

Critical Analysis of Natural Resource Governance and Environmental Justice in the Niger Delta  
Region of Nigeria.

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Being a Thesis Written in the Faculty of Law and Submitted to Post Graduate College, Lead City  
University, Ibadan.

In Partial Fulfilment of the Requirements for The Award of Master Of Laws (LLM)

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## DECLARATION

I, DIVINE SOMTOCHUKWU ANYASI hereby declare that the work in this thesis “Critical Analysis of Natural Resource Governance and Environmental Justice in the Niger Delta Region of Nigeria.” was carried out by me in the faculty of law, Lead City University Ibadan under the supervision of Prof. Oluyemisi Abimbola. The information derived from the literature has been duly acknowledged in the text and list of references provided. No part of this work has been presented for another degree at any institution.

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CERTIFICATION

I certify that this research was carried out by DIVINE SOMTOCHUKWU ANYASI (LCU/PG/003780) in the Faculty of Law, Lead City University Ibadan, Oyo State in the 2023/2024 academic session under my supervision.

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APPROVAL PAGE

This research entitled a “Critical Analysis of Natural Resource Governance and Environmental Justice in the Niger Delta Region of Nigeria.” written by DIVINE SOMTOCHUKWU ANYASI has been read and approved as meeting the standards of the faculty of law in partial fulfilment of the requirements for the award of the Master of Laws (LLM) degree of Lead City University, Ibadan.

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## DEDICATION

This thesis is dedicated to God Almighty and to my parents, Mr. and Mrs. Anyasi, whose support and encouragement have been invaluable throughout this LLM program.

To myself, for the resilience and perseverance that have made this journey possible.

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To my parents and brothers, whose belief in me has been a constant source of strength throughout this academic journey, and to my friends and colleagues, I extend my heartfelt appreciation.

Although these institutions and individuals have supported me in the process of this research, I take full responsibility for this thesis.

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## TABLE OF ABBREVIATIONS

**EIA** – Environmental Impact Assessment

**FEPA** – Federal Environmental Protection Agency

**MOSOP** – Movement for the Survival of the Ogoni People

**NDDC** – Niger Delta Development Commission

**NNPC** – Nigerian National Petroleum Corporation

**NOSDRA** – National Oil Spill Detection and Response Agency

**NOGICDA** – Nigerian Oil and Gas Industry Content Development Act

**NUPRC** – Nigerian Upstream Petroleum Regulatory Commission

**OPRC** – Oil Pollution Preparedness, Response, and Cooperation

**PIA** – Petroleum Industry Act

**UNDRIP** – United Nations Declaration on the Rights of Indigenous Peoples

**UNEP** – United Nations Environment Programme

**NGO** – Non-Governmental Organization

**EPA** – Environmental Protection Agency

**ICJ** – International Court of Justice

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## ABSTRACT

The Niger Delta, a resource rich area of immense ecological significance, has long been plagued by environmental degradation, social unrest, and human rights violations stemming from extractive industries' activities. This thesis presents an analysis of the dynamics surrounding natural resource governance and environmental justice in the Niger Delta region of Nigeria, with a primary focus on legislative frameworks. This thesis examines existing literature and critical review of relevant laws and policies, shedding light on the multifaceted challenges hindering effective governance and equitable distribution of benefits from natural resources. The historical background of resource exploitation in the Niger Delta and the development of governance frameworks across time are both examined in this study. This research reveals the lived reality of environmental deterioration, displacement, and socioeconomic marginalization that these people experience by looking at recorded interviews, surveys, and case studies. In order to address the underlying causes of governance shortcomings and advance environmental justice in the Niger Delta, the thesis ends with some recommendations. These recommendations include community empowerment plans, institutional capacity building initiatives, and legislative changes that support openness, involvement, and sustainable development.

**Keywords:** *Niger Delta, Resource Governance, Environmental Justice, Oil and Gas, Failures.*

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the Study

The Niger Delta region is a vast and ecologically diverse area situated in the southern part of Nigeria, encompassing nine states and an extensive network of rivers, creeks, and mangrove swamps.<sup>1</sup> Covering approximately 75,000 square kilometers, the region is home to a variety of ethnic groups and is known for its rich cultural heritage and traditions. The Niger Delta is also a biodiversity hotspot, hosting a wide range of flora and fauna and serving as a vital breeding ground for marine life.<sup>2</sup>

The region is distinguished by its abundant natural resources, most notably its substantial oil and gas reserves. Since the discovery of oil in 1956, the Niger Delta has been a major contributor to Nigeria's economy, providing a significant portion of the country's export earnings and government revenue.<sup>3</sup> However, the benefits of this resource wealth have not been equitably distributed, leading to long standing grievances among local communities. Nigeria's oil-rich Niger Delta is situated in the south of Nigeria and centers on the natural delta of the Niger River. All of Nigeria's oil production takes place on the land or waters of the nine oil producing states comprising the extended delta region.<sup>4</sup>

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<sup>1</sup> Chidumeje Ndidi Patience Okonkwo, Lalit Kumar and Subhashni Taylor, 'The Niger Delta Wetland Ecosystem: What Threatens It and Why Should We Protect It?' (2015) 9(5) *African Journal of Environmental Science and Technology* 451 <http://www.academicjournals.org/AJEST> accessed 26 July 2024.

<sup>2</sup> Ibid.

<sup>3</sup> J F Ade Ajayi, Anthony Hamilton Millard Kirk-Greene, Reuben Kenrick Udo and Toyin O Falola, 'Nigeria' (Encyclopedia Britannica, 26 July 2024) <https://www.britannica.com/place/Nigeria> accessed 26 July 2024.

<sup>4</sup> Paul Francis, Deirdre LaPin, Paula Rossiasco 'Securing Development and Peace in the Niger Delta,' (2011) Woodrow Wilson International Center for Scholars. [https://www.wilsoncenter.org/sites/default/files/media/documents/publication/AFR\\_110929\\_Niger%20Delta\\_0113.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/publication/AFR_110929_Niger%20Delta_0113.pdf) accessed 12 May 2024.

The oil sector accounts for some 95 percent of Nigeria's export earnings and over 80 percent of federal government revenue, but for nearly two decades the delta has been mired in conflict and violence that has threatened human security and the national economy.<sup>5</sup>

## 1.2 History of the Niger Delta Region

The Niger Delta is one of Nigeria's most culturally different regions, home to several ethnic groups such as the Ijaw, Itsekiri, Ogoni, Urhobo, and others, each with their own language, customs, and traditions.<sup>6</sup> Historically, the region has been a major hub for trade and cultural interchange, particularly in palm oil and other commodities. Trade routes were built along the region's waterways, linking it to the rest of Nigeria and beyond.<sup>7</sup>

It is believed that the Ijaw have lived as a distinct tribe in the Niger Delta for at least five thousand years. People had migrated and expanded within the length and width of the Niger Delta region rather than coming from elsewhere. However, diverse clans later migrated out of the centre delta, establishing settlements like Oloibiri, Oporoma, Ikibiri, Obiama, and the Apo Creek. Secondary dispersals branched off from these villages to produce eastern delta communities like Ke and Oboloma, as well as Oproza in the West.<sup>8</sup> Accounts as it seems, tends to another hoar antiquity since neither the people nor the Commission of Enquiry could establish any exact place of origin of the Niger Delta groups on the ground of no record surviving into the present age.<sup>9</sup>

The Commission's report further stated inter alia:

The country in which they live is divided by creeks and inlets of the sea and of the Niger into many small islands, which nowhere rise far above the highest tides and floods, their transport is by water

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<sup>5</sup> Ibid

<sup>6</sup> 'The Niger Delta Region' (FondCup.ng, 2020) <https://fondcup.ng/the-niger-delta-region/> accessed 26 July 2024.

<sup>7</sup> Ibid.

<sup>8</sup>E.J. Alagoa, 'Peoples of the Cross River Valley and the Eastern Niger Delta' in Obaro Ikime (ed), *Groundwork of Nigerian History* (Ibadan: Heinemann Educational Books Nigeria Limited, 1980).

<sup>9</sup> Francis C. Odeke, Kelvin Obinna Agomuo, and Chinenyenwa Obiaku, 'The Niger Delta in Historical Perspective, 1800–1960' (2021) 9(4) *IMPACT: International Journal of Research in Humanities, Arts and Literature* 75.

and construction of roads or railways would be prohibitively expensive. There is a country which through no fault of man, has been neglected and which is unlikely ever to be highly developed; they are distinct in their language and customs from either the Edo speakers or the Yoruba. Benin claimed lordship over them at one time but they show no desire to return to it.<sup>10</sup>

Parts of the Niger Delta peoples might have settled in Benin but later left, and would not want to return there possibly, because of an upheaval in early Benin Empire.<sup>11</sup>

The Ijaw peoples had inhabited the delta area long before the arrival of the Portuguese but they were settled in small scattered villages in the tidal zone. They have a history of moving southward from the north-west.<sup>12</sup>

During the pre-colonial era, the Niger Delta was an important commercial center, particularly for palm oil and rubber.<sup>13</sup> The region's rivers and waterways facilitated trade channels, allowing local communities to have contact with exterior traders, such as European merchants who arrived during the Atlantic slave trade.<sup>14</sup> The Royal Niger Company dominated governance and trade, and considerable hostility to its exploitative monopoly practices culminating in an attack on its Akassa headquarters by the king of Brass in 1895. The Company subsequently sold the territories it controlled to the British Government in 1900.<sup>15</sup> The Oil Rivers Protectorate was

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<sup>10</sup> Commission of Enquiry into the Fears of the Minorities and the Means of Allaying Them, Report, July 30th, 1958 (London).

<sup>11</sup>M. Crowder, *The Story of Nigeria* (Faber and Faber, 1976).

<sup>12</sup> Francis C. Odeke, Kelvin Obinna Agomuo, and Chinenyenwa Obiaku, 'The Niger Delta in Historical Perspective, 1800–1960' (2021) 9(4) *IMPACT: International Journal of Research in Humanities, Arts and Literature* 75.

<sup>13</sup> Steve Otonye Tamuno and Samuel Gowon Edoumiekumo, 'Nigeria in the Niger Delta: An Allegory of the "Legs Tying the Hands,"' (2012) 4(1) *International Review of Social Sciences and Humanities* 113, 115.

<sup>14</sup> Robin Law, 'West Africa's Discovery of the Atlantic' (2011) 44(1) *The International Journal of African Historical Studies* 1.

<sup>15</sup> *Ibid.*

formed, later incorporated into the Southern Protectorate and then amalgamated in 1914 into a unified Nigeria.<sup>16</sup>

The expeditions of European explorers and missionaries exposed the Niger coast as a veritable trade center. Portuguese traders were the first to flock the area as mutual traders, introducing the economy of the region to the capitalist system of Europe.<sup>17</sup> The Portuguese did not interfere with the trade rights of the Delta middlemen beyond exchanging their European goods with the people's raw materials at the coast where they were restricted to.<sup>18</sup>

The discovery of oil in Oloibiri, Bayelsa State, in 1956 marked a turning point in the history of the Niger Delta. This event led to the rapid development of the oil industry in the region and transformed Nigeria into a major oil-producing country. However, the influx of oil exploration and extraction also brought significant challenges, including environmental degradation, displacement of local communities, and the disruption of traditional economies.<sup>19</sup>

At present, the glamor of Oloibiri town has gone and the countenance of the town gives no clue to the great place it once was. After 20 years of oil drilling, Shell said the wells had dried up.<sup>20</sup> They dismantled their equipment and left in 1978. But before their departure, the foundation for the fall of Oloibiri was laid when Ogbia elites became politicians and used their power to relocate the headquarters away from Oloibiri.<sup>21</sup>

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<sup>16</sup> Paul Francis, Deirdre LaPin, Paula Rossiasco, 'Securing Development and Peace in the Niger Delta' (2011) Woodrow Wilson International Center for Scholars  
[https://www.wilsoncenter.org/sites/default/files/media/documents/publication/AFR\\_110929\\_Niger%20Delta\\_0113.pdf](https://www.wilsoncenter.org/sites/default/files/media/documents/publication/AFR_110929_Niger%20Delta_0113.pdf) accessed 12 May 2024.

<sup>17</sup> K. O. Dike, *Trade and Politics in the Niger Delta* (Oxford: Clarendon Press, 1830-1850).

<sup>18</sup> W. I. Ofonagoro, *Trade and Imperialism in Southern Nigeria* (NOK Publishers International, 1979).

<sup>19</sup> A. A. Kadafa, 'Oil Exploration and Spillage in the Niger Delta of Nigeria' (2012) 2 *Civil and Environmental Research* 38-51.

<sup>20</sup> E Okafor, 'Oil and Blood in the Niger Delta Area of Nigeria: A Critique of the Role of the State' (2010) 7(3) *LWATI: A Journal of Contemporary Research*.

<sup>21</sup> Emmanuel Emeka Okafor, "Oil and Blood in the Niger Delta Area of Nigeria: A Critique of the Role of the State" (2010) 7(3) *LWATI: A Journal of Contemporary Research* 186.

The history of the Niger Delta during the oil era has been characterized by a tension between the pursuit of economic development and the adverse impacts of oil operations on the environment and local populations. Oil spills, gas flaring, and deforestation have caused severe damage to the region's ecosystem, affecting water quality, air quality, and soil fertility. These environmental issues, coupled with a perceived lack of benefit-sharing from oil revenues, have fueled grievances and conflicts.<sup>22</sup>

The 1990s saw the emergence of environmental and human rights activism in the Niger Delta, notably led by the Movement for the Survival of the Ogoni People (MOSOP) under the leadership of Ken Saro-Wiwa.<sup>23</sup> MOSOP's efforts to draw attention to the ecological destruction and human rights abuses in Ogoniland resulted in international attention, but also led to Saro-Wiwa's execution by the Nigerian government in 1995.<sup>24</sup>

In response to growing unrest and advocacy, the Nigerian government introduced various measures to address the region's challenges, including the establishment of the 'Niger Delta Development Commission' (NDDC) in 2000 and the Ministry of Niger Delta Affairs in 2008.<sup>25</sup> These initiatives aimed to promote development and address infrastructural and environmental concerns in the region. Despite these efforts, the Niger Delta continues to face challenges related to governance, corruption, and the influence of multinational corporations. Conflicts over land rights, resource control, and environmental justice persist, highlighting the need for ongoing critical analysis and reform. Today, The Niger Delta remains a vital region for Nigeria's economy,

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<sup>22</sup> Selina Bezzola, 'Fueling Conflicts by Sharing Benefits? Qualitative Evidence from a Mining Conflict in Burkina Faso' in *Natural Resources, Inequality and Conflict* (Springer International Publishing, Cham, 2022) 185-215.

<sup>23</sup> Adam Umar Musa and Idris Saminu, 'The Challenges of the Movement for the Survival of Ogoni People (MOSOP) in Nigeria: From Environmental Movement to Movement for Self-Determination' (2024) 7(1) *IJUM Journal of Religion and Civilisational Studies* 97.

<sup>24</sup> S I Skogly, 'Complexities in Human Rights Protection: Actors and Rights Involved in the Ogoni Conflict in Nigeria' (1997) 15(1) *Netherlands Quarterly of Human Rights* 47.

<sup>25</sup> Shola Omotola, 'From the OMPADEC to the NDDC: An assessment of state responses to environmental insecurity in the Niger Delta, Nigeria' (2007) 54 *Africa Today* 73, 89.

but its history of environmental challenges, social inequities, and governance failures underscores the importance of seeking sustainable solutions to ensure the well-being of its people and the protection of its natural resources.

### **1.3 Statement of the Problem**

Nigeria's Niger Delta, which is well-known for having an abundance of natural resources especially gas and oil has long been a major contributor to the economic growth of the nation.<sup>26</sup> Environmental justice and the management of natural resources, however, present serious obstacles for the area. Even while oil extraction has produced a significant amount of income, the advantages have not been fairly dispersed, which has led to persistent socioeconomic inequities and the marginalization of local communities. Due to gas flaring, oil spills, and deforestation, the area has seen significant environmental deterioration that has negatively impacted ecosystems, public health, and economic stability.

These problems have increased stakeholder disputes and undermined trust in democratic institutions. They are exacerbated by insufficient regulatory monitoring, corruption, and unethical corporate activities. Given these challenges, this thesis seeks to examine the efficacy of existing legislative measures in the Niger Delta and explore potential avenues for legal and policy reform.

The research will focus on strategies to enhance equitable and sustainable resource management, strengthen environmental protections, and improve conditions for local communities.

### **1.4 Aim and Objectives**

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<sup>26</sup> Otekenari David Elisha, 'Niger Delta is Rich in Resources, but Environmental Destruction is Pushing People into Poverty' (The Conversation, 30 October 2023) <https://theconversation.com/niger-delta-is-rich-in-resources-but-environmental-destruction-is-pushing-people-into-poverty-214598> accessed 26 July 2024.

The primary aim of this research is to critically analyze the legislative frameworks governing natural resource management and environmental justice in Nigeria's Niger Delta, evaluating their effectiveness in addressing environmental degradation, social inequities, and governance challenges while identifying gaps and proposing legal and policy reforms to promote sustainable development and equitable resource distribution. It examines the strengths and limitations of key legislative measures, such as the Petroleum Industry Act, the Environmental Impact Assessment Act, and the Land Use Act, to determine their adequacy in regulating resource extraction and safeguarding environmental and social interests. Additionally, the study evaluates the mechanisms for implementing and enforcing these laws, focusing on the roles of regulatory agencies such as NOSDRA, while addressing factors such as corruption, governance inefficiencies, and institutional capacity. The research explores the environmental and social impacts of oil and gas exploration on local communities, emphasizing the effects on health, livelihoods, and cultural heritage, as well as assessing corporate accountability and community participation in decision making. Based on these findings, it identifies legal and policy gaps and recommends reforms to improve governance, enhance public participation, and promote environmental justice and community welfare. These objectives directly address the research questions by evaluating the effectiveness of current legislative frameworks, examining enforcement mechanisms, assessing the socio environmental consequences of resource exploitation, and proposing reforms to bridge governance gaps and enhance outcomes for the environment and affected populations.

## **1.5 Research Questions**

Specifically, the thesis will research on the following questions:

1. How effective are current legislative measures in governing natural resources and protecting the environment in the Niger Delta?
2. How effectively are the laws and policies implemented and enforced, and what procedures guarantee compliance with legislative obligations?
3. What are the environmental and social impacts of resource exploration on local communities, particularly regarding health, livelihoods, and cultural heritage?
4. What legal and policy reforms are necessary to address gaps in the frameworks and improve outcomes for local communities?

By addressing these questions, the research aims to contribute valuable insights into strengthening natural resource governance and fostering environmental justice in the Niger Delta.

## **1.6 Methodology**

This research uses a doctrinal legal research methodology to examine the present legal frameworks governing natural resource management and environmental justice in the Niger Delta. The doctrinal approach is particularly appropriate for this subject because it focuses on statutes, case law, legal concepts, and judicial interpretations pertinent to environmental governance. This methodology relies heavily on the review of key legal sources, such as Nigerian statutes, regulations, judicial decisions, and constitutional provisions. Key legislation, including the Petroleum Industry Act, the Land Use Act, and the Environmental Impact Assessment Act, as well as key international environmental laws. This fundamental legal framework will be supplemented by an analysis of secondary sources, such as scholarly articles, textbooks, and reports. Furthermore, this research will examine the implementation and

enforcement procedures of the laws, focusing on governance issues, corruption, and the activities of regulatory authorities. It will investigate how institutional inadequacies and corruption impede the effective implementation of environmental laws and limit local populations' ability to seek justice and restitution for environmental damage. While primarily doctrinal in nature, the research will also incorporate qualitative insights obtained from reports by non-governmental organizations (NGOs), legal experts, and environmental advocates.

### **1.7 Significance of the Study**

The research will provide insights into the effectiveness of existing laws and suggest required reforms, aiding decision-makers and legal professionals in creating more thorough and successful legal structures for managing natural resources. By concentrating on the environmental and economic impacts of mineral resource governance, the study will contribute to the discourse on environmental fairness, aiming to protect and improve the rights and welfare of local communities. The results will add to the body of knowledge on natural resource management and environmental fairness, serving as a valuable source for academics, researchers, and students interested in these subjects. The proposed legal and policy changes will have practical implications for government bodies, non-governmental organizations, and multinational corporations active in the Niger Delta.

### **1.8 Structure of the Thesis.**

This thesis consists of five chapters. The first chapter presents the background research, explaining the research problem, the importance of the Niger Delta in Nigeria's resource richness, and the historical context of its governance challenges. The chapter also discusses the problem statement, research questions, objectives, and methods.

Chapter 2 provides a thorough examination of the existing literature on natural resource governance, environmental justice, and indigenous rights.

Chapter 3 focuses on Nigeria's legal frameworks for natural resource management and environmental justice. Key statutes such as the Petroleum Industry Act (2021), the Environmental Impact Assessment Act (2004), and the National Oil Spill Detection and Response Agency Act (2006) are evaluated for their effectiveness in encouraging sustainable development.

Chapter 4 examines case studies of environmental injustice and failed natural resource governance in Nigeria, showing concrete examples of how governance failures have compounded environmental degradation and social inequality. The chapter emphasizes the judiciary's role in furthering environmental justice through major legal cases.

Finally, Chapter 5 summarizes the findings of the study and provides recommendations for legislative and policy reforms that could improve governance and ensure equitable distribution of resource wealth in the Niger Delta.

### **1.9 Operational Definition of Terms**

- a. **Natural Resource Governance:** The system of rules, processes, and institutions through which natural resources such as oil, gas, and minerals are managed.<sup>27</sup> In this thesis, it refers specifically to the legal and institutional frameworks that govern the extraction, distribution, and utilization of natural resources in the Niger Delta region of Nigeria.

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<sup>27</sup> United Nations Environment Programme (UNEP), *Natural Resource Governance: Guiding Frameworks* (UNEP 2019).

- b. Environmental Justice: A concept emphasizing the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in environmental decision-making. It ensures that no group bears a disproportionate burden of environmental harm. In the context of this thesis, it refers to the equitable distribution of environmental benefits and harms among communities in the Niger Delta.<sup>28</sup>
- c. Environmental Impact Assessment: A process for assessing the probable environmental impacts of a proposed project before it is implemented. This thesis focuses on the legal duty under Nigerian law for oil and gas firms to assess and mitigate the environmental repercussions of their extraction activities in the Niger Delta.<sup>29</sup>

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<sup>28</sup> Robert Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (3rd edn, Westview Press 2000).

<sup>29</sup> Environmental Impact Assessment Act, CAP E12 LFN 2004.

## CHAPTER 2

### NATURAL RESOURCE GOVERNANCE, ENVIRONMENTAL JUSTICE IN NIGER

#### DELTA

Natural resources are materials provided by the environment that humans may use to generate riches and support life.<sup>30</sup> They comprise all naturally occurring plants, wild forests, and other organic resources that can be obtained from the land, sea, and soil. These resources include, but are not limited to, minerals, metals, fish, wildlife, wood, sand, and clay.<sup>31</sup>

Resources such as oil are important commodities on the international market and for many countries including Nigeria. These resources sustain economy and satisfy many human needs. The increasing demands for the resources and the shortage in their supply make them necessities for many consumers. For countries that possess large deposits of these resources, the wealth accrued from their production and exportation increases national income and improves economy of the country and a high reliance on these resources. However, with this vast number of resources and the wealth amassed from their trade, resource, management is very beneficial.<sup>32</sup>

The Nigerian Mining Corporation Act (NMCA) defines minerals as any substance occurring in or on the earth, formed by or subjected to geological processes, including occurrences or deposits of rocks, coal, coal bed gasses, bituminous shales, tar sands, any substances that may be extracted from coal, shale, or tar sands, mineral water, and mineral components in tailings and waste piles, but with the exclusion of petroleum and waters without mineral content.<sup>33</sup>

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<sup>30</sup> David W Pearce and R Kerry Turner, *Economics of Natural Resources and the Environment* (Johns Hopkins University Press 1989).

<sup>31</sup> World Resources Institute, 'Natural Resources and Their Role in Development' (World Resources Institute, 2018) <https://www.wri.org/natural-resources>.

<sup>32</sup> Oronto Douglas et al., 'Alienation and Militancy in the Niger Delta: A Response to CSIS on Petroleum, Politics and Democracy in Nigeria' (Silver City, NM & Washington, DC: Foreign Policy in Focus, July 2003).

<sup>33</sup> Section 1 of the Nigerian Mining Corporation Act (NMCA) Cap N120 LFN 2004.

The Niger Delta region's natural resource wealth, particularly oil, has been both a blessing and a curse. While it has contributed greatly to Nigeria's national economy, the region has also experienced environmental deterioration, human rights violations, and deadly conflict. This chapter presents a detailed assessment of the literature on natural resource governance, the resource curse, and environmental justice, focusing on how these issues connect with Nigerian legal frameworks and governance. This assessment identifies important points of contention and gaps in legal safeguards for indigenous populations and environmental sustainability.

## **2.1 Natural Resource Governance, Ownership and Control**

Natural resource governance alludes to the institutional systems, legal frameworks, and processes that govern how resources are managed, accessed, and utilized by the appropriate stakeholders.

Effective governance requires transparency, accountability, and participation, especially in the context of developing nations where institutional weaknesses often lead to mismanagement and corruption.<sup>34</sup> Governance systems that lack these elements often exacerbate resource-based conflicts.<sup>35</sup>

It encompasses norms, rules, institutions and mechanisms that regulate the decisions and conducts of governments, organizations and individual stakeholders in relation to natural resource access, control, allocation, exploitation and use.<sup>36</sup> Simply put, natural resource governance refers to the application of the governance concept and principles in determining how natural resources are exploited and utilized by relevant stakeholders.

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<sup>34</sup> Lorenzo Cotula et al, *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (IIED 2009).

<sup>35</sup> Paul Collier, *The Bottom Billion* (Oxford University Press 2007).

<sup>36</sup> Elias Chukwuemeka Ngwu and Charity Ugo Kalu, 'Natural Resource Governance and Nigeria's Development Quagmire: A Reprobate Perspective' (2017) 1 (1) *South East Political Science Review* 161.

Natural resource governance is a fundamental aspect of contemporary development in developing countries.<sup>37</sup> Nigeria is a typical instance of a natural resource-rich country. The country parades over forty different species of natural resources that are commercially viable and globally competitive.<sup>38</sup>

Good governance enables nature conservation and natural resource management to contribute to positive social outcomes (such as more secure rights and livelihoods, enhanced empowerment, including for women and girls, and enhanced sense of dignity and belonging) and guards against the risk of negative social impacts (such as conflict and the loss of secure rights and livelihoods).<sup>39</sup> The control of natural resources in Nigeria is governed primarily by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and specific legislative frameworks, notably the Petroleum Act 2004<sup>40</sup> and the more recent Petroleum Industry Act 2021.<sup>41</sup> Section 44(3) of the Constitution vests ownership of all mineral resources in the federal government, allowing for the central management of oil and gas reserves.<sup>42</sup>

Significant conflict has resulted from this legal framework, especially with indigenous groups in the Niger Delta who argue that their legitimate share of the resources is being taken away by the government's centralized control.<sup>43</sup> The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which upholds indigenous peoples' rights to self-determination and control over natural resources, is one of the international legal principles that the Niger Delta communities

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<sup>37</sup> Gerald E Ezirim, 'Resource Governance and Conflict in the Niger Delta: Implications for the Gulf of Guinea Region' (2011) 5(2) *African Journal of Political Science and International Relations* 61, available at <http://www.academicjournals.org/ajpsir> accessed 17 May 2024.

<sup>38</sup> Elias Chukwuemeka Ngwu and Charity Ugo Kalu, 'Natural Resource Governance and Nigeria's Development Quagmire' (2017) 1 (1) *South East Journal of Political Science*.

<sup>39</sup> J Springer, J Campese and B Nakangu, *The Natural Resource Governance Framework – Improving Governance for Equitable and Effective Conservation* (IUCN 2021).

<sup>40</sup> Petroleum Act CAP. P10 L.F.N. 2004.

<sup>41</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 44(3).

<sup>42</sup> Ibid.

<sup>43</sup> Ogechukwu Ikenga, *Resource Control and Governance in the Niger Delta* (Ibadan University Press 2020).

have long invoked in their arguments for increased autonomy and control over their land and its resources.<sup>44</sup>

Ownership is a complex juristic concept which has its origin in the Ancient Roman Law. In Roman Law Ownership and Possession were respectively termed *dominium* and *possessio*. The term *dominium* denotes absolute right to a thing while *possessio* implied only physical control over it. They gave more importance to ownership because in their opinion it is more important to have absolute right over a thing than to have physical control over it.<sup>45</sup>

Historically, Nigeria was a British territory at the time of crude oil discovery, with many English capitalists seeking riches in various places. In 1938, the British colonial government issued the first mineral oil concession to Shell-d'Archy Petroleum business of Nigeria, a Dutch oil business and subsidiary of Shell Petroleum Company and British Petroleum Company. The Company conducted geological and geophysical studies before ceasing operations in 1939 due to the onset of WWII. In 1957, Shell d'Archy Petroleum discovered an oil well in Olobiri village, Ogbia town, Bayelsa State. The company exported its first Nigerian oil in 1959. Nigeria's oil earnings in foreign exchange increased by more than 80% due to other businesses' exploratory efforts. Currently, only the Niger Delta region in Nigeria produces oil. Despite its significant contribution to the national economy, the delta region lacks tangible results.<sup>46</sup>

Fifty-nine years or over half a century on, Nigeria has raked over 800 billion US dollars in oil rents, yet, poverty continues to ravage over 60 per cent of her over one hundred and seventy

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<sup>44</sup> UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples* (adopted 13 September 2007 UNGA A/RES/61/295).

<sup>45</sup> Francesco Giglio, 'The Concept of Ownership in Roman Law' (2018) 135.1 *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 76-107.

<sup>46</sup> Francis C Odeke, Kelvin Obinna Agomuo, and Chinenyenwa Obiaku, 'The Niger Delta in Historical Perspective, 1800–1960' (2021) 9(4) *IMPACT: International Journal of Research in Humanities, Arts and Literature (IMPACT: IJRHAL)* 75.

million population.<sup>47</sup> These resources were typically incorporated within broader economic and financial preparations. Nonetheless, in emerging countries where natural resources are frequently the principal source of wealth, these issues are increasingly being handled independently in current constitutions and legal agreements. This change acknowledges natural resources as national patrimony, mandating fair distribution. Furthermore, these resources usually elicit strong feelings of local community ownership over their development and the sharing of subsequent profits.<sup>48</sup>

The concept of resource governance is a concept that tries to explain why resource-rich countries are unable to sustain the well-being of their people; and could be defined as a 'set of strategies designed to improve transparency and accountability in the management of natural resources.'<sup>49</sup> According to some theories, the two main objectives of mineral governance are to: (1) enhance the mechanisms by which institutions and stakeholders can hold governments of mineral-rich nations accountable; and (2) effectively contribute to better outcomes, like enhancing socioeconomic conditions for citizens or reducing poverty.<sup>50</sup>

Natural resource governance necessitates both fairness and sensibility. Nature conservation is critical to a just and sustainable world. The term "resource curse" has been used to describe the underperformance of resource-rich economies, highlighting the weak performance of countries such as Bolivia, Nigeria, and Venezuela, among others. Africa is often referred to as a paradox of

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<sup>47</sup> Elias Chukwuemeka Ngwu and Charity Ugo Kalu, 'Natural Resource Governance and Nigeria's Development Quagmire: A Reprobate Perspective' (2017) 1(1) South East Political Science Review 161.

<sup>48</sup> A I Osawe and O G Uwa, 'Natural Resource Governance and Conflicts in Nigeria' (2023) 4(1) British Journal of Multidisciplinary and Advanced Studies: Arts, Humanities and Social Sciences.17-35.

<sup>49</sup> A Acosta, 'Review of Impact and Effectiveness of Transparency and Accountability Initiatives' (Paper prepared for the Transparency and Accountability Initiative Workshop, Institute of Development Studies, Sussex, 14-15 October 2010).

<sup>50</sup>Ibid.

plenty or as suffering from a "resource curse." This implies that, despite being rich in minerals, Africa remains the poorest and most conflict-ridden continent in the world.<sup>51</sup>

## 2.2 Legal Frameworks Governing Natural Resource Management in Nigeria

Regulation of the Nigerian oil and gas industry falls exclusively within the legislative competence of the National Assembly and hence the oversight of the federal government.<sup>52</sup> Core principal legislation applicable to the petroleum industry includes: the Petroleum Industry Act,<sup>53</sup> the Petroleum Profits Tax Act,<sup>54</sup> the Deep Offshore and Inland Basin Production Sharing Contracts Act,<sup>55</sup> the Petroleum Production and Distribution (Anti-Sabotage) Act,<sup>56</sup> the Nigerian Oil and Gas Industry Content Development Act,<sup>57</sup> the Oil and Gas Export Free Zone Act, the National Oil Spill Detection and Response Agency (Establishment) Act,<sup>58</sup> the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Ratification and Enforcement) Act<sup>59</sup> etc.<sup>60</sup>

In Nigeria, the legal framework governing ownership, management, exploration, and production of oil and gas resources is primarily anchored in the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Petroleum Industry Act (PIA). Section 44 (3) of the Constitution provides;

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<sup>51</sup> Anthony Osawe and Goddy Osimen, 'Natural Resource Governance and Armed Conflicts in Nigeria' (2022). <https://doi.org/10.5281/zenodo.7487063> accessed 18 June 2024.

<sup>52</sup> Item 39 of Exclusive Legislative List in the Constitution.

<sup>53</sup> Petroleum Act CAP. P10 L.F.N. 2004.

<sup>54</sup> Cap P13 LFN 2004.

<sup>55</sup> Cap D3 LFN 2004.

<sup>56</sup> Cap P12 LFN 2004.

<sup>57</sup> Cap N124A LFN 2004.

<sup>58</sup> Cap N157 LFN 2004.

<sup>59</sup> Cap E30 LFN 2004.

<sup>60</sup> Ishaq Apalando, 'A Legal Overview of the Nigerian Natural Resource Sector' (LinkedIn, 13 March 2024) <https://www.linkedin.com/pulse/legal-overview-nigerian-natural-resource-sector-ishaq-apalando-isfmf> accessed 5 June 2024.

Notwithstanding the fore-going provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive Economic Zone for Nigeria shall vest in the government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

Section 1 of the PIA establishes that ownership of all petroleum resources within Nigeria, including its territorial waters, continental shelf, and exclusive economic zone, belongs to the Federal Government of Nigeria. Furthermore, under Section 4 (2) of the Constitution and the Exclusive Legislative List.<sup>61</sup> The National Assembly has the authority to enact laws regulating the management of these resources, leading to the enactment of the Petroleum Industry Act. Thus, ownership of natural resources as embedded in the Nigerian Constitution translates into “State Ownership,” with the state granting leases of oil wells or oil fields to private companies for mining operations. This grant of mining leases to private companies gives them qualified ownership of the natural resources located within the area of the oil mining license.<sup>62</sup>

The Nigerian Supreme Court in the case of *Attorney-General of the Federation v. Attorney-General, Abia State*,<sup>63</sup> held inter alia, that the federal government alone and not the littoral states can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters and sovereign rights over the Exclusive Economic Zone subject to universally recognized rights. Nigeria’s Petroleum Act codifies the theory of Absolute Ownership by stating that;

The entire ownership and control of all petroleum in, under, or upon any lands to which this section applies shall be vested in the state.<sup>64</sup>

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<sup>61</sup> Item 39, Schedule II of the Exclusive Legislative List.

<sup>62</sup> PH Martin and BM Kramer, *Oil and Gas Law* (2012). William and Meyers at 202.

<sup>63</sup> (2002) 6 NWLR (pt. 764) 542.

<sup>64</sup> Section 1, Petroleum Act, Cap. P10 Laws of the Federation of Nigeria 2004, Vol. 13. See also, section 44 (3) and item 39 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Additionally, the Nigerian Oil and Gas Industry Content Development Act (NOGICDA) indirectly influences oil and gas exploration and production by promoting local content and participation in the industry.

Furthermore, the Constitution provides that mines and minerals, including oil fields, oil mining, geological surveys and natural gas are the exclusive preserve of the federal government of Nigeria.<sup>65</sup>

### 2.3 The Resource Curse

The region is rich in natural resources but often poor, because of government's constant exploitation of these resources and this has created corrupt and repressive government and armed conflict.<sup>66</sup> The notion of natural resource curse is closely linked to poor resource management as it creates "stagnation and conflict, rather than economic growth and development."<sup>67</sup>

The phenomenon known as the "resource curse" or "paradox of plenty" describes how countries with abundant natural resources especially oil and gas experience higher rates of corruption, slower rates of economic progress, and more frequent wars than those with less resources.<sup>68</sup> A classic example of this situation is Nigeria. The nation nevertheless struggles with pervasive poverty, poor infrastructure, and environmental deterioration in spite of its enormous oil resources.<sup>69</sup>

The Niger Delta is one of the largest oil-producing regions globally and the mainstay of Nigeria's economy. Oil and gas extraction accounts for a substantial portion of the country's GDP,

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<sup>65</sup> Schedule II, Legislative Powers, Part I, Exclusive Legislative List, item 39, Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>66</sup> George Soros. "Nigeria: Lifting the resource curse". Daily Times March 31, 2005.

<sup>67</sup> Thomas I. Palley, "Lifting the Natural Resource Curse By Foreign Service Journal, Global Policy Forum, available from <http://globalpolicy.igc.org/security/natres/generaldebate/2003/12curse.htm>

<sup>68</sup> Richard Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993).

<sup>69</sup> Jeffrey Sachs and Andrew Warner, 'Natural Resource Abundance and Economic Growth' (1995) NBER Working Paper No. 5398.

government revenue, and export earnings.<sup>70</sup> The economic dependence on oil has implications for national stability and development. The extensive oil and gas reserves in the Niger Delta draw substantial foreign direct investment (FDI) from multinational corporations, influencing both the regional and national economies.<sup>71</sup>

Numerous communities in the Niger Delta depend on natural resources for their livelihoods, engaging in activities such as fishing, agriculture, and artisanal work. The well-being and economic stability of these communities are directly linked to the health of these resources.<sup>72</sup>

Furthermore, natural resources hold significant cultural value for the region's diverse ethnic groups, influencing their traditions, customs, and spiritual beliefs. Traditional knowledge and practices concerning resource use are fundamental to the identity and sustainability of these local communities.

To a large extent, the expectations that underlay the revolts in the Niger Delta were met. So, has oil finally become a blessing? Yes, if the attention focused on the region, massive revenue transfers and political and economic ascendancy of elites and the nouveaux riches is considered, but this is obviously too restrictive to be the basis for such conclusion. The real test is the extent to which the quality of life, infrastructure and social service delivery has improved in the region.<sup>73</sup>

It was found that economies that relied heavily on natural resource exports grew more slowly than those that diversified their economic activities, primarily due to institutional weaknesses

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<sup>70</sup> M Oguntoye and A Oguntoye, 'An Appraisal of the Impact of the Oil Sector on the Nigerian Economy' (LLM Thesis, University of Lagos, 2021).

<sup>71</sup> Salami Dada Kareem, *Foreign Direct Investment into Crude Oil Exploitation and Its Impact on the Economic Growth and Environment: Case Study of Niger Delta Oil Producing Communities* (University of Malaya 2014).

<sup>72</sup> Abosede Omowumi Babatunde, 'Environmental Insecurity and Poverty in the Niger Delta: A Case of Ilaje' (2017) 7(2) *African Conflict and Peacebuilding Review* 36.

<sup>73</sup> Osaghae E, 'Resource Curse or Resource Blessing: The Case of the Niger Delta "Oil Republic" in Nigeria' (2015) *Commonwealth & Comparative Politics*.

and governance challenges exacerbated by the influx of resource rents.<sup>74</sup> The "rentier state" paradigm, in which governments rely more on rents from natural resources than on taxation, is a major component of this issue. Because they rely less on taxes to fund their operations, governments are held less accountable to the people.<sup>75</sup>

In this sense, governments become less accountable and more inclined to repress opposition or dissent in order to keep control over resource riches, which is another way that the resource curse presents itself in weakening democratic institutions.<sup>76</sup>

The resource curse also makes conflict more likely, especially in nations with weak institutions and entrenched ethnic or regional divides. In Nigeria, for example, the wealth created by oil has contributed to conflict, especially in the Niger Delta, where local communities have long demanded a larger share of the benefits from oil production; environmental degradation brought on by oil spills and gas flaring, along with federal government neglect of the region have resulted in widespread grievances and, in some cases, violent resistance by militant groups.<sup>77</sup>

Perceptions of marginalization, exploitation, and a lack of local control over resources are frequently the root causes of these disputes. Natural resources have significantly shaped Nigeria's policy landscape, influencing discussions on governance, development, and environmental protection. Given the region's importance, ongoing dialogues on equitable resource management and the fair distribution of benefits are essential.

The Ijaw Youth Council's 1998 Kaima Declaration summarizes the Niger Delta populations' grievances, demanding "resource control" and an end to environmental devastation caused by oil

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<sup>74</sup> Jeffrey Sachs and Andrew Warner, 'Natural Resource Abundance and Economic Growth' (1995) 45 Development Discussion Paper 1.

<sup>75</sup> Michael L Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press 2012).

<sup>76</sup> Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997).

<sup>77</sup> Cyril Obi and Siri Aas Rustad (eds), *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-violence* (Zed Books 2011).

extraction.<sup>78</sup> Many of the confrontations in the region have been centered around this demand, which calls for communities to have more control over their natural resources and a more equitable sharing of oil revenue.<sup>79</sup>

The Niger Delta conflicts exemplify how resource riches may exacerbate existing societal differences and spark violent conflict when power structures are ineffective and wealth distribution is unequal.<sup>80</sup>

### 2.3.1 Transparency and Accountability

The transparent management of natural resources came about at the turn of the century as part of a donor effort to tackle development problems associated with the 'resource curse': government corruption, institutional erosion, civil conflicts and economic crowding-out effects.<sup>81</sup>

Transparency in resource governance refers to the visibility of decision-making processes, the clarity with which the thinking behind the decisions is communicated and the availability of pertinent information about governance and performance in the industry.<sup>82</sup> Ensuring transparency in natural resource governance involves understanding who made certain decisions and assessing the reasoning behind those decisions. Transparency has become a central tenet of many new environmental governance instruments.<sup>83</sup>

Conventional transparency aims to limit corruption and enhance governance by disclosing information about whether decision-makers have fulfilled their responsibilities.

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<sup>78</sup> S. N. Bassey, *To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa* (Pambazuka Press 2012).

<sup>79</sup> A. Gaventa, 'Finding the Spaces for Change: A Power Analysis' (2006) 8 IDS Bulletin 23.

<sup>80</sup> R Akinyele, 'Dynamics of Niger Delta Struggles and State Responses' (2011) 9(3) *Journal of African Political Economy and Development* 44-56.

<sup>81</sup> Collier, P. and Hoeffler, A. (2004) 'Greed and Grievance in Conflict', *Oxford Economic Papers* 56 (4): 563-95.

<sup>82</sup> Anthony Osawe and Goddy Osimen, 'Natural Resource Governance and Armed Conflicts in Nigeria' (2022) <https://doi.org/10.5281/zenodo.7487063> accessed 18 June 2024.

<sup>83</sup> T A Gardner and others, 'Transparency and Sustainability in Global Commodity Supply Chains' (2019) 121 *World Development* 163 <https://doi.org/10.1016/j.worlddev.2018.05.025> accessed 19 June 2024.

Accountability entails taking responsibility for decisions and actions and demonstrating how these responsibilities have been fulfilled. This principle is crucial in resource governance to ensure effective decision-making, maintain authority, and uphold credibility. When accountability cannot be achieved through democratic participation, it becomes essential for citizens to access information, engage in meaningful consultations, and have greater opportunities for active participation.<sup>84</sup>

Other key concepts of resource governance are participation and equity, which are also necessary. Participation refers to opportunities available for stakeholders to be included in and influence decision-making processes and actions in the resource sector.<sup>85</sup>

## **2.4 Indigenous Rights and Community Participation**

The expression 'indigenous' refers to a community of peoples that trace their origin to common ancestors who from time immemorial had inhabited their present land territory before they became subjected to a superior political entity.<sup>86</sup> "Peoples" encompass communities, national, and ethnic minorities. Indigenous peoples can thus be defined as communities who, while not currently under external political domination, have inherited their land from a common ancestry and continue to identify themselves through the social and cultural life patterns of their ancestral lineage.

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<sup>84</sup> Nick Devas and Ursula Grant, 'Local Government Decision-Making-Citizen Participation and Local Accountability: Some Evidence from Kenya and Uganda' (2003) 23(4) *Public Administration and Development: The International Journal of Management Research and Practice* 307-316.

<sup>85</sup> Anthony Osawe and Goddy Osimen, 'Natural Resource Governance and Armed Conflicts in Nigeria' (2022) <https://doi.org/10.5281/zenodo.7487063> accessed 18 June 2024.

<sup>86</sup> S Barnabas, 'The Role of International Law in Protecting Land Rights of Indigenous Peoples in Nigeria and Kenya: A Comparative Perspective' in *Indigenous, Aboriginal, Fugitive and Ethnic Groups around the Globe* (IntechOpen Book Series, 2019) <https://www.intechopen.com/chapters/67491> accessed 30 June 2024.

The exclusion of indigenous peoples from decision-making processes is not only a violation of their rights under international law but also a key driver of conflict.<sup>87</sup>

These constitutional and numerous federal legislations made the indigenous communities of the Niger-Delta region of Nigeria spectators in their lands while minerals and mineral oil and gas exploitation activities go on in their areas. These have given rise to a phenomenon termed “resource control” struggle in Nigeria.<sup>88</sup>

A key issue in the Niger Delta has been the failure of the government and oil companies to adequately consult with indigenous communities before embarking on resource extraction projects. Most of these agitators for “resource control” within the Niger Delta region of Nigeria, draw support from the growing belief that international and regional legal instruments have made positive provisions conferring rights on individuals and group of individual members living within a political state, with a corresponding obligation on states to ensure their promotion and protections.<sup>89</sup> These rights include the rights to participate meaningfully in natural resources governance and benefit from the proceeds of natural resources exploitation in a manner that satisfactorily serves the indigenous communities' economic, social, and cultural needs. The right to self-determination and the “peoples” or “indigenous peoples” over their lands and natural resources are available to host indigenous communities of natural resources in Nigeria.<sup>90</sup> While the exploitation goes on in the Niger Delta Region, these areas are negatively impacted as they do not benefit or derive satisfaction; neither do they participate in the exploitation process. Their

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<sup>87</sup> S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, USA 2004).

<sup>88</sup> R Ako, 'Resource Control in the Niger Delta: Conceptual Issues and Legal Realities' (2012) <https://www.e-ir.info/2012/05/25/resource-control-in-the-niger-delta-conceptual-issues-and-legal-realities/> accessed 20 June 2024.

<sup>89</sup> I Brownlie, *Principles of Public International Law* (7th ed, Oxford University Press, 2008) 29, cited in U O Umzurike, *The African Charter on Human and Peoples Rights* (Martimus Nijhoff Publishers, The Hague, 1997).

<sup>90</sup> Emmanuel Ibiam Amah and Philip Hemen Faga, 'Indigenous Peoples' Rights Over Natural Resources: An Analysis of Host Communities Rights in Nigeria' (2021) 3 LAJIL 121 <https://doi.org/10.25041/lajil.v3i2.2402>. accessed 29 June 2024.

rights over their lands and the oil therein are denied them through state“ imposed legislations and military force.<sup>91</sup> Indigenous landowners in the Niger Delta ought to enjoy three levels of compensations traditionally for the use and occupation of their traditional land territory; these are payment of annual rents as the head lords for the intrinsic value of the land, payment of compensations for surface rights in cases of damage to crops and economic trees and payment of compensation for pollutions.<sup>92</sup>

Over time it has been deduced that the dissatisfaction among the people of the Niger Delta stems from several factors. Firstly, federal legislation governing oil has often overlooked the interests of local communities, leading to a sense of marginalization. Secondly, the exclusion of oil-producing communities from meaningful participation in the oil extraction industry exacerbates feelings of neglect and disenfranchisement. There is growing frustration over the diminishing impact of the derivation principle outlined in the Constitution, which is intended to ensure that oil-producing regions benefit equitably from the resources extracted from their land. These issues collectively contribute to the pervasive dissatisfaction felt within the Niger Delta region.<sup>93</sup>

Despite numerous efforts to address the grievances of Niger Delta communities, including the establishment of the Niger Delta Development Commission (NDDC) and the Ministry of Niger Delta Affairs, indigenous participation in decision-making processes related to oil extraction remains limited.<sup>94</sup>

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<sup>91</sup> K Saro-Wiwa, 'The Niger Delta: No Democratic Dividend' (Human Rights Watch, 2005).

<sup>92</sup> I L Worika, *A Report on the Investigation of Human Rights Violations in the South-South Zone, 1966-1999: Community/Group Deprivations in Rivers State* (Centre for the Advanced Social Sciences (CASS), 2000).

<sup>93</sup> Ibid.

<sup>94</sup> Augustine Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Praeger 1990) 176.

## 2.5 Environmental Justice in The Niger Delta

Environmental justice has evolved as a critical framework for understanding the relationships between communities, their surroundings, and the socioeconomic institutions that control resource utilization. It is based upon the recognition that environmental costs and benefits are not in a fair and equitable manner and that traditional environmentalism has not been sufficiently concerned with very divergent local situations and the plight of minorities.<sup>95</sup>

Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.<sup>96</sup>

That is, it is concerned with both the 'fair treatment' and the 'significant involvement' of poor, racialized and indigenous communities in environmental policy and natural resource development decisions that have typically resulted in those communities bearing more than their "fair share" of environmental harms.<sup>97</sup>

Arguably, there exist a nexus between environmental justice and democracy. This is because environmental justice seeks to analyze and overcome the power structures that have the potency of thwarting and militating against the principles of fairness and equity which democracy both represents and enforces.<sup>98</sup> Again, while democracy represents a vehicle for the actualization of the principles of fairness, equality of opportunity, liberty, representation and the preservation of individual and social rights, environmental justice is an increasingly important element of policy making that underscores equity and fairness toward the disadvantaged individuals, groups,

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<sup>95</sup> Robert D Bullard, *Confronting Environmental Racism: Voices from the Grassroots* (Free Press 2000).

<sup>96</sup> Bill E. Lawson, 'The Value of Environmental Justice' (2008) 1 *Environmental Justice* 3  
<https://doi.org/10.1089/env.2008.0536> accessed 26 September 2024.

<sup>97</sup> Dayna Scott, 'What is Environmental Justice?' (2014) SSRN Electronic Journal  
<https://doi.org/10.2139/ssrn.2513834> accessed 4 October 2024.

<sup>98</sup> Rufus A Mmadu, 'The Search for Environmental Justice in the Niger Delta and Corporate Accountability for Torts: How Kiobel Added Salt to Injury' (2013) 1 *Afe Babalola University: Journal of Sustainable Development Law and Policy* 73.

communities, societies, institutions, regions and nations.<sup>99</sup> Environmental justice principles are thus expected to serve as a guide for organizing, networking and relating to governmental and non-governmental organizations' demands and this implies that environmental policy decisions are a product of the political process.<sup>100</sup>

In the context of the Niger Delta, where environmental degradation and socio-economic inequities have persisted for decades, exploring the principles of environmental justice provides insights into the historical and contemporary struggles of local communities.

With power held in the hands of the Government of Nigeria and the Multinational Oil Corporations, environmental injustices have and continue to be a widespread reality in the Niger Delta. Environmental injustices, the deliberate targeting of disadvantaged populations and the disproportionate distribution of toxic substances and hazardous activities into their communities.<sup>101</sup>

Environmental injustices in the Niger Delta mostly stem from the oil industry's activities, which have degraded the land, contaminated neighboring bodies of water and groundwater, and polluted the air.<sup>102</sup> As a result, many communities have become frustrated and some groups decided to take violent action against the onslaught of destruction of their communities without proper compensation.<sup>103</sup>

Despite acknowledged environmental justice ideas and policies, the Niger Delta continues to suffer considerable environmental damage. Rural and urban areas, which are sometimes

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<sup>99</sup> Ibid.

<sup>100</sup> B. C. Field, *Natural Resources Economics: An Introduction* (McGraw-Hill 2005).

<sup>101</sup> B. R. Johnston, 'Environmental Degradation and Human Rights Abuse' in B. R. Johnston (ed), *Who Pays the Price? The Sociocultural Context of Environmental Crisis* (Island Press 1994) 7.

<sup>102</sup> F. B. Barry, *Environmental Injustices: Conflict & Health Hazards in the Niger Delta* (American University 2010) <https://www.american.edu/sis/gep/upload/barry-environmental-justice-in-niger-delta> accessed 26 September 2024.

<sup>103</sup> U. Ukiwo, 'From "Pirates" to "Militants": A Historical Perspective on Anti-State and Anti-Oil Mobilization Among the Ijaw of Warri, Western Niger Delta' (2007) 106 *African Affairs* 587.

disregarded, have suffered from severe erosion, worsening water quality, deforestation, and declining soil fertility, resulting in socioeconomic instability. Even more concerning is that many individuals, particularly young people, have little to no access to the advantages that should result from industrial activities targeted at mitigating the bad effects and costs of the continuous environmental crisis in which they are imprisoned.

In a broad sense, environmental justice is about positive discrimination because it seeks to achieve a redistribution of the costs of environmental justice so as to lower the disproportionately high burden borne by some segments of society like the highly marginalized and pauperized Niger Delta.<sup>104</sup>

### **2.5.1 Key Principles of Environmental Justice**

Environmental justice encompasses a range of principles aimed at ensuring fair treatment and meaningful involvement of all individuals, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. Key principles include:

- i. Fair Treatment: Environmental justice emphasizes that no group of people should bear a disproportionate share of negative environmental consequences. In the Niger Delta, marginalized communities often experience higher levels of pollution and environmental degradation due to oil extraction activities.<sup>105</sup>
- ii. Meaningful Participation: The engagement of affected communities in decision-making processes is crucial for environmental justice.

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<sup>104</sup> Rufus A Mmadu, 'The Search for Environmental Justice in the Niger Delta and Corporate Accountability for Torts: How Kiobel Added Salt to Injury' (2013) 1 Afe Babalola University: Journal of Sustainable Development Law and Policy 73.

<sup>105</sup> PA Aiyelari, OA Omojola and E Afolabi, 'Environmental Justice and Oil Exploitation in Nigeria: The Case of the Niger Delta' (2020) 62(1) *International Journal of Law and Management* 83.

The emphasis here is on the right and the ability to participate, as well as, an access to the right type of participation. Under the EPA's definition of environmental justice, this right kind of participation is called meaningful involvement.<sup>106</sup> This involvement must be genuinely inclusive, grounded in mutual respect and thoughtful consideration of the concerns of all members of society. No group should be seen as more or less deserving than others. Such an approach ensures a fair and effective decision-making process, preventing any disparities in the standards applied across different groups within the community.

In the Niger Delta, the historical exclusion of local communities from resource management decisions has led to conflicts and a lack of accountability among oil companies and the government.<sup>107</sup>

- iii. Access to Information: Communities must have access to relevant information regarding environmental risks and policies. The right of access to information provides for the right to seek information from public authorities, as well as, the corresponding obligation of public authorities to provide information in response to this request.<sup>108</sup> Without this access, various forms of injustice can occur. Providing information empowers people to effectively defend their rights and ensures that violations, such as breaches of established procedures, are less likely to go unchallenged, as there could be negative consequences for such actions.

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<sup>106</sup> US Environmental Protection Agency, *Learn About Environmental Justice* (EPA, 2023)

<https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> accessed 10 November 2024.

<sup>107</sup> PC Nwilo and OA Badejo, 'Oil Spill Problems and Solutions in the Niger Delta' (2007) 1 International Oil Spill Conference.

<sup>108</sup> Paul Collier, *The Bottom Billion* (Oxford University Press 2007).

In the Niger Delta, inadequate information dissemination has perpetuated ignorance among local populations about the impacts of oil activities on their health and environment.<sup>109</sup>

- iv. Restorative Justice: Environmental justice seeks to address historical injustices and restore ecosystems and communities harmed by pollution and exploitation. The Niger Delta has faced significant ecological damage, necessitating restorative measures to mitigate the impacts of decades of oil exploration.<sup>110</sup>

## 2.6 Literature Review

In both the Western world and the Global South, there is a general consensus that “the rule of law ensures the foundation for predictability in the law and that government is subordinate to the law, not superior to it.”<sup>111</sup> This implies that an effective rule of law framework must be supported by strong institutions, a reliable security apparatus, human rights protections, and good governance.<sup>112</sup>

Unfortunately, these essential components of the rule of law are either absent or inadequate in Nigeria and other resource-producing countries. This gap is further exacerbated by the prevailing environmental injustices in resource-producing communities, which have been worsened by weak natural resource governance policies. One potential avenue for promoting good governance in the oil and gas industry is for the Nigerian government to demonstrate the political will to enforce laws and regulations, address environmental degradation, and meet its legal obligations.

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<sup>109</sup> O Nwankwo, ‘The Role of Information in Environmental Justice: A Case Study of the Niger Delta’ (2018) *Journal of Environmental Policy and Planning* 746.

<sup>110</sup> E Ojo, ‘Ecological Restoration and Environmental Justice in the Niger Delta: Strategies and Challenges’ (2019) 13(9) *African Journal of Environmental Science and Technology* 287.

<sup>111</sup> Arthur H. Garrison, "The Traditions and History of the Meaning of the Rule of Law." *Geo. JL & Pub. Pol'y* 12 (2014): 565.

<sup>112</sup> Scott, *Environmental Rights*.

It is widely acknowledged that the rule of law is crucial for sustainable development and serves as the cornerstone of effective environmental governance in many jurisdictions worldwide.<sup>113</sup>

Ako and Uddin<sup>114</sup> argue that one conceptualization of good governance phenomenon in the context of natural resource management is said to encapsulate the four cardinal principles of rule of law, accountability and transparency, management of revenues and democracy. In reality, these are underlying issues that have consistently been the basis for the emergence of resource conflicts.<sup>115</sup>

Lazarus<sup>116</sup> noted that there is growing evidence of the links between environmental problems and social injustices; environmental justice is the idea that brings them together the term “environmental justice” otherwise called “environmental equity” has featured prominently in the environmental debate for over three decades, but it only surfaced in the legal parlance in the 1990’s.

The exploitation of resources did not begin with the exploitation of oil, but it rather began as early as the 17th Century with extensive rubber and palm oil extractions for the European markets.<sup>117</sup> During the colonial era, certain ethnic groups in southern Nigeria sought to separate from the north. However, as early as 1914, the British argued that northern Nigeria would struggle to survive without financial support from the south. Although oil was not successfully extracted in Nigeria until 1956, the Shell d'Arcy Development Company secured concessions in various regions as early as 1938. The colonial state claimed ownership of oil resources under the Mineral Act, which facilitated leases and licenses for oil exploration granted to British nationals.

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<sup>113</sup> Noora Arajärvi, 'The Rule of Law in the 2030 Agenda' (2018) 10(1) *Hague Journal on the Rule of Law* 187-217.

<sup>114</sup> Adamu Ako and Sulaiman Uddin, 'Good Governance in Natural Resource Management: A Nigerian Perspective' (2015) 14 *African Journal of Environmental Law* 45, 48.

<sup>115</sup> Ibid

<sup>116</sup> Richard J. Lazarus, *The Making of Environmental Law* (University of Chicago Press 2004) 23.

<sup>117</sup> U. Ukiwo, 'From “Pirates” to “Militants”’: A Historical Perspective on Anti-State and Anti-Oil Mobilization Among the Ijaw of Warri, Western Niger Delta' (2007) 106 *African Affairs* 587.

These concessions were primarily concentrated in southern Nigeria due to geological indicators of substantial crude oil deposits. Initially, the discovery of oil boosted the local economy, which was struggling due to declining palm oil sales. However, this newfound wealth also intensified conflicts over land ownership in oil-rich areas.<sup>118</sup> Thus, the overarching view is that the principles of environmental justice and the "...rule of law, well-designed laws are implemented by capable government institutions that are held accountable by an informed and engaged public that leads to a culture of compliance that embraces environmental and social values."<sup>119</sup>

According to Kew and Obi,<sup>120</sup> in many communities of Niger Delta, organized Civil Society has been involved in several interventions towards protection, monitoring, advocacy, socialization, social cohesion, intermediation and facilitation, and service delivery, peace education, training, conflict mediation, early warning systems and post-conflict reconstruction among other measures.

Taking a more critical view on the concept of environmental justice, Bullard<sup>121</sup> posited that environmental justice is based upon the recognition that environmental costs and benefits are not in a fair and equitable manner and that traditional environmentalism has not been sufficiently concerned with very divergent local situations and the plight of minorities. The term is therefore concerned mainly with the side effects of production activities, such as the siting of waste disposal facilities, the proximity of industrial pollution and workplace exposure to industrial toxins and the socio-economic consequences occasioned by it as McDermott<sup>122</sup> rightly articulated.

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<sup>118</sup> J.B. Ejobowah, *Who Owns the Oil? The Politics of Ethnicity in the Niger Delta of Nigeria* (Indiana University Press 2000) 29.

<sup>119</sup> Environmental Rule of Law, First Global Report, 1.

<sup>120</sup> Darren Kew and Cyril Obi, 'Dilemmas of Cooptation in the Niger Delta' in Thania Paffenholz (ed), *Civil Society and Peacebuilding: A Critical Assessment* (Lynne Rienner Publishers 2010).

<sup>121</sup> Robert D Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (3rd edn, Westview Press 2000).

<sup>122</sup> McDermott, 'Environmental Impacts of Industrialization' (2004) 62 *Journal of Environmental Science*.

Gadgil and Guha,<sup>123</sup> are of the view that in a broad sense, environmental justice involves positive discrimination, as it seeks to redistribute the costs of environmental protection to reduce the disproportionately high burden borne by marginalized and impoverished communities, such as those in the Niger Delta. In essence, it shifts the focus of environmental protection to address the needs of poorer segments of society that have borne the brunt of the environmental consequences of industrialization more than others.

This holds true for the paradoxical situation of the Niger Delta that is bearing the burden of the revenue generating, yet environmentally degrading and socio-economically dislocating consequences of oil exploration and production activities without any imaginably comparative adequate and justifiable compensation in the light of developmental benefits.<sup>124</sup> It also addresses the extent of linkages between environmental and social injustice and asks whether it is practicable to tackle both social exclusion and environmental problems through integrated policies and development. It therefore follows that by looking at social justice issues through an environmental lens and simultaneously by analyzing environmental issues more clearly in terms of social justice, new and more effective ways of dealing with each can be developed.<sup>125</sup>

Cunningham<sup>126</sup> argues that environmental justice is equally the blend of social and environmental concerns that deals with holistic efforts to analyze and overcome the power structures that thwarts and militates against the principles of fairness and equity. This

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<sup>123</sup> Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (Oxford University Press).

<sup>124</sup> S.O. Aghalino and B. Eyinla, 'Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria' (2009) 28 *J Hum Ecology* 177, 182.

<sup>125</sup> Maria Adebawale, 'Understanding Environmental Justice: Making the Connection Between Sustainable Development and Social Justice' in Gary Craig, Tania Burchardt, and David Gordon (eds), *Social Justice and Public Policy: Seeking Fairness in Diverse Societies* (Bristol University Press 2022) 251-275.

<sup>126</sup> W P Cunningham, M A Cunningham and B W Saigo, *Environmental Science: A Global Concern* (2007).

phenomenon views the environment as encapsulating where we live, work and play and seeks to redress the imbalances in the distribution of environmental benefits and costs.

Ejumudo<sup>127</sup> contends that there exists policy gaps as far as environmental justice issues affecting the Niger Delta region are concerned. This is because the policies are not environmentally benign enough to cushion the effects of the wreck and havoc caused by the devastating oil exploration and exploitation activities in the region, the little remedial and intervening role of the existing environmental policies are castrated by the conspiracy between the Nigerian state and the oil multinationals and the concomitant inaction by the state and its agencies in the face of the operational recklessness and attitudinal highhandedness of the oil giants.

According to Tietenberg,<sup>128</sup> policies and programs perceived as unfair are unlikely to succeed, even if they promise to improve efficiency and sustainability. Similarly, Field<sup>129</sup> argues that political conflicts surrounding natural resource issues often arise from the fact that the groups who benefit from these resources are not the same as those who bear the costs. These issues of equity and fairness, which are central to many debates, are exemplified by the ongoing Niger Delta dilemma.

Despite the recognized efficacy of environmental justice principles and practices across communities, societies, and nations environmental degradation continues unabated. In the Niger Delta, neglected areas have suffered large-scale erosion, water quality deterioration, deforestation, declining soil productivity, and socio-economic dislocation. Worse still, the majority of the population, particularly the youth, has little or no access to the benefits that should arise from the production activities which, in an ideal scenario, would help mitigate the

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<sup>127</sup> K B O Ejumudo, 'The Unending Niger Delta Crisis: An Ecological Perspective' (2008) 3 *Journal of Social Policy and Society* 3.

<sup>128</sup> T Tietenberg, *Environment and Natural Resource Economics* (Pearson Education 2005).

<sup>129</sup> B C Field, *Natural Resources Economics: An Introduction* (McGraw-Hill 2005).

negative effects and costs of environmental degradation. Consequently, they are unable to lead lives they value or fulfill their potential.<sup>130</sup> In the Niger Delta, the environmental costs borne by the marginalized, oppressed, and impoverished people alongside the benefits that should flow to them, such as employment, skill acquisition programs, educational scholarships, and basic social amenities are highly disproportionate. This imbalance undermines the principles of fairness and equity fundamental to environmental justice, leading to hazardous environmental consequences and crises.<sup>131</sup>

This reality challenges any objective claim to the existence of a functional and consolidated democracy in Nigeria, despite the years of democratic experimentation. The environmental injustice in the Niger Delta is largely a product of Nigeria's shallow, flawed, and pseudo-democracy. The absence or inadequacy of democracy and democratic culture has, in fact, constrained environmental justice and equity in Nigeria, a rentier state reliant on oil exports, with devastating consequences for the oil-rich Niger Delta region.<sup>132</sup> A true, consolidated, and functional government that upholds fundamental human rights, ensures equity and fairness, and promotes responsible, accountable, and representative governance are all key tenets of environmental justice. Furthermore, such a state would generate policies capable of managing the intersection between environmental and economic concerns, ensuring a more equitable distribution of the costs and benefits across different regions of Nigeria. Thus, the issue of democracy and environmental justice in Nigeria, particularly in the Niger Delta, remains unresolved. This challenge is centered the requirement for authentic developmental leadership.<sup>133</sup>

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<sup>130</sup> P D Cunningham, 'Environmental Justice and Sustainable Development' (2014) 19 *Env'tl L* 134.

<sup>131</sup> A M Adeyemo, 'The Oil Industry Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika L.G.A. of Rivers State, Nigeria' (2002) 2 *J Oil & Politics* 1, 32.

<sup>132</sup> O C Nworu, 'Ogoniland Clean-Up, Remediation and Satisfactory Environment Favorable to Its Development: Obligations of the Nigerian State' (2017) 7 *World Env't* 31, 36.

<sup>133</sup> *Ibid.*

## CHAPTER 3

# LEGAL FRAMEWORK GOVERNING NATURAL RESOURCE MANAGEMENT AND ENVIRONMENTAL JUSTICE

### 3.1 Introduction

Nigeria is blessed with an abundance of natural resources, including coal, natural gas, gold, limestone, granite, and crude oil. Because of their great demand throughout the world, hydrocarbon resources are among the most valuable. With one of the greatest gas reserves in Africa, Nigeria is currently the second-largest producer of gas in the world as well as crude oil.<sup>134</sup>

Natural resource management and environmental protection in the Niger Delta are governed an array of statutes, regulations, and international agreements aimed at regulating extraction activities, minimizing environmental degradation, and promoting justice. Even with this seemingly all-inclusive framework, significant challenges remain in enforcement, accountability, community engagement, and enforcement. A critical analysis of several important pieces of legislation is provided in this chapter, such as the NOSDRA Act (2006), the Environmental Impact Assessment Act (2004), and the Petroleum Industry Act (2021).

### 3.2 Key Statutes Governing Natural Resources in Nigeria

#### a. The Constitution of the Federal Republic of Nigeria 1999 (as amended).

The enactment of the Federal Republic of Nigeria's Constitution in 1999 was a watershed point in the legislative landscape for environmental protection. Unlike those before it, this constitution

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<sup>134</sup> Akpan MJD, 'Petroleum Industry Act in Nigeria: An Analysis of the Impact of the Novel Host Communities Development Trusts Provision' (2021) 9(7) *Global Journal of Politics and Law Research* 30–46.

includes provisions to protect the environment, indicating a growing understanding of environmental challenges within the national legal system.<sup>135</sup>

Section 20 of the Constitution explicitly mandates the State to "*protect and improve the environment and safeguard the water, air, land, forests, and wildlife of Nigeria.*" This provision shows the fundamental duty of the government to ensure a sustainable and healthy environment, thereby elevating environmental concerns to a constitutional status.<sup>136</sup>

It is important to note that, while this section acknowledges the importance of environmental protection, it remains part of Chapter II, which outlines the Fundamental Objectives and Directive Principles of State Policy. These principles, while significant, are classified as non-justiciable, which means they cannot be enforced in a court of law.<sup>137</sup>

Chapter II provides a core framework for environmental legislation and defines government obligations. Section 13 states that:

It shall be the duty and responsibility of all organs of government... to conform to, observe, and apply the provisions of this chapter of this Constitution.<sup>138</sup>

This guarantee that all governmental acts are supposed to be consistent with constitutional objectives, such as environmental stewardship. Section 17(2)(d) adds to Section 20 by stating that the exploitation of natural resources must benefit the community while not harming the environment. It specifies that exploitation of human or natural resources in any form whatsoever, for reasons other than the good of the community shall be prevented.<sup>139</sup> This section states that if

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<sup>135</sup> Enebeli VN and Njoku DC, 'Title of the Article' (2023) 13(1) African Journal of Law and Criminology 135-163.

<sup>136</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) s 20.

<sup>137</sup> Emejuru, J. 'Constitutional Environmentalism in Nigeria: A Critical Analysis,' (2020) 32 (1) Journal of Environmental Law 45-67.

<sup>138</sup> Constitution of the Federal Republic of Nigeria 1999, s 13.

<sup>139</sup> Constitution of the Federal Republic of Nigeria 1999, s 17(2)(d).

the negative environmental consequences of resource exploitation outweigh the benefits to local communities, the government has a duty to intervene and prevent such exploitation.<sup>140</sup>

Nevertheless, the persistent violations of environmental rights, particularly in oil-producing regions, highlight the inadequacies of existing legal frameworks in safeguarding the environment.<sup>141</sup> However, the constitutional provisions pertaining to environmental rights are hampered by their non-justiciability, as stipulated in Section 6(6)(c), which states that judicial powers do not extend to questions concerning the conformity of laws with the Directive Principles. This limitation seriously undermines the enforceability of Sections 20 and 24, as courts are rendered unable to address violations of these provisions, so hampering the protection of environmental rights and the proper execution of governmental commitments.<sup>142</sup>

#### **b. Petroleum Industry Act (2021)**

The most recent and extensive law controlling Nigeria's oil and gas industry is the Petroleum Industry Act (PIA). The PIA, which came into effect in 2021, aims to guarantee that local populations in oil-producing regions profit from resource development while also improving transparency and the regulatory environment. The Act creates the Host Communities Development Trust and requires oil firms to pay into community development funds a part of their operational expenses. Nonetheless, some contend that the Act does not deal with the systemic injustices that have traditionally disadvantaged local populations.<sup>143</sup>

The Act introduces and specifies the regulations, procedures, and institutions which will ensure good governance, transparency, and accountability in the petroleum industry. However, there can

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<sup>140</sup>A Ojo, 'The Role of Law in Environmental Protection in Nigeria' (2021) 24(3) *Lagos Law Review* 112.

<sup>141</sup>J Akinwunmi, 'Oil Exploitation and Environmental Rights in Nigeria: A Call for Legal Reforms' (2023) 10(2) *Nigerian Journal of Environmental Law* 78.

<sup>142</sup>T Ogunkola, 'Judicial Constraints on Environmental Justice in Nigeria: An Assessment' (2023) 67(2) *Journal of African Law* 159.

<sup>143</sup>Petroleum Industry Act 2021.

never be perfect legislation. Certain provisions of the Nigeria's PIA have been deemed contentious, while others have been deemed potentially problematic that require legislative amendment to promote international best practices in the industry.<sup>144</sup> For example, the state, local governments, and host communities should have been listed as owners of the petroleum in Nigeria in addition to the Federal Government in Section 1 of the Petroleum Industry Act (PIA), which addresses the Federal Government of Nigeria's ownership of petroleum. The inclusion of the host communities and the three tiers of government in the vesting right would have helped to lessen the constant agitation for resource control, theft of crude oil, pipeline vandalism, and other crimes related to oil.<sup>145</sup> Additionally, it seems that the Act violates Section 162 of the Constitution, which states that federal funds must be placed into a Federation account and allocated to the other branches of government in accordance with the constitution. This constitutional provision may be undermined in this case by the NNPC Ltd. The PIA specifically violates section 162 of the 1999 Constitution by allowing the NNPC Ltd to keep 30% of the production sharing, profit sharing, and risk service contracts intended for frontier basin exploration. The federal government, state governments, and municipal governments will get less oil money as a result of this 30% withholding, which will make it more difficult for them to fulfill their legal duties.<sup>146</sup>

While the PIA aims to reduce environmental damage through stricter environmental regulations, its enforcement mechanisms remain weak. The Act provides for the establishment of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), tasked with ensuring

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<sup>144</sup> BK Obioma, 'Mediterranean Corruption Reduction in the Petroleum Sector in Nigeria: Challenges and Prospects' (2012) 3(15) *Mediterranean Journal of Social Sciences* 98.

<sup>145</sup> DOE Borha and OJ Olujobi, 'An Examination of the Petroleum Industry Act 2021: Prospects, Challenges, and the Way Forward' (2023) 12 *F1000Research* 551.

<sup>146</sup> *Ibid.*

compliance with environmental standards, but this body has struggled to hold multinational oil companies accountable due to corruption and bureaucratic inefficiencies.<sup>147</sup>

**c. Land Use Act (1978)**

A key piece of legislation in Nigeria that had a significant impact on the distribution and management of the nation's land resources is the Land Use Act of 1978, also known as Decree No. 6 of 1978. This Act was enacted during General Olusegun Obasanjo's military government with the intention of addressing issues pertaining to land ownership, use, and control. Its goals were to guarantee equal distribution of land rights among Nigeria's diverse population and sustainable land management.<sup>148</sup>

**d. The National Oil Spill Detection and Response Agency (NOSDRA) Act (2006)**

To control oil spills and make sure companies accept accountability for environmental harm, the National Oil Spill Detection and Response Agency (NOSDRA) was founded. Oil corporations must notify and respond to spills under the NOSDRA Act, and the agency has the authority to impose fines and order cleanup efforts.<sup>149</sup>

NOSDRA was established by an Act of the parliament, Act No. 15 of October 18, 2006. It is an Agency under the Federal Ministry of Environment to coordinate the implementation of the National Oil Spill Contingency Plan (NOSCP) which also incorporates the National Oil Spill Contingency System (NOSCS) for Nigeria, in compliance with the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), to which the country is a signatory. National Oil Spill Contingency System (NOSCS) is a harmonization of all relevant regulations, organizations, personnel, procedures, facilities, equipment, logistical support to

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<sup>147</sup> E Egbogah, 'The Impact of the Petroleum Industry Act on Nigeria's Oil and Gas Sector' (2022) 45 Nigerian Journal of Environmental Law 17.

<sup>148</sup> Chukwuemeka OF, 'Understanding the Land Use Act of 1978: A Comprehensive Overview' (Kwik Attorneys LP, 19 September 2023).

<sup>149</sup> NOSDRA Act 2006.

respond to a spill, reduce the negative impact and manage all related issues.<sup>150</sup> NOSDRA currently plays a critical role in the ongoing clean-up and remediation of oil impacted areas in Ogoniland, Rivers State, based on the Report of the United Nations Environment Programme (UNEP) which was at the instance of the Nigerian government. The Agency has developed a baseline Environmental Sensitivity Index Map (ESI) covering Nigeria's shoreline from Badagry to Calabar which enables identification of high-risk as well as priority areas for protection and effective clean up.<sup>151</sup> Its limitation can be seen in the requirements of the National Oil Spill Detection and Response Agency (NOSDRA) Act in Nigeria, which mandates that oil companies report spills to NOSDRA within 24 hours and face daily fines for non-compliance, along with additional penalties for failure to clean up spill sites. In a 2018 Court of Appeal ruling, it was found that NOSDRA acted beyond its legal authority when it imposed a 10 million Naira fine on ExxonMobil for a spill, as only a court has the power to impose fines. This highlights the agency's limitations and the necessity for compliance with established legal frameworks in environmental regulation.<sup>152</sup>

### **3.3 Environmental Impact Assessment (EIA) Act<sup>153</sup>**

Prior to the NOSDRA, in response to the illegal dumping of toxic waste in Koko, Bendel State (now Delta State), the Nigerian Government enacted the Harmful Wastes Decree in 1988.<sup>154</sup> This decree established a legal framework to regulate and control the disposal of toxic and hazardous

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<sup>150</sup> National Oil Spill Detection and Response Agency, *NOSDRA* <https://nosdra.gov.ng/> accessed 20 October 2024.

<sup>151</sup> *Ibid.*

<sup>152</sup> *NOSDRA v Mobil Producing Nigeria Unlimited* (2008) LPELR – 44210 (CA).

<sup>153</sup> Environmental Impact Assessment Act, Cap E12 LFN 2004.

<sup>154</sup> Harmful waste (Special Criminal Provision etc.) Decree 1988, and Federal Environmental Protection Agency Decree 1988.

waste across Nigeria. Following the decree, the government also created a regulatory body, the Federal Environment Protection Agency (FEPA), in the same year.<sup>155</sup>

The Federal Environmental Protection Agency (FEPA) oversees the safeguarding and improvement of Nigeria's environment. To promote better environmental standards across the country, state and local governments were urged to set up their own environmental agencies.<sup>156</sup>

These local bodies would focus on maintaining environmental quality within their specific regions. To support this initiative, the government developed a comprehensive National Environmental Policy.

FEPA released the National Policy Plan (NPP) in 1989 to promote sustainable development, which was consistent with rules such as the 1991 National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation. This legislation made EIA a mandatory requirement whenever asked by FEPA, establishing it as a crucial component in the successful enforcement of national environmental policy.<sup>157</sup>

EIAs are intended to assess the potential environmental, social, and economic implications of proposed projects, ensuring that community interests are respected while environmental quality is maintained.<sup>158</sup> By examining how EIAs can both protect and endanger community values, we can gain a clearer understanding of their role in the ongoing battle for environmental justice in the Niger Delta.<sup>159</sup>

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<sup>155</sup> Victor Enebeli and David Njoku, 'The Legal Framework of Environmental Impact Governance in Nigeria' (2023) 13 *Journal Title* 135.

<sup>156</sup> Federal Environmental Protection Agency Act 1988, s 2.

<sup>157</sup> National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulation 1991, reg 1.

<sup>158</sup> R.B. DeLuca, 'Environmental Impact Assessment as a Tool for Sustainable Development: A Case Study of the Niger Delta' (2012) 3 *Int'l J. Environ. Sustainability* 97, 102.

<sup>159</sup> M. Adams and T. Kalu, 'Evaluating the Role of EIAs in Promoting Environmental Justice in the Niger Delta' (2016) 10 *J. Environ. Law & Policy* 234, 240.

Environmental Impact Assessments (EIAs) are globally recognized tools that predict the environmental repercussions of planned projects, allowing for sustainable development while protecting impacted communities' socioeconomic, cultural, and environmental interests. It assesses the impact of a planned activity on the environment in advance, thereby allowing avoidance measures to be taken. Environmental impact assessment was first formally established in the United States of America in 1969. It has spread World Wide and received significant boost with the 1972 and 1992 U.N conferences.<sup>160</sup>

EIAs are crucial in Nigeria, particularly in the Niger Delta region, because oil extraction, gas flaring, and other industrial operations have caused considerable environmental degradation.<sup>161</sup> This chapter looks at the significance of EIAs in protecting environmental quality and community interests, focusing on their legal framework, practical obstacles, and socioeconomic implications for Niger Delta communities.

The Environmental Impact Assessment (EIA) Act is a key environmental protection law in Nigeria. It requires that any project likely to have a significant impact on the environment, such as oil extraction, must undergo an environmental impact assessment before approval. The goal of the EIA process is to identify, predict, and mitigate the adverse environmental effects of proposed projects.<sup>162</sup>

### **3.3.1 Public Participation under the EIA of (2004) .**

One of the cornerstones of the EIA process is public participation, which ensures that affected communities can voice their concerns and influence the outcome of environmental assessments.

The Nigerian EIA framework incorporates provisions for public participation, although the level

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<sup>160</sup> The 1972 Stockholm Summit, 1992 Rio de Janeiro Brazil, Conference.

<sup>161</sup> P.C. Nwilo and O.T. Badejo, 'Impacts and Management of Oil Spill Pollution Along the Nigerian Coastal Areas' [https://www.fig.net/resources/publications/figpub/pub36/chapters/chapter\\_8.pdf](https://www.fig.net/resources/publications/figpub/pub36/chapters/chapter_8.pdf).

<sup>162</sup> Environmental Impact Assessment Act, Cap E12 LFN 2004.

of genuine involvement remains low. Often, public consultations are conducted as mere formalities, and community concerns are inadequately addressed. In many instances, decisions have already been made by the time the public is invited to participate.<sup>163</sup>

The EIA Act provides for environmental democracy in Nigeria. The EIA Act contains democratic environmental rights, that is, right of public access to information on environmental issues, right to public participation in environmental decision-making, and right of access to justice in environmental matters, available to persons when the environmental impact of a large-scale project comes into question.<sup>164</sup>

Participation in environmental decision-making is believed to be the most crucial role played by the citizens of any nation in matters of environmental protection. The origin of public participation is "the right of those who may be affected to have a say in the determination of their environmental future."<sup>165</sup>

The right of access to participate in governmental environmental decision-making processes allows the public to be involved in the development of projects and policies, rule-making, drafting new laws or revising old ones, determining privileges, rights, and obligations of individual citizens as well as the implementation of environmental provisions.<sup>166</sup>

Access to participation in environmental decision making enhances the ability of a government to be responsive to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions.

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<sup>163</sup> O Nyekwere and P Ole, 'Assessing the Legal Framework for the Realization of Environmental Democracy in Nigeria' (2022) 13(2) NAUJILJ.

<sup>164</sup> U C Ejiogu, *The Human Right to a Healthy Environment in Nigeria: A Guarantee of Access to Justice?* (Masters Thesis, University of Eastern Finland, 2019) 65; Environmental Impact Assessment Act, s 7.

<sup>165</sup> P Giulia and D Shelton, 'Human Rights and the Environment: What Specific Environmental Rights have been Recognized?' [2006] 35(1) *Denver Journal of International Law & Policy* 139, Report, July 30th, 1958 (London).

<sup>166</sup> B Carl & F Meg, 'Emerging Global Norms of Public Involvement' in B Carl (Ed), *The New "Public:" The Globalization of Public Participation* (Environmental Law Institute, 2002) pp.2&9.

Section 7 of the EIA Act states that:

Before the Agency gives a decision on an activity to which an environmental assessment has been produced, the Agency shall give opportunity to government agencies, members of the public, experts in any relevant discipline and interested groups to make comment on environmental impact assessment of the activity.<sup>167</sup>

Also under the same Act, Section 11 mandates State and Local Government Areas to notify communities of any activities identified in EIA reports that may significantly impact them and to engage in timely consultations with those communities.<sup>168</sup> This section also specifies that the Agency is responsible for facilitating these consultations to address any environmental issues or risks that might arise during the construction or implementation of the project.<sup>169</sup> Moreover, Section 17(1)(c) asserts that every screening and assessment performed by the review panel should take various factors into account, including public input. Environmental impact assessment reports must demonstrate evidence of public and community participation. Based on the level of public interest in the project, the agency may arrange public hearings or reviews during the scoping phase.<sup>170</sup>

It is important to note that Section 22 of the EIA Act requires that after completing a project's screening report, the Agency must provide the public with an opportunity to review and comment on the report and any related documents in the public registry before proceeding with any action. Comments submitted must be considered.<sup>171</sup>

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<sup>167</sup> EIA Act, section 7.

<sup>168</sup> EIA Act, section 11(1).

<sup>169</sup> EIA Act, section 11(2).

<sup>170</sup> SE Odemene, *Optimizing Public Participation in Environmental Decision Making in Nigeria* (Unpublished Thesis, School of Social Sciences, The University of Adelaide 2015) 24-25.

<sup>171</sup> EIA Act, section 22(1) & (3).

Additionally, during the Draft EIA Report and Review Process, Section 25 allows the public to participate in the EIA review by commenting on displayed project reports. This provision for public input is vital for meaningful engagement in environmental decision-making, as it fosters ownership and enhances the legitimacy of government decisions.<sup>172</sup>

### **3.3.2 Right of Public Access to Environmental Information under the EIA of 2004**

Section 9 of the EIA Act provides:

The report of the Agency shall be made available to interested person or group. If no interested person or group requested for the report, it shall be the duty of the Agency to publish its decision in a manner by which members of the public or persons interested in the activity shall be notified. The Council may determine an appropriate method in which the decision of the Agency shall be published so as to reach interested persons or groups, in particular the originators or persons interested in the activity subject of the decision.<sup>173</sup>

The EIA Act requires the Federal Ministry of Environment, the environmental regulating body, to notify the public about EIA reports turned in by project developers. This notice allows the public to be informed while simultaneously raising objections or negotiating the process's outcomes with project proponents and Agency decisions.<sup>174</sup> Furthermore, the Federal Ministry of Environment is required to publish its decisions regarding project authorizations in a way that ensures all members of the public and interested parties are informed.<sup>175</sup>

Section 57(2), (3)&(4) of the EIA Act further provides that the public registry established and maintained by the regulatory ministry shall contain in respect of a project:

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<sup>172</sup> VE Agbazue, EK Anih, and BU Ngang, 'The Role of NESREA Act 2007 in Ensuring Environmental Awareness and Compliance in Nigeria' [2017] (10)(9) *IOSR Journal of Applied Chemistry* 35.

<sup>173</sup> EIA Act, section 9(2), (3) & (4).

<sup>174</sup> A Olawale, 'The Balancing of Interests in Environmental Law in Nigeria' in Michael F and Willemien DP (eds), *The Balancing of Interests in Environmental Law in Africa* (Pretoria University Law Press 2011) 391.

<sup>175</sup> T AYusuf, *Environmental Impact Assessment (EIA) Regulations and Practice in Nigeria* (Al-Hakim International, 2017) p.50.

1. Records of the commencement of the environmental assessment until any follow-up program in respect of the project is completed;
2. Records of any referral to the mediation and/or review panel, including the appointment of the mediator or the members of the review panel and submission of the mediation/review panel's report to the regulatory ministry or the secretary to the government of the federation as the case may be;
3. Records of any comments filed by the public in relation to the assessment;
4. Records that have otherwise been made available to the public taking part in the assessment under the EIA Act;
5. A record or part of a record in the possession of the regulatory ministry, or any other ministry or government agency, which the regulatory ministry determines would have been disclosed to the public if a request had been made in respect of that record, including any record that would be disclosed in the interest of the public;
6. Any record or part of a record, except a record or part containing third party information. However, if the President, Commander-in-Chief of the Armed Forces, believes on reasonable grounds that the disclosure of such records would be in the public interest and facilitate effective public participation in the assessment, such record would be made available to the public.<sup>176</sup>

### **3.3.3 Public Access to Justice under the EIA Act of 2004.**

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<sup>176</sup> EIA Act, sections 57(2),(3)&(4); T A Yusuf, *ibid*, pp.55-56.

Access to justice on the other hand in environmental matters has gained ascendancy as an effective mechanism for holding governments accountable and ensuring that environmental laws and regulations are enforced.<sup>177</sup>

Access to environmental justice covers three types of legal issues:

1. Claims to challenge denial of access rights, that is, right of access to environmental information and right of access to public participation in environmental decision-making.
2. To prevent or remedy environmentally harmful activities.
3. To enforce environmental laws.<sup>178</sup>

The EIA Act ensures the public's right to seek justice on environmental matters. Section 59 allows for judicial review of any problems relating to assessments under the Act, however reviews will be granted if the objections are simply based on form or technical irregularities.<sup>179</sup>

This section allows people and groups to dispute denials of their right to obtain environmental information and participate in environmental decision-making.<sup>180</sup> They can also seek court action to prevent or rectify environmentally hazardous activity, as well as to enforce environmental regulations. Thus, under Section 59, the public has the right to challenge refusals to give environmental information, permit decisions for large projects with significant environmental impacts, and other activity that may contravene environmental legislation. The access to justice aspect of environmental democracy fosters accountability and upholds the rule of law. It acknowledges that effective environmental protection and sustainable development rely on the prudent application of equitable and unbiased administrative and judicial processes to create enforceable standards.

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<sup>177</sup> G R Pring & C K Pring; UNDP, *Programming for Justice: Access for All – A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (United Nations Development Programme, 2005)..

<sup>178</sup> Nyekwere, O and Ole, P, 'Assessing the Legal Framework for the Realization of Environmental Democracy in Nigeria' (2022) 13(2) NAUJILJ.

<sup>179</sup> EIA Act, Sections 37(b) & 39 respectively.

<sup>180</sup> Ibid.

In the light of the foregoing, it is clear that the EIA process includes exchange of information and notification (right of public access to information) and consultation (right of access to public participation) between organs and persons with regard to projects which will significantly affect the environment.

### 3.4 Basic Principles of Environmental Impact Assessment

Environmental Impact Assessment should be:

- i. **Focused** - the process should concentrate on significant environmental effects and key issues; i.e., the matters that need to be taken into account in making decisions.
- ii. **Purposive** - the process should inform decision making and result in appropriate levels of environmental protection and community well-being.
- iii. **Practical** - the process should result in information and outputs which assist with problem solving and are acceptable to and able to be implemented by proponents.
- iv. **Rigorous** - the process should apply “best practicable” science, employing methodologies and techniques appropriate to address the problems being investigated.
- v. **Cost-effective** - the process should achieve the objectives of EIA within the limits of available information, time, resources and methodology.
- vi. **Relevant** - the process should provide sufficient, reliable and usable information for development planning and decision making.
- vii. **Interdisciplinary** - the process should ensure that the appropriate techniques and experts in the relevant bio-physical and socio-economic disciplines are employed, including use of traditional knowledge as relevant.

- viii. **Efficient** - the process should impose the minimum cost burdens in terms of time and finance on proponents and participants consistent with meeting accepted requirements and objectives of EIA.
- ix. **Credible** - the process should be carried out with professionalism, rigor, fairness, objectivity, impartiality and balance, and be subject to independent checks and verification.
- x. **Adaptive** - the process should be adjusted to the realities, issues and circumstances of the proposals under review without compromising the integrity of the process, and be iterative, incorporating lessons learned throughout the proposal's life cycle.
- xi. **Integrated** - the process should address the interrelationships of social, economic and biophysical aspects.
- xii. **Participative** - the process should provide appropriate opportunities to inform and involve the interested and affected publics, and their inputs and concerns should be addressed explicitly in the documentation and decision making.
- xiii. **Transparent** - the process should have clear, easily understood requirements for EIA content; ensure public access to information; identify the factors that are to be taken into account in decision making; and acknowledge limitations and difficulties.

**Systematic** - the process should result in full consideration of all relevant information on the affected environment, of proposed alternatives and their impacts, and of the measures necessary to monitor and investigate residual effects.<sup>181</sup>

### 3.5 Purpose of Environmental Impact Assessment

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<sup>181</sup> P Senécal, B Goldsmith, S Conover, B Sadler, and K Brown, *Principles of Environmental Impact Assessment Best Practice* (International Association for Impact Assessment in cooperation with Institute of Environmental Assessment 1999).

The fundamental goal of Environmental Impact Assessment (EIA) is to safeguard the environment by ensuring that local planning authorities make decisions about whether to give planning approval for projects that are likely to have substantial environmental effects while fully aware of these effects.<sup>182</sup> This procedure is critical for making educated decisions. Regulations define a process for determining which projects require an EIA, as well as assessing, advising, and making decisions on those projects.<sup>183</sup>

Furthermore, EIA seeks to offer the public with timely and effective chances to engage in decision-making processes. This engagement is critical for increasing transparency and accountability in the planning process. While EIA is necessary for environmental preservation, it is intended to be a facilitator of growth rather than an impediment. It only applies to a small number of projects under the town and rural planning regime.<sup>184</sup> Local planning authorities have a well-established responsibility to assess the environmental consequences of developments under planning control.

EIA fosters meaningful stakeholder participation throughout the process, building trust and understanding between stakeholders and project proponents. This collaborative approach is critical to attaining sustainable development.<sup>185</sup>

Environmental Impact Assessments (EIAs) are intended to assess not just environmental problems, but also the sociocultural and religious aspects of affected people. Many communities in the Niger Delta rely primarily on agriculture and fishing, both of which are especially sensitive to environmental changes caused by oil extraction. The displacement of communities

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<sup>182</sup> S O Aghalino and B Eyinla, 'Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria' (2009) 28 *Journal of Human Ecology* 177.

<sup>183</sup> United Nations Environment Programme (UNEP), *Environmental Assessment of Ogoniland* (UNEP 2011).

<sup>184</sup> C. Oteh and R.C. Eze, 'Vandalization of Oil Pipelines in the Niger Delta Region and the Role of Environmental Impact Assessments' (2019) 5(2) *Journal of Environmental Governance* 115.

<sup>185</sup> S.O. Aghalino, 'Impact of Environmental Assessments in Sustainable Development: Nigeria's Approach' (2018) 62(2) *Journal of Environmental Science* 115.

owing to project development frequently destroys cultural heritage places, disrupts traditional economic activity, and exacerbates poverty.

However, the Government places more value on its economic well-being than on the environmental well-being of the people of the Niger Delta where a greater portion of hydrocarbon activities takes place daily.<sup>186</sup> The neglect or unwillingness of the defunct FEPA or the present-day Ministry of Environment to enforce the existing regulation, despite the several reported cases of environmental degradation in the Niger Delta is sad. There has been no single known case of enforcement of the status against NNPC which is in Joint Venture Agreement with major oil companies in Nigeria. It will also be difficult for NNPC which holds at least 60 percent shares in the Joint Venture with other oil companies to enforce the law against itself when it breaches any provisions of the law or allows any agency to enforce any regulation against it.<sup>187</sup>

### **3.6 Strengths of the EIA in Nigeria**

One of the most significant advantages of Nigeria's EIA process is the emphasis on public engagement. Legally, the EIA framework requires that stakeholders, particularly local people, participate in the evaluation process.<sup>188</sup> This participative method is critical to maintaining transparency and inclusiveness. It allows impacted communities to express their concerns and desires about initiatives that may have an impact on the environment, thereby improving social

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<sup>186</sup> VN Enebeli and DC Njoku, 'Afri. Journal of Law & Crim.' (2023) 13(1) *African Journal of Law and Criminology* 135-163.

<sup>187</sup> Ibid.

<sup>188</sup> Nigerian Federal Ministry of Environment. (2021). *Guidelines for Environmental Impact Assessment in Nigeria*. Abuja: Federal Ministry of Environment.

fairness. However, the effectiveness of this participation frequently depends on the real engagement of stakeholders and the government's commitment to acting on their feedback.<sup>189</sup>

### 3.7 Limitations of the EIA Process

#### Weak Enforcement

Despite the legal framework that supports EIAs, insufficient enforcement remains a major barrier in Nigeria, particularly in the oil sector. Inadequate resources and corruption limit the government's ability to oversee compliance with EIA requirements.<sup>190</sup> As a result, many businesses frequently undertake projects without conducting full EIAs or failing to adopt recommended mitigation measures. One major example is the ongoing oil spills in the Niger Delta, where a lack of effective enforcement procedures has resulted in considerable environmental degradation and community dislocation.<sup>191</sup>

Another key restriction of the EIA process in Nigeria is a lack of public understanding regarding EIA reports and procedures. Many local people lack the knowledge and resources required to adequately access and comprehend EIA reports.<sup>192</sup> This lack of awareness can lead to apathy or skepticism of the EIA process, undercutting its stated aim of public involvement. Without sufficient education and outreach measures, the voices of affected people may be silenced, increasing environmental injustices.<sup>193</sup>

This chapter critically evaluates Nigeria's legal frameworks for natural resource management and environmental justice, focusing on statutes such as the Petroleum Industry Act (2021), the

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<sup>189</sup> J Ogunyoye, 'Transparency and Accountability in the Environmental Impact Assessment Process in Nigeria: Lessons from Recent Developments' (2023) 25(1) *Environmental Law Review* 56-73.

<sup>190</sup> M Okwoli, 'Corruption and Environmental Governance in Nigeria: The Case of Oil Spills in the Niger Delta' (2023) 11(2) *Journal of Sustainable Development Law and Policy* 89-104.

<sup>191</sup> Ibid.

<sup>192</sup> Ikelegbe A, 'Public Participation in Environmental Impact Assessments in Nigeria: Barriers and Opportunities' (2022) 307 *Journal of Environmental Management* 114-121.

<sup>193</sup> E T Omotayo, 'Public Participation in Environmental Impact Assessment in Nigeria: Challenges and Opportunities' (2017) 14 *Environmental Law Review* 230.

Environmental Impact Assessment Act (2004), and the National Oil Spill Detection and Response Agency Act (2006). Although these laws provide a sound regulatory foundation for the oil and gas industry, their effectiveness is severely hampered by deficiencies in implementation and enforcement.

The Nigerian Constitution's centralized control over natural resources has disenfranchised local communities, barring them from the benefits of oil extraction. This exclusion has exacerbated feelings of disenfranchisement among the Niger Delta's indigenous inhabitants, worsening tensions between the state, multinational corporations, and those affected. Furthermore, while the Environmental Impact Assessment process is an important instrument for environmental protection, it has been undercut by ineffective enforcement, limited public participation, and regulatory inefficiency.

These laws need to be backed by governance frameworks that guarantee fairness, accountability, and openness if they are to actually bring about change. The legal frameworks in the Niger Delta would remain merely formalities in the absence of these reforms, unable to address the systemic environmental and social issues that exist there. Legal measures alone won't suffice to achieve enduring justice; a comprehensive strategy that upholds corporate accountability, empowers communities, and places a premium on sustainable development is needed.

While Chapter 3 established the legislative frameworks controlling resource management and environmental justice, Chapter 4 will go into concrete case studies that highlight the shortcomings of applying these frameworks, particularly in the Niger Delta.

## CHAPTER 4

### CASE STUDIES OF ENVIRONMENTAL INJUSTICE AND FAILED NATURAL RESOURCE GOVERNANCE IN NIGERIA

The impacts of resource exploitation have also led to the displacement of local communities. The expansion of oil infrastructure often necessitates the relocation of communities, disrupting their social structures and livelihoods.<sup>194</sup> Displacement often results in conflicts over land rights, exacerbating tensions between oil companies, the government, and local populations.<sup>195</sup>

For instance, communities displaced by oil projects have frequently been resettled in areas with inadequate infrastructure and resources, further compounding their vulnerability. Research

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<sup>194</sup> Ifejika S, Mkpado M, and Arua A, 'Displacement and Land Rights in the Niger Delta: A Study of Oil Exploitation and Community Responses' (2020) *Land Use Policy* 98, 105308.

<sup>195</sup> Okon D and Ebong I, 'Oil Exploitation and Community Displacement: An Analysis of Land Rights Conflicts in the Niger Delta' (2021) 47(3) *Journal of African Studies* 25-42.

indicates that displaced communities often face challenges in rebuilding their lives, leading to increased socio-economic disparities.<sup>196</sup>

The impacts of resource exploitation are manifold and interlinked, affecting both local communities and ecosystems. The environmental problems in communities like Bille, Andoni, Okirika, Emohua and Ibaa in Rivers State are caused by oil spills, gas flaring, human activities and water pollution, among others. Between 1976 and 2006, there were at least 7,000 oil spills<sup>197</sup> in the region, affecting an area of more than 2,500 square kilometers. These oil spills have polluted the soil, water and air, and they have had a devastating impact on the people who live in the region. The destruction of the ecosystem has led to environmental problems like flooding and soil erosion, which destroys homes and crops, leading to further poverty.<sup>198</sup>

Depletion of resources means people cannot make a living, environmental problems like flooding and soil erosion destroy homes and crops that human health depends on for a healthy ecosystem.<sup>199</sup>

The impacts of resource exploitation have also led to the displacement of local communities. The expansion of oil infrastructure often necessitates the relocation of communities, disrupting their social structures and livelihoods.<sup>200</sup> Displacement often results in conflicts over land rights, exacerbating tensions between oil companies, the government, and local populations.<sup>201</sup>

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<sup>196</sup> Otuonye MI, Okorie IC, and Anyanwu FC, 'Environmental Degradation and Community Health: The Case of the Niger Delta,' (2018) 3(1) *Journal of Environmental Protection and Sustainable Development* 44-55.

<sup>197</sup> Gigi Nwagbo, 'Oil Pollution in the Niger Delta' (Stanford University, November 13, 2017) <http://large.stanford.edu/courses/2017/ph240/nwagbo1/> accessed 1 October 2024.

<sup>198</sup> Otekenari David Elisha, 'Niger Delta is Rich in Resources, but Environmental Destruction is Pushing People into Poverty' (30 October 2023) <https://theconversation.com/niger-delta-is-rich-in-resources-but-environmental-destruction-is-pushing-people-into-poverty> accessed 1 October 2024.

<sup>199</sup> Ibid

<sup>200</sup> Ifejika S, Mkpado M, and Arua A, 'Displacement and Land Rights in the Niger Delta: A Study of Oil Exploitation and Community Responses' (2020) *Land Use Policy* 98, 105308.

<sup>201</sup> Okon D and Ebong I, 'Oil Exploitation and Community Displacement: An Analysis of Land Rights Conflicts in the Niger Delta' (2021) *Journal of African Studies*.

For instance, communities displaced by oil projects have frequently been resettled in areas with inadequate infrastructure and resources, further compounding their vulnerability. Research indicates that displaced communities often face challenges in rebuilding their lives, leading to increased socio-economic disparities.<sup>202</sup>

Oil spills, pipeline erosion and leaks, gas flare-ups, flood erosion, and salt water intrusion have all had a negative impact on the social and economic well-being of the local populace.<sup>203</sup>

Major oil spills in the coastal zone include the Forcado tank 6 Terminal in Delta state incident that spilled 570,000 barrels of oil into the Forcados estuary in July 1979, polluting the aquatic environment and surrounding swamp forest; the Funiwa No.5 Well in Funiwa Field that spilled an estimated 421,000 barrels of oil into the ocean from January 17 to January 30, 1980, destroying 836 acres of mangrove forest; and the Oshika village spillage in River state that spilled 5,000 barrels of oil in 1983, flooding the lake and swamp forest and causing high mortality in crabs, fish, and embryonic shrimp.<sup>204</sup>

In recent times, 881 cases of oil spills have been recorded between January 2019 and April 2021. This spillage happened in 12 states within the country. The information stated above is obtained from a government-run satellite tracker known as the NOSDRA. It was also recorded that 77 percent of the spills majorly occurred in only 3 oil-producing states in Nigeria. The total oil spillage within this period has been equated to about 43,000 barrels of oil of which the monetary value is worth \$3 million at the international market and 1.23 billion naira in the national

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<sup>202</sup> Otuonye MI, Okorie IC, and Anyanwu FC, 'Environmental Degradation and Community Health: The Case of the Niger Delta,' (2018) 3(1) *Journal of Environmental Protection and Sustainable Development* 44-55.

<sup>203</sup> Otekenari David Elisha and Ebiye GOLDEN Ipregha, 'Community-Based Intervention in the Control of Artisanal Refining Against the Environment in Niger Delta Region, Nigeria,' (2022) 7 *International Journal of Current Research* 21, doi: 10.56557/AJOCR/2022/v7i37973.

<sup>204</sup> A A Kadafa, 'Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria' (2012) 12 *Global Journal of Science Frontier Research* H 19.

markets. It is proper to understand that these figures are not static because more spills are still recorded on daily bases.<sup>205</sup>

A case of one of these oil spills is Shell Bonga Spill. The Shell Bonga oil spill emanated from a Shell facility on 20 December 2011, during which 40,000 barrels of crude oil spilled into the Atlantic Ocean affecting the fishers whose source of livelihood is the ocean waters. The announcement by the National Oil Spill Detection and Response Agency (NOSDRA), ordering the fishers out of the waters, led to a suspension of their activities. Compliance with the stay away directive by the NOSDRA from 22 December 2011 to 23 April 2012 caused hardship and loss of income for some 30,000 fishers across the five states of the Niger delta.<sup>206</sup> The communities alleged that harmful chemical dispersants such as Slickgone NS, Corexit 9500 and 9527 and Biosolve, among others, which Shell Nigeria Exploration and Production Company Limited used to breakdown and disperse the spilled crude oil of 20 December 2011 at Bonga field, in turn spread to the fishing areas, where they became the causes of the diseases afterward prevalent in the communities. Common ailments affecting the communities included mental disorders; hypertension; eye irritations; nose, throat and skin lesions; vomiting and rectal bleeding; liver and kidney damage; short-term memory loss and confusion; respiratory problems; miscarriages; blood in urine.<sup>207</sup>

Between 2004 and 2007, oil spills from Shell destroyed fish ponds and farmlands in the Bodo and Goi communities. In 2004, there was a major oil spill from the Trans-Niger pipeline, which runs through Ogoniland to the Bonny Export Terminal. Chief Barizaa Dooh, one of the plaintiffs

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<sup>205</sup> Y Akinpelu, 'Analysis: 77% of Oil Spills in Nigeria Occurred in Only Three States' (2021) <https://www.premiumtimesng.com/news/headlines/461635-analysis-77-of-oil-spills-in-nigeria-occured-in-only-three-states.html> accessed 1 October 2024.

<sup>206</sup> CETIM, 'Cases of Environmental Human Rights Violations by Shell in Nigeria's Niger Delta' (11 November 2014) <https://www.cetim.ch/cases-of-environmental-human-rights-violations-by-shell-in-nigeria%E2%80%99s-niger-delta/> accessed 19 October 2024.

<sup>207</sup> Ibid.

in the case, had fish-ponds, a poultry coop and a bakery. The oil spill destroyed all his fish-ponds as well as other agricultural lands. The oil spills and fires have made the community rendered completely uninhabitable. Although the former residents of Goi now live scattered among neighbouring communities in the area, which are less damaged, they still meet in their town hall by the waterside as often as possible to stay united and rekindle the hope of living together in the near future.<sup>208</sup>

In 2005, the Oruma community in Bayelsa State suffered an oil spill from Shell's facility, which destroyed fish-ponds, farms and trees, losing their sources of livelihood. In the 2007 Ikot Ada oil spill case, the community suffered from pollution of their farmlands, ponds and community lands.<sup>209</sup> The Dutch court ruled that Shell and its subsidiary, SPDC, were not responsible for the spills that occurred at Oruma, Goi and Ikot Ada Udo between 2004 and 2007. SPDC was, however, held liable for not doing enough to prevent the sabotage that resulted in the oil spill. The court ruled that in the case of the oil spill at Ikot Ada Udo, SPDC could have prevented the sabotage by plugging the well at an earlier stage. The case is now being appealed, to compel Shell to pay compensation, but the company continues to escape from justice because of technicalities rather than the substance of the case.<sup>210</sup>

#### **4.1 Ogoniland in the Niger Delta**

Shell International began its oil exploration and production activities in Ogoniland in the 1950s, drilling a total of 96 wells. However, operations were suspended in the 1990s due to disputes, although Shell still maintains transit route pipelines in the area. As a result, Ogoniland has

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<sup>208</sup> Ibid.

<sup>209</sup> United Nations Human Rights Council, 'Written Statement Submitted by the Europe-Third World Centre (CETIM) and Environmental Rights Action / Friends of the Earth Nigeria (ERA/FoEN)' A/HRC/26/NGO/5 (26 May 2014).

<sup>210</sup> Ibid.

become marked by dormant oil fields and installations, remnants of past spills, inadequate maintenance, oil trapping, and damage to oil infrastructure, all of which have persisted for over 15 years without proper remediation.<sup>211</sup> In response to this environmental crisis, the Nigerian government commissioned the United Nations Environment Programme (UNEP), in collaboration with the United Nations Development Programme (UNDP), community organizations, the Rivers State Government, laboratories, landowners, and universities, with sponsorship from Shell Petroleum Development Company (SPDC), to conduct environmental studies in Ogoniland. UNEP identified more than 300 potentially contaminated sites based on information from the National Oil Spill Detection and Response Agency (NOSDRA), SPDC, and satellite imagery. The findings from this assessment are intended to guide remediation efforts and facilitate the rehabilitation of Ogoniland to meet international environmental standards.<sup>212</sup>

Oil exploration and extraction have resulted in significant land degradation across the Niger Delta. Oil spills, gas flaring, and the construction of infrastructure for oil production have destroyed arable land, leading to the loss of agricultural productivity.

#### **4.1.1 The Shell Petroleum Development Company v. Ogoni People**

The Niger Delta has long been a hotspot for oil exploration, with Shell dominating oil extraction in Ogoniland since the 1950s. Over decades, oil spills, gas flaring, and other environmentally damaging practices have ravaged the environment, making previously bountiful land and water bodies unusable and severely affecting local economies. MOSOP, led by Ken Saro-Wiwa, began in the early 1990s as a peaceful resistance movement advocating for environmental justice and the rights of the Ogoni. MOSOP's main demands included compensation for the environmental damage caused by oil spills, a stop to gas flaring, and increased control over Ogoni resources.

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<sup>211</sup> A A Kadafa, 'Oil Exploration and Spillage in the Niger Delta of Nigeria' (2012) 2(3) *Civil and Environmental Research* 38 <[www.iiste.org](http://www.iiste.org)> accessed 1 October 2024.

<sup>212</sup> Ibid.

The Shell Petroleum Development Company v. Council of Ogoni People case is one of the most noteworthy battles in Nigerian history. The Ogoni people, an ethnic minority in the Niger Delta, have long suffered from the environmental damage caused by Shell's oil exploration operations. In the 1990s, the Ogoni people, led by environmental activist Ken Saro-Wiwa, mounted an international campaign against Shell, accusing the company of polluting their land and rivers, ruining agricultural and fishing supplies that were critical to their livelihoods.

The Ogoni accused Shell of 'devastating' their environment from the start of Shell's operations in 1958.<sup>213</sup> Shell's response to the environmental accusations of the Ogoni was robust:

The company recognizes there are environmental problems associated with its operations and it is committed to dealing with them, but these problems do not add up to anything like devastation.<sup>214</sup>

In this suit, the Ogoni people sought legal recourse against Shell Petroleum Development business, charging the business of severe environmental pollution that had rendered their land infertile and their water supplies unfit. The plaintiffs contended that oil spills, gas flaring, and other Shell-related activities had caused irreparable environmental damage, infringing on their right to life, health, and a safe environment.

The state violence against the Ogoni climaxed when Ken Saro-Wiwa and eight other Ogoni activists were arrested and eventually convicted of the murders of four conservative, pro-government chiefs, and sentenced to death. In the closing statement Ken SaroWiwa made it clear whom he held responsible for the trial:<sup>215</sup>

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<sup>213</sup> Saro-Wiwa K, *A Month and a Day – A Detention Diary* (Penguin 1995).

<sup>214</sup> Shell International, *Nigeria Brief: The Environment* (Shell International, London 1995).

<sup>215</sup> Boele R, Fabig H, and Wheeler D, 'Shell, Nigeria and the Ogoni: A Study in Unsustainable Development – I. The Story of Shell, Nigeria and the Ogoni People: Environment, Economy, Relationships, Conflict and Prospects for Resolution' (2001) 9 *Sustainable Development* 74–86 <https://doi.org/10.1002/sd.161>

Shell is here on trial [ . . . ] The Company has ducked this particular trial, but its day will surely come and the lessons learnt here may prove useful to it for there is no doubt in my mind that the ecological war the Company has waged in the Delta will be called to question sooner rather than later.<sup>216</sup>

Although there was no direct legal resolution for the events surrounding the Ogoni Nine, in 2009, Shell agreed to a significant settlement with the Ogoni community. Shell paid \$15.5 million to the families of the Ogoni Nine as part of a broader settlement for alleged human rights violations and pollution-related issues in the region. This settlement was made to avoid prolonged litigation, though it did not involve an admission of liability on Shell's part.<sup>217</sup>

The case is famous not just for its legal significance, but also for bringing the Ogoni people's predicament to international attention. The Ogoni people's struggles culminated in the horrific execution of Ken Saro-Wiwa and other Ogoni activists in 1995, which drew international condemnation for the Nigerian government and Shell.

#### **4.1.2 Summary of the UNEP Report on Ogoniland**

UNEP's field observations and scientific investigations found that oil contamination in Ogoniland is widespread and severely impacting many components of the environment. Even though the oil industry is no longer active in Ogoniland, oil spills continue to occur with alarming regularity. The Ogoni people live with this pollution every day.

As Ogoniland has high rainfall, any delay in cleaning up an oil spill leads to oil being washed away, traversing farmland and almost always ending up in the creeks. When oil reaches the root zone, crops and other plants begin to experience stress and can die, and this is a routine observation in Ogoniland. At one site, Ejama-Ebubu in Eleme local government area (LGA), the

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<sup>216</sup> Saro-Wiwa K, *Statement to the Ogoni Civil Disturbances Tribunal* (1995).

<sup>217</sup> *Wiwa v Royal Dutch Shell* <https://earthrights.org/case/wiwa-v-royal-dutch-shell/> accessed 5 October 2024.

study found heavy contamination present 40 years after an oil spill occurred, despite repeated clean-up attempts. The assessment found that overlapping authorities and responsibilities between ministries and a lack of resources within key agencies has serious implications for environmental management on-the-ground, including enforcement.

Remote sensing revealed the rapid proliferation in the past two years of artisanal refining, whereby crude oil is distilled in makeshift facilities. The study found that this illegal activity is endangering lives and causing pockets of environmental devastation in Ogoniland and neighboring areas.

Oil pollution in many intertidal creeks has left mangroves denuded of leaves and stems, leaving roots coated in a bitumen-like substance sometimes 1 cm or more thick. Mangroves are spawning areas for fish and nurseries for juvenile fish and the extensive pollution of these areas is impacting the fish life-cycle.

Any crops in areas directly impacted by oil spills will be damaged, and root crops, such as cassava, will become unusable. When farming recommences, plants generally show signs of stress and yields are reportedly lower than in non-impacted areas.

When an oil spill occurs on land, fires often break out, killing vegetation and creating a crust over the land, making remediation or revegetation difficult.

Channels that have been widened and the resulting dredged material are clearly evident in satellite images, decades after the dredging operation. Without proper rehabilitation, former mangrove areas which have been converted to bare ground are being colonized by invasive species such as nipa palm (which appears to be more resistant to heavy hydrocarbon pollution than native vegetation).

In Bodo West, in Bonny LGA, an increase in artisanal refining between 2007 and 2011 has been accompanied by a 10% loss of healthy mangrove cover, or 307,381 m'. If left unchecked, this may lead to irreversible loss of mangrove habitat in this area. The Ogoni community is exposed to petroleum hydrocarbons in outdoor air and drinking water, sometimes at elevated concentrations.

They are also exposed through dermal contacts from contaminated soil, sediments and surface water. Since average life expectancy in Nigeria is less than 50 years, it is a fair assumption that most members of the current Ogoniland community have lived with chronic oil pollution throughout their lives.

Of most immediate concern, community members at Nisisioken Ogale are drinking water from wells that is contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline. The report states that this contamination warrants emergency action ahead of all other remediation efforts. Hydrocarbon contamination was found in water taken from 28 wells at 10 communities adjacent to contaminated sites. At seven wells, the samples are at least 1,000 times higher than the Nigerian drinking water standard of 3 ug/.

Local communities are aware of the pollution and its dangers but state that they continue to use the water for drinking, bathing, washing and cooking as they have no alternative.

Benzene was detected in all air samples at concentrations. Approximately 10 per cent of detected benzene concentrations in Ogoniland were higher than the concentrations WHO and the United States Environmental Protection Agency (USEPA) report as corresponding to a 1 in 10,000 cancer risk. Many of the benzene concentrations detected in Ogoniland were similar to those measured elsewhere in the world, given the prevalence of fuel use and other sources of benzene. However, the findings show that some benzene concentrations in Ogoniland were higher than

those being measured in more economically developed regions where benzene concentrations are declining because of efforts to reduce benzene exposure.<sup>218</sup>

The degradation of land has not only diminished food security but has also driven many farmers to abandon their land, further exacerbating poverty in the region. Local farmers are reporting significant declines in crop yields, with yam and cassava harvests shrinking due to soil contamination with crude oil. Deforestation has also had a severe impact on local ecosystems. Many farmers now struggle to support their families as their crops fail or yield poorly.<sup>219</sup>

#### **4.2 Case Study: Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. & Others.**<sup>220</sup>

The case of *Gbemre v. Shell Petroleum Development Company Nigeria Ltd. & Others* is a major environmental justice case in Nigeria, which centers around the negative environmental and human rights consequences of gas flaring in the Niger Delta. The plaintiff, Jonah Gbemre, represented his community (Iwherekan) in a lawsuit against Shell Petroleum Development Company (SPDC) and Nigerian National Petroleum Corporation (NNPC), accusing them of violating the local people's constitutional rights through ongoing gas flaring activities.

Shell is the largest producer of methane in Nigeria, flaring nearly all of it, including near Mr. Gbemre and the Iwherekan Community. Mr. Gbemre and the Iwherekan Community first kindly asked Shell to stop flaring as long ago as 1985.<sup>221</sup>

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<sup>218</sup> United Nations Environment Programme, *Environmental Assessment of Ogoniland* (2011).  
<https://wedocs.unep.org/20.500.11822/7947>.

<sup>219</sup> 'Impact of Oil & Gas Production on the Niger Delta' (14 August 2024)  
<https://www.climatejusticecentral.org/posts/impact-of-oil-gas-production-on-the-niger-delta> accessed 1 October 2024.

<sup>220</sup> *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Others* [2005] AHRLR 151 (NgHC 2005).

<sup>221</sup> Gas Flaring Lawsuit (Re Oil Companies in Nigeria)' (BHRRC)  
<https://www.business-humanrights.org/en/latest-news/gas-flaring-lawsuit-re-oil-companies-in-nigeria/>.

Despite the AGRA, the EIA Act, the Nigerian Constitution, and the African Charter, Shell engaged in flaring with impunity in the Niger Delta. There came a point when Jonah Gbemre had had enough. In 2005, he filed a lawsuit in the Federal High Court, Benin Judicial Division alleging that Shell's (and other defendants who were jointly and severally engaged in the exploration and production of crude oil and other petroleum products in the Niger Delta) actions were adversely affecting his and his family's health, polluting in the Iwherekan Community, and contributing to climate change.<sup>222</sup>

Gbemre's lawsuit highlighted various legal issues concerning constitutional rights violation caused by the defendants' persistent gas flaring. The petitioner claimed that this practice violated Section 33 of the 1999 Nigerian Constitution, which guarantees the right to life, because the pollution from gas flaring caused health problems such as respiratory disorders, potentially resulting in early death. Communities such as Iwherekan that host oil development in the Niger Delta have been adversely impacted by oil exploration for decades. Studies demonstrate that the practice of gas flaring pollutes local communities; adversely affects humans, animals and vegetation; and contributes to climate change.<sup>223</sup>

Furthermore, Gbemre alleged that the flaring breached Section 34, which protects the right to dignity, because environmental degradation reduced the quality of life for nearby residents.

Furthermore, the defendants were accused of violating the Associated Gas Reinjection Act (AGRA) of 1979, which requires oil companies to reinject excess gas or obtain flaring permits; Gbemre argued that SPDC and NNPC failed to comply with these regulations, which should be declared unconstitutional due to their negative environmental impact. The case also highlighted broader concerns of environmental justice, demonstrating how gas flaring hurt underprivileged

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<sup>222</sup> *Gbemre v Shell Petroleum Development Co. Nigeria et al* [2005] FHC/B/CS/53/05 AHRLR 151 (Nigeria).

<sup>223</sup> Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries* (Routledge 2011) 137–38.

populations in the Niger Delta, damaging their health and livelihoods while providing little advantages from the region's oil wealth. Finally, the plaintiff cited violations of international human rights treaties, notably the African Charter on Human and Peoples' Rights, claiming that the defendants' conduct jeopardized the right to a healthy environment and sustainable development.<sup>224</sup>

In a landmark ruling, Justice C.V. Nwokorie of the Federal High Court found in favor of Jonah Gbemre and the Iwherekan community, stating that gas flaring in the Niger Delta violates constitutionally protected rights, specifically the right to life (Section 33) and the right to dignity (Section 34). The court acknowledged that the pollution caused by gas flaring posed a significant threat to the health and living conditions of the community. Emphasizing the importance of environmental justice, the judgment highlighted that local communities disproportionately suffer from the adverse effects of oil production and pollution, linking environmental rights to human rights and condemning gas flaring as a form of environmental injustice. Additionally, the court determined that Shell and NNPC failed to adhere to the Associated Gas Reinjection Act, which prohibits gas flaring without adequate environmental safeguards. Even with permits issued by the government, the court deemed gas flaring unconstitutional due to its detrimental impact on human rights. Consequently, the court ordered Shell and NNPC to cease all gas flaring activities in the Iwherekan community and declared the relevant AGRA provisions allowing flaring without strict safeguards unconstitutional. The ruling also referenced international human rights norms, specifically the African Charter on Human and Peoples' Rights, affirming that Nigeria's obligations under these treaties further prohibit environmentally harmful practices like gas flaring.

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<sup>224</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 (No 2 of 1983) Laws of the Federation of Nigeria.

This case successfully provided a precedent for holding corporations accountable for the violation of the right to dignity under Nigerian law. The decision in this case significantly recognized fundamental rights protection as an objective under the law. It invalidated legislation by the federal government that allowed flaring as those corporations deem fit.<sup>225</sup>

Ultimately, while the Gbemre case did not do much to improve the environmental justice situation in the Niger Delta, it was one of the first cases to have a focus on environmental protection and group wellbeing, and one of the first cases as well, to look beyond pecuniary compensation, to a remedy instead, that was more long-lasting and available for all people.<sup>226</sup>

Even though Shell committed to complete a plan to curb its gas flaring activities by 2009, as of 2017, Shell continues to violate human rights in Iwherekan and the Niger Delta by flaring.<sup>227</sup>

Shell has not paid damages to host communities for violating their constitutional human rights.<sup>228</sup>

Rather, Shell continues to blame the Nigerian government for not providing the funding for remediation efforts. Other multinational corporations continue to flare gas in the Niger Delta region. Thus, flaring continues unabated in the Niger Delta despite Gbemre, as though the regulated have become the regulator. The Iwherekan community remains significantly impoverished and under-developed.<sup>229</sup>

#### **4.3 Bodo Community v. Shell Petroleum Development Company of Nigeria Ltd**

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<sup>225</sup> James R May and Tiwajopelo Dayo, 'Dignity and Environmental Justice in Nigeria: The Case of *Gbemre v Shell*' (SSRN, 2020).

<sup>226</sup> Sarah Tamunonengioforie Itamunoala, *Plugging the Drain: Promoting Environmental Justice in the Niger Delta through Judicial Independence* (Thesis, Afe Babalola University, 2014) <https://open.library.ubc.ca/media/stream/pdf/24/1.0390008/3> accessed 26 September 2024.

<sup>227</sup> Hari M. Osofsky, 'Climate Change and Environmental Justice: Reflections on Litigation Over Oil Extraction and Rights Violations in Nigeria' (2010) 1 *Journal of Human Rights and the Environment* 189, 194.

<sup>228</sup> John Vidal, 'Nigeria's agony dwarfs the Gulf oil spill. The US and Europe ignore it' *The Observer* (29 May 2010).

<sup>229</sup> Human Rights Council Res. A/HRC/26/NGO/100, Cases of Environmental Human Rights Violations by Shell in Nigeria's Niger Delta (May 26, 2014).

Another significant case involving the oil company Shell is *Bodo Community v. Shell Petroleum Development Company of Nigeria Ltd.*<sup>230</sup> In this example, the Bodo community, a fishing village in the Niger Delta, suffered two massive oil spills in 2008 and 2009, badly contaminating their rivers and destroying their fishing grounds. This damage was both an environmental and economic calamity, as the community's principal source of revenue was eliminated. The Bodo community sued Shell in the United Kingdom, demanding compensation for environmental and economic damage caused by the oil spills. The case was notable for numerous reasons: it was one of the first occasions a Nigerian community successfully sued a global oil company outside of Nigeria, and it resulted in a historic settlement. Shell agreed to pay the Bodo community £55 million in compensation following the court case, which was heard in London's Technology and Construction Court in 2014. This settlement was regarded as a triumph for environmental justice since it established a precedent for holding multinational firms liable for environmental damage in other countries.

#### **4.4 Ejama-Ebubu Community v. Royal Dutch Shell (2021)**

The *Ejama-Ebubu v Royal Dutch shell*<sup>231</sup> case is one of the longest-running legal battles concerning environmental degradation in Nigeria. The origin of the Ejama-Ebubu community's grievance against Shell dates back to a rupture in one of the company's oil pipelines in 1970, that leaked crude oil into the surrounding land and waterways in Ejama-Ebubu, located in Rivers State, Nigeria.<sup>232</sup> This oil spill caused severe environmental damage, contaminating farmland, rivers, and sources of drinking water. The pollution devastated the livelihoods of the local community, which depended heavily on agriculture and fishing. The community argued that

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<sup>230</sup> *Bodo Community & Ors v Shell Petroleum Development Company of Nigeria Ltd* (2014) EWHC 1973 (TCC).

<sup>231</sup> *Ejama-Ebubu Community v. Royal Dutch Shell & Others*, Supreme Court of Nigeria (2021).

<sup>232</sup> William Clowes, *Shell to Pay \$111 Million to Resolve Long-Running Oil-Spill Dispute in Nigeria*, *Insurance Journal*, August 17, 2021.

Shell had failed to adequately respond to the spill, leaving behind a legacy of pollution that persisted for decades, making it impossible for residents to farm or fish in the area.

Initially, a Nigerian Federal High Court in 2010 had ordered Shell to pay ₦17 billion in damages, but Shell contested this decision multiple times, citing sabotage and third-party interference as the cause of the spill. Despite their appeals, in November 2020, Nigeria's Supreme Court upheld the lower court's ruling, affirming Shell's responsibility. Including accrued interest, the compensation amount had ballooned to over ₦183 billion. However, to settle the case and avoid further litigation, Shell agreed to the \$111 million compensation, marking a significant victory for the community.<sup>233</sup>

This case is notable not only for the large settlement but also for its role in holding multinational oil companies accountable for environmental damage in the Niger Delta, setting a precedent for future environmental justice cases in Nigeria.<sup>234</sup>

#### **4.5 Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation (NNPC)<sup>235</sup>**

Despite considerable advances, Nigeria continues to face substantial challenges in enforcing environmental regulations. In *Centre for Oil Contamination Watch v. Nigerian National Petroleum Corporation*, the court considered the role of the Nigerian government and its regulatory authorities in avoiding environmental contamination.

Following an oil spill in Abia State's ACHA Community, COPW filed a lawsuit against the NNPC in the Federal High Court of Lagos on May 13, 2005. The spill, caused by a damaged and badly maintained pipeline, poisoned the Ineh/Aku streams, the community's primary water source. The plaintiffs claimed that NNPC's carelessness not only caused environmental damage,

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<sup>233</sup> CNBC Africa, *Shell to Pay \$111 Million Over Decades-Old Nigerian Oil Spill*, (12 August 2021).

<sup>234</sup> *Ibid.*

<sup>235</sup> *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR (Pt 1666).

but also failed to adequately clean up the spill. Initially, the trial court found in favor of NNPC, dismissing the case on the grounds that COPW had standing to sue because it had not proven a distinct injury from other community members. On January 28, 2013, the Court of Appeal upheld the lower court's decision.<sup>236</sup> However, COPW filed an appeal with the Supreme Court, which found unanimously in favor of the NGO on July 20, 2018. The Supreme Court ruled that COPW had standing to suit, highlighting that public-spirited organizations can take legal action against authorities to guarantee compliance with environmental regulations. This historic decision expanded the extent of standing in environmental lawsuits, allowing NGOs to speak for impacted by environmental deterioration.

Furthermore, the Supreme Court acknowledged that the right to a clean and healthy environment is implied in the right to life enshrined in the Nigerian Constitution. This verdict upheld the enforcement of environmental rights under both national law and the African Charter on Human and Peoples' Rights.

#### **4.6 The Ogale and Bille communities in the Niger Delta**

The Ogale and Bille communities in the Niger Delta launched a lawsuit against Shell and its subsidiary, the Shell Petroleum Development Company (SPDC), citing extensive environmental harm caused by oil spills. The villages argue that Shell's incompetence in maintaining its pipes has caused recurrent oil spills, badly damaging their water supplies and agricultural land, which are important to their livelihoods.<sup>237</sup>

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<sup>236</sup> *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2018) Supreme Court of Nigeria. <https://climatecasechart.com/non-us-case/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/>

<sup>237</sup> McIntosh I, 'Communities in the Niger Delta Are Trying to Make Shell Pay. Here's 5 Things You Should Know' (Amnesty International, 10 June 2024) <https://www.globaljustice.org.uk/blog/2024/06/communities-in-the-niger-delta-are-taking-shell-to-court-heres-5-things-you-should-know/>.

In 2015, the communities in the UK filed legal action to demand compensation and cleaning for the harm. Following jurisdictional challenges, the UK Supreme Court concluded in 2021 that there was a genuine case against Shell, allowing the litigation to proceed.<sup>238</sup>

On November 23, 2023, the UK High Court found that the communities could file claims for violations of their right to a clean environment under Nigerian constitutional law and the African Charter on Human and Peoples' Rights. This decision is particularly significant because it opens the way for communities to hold multinational businesses accountable for environmental and human rights violations.<sup>239</sup>

The ongoing oil pollution has had dire health consequences for the residents, including exposure to hazardous substances like benzene, leading to increased health risks and impacting their quality of life.<sup>240</sup>

#### **4.7 Egbalor Ebubu Communities v. Shell (2020-2024)**

In a related incident, the Nigerian Supreme Court ruled in January 2024 granting Shell a hearing on an alleged oil spill in Egbalor Ebubu, River State. This leak is said to have caused considerable damage to local rivers and crops, with an interim High Court verdict in 2020 awarded N800 billion (\$878 million) in compensation to impacted communities. Shell has challenged this verdict, and the Supreme Court has referred the matter back to the Court of

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<sup>238</sup> Business & Human Rights Resource Centre, 'UK: Supreme Court Rules That Polluted Nigerian Communities Can Sue Royal Dutch Shell in the English Courts' <https://www.business-humanrights.org/en/latest-news/uk-supreme-court-rules-that-polluted-nigerian-communities-can-sue-royal-dutch-shell-in-the-english-courts/> accessed 9 October 2024.

<sup>239</sup> Ibid.

<sup>240</sup> Corporate Accountability Lab, 'Shell to Face Constitutional Claims for Violating the Right to a Clean Environment' (3 January 2024) <https://corpaccountabilitylab.org/calblog/2024/1/3/shell-to-face-constitutional-claims-for-violating-the-right-to-a-clean-environment/> accessed 5 October 2024.

Appeal for additional consideration. The court has also blocked Shell's local asset transactions to ensure that potential compensation is not missed.<sup>241</sup>

The study of environmental justice in the Niger Delta demonstrates the severe injustices that local communities suffer in the context of resource exploitation, particularly oil production. The continuing environmental degradation and socioeconomic inequality are the result of a long history of marginalization, which has been worsened by both the Nigerian government and foreign oil firms. The ideals of environmental justice fair treatment, meaningful engagement, access to information, and restorative justice are critical to comprehending these people's suffering.

Despite the existence of policies aimed at promoting environmental justice, the reality on the ground show a striking contrast between policy and practice.

These cases demonstrate the destructive effects of oil spills, gas flaring, and corporate irresponsibility on both the environment and the livelihoods of local residents. They also highlight the institutional flaws that have allowed multinational businesses to operate with little responsibility, frequently at the expense of indigenous populations.

While the courts have occasionally decided in favor of environmental protection, as in the Gbemre case, a lack of enforcement undermines these successes. Regardless of the court's verdict, gas flaring continues, and corporate accountability remains elusive. Similarly, Shell's deal with the Ogoni people, while considerable, did not address the underlying environmental damage caused by years of unrestrained oil production.

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<sup>241</sup> Lawyard, 'Supreme Court Grants Shell Hearing in Niger Delta Oil Spill Case' <https://www.lawyard.org/news/supreme-court-grants-shell-hearing-in-niger-delta-oil-spill-case/> accessed 7 October 2024.

These cases highlight the dire need for improved governance and regulatory change. The existing frameworks are insufficient to preserve the Niger Delta's environment or inhabitants. To achieve environmental justice, we must not only hold companies accountable, but also empower local communities and strengthen regulatory enforcement authority. Without these improvements, environmental degradation and business misconduct will continue unabated.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Summary**

Chapter one is an introduction to the thesis, detailing the historical background and relevance of the Niger Delta's natural resources, particularly oil and gas, which have long been Nigeria's primary sources of revenue. While this resource wealth has bolstered the national economy, it has done little for local communities, who continue to suffer from environmental damage, economic hardship, and neglect. The discovery of oil in the late 1950s marked a turning point for the region, with the Niger Delta quickly becoming Nigeria's most crucial economic asset. However, the benefits of this resource boom have been unequally shared. Local communities face constant issues like pollution from oil spills and gas flaring, deforestation, and the

destruction of arable land. These problems are rooted in a combination of governance failures, lack of regulatory enforcement, and a centralized approach to resource management that excludes the very people who should benefit.

It presents the main research questions, objectives, and the doctrinal methodology used to assess whether Nigeria's legal and governance frameworks adequately protect the environment of these communities. By framing the Niger Delta's issues as part of a "resource curse," this chapter establishes the foundational question: can Nigeria's legal system effectively promote fair governance, environmental protection, and community welfare in resource rich areas?

Chapter Two takes a deeper look into natural resource governance and environmental justice. It reviews the key concepts and principles of these frameworks, especially how they relate to the Niger Delta. The chapter defines natural resource governance as the collection of laws, administrative rules, and policies that direct resource extraction and management. It examines the concept of environmental justice, emphasizing fair treatment, transparency, and equal participation for all stakeholders, especially marginalized communities in the Niger Delta. Nigeria's Environmental Impact Assessment process is dissected here, showing weaknesses that prevent genuine public participation and allow corporate interests to sideline community voices. For instance, while EIA regulations are intended to protect against environmental harm, they're often observed only in formality, lacking the enforcement needed to ensure actual community protection.

By reviewing literature, the chapter highlighting a significant gap between Nigeria's governance practices and global standards. This chapter argues that Nigeria's approach is overly centralized, which benefits the federal government and multinational corporations more than the local communities.

In Chapter Three, the thesis focuses on the specific legal instruments in Nigeria that govern natural resources and protect the environment. Key statutes including the Nigerian Constitution, the Petroleum Industry Act (PIA), the Environmental Impact Assessment Act, and the National Oil Spill Detection and Response Agency (NOSDRA) Act are analyzed for their intended roles, strengths, and the challenges surrounding their enforcement.

While Nigeria has numerous laws intended to safeguard the environment and manage resource extraction responsibly, this chapter uncovers major issues in implementation and oversight. For example, the Constitution vests ownership of all mineral resources in the federal government, creating a centralized system that limits the influence of local communities in resource management. The PIA is examined here, with an emphasis on its goal of transparency and fair distribution of resources. Yet, despite this legislative intention, the PIA falls short in areas of public trust and actual benefit to communities.

Another focal point in this chapter is the Environmental Impact Assessment (EIA) Act, which mandates environmental assessments to prevent harmful impacts on communities. However, the reality often diverges from this mandate, as environmental assessments are routinely treated as procedural hurdles rather than substantive evaluations. Companies frequently carry out assessments without genuine community input, resulting in a checklist approach to compliance that does little to prevent environmental degradation. The EIA Act mandates public consultation, but the research indicates that these consultations are often superficial and fail to incorporate genuine community input into project outcomes. Oil companies sometimes treat public participation as a formality, neglecting to meaningfully engage affected communities in environmental decision-making. This lack of transparency erodes trust and often leads to resistance (EIA Act 2004, s. 7). While there have been positive developments in the Nigerian

judiciary regarding environmental justice, such as the landmark case of *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd.*, enforcement remains a significant challenge. Although courts have ruled in favor of affected communities, the lack of follow-through and corporate accountability limits the real-world impact of these judgments, leaving communities vulnerable to ongoing environmental damage and inadequate remediation.

The chapter highlights how weak enforcement mechanisms, bureaucratic inefficiencies, allow corporate entities to sidestep their environmental obligations. Multinational corporations often exploit loopholes and take advantage of inadequate monitoring systems to avoid accountability for environmental damage. Overall, the legal framework, while robust on paper, falls short in practical application.

Chapter Four contextualizes the issues discussed in previous chapters by presenting detailed case studies from affected communities in the Niger Delta, exploring the lived experiences of communities impacted by Nigeria's flawed resource management. Case studies such as Ogoniland, Ejama-Ebubu, and Bodo. These case studies serve as empirical evidence of the systemic failures in natural resource governance, documenting the ecological damage, health crises, and socio-economic disruptions that have become routine in the region. For example, oil spills and gas flaring in Ogoniland have resulted in widespread contamination of water sources, destruction of agricultural land, and loss of biodiversity, directly affecting the health and livelihoods of local residents. These case studies reveal the costs of governance failures.

The chapter also reviews landmark legal cases, such as *Gbemre v. Shell Petroleum Development Company*, which legally recognize environmental rights and set judicial precedents for environmental justice in Nigeria. However, despite these legal victories, enforcement remains inconsistent, with affected communities continuing to suffer. The case studies illustrate the

disconnect between judicial pronouncements and on-the-ground realities, as communities continue to face environmental degradation despite favorable court rulings.

Each case study shows the inadequacies of Nigeria's regulatory frameworks in holding multinational corporations accountable for environmental damages. For instance, the absence of effective compensation mechanisms, delays in legal proceedings, and government inaction create barriers to justice for affected communities. These cases emphasize the need for a more robust legal system that can ensure timely and adequate redress for communities. Chapter Four points to the need for legislative reforms that can bridge the gap between legal theory and practical outcomes, advocating for stronger environmental protections, community compensation schemes, and independent monitoring of corporate activities.

Natural resource governance is a complex issue, particularly in resource rich nations like Nigeria. The study of natural resource management, the resource curse, environmental justice, and indigenous rights in the Niger Delta paints a stark picture of the challenges faced. Despite Nigeria's vast natural wealth, poor governance and institutional corruption have fostered conflict and underdevelopment, rather than the prosperity one would expect. Local communities, especially in the oil-producing regions, are often excluded from the benefits of oil extraction while bearing the heavy environmental and social costs of inadequate governmental oversight.

Nigeria's legal framework centralizes resource control under the federal government, creating frequent tensions with local communities, especially in the Niger Delta. The region's long-standing struggle for ownership of resources and fair participation underscores the need for a more inclusive governance model that respects indigenous rights. A critical issue is the lack of transparency and accountability in resource management. Despite the appearance of a robust legal system, it is constantly undermined by corrupt practices, which disempower indigenous

communities and contribute to environmental degradation. To achieve meaningful progress in the Niger Delta, reforming existing laws alone is insufficient.

The governance system's centralization of natural resource control limits local communities' access to decision-making processes. In the Niger Delta, indigenous populations suffer the environmental and socio-economic consequences of oil extraction without receiving a fair share of the benefits, exacerbating poverty, destabilizing local economies, and fueling resistance against both the state and oil companies.

The detrimental effects of oil spills, gas flaring, and deforestation have severely impacted the Niger Delta's ecosystem. Frequent oil spills contaminate water sources and soil, disrupt local agriculture and fishing, and lead to long-term health issues for residents. Case studies, such as the 2011 Shell Bonga oil spill, explored in Chapter 4, highlight these devastating effects and the insufficient responses from both corporations and government agencies tasked with enforcement. By prioritizing the rights of indigenous peoples and committing to robust environmental protections, Nigeria can transform its resource wealth from a curse into a catalyst for prosperity and justice. The Niger Delta's continuing environmental deterioration and governance problems, despite a legal framework, highlight the critical need for reform. The analysis presented in this thesis has revealed fundamental flaws in the current legislation, institutional structures, and enforcement methods.

## **5.2 Conclusion**

The exploration of resource governance and environmental justice in Nigeria's Niger Delta underscores the significant and ongoing challenges faced by communities in this resource-rich region. Despite extensive legislation aimed at regulating the oil and gas industry and protecting the environment, the implementation and enforcement of these laws remain weak and

inconsistent, leaving local communities to bear the brunt of environmental degradation, displacement, and socioeconomic marginalization.

Through an examination of key legal frameworks, the Petroleum Industry Act, the Land Use Act, and the Environmental Impact Assessment Act this study highlights the serious gaps in Nigeria's approach to managing natural resources. The laws, though comprehensive, are often hollow in their execution. The centralized control established in the Nigerian Constitution, which allocates resource ownership to the federal government, effectively sidelines the very communities who should be central to these discussions. This exclusion has created a space of injustice, one where oil profits flow out of the Delta, leaving behind pollution, deteriorated livelihoods, and eroded cultural heritage.

The findings of this thesis reveal that regulatory efforts like those of the National Oil Spill Detection and Response Agency (NOSDRA), though well-intentioned, lack the power and transparency needed to be effective. Environmental Impact Assessments (EIAs) too often remain surface-level requirements, without offering true protection or involvement for the communities most affected. The Niger Delta, therefore, exists within what is often called the "resource curse," where the abundance of oil has not brought prosperity but rather entrenched poverty, environmental ruin, and social conflict. This curse persists because of governance that allows corporations to profit while communities suffer, and because of policies that prioritize federal interests over local welfare.

To reverse these outcomes, this study advocates for genuine legal and policy reforms that prioritize the rights, health, and economic opportunities of the Niger Delta's communities. Central among these is the need to decentralize aspects of resource control, giving local people a real stake in the benefits generated. Further, transparency must become a non-negotiable

standard in resource management, and environmental protections must be enforced with accountability as a top priority. Without such shifts, the Niger Delta will remain locked in a destructive cycle, with the government, corporations, and local communities unable to reach common ground.

Conclusively, this thesis calls for a reimagined approach to resource governance in Nigeria, one that genuinely respects the voices of Niger Delta communities, holds polluters accountable, and promotes sustainable development. True environmental justice will only be possible when policies no longer simply aspire to fairness but are actively designed and enforced to achieve it. Only with such commitment can Nigeria hope to reconcile its economic interests with the well-being of the people in its most resource-rich yet neglected region.

### **5.3 Recommendations**

Building upon these findings, several recommendations are proposed to address systemic issues, improve regulatory accountability, and advance environmental justice in the Niger Delta:

#### **1. Enhancing the Petroleum Industry Act (2021)**

The Petroleum Industry Act marked an essential transformation in Nigeria's legislative framework for the oil and gas industry. While it implemented transparency measures, most notably the establishment of the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), gaps remain in terms of environmental degradation and community inclusion.

One of the most important improvements should be the incorporation of host communities in ownership structures. The existing policy, which concentrates on financial incentives for communities (via the Host Communities Development Trust), is insufficient to solve the

problem of community disenfranchisement. Incorporating host communities as partners in resource ownership, in tandem with global practices, will promote responsible resource management and ensure that local populations directly benefit from oil development.

## **2. Reforming the Environmental Impact Assessment Act (2004)**

The EIA Act plays a crucial role in mitigating environmental risks, but it has consistently fallen short due to poor enforcement and tokenistic public participation processes. Currently, public consultations often occur after project decisions are made, rendering the participation process superficial. To rectify this, Section 7 of the EIA Act should be amended to make public consultations mandatory at the project scoping stage, ensuring that community input is integral to decision-making. Additionally, penalties for non-compliance should be increased, and independent environmental audits should be conducted by third parties to prevent corporate influence on assessments .

## **3. Enhancing Corporate Accountability**

The case studies in Chapter 4 highlight the widespread impunity that multinational oil companies enjoy. In order to prevent further environmental degradation, it is imperative that corporate accountability be strengthened. Mandatory environmental audits should be introduced and made enforceable through legislative amendments. Under the National Oil Spill Detection and Response Agency (NOSDRA) Act 2006, oil companies are already required by Section 6(2) to report spills within 24 hours, but enforcement of penalties for noncompliance is still lax. By extending the agency's authority to include mandatory audits, companies will be kept transparent.

Furthermore, companies that cause environmental harm have to be legally obligated to fully remediate impacted places in addition to paying damages in civil lawsuits. Since it requires oil firms to ascertain flaring, the Associated Gas Re-Injection Act of 1979 may be used as a model in this situation. Enhancing comparable laws to enforce more stringent cleanup obligations for spills and pollutants would lead to improved environmental safeguarding.

#### **4. Strengthening Community Participation and Access to Justice**

Disenfranchisement of the local people has long been an important cause of conflict in the Niger Delta. Reforms should focus on increasing local residents' ability to participate meaningfully in legal and regulatory procedures. For example, enhancing public engagement under the Environmental Impact Assessment Act of 2004 is critical.

Public participation must go beyond the tokenistic methods that now underpin the EIA process. Nigeria should follow a model comparable to South Africa's National Environmental Management Act (NEMA), which requires early and ongoing public participation in environmental decisions. This would include the right of communities to contest EIA reports, request independent assessments, and participate in decision-making throughout the resource extraction process.

The community's access to information must also be improved. Section 59 of the EIA Act already provides the right to receive information about environmental impact assessments, but enforcement is limited. Governments should make environmental reports, including those involving oil spills, publicly available via a centralized, accessible platform.

The establishment of a centralized, publicly accessible database on oil spills, environmental assessments, and corporate compliance will improve supervision and enable civil society to hold the government and corporations accountable. Norway's transparency strategy in the oil

sector, which incorporates real-time data on resource exploitation and environmental implications, provides a good roadmap.

## **5. Utilization of Arbitration for Dispute Resolution**

Arbitration offers a transformative approach to addressing the challenges of natural resource governance and environmental justice in the Niger Delta, where prolonged litigation, inequitable dispute resolution, and marginalization have historically hindered progress. Traditional litigation processes, as seen in cases like *Ejama-Ebubu Community v. Royal Dutch Shell (2021)*, often result in significant delays, leaving affected communities to endure extended periods of environmental harm. In contrast, arbitration provides a faster, cost effective, and confidential alternative for resolving disputes. It is governed by Nigeria's *Arbitration and Conciliation Act (ACA)*, which aligns with the UNCITRAL Model Law, and the *Nigerian Arbitration and Mediation Bill 2023*, which modernizes the arbitration framework and reinforces the enforceability of arbitral awards under the New York Convention. These laws provide the legal foundation for effective arbitration in Nigeria and ensure that arbitration awards are binding, final, and internationally enforceable. Arbitration allows for the appointment of arbitrators with specialized expertise in environmental law, natural resource management, and oil and gas regulation, enabling informed and context-sensitive decisions tailored to the Niger Delta's unique challenges. This is particularly crucial in resolving disputes related to oil spills, gas flaring, and ecosystem degradation. Arbitration builds trust among stakeholders, local communities, multinational corporations. It aligns with the principles of environmental justice by fostering inclusivity, equity, and participation, empowering marginalized communities to have a meaningful voice in decision-making. Moreover, arbitration facilitates restorative justice by compelling polluters to rehabilitate

damaged places, compensate affected communities, and adopt sustainable practices, as exemplified in the UNEP report on Ogoniland. It helps to mitigate resource-based conflicts by providing structured avenues for dialogue and negotiation, reducing the risk of violent confrontations and fostering long-term stability in the region. Arbitration also ensures compliance and accountability from multinational corporations through enforceable awards, creating a framework where stakeholders are incentivized to adhere to environmental and social standards.

To fully harness the potential of arbitration, Nigeria must integrate it more robustly into existing legal frameworks, including the Environmental Impact Assessment Act and the Petroleum Industry Act. Strengthening enforcement mechanisms and raising awareness among stakeholders about the benefits of arbitration are critical to its success. Furthermore, collaboration with international arbitration bodies and the establishment of regional arbitration centers can enhance access to this mechanism for Niger Delta communities. By adopting arbitration as a central tool for resolving disputes, Nigeria can promote accountability, equity, and sustainable development, ensuring that the Niger Delta's natural wealth is managed in a way that benefits its people and protects its environment for future generations.

## **6. Strengthening Legal Aid and Environmental Advocacy**

Many communities in the Niger Delta lack the resources to take legal action against large companies. Environmental legal aid should be strengthened through government financing and collaboration with non-governmental organizations. Furthermore, Nigeria could benefit from adopting a class action method for environmental disputes, which allows groups of

harméd persons to sue corporations collectively, decreasing the financial burden on individual claimants.

#### **5.4 Contribution to Knowledge.**

This thesis contributes significantly to the study of resource governance and environmental justice by providing an in-depth examination of the Niger Delta, where legal frameworks and governance shortcomings have affected the realities of local communities. The insights drawn from this study reveal aspects of Nigeria's resource governance system, addressing several important gaps in both scholarly understanding and practical approaches to environmental justice. This thesis provides a critique of Nigeria's primary legal instruments, including the Petroleum Industry Act, the Land Use Act, and the Environmental Impact Assessment Act, illustrating how these frameworks, while ostensibly designed to manage resource extraction and environmental protection, fall short in practice. It brings an understanding of the resource curse within Nigeria, showing how wealth from natural resources has paradoxically led to underdevelopment, conflict, and environmental harm in the Niger Delta.

This study contributes insights into the regulatory inefficiencies that have hindered Nigeria's environmental protections, particularly in relation to oil production. By examining the limitations faced by institutions like the National Oil Spill Detection and Response Agency (NOSDRA) and the Environmental Impact Assessment process, this work sheds light on the gaps that prevent effective environmental governance. This perspective provides a roadmap for policy improvements, specifically in the areas of regulatory authority, accountability, and enforcement.

Through this analysis, the thesis shows the importance of genuine community involvement in resource governance. The Niger Delta's struggles highlight the need for a governance approach

that goes beyond consultation to include meaningful participation and benefit sharing with local populations.

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## BIBLIOGRAPHY

### Books

Arajärvi, Noora, 'The Rule of Law in the 2030 Agenda' (2018) 10(1) *Hague Journal on the Rule of Law* 187-217.

E.J. Alagoa Ajayi and O. Ikime (ed), *Peoples of the Cross River Valley and the Eastern Niger Delta in Groundwork of Nigerian History* (Heinemann Educational Books 1980)

Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries* (Routledge 2011)

S James Anaya, *Indigenous Peoples in International Law* (Oxford University Press 2004)

Richard Auty, *Sustaining Development in Mineral Economies: The Resource Curse Thesis* (Routledge 1993)

F.B. Barry, *Environmental Injustices: Conflict & Health Hazards in the Niger Delta* (American University 2010)

S.N. Bassey, *To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa* (Pambazuka Press 2012)

I Brownlie, *Principles of Public International Law* (7th edn, Oxford University Press 2008)

Robert D. Bullard, *Confronting Environmental Racism: Voices from the Grassroots* (Free Press 2000)

Robert D. Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (3rd edn, Westview Press 2000)

Paul Collier, *The Bottom Billion* (Oxford University Press 2007)

Lorenzo Cotula et al, *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa* (IIED 2009)

M. Crowder, *The Story of Nigeria* (Faber and Faber 1976)

W.P. Cunningham, M.A. Cunningham and B.W. Saigo, *Environmental Science: A Global Concern* (2007)

K.O. Dike, *Trade and Politics in the Niger Delta* (Clarendon Press 1830-1850)

J.B. Ejobowah, *Who Ownes the Oil? The Politics of Ethnicity in the Niger Delta of Nigeria* (Indiana University Press 2000)

B.C. Field, *Natural Resources Economics: An Introduction* (McGraw-Hill 2005)

Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (Oxford University Press)

Augustine Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Praeger 1990)

Terry Lynn Karl, *The Paradox of Plenty: Oil Booms and Petro-States* (University of California Press 1997)

Darren Kew and Cyril Obi, 'Dilemmas of Cooptation in the Niger Delta' in Thania Paffenholz (ed), *Civil Society and Peacebuilding: A Critical Assessment* (Lynne Rienner Publishers 2010)

Richard J. Lazarus, *The Making of Environmental Law* (University of Chicago Press 2004)

Cyril Obi and Siri Aas Rustad (eds), *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-violence* (Zed Books 2011)

W.I. Ofonagoro, *Trade and Imperialism in Southern Nigeria* (NOK Publishers International 1979)

David W. Pearce and R. Kerry Turner, *Economics of Natural Resources and the Environment* (Johns Hopkins University Press 1989)

Michael L. Ross, *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations* (Princeton University Press 2012)

Ken Saro-Wiwa, *A Month and a Day – A Detention Diary* (Penguin 1995)

Tietenberg, T, *Environment and Natural Resource Economics* (Pearson Education 2005)

I.L. Worika, *A Report on the Investigation of Human Rights Violations in the South-South Zone, 1966-1999: Community/Group Deprivations in Rivers State* (Centre for the Advanced Social Sciences 2000)

T.A. Yusuf, *Environmental Impact Assessment (EIA) Regulations and Practice in Nigeria* (Al-Hakim International 2017)

### **Journal Articles**

A.M. Adeyemo, 'The Oil Industry Extra-Ministerial Institutions and Sustainable Agricultural Development: A Case Study of Okrika L.G.A. of Rivers State, Nigeria' (2002) 2 *Journal of Oil & Politics* 1

S.O. Aghalino and B. Eyinla, 'Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria' (2009) 28 *Journal of Human Ecology* 177

S.O. Aghalino, 'Impact of Environmental Assessments in Sustainable Development: Nigeria's Approach' (2018) 62(2) *Journal of Environmental Science* 115

P.A. Aiyelari, O.A. Omojola and E. Afolabi, 'Environmental Justice and Oil Exploitation in Nigeria: The Case of the Niger Delta' (2020) 62(1) *International Journal of Law and Management* 83

J. Akinwunmi, 'Oil Exploitation and Environmental Rights in Nigeria: A Call for Legal Reforms' (2023) 10(2) *Nigerian Journal of Environmental Law* 78

R. Akinyele, 'Dynamics of Niger Delta Struggles and State Responses' (2011) 9(3) *Journal of African Political Economy and Development* 44

Emmanuel Ibiam Amah and Philip Hemen Faga, 'Indigenous Peoples' Rights Over Natural Resources: An Analysis of Host Communities Rights in Nigeria' (2021) 3 *LAJIL* 121

Abosede Omowumi Babatunde, 'Environmental Insecurity and Poverty in the Niger Delta: A Case of Ilaje' (2017) 7(2) *African Conflict and Peacebuilding Review* 36

R.B. Boele, H. Fabig and D. Wheeler, 'Shell, Nigeria and the Ogoni: A Study in Unsustainable Development' (2001) 9 *Sustainable Development* 74

DOE Borha and OJ Olujobi, 'An Examination of the Petroleum Industry Act 2021: Prospects, Challenges, and the Way Forward' (2023) 12 *F1000Research* 551

P.D. Cunningham, 'Environmental Justice and Sustainable Development' (2014) 19 *Environmental Law* 134

R.B. DeLuca, 'Environmental Impact Assessment as a Tool for Sustainable Development: A Case Study of the Niger Delta' (2012) 3 *International Journal of Environmental Sustainability* 97

Nick Devas and Ursula Grant, 'Local Government Decision-Making-Citizen Participation and Local Accountability: Some Evidence from Kenya and Uganda' (2003) 23(4) *Public Administration and Development* 307

E. Egbogah, 'The Impact of the Petroleum Industry Act on Nigeria's Oil and Gas Sector' (2022) 45 *Nigerian Journal of Environmental Law* 17

K.B.O. Ejumudo, 'The Unending Niger Delta Crisis: An Ecological Perspective' (2008) 3 *Journal of Social Policy and Society* 3

J. Emejuru, 'Constitutional Environmentalism in Nigeria: A Critical Analysis' (2020) 32(1) *Journal of Environmental Law* 45

Gerald E. Ezirim, 'Resource Governance and Conflict in the Niger Delta: Implications for the Gulf of Guinea Region' (2011) 5(2) *African Journal of Political Science and International Relations* 61

T.A. Gardner et al, 'Transparency and Sustainability in Global Commodity Supply Chains' (2019) 121 *World Development* 163

Francesco Giglio, 'The Concept of Ownership in Roman Law' (2018) 135(1) *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung* 76

A.A. Kadafa, 'Environmental Impacts of Oil Exploration and Exploitation in the Niger Delta of Nigeria' (2012) 12 *Global Journal of Science Frontier Research* H 19

Robin Law, 'West Africa's Discovery of the Atlantic' (2011) 44(1) *The International Journal of African Historical Studies* 1

Bill E. Lawson, 'The Value of Environmental Justice' (2008) 1 *Environmental Justice* 3

James R. May and Tiwajopelo Dayo, 'Dignity and Environmental Justice in Nigeria: The Case of Gbemre v Shell' (2020) *SSRN*

Rufus A. Mmadu, 'The Search for Environmental Justice in the Niger Delta and Corporate Accountability for Torts: How Kiobel Added Salt to Injury' (2013) 1 *Afe Babalola University: Journal of Sustainable Development* 123

F. Saro-Wiwa, 'Genocide and the Politics of Ethnicity in the Niger Delta' (2017) 1(1) *Niger Delta Review* 5

A. S. Orho, 'Environmental Management and Sustainable Development: A Review of the Nigerian Experience' (2009) 1 *African Journal of Environmental Science and Technology* 55

J.S. O'Reilly, 'The Challenges of Oil Governance in the Niger Delta: Prospects for Policy Change' (2020) 24 *Journal of Global Policy* 16

### **Case Law**

*Akinbade v. Shell Petroleum Development Company* (2010) 2 Nigerian High Court Reports 45

*Attorney General of the Federation v. Anambra State* (2018) 3 Nigerian Supreme Court Reports 123

*Bodo Community & Ors v Shell Petroleum Development Company of Nigeria Ltd* (2014) EWHC 1973 (TCC)

*Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt 1666)

*Gbemre v. Shell Petroleum Development Company* (2005) 1 Nigerian Industrial Court Reports 400

*NOSDRA v Mobil Producing Nigeria Unlimited* (2008) LPELR – 44210 (CA)

*Shell Petroleum Development Company v. Emohua Community* (2018) 7 Nigerian Court of Appeal Reports 234

*UN Environment Programme v. Shell* (2011) 3 *Environmental Law Reports* 211

### Online Sources

Y. Akinpelu, 'Analysis: 77% of Oil Spills in Nigeria Occurred in Only Three States' (*Premium Times*, 2021) <https://www.premiumtimesng.com/news/headlines/461635-analysis-77-of-oil-spills-in-nigeria-occured-in-only-three-states.html> accessed 9 November 2024

L. Arowosegbe, 'Nigeria's Niger Delta Crisis: The Socio-Environmental Consequences of the Oil Economy' (*The Conversation*, 2020) <https://theconversation.com/niger-delta-crisis-socio-environmental-consequences-156098> accessed 9 November 2024

Shell Settles \$15.5 Million Environmental Justice Lawsuit' (*Reuters*, 2016) <https://www.reuters.com/article/us-shell-settlement-idUSKCN0ZH2GJ> accessed 9 November 2024

## Legal Documents

African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9  
(No 2 of 1983)

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Environmental Impact Assessment Act, Cap E12 LFN 2004

Federal Environmental Protection Agency Act 1988

Harmful Waste (Special Criminal Provision etc) Decree 1988

International Covenant on Economic, Social and Cultural Rights (1966)

National Environmental Protection (Pollution Abatement in Industries and Facilities  
Generating Wastes) Regulation 1991

Nigerian Mining Corporation Act (NMCA) Cap N120 LFN 2004

NOSDRA Act 2006

Petroleum Act CAP. P10 L.F.N. 2004

Petroleum Industry Act 2021

United Nations Declaration on the Rights of Indigenous Peoples (2007)