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Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria

Olubisi Friday Oluduro[1*] Olubayo Oluduro[2]
1.Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria
2.Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Nigeria
* E-mail of the corresponding author: oluduro2003@hotmail.com

Abstract
The need for provision and sustenance of energy around the world has necessitated the exploitation of crude oil in different parts of the globe. However, the technology for this exercise so far, is limited to corporations from the technologically advanced countries which operate in the oil-rich areas. The corporations otherwise called multinational corporations (MNCs) have been found to employ discriminatory operational standards in countries of their operation as against what obtains in their countries of origin, particularly, where such are developing countries, lacking in requisite technology to tap their own resources. The paper examines some of the environmentally destructive methods of oil exploration adopted by the oil MNCs in developing countries, like Nigeria which may not be acceptable in developed countries where these companies are based. It argues that while the oil MNCs freely pollute and degrade the environment in the developing countries with little or no attention paid to the local inhabitants and the eco-system, the reverse is always the case in developed countries, as well as their home countries where they operate. This paper examines the practice of double standards by oil MNCs in Nigeria and the implications on the local inhabitants. It seeks for the elimination of unequal enforcement of international environmental standards and disparate treatment of local populations from the oil producing areas of Nigeria.
Keywords: Environment, degradation, MNCs, indigenous people, international standards

1. Introduction

Nigeria with a population of over-140 million[1] is today the World's 12th largest oil producer and the 8th largest exporter of crude oil, and has the 10th largest proven reserves.[2] The Niger Delta is the centre of oil production in Nigeria. It is a vast sedimentary and oil-rich basin of some 70,000 sq. kms and composed officially of nine states (Abia, Akwa-Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Rivers, and Ondo), 185 local government areas (LGAs) and a population of roughly 28 million.[3] The major stakeholders in the Nigerian oil industry are the oil multinationals (who exploit for oil), the Nigerian State (which depends on oil for 80 percent of its revenue, and over 95 percent for its foreign exchange earnings), and the communities (and social movements) of the oil producing communities of the Niger Delta.[4] The number of international oil companies in Nigeria has increased from one (Shell BP) in 1958 to more than 24 in 2007 with the top four- Shell, ExxonMobil, Chevron Elf Petroleum Nigeria Limited)-accounting for about 83 percent of total oil production in Nigeria in 2008.[5] The

* Dr. Olubisi F. Oluduro is a Faculty member in the Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria.
** Prof. Olubayo Oluduro is the Dean of the Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Nigeria.
[1] The population of Nigeria was estimated to be 140,003,542 million in the 2006 census figures. See Nigeria 2006 Census Figures, Office of the National Bureau of statistics, (www.nigerianstat.gov.ng/Connections/pop2006.pdf) .
[2] Wikipedia, the free encyclopaedia, Nigeria, (www.en.wikipedia.org/wiki/Nigeria) .
[3] Michael Watts, '*Petro-Insurgency or Criminal Syndicate? Conflict, Violence and Political Disorder in the Niger Delta,*' Niger Delta Economies of Violence Working Paper No. 16, 2008, (www.geographyberkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/16-Watts.pdf). The widely publicised land mass of Niger Delta (70,000 square kilometres) is only a geographic estimation, politically, the region is much larger. The nine states that make up the Niger Delta occupy surface area of about 112, 110 square kilometres (Abia 4,877, Akwa Ibom 6, 806, Bayelsa 11, 007, Cross River 21,930, Delta 17, 163, Edo 19,698, Imo 5,165, Ondo 15,086, Rivers 10,378)- 12% of Nigeria's territory. Today, out of over 606 oil feeds in the Niger Delta, 60% of them are onshore while 40% are offshore. - See Niger Delta Development Commission (NDDC) 2004. Niger Delta Regional Development Master Plan: Summary of Draft Report, September, p.2; '*Carry Go' Citizens Report on State and Local Government Budgets in the Niger Delta 2008*, published by Niger Delta Citizens and Budget Platform Social Development Integrated Centre (Social Action), 2009, at (www.saction.org/ebook/carry%go-full%20report.pdf); Uwafiokun Idemudia, 'Assessing Corporate-Community Involvement Strategies in the Nigerian Oil Industry: An Empirical Analysis,' *Resources Policy* 34 (2009) 133-141 at 135.
[4] Cyril I. Obi, 'Globalization and Environmental Conflict in Africa,' *Afr. J. Polit. Sci*. (1999), Vol.4 No.1, 40-62 at 42.
[5] Wumi Iledare and Rotimi Suberu, 'Oil and Gas Resources in the Federal Republic of Nigeria,' being excerpts of a paper presented at the Conference organised by the World Bank and the Forum of Federations, on 'The Management of Oil and Oil and Gas in the Federal Systems, held at Black Auditorium, World Bank, Washington D.C., March 3-4, 2010.

production of oil in Nigeria is through the joint venture partnership between the State and the oil MNCs, and this has led to the State's promotion of uninterrupted oil exploitation and exploration (including degradation) by the MNCs, with dire consequences on the local inhabitants and the environment. In 2006, the Nigerian government estimated it is earning about US$36 billion each year from the extensive petroleum Industry.[1] Other estimates put current annual earnings at over $45 billion.[2]

Notwithstanding the several billions of dollars generated from oil exploration, the Niger Delta, which is the oil and gas rich wetland in the Southern part of Nigeria and which firmly, established Nigeria as a major world producer of oil, are amazing metaphors of wealth and opportunities, as they have nothing to show for the huge revenue derivable from their land. For five decades, environmental damage, such as oil spills and gas flaring caused by the careless and reckless operating practices of the oil MNCs remains a permanent feature in the Niger Delta region. The activities of these oil MNCs seriously destroy self-sustaining eco-system and also undermine the peoples' ability to meet their basic needs, which include food, clothing, shelter, safe drinking water, health-and clean environment and above all, the quality of life in which they live. Little or no regard is paid by the oil MNCs to the laws regulating the oil industry in Nigeria and the various international environmental standards. The Nigerian government that is supposed to ensure the observance of these laws does not help matters as they continually maintain a lukewarm attitude to the detriment of the local populations.

The paper is structured into five sections including this introductory section. The second section examines some of the Nigerian laws and international environmental standards regulating the oil industry while the third section discusses the double standards adopted by the oil MNCs resulting in adverse impact on the people and eco-system. The fourth examines the role of the government as a regulator of the oil industry and to what extent it has been able to ensure the compliance of the oil MNCs to various laws and regulations in place. The fifth section concludes with some recommendations.

II. Legal Framework for oil operations in Nigeria

There are several provisions of Nigerian laws that require the oil companies to ensure 'good oil practice.'[3] Even though some of these laws did not define what the term is, recourse may be had to the Nigerian Mineral Oils (Safety) Regulations 1962 which expressly provides that good oil field practice compliance 'shall be considered to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute's (API] Codes or the American Society of Mechanical Engineer [ASME] Codes.' This therefore makes it effectively binding on oil companies to respect international standards in their operations in Nigeria.[4]

The American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), the U.S. Integrity' Management (IM) for High Consequence Areas (HCAs), and the Alaska Best Available Technology (BAT) Industry standards represent a widely accepted 'good oil field practise' standard for petroleum pipeline management.[5] These standards are aimed among others, at ensuring the use of safe and interchangeable equipment, effective detection of internal leak in pipelines, development of pipeline code for pressure piping, incorporation of Best Alternative Technology into all the stages of field operations and making provisions for Third Party Damage (TPD) such as accidental discharge to buried pipelines during construction, or cases of sabotage and illegal bunkering as we have in the Niger Delta areas. Members of API to which Shell and some other companies operating in the Niger Delta belong are responsible for "obeying all laws and best practice" as part of the pledge to a programme of continuous health, safety and environmental improvements,[6] in all areas of their production.

The oil companies are required by Nigerian laws to comply with the API standards for High Consequence Areas. This is because most parts of the Niger Delta region meet the criteria defined in the U.S. as

(www.siteresources.worldbank.org/EXTOGMC/Resources/3369291266445624608/Nigeria conference Finaldraft Feb10.pdf)

[1] Nigeria earns US$36 Billion from Oil and Gas Annually, The Punch Monday 27 November, 2006.

[2] Human Rights Watch, '*Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria,'* January 2007 volume 19, No.2 (A), p.16, quoted in Asume Isaac Osuoka, 'Oil and Gas Revenues and Development Challenges for the Niger Delta and Nigeria,' being a paper presented at the Expert Group Meeting on the Use of Non-Renewable Resources for Sustainable Local Development, Organized by the UN Department of Economic and Social Affairs, Friday 21 Sept., 2007, UN Headquarters, New York.

[3] See Regulations 25 and 36 of The Petroleum (Drilling and Production) Regulations 1969 discussed below.

[4] Human Rights Watch 1999, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities,* New York, p.55.

[5] Richard Steiner, '*Double Standards? International Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria,'* published by Friends of the Earth, The Netherlands November 2008.

[6] American Petroleum Institute (API), API Environmental Stewardship Pledge for CAREFUL operations, (www.api.org), quoted in Alexandra S Wawryk, 'Adoption of International Environmental Standards by Transnational Oil Companies: Reducing the Impact of Oil Operations in Emerging Economies,' 20 *J. Energy Nat. Resources L.* 402-434 at 403.

High Consequence Areas for oil spills (populated area, drinking water area, or productive ecosystem), in addition to the fact that the areas are susceptible to damage from third parties.[1] It is important to stress that all the major oil companies operating in Nigeria including Shell, Eni, Total are all members of the International Petroleum Industry Environmental Conservation Association (IPIECA) — established in 1974 with the aim of developing and promoting 'scientifically-sound, cost-effective, practical, socially and economically acceptable solutions to global environmental and social issues pertaining to the oil and gas industry.'[2] IPIECA has developed a wide range of documents on issues like impact of oil spill on aquatic life, oil spill response, social impact assessment, human rights training package to assist the industry in their operations, among others.

Some of the laws regulating the oil industry in Nigeria include the Harmful Waste (Special * Criminal Provisions etc) Act 1988,[3] Oil in Navigable Waters Act,[4] Oil Pipelines Act,[5] Associated Gas Re-Injection Act,[6] and the Regulations, Petroleum Act 1969 and the Petroleum (Drilling and Production) Regulations, National Environmental Standards and Regulations Enforcement Agency (NESREA),[7] National Oil Spill Detection and Response Agency (Establishment) Act 2006,[8] Environmental Impact Assessment (EIA) Decree.[9] This sub-section shall however examine briefly few of these laws.

II. A. Oil Pipelines Act

This Act was enacted in 1956 as one of the earliest laws on oil pollution and contains some important provisions that could be effectively used to protect the Niger Delta people and their environment from the negative impacts of oil operations. It was to 'make provision for licenses to be granted for the establishment and maintenance of pipelines incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipeline.'[10] It provides for the issuance of permits to survey and oil pipeline licenses. As a way of regulating environmental degradation, section 17 (4) of the Act provides that:

> Every license shall be subject to the provisions contained in this Act as in force at the date of its grant and to such regulations concerning public safety, the avoidance of interference with works of public safety in, over and under the land included in the license and the *prevention of pollution of such lands or any waters* as may from time to time be in force. (Italics ours)

The Act also makes provision for the duration of an oil pipeline license which is fixed for a term not exceeding twenty years.[11] This may be in recognition of the fact that 'the nature of pipelines may make them less fit due to corrosion and other wear and tear arising from pressure and long usage.'[12] 'The Act confers a right of action on victims of pollution arising from any breakage of, or leakage from oil pipeline or ancillary installation. Section 11 (5) provides that:

> The holder of a licence shall pay compensation…; (c) to any person suffering damage (other than on account of his own default, or on account of the malicious act of a third person) as a consequence of any breakage of, or leakage from the pipeline or an ancillary installation. If the amount of such compensation is not agreed between any such person and the holder, it shall be fixed by a court in accordance with Part IV of this Act.

This section is highly commendable in that it creates a strict liability for the licence holder, but for a complacent judicial system that would not evoke the spirit of the law. The claimant is therefore not required to establish negligence on the part of the pipeline licence holder. However, this provision has been under-utilised by claimants probably as a result of ignorance on the part of the claimants and their counsel,[13] and the defence of sabotage mostly raised by oil multinational companies.

II. B. Associated Gas Re-Injection Act and the Regulations

This is an Act to compel every company producing oil and gas in Nigeria to submit to the Minister charged with

[1] Richard Steiner, above n.10.
[2] IPIECA, Bringing together the oil and gas industry on global, environmental and social issues, (www.ipieca.org/ipieca_info/about.php).
[3] Cap.165 Laws of the Federation of Nigeria, (LFN), 1990.
[4] Cap. 337 LFN, 1990.
[5] Cap. 338 LFN 1990.
[6] Cap. 26 LFN 1990.
[7] See, The Federal Republic of Nigeria Official Gazette, Government Notice No 61, Act No.25.
[8] Act No.15 of 2006 A.407 Acts and Subsidiary Legislation 2006 Vol.1.
[9] Decree No.86 of 1992.
[10] Preamble to the Act.
[11] Section 17 (1) of the Act.
[12] Nwosu E.O., 'Petroleum Legislation and Enforcement of Environmental Standards in Nigeria,' *The Nigerian Judicial Review* (1998-1999), Vol.7, pp.80-108 at 87.
[13] Ambrose O.O. Ekpu, 'Environmental Impact of Oil on Water: A Comparative Overview of the Law and Policy in the United States and Nigeria,' *Denver JILP,* Vol.24, No.1 Fall 1995, p.89.

responsibilities for oil (not later than 1 April, 1980) preliminary programmes for (a) schemes for the viable utilization of all associated gas produced from a field or group of fields; (b) projects to reinject all gas produced in association with oil but not utilized in an industrial project. The Act also makes it a duty for oil companies to submit detailed plans for implementation of gas re-injection, not later than 1 October 1980.[1] Again, the Act provides that no company engaged in the production of oil and gas shall after 1st January, 1984 flare gas produced in association with oil without the permission in writing of the Minister.[2]

Close to the end of 1984, evidence reveals that no oil company had complied with the provisions of the Act and no evidence that the Minister insisted that the oil companies complied with it. The reason which was presumably attributed to 'adverse effects it could have on the nation's economy if its enforcement results in a halt to oil production operations.'[3] Rather than ensuring the enforcement of the law, the Minister made the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984 which provide for exemptions to the earlier general ban on flaring. The regulations, which became effective from 1 January, 1985 stipulated conditions for the issuance of certificate for the continued flaring of gas. These are:

(a) Where more than seventy-five per cent of the produced gas is effectively utilized or conserved.
(b) Where the produced gas contains more than fifteen percent impurities, rendering it unsuitable for industrial purposes.
(c) Where an on-going utilization programme is interrupted by equipment failure.
(d) Where the ratio of the volume of gas produced per day to the distance of the field from the nearest gas line or possible utilisation point is less than 50,000 scf/km provided that the gas to oil ratio of the field is less than 3,500 scf/bbl, and that it is not technically advisable to re-inject the gas in that field....[4]

In reality, this regulation no doubt defeated the intention of the Associated Gas Re-Injection Act which was aimed at putting an end to gas flaring in Nigeria. As observed by a scholar, 'a total of 86 out of 155 'fields thereby remained exempted from the anti-flaring provisions. The remaining fields were subject to a fairly insignificant penalty which made it far more economical for the companies to flare than to utilise or re-inject gas.'[5] This is further buttressed by the provisions of the Associated Gas Re-Injection (Amendment) Decree 1985,[6] which permits a company engaged in the production of oil or gas to continue to flare gas in a particular field(s) on the payment of a fee prescribed by the Minister. This Decree fixed a fine of 2 kobo (equivalent to $0.0009 in 1985 when Nigerian currency was still strong) against any erring oil companies for each 1000 standard cubic feet (scf) of gas flared. As expected, this paltry sum could not deter the oil companies from the continued flaring of gas to the detriment of the health and environment of the Niger Delta as it is far more economical and effective to flare than to reinject or utilize the associated gas. The fines were again raised in January 1998 to $11 for every 1000 scf of gas flared,[7] but the companies still continued with the flaring. The government further came up with the Associated Gas Re-Injection Act 2004 and the Associated Gas Re-Injection (Amendment) Act 2004 which made it compulsory for all oil producing companies in the country to submit detailed plans for utilisation of their gases. Flaring of associated gas without the written permission of the Minister was also prohibited, but all these seem inadequate to deter the oil companies as the gas flaring still continues unabated.

Suffice it to say that 1985 was initially promoted by the government and the oil operators to end gas flaring, and then shifted to 2003, 2004, 2006, and 2008 and to December 2010 which has since passed, but flaring has continued unabated. This apparently shows that there is little or no regard by the government concerning the impact of gas flares on the environment and human life in the Niger Delta and neighbouring communities. Any hope to end flaring will depend much on the government's commitment and political will, the oil companies and most especially the prospects and success of the various Liquefied Natural Gas (LNG) projects in the country.

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[1] Ibid, Section 2(1).
[2] Ibid, Section 3(1).
[3] Kassim-Momodu M., 'Gas Re-Injection and the Nigerian Oil Industry,' *JPPL* 6 & 7, 1986/1987, p.83, quoted in Kaniye Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues,* Rudiger Koppe Verlag, Germany 2006, p.206.
[4] Regulation 1. It was contended that one of the underlying reasons for this gradual easing of the provisions on re-injection was probably the realisation that the NNPC as majority shareholder in all the ventures would be bound to pay up its own percentage of costs of re-injection, which amounts to a substantial sum. See, Yinka Omorogbe, 'Pollution and the Nigerian Oil Industry,' *Thoughts on Petroleum Law,* being a Report of National Workshop on Petroleum and Industrial Law, The Law Society, Faculty of Law, University of Lagos (Special Publication), Wole Owaboye & Osuntogun Abiodun (Eds.) 1992, p.25.
[5] Yinka Omorogbe, 'Law and Investor Protection in the Nigerian Natural Gas Industry,' 14 *J. Energy Nat. Resources L.,* 179-192 at 181 (1996).
[6] Decree No.7 0f 1985.
[7] Garba I. Malumfashi, 'Phase-Out of Gas Flaring in Nigeria by 2008: The Prospects of a Multi-Win Project (Review of the Regulatory, Environmental and Socio-Economic Issues),' *Petroleum Training Journal* Vol.4, No.2, July 2007, p.16.

II. C. Petroleum Act 1969 and the Petroleum (Drilling and Production) Regulations

This Act empowers the Minister in section 9 (1) (b) (iii) to make regulations for the prevention of the pollution of water-courses and the atmosphere during petroleum operations. Pursuant to this Act, the Minister issued the Petroleum (Drilling and Production) Regulations 1969 which contains some important provisions on environmental protection. Regulation 25 thereof provides that:

> The licensee or lessee shall adopt all practicable precautions including the provision of up-to-date equipment approved by the Director of Petroleum Resources to prevent pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or the high seas by oil, mud or other fluid or substances which might contaminate the water, bank or shore line which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred, shall take prompt steps to control and, if possible, end it.

The regulation has been criticised for the vague legal duty it imposed, as all the 'operator is enjoined to do is to take prompt steps "to control and, if possible, end" the pollution in question.'[1] Also, the provision for the adoption of "all practicable precautions" may be difficult to apply in reality because the present day economic pressure may be adduced to defeat the ecological and environmental concerns. The use of the term "up-to-date equipment" appears to be relative and vague as it does not assert certainty in terms of period of time in which a particular equipment must be put in use. This regulation may partly explain why most oil companies in Nigeria use substandard and outmoded equipment in their operations, thus leading to high frequency of oil spillages experienced in the oil producing communities of Nigeria. As rightly noted, 'the use of poorly defined terms permits maximisation of production rather than protection of the environment'.[2]

Again, Regulation 36 provides that 'the licensee or lessee shall maintain all apparatus and appliances in use in his operations, and all boreholes and wells capable of producing petroleum, in good repairs and conditions, and shall carry out all his operations in a proper and workmanlike manner in accordance with these and other relevant regulations and methods and practices accepted by the Director of Petroleum Resources as good oil field practices'. The Regulation further provides that the licensee or lessee must take reasonable steps to control the flow and prevent the escape of waste out from relevant areas; prevent the escape of petroleum into any water, well, spring, river, lake, reservoir, estuary, or harbour; and cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property. This provision is quite good in view of environmental impacts of seismic operations most especially on buildings and vegetations, and the impact of oil spills on mangrove trees.[3] However, the terms 'businesslike manner', 'workmanlike manner,' and 'good oilfield practices' which interpretations arc important for the enforceability of the provisions of this law are not defined by the Regulations. Though the need for definition of these phrases is not particular to developing countries like Nigeria, the lack of strong and independent judiciary together with government strongly committed to protection of the environment may subject their interpretations to require the lowest level of environmental protection rather than the strictest level of behaviour.[4]

Furthermore, the Regulations require a licensee or a lessee to pay "adequate compensation" to any person whose fishing rights are interfered with by the unreasonable exercise of the licensee's or lessee's rights. This provision which seeks to assist victims of oil pollution has some inherent weaknesses. Aside from the fact that it contains vague terms as 'adequate compensation', the scope is limited to fishing rights while other interests that may be affected by the unreasonable exercise of the licensee's rights are not covered. Also, the victim is also only entitled to compensation if he is able to prove that the licensee or lessee exercises its right 'unreasonably'. It has been observed that this will be a herculean, if not an impossible task for the victim, who often is a poor and illiterate fisherman[5]. It is unthinkable for a poor and illiterate fisherman to procure expert evidence that will be able to match that of the oil multinationals. Another shortcoming is that there is no specific sanction or penalty imposed upon the licensee or lessee for contravening any of the provisions of the Regulations aside from the general power given to the Minister of Petroleum Resources to revoke the licence or lease of the licensee or lessee[6] or to order the suspension of their operations[7] for non-compliance with the enabling Act or any regulations issued there under. The economic consequences on the nation may make the penalties unrealistic

[1] Yinka Omorogbe, *Oil and Gas Law in Nigeria,* Malthouse Press Ltd., 2001, p.136. similar provision is contained in paragraph 43 (3) of the Petroleum Refining Regulations 1974, which provides: "The Manager [of a refinery] shall adopt all practicable precautions including the provision of up-to-date equipment as may be specified by the Director [of Petroleum Resources] from time to time, to prevent the pollution of the environment by petroleum or petroleum products; and where such pollution occurs, the Manager shall take prompt steps to control and, if possible, end it."
[2] Ambrose O.O. Ekpu, above n. 24 at p.79.
[3] Kaniye Ebeku, above n. 27, at 197.
[4] Alexander S. Wawryk, above n. 11 at 29.
[5] See Ambrose O.O. Ekpu, above n. 24 at 80.
[6] Paragraph 24 of Schedule 1 to the Petroleum Act.
[7] Section 8 (1) (f).

except if the acts or omission constituting the offence is a grave one. Equally important to note is that the while the penalty of a fine of ₦100[1] (less than $1) can have no deterrent effect on the oil companies, the prison term is certainly unfeasible for corporate offenders.

II. D. National Oil Spill Detection and Response Agency (Establishment) Act 2006

The National Oil Spill Detection and Response Agency (NOSDRA), a Federal Government parastatal under the Federal Ministry of Environment, Housing and Urban development, was established under the National Oil Spill Detection and Response Agency (Establishment) Act 15, 2006 as the institutional framework for the coordination and implementation of the National Oil Spill Contingency Plan for Nigeria in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990,[2] to which Nigeria is a signatory. Prior to the enactment of NOSDRA, it can be said that there were no adequate legal and institutional frameworks in place to directly address oil spills and which clearly defined the oil spill preparedness and response principles. NOSDRA is therefore created specifically for the oil industry to serve as a policing body of oil spills.

NOSDRA is also mandated to establish among others, a viable national operational organization to ensure a safe, timely, effective and appropriate response to major oil spills and identify high risk/priority areas in the oil-producing environment for protection and clean up, as well as ensuring clean up and remediation of all impacted sites to all best practical extent.[3] Sections 6 and 7 of the Act provides for the functions of the Agency, which includes that it shall:

(i) be responsible for surveillance and ensure compliance with all existing environmental legislation and the detection of oil spills in the petroleum sector;
(ii) receive reports of oil spillages and coordinate oil spill response activities throughout Nigeria;
(iii) co-ordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) as may be formulated, from time to time, by the Federal Government….

This Act is quite commendable as it tries to address the issue of environmental degradation emanating mostly from oil pollution which is one of the root causes of the crisis in the Niger Delta. An oil spiller is required by the Act to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of an oil spill, in default of which the failure to report shall attract a penalty in the sum of Five Hundred Thousand Naira (₦500,000.00) (approximately US$3,500) for each day of failure to report the occurrence. The failure to clean up the impacted site, to all practical extent including remediation, shall attract a further fine of One Million Naira (₦1,000,000.00) (approximately US$7,000).[4] Suffice it to say that these penalties imposed on defaulting companies are quite inadequate to ensure compliance with the law when viewed against the background that failure, for example to clean up and remediate oil impacted sites exacerbates human rights violations.

Another challenge is that the agency still lacks necessary facilities to function, such as a boat/ship, helicopter which are vital for monitoring oil spills in the region with both onshore and offshore oil operations.[5] More often, they had to rely on oil companies for analysis of soil and water samples and for other data all of which makes them unable to effectively enforce compliance on the oil companies. There is also the need for constant capacity training programmes and the procurement of high-tech equipment to enable NOSDRA fulfill its mandate of preventing oil spills and clean-up and restoration efforts of affected areas.

III. Multinational Oil Companies, Environmental Impacts and Double Standards in the Niger Delta

III. A. Oil Spillages

The oil MNCs in the Niger Delta do not deny the fact that their operations result in damage to the environment. What they continued to dispute is the extent of damage to the environment and amount of the damage that are attributable to them. For example, Shell reports incidence of oil spills every year- 262 in 2002, 221 in 2003, 236 in 2004, 224 in 2005 and 241 in 2006,[6] even though it continued to attribute more than half to sabotage. According to Shell, of the 241 incidents that occurred in 2006, sabotage accounted for 165 (69 per cent), while

[1] Regulation 45 (1) provides for a fine of ₦100 or imprisonment for a term of six months against violation of any of the Regulations.
[2] Its objectives are to advance the adoption of adequate response measures in the event that an oil-pollution incident does occur; to provide for mutual assistance and co-operation between States.
[3] See Section 5 of the NOSDRA Act for the objectives of the Agency.
[4] Section 6 (2) & (3).
[5] Nigeria: Petroleum Pollution and Poverty in the Niger Delta, Amnesty International Publications 2009.
[6] Shell Petroleum Development Company (SPDC), 2007. *Shell Nigeria Annual Report 2006: People and the Environment, May 2007*. Shell Petroleum Development Company, Nigeria, (www.narcosphere.narconews.com/userfiles/70/2006 shell_nigeria_report.pdf). Also, (www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf)

50 (20 per cent) were controllable incidents (resulting from equipment failure, corrosion or human error).[1] Shell again recorded that in 2008, 53 spills involving 8,325 barrels (about 15% of the total volume spilled) were the result of the failure of equipment, corrosion or human error, and this they claimed is a significantly lower volume than the previous year (11,723 barrels).[2]

Similarly, Tuodolo notes that, 'between 1995 and 2006, Shell alone recorded 3,213 oil spill incidents (annual average of 300 incidents) resulting in the spillage of over four hundred and fifty thousand barrels of oil (450,000 bbls) on the Niger Delta environment and a daily flaring of huge volumes of gas (about 604 million scf per day).'[3] This is notwithstanding the fact that oil companies are noted for under-reporting incidence of oil spillage. Pollution from oil exploration and exploitation activities in the Niger Delta impacts heavily on the health of humans and resources such as agricultural land, fresh water, mangroves, fish and shellfish and result in high cost of remediation of contaminated sites. Oil spills from leaking underground pipelines and storage tanks are a regular occurrence, rendering vast tracts of land and water bodies unproductive in the region.[4] Indeed, the conclusion reached after a Natural Resource Damage Assessment and Restoration scoping Team visited the Niger Delta from May 21-May 29, 2006[5] was that an estimated 9 million-13 million barrels (1.5 million tons) of oil has spilled in the Niger Delta ecosystem over the past 50 years, representing about 50 times the estimated volume spilled in the Exxon Valdez Oil Spill in Alaska in 1989 and which amount is equivalent to about one "Exxon Valdez" spill in the Niger Delta each year. This, according to the team, makes the Delta one of the 5 most oil polluted environments in the world.[6] Pollution from oil spills continues unabated.

Comparing the rate of oil spillage in U.S. that has over 165.000 miles of oil transmission lines with Niger Delta that has 10.000 miles of high pressure oil pipelines and flow lines, it was revealed that more oil is being spilled from the pipeline system on an absolute basis in the Niger Delta whose pipeline is 16 times shorter than that of U.S. and the spill rate (spills/km of pipeline) is immensely greater in Nigeria than in US.[7] Although, several reasons- blowout, human error, equipment failure, natural causes, sabotage, third party, accident and others- have been given for the high incidence of oil spillage in Nigeria, of these causes, studies have shown that equipment failure, particularly ruptured oil pipelines, accounted for 80 per cent of the reported cases.[8] Many oil spills could have been avoided or better contained, but for the careless and reckless operating practices of these oil MNCs in Nigeria.[9] Debunking the long-standing claim of Shell that sabotage[10] is the single most important cause of oil pollution in the Niger Delta, Terisa E. Turner, a Canadian Professor and UN-based International Oil Working Group Expert, in her post-visit interview after the fact finding visit to the Niger Delta communities in 2001 stated that:

The claim of sabotage is patently false….There has been almost no arrest for sabotage of petroleum pipelines. Much less prosecution of any accused. The oil companies have been claiming that the oil spills, the

[1] Shell Petroleum Development Company (SPDC), 2007, ibid. There is no year that Shell Nigeria do not record spills caused by corroding pipelines. For example, the 2004 leaks from an 8-inch line near Opuama, the 24-inch Nkpoku to Bomu line; it reported in 2005 that 'the number of spills caused by corrosion decreased slightly from 38 in 2004 to 33 in 2005;' there was 2,500 barrels of oil spill at the Nimbe-IV pipeline in 2006; in 2007, a spill occurred 'along a 28-inch pipeline in the Cawthorne Channels due to corrosion,' and in 2008 'Trans Niger Pipeline (TNP) near the Bodo community in Ogoni land spilling 4,140 barrels'- all caused by corrosion as compared to Trans Alaska Pipeline in the US that has operated for over 30 years with no record of oil spills caused by corrosion- Cited in Richard Steiner, above n. 10; See also Shell in Nigeria, 'Environmental Performance: Managing Oil Spills,' Shell in Nigeria, May 2009, (www.static.shell.com/static/nga/downloads/pdfs/briefing_notes/environmental_performance.pdf)

[2] Shell in Nigeria, ibid.

[3] Felix Tuodolo, Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World *ACME*: *An International E-Journal for Critical Geographies* 2009, 8(3), 530-541 at 537.

[4] Nigeria Vision 2020 Programme, Report of the Vision 2020 National Technical Working Group on Environment and Sustainable Development, July 2009, p.41.(www.npc.gov.ng/downloads/Environment%20&%20%20Sustainable%20Devt%20NTWG%20Report.pdf)

[5] A group of independent environmental and oil experts, with participation by Nigeria's Ministry of the Environment, WWF UK and the IUCN Commission on Environmental, Economic and Social Policy visited Niger Delta communities and spill-damaged sites in Rivers, Bayelsa and Delta states. Despite this alarming figure, Nigerian Government and the oil companies are yet to take drastic measures at preventing oil spills from recurring, or at addressing the impact of oil spills on the ecosystem and the people of the region.

[6] Ibid.

[7] Richard Steiner, above n. 10.

[8] Daniel A. Omoweh, *Shell Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger delta: A Study in Environmental Degradation,* Africa World Press, Inc., Trenton, NJ, 2005, p.146.

[9] Frynas J.G., 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta,' *African Affairs* (2001), 100, 27-54 at 35.

[10] Shell in its Sustainability Report 2009, alleged that most oil spills onshore in the Niger Delta- 98 per cent in 2009- were as a result of sabotage and oil theft, with the remaining 2 per cent due to operational failures. See, Shell Sustainability Report, 2009, (www.shell.com/home/content/environmentsociety/society/nigeria/environment).

pipeline explosions were all caused by sabotage. But there is no evidence to this so far. These are just lies, distraction, shirking of responsibility on the part of the oil companies- and Shell here is the most serious culprit. Shell has not replaced its pipelines, has not carried out proper maintenance. It is well known...that should the pipelines not be replaced within 20 years or even sooner, then inevitably, they will leak, they may explode any day.... It so happened in the case of Yorla [in Ogoni] that Shell jumped to the false accusation and the cowardly denial of responsibility by citing villagers guilty of sabotage. This false allegation was then proved false by the very contractor- Boots and Coots- that Shell brought in from Texas to install a new X'mas tree which regulates that flow of crude oil in the pipelines. So then we have the petroleum experts showing the claim of sabotage to be false.[1]

This position has been confirmed by several scholars[2] and the courts.[3]

III. B. Gas Flaring[4]

Nigeria has the stigma of being the World's top gas flarer. In 2001, Nigeria comes out as the world's number one flarer and venter- 16.8 bcm/y on both absolute and proportionate terms, based on the OPEC figures for that year.[5] Estimating the total world flaring volume in 2001 at 84.87 bcm, Cedigaz data shows that Nigeria accounted for 19.79% of the global amount.[6] The Nigerian amount is more than the second and third countries combined,[7] and four times higher than the nearest African country, Algeria, which is recorded as having flared and vented 4 bcm.[8] European flaring is put at 2.54 bcm; or 0.76% of gross production; U.S. flaring at 2.97 bcm, or 0.43% of gross production.[9] Over 2.5 billion cubic feet of crude associated gas is flared in Nigeria ever)- day and this represents 40 percent of all of Africa's natural gas consumption in 2001.[10] In economic terms, it translates into a loss of $2.5 billion[11] m government revenues and $[7]2 billion for the period 1970-2006.[12] There are more than 100 gas flare sites in the Niger Delta.[13]

It is sad to note that while 99 percent of associated gas is used or re-injected into the ground in the United States[14] and Western Europe, more than half the associated gas is flared in Nigeria.[15] Besides most of the gas flare sites are located within residential areas.[16] Notwithstanding government regulations, decisions of the court[17] and even the several promises by the oil companies to put an end to the gas flaring aptly described by a

[1] Terisa E. Turner, being her Assessment of the Aftermath of Shell's Oil Spill Disaster at Ogbudu, Niger Delta: '*Oil Companies Lie, Deceive, Play Ethnic Card to Divide Host Communities,'* published by National Interest (Lagos), Vol.221, 31 July 2001, pp.29-30.
[2] See Kaniye Ebeku, above n. 27 at 139-141; Frynas J.G., above n. 53 at 47.
[3] In Shell v Isaiah (1997) 6 NWLR (Pt. 508) 236, the Shell's defence of sabotage in an action for negligently failing to contain the oil spills caused by an old tree which fell on the pipeline causing extensive pollution on the plaintiff's land, failed as the Court of Appeal considered the defence as an afterthought.
[4] Flaring is the emission of GHGs including Carbon dioxide (CO_2), Methane (CH_4), and Nitrous oxide (N_2O).
[5] Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, published by Environmental Rights Action/Friends of the Earth Nigeria in collaboration with the Climate Justice Programme, June 2005, p. 12.
[6] Ibid.
[7] Second highest was Iran (10.50 bcm; 9% of gross production) and third was Indonesia (4.80 bcm; 5.8% of gross production).
[8] Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, above n. 58.
[9] Ibid.
[10] Ibid.
[11] TELL Newsmagazine, (Special Edition), 50 Years of Oil in Nigeria, February 18, 2008, p.33.
[12] Environmental Rights Action/Friends of the Earth Nigeria, Fact Sheet: Harmful Gas Flaring in Nigeria, November 2008, (www.foe.org/pdf/GasFlaringNigeria_FS.pdf).
[13] Betty Abah, 'When Blessing Becomes a Curse in the Niger Delta,' *Women in Action*, No. 2 2009, p.27, (www.isiswomen.org/index.php?option).
[14] In 2009, less than 1% of the natural gas produced in the US was vented or flared. See, Energy Information Administration, 'Over One-Third of Natural Gas Produced in North Dakota is Flared or Otherwise Not Marketed,' US Department of Energy, Washington, 23 November, 2011, (www.eia.gov/todayinenergy/detail.cfm?id=4030).
[15] *'Shell's Big Dirty Secret: Insight into the world's most carbon intensive oil company and the legacy of CEO Jeroen van der Veer'* published by: Shell Guilty Campaign: Oil Change International, Friends of the Earth (International, Europe, U.S. and The Netherlands), PLATFORM, and Greenpeace UK, June 2009, (www.foeeurope.org/vorponucs/Extraytivgs/shellbigdirtysecret June09.pdf). [15]
[16] In the small village of Orugbiri, which is 'a small settlement not larger than 100 metres in length, two gas flaring sites exists therein,' in contravention of the rule that flare sites must be located far away from communities to avoid the hazardous effect of gas flaring to the health of the people. Shell and Agip still flare gas day and night, less than 500 metres from the residents of the local inhabitants in Obigbo and in Rumuola Road, Port Harcourt respectively. See Amos Adeoye Idowu, 'Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoniland Episode,' *NetherlandsQHR,* Vol. 17 No. 2 June 1999, 161-184 at 171; Daniel A. Omoweh, above n. 52 at 140.
[17] In Jonah Gbemre v. Shell Petroleum Development Company Nig. Ltd. and 2 others Suit No: FHC/B/CS/53/05, the Federal

critic as "constant night and day pollution,"[1] the practice still continues unabated. Angered by the situation, Saro-Wiwa wrote in 1992 that:

> As a final remark of their genocidal intent and insensitivity to human suffering, Shell and Chevron refuse to obey a Nigerian law, which requires all oil companies to re-inject gas into the earth rather than flare it. Shell and Chevron think it cheaper to poison the atmosphere and the Ogoni and pay the paltry penalty imposed by the government of Nigeria than re-inject the gas as stipulated by the regulations...Shell has won prizes for environmental protection in Europe where it also prospects for oil. So it cannot be that it does not know what to do. Now, why has it visited the Ogoni people with such horror as I have merely outlined here? The answer must lie in racism.[2]

Flaring in Nigeria contributes a great deal to the continent's emission of greenhouse gases, leads to climate change, creates acid rain and retarded crop yield, corroded roofs, etc. Flaring produces gases such as methane which is known for its high warming potentials and the contaminated air impacts negatively on the health of the local inhabitants.[3] The resultant adverse effect of gas flaring includes premature deaths, respiratory illnesses, asthma and cancer and others.[4]The question then is: What is responsible for high and persistent gas flare in Nigeria when compared to other oil producing developed countries? Several factors have been blamed for the ' continuous flaring of gas in Nigeria, among which include lack of necessary technology for the gathering and conserving the gas flared,[5] low gas demand in the domestic and regional markets, low level of environmental consciousness of the consequences of gas flaring, failure of the government to meet its financial contribution under the existing joint venture agreements to the cost of any gas injection facility', lack of clearly defined long-term vision for the gas sector, lack of robust fiscal, legal, contractual and regulatory framework and institutions to interface with foreign investors.[6] Experiences of countries like Saudi Arabia, Algeria, and Norway in flaring reduction and gas utilization should serve as a pointer to Nigerian government that it is indeed possible for such routine flaring to cease. For example, in Saudi Arabia, 'gas flaring emissions fell from 38 billion cubic meters per year in the early 1980s to a mere 120 million cubic meters per year in 2004[7], with the associated gas providing the basis of a successful petrochemicals industry. This has now made Saudi Arabia one of the world's largest producers of urea- a widely used agricultural fertilizer. In Norway, clear and detailed gas flaring and venting policy, careful evaluation of the development plan as well as the cooperation of the Norwegian government with oil companies contributed to the successful Norwegian Gas Utilization Policy.[8] A lot can be achieved through gas flaring reduction, this include but not limited to: 'lowering $C0_2$ emissions while opening new economic opportunities through gas utilization, and at the same time enhancing energy security by increasing available supplies',[9] engendering peace and stability in the Niger Delta region, and the nation at large.

High Court held among others that the action of the 1" and 2nd respondents in continuing to flare gas in the course of their oil exploration and pollution activities in the applicant's community is a violation of their fundamental rights to life (including healthy environment) and dignity of human person guaranteed by sections 33(1) and 34(1) of the 1999 Constitution of Nigeria and reinforced by Articles 4, 16, and 24 of the African Charter. It further restrained respondents from further flaring of gas in the applicant's community and are to take immediate steps to stop the further flaring of gas in the community. Despite this laudable pronouncement by the learned trial judge in this case, environmental injustice, continuous gas flaring, and general insensitivity of the MNCs and government to environmental living conditions of marginalized groups living in the Niger Delta region still persists rill date.

[1] Claude Ake, *Interview with Andy Rowell,* December 1, 1995. Suffice it to say that Shell publicly stated in its Sustainability Report 2003 that it had "set a corporate objective to end all flaring of gas by 2008," but as usual, it shifted the goal-posts a year after again to 2009 which also passed away with the situation remaining almost the same. See 'Shell's Big Dirty Secret,' above n. 67.

See Shell Petroleum Development Company of Nigeria, *Environment 1996*, February 1997.

[2] Ken Saro-Wiwa, *Genocide in Nigeria: The Ogoni Tragedy,* Saros International, 1992, p.82

[72] Gizel Thomas-Roberts, "Sacrificial Lambs or Equal Beneficiaries." Is there any Justification for this Description Based on the Human Rights Violations of the Indigenous Peoples of the Niger Delta? (www.dundee.ac.uk/cepmlp/gateway/files.php?); Social Action, *Flames of Hell: Gas Flaring in the Niger Delta,* Social Development Integrated Centre (Social Action) Port Harcourt, 2009, pp. 12-13.

[4] Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity, above n. 58 at 25.

[5] See Garba I. Malumfashi, above n. 31 at 102.

[6] Soala Ariweriokuma, *The Political Economy of Oil and Gas in Africa: The Case of Nigeria,* Routledge, London, 2009, p.178.

[7] Rashad Kaldany, 'Global Gas Flaring Reduction: A Time for Action,' Being a Keynote Speech at the Global Forum on Flaring & Gas Utilisation, Paris, December 13th, 2006. (www.worldbank.org/html/pdf/ggfrforum06/kadany.pdf).

[8] Gulzhan Nurakhmet, 'Gas Flaring and Venting: What Can Kazakhstan Learn From the Norwegian Experience?' (www.dundee.ac.uk/cepmlp/car/html/CAR10_ARTICLE14.PDF) it was reported that in 2004, only 0.16% of the total annual AG from oil production was flared in Norway because approval of development plan is contingent upon provision for gas reinjection, gas export solution or other AG utilisation schemes.

[9] Ibid.

III. C. Oil Clean-ups

Clean up of oil spills and repair of pipelines by oil MNCs in Nigeria has been found by Christian Aid in its report to be scandalously inadequate and would never be tolerated in Europe or North America.[1] It continued that the 'oil spills, made inevitable by a network of ageing pipes, many of which are still routed above ground, are left for weeks, sometimes months, without being cleaned up. Oil is carried downstream, visiting a deadly black plague on communities miles away from the original spillage.' Describing the clean-up purportedly done following the 24 June 2001 explosion of Shell's pipeline in Ogbudu community (150,000 people) in Rivers State, Turner noted that apart from the fact that it took Shell days to respond, 'we couldn't accurately or honestly describe it as a clean-up operation. It was a token initiative. There were very small amount of crude oil on top of the water being removed by a petroleum lorry tanker packed in the water.'[2] This makes a nonsense of Shell's claims of 'integrity and respect for people,' and its 'commitment to support human rights and to contribute to sustainable development' in Nigeria."[3]

More often, the clean-up of oil spills is very superficial, 'sometimes involving little more than turning the land so that the oil remains just beneath the surface of the soil.'[4] They engage the use of contractors that do not have the technical skill in oil spill cleaning. Little wonder they often set the entire forest on fire so as to wipe out the evidence of spills, as witnessed in Aleibiri where the forest was set on fire to hide SPDC spills after the crude efforts to clean up the spill proved ineffective.[5] While Shell has pledged to clean-up spills as fast as possible, no matter what their cause, it cited security concerns, desire of some communities to win clean up-contracts or extract greater compensation as likely reasons for delays.[6] These reasons are rather spurious and weak considering the fact that delays can increase the impact of oil spills on the people and the environment. The question is 'are there no ground rules as to the cost range and source of contractors for the clean-up of oil spills in the joint venture operations production programme.'[7] The swift and immediate response of BP to the 20 April, 2010 explosion of its Deepwater Horizon oil rig that resulted in the death of eleven workers and causes horrendous ecological disaster around the Gulf of Mexico is noteworthy. The environmental disaster that occurred in the Gulf of Mexico have been on in the Niger Delta for decades resulting in deaths, diseases, displacement and destruction of the means of livelihood of the people and their culture, without any apology, regrets, compensation and necessary remedial actions by the oil MNCs responsible for them. Whereas, when these occur in developed countries, like we presently have in America's Gulf coast in the Gulf of Mexico, BP, Halliburton and Transocean limited linked to the spill 'have engaged in purely voluntary actions at remediation in cleaning up, in offering compensations to individuals and companies and as well as offering $170 million dollars within one month, to the US Gulf Coast States of Alabama, Florida, Louisiana, and Mississippi, even well before the effects and consequences of pollution become apparent.'[8] BP is voluntarily expending six million dollars per day to clean up the Gulf of Mexico with the possibility of increasing this amount on daily basis.[9] In June 2010, also BP agreed to place about $20 billion in an escrow account to pay for damage claims resulting from the Gulf of Mexico oil spill.[10] The response here is also similar to that of Exxon Corporation when there was an oil spillage in Alaska in 1989. Exxon immediately brought in sixty experts and five plane load of modern equipment to the site to contain the oil spill.[11] Again, in the 1988 oil spill in Martinez, California, Shell paid nearly $20 million to the various governments of the United States for environmental damage, in addition to

[1] Christian Aid (2004) Report, *Behind the Mask: The Real Face of Corporate Social Responsibility,* p.23. (www.standrews.ac.uk/~csearweb/aptopractice/Behind-the-mask.pdf).
[2] Terisa E. Turner, above n. 55.
[3] Christian Aid Behind the Mask, above n. 79 at 23.
[4] EarthRights International, 'Shell's Environmental Devastation in Nigeria,' (www.wiwavshell.org/shell%E2%80%99s-environmental-devastation-in-nigeria)
[5] Nnimmo Bassey, 'Oil and Gas in Africa: Ecological Debt Huge as the Sky,' being paper presented at the Friends of the Earth International's (FoEI's) "Globalisation, Ecological Debt, Climate Change and Sustainability: A South-South Conference," held in Cotonou/Ouida, Benin, (www.waado.org/Environment/OilCompanies/GasAndOilInAfrica-Bassey.html).
[6] See Shell Sustainability Report 2009, above n.54.
[7] The Guardian, 'Shell's 2009 Sustainability Report,' Editorial Opinion, The Guardian, 20 May 2010 at (www.nigeriamasterweb.com/paperfrmes.html).
[8] Paul I. Adujie, American Oil Spills in Gulf of Mexico: Lessons for Nigerians, Ecuadorians and Others,' New Liberian, (www.newliberian.com/?p=1228).
[9] Ibid. as at June 2010, BP disclosed that the cost of battling the Gulf of Mexico oil spill has reached US$2.65 billion as efforts to stop the spills continue. See Eduard Gismatullin, 'BP Spill Costs at US$2.65 Billion as Relief Well Work Continues,' Bloomberg Businessweek, Monday 28 June, 2010, (www.businessweek.com/news/2010-06-28/bp-spill-costs-at-2-65billion-as-relief-well-work-continues.html).
[10] Classaction.org, Environmental Hazards: Lawsuits Being Filed Over Gulf of Mexico Oil Spill, (classaction.org/gulf-of-mexico-oil-spill-lawsuits.html)
[11] Aghalino S.O. & Eyinla B., 'Oil Exploitation and Marine Pollution: Evidence From the Niger Delta, Nigeria,' *J. Hum Eco.* 28 (3): 177-182 at 181 (2009).

payment of monthly allowances to those whose businesses were affected by the oil spill during the months until final settlement.[1]

However, in clear cases of devastating effects of their actions on the people and the environment, the oil MNCs in the Niger Delta are always not willing to respond, even under compulsion by court judgments, protests and demonstrations as they constantly deny liability to exonerate themselves from cleaning the spills and paying appropriate compensations to the victims. The swift response of BP has clearly revealed a sharp contrast in the protection and rights afforded the local inhabitants of the oil producing communities and their environment in different parts of the world. While the BP immediately responded to the disaster in America, the minorities in the Niger Delta 'continue to suffer environmental degradation, a complete lack of benefits from oil extraction and outright repression in an environment devoid of effective protective mechanisms.'[2] The application of different standards by the oil multinationals in oil exploration, prospecting, drilling, compensation and disaster management control between the developed and developing countries amounts to double standards. This is borne out of the fact that both the Nigerian State and the oil multinational companies see the oil producing areas as a minefield, hence, the little or no attention been paid to these unwholesome practices.[3] Both are more concern with the money to be gotten from the continuous exploitation and production of oil regardless of the unsustainable manner in which it is done. This discriminatory practice against victims of similar harmful oil pollution is an injustice to the economically dispossessed, socially disoriented and ecologically endangered people of Niger Delta.

III. D. Pipelines

Pipelines are important infrastructure in the oil and gas industry as they are used in the transportation, marketing and storage of natural gas, crude oil and refined petroleum products. The Nigeria's pipeline network is put at over 3,000 km.[4] However, quite worrisome is the high-pressure pipelines that pass above ground through the communities and criss-cross over their rivers, creeks, swamps, homes and land inhibiting them from making use of same for agricultural purposes, thus rendering them economically useless.[5] For instance, the 95 km trunk line of Shell Petroleum Development Company runs from Nembe Creek field to Cawthorne Channel field passing through 35 communities and traversing 60 rivers/creeks of varying sizes along its route.[6]

This is unlike the practice in the developed countries where these flow lines are buried below the ground to minimize their human and environmental impact. As pointed out by a scholar, international safety and standards regulations prescribe a minimum of one kilometre between oil installations and residential houses.[7] This is often ignored by the oil companies who lay their pipelines in front of residential buildings. The oil companies have however argued that '[Much of the area in which oil companies are operating is swamp, so burying pipelines could, in fact, exacerbate the risk of fractures and spillages. From time to time the positioning of pipelines is reviewed, especially when it is known that communities have expanded onto land neighbouring a pipeline, and if considered a hazard then the pipelines are re-routed."[8] In response to this argument, the Ogonis contended that their land is neither swampy nor has a pipe ever been re-routed in their communities.[9] They alleged the practice of double standards by the oil companies as they carry out proper environmental survey in laying pipelines and also bury the pipelines in UK and EU in their on-shore oil production. Not minding the impact of their actions on the communities- farmlands, creeks and forests- Shell and other oil MNCs prefer to take the cheaper option of laying pipes above ground in the Niger Delta as opposed to burying them."[10] Sadly

[1] Patrick D. Okonmah, 'Right to a Clean Environment: The Case for the People of Oil Producing Communities in the Nigerian Delta,' 1997 *Journal of African Law,* 41: 43-67 at 58.

[2] Alex Free, 'Africa: Multinational Oil, the U.S and Nigeria- a Crude Contrast,' Pambazuka News (www.allafrica.com/stories/201005140634.html).

[3] Daniel A. Omoweh, above n. 52 at 144.

[4] Friday Adejoh Ogwu, Petroleum Pipeline Distribution System: The case of Oil and Gas Pipeline Network in Nigeria-'an environmental justice approach' ESRC Seminar, 13 July 2009, (www.lancs.ac.uk/fass/events/chhangingcultures/docs/sem6/ogwu.docx).

[5] Gabriel Eweje, 'Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria,' *Journal of Business Ethics* 69: 27-56 at 40 (2006). For example, Shell's oil and gas pipelines are laid bare on the ground and across residenual compounds and not maintained in the Niger Delta communities of Port Harcourt, Bomu, Umuechem, Bonny and Nembe. See Daniel A. Omoweh, above n. 52 at 142.

[6] Friday Adejoh Ogwu, above n. 142.

[7] Isuwa B. Dogo, *'Transnational Corporations and Environmental Pollution and Degradation*,' being the text of a paper presented at the 1997 Annual Conference of the Nigerian Society of International Law in Lagos on 15 August 1997, p. 6, quoted in Amos Adeoye Idowu, above n. 68 at 171.

[8] Tookey R.W.: 9 December 1992, 'Letter to Shelley Braithwaite, London Rainforest Action Group,' Shell International Petroleum Company Limited, quoted in Gabnel Eweje, above n. 94 at 41

[9] Gabriel Eweje, ibid.

[10] Andy Rowell et al, *The Next Gulf, London, Washington and Oil Conflict in Nigeria,* Constable and Robinson Ltd., 2005,

enough, 'ruptured oil pipelines were and still lay bare on the ground for the past 40 years without any maintenance except when they burst.'[1] Thus, given the large number of oil spills in the Niger Delta caused by equipment failure, it can be concluded that the provision of the Petroleum (Drilling and Production) Regulations on the duty to maintain pipelines has not been faithfully adhered to by the oil companies.[2] Interestingly, the oil MNCs has commenced a replacement programme to replace pipelines older than 15 years.[3] It is hoped that this will not take another century for it to be effectively concluded. Burying of pipelines will not only reduce the various incidences of sabotage, but will further help to prevent the pollution of waters and farmlands. Efforts should be made to quickly inspect and assess the state of the pipelines and to replace the ageing ones.

IV. Failures of the Oil MNCs

In recognition of the above and the need to fulfill their obligations under the relevant national laws, most of these companies now published their environmental principles and policies indicating that they are abiding by the relevant laws concerning their operations or are taking necessary steps to comply. I"he publication of these principles sometimes called 'code of conduct' by the MNCs and their various promises to behave ethically and to abide by 'international standards' or 'best practices' for environmental protection have considerably raised the hopes of the affected communities that the oil companies will improve on their environmental performance. For example, Shell declares that one of its several responsibilities to the society is, 'to conduct business as responsible corporate members of society, to comply with applicable laws and regulations, to support fundamental human rights in line with the legitimate role of business, and to give proper regard to health, safety, security and the environment.'[4]

However, events in the Niger Delta region have shown that these cosmetic statements and languages are not enough to guarantee environmental protection. The oil companies have not only failed to comply with, but also not willing to provide information required to verifying their claims of environmental excellence, or that of effective compliance with applicable international standards and best practices. For instance, the lack of willingness on the part of Shell Nigeria to give information in spite of the professed transparency principle to 'provide full relevant information about their activities to legitimate interested parties'[5] were separately revealed by Steiner[6] and Christian Aid.[7] They disclosed their unsuccessful attempts to obtain information from Shell Nigeria on the situation of their pipelines, the efficacy of their pipeline management in Nigeria, their Oil Spill Contingency Plan (OSCP), among others. Christian Aid observed that there is 'no publicly available information from SPDC on the lifespan of its pipelines in Nigeria or on the application of the lifespan criteria commonly used by the international oil industry, such as those applied by the American National Standards Institute (ANSI) and the US Environmental Protection Agency.'[8] In fact, Shell's Alan Detheridge admitted that Shell Nigeria's 'overall picture' of the age and condition of its pipelines in Nigeria with respect to industry standards was incomplete.[9] These not only violates the company's code of conduct but also the all known environmental international standards in the oil industry. Incidence of oil spills, gas flaring and the oil pipelines that criss-cross the entire Niger Delta region as earlier discussed are all testimonies to the non-compliance by the oil companies with the international environmental standards.

Confirming the double standards, Shell Nigeria for example did not initiate its Asset Integrity Review (covering wells, pipelines, flow lines and other production facilities) and Pipeline Integrity Management System (PIMS) until 2003/2004 when the requirements of these important management plans date back decades- the Leak System standard in 1995, ASME standards, the Alaska BAT requirement in 1997, and the U.S. Integrity Management Requirement in 2001.[10] All of these could have averted most of the large pipeline spills occurring in the region. Commenting on the poor environmental practices of Shell in Nigeria, Bopp van Dessel, the former head of environmental studies for Shell Nigeria between 1992-1994, and who had to quit in 1994 from Shell as a

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p.69.

[1] Daniel A. Omoweh, above n. 52 at 146.

[2] Kaniye Ebeku, above n. 27 at 230.

[3] Gabriel Eweje, above n. 94 at 41.

[4] See generally, Revised Shell General Business Principles 2005, (www.static.shell.com/static/public/downloads/corporate_pkg/code_of_conduct_english.pdf); See also, Shell Code of Conduct 2006, 'How to Live by the Shell General Business Principles,' (www.static.shell.com/static/public/downloads/corporate_pkg/code_of_conduct_english.pdf).

[5] Shell 1997, Shell General Business Principles, (www.static.shell.com/static/public/downloads/corporate_pkg/sgbp_english.pdf).

[6] Richard Steiner, above n. 10.

[7] Christian Aid (2004) Report, above n.79 at 28-30.

[8] Ibid, 30.

[9] Ibid.

[10] Richard Steiner, above n. 10.

result of' professional frustration' stated that Shell's operations in Nigeria 'breached international standards and caused extensive pollution.'[1] He continued that: Wherever I went, I could see that Shell were not operating their facilities properly. They were not meeting their own standards, they were not meeting international standards. Any Shell site that I saw was polluted, any terminal that I saw was polluted. It is clear to me that Shell was devastating the area.[2] In an interview with Basil Omiyi, Country Chair for Shell Nigeria and Managing Director of SPDC, he stated that, '[W]e do, however, have a substantial backlog of asset integrity work to reduce spills and flaring. That backlog is caused by under-funding by partners over many years, operational problems and, more recently, the lack of safe access to facilities.'[3] This statement no doubt is an admission that Shell Nigeria is operating below the international best practice standards, Shell corporate standards worldwide and the Nigerian laws regulating the oil and gas industry and calls into question its claim of environmental leadership.

Shell's attitude to Nigeria's environment is not an isolated case as all other oil multinationals operating in Nigeria has not fared better in their operations regarding adherence to international standards.[4] They have variously demonstrated lukewarm attitude to responding to incidence of oil spillages, halting gas flaring and other activities deleterious to the health of the communities and the ecosystem where they operate.[5] It is certain that the environmental regimes in Europe and America would not permit these unwholesome and lax attitudes as such company could be sued out of business.[6]

Shell excuses of underfunding by Nigerian government or security[7] (militancy problem) as reasons for not been able to conform with 'good oil field practice' in Nigeria is no longer tenable since it has the technical know-how, the financial wherewithal and the corporate mandate to achieve a significant improvements in their oil field operations in the Niger Delta.[8] Besides, it can ask for the renegotiation of the Joint Operating Agreements (JOA) and the Memorandum of Understanding (MOU) if these are making them to violate the international best practices in the industry.

V. Government Failures

Nigerian government has a duty under international law to protect its citizens human rights against violation by non-state actors (corporations alike) and to ensure that they do not violate the laws of the land that may negatively impact the human rights of the people. This is confirmed by the African Commission in *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria,*[9] which is a

[1] Quoted in Richard Steiner, *ibid.* in 2007, Shell in its advertisements in various European Newspapers and Magazines claimed: "We used our waste [carbon dioxide] to grow flowers," thus suggesting that its operations have little or minimal impact on the environment. Both the Dutch and the UK Advertising Standards Authorities declared that Shell had misled the public on its environmental performance. See Shell's Big Dirty Secret, above n. 67.

[2] Ibid.

[3] Basil Omiyi, being a statement made in an interview by Roger Hammond, Development Director, Living Earth, on '*Meeting the Energy Challenge,'* The Shell Sustainability Report 2006, (www.shell.com/static/envirosocen/downloads/sustainability_reports/shell_sustain_report_2006.pdf).

[4] For example, at the fire incident that struck at the Chevron Escravos Tank Farm on 20 July, 2002, it took the company not less than five days to end the disaster. At the end of the five days, 'there was estimated 180,000 barrels of oil in the affected tank, from which the company successfully pumped out 80,000 barrels,' with the 100,000 barrels unaccounted for. This incident affected five communities- Madagho, Ajidagbo, Ajala, Ogidigben, and Ogorodo which made up the Escravos. Apart from the fact that Chevron only attempted a botched clean-up of the oil spill, it was reported that the communities were still appealing to Chevron for compensation till date. This is unlike the fire and explosion incident at Chevron's Richmond Calif Refinery in America in April 1989, where it was reported that "the State Labour Department fined Chevron US$877,000 for 114 safety violations in connection with the fire, 5 of them classified as 'serious' legal violations. The company eventually settled for US$275,000 in penalties and as part of the settlement agreed to reinforce its fire protection efforts at the U.S. refineries." Cited in Kenneth Omeje, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria,* Ashgate Publishing Ltd., England, 2006, pp.127-128; Manuel A. 'The Dirty Four: The Case Against Letting BP Amoco, ExxonMobil, Chevron and Phillips Petroleum Drill in the Arctic Refuge.' US Public Interest Research Group, Washington D.C. March 2001, cited in Kenneth Omeje, *ibid*, p.128; ChevronTexaco News, Lagos, CNL, 2/3 July-September 2002, p.7.

[5] For example, the Qua Iboe oil spillage exposed the inadequacy of Mobil safety measures. A major oil spillage occurred on 12 January, 1998 in one of the Mobil's oil wells in its Qua Iboe onshore terminal in Akwa Ibom state which covered a distance of two hundred kilometres affecting about twenty communities in the area. Mobil could not engage in the onshore cleaning until eleven days after the occurrence of the oil spillage, that is, 28 January, 1998. This can be contrasted with a similar incidence involving Exxon Corporation in 1989 on the oil spillage in Alaska, where Exxon Corporation responded swiftly by bringing in experts and five plane loads of modern equipment to contain the spill within the shortest possible time. See, Aghalino S.O and Eyinla B., above n. 89 at 177-182.

[6] Aghalino S.O and Eyinla B., *ibid* at 181.

[7] For example, Shell stated that it has not been able to put an end to gas flaring in Nigeria 'mainly due to security issues and funding difficulties with its main partners.' See, Shell Sustainability Report 2009, above n. 54.

[8] Richard Steiner, above n. 10.

[9] Communication 155/96.

communication filed before the African Commission on Human Peoples' Rights by the Social and Economic Rights Action Center (SERAC) in collaboration with the New York based Center for Economic and Social Rights (CESR) against the Federal Military Government. The communication alleges that the Military government of Nigeria was directly involved in oil production through the State Oil Company, the NN'PC, which is the majority shareholder in a consortium with Shell Petroleum Development Company (SPDC). It further alleges that "the widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals; and the climate of terror that has been visited upon the Ogoni communities" constituted a violation of their rights to health, a healthy environment, housing and food. They also complained that the government condoned and facilitated violation of international standards by placing the legal and military powers of the State at the disposal of the oil companies; withholding information from the communities about the dangers of oil activities; ignoring the concern of the communities; and responding to non-violent protests of MOSOP "with massive violence and executions of the Ogoni leader".

In October 2001, the Commission found that the Federal Republic of Nigeria violated Articles 2 (non-discriminatory enjoyment of rights), 4 (right to life), 14 (right to property), 16 (right to health), 18 (family right), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples in a satisfactory environment). The African Commission briefly considered the right to a satisfactory environment as a right that requires a government to: take reasonable measures to prevent pollution and ecological degradation;[1] promote conservation and ensure ecological sustainable development and the use of natural resources;[2] permit independent scientific monitoring of threatened environments;[3] undertake environmental and social impact assessments prior to industrial development;[4] provide access to information to communities involved;[5] and grant those affected an opportunity to be heard and participate in the development process.[6] It concluded that Nigerian government which has a duty to ensure that all human rights in the African Charter arc guaranteed did not live up to the expectation. It appealed to the government to ensure the protection of the environment, health and livelihood of the Ogoni people and the entire Niger Delta, ensure adequate compensation to victims of human rights violations etc.[7] However, since the communication was made in 2001, Nigerian government has not taken any step towards implementing the decisions of the Commission. The Niger Delta region remains polluted and the human rights abuses continue.

The over dependence on oil revenue by the government implies that most of the policy of government will be directed towards minimizing loss of the revenue from oil at the expense of environmental protection or the protection of citizen's rights. Since the State is more concerned with patrimonial accumulation and how to maximize oil rent, it least bordered about issues of environmental protection and how to put in place necessary institutional framework for enforcing the relevant laws.[8] In this sense, government does not perceive any harm to the environment as a problem except where it inhibits the free flow of profit. The result is that there are several oil-related environment protection laws which are not enforced to regulate the activities of the oil companies due to the economic interest of the nation. The non-enforcement of laws and regulations by the Nigerian government to control the environmental harmful practices of the oil MNCs amounts to a political sanctioning of environmental injustice.[9] Nigerian government has so misinterpreted the 'right to development' as declared by the United Nations General Assembly[10] to mean the pursuit of economic development to the detriment of environmental protection.

Failure to halt continued degradation of the environment by the oil companies on the specious excuse that trade should not be jeopardised will not only worsen the human rights situation of the people whose lives depend on the sustainability of the environment but will affect the capacity of the future generations in meeting their needs for sustainable national development.[11] Pursuits of economic development and human rights are never antithetical. Government must realise that the human and other costs of environmental damage cause by the reckless and deadly capitalistic exploitation of oil by the oil MNCs cannot be equated to any amount of revenue derivable from such destructive exploitation. Regulating the activities of oil MNCs and halting the

[1] Para. 52 of the Communication.
[2] As above.
[3] Para. 53 of the Communication.
[4] As above.
[5] As above.
[6] As above.
[7] As above.
[8] Kenneth Omeje, above n. 113 at93.
[9] John Bryne, *et al.,* A Brief on Environmental Justice, in John Bryne, *et al.* (eds.), Discourses in International Political Economy, Transaction Publishers 2002, p. 6.
[10] Declaration on the Right to Development was adopted by General Assembly resolution 41/128 of 4 December 1986, (www.ohchr.org/English/law/pdf/rtd.pdf)
[11] Amos Adeoye Idowu, above n. 68 at 181.

practice of double standards are major steps that government must take to show its sincerity towards addressing the issue of the Niger Delta and show its commitment to future generations. In order to ensure adequate protection to the people of the oil producing communities of Nigeria and the ecosystem of the region, there is need for change of attitude by the government and the judiciary in the form of effective balancing of economic interests with the need for environmental protection.

Akin to the above is the fact that most government institutions in Nigeria involved in environment resources management lack trained staff, technical expertise, adequate information, analytical capability and other prerequisites for policies and programme.[1] For example, in 1995 the World Bank found that the Regional Office of FEPA in Rivers State had only 25 staff which included 10 environmental professionals out of which only 3 were concerned with pollution.[2] Also worrisome is the fact that the regulatory bodies do not have the equipment required to effectively monitor environmental standard due to poor funding. In this regard, they rely on MNCs that they are supposed to regulate for these equipment. The regulated, that is, MNCs are in effect the regulators. Egbu,[3] asserts that neither the Federal Environmental Protection Agency's Zonal Office in Port Harcourt nor the Rivers State Ministry of Environment have a well-equipped laboratory. The result is that where there is an oil contamination incidents in River State, the authorities often request that the oil companies responsible should provide soil and water sample analysis.[4] The effect of unskilled personnel concerning detection and enforcement of rules was most evident in the failure of the customs officials to detect the harmful substance of the Koko incident, when they were deceived into believing that the 3,800 tons of toxic wastes were chemicals for manufacturing fertilisers.[5] Little wonder that oil companies operating in the Niger Delta are rarely found wanting by the regulating authorities for environmental pollution. All these are to the detriment of the local communities in this area. Thus, in addition to provision of adequate training of staff, government must ensure that there is adequate funding of the agencies responsible for regulating the oil industries so as to be able to enhance their performance.

VI. Conclusion

This paper showed the discriminatory practices of the oil MNCs in their operations in the Niger Delta. It further contends that been a co-owner in the industry and equally liable for claims from environmental damage, government hardly performs its oversight and regulatory function in the industry and which has contributed immensely to the non-compliance by the oil companies with the Nigerian relevant laws, internationally recognised best practice and even the companies own environmental standards. From the continuous environmental devastation of the Niger Delta area and the worsening human rights situations of the people in the region, it can arguably be concluded that Shell and other oil companies operating in the Niger Delta are not employing internationally recognized standards used in developed countries to prevent pollution and environmental damage. In order to make the oil companies take the protection of environment seriously, government must free itself from the joint venture agreement with the oil companies so that it will be able to effectively enforce the environmental standards.[6] There is also the need for Nigerian government to address the inadequacies in some of the laws regulating the oil industry and ensure are effectively applied and enforced by all categories of people charged with the responsibility of enforcing the laws.

Unless there is a change of attitude by the oil companies by ensuring they adopt best global practices in the industry, the amnesty[7] put in place by the federal government to bring about peace in the Niger Delta region would end up as a failure. The oil MNCs need not be reminded that they have an obligation to protect the people and the environment where they operate from destruction over and above what is required by law and cooperate

[1] Environmental Resource Manager Limited, Niger Delta Environmental Survey Final Report, Phase 1, p.763.
[2] Kaniye Ebeku, above n. 27 at 238.
[3] Anthony Nzodinma Egbu, 'Constraints to Effective Pollution Control and Management in Nigeria,' *The Environmentalist,* 2000, Vol. 20, pp.13-17 at 15.
[4] Ibid. see, Kenneth Omeje, above n. 113 at 52-53.
[5] Newswatch 1998, Jul. 4, p.16, quoted in Ali Ahmad, 'Policing Industrial Pollution in Nigeria,' in Beatrice Chaytor and Kevin R. Gray (Eds.), *International Environmental Law and Policy in Africa,* Environmental and Policy, Vol. 36, Kluwer Academic Publishers, Dodrecht, the Netherlands, 2003, p.138.
[6] Aghalino S.O., 'Corporate Response to Environmental Deterioration in the Oil Bearing Area of the Niger Delta, Nigeria, 1984-2002,' *Journal of Sustainable Development in Africa,* Vol.11, No.2, pp.281-294 at 290, (2009).
[7] President Umaru Musa Yar'Adua pursuant to Section 175 of the Constitution of the Federal Republic of Nigeria granted 'amnesty and unconditional pardon to all persons who have directly or indirectly participated in the commission of offences associated with militant activities in the Niger Delta.' The amnesty commenced on 25 June, 2009 and terminates on 4 October, 2009 and is 'predicated on the willingness and readiness of the militants to give up all illegal arms in their possession, completely renounce militancy in all its ramifications unconditionally, and depose to an undertaking to this effect.' See, Sahara Reporters, 'Yar'Adua "Niger Delta" Amnesty proclamation,' Thursday 25 June, 2009, (www.saharareporters.com/index.php?option=com_content&view=article&id=3088:yaradua-qniger-deltaq-amnesty-proclamation&catid=42:exclusive&Itemid=160).

with government in establishing environmental regulations and standards. [1] The non-enforcement of environmental laws by the Nigerian government is not enough for the oil MNCs to ignore the environmental and human rights concerns of the local inhabitants. Shell and other oil MNCs could be made answerable in litigation for their deleterious acts in their operational areas in the Niger Delta by following the Indian example, where the government passed the Bhopal Act (The Bhopal Gas Leak Disaster (Processing of Claims) Act 1985), which made to represent the interests of its citizens against a foreign entity based on the *parens patriae* doctrine.[2] What is good for the goose (developed countries) is also good for the gander (developing countries). .Adherence to international environmental standards and efficient use of natural resources will help to prevent environmental damage and the attendant violations of the rights of the people.

[1] Gabriel Eweje, above n. 94 at 35.
[2] Deepa Badrinarayana, India's Constitutional Challenge: A Less Visible Climate Change Catastrophe, in Benjamin J. Richardson et al (Eds.) Climate Law and Developing Countries: Legal and Policy Challenges for the World Economy, Edward Elgar Publishing, Cheltenham, 2009, p.73.

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