

## A CRITICAL DISCURSIVE APPRAISAL OF ENVIRONMENTAL LAWS IN NIGERIA AND THE REALITY OF OIL SPILLAGE IN Ogoniland

### UMA AVALIAÇÃO CRÍTICA DISCURSIVA DAS LEIS AMBIENTAIS NA NIGÉRIA E A REALIDADE DO DERRAMAMENTO DE PETRÓLEO EM Ogoniland

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#### Abstract

The Niger Delta issue has been examined from diverse dimensions ranging from ecolinguistics, stylistics, discourse analysis, semantics and economic implications of vandalism and environmental despoliation in the region. As a result of the outcry emanating from government abandonment of the region, several environmental laws have been enacted to safeguard not just the Niger Delta region of Nigeria but also the entire Nigerian landscape. Since the discovery of oil in Oloibiri, the present Bayelsa state in 1956; oil exploration and production in the Niger Delta began in the late 1950s, operations were suspended in Ogoniland in the early 1990s due to disruptions from local public unrest. The oilfields and installations have since largely remained dormant. However, major oil pipelines still cross through Ogoniland and oil spills continue to affect the region, due to a lack of maintenance and vandalism to oil infrastructure and facilities. The policies guiding the Nigerian environment, and oil and gas production is enormous. Nigeria is a signatory to innumerable international agreements and conventions related to environmental sustainability, climate change, the health and safety of its citizens, and the protection of marine waters, fish, and livelihood structures. The regulations aim to reduce the dangers emanating from industrial activities and safeguard the surroundings and well-being. This article sets out

#### Resumo

*A questão do Delta do Níger tem sido analisada sob diversas perspectivas, desde a ecolinguística, a estilística, a análise do discurso, a semântica e as implicações econômicas do vandalismo e da destruição ambiental na região. Como resultado do clamor causado pelo abandono da região por parte do governo, várias leis ambientais foram promulgadas para proteger não apenas a região do Delta do Níger, na Nigéria, mas também todo o território nigeriano. Desde a descoberta de petróleo em Oloibiri, no atual estado de Bayelsa, em 1956, a exploração e produção de petróleo no delta do Níger começou no final da década de 1950, mas as operações foram suspensas em Ogoniland no início da década de 1990 devido a perturbações causadas por agitação pública local. Desde então, os campos petrolíferos e as instalações permaneceram em grande parte inativos. No entanto, grandes oleodutos ainda atravessam Ogoniland e derramamentos de petróleo continuam a afetar a região, devido à falta de manutenção e ao vandalismo das infraestruturas e instalações petrolíferas. As políticas que orientam o ambiente nigeriano e a produção de petróleo e gás são enormes. A Nigéria é signatária de inúmeros acordos e convenções internacionais relacionados com a sustentabilidade ambiental, as alterações climáticas, a saúde e a segurança dos seus cidadãos e a proteção das águas*



to review, appraise and critically examine the existing laws guiding environmental despoliation in the Niger Delta region viz-a-viz the literature that exists on the reality of environmental degradation in Nigeria.

**Keywords:** Critical Discourse. Environment Laws. Oil Spillage. Ogoni. Niger Delta.

*marinhas, dos peixes e das estruturas de subsistência. Os regulamentos visam reduzir os perigos decorrentes das atividades industriais e salvar o meio ambiente e o bem-estar. Este artigo tem como objetivo revisar, avaliar e examinar criticamente as leis existentes que orientam a destruição ambiental na região do Delta do Níger, em comparação com a literatura existente sobre a realidade da degradação ambiental na Nigéria.*

**Palavras-chave:** Discurso Crítico. Leis Ambientais. Derramamento de Petróleo. Ogoni. Delta do Níger.

## 1 INTRODUCTION

The Oloibiri Oilfield was discovered in 1956 by Shell Darcy, and it was the first commercial oil discovery in Nigeria; thus, ending fifty years of unsuccessful oil exploration in the country by various international oil companies and launching Nigeria into the limelight of the Petro-State. As a result of that discovery in large quantity, Shell stepped up exploration in the Niger Delta, and by 1958 Shell Darcy had discovered oil in twelve areas in the Niger Delta of which Oloibiri, Afam, and Bomu was the most promising.

With over two million residents in the Niger Delta community, their running battles with oil spill and its attendant environmental consequences have negatively affected Ogoni land.<sup>1</sup> According to records, four years before Nigerian Independence, Royal Dutch/Shell, in collaboration with the British government, found a commercially viable oil field in the Niger Delta and began oil production in 1958. In 15 years from 1976 to 1991, there were reportedly 2,976 oil spills of about 2.1 million barrels of oil in Ogoni land, accounting for about 40 percent of the total oil spills of the Royal Dutch/Shell company worldwide. In Ogoni, virtually all the oil wells operated by multinational companies commonly experience spillage. The oil wells, pipelines, and other facilities like manifolds routinely spill crude petroleum substances on a large scale and at disturbing frequencies.<sup>2</sup> The ownership of these wells, pipelines, and related facilities is

<sup>1</sup> O.T. Badejo and P.C. Nwilo (2019)

<sup>2</sup> Vidal, John (2010-05-30). "Nigeria's agony dwarfs the Gulf oil spill. The US and Europe ignore it". The Observer. Retrieved 27 July 2010. government's National Oil Spill Detection and Response Agency (Nosdra) says that between 1976 and 1996 alone, more than 2.4m barrels

generally spread among Shell Petroleum Development Company, (SPDC), the Petroleum Pipelines Marketing Company, (PPMC), the Nigeria National Petroleum Corporation, (NNPC), and the Department of Petroleum Resources, (DPR). Often, the incidents of spillage are traced to sabotage or equipment failure.

From close observations so far, one can say that the Niger Delta is one of the world's largest wetlands, and the largest in Africa. This assertion is because it incorporates over 20,000 square kilometres with a vast floodplain built up by the accumulation of centuries of silt washed down the Niger and Benue Rivers, composed of four main ecological zones—coastal barrier islands, mangroves, freshwater swamp forests, and lowland rainforests—whose boundaries vary according to the patterns of seasonal flooding.<sup>3</sup> The mangrove forest of Nigeria is the third largest in the world and the largest in Africa; over 60 percent of this mangrove, or 6,000 square kilometres, is found in the Niger Delta. The freshwater swamp forests of the delta reach 11,700 square kilometres and are the most extensive in West and Central Africa.

Since the commencement of oil production in the region, there have been complaints of oil spillage leading to the destruction of farmlands, pollution of water, and the destruction of aquatic life in the Niger Delta. There has also been an outcry from the people of the region, well-meaning Nigerians, and environmentalists on the need to preserve the region's environment by ensuring that the production of oil does not lead to the extermination of lives in the region.<sup>4</sup>

However, response to oil spills has been marked by corruption, lack of effective communication, power struggles, and an almost total failure to adequately remedy oil spills by cleaning and restoring the environment and compensating those harmed. Decades of this failed response have bred resentment and distrust among oil-affected communities, increasing militancy and black-market oil trade as a last resort path to wealth-sharing and further complicating the possibility of a successful remediation and long-term peace. On the other hand, oil companies report that they struggle with sabotage and theft of oil, difficulties accessing spill sites, and complicated community dynamics that contribute to spills and confuse and undermine remediation efforts.<sup>5</sup> Considering the

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<sup>3</sup> The Guardian, 29 May 2010 "Nigeria's agony dwarfs the Gulf oil spill. The US and Europe ignore it,"

<sup>4</sup> G.S Ogbodo., "National Environmental Standards and Regulations Enforcement Agency (NESREA) A Review", *Journal of private and property law University of Benin Law* vol 11 No.1&2, pp. 144.2008

<sup>5</sup> G.S Ogbodo. "The Role of the Nigerian Judiciary in the Environmental protection against Oil pollution is it active enough" *Journal University of Benin Law* vol. 11, No. 1 & 2, pp. 253. 2008.

geographical location of the Niger Delta and the circumstances surrounding the production of oil therefore, it would be imperative to ensure that effective laws are formulated to safeguard the people and the environment as well.

## **2 RESEARCH METHOD**

In this study, we adopt a tripartite methodological approach which involves a three-pronged tactic in describing, interpreting, and analyzing the issues involved in the research. The first method is the non-doctrinal method, also known as socio-legal research that considers how the law and the legal institution shape and mold society by adopting methods from other disciplines to generate empirical data to answer relevant questions. The second method is the Spill Prevention Response (SPR) approach which focuses on the implementation process of the various resolutions by the operating companies in the region towards ensuring that oil spill is either stopped or reduced to the barest minimum. Here, we focus on the multi-agency efforts towards curbing the spill and how the efforts have yielded results or otherwise failed. The multi-agency approach will give us a robust understanding of how holistic the approach has been and what results have been achieved.

The third and last approach is the bio-remediation approach in ensuring the preservation of the environment for the survival of the living organisms in the area. Bioremediation is a useful tool in removing spilled oil under certain geographic and climatic conditions. ‘It is a proven alternative treatment tool that can be used to treat certain aerobic oil-contaminated environments. Typically, it is used as a polishing step after conventional mechanical cleanup options have been applied. It is a relatively slow process, requiring weeks to months to effect cleanup. If done properly, it can be very cost-effective, although an in-depth economic analysis has not been conducted to date. It has the advantage that the toxic hydrocarbon compounds are destroyed rather than simply moved to another environment’.

### 3 ISSUES OF ENVIRONMENTAL DEGRADATION IN THE NIGER DELTA

One can say categorically that environmental despoliation in the Niger Delta region is mostly caused by the prevalence of oil in the area. The abundant natural resources have become a form of curse rather than a blessing to the people of the Niger Delta region.<sup>6</sup> The region that is a shelter to about twenty million people and about forty ethnic groups is constantly in the news for the wrong reasons. Every year, there are reported cases of oil spillage because of the activities of multinational oil corporations resulting from environmental destruction, gas flaring, bush burning, and other sundry causes from the oil industry.

The advent of oil production in the region has had negative effects on the environment and the people at large because of the oil spillage that has continuously affected the area even before the days of independence of Nigeria in 1960.<sup>7</sup> The region has the largest concentration of biodiversity which if effectively utilized can turn around the fortunes of the people and the entire Nigerian state. Unfortunately, the mismanagement of natural resources has left the region in a very terrible state thus turning the region into one of the most polluted environments in the history of humanity.<sup>8</sup> This has constantly resulted from the heavy contamination of the land, sea, air, and other paraphilia of the region including the flora and the fauna. As a result, there have been constant agitations from the people resulting in the formation of deadly cult gangs that claim their mandate is to call the attention of the government to the state of devastation of the land.

It has been roughly estimated that while the European Union, UN has had the experience of ten (10) oil spills in the past forty years, Nigeria has experienced 9,343 cases in the past ten years thus demonstrating the level of environmental despoliation in the area and the carelessness of the Nigerian government towards the preservation of the ecosystem in the region and by extension the entire country. In 1983, the Nigerian National Petroleum Corporation reported a frightening case of the destruction of human,

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<sup>6</sup> *Constitution of the Federal Republic of Nigeria*, (1999) Section 33(1) and (2005) unreported suit no. FH C/B/CS/53/05

<sup>7</sup> Olujobi, et al. "Oil Spillage in Nigeria's Upstream Petroleum Sector: Beyond the Legal Framework" *International Journal. Energy Economics and Policy*. vol 1. No. 92018.

<sup>8</sup> I. Stewart. And U. S. Uduall, Politician and constraints. The quotation apathy depicts the situation in the Niger Delta.

aquatic, and natural lives in the Niger Delta area. According to the report: <sup>9</sup>*We witnessed the slow poisoning of the waters of this country and the destruction of vegetation agricultural land and good water sources by oil spills that occur during petroleum operations. But since the inception of the oil industry in Nigeria, more than fifty years ago, there has been no concerned and effective effort on the part of the government, let alone the oil operators, to control environmental problems associated with the industry.*<sup>10</sup>

This alarming report has not been given any meaningful attention required to ensure the safety of human, natural, and aquatic lives. The activities have rather persisted for quite a while and the destruction seems not to have any solution in sight despite the various laws that have been “formulated” to curb the excesses of the oil magnets.

The aftermath of the above activities has culminated in the loss of the financial fortunes of the country and the gradual extermination of lives in the region. Unfortunately, the burden of the cost of environmental degradation is born by the locals through polluted water, infertility of the farming land, and the loss of biodiversity in the region. There is the possibility that soon if there is no effective legal framework to checkmate the excesses of these oil magnets, there might be no lives and means of livelihood in the region.

While there is the consistent outcry of experts on the need to ensure a habitable environment for the people of the Niger Delta region, the NNPC has consistently focused on the financial loss rather than the implications of the oil spill and the aftermath of such activities on the lives of the people.<sup>11</sup> According to media reports, “A catastrophic spill occurred on May 1, 2010, at an ExxonMobil offshore oil platform approximately 35 to 45 kilometres (20 to 25 nautical miles) from shore. The rupture spewed more than 3.8 megalitres (1 million US gallons) of crude into the Delta. Because the spill occurred just 10 days after the Deepwater Horizon oil spill in the Gulf of Mexico, people affected by repeated spills in the Niger Delta noted “massive differences”<sup>12</sup> in the international response to these disasters and the relative lack of media coverage for such events in Nigeria”.

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<sup>9</sup> Reuters: Nigeria's Oil Spills Agency Investigates Shell Pipeline Leak Report January 20, 2024

<sup>10</sup> R. Jones Shell is responsible and should be held accountable for the environmental despoliation in Niger Delta. <https://www.awid.org/news/oil-giant-shell-held-responsible-environmental-pollution-small-victory-women?in-the-Niger-delta>. [Accessed June 14, 2024]

<sup>11</sup> R. Jones “Oil giant shell is held responsible for environmental pollution”

<sup>12</sup> R. Jones (2013 March 29) Shell and the Niger Delta environment: Issues arising.

This negligence led to the formation of deadly gangs that threatened the production of oil in the region for years before the granting of amnesty to the militants by President Musa Yaradua in 2009.<sup>13</sup> A programme that had a three-pronged methodological framework: Disarmament: Repentant militants from the Niger Delta voluntarily surrendered their weapons to the Federal Government in 2009. Arms and ammunition from over 29, 000 ex-militants were recovered. Demobilization: Essential information on the background and stations of the disarmed ex-militants was collected. They were then counselled, trained, and documented and they were enrolled in the Programme. Reintegration: It is our mandate to reintegrate beneficiaries fully into society after training and empowering them to the status of entrepreneurs and/or employable citizens who will become net contributors to the economy of the Niger Delta region.

### 3.1 TIMELINES (TABLE)

Below is a presentation of the templates for both timelines and datelines for oil spillage in the Niger Delta as reported in the media:

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<sup>13</sup> In a bid to curb attacks on foreign oil companies, Nigeria's President Umaru Yar'Adua grants amnesty to fighters in the country's volatile Niger Delta if they lay down their arms and cease militant activity. <https://www.france24.com/en/20090625-president-offers-amnesty-niger-delta-militants-25/06/2009> - Retrieved 09/09/2024

**Table 1**

*Templates for both timelines and datelines for oil spillage in the Niger Delta as reported in the media*

**NIGERIA****Multiple oil spills in the Niger Delta region**

Oil was first discovered in commercial quantities in 1956 in Nigeria, and there have been multiple oil spills in the Niger Delta since then. In the last ten years, there have been 9,828 episodes documented, according to the government's spill detection agency.

Year	No of Spills	Major Spills	Spills with no Estimate	Spills with no JIV*
2011	1059	2	359	218
2012	1135	4	391	179
2013	1666	1	762	450
2014	1521	8	540	284
2015	920	4	268	158
2016	684	5	173	129
2017	599	6	178	73
2018	699	0	154	104
2019	723	5	192	70
2020	440	0	90	35
2021	382	2	122	33

\*Join Investigation Limit



Source: nosdra.oilspillmonitor.ng

**Table 2**

*Dateline of Oil Spillage in Niger Delta*

S/no	Year	Oil Event
1	1958	Oil is discovered in commercial quantity in Ogoniland. Shell commences operations
2	1970	An oil spill, possibly the first documented one, occurs in the Boobanabe community as a result of a fire at Shell's Bomu oil well
3	1990	Ogoni leaders, including environmental activist Ken Saro-Wiwa, formed the Movement for the Survival of the Ogoni People (MOSOP), a non-partisan organization to stop the exploitation of the Ogoni by oil companies and the government.
4	1993	Due to increasing local and international protests, Shell suspends production in Ogoniland. It hasn't pumped oil from most of its wells since, but its pipelines still run through Ogoniland, leaking oil.
5	Jan. 4, 1993	About 300,000 Ogoni people protest peacefully against Shell and oil pollution. Later that year, Shell requested military support to build a pipeline through Ogoniland.
6	Nov. 10, 1995	Despite international appeals for clemency, Nigeria's military government executes Ken Saro-Wiwa and eight other Ogoni human rights activists on charges of murder of four Ogoni elders.
7	April 26, 2001	A spill occurs in the Yorla community that lasts till May 7, 2001. It triggers a fire that consumes crops of commercial foods and medicinal herbs.
8	February 2003	An explosion at Shell's abandoned Yorla oil field causes another major oil spill.

9	April 2006	Ogoni people report an oil spill from a damaged pipeline owned by Shell.
10	August 28, 2008	The first of two massive oil spills occur in the Bodo community due to a fault in the Trans-Niger Pipeline. The leak goes on for at least four weeks. Shell says 1,640 barrels of oil were spilled but experts estimate the leak to be nearly three times that – as much as 4,000 barrels.
11	December 7, 2008	A second spill occurs in the Bodo community.
12	February 2009	Ten weeks after the second Bodo spill, between February 19 and 21, Nigeria's NOSDRA, Shell, and the Bodo community went on a joint investigation visit. Afterward, Shell said the spill was caused by equipment failure due to natural corrosion.
13	April 12 2009	Fire and a spill at the Bomu manifold cause oil to flow into the swamp. The manifold is a junction where several Shell pipelines meet in Kegbara Dere, Ogoniland. The fire burns for 36 hours.
14	November 30, 2009	At the Nigerian government's request, the United Nations Environmental Programme (UNEP) launched an assessment of the impact of contamination from oil across the Ogoni region.
15	August 2011	UNEP publishes a report on the environmental impact of oil industry operations in Ogoniland, showing widespread contamination of soil and groundwater and recommending a comprehensive cleanup of affected areas.
16	August 2011	After a class action suit in the UK, Shell accepts responsibility for the double rupture of the Bodo-Bonny Trans-Niger Pipeline that caused two massive oil spills in Bodo. The Trans-Niger carries up to 180,000 barrels of oil a day through the community.
17	May 7, 2012	A spill occurs in Kegbara-Dere, about 200 meters (650 feet) from the Bomu manifold
18	February 1	The Senate Committee on Environment and Ecology meets with Shell Petroleum Development Company of Nigeria (SPDC) over the environmental degradation of Ogoniland.
19	June 2013	An explosion occurs at a Shell pipeline, spilling 6,000 barrels of crude oil into the creeks and waterways of Bodo. The Ogoni people vow not to allow oil exploration to resume in the area until conditions addressing challenges of environmental pollution are met.
20	November 13, 2014	As revealed by Amnesty International, court documents show Shell repeatedly made false claims about the size and impact of the two oil spills in Bodo in 2008.
21	November 3, 2015	Forty-five years after an oil spill at Bomu, researchers find blackened soil and layers of oil on the water despite Shell's claims to have remediated the site twice in 1975 and 2012.
22	June 2, 2016	Nigeria's Vice President Yemi Osinbajo launches the Ogoni cleanup, alongside UN Deputy Secretary-General Amina Mohammed, then the country's environment minister.
23	March 25, 2017	Shell agrees to clean up Bodo, which was affected by two spills in 2008.
24	July 26, 2017	The UN pledges continued support for the execution of the Ogoni cleanup.
25	July 3, 2018	MOSOP opposes the application by the SPDC for the renewal of its oil mining license in Ogoniland.
26	January 2019	Remediation sites in Eleme, Tai, Khana, and Gokana Local Government areas of Ogoni are handed over to 21 contractors.

27	April 18, 2019	Two oil spills claim two lives in the Kegbara-Dere community, according to the local paper The Sun.
28	May 5, 2019	An investigation by the local paper Premium Times alleges that unqualified companies were awarded Ogoni cleanup contracts.
29	October 25, 2021	Contractors in charge of the Bodo community cleanup in Ogoniland said 2 million liters (440,000 gallons) of crude oil were recovered from the ongoing exercise by SPDC in the area.
30	July 5, 2022	A parliamentary committee summons environment minister Mohammed Abdullahi and HYPREP management over failure to clean up Ogoniland despite payment of \$1bn for the project.

Source: Al Jazeera Timeline: Half a century of oil spills in Nigeria's Ogoniland

## 4 A REVIEW OF LAWS ON ENVIRONMENTAL PROTECTION IN NIGERIA

### 4.1 The Endangered Species Act <sup>14</sup>

This law was modified in 2011 by section 7 of the Endangered Species (Control of International Trade and Traffic) Act, CAP E9; Laws of the Federation of Nigeria 2004, and section 34 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007. By this enactment, hunting capturing, or trading in animal species listed in the First Schedule to this Act is prohibited. Furthermore, no person shall hunt, capture, trade in, or otherwise deal with an animal species specified in the Second Schedule to this Act except if that person has a license issued under this Act. The act also sets out the conditions of licenses and permits.

By this law, the Minister may by an order published in the Federal Gazette alter the list of animals specified in the First or Second Schedule to this Act by way of addition, substitution deletion, or otherwise. Penalties for violations are also provided. The rationale for this law is that Nigeria is home to numerous wild animals such as pangolins, lions, chimpanzees, elephants, gorillas, vultures, manatees, and parrots. But these animals are now endangered and at risk of extinction due to poaching for bushmeat consumption illegal wildlife trade and habitat destruction. It should be noted that “When wild animals are endangered, it means only a few of them are left in the wild and the continued threats

<sup>14</sup> An Act to provide for the conservation and management of Nigeria's wildlife and the protection of some of her endangered species in danger of extinction as a result of over-exploitation, as required under certain international treaties which Nigeria is a signatory.

to these species will further reduce the animal population or make them extinct soon while negatively impacting biodiversity and destroying the ecosystem. “Our iconic giraffes, rhinos, and cheetahs have already gone into extinction due to illegal wildlife activities. It will be disastrous for Nigeria to lose its remaining endangered animals,”.

#### **4.2 Water Resources Act<sup>15</sup>**

This Act promotes the optimum planning, development, and use of Nigeria's water resources and other related matters. Vesting of rights and control of water in the Federal Government (I) The right to the use and control of all surface and groundwater and of any water- course affecting more than one State as described in the Schedule to this Act, together with the bed and banks thereof, are by this Act and without further assurance vested in the Government of the Federation.

This Act vests the right to use and control all surface and groundwater and all water in any watercourse affecting more than one state, together with the banks and beds thereof, in the Federal Government (sect. 1). The purposes for this vesting are listed as the promotion of planning, development and use of Nigeria's water resources; coordination of activities likely to influence the quality, quantity, use, distribution and management of water; the application of appropriate standards and techniques for use, protection, etc.; and technical assistance and rehabilitation for water supplies (sect. 1).

Notwithstanding the vesting of water resources in the federal government, persons may take water for a variety of uses, including domestic uses, the watering of livestock, fishing and navigation, and the irrigation of land over which they have rights of occupancy (sect. 2). Section 4 gives the Secretary power to control the use or taking of groundwater by various means, including defining the places from where and means by which it can be abstracted; fixing of limits on amounts used; prohibiting the taking or use of water from sources to protect health; etc. In discharging his duties, the Secretary is required to have regard for many matters, including the need to make provision for adequate supplies of water, control of flooding, the reclamation of land, the protection of inland fisheries, flora, and fauna, etc. (sect. 5).

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<sup>15</sup> This is an Act to promote the optimum planning, development and use of Nigeria's water resources and other matters connected therewith.

### 4.3 Harmful Waste (Special Criminal Provisions) Act <sup>16</sup>

This law “prohibits the carrying, depositing and dumping of harmful waste on any land, territorial waters and matters relating thereto”. Notwithstanding the provisions of the Customs, Excise Tariff, etc. (Consolidation) Act, or any other enactment, or law, all activities relating to the purchase, sale, importation, transit, transportation, deposit, storage of harmful wastes are hereby prohibited and declared unlawful. [Cap. C49.] (2) (a.b.c)

This Act declares all activities relating to the purchase, sale, importation, transit, transportation, deposit, and storage of harmful wastes to be prohibited and declared unlawful, the provisions of the Customs, Excise Tariff, Etc. (Consolidation) Act 1988, or any other enactment, or law notwithstanding. As from the commencement of this Act, any person who, without lawful authority: (a) carries, deposits, dumps, or causes to be carried, deposited, or dumped, or is in possession to carry, deposit, or dumping, any harmful waste on any land or in any territorial waters or contiguous zone or Exclusive Economic Zone of Nigeria or its inland waterways; or; (b) transports or causes to be transported or is in possession to transport any harmful waste; or; (c) imports or causes to be imported or negotiates for importing any harmful waste; or; (d) sells, offers for sale, buys or otherwise deals in any harmful waste, shall be guilty of a crime under the this Act. The remaining provisions deal with the prosecution, crimes by a body corporate, and penalties.

### 4.4 National Environmental Standards and Regulations Enforcement Agency (NESREA) Act <sup>17</sup>

The act empowers the Agency to be responsible for enforcing all environmental laws, guidelines, policies, standards, and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions, and treaties on the environment to which Nigeria is a signatory. NESREA has responsibility

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<sup>16</sup> The Harmful Waste Act prohibits, without lawful authority, the carrying, dumping or depositing of harmful waste in the air, land or waters of Nigeria.

<sup>17</sup> An act to provide for the establishment of the national environmental standards and regulations enforcement agency charged with responsibility for the protection and development of the environment in Nigeria, and for related matters. (30th day of July,2007)

for the protection and development of the environment, biodiversity conservation, and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines. Some functions of the Agency, amongst others, include to:

- enforce compliance with guidelines, and legislation on sustainable management of the ecosystem, biodiversity conservation, and the development of Nigeria's natural resources.
- conduct environmental audits and establish a data bank on regulatory and enforcement mechanisms of environmental standards other than in the oil and gas sector;
- create public awareness and provide environmental education on sustainable environmental management, promote private sector compliance with environmental regulations other than in the oil and gas sector and publish general scientific or other data resulting from the performance of its functions; and carry out such activities as are necessary or expedient for the performance of its functions.
- prohibit processes and use of equipment or technology that undermine
- environmental quality.
- conduct field follow-up of compliance with set standards and take procedures prescribed by law against any violator; subject to the provision of the Constitution of the Federal Republic of Nigeria, 1999, and in collaboration with relevant judicial authorities establish mobile courts to expeditiously dispense cases of violation of environmental regulation.

#### **4.5 Territorial Waters Act 1967**<sup>18</sup>

The Act was enacted to determine the limits of the territorial waters of Nigeria and for other matters connected therewith. (1) The territorial waters of Nigeria shall for all purposes include every part of the open sea within thirty nautical miles of the coast of Nigeria (measured from the low water mark) or of the seaward limits of inland waters.

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<sup>18</sup> This Act shall for all purposes include every part of the open sea within twelve nautical miles of the coast of Nigeria (measured from low water mark) or of the seaward limits of inland waters.

(2) Without prejudice to the generality of the foregoing subsection, that subsection shall apply for any power of the Federal Government to make, concerning any matter, laws applying to or to any part of the territorial waters of Nigeria.

#### **4.6 Environmental Impact Assessment Act 1992**<sup>19</sup>

This Act, among other things, sets out the procedures and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. The Act also gives specific powers to the Federal Environmental Protection Agency to facilitate environmental assessment on the projects. The text consists of 64 sections divided into 3 Parts: General Principles of Environmental Impact Assessment (I); Environmental assessment of Projects (II); and Miscellaneous (III). The Schedule lists mandatory study activities including agriculture, irrigation drainage, and fisheries.

##### *4.6.1 The objectives of the act were to*

- (a) to establish before a decision taken by any person, authority, corporate body, or unincorporated body including the Government of the Federation, State or Local Government intending to undertake or authorize the undertaking of any activity that may likely or to a significant extent affect the environment or have environmental effects on those activities shall first be taken into account.
- (b) to promote the implementation of appropriate policy in all Federal Lands (however acquired) States and Local Government Areas, consistent with all laws and decision-making processes through which the goal and objective in paragraph (a) of this section may be realized.
- (c) to encourage the development of procedures for information exchange, notification, and consultation between organs and persons when proposed activities are likely to have significant environmental effects on the boundary or trans-state or on the environment of bordering towns and villages.

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<sup>19</sup> An Act to set out the general principles, procedure and methods to enable the prior consideration of environmental impact assessment on certain public or private projects. [1992 No. 86.]

#### 4.7 Sea Fisheries Act, 1992<sup>20</sup>

This Act makes provision for the control, regulation, and protection of sea fisheries in the territorial waters of Nigeria. The first part of the Act concerns the licensing of motor fishing boats. No person shall operate or navigate any motor fishing boat for fishing or a reefer vessel to discharge frozen fish within the territorial waters of Nigeria or its exclusive economic zone unless that boat or reefer vessel has been fully registered and licensed (sect. 1). Section 4 specifies criteria for issue of a license. The owner of a motor fishing boat in respect of which a license has been issued shall: (a) render to a licensing officer such periodical returns concerning the operation of the motor fishing boat as may be prescribed; and (b) permit an licensing officer or any person authorized in writing by a licensing officer to inspect the catch of the motor fishing boat either before or after the catch has been landed and shall give the licensing officer or that person all reasonable facilities for the inspection of the catch. The second part of this Act concerns enforcement, the prohibition of certain fishing methods, and offenses and penalties.

#### 5 NIG VS SHELL: A CASE STUDY OF AN ENVIRONMENT SUFFERING FROM DEGRADATION<sup>21</sup>

The case involving Shell Petroleum, and the Nigerian government is not one involving just the government. It is rather a series of court cases involving several individuals that have special interests in the Niger Delta region. Ranging from farmers to fishermen and other environmentalists, Shell has been caught up in a series of litigations resulting from environmental degradation, and pollution. Gas flaring, poisoning of the water in the region, and the destruction of aquatic life.<sup>22</sup> We singled out this case because it is one of the groundbreaking cases that have been left unresolved even though there is glaring evidence of the commission of the crime in question. This case is therefore the case study for this analysis.

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<sup>20</sup> This Act provides for the control, regulation, and protection of sea fisheries in the territorial waters of Nigeria. The first part of the Act describes the licensing of motor fishing boats; the second part concerns enforcement, the prohibition of certain fishing methods, and offences and penalties.

<sup>21</sup> Jalla and another (Appellants) v Shell International Trading and Shipping Company and another (Respondents) Case ID: 2021/0050

<sup>22</sup> Available <https://www.awid.org/news/oil-giant-shell-held-responsible-environmental-pollution-small-victory?women-in-the-Niger-delta>. [Accessed April 10, 2019]

## 5.1 Shell vs residents of Niger Delta

The case is one of a series of legal battles Shell has been fighting in London courts, mounted by residents of Nigeria's oil-producing Niger Delta. The United Kingdom's Supreme Court has ruled that it was too late for a group of Nigerian claimants to sue two Shell subsidiaries over a 2011 offshore oil spill.<sup>23</sup> On December 20, 2011, an estimated 40,000 barrels of crude oil leaked when a tanker was loaded at Shell's Bonga oilfield, 120km (75 miles) off the coast of Nigeria's Niger Delta. Shell disputed the allegations and said the Bonga spill was dispersed offshore and did not impact the shoreline.

However, the Supreme Court upheld rulings by two lower courts that found the plaintiffs had brought their case after the six-year legal expiry date. A panel of five Supreme Court justices unanimously rejected the claimant's argument that the ongoing consequences of the pollution represented a "continuing nuisance".<sup>24</sup> The court did not look at the evidence supporting either side's assertions or make a ruling on the issue. It only decided the legal point of nuisance.

"The Supreme Court rejects the claimants' submission. There was no continuing nuisance in this case," Justice Andrew Burrows said as he delivered the ruling. "The leak was a one-off event or an isolated escape. The oil pipe was no longer leaking after six hours,"

Shell said it was not responsible for most of those spills and said they were caused by illegal third-party interference. "*We believe litigation does little to address the real problem in the Niger Delta: oil spills due to crude oil theft, illegal refining and sabotage, with which SPDC [Shell's Nigerian subsidiary] is constantly faced and which cause the most environmental damage,*" a Shell spokesperson said.<sup>25</sup> In a separate case in 2015, Shell agreed to pay 55 million pounds (\$70m) to the delta's Bodo community in compensation for two spills after a legal battle in London.

<sup>23</sup> R. Jones (2013 March 29) "Oil giant shell is held responsible for environmental pollution" [Online] Available <https://www.awid.org/news/oil-giant-shell-held-responsible-environmental-pollution-small-victory-women-in-the-niger-delta>. [Accessed April 10, 2019]

<sup>24</sup> Gabriel, K.B. (2013). 'Emerging Issues in Compensation Valuation for Oil Spillage in the Niger Delta of Nigeria.' *Journal of Reviews on Global Economics*.

<sup>25</sup> Oludayo, G. A. (2004). *Environmental Law and Practice in Nigeria*. Lagos: University of Lagos Press 676-678.

## 5.2 Ogale people vs shell on the need for a clean-up

This case focuses on the contamination of Nigerian water with oil and cancer-causing compounds such as benzene. Britain's High Court began hearing lawsuits filed by the Ogale and Bille people alleging that decades of oil spills have fouled the water and destroyed the lives of thousands of fishermen and farmers in the Niger River Delta,<sup>26</sup> where a Shell subsidiary has operated since the 1950s. They brought their fight to Shell's home base because they say the Nigerian courts are too corrupt. The lawsuits were brought by two communities located in Ogoniland, part of the oil-rich southern Niger River Delta. They want to hold Shell, incorporated in the UK, responsible for the actions of its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd, or SPDC. The subsidiary said it has produced no oil or gas in the region since 1993. The area is heavily affected by crude oil theft, pipeline sabotage and illegal refining.<sup>27</sup> It is argued in court that the legal challenge is speculative and full of "legal and evidential weaknesses".

SPDC said it will challenge the jurisdiction of the UK courts in this case – arguing that it concerns Nigerian plaintiffs in dispute with a Nigerian company over issues in Nigeria. "If the claimants' lawyers are correct as to the existence of this novel duty of care, [Shell] and many other parents of multinational groups will be liable to the many hundreds of millions of people around the world with whom their subsidiaries come into contact in the ordinary course of their various operations," the company said in its court argument. "That would constitute a radical if not historic expansion of the law and open the floodgates to litigation on an unprecedented scale." The Ogale and Bille communities account for only a small portion of the millions of Nigerians that human rights activists say have been injured by contamination they say would never have been allowed in the home countries of the multinational oil companies that operate in partnership with the Nigerian government.

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<sup>26</sup> Oshienemen, N. A., Dilanthi, A. and Richard, P. H. (2018). 'Environmental Policies within the Context of Compensation for Oil Spill Disaster Impacts: A Literature Synthesis' *Procedia Engineering* 212 1183 - 1184.

<sup>27</sup> NOSDRA 'Towards a New Oil Spill Compensation System in Nigeria – Summary' pp 6-7, <<https://www.stakeholderdemocracy.org/wpcontent/uploads/2015/04/Towards-a-Nigerian-Compensation-Scheme-.pdf>> accessed 06 April 2020.

### **5.3 Communities of Egbalor Ebubu in Rivers State vs Shell on oil spill**

Nigeria's court says Shell's appeal should be heard after oil spill claim January 5, 2024

The case, one of several against Shell Plc (SHELL), opens new tab locally and abroad, started with a High Court ruling in November 2020 that ordered Shell to pay 800 billion naira (\$878 million) to communities of Egbalor Ebubu in Rivers state, who accused the firm of an oil spill that damaged waterways and farms. But Shell had appealed to stop the High Court from executing its judgment, but the Court of Appeal ordered Shell to deposit the money in an account controlled by the court before its appeal could proceed. Shell was also ordered to pause the disposal of local assets last June until the Supreme Court ruling, to allow for any compensation due to the Niger Delta Community.

### **5.4 Shell vs Nigerian farmers**

In 2008 four farmers, together with Milieudefensie, initiated legal proceedings against the headquarters of Shell in The Hague. Their motivation was oil pollution in the villages of Oruma, Goi and Ikot Ada Udo in the Niger Delta in Nigeria. The oil spills occurred between 2004 and 2007. The court ordered Shell to pay compensation to the farmers and to install a leak warning system. Following negotiations, the amount of compensation was announced in December 2022. This was a truly ground-breaking case: for the first time in history a corporate headquarters was held responsible for the actions of their subsidiary in another country. Shell resisted the claim for many years, arguing from their headquarters in the Netherlands that the case should be heard in a Nigerian court. The Dutch Court did not agree. The key prayer points of the defendants in this case were that: (i) Shell should stop the leaks and take measures to prevent future spills; (ii) Shell should clear up its mess. (iii) Shell should take responsibility and pay compensation to the plaintiffs.

## **6 OBSTACLES TO ENVIRONMENTAL PROTECTION IN THE REGION**

One can say categorically that the issues in the Niger Delta region are mainly caused by the oil exploration in the region. The era of oil production has had negative

effects on the area due to the unprecedented oil spillage that has persisted for several years thus making the region one of the most polluted areas of the world. The contamination of the air, water, and land can best be described as “ecocide” --- a process that calls for the criminalization of the activities of oil explorers in any part of the world. The key elements involved in this process are oil spills, loss of mangrove forests, depletion of the fish population, gas flaring, and biological remediation, all of which can lead to flooding in the region.

### **6.1 The need for environmental protection in the region**

Environmental improvements in air and water quality can significantly reduce healthcare costs. Fewer pollutants mean lower rates of respiratory and waterborne diseases, allowing community members to save money and lead more productive lives. Projects focused on environmental cleanup, green infrastructure, and renewable energy often generate new jobs, particularly in construction, maintenance, and environmental management. These jobs frequently offer training opportunities, helping to elevate local employment standards. Green spaces, clean environments, and well-maintained landscapes enhance property values. Residents in environmentally healthy communities can benefit from higher home values and improved quality of life.

Businesses are more likely to invest in and relocate to communities that are clean and sustainable. A strong environmental record can attract companies that prioritize corporate responsibility, bringing additional jobs and resources to the community. Implementing energy-efficient technologies reduces utility costs for residents and businesses. Savings on energy can be redirected into local economies, boosting spending and investment in other areas. Environmental protection efforts help communities adapt to and mitigate the effects of climate change, such as extreme weather events. This resilience protects local economies from potential disasters and associated economic losses.

Clean, attractive communities are more appealing to tourists. Investing in environmental conservation can boost local tourism, creating jobs and bringing in revenue from outside the community. Cleaner environments lead to better health, reducing absenteeism in schools and improving educational outcomes. Better education supports long-term economic development through a more skilled workforce. Efforts to protect

and enhance the environment can increase community pride and cohesion. Strong, united communities are better able to advocate for their needs and attract investment, further driving local economic development. This is why environmental protection is not only vital for the health and sustainability of underserved communities but also a key component of their economic empowerment and development.

## 7 CONCLUSION

From our observation, Nigeria is constantly enacting laws that are targeted at preserving and protecting the environment in accordance with world and international best practices. However, the implementation of such laws is at point zero. Is either there is no political will to implement or the capacity to do so is not there. With all the gamut of laws either promulgated by the various military regimes in the past and those formulated by the various civilian regimes, the need for effective protection and preservation of the environment is still at the lowest point. With all the gamut of laws made in relation to the environment, the issue of the Niger Delta debacle remains unresolved. The ecosystem is fully destroyed, the aquatic life is gone, the land for farming is destroyed and every other means of livelihood is totally destroyed. The people now live at the mercy of both government and the multinational oil corporations. A situation that has resulted in the formation of deadly gangs. Where law fails to achieve its aim, then rascality becomes the order of the day. This is the true situation of the Niger Delta region as at today. There is therefore the need for effective implementation of the laws on environment to cater for the need of the people. This is the only way there can be effective production of oil in the region.

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### **Authors' Contribution**

All authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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