from various illnesses. The community was therefore left in a state of gross under-development.
3. Further the plaintiffs' counsel had argued that the provisions of the Associated Gas Re-Injection Act (Continued Flaring of Gas Regulations 1984 and the Associated Gas Re-Injection (Amendment) Decree no 7 of 1985 which allow the continuation of gas flaring are inconsistent with the right to life (which includes the right to a healthy environment) guaranteed under the Constitution.³⁴

The defendants opposed the case on several grounds, including that those articles of the ACHPR do not create enforceable rights under the Nigerian Fundamental Rights Enforcement Procedure. However, they failed to follow up their arguments during the proceedings due to procedural issues.³⁵

The judge, therefore, proceeded to judgment bereft of any in-depth legal analysis. The court agreed with the plaintiff's counsel's argument on continuation of gas flaring and held as follows:

1. That the legislation permitting flaring of gas in Nigeria, with or without permission is inconsistent with the Nigerian Constitution and therefore unconstitutional. Therefore, the court directed the Attorney General of the Federation and Minister for Justice to take steps to amend relevant legislation governing gas flaring to bring them in line with the provision of the fundamental human rights under the Constitution.
2. That the constitutionally protected rights include rights to a clean, poison-free, pollution-free environment and that the actions of Shell in continuing to flare gas in the course of its oil exploration and production activities in the plaintiffs' community violated their right to life and/or the dignity of the human person under the Nigerian Constitution and the African Charter. Even though there is no apparent justifiable right to a 'clean, poison-free, pollution-free and healthy environment' under the Nigerian Constitution, the court relied on a cumulative use of constitutional provisions with the provisions of the African Charter (especially article 24) to recognize and apply a fundamental right to a "clean, poison-free, pollution-free and healthy environment."³⁶

The significance of this decision is that fundamental rights protection is held as an objective which other regulations must meet to be valid under the law. This clearly invalidates the discretion given by extant legislation to the government to permit gas flaring as it deems fit. The court consequently restrained Shell from further gas flaring in the plaintiffs' community. Regrettably, since after the

³¹ Fubara (n 33).

³² *Ibid.*

³³ Suit No. FHC/B/CS/53/05 (Federal High Court Nigeria, Benin Judicial Division Nov. 14, 2005) (Nigeria).

³⁴ Suit No. FHC/B/CS/53/05.

³⁵ *Ibid.*

³⁶ G Fortman, 'Adventurous Judgments: A Comparative Exploration into Human Rights as a Moral-Political Force in Judicial Law Development' [2006] (2) *Utrecht Law Review*; 18.

ruling in Gbemre, Shell and other multinational oil corporations have contemptuously continued to flare gas indiscriminately in the Niger Delta. However, Gbemre introduced a significant shift in the control of multinational oil corporations under Nigerian law as human rights provisions were relied on for the first time.

It is also significant to note that the provisions employed were not only constitutional provisions, but also provisions of the African Charter, which is wider. Unlike the procedural limitations that have for example attended to tort based claims,³⁷ the human rights approach enabled the court to grant an injunction to protect the rights considered to be fundamental and which should not be ignored on the balance of convenience test as in the case of injunction under tort law. The speedy conclusion of this case in less than a year demonstrated that cases brought using fundamental rights enforcement procedure rules are faster.³⁸ Furthermore, the decision also explicitly recognized the duty of non-state actors, that is, corporations *vis-à-vis* human rights which signals the possibility of the horizontal application of human rights provisions to corporations in Nigeria.

The linkage between the environment and human rights may be traced in two ways, either one looks at the existing international human rights law in order to examine whether it provides environmental rights, or one can study international environmental law and looks for human rights norms within it. There is no explicit right to environmental quality in the core international human rights instruments, that is, UDHR, ICCPR and ICESCR. However, ICESCR mentioned the issue of the environment in relation to hygiene.³⁹ Under Convention on the Rights of the Child (CRC) the issue of environment discussed in terms of prevention of disease and malnutrition. Article 24, paragraph 2 (c) of CRC requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution.

These references relating to the environment attached to a particular issue and do not recognize the human right to a quality environment.

However, regional human rights instruments such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights make explicit references to the environment. Article 24 African Charter on Human and Peoples' Rights recognizes that "all peoples have the right to a generally satisfactory environment favourable for their development." Similarly, Article 11 of the San Salvador Protocol to the ACHPR states that: "Everyone shall have the right to live in a healthy environment and to have access to basic public services; The States Parties shall promote the protection, preservation, and improvement of the environment." The human rights treaty bodies and regional human rights mechanisms have interpreted their respective human rights instruments in a manner that recognizes the environmental dimensions of protected rights.

The larger part of international environmental law is still belonging to the category of soft law. In the twenty years between the United Nations Conference on the Human Environment in 1972 and the U.N. Conference on Environment and Development, 1992 increasing attention has been paid to the impact of environmental problems on human rights. Even in 1972, the Stockholm Declaration stated the human right to "adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being".⁴⁰ Diego Quiroz clearly outlines that human rights have inconsistently appeared in the discourse of environment and development from the Stockholm Conference, 1972 onwards. The World Commission for Environment and Development defined "sustainable development" as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs." The Rio Declaration on Environment and Development, 1992 included the concepts of sustainable development and the rights of future generations to a healthy environment.⁴¹ It states that human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature.

³⁷J G Frynas, 'Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria' [1993] *Journal of African Law*, 121-50.

³⁸*Ibid.*

³⁹The ICESCR, art 7.

⁴⁰A/Conf.48/14, 1972

⁴¹A/Conf.151/5/rev.1, 1992

The World Summit on Sustainable Development in Johannesburg, 2002 focused on the concept of sustainable development was affirmed in the Johannesburg Declaration.⁴² The final outcome document of the Rio+20 Summit also reaffirmed the importance of the human rights, particularly the rights to health, food and safe drinking water. While most international human rights treaties do not make a specific reference to the environment, healthy environmental conditions is regarded as one of the necessary prerequisites for the enjoyment of human rights especially the rights to life⁴³ and health.⁴⁴

Besides these conferences some progress made in the form of resolutions, special reports and debate by human rights bodies and specialized agencies working in the area of environment and human rights in this regard. UNGA in its resolution in 1990 observed that environmental protection is indivisible from the achievement of full enjoyment of human rights by all.⁴⁵ One of the most encouraging steps in this direction has been the work in the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities. In 1994 the Special Rapporteur to the sub-commission proposed a set of draft principles providing for a stand-alone environmental right, described as the right “to a secure healthy and ecologically sound environment”.⁴⁶ In 2002, a Joint Expert Seminar was convened by the UN Commission on Human Rights inviting the High Commissioner for Human Rights and the Executive Director of UNEP which concluded that national and international developments reflect the growing interrelationship between approaches to guaranteeing human rights and environment protection.⁴⁷ It is also observed the role of environmental protection as a pre-condition for the effective enjoyment of human rights.⁴⁸ The United Nations Secretary-General’s 2005 report on the Relationship between Human Rights and the Environment concluded that ‘since the World Summit on Sustainable Development (2002), there has been growing recognition of the connection between environmental protection and human rights’.⁴⁹

Human rights concerns are also increasingly integrated into the mainstream of climate change texts.⁵⁰ The United Nations Human Rights Council has, in three separate resolutions,⁵¹ noted the threat of climate change to individuals and communities, and its implications on the enjoyment of human rights.⁵² The Office of the U.N. High Commissioner for Human Rights (OHCHR) examined the relationship between climate change and human rights, concluding in its report (2009) that climate change threatened the enjoyment of a broad array of human rights. Moreover, human rights law placed duties on states concerning climate change; including an obligation of international cooperation.⁵³

It is relevant to mention here that though the regional human rights instruments recognized the right to a healthy environment and the states’ obligation to protect, to preserve and improve the environment, it does not allow individual to file a petition in case the state is not fulfilling its obligations. Environmental harm can only be alleged by showing that it can cause severe human rights violation guaranteed under ACHR. In regard to the right to a healthy environment the role of regional human rights institutions and domestic courts is quite commendable. The right to a quality environment has been given content by regional human rights tribunals and national courts through the incorporation of environmental jurisprudence, law, principles and standards. Such bodies increasingly utilize environmental standards to adjudicate human rights claims related to the environment and to judge whether or not states have complied with their legal obligations.⁵⁴

In 1994, in the landmark case of *Lopez-Ostra v. Spain*, the European Court opened the door for the protection of human rights against nearly all sources of environmental pollution. The claim was related to the inactivity of the Lorca municipal authorities in respect of a nuisance caused by a waste treatment plant, which violated the right to privacy, home and family, under Article 8 of the European Convention on Human Rights. The Court decided that there was indeed a breach of Article 8 of the

⁴²A/CONF.199/20, 2002

⁴³Article 3 of UDHR; Article 6(1) ICCPR; Article 6 CRC

⁴⁴Article 25(1) of UDHR; Article 12(1) ICESCR; Article 24 CRC and Article 12 CEDAW

⁴⁵UNGA Res. 45/94, 1990

⁴⁶Human Rights and the Environment, 1994

⁴⁷Human Rights and the Environment, 2002

⁴⁸OHCHR, 2002

⁴⁹E/CN.4/2005/96, 2005

⁵⁰Malé Declaration, 2007 & Cancun Agreements, 2010

⁵¹7/23, 10/4, and 18/22

⁵²HRC Res. 7/23, 2008

⁵³A/HRC/10/61, 2009

⁵⁴Frynas (n 40).

Convention, stating that the article creates a positive duty of regulation and protection on the part of the State, so that state tolerance of environmentally noxious activities may constitute a breach. Again in *Diego Cali & Figli Srl v. Servizi Ecologici Porto Di Genova SpA (SEPG)*, the European Court of Justice states that the prevention of pollution serves the interests of not only current, but also future generations, and remarkably makes reference to Principle 3 of the Rio Declaration and to the report of the WCED.⁵⁵

4) Cross Border Appraisal of Environmental Degradation.

a. Environmental Degradation in the United Kingdom

Environmental issues are harmful effects of human activity on the biophysical environment. For the past decade, the state of the environment in the UK has significantly deteriorated both in urban and rural areas. With a population of almost 67 million, such a highly populated and technologically advanced nation grows the environmental suffers. According to the UK NEA, grazing air pollution and the forces of climate change have significantly affected the mountainous regions of the UK.⁵⁶ Due to climate change; rising seawater temperatures and exploitation of marine resources led to a serious loss of quality in UK marine ecosystems.⁵⁷ Air pollution, climate change, litter, waste, and soil contamination are all a part of the human activity that create these environmental issues in the UK.

Gases that lead to air pollution include carbon, nitrogen and sulfur oxides. While some of these gases occur naturally, like carbon dioxide in the expulsion of air from the lungs, the serious polluters come from the burning of fossil fuels: coal, oil and natural gas. Poisonous gases are being released in the air through smoke released by factories and chemical industries.

Air pollution is known as a mixture of natural and man-made substances in the air we breathe. Some examples of natural substances that contribute to air pollution in the UK are dust and pollen while examples of man-made substances contributing to the problem are gases that come from cars and truck exhaust. Additionally, air pollution is the cause of 10% of all deaths in the United Kingdom coming only second after China with 17%,⁵⁸ this is a startling statistic considering China's population is much larger than the UK. Individuals with heart and lung disease are most affected by air pollution, but exposure has also been linked to stroke, diabetes, obesity and dementia.¹²¹ It has been reported in multiple headlines that air pollution kills 29,000 people a year in the United Kingdom.⁵⁹ These statistics show just how dangerous and deadly air pollution is and also how much it can affect and contribute to other serious health problems amongst people. According to Stern, the flooding and storms in UK in 2014 were clear signs of climate change. He said weather is part of international pattern and demonstrates urgent need to cut carbon emissions.⁶⁰

Climate change occurs when the Earth's climate system changes, resulting in new weather patterns for an extended period of time. Climate change has a profound effect on both marine and terrestrial biodiversity. In the waters of the United Kingdom, climate and ocean changes can also affect and have a major impact on threatened species by influencing the efficacy of measures designed to protect them.⁶¹ Greenhouse gas emissions are also a known reason for some of the major advancements in global climate change over the years. Waterfront cities, which make up the majority of the United Kingdom, are reported to have a great challenge ahead of them in terms of resilience to climate change.⁶² This is resulting in existing cities such as these waterfront cities to be regenerated and improved to better deal with the impacts of climate change. Littering is the act of improperly disposing of any kind of waste material, littering in the United Kingdom is an especially significant problem. The Marine Conservation Society (MCS) revealed that its annual beach litter report has shown a rising trend in garbage on United Kingdom shores over 20 years,⁶³ so they conclude that there clearly isn't enough being done by the UK government in trying to decrease this problem. The latest results from Great British Beach Clean event show that plastic pieces are the most frequently found items on United Kingdom beaches, not only that but the results

⁵⁵Frynas (n 40).

⁵⁶*Ibid*

⁵⁷*Ibid*

⁵⁸Frynas(n 40)

⁵⁹*Ibid*

⁶⁰*Ibid*

⁶¹*Ibid.*

⁶² *Ibid.*

⁶³Frynas(n 40)

show that plastic accounted for over 50% of all the litter that was recorded.^{64 [7]} In addition to this, litter in UK oceans have been widely affecting the marine life. Littering is such a serious concern with oceans because it destroys the habitat of the marine life and is the reason of fatal consequences for countless sea creatures. The Scottish government has acknowledged littering as a serious problem in their oceans and have begun a process to advance strategies that will work to prevent harm to the marine life and the environment.⁶⁵

Waste is a natural part of the life cycle; waste occurs when any organism returns substances to the environment. Humans produce an excessive amount of waste material residue that overloads the capacity of natural recycling processes. Composting is an important element in sustainable waste management for the UK and could potentially have a vital role to play in meeting the obligations of the Landfill Directive. Currently the UK landfills 27,000,000 tonnes a year of municipal solid waste with 60% turning out to be biodegradable.⁶⁶ The amount of biodegradable material in landfills will be greatly reduced by composting, with the effect that less landfill gas and leachate will be produced. Although not all biodegradable material is suitable for composting, it is a start in getting waste management under control in the UK. Damage to the environment due to poor waste management is something that can be avoided by implementing techniques through the principle of best practicable environment option (BPEO).^{67 [10]} Waste minimization, re-use, recycling, and recovery techniques are all ways to reduce the need for landfill sites within this principle.⁶⁸ Recycling/reuse together with composting have become the dominant methods of waste management in the UK, accounting for 42.2% of the total MSW.⁶⁹ In 2012, 13.1 million tonnes of MSW was composted or recycled in the United Kingdom, which represented an increase of 27.3% since 2002.⁷⁰

Soil contamination is a part of land degradation that is caused by the presence of chemicals and this contamination is incredibly dangerous for humans. Soil contamination in the United Kingdom has been an ongoing issue in some regions and is not only recently developing, the Soil contamination, like littering, is caused by improper disposal of waste materials. Furthermore, there have been reports of multi-element contamination of soils and plants in parts of England that have been formerly known as mining areas,⁷¹ which leads to compromising soil matter.

b. Environmental Degradation in the United States of America

Environmental issues in the United States include climate change, energy, species conservation, invasive species, deforestation, mining, nuclear accidents, pesticides, pollution, waste and over-population. Despite taking hundreds of measures, the rate of environmental issues is increasing rapidly instead of reducing.

Both Conservationism and Environmentalism appeared in political debates during the Progressive Era in the early 20th century. There were three main positions. The laissez-faire position held that owners of private property including lumber and mining companies, should be allowed to do anything they wished for their property.⁷²

The Conservationists, led by President Theodore Roosevelt and his close ally Gifford Pinchot, said that the laissez-faire approach was too wasteful and inefficient. In any case, they noted, most of the natural resources in the western states were already owned by the federal government. The best course of action, they argued, was a long-term plan devised by national experts to maximize the long-term economic benefits of natural resources.

Environmentalism was the third position, led by John Muir (1838–1914). Muir's passion for nature made him the most influential American environmentalist. Muir preached that nature was sacred and humans are intruders who should look but not develop. He founded the Sierra Club and remains an icon of the environmentalist movement. He was primarily responsible for defining the environmentalist position, in the debate between Conservation and environmentalism.

Environmentalism preached that nature was almost sacred, and that man was an intruder. It allowed for limited tourism (such as hiking), but opposed automobiles in national parks. It strenuously opposed timber cutting on most public lands, and vehemently denounced the dams that Roosevelt

⁶⁴ *Ibid*

⁶⁵ *Ibid*

⁶⁶ *Ibid*.

⁶⁷ *Ibid*.

⁶⁸ *bid*.

⁶⁹ Frynas (n 40).

⁷⁰ *Ibid*.

⁷¹ Frynas (n 40).

⁷² *Ibid*

supported for water supplies, electricity and flood control. Especially controversial was the Hetch Hetchy dam in Yosemite National Park, which Roosevelt approved, and which supplies the water supply of San Francisco.

The United States is the second largest emitter, after China, of carbon dioxide from the burning of fossil fuels.⁷³ The energy policy of the United States is widely debated; many call on the country to take a leading role in fighting global warming.⁷⁴ The U.S. is one of only three countries that has not signed up to the Kyoto Protocol.

Since about 26% of all types of energy used in the United States are derived from fossil fuel consumption it is closely linked to greenhouse gas emissions. The energy policy of the United States is determined by federal, state and local public entities, which address issues of energy production, distribution, and consumption, such as building codes and gas mileage advancements. The production and transport of fossil fuels are also tied to significant environmental issues.

Many plant and animal species became extinct in North America soon after first human arrival, including the North American megafauna; others have become nearly extinct since European settlement, among them the American bison and California condor.⁷⁵

The last of the passenger pigeons died in 1914 after being the most common bird in North America. They were killed as both a source of food and because they were a threat to farming. Saving the bald eagle, the national bird of the U.S., from extinction was a notable conservation success. As of 13 December, 2016, the International Union for the Conservation of Nature's Red List shows the United States has 1,514 species on its Threatened list (Critically Endangered, Endangered and Vulnerable categories).

As a nation, Americans generate more waste than any other nation in the world, officially with 4.4 pounds (2.0 kg) of municipal solid waste (MSW) per person per day,⁷⁶ with another study estimating 7.1 pounds (3.2 kg) per capita per day.⁷⁷ Fifty five percent of this waste is contributed as residential garbage, while the remaining forty five percent of waste in the U.S. 'waste stream' comes from manufacturing, retailing, and commercial trade in the U.S. economy.⁷⁸ Based on proprietary data released to the public, Nevada was named America's "Most Wasteful State" for the years 2005-2010; where each resident threw away over 14 pounds of non-recycled, reused items, often ending up into landfills and incinerators per day, eight pounds over the national state daily throwaway average. "Wasteful" states Michigan, New Mexico, Wisconsin and Oregon as well as Washington also dominated the list's 5-year period.⁷⁹

Electronic waste have become an ever-growing problem in the United States. Each year, over 3.2 million tons of electronic waste is put in US landfills.⁸⁰ A large portion of this electronic waste is computers, monitors, and televisions. Over 100 million computers, monitors, and televisions are disposed of yearly in the U.S.⁸¹ although there is an enormous amount of electronic waste in the United States, the Environmental Protection Agency found that in 2009 approximately only about 25% of all electronic waste is recycled in the United States.⁸² About 70% of metals that are found in the United States landfills come from electronic devices.⁸³ The disposal of all this electronic waste has a detrimental effect on the environment, as well as the global economy.

Electronic waste has become serious issue for the environmental stability in the United States. Over the years, the government has become increasingly more involved in this issue. As described in the U.S. Environmental Protection Agency Office of Resource Conservation and Recovery report of 2009, after the electronic products are purchased and used, they are separated into two groups. One group of electronics is collected for recycling, while the other is disposal. After this, the products that are disposal mainly are put into landfills, and the rest of electronics that were collected for recycling are either refurbished, reused, or used for material.⁸⁴

⁷³Frynas (n 40).

⁷⁴*Ibid.*

⁷⁵Frynas (n 40).

⁷⁶[EPA Fact Sheet, 2012](#)

⁷⁷E Humes, 'Garbology: Our Dirty Love Affair with Trash'. Available at <https://www.reuters.com/article/2008/05/29/idUS108659+29-May-2008+PRN20080529> March 2008, Cashing in on Climate Change, IBISWorld> accessed December 4 2019.

⁷⁸*Ibid.*

⁷⁹E Humes (n 80).

⁸⁰*Ibid.*

⁸¹*Ibid.*

⁸²*ibid.*

⁸³*Ibid.*

⁸⁴*Ibid.*

Hans talks about the detrimental effect the waste has on the environment. Nearly 20% of all waste in the United States is being incinerated, while the rest of it is being put into landfills.⁸⁵ That leaves almost 80% of the waste consumed in the United States being placed into landfills. Out of this 80% of the waste, the majority of this waste is primarily electronic.

From fluorescent light bulbs to common household batteries, every piece of electronic waste that is found in landfills contains some kind of metal. One of the most commonly used metals in electronic waste is lead.⁸⁶ Lead is found in most batteries, in the form of lead-acid, and it is also found in CRTs (cathode ray tube). These tubes are primarily used in television screens, as well as computer monitors. Since so many televisions, computer monitors, and batteries are placed into landfills that means that most landfills have a large amount of lead in them, which is dangerous to the local environment. This is because the lead, like most hazardous materials that are in landfills, can be absorbed into the soil and ground water.⁸⁷ Being exposed to a high level of lead can cause various health issues such as blood and brain disorders, comas, and in serious cases even death.⁸⁸ Lead is not the only hazardous metal in U.S. landfills. For example, mercury, beryllium, and chromium are just some of the other metals that are in our landfills that are extremely hazardous to the environment, as well as to human health.

Today, the organized environmental movement is represented by a wide range of organizations sometimes called non-governmental organizations or NGOs. These organizations exist on local national and international scales. Environmental NGOs vary widely in political views and in the amount they seek to influence the government. The environmental movement today consists of both large national groups and also many smaller local groups with local concerns. Some resemble the old U.S. conservation movement - whose modern expression is the Nature Conservancy, Audubon Society and National Geographic Society - American organizations with a worldwide influence.⁸⁹

5) Challenges on the Enforcement of Laws against Environmental Degradation

The number of environmental laws has increased 38-fold globally since the Stockholm declaration on the human environment in 1972 but there has been lack of political will to implement these laws due to the potential impact on livelihoods, lands, properties, and profits, according to a report by the United Nations Environment Programme.⁹⁰

As the first-ever assessment of the global environmental rule of law, the report highlights the vast gaps between legislation and implementation for environmental laws and agencies: under resourced; lacking enforcement methods; poorly coordinated; hamstrung by a lack of data; and deprioritized against economic gain. This lack of political will has been a major obstacle in the mitigation of climate change, the reduction of pollution, and the prevention of widespread species and habitat loss, the report claims.

This association between environmental rule of law and the SDGs is a critical part of the report's communication, Kreilhuber explained, since environmental law is often seen as "soft" law, and less important than other fields.

Public and community groups need to be seen as critical stakeholders in environmental protection, with institutions and lawmakers engaging with them early and effectively to build trust, the report says. This involves publishing information, including open data on environmental indicators, and reports on decision-making for increased transparency. Proper resourcing is also crucial.

Carl Bruch, director of international programs at the Environmental Law Institute and an author of the report, told Devex that differing views on how best to implement laws and monitor their effectiveness were expressed during consultations with member countries, with the final report highlighting some of the key approaches. But he said there is widespread agreement from countries on the need to improve existing laws and implementation. That will be important moving forward in sustaining enforcement action over time and demonstrating governments' commitment to environmental goals.

For U.N. member countries, framing environmental law as part of human rights was a contentious issue in developing the report.

⁸⁵T Hans, *The Waste Crisis* (Oxford University Press 1999) 279.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹E Humes(n 80).

⁹⁰ *Ibid.*

“In discussions on effective governance, rights related to the environment were of great positive interest to some countries and other countries weren’t so excited about it — they would prefer to have a technocratic and administrative approach over a rights-based approach,” Bruch explained.

But the link with human rights — including the right to water, health, and life — was found to be important in enabling environmental law to support sustainable development and environmental protection for all, including disadvantaged groups such as indigenous populations. Similarly, a lack of respect for rights could undermine environmental law.

U.N. special rapporteur for the rights of indigenous peoples, Victoria Tauli-Corpuz, told Devex that the report was a critical source of evidence, highlighting the challenges indigenous people face in accessing environmental systems; conflicts between customary and other types of law; and the environmental benefit indigenous land management can bring.

“Indigenous people have always pushed strongly,” she said. “The release of this report can enable indigenous peoples to further strengthen their assertions for the right to be recognized. The crisis we are facing will worsen, but they can use the report to show that if there is greater respect for rights there will be impact on biodiversity, erosion and other environmental challenges we need to address.”

Some clothing brands have been criticized for subjecting their workers to sweatshop labor. Now, a new map aims to spotlight their environmental impacts too. Moving forward, there will be a need for a regular global assessment of the environmental rule of law and to track progress both nationally and globally using consistent indicators, the report suggests.

The report proposes an indicator framework to assess and monitor the implementation of environmental law, acting as a launching point for heightened engagement with governments worldwide. But it is a proposal that U.N. member states have been quiet on so far.

Countries will need to agree on the indicators and data collection methodology to support work to move forward — and governments must be willing to be held accountable for implementing the legislation they have enacted.

6) The Role of Human Rights in Environmental Protection

Environmental protection and human rights are interrelated, interconnected, and mutually responsive as both of them intended to the well-being of humanity. Safe and healthy environment is the pre-condition for the enjoyment of fundamental human rights. The linkage between these two approaches has recognized in various international and regional instruments, resolutions of the UN subsidiary organization, the outcome documents of international conferences, and the judicial pronouncement of tribunals, which consider the human rights framework as an effective means to achieving the ends of environment protection. Despite the evident relationship between these two, human rights violations and environmental degradation have been treated by most organizations, governments and even academia as unrelated issues. Environmentalists have tended to focus primarily on natural resource preservation without addressing human impacts of environmental abuse. A state of natural imbalance has been developed by many human-centric activities such as the industrialization, urbanization and the large scale exploitation of natural resources damaging the environment led to many serious repercussions on a large scale including Global Warming, drought, flood, environmental Refugees and migration, health issue, Ozone Depletion. Such issues involve not only environmental factors but other factors as well, that is, political, social, economic factors which requires the integration of both approaches to tackle the issues more holistically. The result of looking these two approaches separately is that the victims of environmental degradation are unprotected by the laws and mechanisms established to address human rights abuses.

Linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its center. Articulating the fundamental rights of peoples with respect to the environment creates the opportunity to secure those rights through human rights bodies in an international forum as well as the national tribunals. In this regard, the contribution made by the Indian judiciary for the protection of environment and to provide remedies to the victim of environmental harm by applying the right based approach to environmental protection is a clear example of how the framework of human rights can contribute in the protection of environment and the very existence of the humanity. The concept of sustainable development is very well served to interlink these approaches as it comprising three interrelated dimensions: environmental, economic and social. The present study is intended to describe the interlink between environmental protection and human rights approaches by analyzing instruments, initiatives taken by environmental and human rights bodies and the judicial pronouncement of various tribunals. Further it also evaluates how far the mechanism of human rights is helpful to provide remedies to the victim of environmental degradation and to provide better protection to the global environment.

Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. This relationship is increasingly recognized, as the right to a healthy environment is enshrined in over 100 constitutions. Despite this, at least three people a week are killed protecting our environmental rights - while many more are harassed, intimidated, criminalized and forced from their lands. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve substantial rights).

Substantive are those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of *civil and political rights*, such as the rights to life, freedom of association and freedom from discrimination; *economic and social rights* such as rights to health, food and an adequate standard of living; *cultural rights* such as rights to access religious sites; and *collective rights* affected by environmental degradation, such as the rights of indigenous peoples.

Procedural rights prescribe formal steps to be taken in enforcing legal rights. Procedural rights include rights to access information, participate in decision-making, and access justice.

CONCLUSION

It is beyond doubt that the activities of man and multinational oil companies have done serious damage to the environment. There are multiplicity of human rights abuse, loss of means of livelihood and aquatic lives, and environmental pollution. These no doubt constitute gross violation of both human and environmental rights. There is no respect for the human rights norm that ensure environmental protection.

The state of the environment has raised serious concerns in the world over. Hence, environmental issues are now given top priority as environmental rights protection has gained momentum across the globe. About 90 nations have expressly incorporated issues bordering on environmental protection into human rights norms.

RECOMMENDATION

In view of the forgoing, this paper recommends: that the provision on environment in the 1999 Constitution of Nigeria should be amended to make it enforceable as human rights. There is a need to have a comprehensive and an integrated law on environmental protection for meaningful enforcement. Similarly, there is a need for the three arms of government and the citizens to work in concert to ensure that laws protecting the environment are enforced. And there is a need for regular and periodic sensitizations of people about the environment they live. Environmental awareness programme should be carried in all parts of the country including rural areas from time to time for protection of the environment.