ENVIRONMENTAL LAWS AS MECHANISMS FOR PROTECTING HUMAN RIGHTS IN AFRICAN SOCIETIES: A NIGERIAN PERSPECTIVE*

Abstract
This article examines both regional and domestic legal framework as well as the existence of some critical provisions governing best practices for sustainable development in the sphere of oil industry in Nigeria, particularly in the Niger Delta region. It is sad to note the quantum of pollution of the environment corollary to oil exploitation by multinational co-operations controlling exclusively upstream oil production in most of the African states with particular reference to Nigeria. Having identified the complex nature of interaction between the host communities and the Nigerian state, and strong human rights implications bordering on right to life, privacy, right to healthy environment, and right of self-determination, the authors argue that the impact of pollution on swathes of farmlands, creeks, fish-ponds, communal rivers and other sources of portable water to the host communities constitutes an infraction of their environmental rights. The need for protection against environmental degradation using both the provisions of international and Nigerian legal framework to demonstrate the existence of such rights, the authors maintain that a delicate balance approach should be adopted in easing the usual tensions and incidental impoverishments associated in the course of oil production by multinational co-operations in the Niger Delta of Nigeria.

Keywords: Environment, Human Rights, Legal Framework, Pollution and Enforcement

1. Introduction
Environmental degradation implicates many human rights issues bordering on right to life, privacy, right to healthy environment, and right of self-determination. A worrisome dimension to the plethora of complications associated with the environment is the issue of environmental abuses inflicted by many multinational companies engaged in exploitation of oil, mineral, timber or other natural resources in the African continent, particularly Nigeria. Drawing attention to human rights and environmental abuses, it has been observed that one of the most disturbing aspects of public environmental litigation is the absence of a constitutionally guaranteed ‘environmental right’ under Nigerian law to remedy these environmental abuses. This is because the right to a safe and healthy environment is as controversial as other debates concerning new or emerging rights (that is, right to development, right of the people, indigenous rights). The existence of such a legally recognized right will in no small measure serves many purposes. First, it will provide the necessary substantive rights, in this case an obligation on individuals and government to protect the environment which can be enforced when violated. Second, it will obliterate the legal hurdle of

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1Enviromental right refers to the right of the citizen to have a clean, safe and decent environment and to enforce it in case of violation by the government or private citizens. I must warn that the terminology used in articulating the content of this right is diverse, vague, controversial, and ever-changing; for example, many adjectives have been applied to the term environment in describing the particular environmental quality to which humans have a right to under international and national laws. The adjective most frequently found in legal literature for such a purpose include: secure, safe, satisfactory, healthy, healthful, decent, adequate, clean, pure, natural, viable, ecologically-sound, and ecologically-balanced, moreover, the term environment has itself been the object of debate.
Although at present, there is no specific constitutional provision directly proclaiming a right of environmental protection under the 1999 Constitution of Nigeria, there is however, a mixture of ideas associated traditionally with the concept of environmental rights. The proponents of this right have expanded and re-interpreted the Civil and Social Rights in the Universal Declaration of Human Right, the International Covenant on Economic, Social and Cultural Rights and other human rights instrument to suggest that the right to a clean environment is an integral part of the fundamental human rights of every citizen. Article 17 of the Covenant on Economic Social and Cultural Rights for example, guarantee respect for private and family life and home. Again, Article 25(1) of the UDHR asserts that, ‘everyone has the right to life, liberty, and the security of person.’ Using this derivative right principle, human rights scholars argue that the civil and social rights to life, health and personal liberty guaranteed by many international treaties and municipal legislations would be meaningless if the environment was continually degraded to the detriment of the people. The state has a positive obligation to take steps to promote life expectancy of the citizens. Therefore, any person whose environment is wrongly degraded can rely on these civil and social rights to enforce his environmental right. Critics of this right have argued that the concept is vague and non-justiciable. Core human rights scholars regarded environmental right as a third generation right which cannot be enforced individually but by the collective effort of the people. They maintain that the imprecise nature of the rights would make it difficult to enforce if environmental right is given a legal recognition. Again, since the scope of the right cannot be clearly defined, the determination of its scope and judicial enforcement of the right would depend solely on the court definition of ‘environment’ and this may pitch the court against the legislature in a never-ending battle.

Another problem is the resulting liability for environmental harms. Characteristically, human rights obligation imposes a duty on the state to enforce the right and to compensate or remedy the harm, if any, sustained by the citizen, in case of violation of such a right. Generally, states are unwilling to accept that the right to environment imposes an absolute legal obligation on them to protect the environment rather than relying on derivative rights to environmental protection.

6 International Covenant on Economic Social and Cultural Rights [Hereafter ICESCR]
7 See also supra note 7 for other similar human rights treaties.
9 Ibid, note 2
10 Ibid
they are more contended with soft law and declaration which lack force and imposes no legal obligation on
the state as illustrated by many UN declarations. Again, since environmental right is also a second-
generation social, economic and cultural right whose full implementation cannot be fully ensured without
economic and technical resources, education and planning the gradual reordering of social priorities and, in
many cases, international co-operation, state will be unwilling to assume such obligation because of the
financial commitments involved.

In addition, environmental right is often rebuffed because it implicate national development, for example, the
states have to build dams, road, encourage the construction of factories, new settlement, explore mineral
resources (including oil and gas), promote large-scale farming and provide basic infrastructure for human
development—all these will have adverse impact on the environment. A strict adherence to the promotion of
environmental right will, undoubtedly and ultimately hinder development, inconvenience the government
courage political resistance and engender political instability.

2. Concept of Environmental Rights and Litigation

Significantly, an analysis on environmental right using the 1999 Constitution of the Federal Republic of
Nigeria is appropriate here. Chapter II of the Constitution in its Fundamental Objectives and Directive
Principle of the State Policy (FODPSP) directs the state to protect and improve the environment and
safeguard the water, air and land, forest and wildlife of Nigeria. Similarly, the Constitution guarantees
the right of every person to life.

The effect of these provisions ordinarily suggests that the right to a clean environment is guaranteed by the Constitution and that any individual or group of individuals whose environment is degraded can trigger an action to protest the degraded environment, if the government
refuses, or neglects to enforce any environmental legislation. In practice this is not necessarily so. Firstly,
enforcement of fundamental human rights pursuant to special procedure made under section 42 of the 1979
Constitution does not admit of any right not enshrined in chapter IV of the 1999 Constitution. Second, the
ability of Nigeria citizen to invoke the provision of section 20 of the Constitution has been whittled down
by the provision of section 6(60) (c) of the Constitution, which clearly exclude judicial powers to decide on
issue or question as to whether any act or omission by any authority or person or as to whether any law or
any judicial decision is in conformity with the fundamental objectives and directive principles section set
out in Chapter II of the Constitution.

Third-judicial attitude towards the interpretation of the FODPSP provision has typically been patronizing
cautious and restrictive.” Nigerian courts have, by their rigid adherence to the ‘self-execution’ cannon of
statutory construction, refused to give full effect to the FODPSP provision engraved in the constitution. The
provision of the FODPSP were construed as non-justiciable right but mere directives and lofty objectives of

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11 D Marcus, ‘Famines Crimes in International Law’ (2003) 97(2) AJIL 245 at 250 (arguing that the violation of the citizens right to food being a second generation rights is more tolerated by state and that deliberate promotion of famine through inaction, corruption, authoritarian governance should be criminalized internationally).
12 Note 2
13 Hereinafter refer to as Fundamental Objectives and Directive Principle of the State Policy (FODPSP)
14 Section 20
15 Section 33(1)
17 [Hereafter, FODPSP]

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the state that cannot be elevated to the status of substantive rights except through legislative intervention.\(^{18}\) In *Okogie v. Lagos State Government*,\(^{19}\) where the plaintiff brought an application challenging a circular issued by the Lagos State Government purporting to abolish private schools in the state on the ground that the circular infringed on the constitutional rights to receive and impart education guaranteed under section 36 of the 1979 Constitution. The defendant argued that the implementation of the circular was in conformity with the provision of FODPSPP on educational matters as contained in section 18 of the 1979 Constitution. That the proviso requires the state to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels to the citizens.\(^{20}\) The issue before the court was how to reconcile the constitutional provision in section 36 that guarantees right to disseminate and impart education with that of fundamental objectives provision on education. The Court of Appeal, however, decided that the directive principle of state policy in chapter II of the 1979 Constitution is non-justiciable and must conform to and run subsidiary to the fundamental rights. The court held, in effect that an individual could not rely on FODPSPP to assert any legal right. It is pertinent to note that the decision in Okogie’s case\(^{21}\) was greatly influenced by an earlier Indian case of *State of Madras v Champakam*.\(^{22}\) Incidentally the Indian court appeared to have set a new standard in the field of environmental litigation. When the new standard in the field of environmental hazard became increasingly perceptible, in the field of environmental legislation, by invoking the power under article 32 and 48\(^{23}\) of the Indian constitution concept of *locus standi* to entertain a new genre of litigation and allowed private attorney to institute actions to protect the fundamental deterioration,\(^{24}\) proceeded on the premise that a clean and wholesome environment is prerequisite to enjoying the right to life enshrined in the Indian Constitution as fundamental right of all personate decision in rural litigation and entitlement *Kendra v. State of U.P.*,\(^{25}\) blazed this trial. In that case, the petitioner, the Indian Council for enviro-legal action brought this action to stop and remedy the pollution caused by several chemical industrial plants in Bichri Village, Udaipur District, and Rajasthan. The respondent operated heavy industry plants without permits producing chemicals such as oleum, single super phosphate and the highly toxic ‘H’ acid which polluted the water and soil of the village and its environs. The Supreme Court, in public interest litigations instituted by the Kendra people, ordered a major part of the quarrying activities to be closed down. In few subsequent public interest litigation cases, the court recognized the right to environment and invoked the power under article 32 of the constitution to issue appropriate orders and direction thus, in *M.C. Mehta v. Union of Indian*\(^{26}\) the practitioner filed a writ

\(^{18}\) By this principle, a provision constitute sufficient rule by means of which the right that it grants may be enjoyed and protected without the aid of a legislative enactment before it will be judicially enforced. this principle owes its existence from the united states case of state ex Re. city of Fulton v. smith 194, S.W. 3d 302, 304 (MO. 146).

\(^{19}\) (1981) 2 NCLR 337

\(^{20}\) Ibid, note 2

\(^{21}\) Ibid

\(^{22}\) (1951) SCR 252

\(^{23}\) Article 32 empowers the Supreme Court to enforce the rights conferred under the constitution and t issue directions or order, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari for the enforcement of any rights conferred under the constitution.

\(^{24}\) Article 48 provides: the state shall endeavour to protect and improve the environment and safe guard the forest and wild life of the country.’

\(^{25}\) (1966) A.I.R. SC 1057,

\(^{26}\) (1987) AIR 1086, in Indian counsel for environ legal action v. Union of India, (1987) AIR 1086 where the sludge, a lethal waste, left out in a village for years after the chemicals industries were closed, caused
at the supreme court ordered its office to serve notice of the suit on all industries concerned and, after hearing both tanneries not having pre-treatment plants approved by the pollution control board to stop their discharge of trade effluents.

In a related environmental pollution case in Philippines, the Philippines Supreme Court reached a similar decision in Minor Oposa v. Secretary of the Department of Natural Resource, a case based on a substantive procedural right to a clean environment contained in article II of the Philippine constitution. The plaintiff in the case were a number of minors, together with the Philippines ecological network, Inc., a non-profit organization challenging the powers of the defendant to issue license to a timber company to engage in logging business within Philippines forest. The petitioners based their claim, inter alia, on section 16, Article II of the 1987 constitution of Philippines, which recognizes the right of people to a balance and healthful ecology the concept of generational genocide in criminal law, and the concept of man’s inalienable right to self-preservation and self-perpetuation embodied in natural law. The respondent argument was grounded on two natural laws. The respondent argument was grounded on two points. First, the respondent argued that the petitioner failed to demonstrate in their complaint the violation of any specific legal right for which relief was guaranteed by law. Second the respondent argued that logging is a political not a legal question and should be dealt with by the executive or legislative branches, not by court law. The court upheld the argument submitted by the petitioners, and further held that timber-licensing agreement were not contract that fell within the non-impairment clause of the constitution of the Philippines Constitution, which obliges the state to ‘protect and promote the impairment clause of the constitution of the Philippines court also referred to section 15, article II of the Philippines constitution, which obliges the state to ‘protect and promote the right to health of the people and instil health consciousness among them.’ The court further replied on executive order No. 192 (1987), the administrative code, and the Philippines environmental policy, which introduce the general policy of environmental protection. It made ground breaking pronouncement concerning the right to clean environment as funding possible causes of action.

From the above analysis, it is obvious that the decision in Okogie’s case should no longer be good law, particularly as it relates to environmental protection and sustainable use of resources. Unfortunately the Supreme Court remains unyielding when in Attorney –General of Ondo State v. Attorney General Federation. It held that the provision of FODSP in chapter II of our constitution remain non-justiciable. The court further held that FODSP are mere declaration that lack the force of law and cannot be enforced by legal process except translated or elevated to the status of law by legislation. It is submitted that a liberal interpretation of the provisions of Chapter II by the Supreme Court in future, particularly as it relates to environmental protection will undoubtedly promote sustainable development goals, public participation and access to environmental justice. This is because in most environmental related litigation and policy implementation, what is expected of the court is to hold the balance between environmental consideration heavy damage to the environment, the supreme court ordered the remedial action be taken and compensation be given for the silent tragedies in line with the ‘Mehta absolute liability’ principle.

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27 I.L.M. 173 (1994)
28 Article II, s. 16 provides that ‘the state shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.’
29 Ibid, note 2
30 Ibid
31 (2002) 9 N.W.L.R. (Pt. 7720, 222
and developmental consideration. Such approach if and when adopted by our court, will be consistent with current national and international sustainable development policy which requires governments to consider development holistically by taking into consideration significant environmental factor in the development process.

In interpreting Article 24 of the Charter, the African Commission on Human and People Right took cognizance of Nigeria domestication of the provision of the African charter on that all the right contained therein can be invoked in Nigeria courts by the citizens and held that Article 24 clearly imposes obligations upon a government to take reasonable and other measures to prevent pollution and ecologically sustainable development and use of natural resources. The commission observed that the Niger delta had suffered from degradation as a result of oil pollution and therefore, citing Kiss, concluded that an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of the fundamental ecologic equilibrium is harmful to physical and moral health.

The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African charter and the rights to a general satisfactory environment favourable to development in Article 24 also oblige governments to desist from directly threatening the health and environment of their citizens. The state is also under an obligation to respect these rights and this entails largely non-interventionist conduct from the state, for example not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual. According to the commission, government compliance with the spirit of Article 16 and 24 of the African charter must also include ordering or at least permitting independent scientific monitoring of threatened environment, requiring and publicizing environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individual to be heard and to participate in the development decisions affecting their communities.

Again, in Sani Abacha v Gani Fawehinmi, The Supreme Court considered the status of African charter vis-à-vis the constitutional rights of the citizens. In the case, the respondent, a legal practitioner and human right activist was unlawfully arrested and detained in a prison by the State Security Service (SSS) without any formal charge. The respondent brought an application challenging his arrest and detention and contended that the arrest and detention was a gross violation of his fundamental rights guarantee under the constitution and Articles 4, 5, 6 and 12 of the African Charter, one of the issues for consideration was whether the provision of the charter runs subsidiary to the provision of the human and people right though not superior to the constitution, are integral to laws the court must uphold them and in case of inconsistency

32Ibid
34Ibid
35‘Article 16 provides :’(1) every individual shall have the right to enjoy the best attainable state of physical and mental health.’(2) State parties to the present charter shall take the necessary measure to protect the health of their people and to ensure that they receive medical attention when they are sick.’
36Ibid
37Ibid
between them and other statutes the provision contained in the charter will prevail for the reason that it is presumed that the legislature does not intend to breach an international obligations. The court further ruled that the charter gave to every Nigeria citizens’ rights and obligations, which are enforceable by the court. Consequently, it is arguable that the individual rights contained in the charter are justiciable and our court can seek to protect them from violation and be ready to provide appropriate remedies in favour of the victims. Going by these decisions, two theses could readily be formulated, particularly as related to access to environmental justice. First, the right of the people to clean environment and general satisfactory environment favourable to their development engraved in Article 24 is judicially legalised. A fortiori, the people can invoke the provision of Article 24 to trigger state action in the formulation and implementation of sounds national environmental policies that will promote and encourage economic growth and sustainable development.

A Rights Approach to Deterrence
The point has to be made that even where a company has been adjudged guilty or liable, there has to be sanction that would sufficiently deter. This is so because if the only sanction is for the payment of some nominal fine, rather than deter, it would encourage the corporation to pollute and pay the assured meager fines. The emerging trend the world over is to impose strict liability on companies for pollution caused by them. This is in recognition of the fact that if a polluter can be found there is no guarantee that any compensation paid out will be spent on clean up, and that clean-up is likely to fall upon the public purse in any event. Legislative, and more importantly enforcement measure, are put in place to encourage companies to limit their environmentally damaging activities, not because to do otherwise would be a crime, but rather because to do otherwise would be economically unwise. It was for this reason that the Niger delta technical committee recommended the establishment by this year of regulations that would compel oil companies to have insurance bonds against environmental pollution, strength independent regulation of oil pollution and make enforcement of critical environmental laws and prosecution of polluters and fraudulent cases of national priority. More seriously, to complement such measures, in the face of the obvious consequences of oil pollution on health which in some cases result in death the time has come for oil companies to be charged with murder of the innocent citizens of the Niger delta region who die daily as a result of contaminations from oil exploitation activities.

3. Common Law Regime
The torts relevant to the activities of the petroleum industry are negligence, nuisance and the rule in Rylands v Fletcher. Except the statute and regulations empowering or granting right for petroleum exploration, prospecting and mining specifically exclude the application of these torts, communities or individual have the legal rights to sue the offending companies for any adverse consequences of their activities. It should be noted that the provision of the Mineral Act have not derogated from the rights

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40 Ibid
42 Ibid
enjoyed by dwellers of land in Nigeria including the respondent. It must be mentioned also that the common rights of fishery in Idal waters is not affected by the Mineral Act. On application of the rule in Rylands v. Fletcher, ‘it is clear therefore that a person who is in possession or in control of land (such as appellant herein) and keeps on such land petroleum products ‘exist under the rule in Rylands v. Fletcher.’ It must be said also that the establishment of crude oil pipeline on land with the potential of escape or spill of its contents is clearly non-natural user of the land. the rule laid down in Rylands v. Fletcher is, on the other hand, to the effect that the occupier of land who brings and keep upon it anything likely to do damage if it escapes, is bound at his peril its escape, even if they have not been guilty of negligence.

4. Negligence

The tort of negligence ‘connotes’ the complex concept of duty, breach and damage thereby suffered by the person to whom the duty is owed. Negligence may consist of an action or omission. The main difficulties for the plaintiff remain the proof of sense of reasonable care on the part of the operator. The plaintiff also has the burden of showing causal link between his damage and the defendant’s action. In a highly technical industry such as the petroleum industry, proof of negligence requires expert’s scientific evidence, unavailable and unaffordable to the largely unschooled and poor victims who suffer from the ravages of exploratory activities of the oil companies. In Chinda & Others v. Shell Petroleum Development Company of Nigeria Ltd, the plaintiff alleged that owing to the defendant’s company negligence in the control and management of their flares’ site which was within a short distance of the plaintiff villages, a lot of damage was done to the plaintiff trees lands and houses. Holden C.J. held that the plaintiff have not produced any evidence of negligence in the defendant operation of their flares sites and therefore would fail. In Atubin v Shell B.P. petroleum Development Company of Nigeria Ltd, the plaintiff claimed that the defendant caused crude oil, gas and chemicals to escape from pipelines under their control thereby destroying fishes in the lake and their farmland, the court held that the plaintiff did not prove that the defendant was negligent. In Seismograph Service Ltd v Benedict Etedjere Onokpasa, the main question before the court was whether the shooting operations carried out by the defendant company caused extensive damage to some buildings owned by the plaintiff. Thus, the plaintiff had the burden to establish the negligence of the defendant company in its operation. He was, however unable to do this because the fact of the negligence were not within his knowledge.

44 ELF (Nig) Ltd v. OpereSiilo&Anor (1994) 6 N.W.L.R. (pt. 358) 258 at 269-270
45 Per Rowland JCA (p. 133) para 10-15
46 See also Hale v. Jennings Bros (1938) 1 ALL ER, 579 at 582 &584;’per Akintan JCA (139) para. 20-25
47 Per Lord Wright in Lochgelly v Iron Coal Co. v. M. Mullan (1934) AC pl at 25
50 (1972) 4.S.C. l23
51 Suit No UHC/48/73, judgment of the Ughelli High Court delivered on November 12, 1974 (unreported)
Although a plaintiff may successfully plead the doctrine of res ipsa loquitur to relieve him of the burden of establishing defendant negligence the defendant can rebut this presumption by mere explanation of the cause of spillage. The oil companies are well positioned, considering the enormous resources at their disposal to afford and supply expert evidence in rebuttal and if unchallenged, must be accepted and acted upon by the court. In Seismograph Service Ltd v Akpornova the respondent case against the appellant was that the appellant had caused damage to his building during seismic operations. The respondent failed to call expert evidence in support of the causal link between the damage and the appellant seismic operations as alleged. The appellant called a seismologist who gave unchallenged evidence. The learned trial judge nevertheless held the appellant liable. Dissatisfied, the appellant appealed and the Supreme Court reversed the decision of the lower court on the grounds that the learned trial judge ought to have acted upon the unchallenged evidence.

5. Nuisance
Nuisance may be defined as an unjustified or unlawful interference with the plaintiff’s use or enjoyment of his land. A nuisance may be public or private. Whereas public nuisance which affects the public as a whole can rise to both civil and criminal proceedings, a private nuisance consist of an act or omission which materially affects the reasonable comfort and convenience of the general public or a section of the general public. Where the interference is with his land, then it is a private nuisance. Furthermore, Clark and Lindsell observed that:

An actionable nuisance is incapable of exact definition. It is an act or omission which is an interference with, disturbance of, or annoyance to a person in the exercise or enjoyment of (a) a right belonging to him as a member of the public, when it is a public nuisance or (b) his ownership or occupation of land or some easement, profit or other rights used or enjoyed in connection with land, when it is private.

Public nuisance is basically a crime, actionable by the attorney General. It is a tort actionable by an individual plaintiff only where he can show that the defendant conducts has caused him particular damage over and above that suffered by the general public. In Amos &Ors v. Shell B.P. Nigeria Limited, the plaintiff had claimed that the defendant by constructing a dam across their creek should be held liable in negligence. This is because the construction of the dam had resulted in flooding upstream causing severe damage to farmland and crops while downstream was experiencing a drought. The court held that since the creek was a public waterway the action by the defendant amounted to a public nuisance. Therefore since only the attorney general can bring an action for a public nuisance, the action of the plaintiff must show that he has suffered damage which is different in kind, not merely in degree, from that suffered by the general public. But the better view is that it is sufficient for the plaintiff to show that he suffered damage

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53E.O Akpezi, ‘Compensation and Liability for Oil Pollution in Nigeria: need for a positive approach’ (1985) 3 J.P.P.P.L. 4
54Ibid.
55Kodilinye, Op. Cit. 90
56Clark and Lindsell on Torts (14th ed.) Article 1391
57Criminal Code Cap C38 L.F.N. 2004 section 23
581997) 4 E.C.S.L.R. 86
59Attorney General v P.Y.A. Quarries Ltd (1975) all ER p. 894 per Lord Denning at 908
which is appreciably greater in degree than any suffered by the general public.** It seems most acts of nuisance committed by oil companies are public nuisance. But the scope of remedy is highly limited; it is difficult to succeed in an action in nuisance in oil pollution cases. In Nigeria where the same person doubles as the attorney general and minister of justice it is difficult for that person to bring an action against the national oil company or the subsidiaries of the multinational oil companies because the federal government of Nigeria has majority equity shares in the subsidiaries of most of the multinational oil companies operating in Nigeria.

6. The Rule in Rylands v Fletcher

The rule in *Rylands v Fletcher* is one of the common law remedies which have been widely acclaimed as a rule of strict liability and providing new remedies where none would otherwise have existed. The rule which evolved from the case of *Rylands v Fletcher* itself was stated by Blackburn J as follows: ‘A person who for his own purpose brings on his land and collects and keeps there, anything likely to do mischief if it escape must keep it in at his own peril and if he fails to do so, he is *prima facie* liable for all the damage which is the natural consequences of its escape.’ Oil was held to be capable of constituting such a dangerous matter in *Machine Umudje v Shell B.P. Petroleum Development Company of Nigeria Limited.*

In this case the plaintiff who owned land adjacent to the area of exploration complained (a) that, in the course of road building the defendants had blocked and diverted a natural stream, thus interfering seriously with the plaintiff fishing rights and (b) that the defendant had accumulated oil waste on land under their control and that this oil had escaped onto the plaintiff's land and caused damage there.

As regards the first complaint, the supreme court that under the rule in *Rylands v Fletcher* it is now generally accepted that a person who diverts a natural stream or cause same to become blocked and in this way diverts its natural course does so at his peril, and is liable for any damage caused by the failure of his works to contain the diverted stream although there was no negligence on his part. The court, however, held that in the present case the defendant were not liable because their blocking of the stream had not caused flooding of plaintiffs land but merely starvation of water and fish; there was, in other words, no escape of water from the defendant land to that of the plaintiff. With regard to the other complaint the defendant were held liable under the rule, since there was clear proof that crude oil waste, which they had accumulated in a pit on land under their control, had escaped onto the plaintiffs' land where it had polluted certain ponds and killed the fishes therein. An essential requirement of the rule is that there must be a non-natural user of the land by the occupier. In *Edhemowe v Shell B.P petroleum Development Company of Nigeria Limited,* the court held the defendant liable for damage caused to the plaintiff fish ponds by the oil which escaped from the defendant waste pit holding that the accumulation of crude oil in a waste pit was

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60 Street on torts (5th ed.) 1972 293
61 Ibid
62 (1866) LR, EX. P265
63 Liability in the law of tort usually arises as a result of some wrongful or negligent act on the part of the defendant. Strict liability on the other hand connotes a situation where the defendant would be liable whether or not he was at fault and the fact that he exercised due in the circumstance will not exonerate him.
64 (1975) 9-11 S.C. p155
65 Ibid. 159 per Idigbe J.S.C
66 Suit No UHC/12/70 Judgment of the Ughelli High Court (Unreported) Delivered on January 29, 1971
non-natural user of land. However, the court has accepted statutory authority as a complete defence to claim brought under the rule. Some doubt have been expressed in some quarter on the appropriateness of applying the rule in *Rylands v Fletcher* to oil operations in Nigeria in view of the fact that oil production being the bedrock of the country revenue could not be regarded as non-natural user of land.

It has been submitted and rightly one thinks, that the utilization of the rule might be defended as an effort by the Nigerian court to regulate oil pollution and provide relief to victims in the absence of any other basis for relief. Environmental injuries are often of long-lasting effect. In recent times, there has been a remarkable shift from the long-established common law concept of liability founded on the fault of the defendant, especially in ultra-hazardous activities like petroleum exploration and production, to that founded on absolute liability principle. This is the approach of the Indian Supreme Court in the case of *MC Mehte v. Union of India*. In this case, on an application for compensation following a leak of hazardous gas from a factory in Delhi owned by the Siram food and fertilizer company, the court moved from the strict liability principle as propounded in *Rylands v. Fletcher* into absolute liability which is stated was not subjected to any exceptions which operate in the area of the principle of strict liability. In a potentially hazardous industry like the petroleum industry where the standard of operation in Nigeria is not comparable to international best practices, it is necessary that the court in Nigeria continue to make use of the rule in *Rylands v. Fletcher* and gradually move to the absolute liability principle.

7. Conclusion
A healthy environment is vital to the quality of life of human being. This has made it imperative to safeguard the human environment for human interest. Environmental right is one of the tools used to address environmental problems at the global, regional and national levels. It has been posited that environmental rights could be employed to restore the balance between man’s activities and the preservation of the

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67 Other cases where the rule was accepted by the court as the basis for their decisions include *Otaku v Shell B.P petroleum development company of Nigeria ltd*, suit no BHC/2/83, judgment of the bori high court, (unreported) delivered on January 15, 1985; *Okoro v Shell B.P Petroleum Development company of Nigeria ltd*. Suit no W/2/21/77, Judgment of the Warri High Court (Unreported) Delivered on November 27, 1972.


69 Uzobike, E.NU. op. cit. 238; Y Omorogbe, ‘Regulation of the Oil Industry Pollution in Nigeria’ in *New Frontiers in Law* (EAzinge ed. 1991) 147 at 155

70 Ekpu, Op. cit. 92

71 Ibid
Environmental harm and the abuse of human rights often go together. An unhealthy and unfavourable environment is a violation of the right to life and human dignity every human being is entitled to a healthy and productive life in harmony with nature. A healthy and ecologically balanced environment is a fundamental right so as to enhance environmental governance in Nigeria. By so doing the importance of the issues of environmental governance will be elevated in Nigeria and Nigerian will be assured of a healthy and ecologically balanced environment. Procedural rights are indispensable to the implementation of environmental rights for the attainment of sustainable environmental governance. These procedural rights should be given effect to under the Nigerian laws in order to enhance the enforcement of environmental rights in Nigeria. Provision should therefore be made for an environmental rights act which has incorporate in it ‘procedural rights’ and such an act should be given effect to under the Nigerian constitution. Such procedural rights provide civil society with the mechanism for learning about actions that may affect them, participate in governmental decision making processes and holding the government accountable for its action inactions. They also serve to enable civil society to be bond together to protect the environment through the exercise of those procedural rights.

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