The Nigerian State and Environmental Justice in Niger Delta: Evidence from Rivers State (2000 – 2020)

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Abstract

This paper sets out to interrogate the role of the Nigerian state in the perpetration of environmental injustice in Niger Delta with Rivers State as a case study. Niger Delta is an embodiment of contradictions and therefore a phenomenon. It is a twist of resource endowment, ecological devastations, destruction of lives and livelihood structures and underdevelopment; a manifestation of resource curse. The region has paid, and still pays the price for the economic sustenance of the Nigerian state. As a participant and regulator of a rentier oil dependent economy, the Nigerian state runs economically irresponsible brown growth economic model. These are issues in environmental (in)justice – not caused by the lack of legislations, howbeit weak, but their ineffective enforcement and absence of appropriate governance mechanisms. In the drive for protection of oil rents and survival, the Nigerian state maintains a cozy relationship with MNOCs and enforces environmental injustice. To properly explicate the variables, the paper adopted the rentier state theory as a theoretical framework; used the ex-post facto and descriptive research design and relied on qualitative and quantitative data generated from secondary sources. The data were analyzed using content analysis. The findings showed that the Nigeria's oil dependent economy and rentier character of state (leadership) are the wheels on which weak regulation and enforcement of environmental justice spin. Principally, the recommendations call for a radical divestment of state interest in the oil economy, economic diversification and agriculture development, criminalization of environmental violence, constitutional amendment for removal of immunity clause andnon-justiciability of chapter two of the Nigerian constitution.

Keywords: Environment, Environmental justice, Nigerian state,Rentier state, Enforcement

Background

The whole issue of environmental justice is concerned with the incorporation of the environmental right issues into development pursuits and governance. These rights (environmental rights) are guaranteed by section 20, 1999 CFRN (as amended) which provides that "the state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife." For over three decades now, the issue of environmental justice in Niger Delta has been on the front burner of discourses in political economy, development studies, peace and conflict studies, environmental politics and governance, etc. It is likely remain so for a long period, in as much as the Nigerian state personified by its ruling class continue in their *rentier*, predatory and negligent manners in the management of the affairs of the citizens and thus abdicating its onus in pursuing the security and welfare of the people which is the primary purpose of government as expressly contained in chapter II, section 14(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended.

There is no doubt that Nigeria is not in want of environment laws and regulations. There are a plethora of these legislations, including the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended), National Policy on Environment, Act 42 of 1988; Petroleum Industry Act 2021, National Environmental Standards and Regulation Enforcement Agency (NESREA) Act, 2007; National Oil Spill Detection and Response Agency (NOSDRA) Act 2006; Environmental Impact Assessment Act, Cap L12 LFN, 2004; National Effluent Limitation Regulation, Special Instruction No.8, 1991; Associated Gas Re-injection Act, Cap A25; LFN 2004; Associated Gas Re-Injection (Continued Flaring Of Gas) Regulation, LFN, 2004; amongst others. These are laws that regulate the Nigeria oil and gas environment for effective and efficient performance and operations; safeguard of the environment and enforcement of human security. It is the enforcement of these laws that is an issue in environmental justice.

It is equally common knowledge that the political economy of Nigeria is largely dependent on oil and dominated by the Multinational Oil Companies (MNOCs).

Since the discovery of crude Oil in commercial quantity in Oloibiri, in 1956(now in Ogbia Local Government Area of Bayelsa State), Niger Delta region had remained the hub of oil production in Nigeria. This has exposed the Niger Delta region to varying degrees of oil spills, gas flaring and other accompanying environmental hazards; making the Niger Delta "the most oil impacted ecosystem in the world" (Bassey, 2010 p.45). This has equally accentuated the oil resource curse and the Dutch disease for Niger Delta (Aunty, 2000; Sach &Warner 2002).

The curse and disease haveby different twist also occasioned underdevelopment, environmental degradation and despoliation of rural livelihood structures and resource violent conflicts in the Niger Delta (Gilbert,2010; Pegg & Zabbey, 2013; Barigbon, 2021a). These are also seen as factors in the poverty of the people of Niger Delta. The negative implication of the above narrative places the area (Niger Delta) as one of the poorest regions in Nigeria (Asuni, 2009). Poverty itself is a factor in human insecurity. Human security is a component of security which is the primary purpose of government. Environmental violence, poverty and human insecurity in the Niger Delta are largely outcomes of unsustainable production process by the MNOCs that dominated the oil industry and by the tacit approval of the Nigerian state amount to violation of rights to the environment, life and livelihood. This amounts to a violation of their rights to life and livelihood. In all, Nigeria plays certain roles that could be seen as committing or accentuating environmental injustice committed by the MNOCs against the people of the Niger Delta.

Statement of the Problem

It has been well established that the Niger Delta region is richly endowed with huge deposit of hydrocarbon (oil and gas) resources. Revenue from this accounts for over 95% the country's foreign exchange earnings (Oviasuyi & Uwadiae, 2010). It is also the presence of these resources and the negative activities associated with its production that makes the Niger Delta region prominent. The political economy of oil production has rather produced more negative results for the people. The enormity and intensity of ecological destruction in the Niger Delta has been fairly studied and documented. The Ogoni UNEP report represents such elaborate study and documentation. This is because the findings could be extrapolated and generalized fairly for the entire Niger Delta region. Oluduro (2012) observed that

"the people of the Niger Delta region have continued to pay the price of development of the nation with their lives, health, cultures, environmental and other means of livelihood" (p. 455).

The problem is that governance and regulation of the activities of the Multi-national Oil Corporations (MNOCs) are at the weakest in Nigeria. Yusuf and Omoteso (2015) attribute this to institutional issues. The contention is that the second scramble by China, India, Japan and Indonesia with focus on access to natural resources had undermined regulatory power of the Nigerian state. This is in part due to the weak economic base of the Nigerian state and what is best described as the ignorance of the operators (the ruling and the political class) of the state. It is that source of the rent jealously protected by the Nigerian state even against the welfare and security of its citizens. This is exemplified in the cozy relationship between the Nigerian state and MNOCs; a relationship that undermines efforts at pursing environmental justice for the people, especially through the Nigerian judicial system. It is the demand for remediation, restoration, and redistribution of the social wealth from oil production related activities as well as the struggle for restitution and compensation for their impact on the health and livelihood of the people that is discussed herein. How have the Nigerian state as a regulator and the MNOCS as operators of the oil and gas industry in pursuit of profit accentuated the continually unabated perpetration of heinous crimes against the people Niger Delta? What is the role of the Nigerian state in environmental injustice in Nigeria?

Against the above background, the overall objective of this paper is to demonstrate how the ignoble activities, actions and inactions of the Nigerian state with the tacit support of oil capitals amount to environmental injustice against the people of the Niger Delta. However, the specific objectives are to: identify the manifestations of environmental injustice in Nigeria; explain the role of the Nigerian state in environmental injustice in Nigeria; and evaluate the challenges encountered by victims of environmental rights violation in the pursuit of environmental justice in Nigeria. In pursuit of these objectives, this investigation was guided by the following research questions: what are the manifestations of environmental injustice in Nigeria? What is the role of the Nigerian state in environmental

injustice in Nigeria? What are the challenges in accessing environmental justice in Nigeria?

It is instructive to state clearly that environmental justice within the context of this paper is limited to the negative outcomes of the economic activities of the state and Multinational Oil Companies (MNOCs) operating in the Niger Delta. This is particularly in relation to oil and gas production activities and its aftermath on the environment and the people of the area. It does not include outcome of the acts of illegal oil refineries otherwise called *kpo-fire* and oil bunkering. They are in the opinion of the researcher, manifestations of state failure. Meanwhile, exploration of environmental injustice in the Niger Delta is extensive; therefore the time scope for this paper was limited to 2000-2020 and the geographical scope is limited to Rivers State.

The Nigerian State

The state has been described essentially seen as a collection of institutions; a territorial unit with compulsory jurisdiction; a philosophical idea, an instrument of coercion or oppression and so on. However, there are two dominant theoretical explanations for an understanding of the state, what it stands and in whose interest it function. As such the liberal interpretation sees the state is agency neutral arbiter and balancer of things; acting in the interest of all and not for any particular class; and therefore a genuine expression of the human desire for order and mutual respect (Ekekwe, 1986; Barigbon & Idoniboye-Obu, 2022).

In sharp contrast liberalist, Marxist theorists accuses the liberalists of masking the state in strange robe of a neutral agent; a reconciliator and balancer of antagonistic class interests, which in reality is not but pretends or claims to be. It rather sees the state as a class state protecting class interest; "a committee for managing the affairs of the whole bourgeoisie…the form in which the individual of a ruling class asserts their common interest" (Marx &Engel, 1967, p.37). The Marxist conceptualization present a picture of the state is not an abstract thing, but something concretized in a number of institution(s) such as the court, instrument of state force such as the police, prison, parliament, the bureaucracy, and the governing parties which are the instruments with which it pursues it course and protect its interests (Toyo, 1987).

The Nigerian state is one constructed by colonialism and imperialist interest; implanted from the outside and clothed with force as the *deus ex machina* to enforce obedience to the unfriendly, exploitative and repressive rules and to reflect vision of its implanters (Ake, 1985; Ekekwe, 1986). That vision is the continuous plunder of the resources of the Nigerian State as a peripheral state in the system of global capitalism (Barigbon & Idoniboye-Obu, 2022; Kieh&Agbese, 2014). These elements inform and define the supposed character of the Nigerian state. The state inherited from colonialism had remained unaltered in character and form (Kieh&Agbese, 2014) since it equally serves the class interest of its present operators. It thus become at their will, a veritable instrument of material accumulation. So, "rather than building a productive base in industry, the bourgeois class and operators continue to extend the powers of the state to build up their own capital base" (Ihonvbere, 2014, p.100-101), hence the ferociousness and manifest Hobessian inclinations in the contestation for and maintenance of state power by the ruling class and political class.

Nigerian state is a true reflection of Marxist state, thus using coercive instruments to pursue and protects the interest of its ruling class and sometimes the interest of its operators (political class). It also uses the instruments of the state (including coercive instruments) to protect foreign interests who are in alliance with it, since as a post-colonial state; its economy is still manipulated from the outside. This undermine it autonomous extractive regulatory capacity. It rather makes acts more as an instrument of accumulation for both the outside interests and the interest of its operators as gatekeepers. This it does for its survival and most times against the health, survival and livelihood of its population which is explained here as amounting to environmental injustice.

Kieh and Agbese (2014) that the anti-progressive and anti-developmental character of the Nigerian state manifesting in "criminalized," "exploitative," "negligent," "predatory," "rentier," "dependent," and "prebendal" disposition (Kieh &Agbese, 2014) create a disconnect between the Nigerian state and the people. The further characterization of the Nigerian was well articulated in Barigbon and Idoniboye-Obu (2022) wherein they argued to that it makes more sense to talk about character of Nigerian political leadership than a character of a state that got no soul. Truly, political leadership (comprising the ruling and

political class) is the soul of the Nigerian state. It is political leadership that runs or adminiister the state as symbolized by the executive, the judiciary, the legislature, administration, armed forces, the prison, governing parties and governmental institutions. It is the character of this political leadership, driven by material accumulation for selfish aggrandizement (not development) that has adversely undermined environmental good governance in the Niger Delta, Nigeria and anywhere that environmental injustice is prevalent.

Environmental Justice

Environmental justice is situated within the context of the environment. Brundtland (1987) simply defined the environment as "where we all live" including water, air, land and all plants and human beings or animals living therein and the inter-relationship which exists among these or any of them.The federal government of Nigeria (FGN, 2016), in the revised national policy on the environment, defines the environment as "the life supporting system for human existence and survival and provides much of the physical milieu and the raw material for socio-economic progress" (p.7).The environment also includes socio-cultural setting of humans and other living organisms that live in it. In other word it is the external surrounding that support life, influences development and behaviour. It is the traditional source of livelihood for the local people. In the political economy of oil production, it is also a prime factor of production. The hitherto naturally pristine environment is "considered polluted when it is altered in composition or conditions directly or indirectly as a result of activities of man so that it becomes less suitable in its natural uses" (Ola, 1984p.155).

Environmental justice otherwise described by Ejumudo (2014) as environmental equity is concerned with the intractable relationship between man and the environment and the different ways by which his surrounding affects his wellbeing or welfare. The United States Environmental Protection Agency (USEPA, 2020) defined environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulation and policies." The concern is to ensure thatmankind offers maximum degree of protection for environment and enjoys relatively the same degree of protection from health hazards as well as equal access

to the decision-making process for a healthy environment in which to live, learn, and work. The definition of environmental justice offered by the Department of Environmental and Occupational Health Sciences (DEOHS), is much less different. It only used such phrases as: all citizens; equality of ethnicity or socio-economic classes, shared benefits and shared burdens of the environmental health hazards to describe to environmental justice. The South African Environmental Justice Network Forum (SAEJNF) clearly gave clearer description of environmental justice when it noted that it is about:

> social transformation directed towards meeting basic needs and enhancing our quality of life, economic quality, health care, housing, human rights, environmental protection and democracy… in linking environmental and social justice issues, the environmental justice approach seeks to challenge the abuse of power which results in poor people having to suffer the effects of environmental damage caused by the greed of others…(cited in Omuta, 2014, p. 14).

Central to environmental justice as offered above are the issues of "meeting basic needs and enhancing our quality of life" of mankind; and the role of state power in effectuating or undermining the actualization of same such as the shared burden and benefits which are evenly distributed with the poor bearing greater burden and less benefit; but not less guaranteed opportunities for redress or restitution. The point been made here is that that environmental justice which draws from Brundtland's report on sustainable development (Brundtland, 1987), focuses attention on the synergy between the environment and development;and emphasized the need for sustainable exploitation of the resource of the earth on the basis of shared burden and benefits for the present and future generation. The thrust is also to achieve redistribution of the cost of production activities such that the victims do not suffer double jeopardy. Environmental justice therefore seeks to achieve a balance between environmental cost (burdens) such as ecological devastation and its accompanying structural unemployment, social and economic dislocation on the one part; and ensuringthat resources accruing from environmental exploitation are put into such development purposes that are directly beneficial to the people. These purposes and benefits would include but not limited to quality infrastructure, employment and livelihood support

structures particularly for those who suffer more of the negative externally-occasioned activities which rely heavily on the environment (land and it resources) as a means of production.

Environmental justice is therefore a precursor to social justice for deprived population. It is the demand or response for correcting the wrong of environmental degradation or ecological devastation. As Ejumudo(2014) puts it, "it is shifting the focus of environmental protection towards taking into account the needs of the poorer section of the society that have suffered the environmental consequences of industrialization" (p.144). Where the drive for development (industrialization) undermines the usefulness of the environment for others who also depend on it for other purposes, there is need for reparation and compensation. Environmental justice would therefore mean forestalling ecological or environmental devastation, reparation, remediation, restoration and adequate compensation where damages had occurred.

The Niger Delta

The Niger Delta is both a geographical space and a concept (phenomenon).Extant literature such as Greyl, *et al* (2013); Omuta (2014);Bello and Olukolaja (2016) UNEP, (2011), NDDC (2003), Ochuba and Idoniboye-Obu (2020), amongst others, described the politico-ethnic composition, geography, landmass, boundaries, population, etc of the geographical space making up the Niger Delta. Central to the description is that Niger Delta area consists of about 40 ethnic of 5,000 communities spread over the 9 states of Rivers, Bayelsa, Cross Rivers, Akwa-Ibom, Delta, Edo, Ondo, Imo and Abia States with a projected population of about 58 million(NBS,2020). It is however noteworthy that the politico-economic description shifted focus from wetland and marine ecosystem as main defining characteristics of the Niger delta,to the presence of commercial quantity of crude in the domain of the constituent states. It is this that qualifies the states of Imo and Abia, and may soon include Anambra and Kogi amongst the Niger Delta States.

As a phenomenon, the Niger Delta represents a contradiction. It an embodiment of resource endowments; a swamp full of dollars" (Peel, 2009) and the hub of oil and gas production and the economic life-wire of the Nigerian state; "the rents from which sustains the Nigerian state (UNEP, 2011).Yet the Niger Delta has manifestations of a resource curse and showing symptoms of the Dutch disease

(Aunty, 2000;Sach& Warner, 2002).The Niger Delta represents squalor, poverty, underdevelopment, dearth of traditional livelihood structures. It is ecological wasteland and an embodiment of lowest life expectancy and fertility (UNEP, 2011). It bears the toga of incessant resource related violent conflicts and dangerously sandwiched in a complex web of economic, social and human insecurity. These are characterizations of the Niger Delta conundrum.

Theoretical Framework and Methodology

The complexity of the issue of this paper requires elaborately descriptive explanatory theory in trying to explain the complex phenomenon of environmental justice and the role of the Nigerian state. The rentier state theory or *rentierism* was originally postulated by Henry Mahdavy in 1970. Rent from the perspective of a political economy refers to the revenues that a government receives from external sources, such as oil revenues generated by oil-exporting countries. Beblawi&Luciani (2015) in a further exposition of the theory of the rentier state describes a state as rentier if 42% or more of its foreign exchange earnings is derived from rents. One fundamental feature of a rentier state is dependency on foreign direct investment in exchange for natural resources in developing nations (Adeola, 2001).This instructively makes the Nigerian situation quite spectacular. As at 2010, even now, rents from MNOCs-dominated oil and gas production account for 95 % of Nigeria's foreign exchange earnings (Oviasiyi&Uwadaie, 2010). By the second scramble 'resource rich' developing countries are by the forces of globalization and international division of labourmade more dependent on the revenue (rents) from extraction of natural resources. This is however dominated by MNOCs who had monopolized the natural resource exploration and exploitation operations in the local economies.

Politics and governance in a rentier state have two main characteristics. First, following Easton's descriptions of politics as the *authoritative allocation of values* or Laswell's *who gets what when and how* (cited in Nwosu, 2006 p.2) we find a Nigerian state whose ruling class are only gatekeepers, allocators and distributors of oil rents. The second is that there is social inequalities, corruption and mismanagement due to the disconnection of state (ruling class) from society. The Nigerian state does not depend on citizens' tax collected but on extractive industry rents. There is therefore no need for responsiveness to the people (citizens) but the

MNOCs. This continues to generate a crisis of governance in the Nigerian oil and gas sector, which is a deep-rooted feature of rentierism. It undermines or weakens the extractive and regulatory capacity of the states to enforce strict compliance to its regulation, in this case environmental regulation. There is rather a bias in favour of oil capitalists (MNOCs). The continuous flow of oil rent means the protection of foreign oil investments. Strict enforcement of environmental regulations is likely to threaten the survival of the MNOCs. Any threat to them is also a threat to the continuous flow of oil rent. The rentier state extractive and regulation capacity are likely to be lagging or declining in this circumstance (Kamrava,2002; Cohen &Naor, 2013).Because of weak law and regulations as well as weak extractive power of the Nigerian state, the MNOCs have carried on their business in some environmentally unsustainable ways. They have equally used their strong financial strength, connection and tacit support by the Nigerian state to undermine redress for environmental justice especially in Nigerian courts.

Methodologically, this work adopted the ex-post facto research design. Data which are in qualitative form were collected from primary and secondary sources. Greater parts of the primary data were collected through participant observation. Content analysis was used to explain the associational relationship between variables of the research so that valid inferences could be drawn. This was done by interpreting qualitative and quantitative materials such as secondary data on oil spills and gas flaring and other environmental violent acts. Environmental legislations, court rulings and judgments were also empirically evaluated in line with the objectives of this paper.

The social setting of study, Rivers State, situated in the deep southern Niger Delta Nigeria, and lies between latitude 4^0 and 6^0 29^0 and 7^0 31^0 East, with a total area of 11,077km^2 was created on the 27th day of May, 1967. The state bounded on the south by the Atlantic Ocean, to the north by Imo, Abia, and Anambra States, to the east by Akwa Ibom and to the west by Bayelsa and Delta States (http://riversstate.net.ng). It currently has 23 local government areas with projected population of 9,567,982 (Nigerian Informer, 2022). The state capital and seat of government is Port Harcourt. Majority of the local government areas in Rivers State except Port Harcourt City, Obio/Akpor, Bonny, Eleme are rural. The people of Rivers State depend on the environment for their livelihood. The

topography of Rivers state as both coastal/riverine and upland broadly categorized the people as either farmers or fishermen/women communities. Such areas as Abua, Ogoni and some parts of Orashi combine both farming and fishing. However, the state is prominent for the activities of oil and gas related production. As such oil exploration and production companies dot its landscape. Prominent among these companies are: Shell Petroleum Development Company of Nigeria, Nigeria Agip Oil Company, Nigeria National Petroleum Company Ltd, Port Harcourt Refinery Company, Indorama Petro-chemical Company, Total E&P Elf (UNEP, 2011).The political economy of Rivers State largely depends on rents from these companies.

Data Presentation and Analysis

The manifestations of environmental injustice in Rivers State -Nigeria

Thisis in response to the first research question which states: *what are the manifestations of environmental injustice in Nigeria?* Oil and gas production produce negative consequences. These are in violation of environmental laws and legislation in Nigeria. These negative consequences manifest as environmental pollution such as air pollution, gas flaring and oil spills. Table 4.1 below show trend of air pollution, gas flaring and oil spill in the Niger Delta.

Table 1: Air Pollution, Gas flaring, Oil spills and Poverty Trends inRivers State, Nigeria

Year	Air pollution	Gas flaring (million cubic meters)	Oil spills (no)	Poverty rate gini (%)
2000	79182	876286190	311	56
2001	81151	970905671	178	51.2
2002	98175	744108016	417	45.08
2003	91118	847614687	419	40.1
2004	97047	886070555	187	40.06
2005	104697	812117777	410	40.77
2006	98514	740770521	251	41.74
2007	95710	759688776	597	41.89
2008	97671	619198854	777	47.9

2009	171719	509151905	417	41
2010	79676	581568154	158	41.9
2011	86986	619017858	324	44.5
2012	82456	588666724	291	45.1
2013	82073	409311430	203	45.7
2014	78150	285761600	174	46.1
2015	87056	141177764	401	46.9
2016	82634	177448051	111	47.5
2017	83363	357703770	234	48.1

Source: Yelwa, M. & Emmanuel, A. O., (2013), NOSDRA, 2019; Modified by Researcher

Table 1 above indicates that air pollution, gas flaring and oil spillage have corresponding increase with level of poverty in Nigeria. It shows that in 2000, the volume of air pollution was 79182, 876286190 cubic metres of gas was flared and there were 31 cases of oil spill. In that year, the poverty index of the country at Gini co-efficient was 51%. In 2001, volume of air pollution was 81151. Gas flared was 970905071 cubic metres, incidence of oil spill was 178 and poverty index was 5.1%. However, there is decline in the consequences of oil and gas production on the environment from 2001 down. This the researcher attributes to *force majeure* and militant hostilities against MNOCs in the Niger Delta from 2002 to 2008.The negative trend continued as the table shows. The figures in table 1 above are national figures. It is important to note that the establishment of NOSDRA as an agency responsible for spill detection, recording, and response, etc was in 2006. Prior to 2006 all reports on oil spills were with national coverage. However, it is common that a large chunk of the incidence of oil spills occurred in the Niger which is the hub of oil and gas exploration and exploitation. Rivers State had held sway as the third highest oil producing state in Nigeria for over decades contributing 21.43% giving 344,000pbd (NNPC, 2022). The state therefore has a corresponding quantum of the damages of oil and gas related activities.

Further acts of the environmental violence, which within our definition further translate to act of environmental injustice, are evidenced by the case of oil spills in

the area. The data below are quite specific on the cases of oil spill in Rivers State from 2000 to 2019.

Table 2 Incidences of Oil Spills in Rivers State, 2008 – 2019

S/NO	L.G.AS	No. of oil spills
1.	AHOADA-WEST	360
2.	AHOADA-EAST	42
3.	ABUA-ODUAL	59
4.	AKUKU-TORU	96
5.	EMOHUA	98
6.	ELEME	75
7.	ETCHE	63
8.	BONNY	213
9.	OGU/BOLO	5
10.	OBIO/AKPOR	58
11.	OMUMA/EBERI	20
12.	TAI	54
13.	OGBA/EGBEMA/NDONI	980
14.	DEGEMA	137
15.	GOKANA	120
16.	IKWERRE	29
17.	OYIGBO	40
18.	OKIRIKA (WAKIRIKE)	27
19.	PORT HARCOURT	1
20.	ANDONI	3
	Total	**2,480**

Source: NOSDRA 2019 - calculated by the researcher

Table 2 specifically shows cases of oil spills in Rivers State from 2008 to 2019. It shows that about 2,480 cases of oil spill occurred in Rivers State between 2008 and 2019. The highest incidence is in Ogba/Egbema/Ndoni L.G.A (980) and lowest incidence is recorded in Port Harcourt City L.G.A (1). It does not show quantity or actual barrels of oil spilled. However, the example of Bodo oil spill of 2008 and 2009 indicates that majority of the spills were massive in barrels. It is estimated

that 103,000 and 311,000 barrels of oil were spilled in the 2008/2009 Bodo oil spills (AI/CEHRD, 2011; Pegg & Zabbey, 2013).

The role of the Nigerian state in environmental injustice in Nigeria

This is also in response to the second research question which asked: *what is the role of the Nigerian state in environmental injustice in Nigeria?* The Nigerian state has series of vested economic interest in the MNOC by virtue of an existing joint venture (JV) arrangement. It holds 50% equity in oil and gas production in the country. The Nigerian National Petroleum Corporation (NNPC) Ltd is the operational vehicle for its participation of the Nigerian state in the commercial capitalism of oil and gas production. The SPDC holds 30%, Total (E& P) Ltd, 10%, NAOC(Agip), 5%, Chevron, 5% with other smaller companies holding the remaining nominal shares respectively. By virtue of this interest, the Nigerian state maintains a cozy relationship with the MNOC/IOCs. The MNOC or IOCS, with quasi-legal personality and as imperialists agents of neocolonialism, have emerged on the international scene as "economic colossuses" and "modern leviathan" wielding considerable social and political influence in the states which they operate, in "addition to their overwhelming economic leverages" (Ezeudo, 2011p.24). This relationship between the Nigeria state and MNOCs had rather been at the expense of citizens of Nigeria. The relationship undermines strict enforcement of environmental regulation. This is a serious factor that has undermined the regulatory role of the Nigerian state in the oil and gas sector. This may be interpreted as tacit approval for environmental injustice committed by the MNOCs. This is also despite enormous laws, protocols and other regulatory frameworks, including the CFRN which places the safety and security of Nigerians as the primary responsibility of government.

The Nigerian state does everything in protecting the economic interest and cozy relationship described above. The outcome of contestations between the people of ecologically devastated environment of Rivers State and by extension the Nigerian state has also led to *ecocide and* genocide as state use repression and brute force to protect the MNOCs in view of its economic interest. This is well demonstrated by the Umuechem and Ogoni cases in Rivers State. The Umuechem crisis of 1990 and the application of brute force by the state resulted in the desecration of the community with over 80 human deaths and destruction of animal lives and

farmlands (Human Right Watch, 1999). In 1990, Ogoni suffered more destruction of lives and properties. In fact, the story of Ogoni became so pathetic and attracted serious international concern. The causalities were huge such that it became difficult to contemplate a reasonable recovery in the life span of the present generation. As Barigbon (2021a) brilliantly captured, Ogoni bests were lost to the SPDC fueled or sponsored and Nigerian state executed genocide against those whose only crime was the demand for environmental justice. He noted:

> The aftermath was the gruesome murder of Ken Saro-Wiwa, John Kpuinen, Dr. BarinemKiobel, BariborBera, NorduEawo, Paul Levura, Saturday Dobee, Daniel Gbokoo and Felix Nuate. The crisis for reasons of external manipulation had earlier cost the lives of some of the most prominent sons of Ogoni described as the Ogoni four, among them are, A.T Badey, E.N Kobani, and the two Orages. The scare of genocide remains with the Ogoni till date. It is an agony that cannot be forgotten in a hurry (p.163)

The persons above, until their gruesome murder by the Nigerian government in controversial circumstances, were leaders of the Ogoni struggle for environmental justice. Ken Wiwa was described as the *zina/miayor* of Ogoni, (meaning the star of Ogoni),as leader of the Ogoni liberation struggle for environmental justice, amongst others demanded for $30,000,000,000 as reparation and compensation as damages environmental degradation to be paid to Ogoni people by oil giant Shell BP and the Nigerian state. A.T.Badey until his death was a serving Secretary and Head of Service of the Rivers State Government (statesman par excellence), E.N. Kobani was a prominent politician of national repute and two times commissioner in the Rivers State Government, and Chiefs Sam and Theolophilus Orage were astute opinion leaders of the Ogoni people. These were the shining lights of Ogoni. These last four are referred to as Ogoni four. It was reported that apart from the extra-judicial killing of Ken Saro-wiwa and nine (9) of his co-accused, and the Giokoo massacre of the Ogoni four, over 5,000 Ogoni people have been murdered in the struggle for environmental justice (Ojo, 2016). These are part of the evidence of the role of the Nigerian state in environmental injustice in Rivers State, Niger Delta, Nigeria.

The challenges of accessing environmental justice in Nigeria

Finally, this section is in response to the third research question or objective which seeks to evaluate the challenges in accessing environmental justice in Nigeria. There are huge challenges in the pursuit of environmental justice through the Nigerian judicial system. Four things compound this problem. They are:corruption and weak judicial system, cost of litigation, the challenge of *locus standi,* weak legislation and burden of enforcement. The remainder of the paper focuses on these problems.

1. Corruption and weak judicial system

Corruption and weak judicial system is an obstacle on the path to achieving environmental justice in Nigeria. It is a clog in the wheel of environmental justice. The explanation for this is made clearer by the theoretical framework of this study: the rentier state theory. The *rentier* character of the Nigerian state or properly put the *rentier* character of Nigerian leadership is the factor here. It is common knowledge that the court is a constitutive element of the state. It is also itsapparatus. The court (Juries and Judges) represents the state and work in the interest and protection of the state. It acts at the behest of the state and for the protection of its interest. Recall the state here is not a state of the people and for the people. It is a state of the ruling class and for the ruling class and their cronies, a state divorced from the people. A rentier state is here represented by *rentier* and corrupt court, whose rule is guided by profit and not justice. As Ukpeh, cited in Owolabi and Okonkwo (2014), noted:

> several efforts made by the oil producing communities to checkmate the unwholesome practices and get compensated for damages to their land have been resisted by the multinational oil giants with the federal government and occasionally, states collaborators. While groaning under the pains of negative socio-economic, health and environmental impacts, the communities have little recourse under the Nigeria's weak and ever corrupt legal system that could have assuaged their suffering (p. 37).

The courts performing the functions of adjudication, interpretation of laws and exercising supervisory and judicial review functions over administrative bodies is seen as 'hope of the common man.' The 1992 Rio Declaration particularly Agenda

21 reawakened calls for state courts to enthrone environmental justice. Thirty years after, the Nigerian state has not demonstrated any serious commitment to environmental justice.In Nigeria litigation are also delayed both by the court and the subterfuges of uncooperative parties and litigants. Sometimes it takes 5 to 10 years to conclude a case in court. This excludes the right of the unsuccessful litigant to file appeal and the delays also involved. Justice delayed, in this case, is justice denied.

Another point in the weakness of Nigerian judicial system is the lack jurists who are knowledgeable in the technical aspects of environmental jurisdiction. For instance, the United Kingdom has technology court saddled with jurisdiction to adjudicate technical matter such as those of ecological or environment pollution. This is why many cases of environmental rights violation had recently been filed in the home countries of the corporations or in foreign courts rather than in the courts of operational areas or countries. The Bodo Community &Ors vs. SPDC, Kiobel vs Royal Dutch Shell, Goi vs SPDC are some of the most recent of such cases. Interestingly they were filed in the United Kingdom and the plaintiff or victims of environment violent crimes got justice. These are courts off the Nigerian jurisdiction. It also appears that these foreign courts are committed to protecting the environmental right as recent landmark rulings and justice of these courts would show. In the particular case of the Ogoni and Shell, BP, African Commission on Human and Peoples Right ruled indicted the Nigerian State. The Commission ruled that "The government of Nigeria facilitated the destruction of the Ogoni land…and gave green light to private actors and oil companies in particular to devastatingly affect the well-being of the Ogoni" (ACHPR, 2002, p.50). This is to buttress the point that the Nigerian state is culpable for environmental rights violation. It equally undermines access to environmental justice.

2. Cost of Litigation

The second challenge of access to environmental justice is cost of litigation. Cost of litigation is a huge burden on victims of environmental violence or injustice. Apart from the exorbitant legal fee required to successfully pursue litigation in Nigeria, there is also the problem of burden of proof. This also adds to the cost of pursuing environmental justice in Nigeria. Proving the technical case of ecological devastation, other negative and sometimes accidental impacts of oil production

require the service of technical experts and professional witnesses. The huge financial implication is usually not within the reach of the poor victims. On the flip side, the MNOCs could easily procure professional technical experts to prove the cases of environmental violence to the contrary, thereby shifting the blame to acts of sabotage.

In a particular case in River State, precisely the Bodo oil spill and compensation case against SPDC, huge part of the successful compensation paid went to the lawyers and technical experts. This was because the poor rural and helpless victims in pursuit of justice signed off individual and collective *Power of Attorney* for the persecution an attorney. This permitted the attorney to do everything within his reach and allowed by law to ensure judicial victory. This came at huge implication for the victims and the local plaintiffs. At the end, compensation benefits the technical experts and legal team more than the victims and plaintiffs. This was quite an irony.

3. The controversy *of locus standi*

Locus standi is the right to sue. This has been surrounded with controversies in environmental rights litigation in Nigeria. Because of cost of litigation, many cases of environmental justice are pursued through public interest litigation. These are the type cases undertaken by *Socio-Economic Rights & Accountability Project (SERAP)* and other civil society organizations on behalf of victims of certain social ills.

Environmental suits and claims are usually objected to by the defendants for lack of capacity of the claimants suing through a public interest or Non-Governmental Organisation. However, in order to find a way around the issue of *locus standi* in environment related matter, NGOs such as SERAP and SERAC have resorted to jurisdictions outside Nigeria to seek justice for victims of environmental violence. For instance, the case of *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v. President of the Federal Republic of Nigeria &Ors* was instituted at the ECOWAS Community Court of Justice. In the case, SERAP sought the court's jurisdiction for a declaration that the failure and/or complicity and negligence of the defendants individually and/or collectively to effectively and adequately clean up and remediate contaminated land and water; to address the

impact of oil-related pollution and environmental damage on agriculture and fisheries; and to establish an effective system of monitoring the impact of oil on humans, unlawful and a breach of international human rights obligations and commitments as it violates the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights amongst other claims. The claimant relied on the African Charter on Human and Peoples' Rights, particularly, Article 24 which provides that: "*All peoples shall have the right to a generally satisfactory environment favourable to their development*", and other international instruments. The defendant brought preliminary objection on the ground that claimant lacks *locus standi* to institute the action. While ruling on the preliminary objection, the court brought a human right dimension to the case and held among others that:

> There is a large consensus in International Law that when the issue at stake is the violation of rights of entire communities, as in the case of the damage to the environment, the access to justice should be facilitated. Based on this authorities, and taking into account the need to reinforce the access to justice for the protection of human and people's rights in the African context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State, and enjoying observer status before ECOWAS institutions, can file complaints against Human Rights violation in the case that the victim is not just a single individual, but a large group of individuals or even entire communities.

By the provision of the 2009 fundamental rights enforcement procedure rules particularly in preamble paragraph 3(e), a party can institute an action in court to enforce the fundamental rights of another who is incapacitated to do so. Despite this provision, the issue of *locus standi* had remained a clog in the wheel of environmental justice in Nigeria.

4. Weak legislation and Burden of Enforcement

Weak legislation and burden of enforcement is the crux of environmental justice in Nigeria. The Nigerian state makes environmental laws, albeit weak, that it is not interested in enforcing for fear of jeopardizing its vested economic interests. It is such reason that the *polluter pays* policy in Nigeria is weakly enforced. The polluter

pay principle is encapsulated in the Nigeria oil and gas law particularly the Flare Gas (Prevention of Waste and Pollution) Regulation, 2018 (FGN, 2008). Because of the insignificant fine imposed, the polluter will opt to flare gas and pay the fine. It would be economically profitable to the MNOCs to do so. It is more worrisome that since the first legislation on stopping gas flaring in 1969, and its declaration as illegal in 1984, the Nigerian state has continued to shift deadlines. The deadline to gas flaring in Nigeria has been shifted for several times, the latest being the shift from 2020-2030.

Nigeria is signatory to the African Charter Human and People's Rights. However, the provisions as relate to environmental rights enforcement are not operational in Nigeria. They are not enforceable. In fact, the African Commission had earlier found the Nigerian state culpable for environmental injustice against the people. In a petition filed by Social and Economic Rights Action Centre (SERAC) against the Federal Government of Nigeria and following a decision reached in 2001, the commission indicted the Nigerian state and called on it to ensure protection of the environment and safeguard the health and livelihood of the people. Established steps recommended to remedy the suffering of the people were: adequate compensation, cleaning and remediation. This perhaps informed the institution of the United Nation Environment Project Scientific of the Ogoni environment which study produced the UNEP report of 2011. Unfortunately, the report did not give serious recommendation for compensation for loss of livelihood and environmental violence caused by decades of destructive oil exploitation and exploration of the areas.

Section 20 of the constitution which is supposedly aimed at safeguarding a healthy environment in all parts of Nigeria is well encapsulated under "Fundamental Objectives and Directives Principles of State Policy." This in itself means that the key goal of the government is the overall welfare of the citizens with focus on certain areas including the environment. Ironically the Nigerian state in characteristic manner of non-responsiveness to the welfare of its citizen turns around to make the section ineffective by describing it *non-justiceable*. Particularly section 6(6) (C) of the same constitution provides that:

> The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by

> this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

This invariably precludes the Nigerian courts from adjudication on any of the issues having to do with the enforceability of the provision of section 20 of 1999 Constitution of Federal Republic of Nigeria (as amended). The indication is that the state cannot be questioned for environmental injustice it commits against the people. The courtin several judgments have reinforced this position. To be sure, the Court of Appeal in the case *Archbishop Okogie (Trustees of Roman Catholic Schools) and others v. Attorney-General, Lagos State* re-states that section 20 of the 1999 CFRN (as amended) is expressly non-justiciable when it held that:

> Section 20 of the 1999 constitution of the Federal Republic of Nigeria states that, states shall protect and improve the environment and safeguard the water, air, forest and wildlife of Nigeria even at that it is important to note that, this provision is non-justiciable as it forms part of the Fundamental Objectives and Directive Principle of State Policy in chapter II of the constitution, the implication of which is that no Nigerian citizen can go to the court to enforce his/her rights in respect of a violation or threatened violation of such provision. The fear of enshrining human and environmental rights in Nigeria is in the possibility of multiplicity of suits against the Federal Government (cited in Kingston, *et al*, 2018, p.11).

The inclusion of the above provisions of section 6(6) (c) in the constitution is the cause for the non-enforcement of environmental justice decisions against the Nigerian state. In a case filed by SERAC against the Federal Republic of Nigeria, the ECOWAS Court of Justice, relying on article 24 ACHPR equally noted and ruled that:

> the numerous legislations passed to regulate the extractive oil and gas industry [and] the creation of agencies to ensure the implementation of the legislations, the core of the problem in tackling the environmental degradation of the region of the Niger

> Delta resides in the lack of enforcement of the legislation and regulation in force (ECW/CCF/JUD/18/12, p.58).

The foreign court cannot enforce its decision in Nigeria. Such will undermine the principle of national sovereignty. The burden of enforcement lies at the behest of the Nigerian state. However, the issue of protecting channel of sources of oil rent as the major source of foreign exchange earnings and the fulcrum that drives the wheel of the Nigerian economy is a serious clog in the wheel of strict enforcement. Essentially, there is a lack of political will to enforce compliance to existing laws, no matter how weak. As shown in some of the cases so far x-rayed, MNOCs do not obey the court orders. Even where some activist Nigerian jurists could have attempted ensuring the part of justice for victims of environmental violence, the burden of enforcement scares them. A combination of the above factors undermines the effectiveness of the environmental justice administration in Nigeria.

Discussion of Findings

(i) The Nigeria's political economy and rentier character of leadership are factors in environmental injustice

This prime finding of this analysis is the Nigeria's oil-dependent economy and the rentier character of her political leadership undermines enforcement of environmental justice. This flows naturally from the dependent character of the Nigeria state. Since the development of productive forces (such as the means of production) is weak, the domestic economy too is productively weak. Nigeria like many other *underdeveloped* and *fourth world economies* are suffering from a second scramble. It significantly depends on Foreign Direct Investment to survive. Foreign Direct Investment (FDI) especially those of the MNOCs as agents of the second scramble for Africa can only be expected to flow to countries with lax environmental and other business regulations. Strict environmental and business regulations are threats to such investment. The national growth implication of this on rent-dependent country like Nigeria is negative. The indication would mean that lax environmental regulation is invitation for foreign capital inflows. This finding is consistent with the "pollution haven hypothesis" (Scott, 2004), which explains that the rentier state relaxes environmental regulatory regime to attract

foreign direct investment to accommodate polluting but rent-generating MNOCs. This shows the negligent character of the Nigerian state as personified by her political leadership.

(ii) **Unsustainable energy production activities result in environmental injustice**

The finding of this work accentuates the fact that unsustainable production energy product manifest in environmental injustice. The political economy of Nigeria is oil-dependent. The unsustainable exploration, exploitation and production of oil and gas result in air pollution (particle soot) oil spill, gas flaring etc. Nigeria flares 75% of the gas it produces. Gas is flared almost 24 hours per day over 50 years in Nigeria. These are ecologically devastating. The activities associated with unsustainable oil and gas production destroy the environment (land, rivers, forest, mangrove etc) as a livelihood structure for the local people of Rivers State and the Niger Delta. Land in this case is a means of production. This destruction deepens the vulnerability of the rural people to all forms of human insecurity. This finding re-emphasized Ake's (1981) well established position which holds that "a man deprived of his means of production becomes helpless and in danger of perishing, for even his labour power cannot help him" (p.11). The deprivation of the means of livelihood of the people is a human right tragedy, and amounts to violation of right to the environment and thus environmental injustice.

(iii) **The Nigerian state is a perpetrator of environmental injustice**

The third finding is that the Nigerian state is a perpetrator of environmental injustice. This is because in Nigeria political power and the economy are intertwined. Management of the state and the economy are inseparable. As such the Nigerian state vested interest in the economy and her cozy relation with oil capitalists undermines her regulatory powers. Its position on the economy and the protection of source of rent obfuscate the need to protect the people and the environment. As such the Nigerian state could be said to be running a "brown growth" economic model. The World Bank describes "brown growth as economic development that does not consider the negative effect of economic production and consumption on the environment" (2013, p). This is therefore against the tenets of sustainable development. In pursuing economic growth through exploration and exploitation of oil minerals, it is the people, their health and

livelihood that have been sacrificed to sustain the Nigerian state. What is more, it is therefore very apposite that where and when the state fails to enforce environmental justice, it means it is enforcing environmental injustice. This finding is consistent with the position of William (2007) who argued that the state is responsible for all forms of injustice in society.

iv. The Nigerian constitution is clog in the wheel of environmental justice enforcement

The Constitution of the Federal Republic of Nigeria is a clog in the wheel of environmental justice enforcement. It has a satanic character. It gives with right hand and takes back with the left hand. It claims to give right to the environment in Section 20 of the constitution but reverses itself to say it is non-justiciable. What an irony. There is also the problem of enforcement of international decisions on environmental justice in Nigeria. Significantly, this undertaking found that many victims of environmental violence had got favourable judgment from foreign courts and judicial administrative bodies such as the ECOWAS Court, African Commission on People and Human Rights, courts of the United States of America and the United Kingdom, yet had found it difficult to enforce such judgments against the Nigerian state.

Summary, Conclusion and Recommendations

The take home of this paper is that where and when the Nigerian state is not enforcing environmental justice, it simply means it is enforcing environmental injustice; it is enforcing ecocide. The JV operation between the MNOC and the federal government of Nigeria runs on a *Production Sharing Formula* (PSC). The Nigerian state by its nature and character (character of leadership) is more interested in the gains (rent) but reject liability. It is therefore the rentier attitude of the Nigerian leadership that undermines the strict enforcement of environmental legislation in Nigeria. There is also the case of corruption and effectiveness of the regulator. It is obvious that there are many favourable judicial decisions on environmental injustice from the international court against the Nigerian state. The principle of territorial sovereignty would not permit their international enforcement, making these courts toothless bulldogs especially against the Nigerian state. Their decisions lie in the dockets without implementation. But must the Nigerian state and its leadership kill its citizens just

to survive? There must be a way of enforcing environmental justice in Nigeria. This is a very serious matter.

Theoretically that paper had attempted to expand the understanding that the Nigerian state is the prime violator of environmental rights and perpetrator of environmental injustice. The Nigerian state through its domestic courts undermines access to environmental justice. It is hoped that the discourse so far made would reawaken in the readers, people and victims of environmental injustice the spirit of courage and the demand to push on in the quest for environmental justice. Strongly believing in the demand for environmental rights, they may secure enduring change in the manner of exploitation and utilization of natural resources for common good. The journey is far but the destination is sure. It is hoped that our modest effort here has contributed to the expanding the literature on environmental justice in the Niger Delta region of Nigeria.

On the strength of the findings and conclusion, the following recommendations are made:

(i) Establishment of international environmental criminal court

This is a duty for the United Nations, because international courts are radically serious on cases of environmental violence; there is the need to expand its jurisdiction to cover environmental crime. Such environmental crime jurisdiction should be backed with enforceable power. This would mean expansion of the jurisdiction of the Rome Statute of the International Criminal Court (ICC). Environmental violence should therefore be treated as a crime against humanity such that national leaders under whose regime environmental violence and injustice are allowed should be made to face the music after their tenure in office.

(ii) **Codification of environmental violence as criminal offence**

In line with recommendation one above, the United Nations through the International Court of Justice should codify environmental irresponsibility or environmental violence as a criminal offence. This could instill more sense of environmental responsibility in states and corporations. After all environmental crime or ecocide is a crime against humanity.

(iii) **Full divestment of Nigerian state interest in capitalist oil and gas production**

The Nigerian state or government has no business doing business – especially oil and gas. The Nigerian masses must through active participation in the electoral process push up a focused and visionary leadership that divests all state interest in oil and gas business and allow it run as full-time business. Government revenue from these sources should rather come as tax and royalties and not returns on equity or investment. By this it would focus on its regulatory role and do it more effectively without hindrances.

(iv) **Diversification of the Nigerian economy**

The political economy of Nigeria is oil-dependent. Global energy demand is the push for further devastation of the environment. This is equally pushing all lives both human and animal to a slow death caused by a toxic environment. The leadership of the Nigeria state should save humanity from imminent destruction. One sure way of doing this is by moving from a brown economy to a green economy. There is an urgent need to show commitment for a shift of economic focus to agriculture, service, tourism,etc as alternatives to the oil economy. An agriculture or service-driven economy is an environmentally conscious economy.

(v) **Increased activism and push for environmental justice**

Victims of environmental injustice and environmental NGOs and public interest organization in Nigeria should tirelessly continue to push for environmental justice. Someday, in demanding justice and change, society shall achieve unfettered right to the environment.

(vi) **Amendment of Section 20 of the Nigerian constitution**

There seems to be a renewed legislative activism on the part of the Nigeria's national assembly. The members of the national assembly should use same activism to amend section 20 of the constitution to make it enforceable. They should equally expunge the immunity clause from the Nigerian constitution as it has become a floodgate for executive rascality. Equally the amendment should treat all acts of environmental violence, the encouragement, aiding and abetting of it as criminal offence.

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