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ENVIRONMENTAL POLLUTION AND VIOLATION OF THE RIGHT TO HEALTH: A CASE STUDY OF NIGER DELTA OF NIGERIA

Abdulkadir Bolaji Abdulkadir (PhD)*

Abstract

Since the Stockholm Conference of 1972, it has been globally recognised that human rights can only be enjoyed in a polluted free environment. For instance, the rights to life, health, food, and access to clean water are dependent upon a healthy environment. Globally, the environment is in mess but the situation is such a contemptible one in the Niger Delta owing to the scale of damage done to the environment resulting from the unsustainable activities of the multinational oil companies in the region. This certainly continues to imperil the realization of basic rights guaranteed in the Nigerian Constitution. It is on this premise that this paper investigates into how environmental pollution constitutes an infringement of the right to health of the Niger Delta people. Although, the Niger Delta is presently faced with series of environmental problems, this paper however seeks to exclusively examine gas flaring and oil spillage with their adverse impacts on the right to health. To achieve this, the paper relies on both primary and secondary sources. The primary source involves analysis of relevant laws on this issue. The secondary source extract materials from United National Environment Programme, United Nation Development Programme, Amnesty International and other materials desirable to analyse issue in contention.

1. Introduction

International concerns with human rights, health and protection of the environment have extended significantly in the past several decades.¹ The international community has created an enormous series of international legal instruments, specialized organs, and agencies at the global and regional levels to address identifiable problems in each of the three areas.² Often, these have seemed to develop in isolation from one another. Nevertheless, the interrelationship between

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¹ See Francis O. Adeola, "Environmental Injustice and Human Rights Abuse: The States, MNCs, and Repression of Minority Groups in the World System (2001) vol. 8 No. 1, *Human Ecology Review* 40; Virginia W. Rasmussen, "The Peril of Ecological Illiteracy: Thoughts for the Graduating Class" (1986) vol. 75, No. 4 *Yale L. & Pol'y Rev.*, 594; Mackenzie W.J.M., "*Biological Ideas in Politics*", Penguin Books, London, 1978, 16-17; Young, Demok and Ramakrishna, "Global Environmental Change and International Governance being a summary and Recommendations of a Conference Held at Dartmouth College, Hanover, NH., June 1991, 8-9

² Ihonvbere, J.O., "The State and environmental Degradation in Nigeria: A Study of the 1988 Toxic Waste Dump in Koko" (1994) 23 (3) *Journal of Environmental Systems*, 207-227; Johnson Barbara R. "Environmental Degradation and Human Rights Abuse," in Johnston, B. R. (ed.), *Who Pays the Price? The Sociocultural Context of Environmental Crisis*, CA Island Press, Covelo, 1994, 7-15.

human rights, health and environmental protection were obvious at least from the first international conference on the human environment, held in Stockholm in 1972. At the Stockholm concluding session, the participants proclaimed that:¹

Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.

Principle 1 of the *Stockholm Declaration* established groundwork that pictures the interrelationship between human rights, health, and environmental protection, declaring that "man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."⁴ Thus, environmental protection is fundamental to the realization of basic human rights.⁵ Environmental conditions obviously assist to measure the degree to which people benefit from their basic rights to life, health, adequate food and housing, and traditional livelihood and culture.⁶ Time has come to acknowledge that those who degrade the natural atmosphere are not only violating the law of nature, but also are violating human rights as well.⁷ Globally, the environment is in mess but the condition is such a detestable one in the Niger Delta owing to the negative nature of the environment consequential from the untenable operation of oil and gas companies in the region. The Niger Delta consists of nine out of the 36 states making up the Federal Republic of Nigeria.⁸ They are: Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers States.⁹ The three major states producing oil in high quantities are Delta, Bayelsa and Rivers States. Crude oil was originally discovered in large quantities at Oloibiri, a community in Bayelsa State.¹⁰ This was discovered in 1956 and the nation rejoiced as this was seen as great opportunity to develop and boost the nation's economy.¹¹ To the people of the region, it was an opportunity

¹ See the *Stockholm Declaration*, 1972.

⁴ *Ibid.*

⁵ Sachs Aron, "Upholding Human Rights and Environmental Justice" In L. Starke (ed.), *State of the World* W.W. Norton and Company, New York, 1996, 131; Saro-Wiwa Ken, *They are killing my People*, in Na Allah (ed.), *Ogoni's Agonies*, Trenton, NJ: Africa World Press, 1998, 329-359; Anoliefo G.O., Isikhuemhen O.S., and Ochiye N.R., "Environmental Implications of the Erosion of Cultural Taboo Practices in Akwa-South Local Government Area of Anambra State, Nigeria: Forest, Trees, and Water Resources Preservation" (2003) 16 *Journal of Agricultural and Environmental Ethics*, 281, 289-293.

⁶ Anderson, M.R. and Ahmed A., "Assessing Environmental Damage under Indian Law" (1996) 5(4) *RECIEL*, 335-341; Anderson, M.R., "International Environmental Law in Indian Courts" (1998) 7(1) *RECIEL*, 22-31; Jarrwala, C.M., "A Judicial Approach in the Fire Works Noise Pollution: A Critical Overview" (1999) *All Indian Reporter Journal Section* 72-74; La Vina A.G.M., "The Right to a Sound Environment in the Philippines: The Significance of the *Minors Oposa Case*" (1994) 3(4) *RECIEL*, 246-252.

⁷ Midgley, "The End of Anthropocentrism" in Attfield and Belsey (eds.), *Philosophy and the Natural Environment* Royal Institute of Philosophy Supplement No. 36, 1994, 111; Symonides J., "The Human Right to a Clean balanced and Protected Environment" (1992) 20(1) *Int'l J. Of Legal Information*, 24-40 at 29; Contra Downs J.A., "A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right" (1993) 3 *Duke J. Comp. & Int'l L* 351-385.

⁸ Wahab Egbewole, "Millennium Development Goal and the Niger-Delta In The Jurist (2006) A Publication of the Law Students' Society, University of Ilorin, 36.

⁹ *Ibid*

¹⁰ Paul M. Lubeck, Michal J. Watts & Ronnie Lipschutz, "Convergent Interest US Energy and Securing Nigerian Democracy", International policy report Retrieved from http://www.ciponline.org/NIGERIA_FINAL.pdf [accessed 21st September, 2013]

¹¹ *Ibid*

for the goose that lays the golden egg to be treated as a golden goose. As each year passes, the story appears to have taken a new look as the resultant effect of the growth and development of the nation's economy was and is still a devastation and deteriorating of the Niger Delta environment.¹² This spring surprises whether the detection of crude oil is truly a blessing or a curse. It is on this premise that this paper seeks to examine how environmental problems in the Niger Delta is affecting the right to health of the people. The discussion is limited to gas flaring and oil spillage with their pervasive impacts on the right to health. Therefore, this paper is divided into five major parts. This introduction is the first part. The second part examines the major environmental problems in the Niger Delta. The third part looks at the status of Environmental protection in the Nigeria Constitution. The fourth part is an analysis of how the examined environmental problems is affecting the right to health of the People of Niger Delta. The last part represent the conclusion.

2. Environmental Problems In the Niger Delta

As earlier indicated, the discussion here shall be limited to gas flaring and oil spillage.

A. Gas Flaring

Gas flaring has been a touchy issue in Nigeria since the beginning of oil exploitation in the country. The flared gas is referred to as associated gas.¹³ Such gases are produced during oil production process. There are three major ways by which the associated gas can be dispensed with. Firstly, if separated from the oil, it could be used as liquefied natural gas.¹⁴ Secondly, it could be re-injected into the soil to avoid its environmental impacts. Thirdly, which is prominent in the developing countries is to burn off or flared such gases.¹⁵ Thus, available data has shown that Nigeria flared more than 60% of associated gas it produces.¹⁶ This act has been tagged culpable because of its effects and extravagancy.¹⁷

Flaring of associated gas from oil fields as a waste product of crude oil production is a common occurrence in the Niger Delta of Nigeria. It is the most noticeable impact of the oil industries on daily basis.¹⁸ At present, there are over 100 locations within the Niger Delta for flaring of associated gases.¹⁹ The gas is said to produce toxic gases such as: sulfur oxide,

¹² Aluko M.A.O., "Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria" (2004) 15(1) *Kamla-Raj J. Hum. Ecol.*, 63-68

¹³ Torulagha P. S "Onshore/Offshore Dichotomy: Why the Locus of Power Lies in the North" Available at <http://www.unitedijaw.com/torulagha0000109.htm> [accessed on 28th October, 2013]

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ See United Nations Development Programme (UNDP), *Niger Delta Human Development Report*, UNDP, 2006, 1-11. For more discussion on this, see Aluko M.A.O., "Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria" (2004) 15(1) *Kamla-Raj J. Hum. Ecol.*, 63-68

¹⁸ Rufus O. Idris "Impacts of Oil Spillage and Gas Flaring on the Population and Distribution of Birds in Niger Delta of Nigeria: A Brief Interim Report Submitted to ABC Conservation Awards and Fund, United Kingdom" Retrieved

from: <http://www.google.com.my/search?q=%20Rufus%20O.%20Idris%20%E2%80%99Impacts%20of%20Oil%20Spillage%20and%20Gas%20Flaring%20on%20the%20Population%20and%20Distribution%20of%20Birds%20in%20Niger%20Delta%20of%20Nigeria&ie=utf-8&oe=utf-8&aq=t&rls=org.mozilla:en-US:official&client=firefox-a&source=hp&channel=np> [accessed on 20th January, 2014]

¹⁹ Eferiekosa Ukala "Gas Flaring in Nigeria's Niger Delta: Failed promises and Reviving Community Voices" (2011) 97(2) *WASH. & LEE J. ENERGY, CLIMATE & ENV'T*, 98-126.

nitrogen oxides, benzapryene, xylene and hydrogen sulfide.²⁰ These gases for instance, methane and carbon dioxides when released into the atmosphere in large quantity is said to have negative consequences on the people, environment and the entire ecosystem.²¹ Since the major occupation of the people of Niger Delta are basically farming and fishing, these gases flaring not only have a dreadful effect on the environment but also affect peoples' means of livelihood. It is true that all industries in Nigeria require natural gas for business-related purposes, they however, choose and prefer to extort such gas from deposits where it is found in high quantity free of oil mixture.²² This is referred to as non-associated gas.

Gas flaring began in Nigeria concomitantly with oil extraction in the 1960s by the Shell-BP. It was permitted to proceed with no practicable attempts to regulate same by the Nigerian Government notwithstanding the fact that gas flaring has since been forbidding under the Associated Gas Re-Injection Act.²³ The flared gas has harmful consequences on the health and livelihood of the communities in the Niger Delta.²⁴ This is because, it emitted arrays of poisonous chemicals and exposure to such poisonous substances like benzapryene and dioxin can lead to a range of respiratory problems which are already prominent among many children in the Delta.²⁵ These substances as proof by scientists can intensify asthma, causing breathing difficulties and pains, as well as other related consequences.²⁶ Commenting on this, Environmental Rights Action said²⁷:

The flaring of associated gas (AG) in the Niger Delta is a human right, environmental and economic monstrosity. Nowhere else in the world has communities been subjected to it on such a scale. It estimated to cost Nigeria as \$ 2.5 billion annually, while the roaring, toxic flares affect the

²⁰ See Bruno Gervet, "Gas Flaring Emission Contributes To Global Warming" (2007) available at http://www.itu.se/polopoly_fs/1.5035!gas%20flaring%20report%20-%20final.pdf [accessed on 25th October, 2011]. The Climate Justice Programme & Environmental Rights Action/Friends of the Earth Nigeria, "Gas Flaring in Nigeria: A Human Rights, Environmental, And Economic Monstrosity" (2005), available at <http://www.climateclaw.org/media/cases/case-documents/nigeria/gas-flaring-in-nigeria.pdf> [accessed on 25th October, 2011]. Nnimmo Bassey, "Gas Flaring: Assaulting Communities, Jeopardizing The World" (2008) available at <http://www.eraction.org/publications/presentations/gas-flaring-ncc-ahuja.pdf> [accessed 23rd October, 2011] (describing the harmful effects of gas flaring on the health of the people in the Niger Delta, on the economy of the region, and on the world because of gas flaring's relation to climate change); See Ofeibe Quist-Arcton, "Gas Flaring Disrupts Life in Oil-Producing Niger Delta" (National Public Radio July 24, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=12175714> [accessed on 23rd October, 2011].

²¹ See Alagoa E.J., *A History of the Niger Delta*, Port Harcourt: Onyoma Research Publications, 1972; Alagoa E.J. (ed.), *The land and People of Bayelsa State: Central Niger Delta*, Port Harcourt: Onyoma Research Publications, 1999; William Moore, *History of Itsekiri*, London: Frank Cass & Co. Ltd, 1970; Michael Crowder, *Colonial West Africa*, London, Frank Cass & Co. Ltd, 1978.; Paula Palmer, "Emergency Action: Stop Gas Flaring in Nigeria" (2009) available at <http://www.foei.org/en/media/archive/2009/nigeria-to-stop-companies-flaring-gas> [accessed on 23rd October, 2011]. See Eleanor Kinney and Brian Clark, "Provisions for Health and Health Care in the Constitutions of the Countries of the World" (2004) 37 *Cornell International Law Journal*, 285.

²² Ibid

²³ See section 3 of the Associated Gas Re-Injection Act, Cap. A 25 Laws of Federation of Nigeria, 2004

²⁴ See Nnimmo Bassey "Gas Flaring: Assaulting Communities, Jeopardizing the World" A Paper Presented at the National Environmental Consultation Organized by the Environmental Rights Action in Conjunction with the Federal Ministry of Environment held in Abuja between 10-11 December, 2008.

²⁵ See UNEP, *Environmental Assessment of Ogoniland*, UNEP, 2011, 26-66.

²⁶ Ibid.

²⁷ Environmental Right Action "Gas Flaring in Nigeria: Human Rights, Environment and Economy Monstrosity" Retrieved from http://www.foe.co.uk/resource/reports/gas_flaring_nigeria.pdf [accessed on the 29th April 2012]

health and livelihoods of Delta inhabitants. It is estimated that 66% Nigeria live below the poverty line

The government of Nigeria has been taking series of steps to put an end to gas flaring for some years but the time limit to execute the policies and punish the offender has been repetitively postponed with the most current time limit being December 2012.²⁸ For instance, government response to gas flaring began in 1969 when President Gowon ordered oil companies to end flaring gas and establish a facility to utilize the associated gas within five years. This means that gas flaring was expected to have come to end since 1973. When the oil industries pay a little attention to this requirement, the ends date was shifted to 1979 which could not materialize due to a change in government in 1975.²⁹ In 1979, the Associated Gas Re-Injection Act was passed and it requires oil producing companies to maintain a zero flare by January 1 1984. Also, the date was further shifted to January 1 2008 by President Olusegun Obasanjo upon assuming power in 1999. The time limits have come and pass and once again shifted to December 2012 and at present no one can say when the government will be willing to implement its policies.³⁰ This shows lack of political will and commitment on the part of the government to address the plight of the people of Niger Delta.

B. Oil Spillage

Oil spills is one of the major and noticeable environmental problems in the Niger Delta Region of Nigeria. Oil spills simply denotes leakages of petroleum unto the earth surface. It is a common occurrence in the Niger's oil industry.³¹ The Niger Delta has suffered and still suffering from oil spills, which occur both on land and off shore. Oil spills on land damage crops and lower the productive quality of soil that community relies on for farming.³² Oil in water destroys fisheries and lowers the quality of water that people use for drinking and other domestic activities.³³ The Amnesty Organization in a research conducted in respect of the devastating effects of oil pollution in the Niger Delta found that oil spills usually occurred due to the corrosion of oil pipes, poor infrastructural facilities, and leaks during processing at refineries, human errors and a deliberate vandalism.³⁴ Thus, where oil spills into the water, such water becomes polluted and no longer fit or suitable for cooking, bathing and consumption. This is the same water that people in the Niger Delta rely upon for their daily uses. The use of such water for bathing can lead to series of health problems like body rashes, cancer and even lung problems depending on the level of exposure.

Since the commencement of oil operation in the Niger Delta, there has been no conclusive empirical data of the total percentage of oil spills in the region. For example, between

²⁸ Francis C. Anyim, Cyril Oseloka Ikemefuna and Joy Onyinyechi Ekwoaba, "Conflict and Environmental Challenges Facing the Oil Companies in Nigeria Niger-Delta Region" (2012) Volume 2 No. 3, *International Journal of Business and Management Tomorrow*, 1-9

²⁹ Ibid.

³⁰ Ibid.

³¹ Eregha P.B. and Irughe I.R., "Oil Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects" (2009) Vol.11 No. 4, *Journal of Sustainable Development in Africa*, 160-175; Frynas G.J., "Legal Change in Africa, Evidence from Oil-Related Litigation in Nigeria" (1999) Vol. 43, No. 2, *Journal of African Law*, 128

³² Amnesty international, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Amnesty International Publications, United Kingdom, 2009, 14-17

³³ Ibid.

³⁴ Ibid, 15

1989 and 1994, Shell Petroleum Development Company (SPDC) recorded an average of 221 spills per year, involving a total of 7,350 barrels annually (SPDC, 1995:3). Again, other statistics show that a total of 2,796 oil spills were recorded between 1976 and 1990, leading to the spilling of 2,105,393 barrels of oil (Punch, February 20, 1991:2). In 2006, the United Nations Development Programme proclaimed in their report that a total of 6,817 oil spills occurred between 1976 and 2001 with loss of approximately three million barrels of oil in the region and that and over 70 percent of the spilled oil was not recovered (UNDP, 2006:181). In contrast, the Department of Petroleum Resources recorded the total amount of oil spill to be 5,724 with a loss of approximately 2,571,114 barrels of oil into the environment between 1976-1998. In 2006, a group of independent and oil experts visited the Niger Delta and recorded the total amount of oil spills both on shore and off shore to be 9 to 13 million barrels over the past 50 years. There has not been any report from the Department of Petroleum on the percentage of oil spills that occur between 1999 to date. However, Shell Bp reported a total of 1,100 oil spills with a loss of approximately 295,000 barrels of oil into the environment between 2006 and 2011. The focus here is that the people of Niger Delta have since the beginning of oil operation over five decades ago are being surrounded by human rights violators by the day to day activities of the oil industries. The statistics revealed that in as much as oil activities continues in the Niger Delta without appropriate mechanism to regulate the practices, the devastating effects will be inimical both to the immediate inhabitants and the generations to come. Also, the data is a revelation that the people of Niger Delta have been living a shameful life since the inception of oil operation in their region. Their fundamental right to right is being put at high risk due to the level of devastation done to it. On this note, the African Commission of Human and Peoples' Rights with specific reference to the Ogoniland stated that "pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare."³⁵

Oil spills and gas flaring can cause respiratory disease, cardiovascular disease, chest pain and congestion depending on the level of exposure.³⁶ The act of gas flaring and oil spillage has polluted the atmosphere in the Niger Delta and the air the people in the region breathe smells of oil, gas and other pollutants.³⁷ There are complaints of breathing problems, skin lesions, and other health problems by communities in the Niger Delta.³⁸ In human rights law discourse, a healthy environment is acknowledged as fundamental to the protection of the right to health.³⁹

³⁵ African Commission on Human and Peoples' Right, Decision on Communication of the Social and Economic Rights Action Centre (155/96).

³⁶ Terisa Turner and M.O. Oshare, "Women's Uprisings against the Nigerian Oil Industry," in Terisa Turner and Bryan Ferguson (eds.), *Arise! Ye Mighty People! Gender, Class & Race in Popular Struggles*, Trenton: Africa World, 1994; Kingsley Osadolor, "The Rise of the Women of the Niger Delta," (2002) *World Press Review*, New York, 47.

³⁷ Ibid

³⁸ Amnesty international, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Amnesty International Publications, United Kingdom, 2009, 17-25.

³⁹ Elias Courson, "The Burden of Oil: Social Deprivation and Political Militancy in Gbaramatu Clan, Warri South West LGA, Delta State, Nigeria" United States Institute of Peace, Washington DC, USA, 2007, 1-51; Tony

Virtually no positive steps have been taken on the water quality, food safety or the health consequences of oil pollution in the Niger Delta. Academic and non-governmental sources have continued to query the protection of food affected by oil spills and other pollution.⁴⁰ For instance, the people of Niger Delta for several years have claimed that gas flares gravely damage their quality of life and create a risk to their health.⁴¹ Flares, which persist for 24 hours a day in several areas, pose noise pollution and the communities' source of livelihood continue to be endangered. Oil pollution is said to be responsible for more death per day than other environmental problems in the Niger Delta.⁴² This is due to the contamination of water that people used for drinking and other domestic purposes, resulting into skin rashes and other similar diseases.⁴³

3. The Nigerian Constitution And Issue Of Environmental Protection

The Constitution of the Federal Republic of Nigeria is the supreme law of the land. This has three implications. First is that the constitution is supreme over all other laws. Secondly, all subjects in Nigeria must abide to the dictate of the Constitution. Thirdly, any law that is inconsistent with the constitutional provisions will to the extent of its inconsistency be regarded as null and void and of no effect. So by virtue of this, the constitution has a fundamental role to play in the protection of the environment because of the premium placed on it.⁴⁴ The Constitution of Federal Republic of Nigeria, which came into force on May 29, 1999 specifically makes environmental protection a state objective and indeed provides for it in the chapter two on Fundamental Objectives and Directive Principle of State Policy.⁴⁵ Section 20 expressly contains provision on environmental clause and states as follows:⁴⁶

The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life in Nigeria.

The justification for this is to ensure a healthy environment for Nigerian Citizens. The constitution is the ground norm of which Nigerians protection is to be guaranteed. It is therefore expected that such Constitution should make environmental protection a priority because human rights can only be enjoyed in a healthy and unpolluted environment.⁴⁷ It is argued that the inclusion of environmental clause in the constitution as the supreme law of the land shows the

Tebekaemi (ed.), *The Twelve-Day Revolution*, Benin-City: Umeh Publishers, 1982, 64, 116 & 117; J.O.S Ayomake, *The Ijaw in Warri: A Study In Ethnography*, Benini-City: Mayomi Publishers, 1990, 9

⁴⁰ Alagoa E.J., *A History of the Niger Delta*, Port Harcourt: Onyoma Research Publications, 2005, 46

⁴¹ Sir Alan Burns, *History of Nigeria*, London: Allen & Unwin Ltd, 1969, John Hatch, Nigeria, London: HEB Ltd, 1971; Diepreye Alamiyeseigha, 'Energy, Environment and Disaster: The Niger Delta Experience' being a lecture delivered as Governor of Bayelsa at the International Conference on Energy, Environment and Disaster, Charlotte, North Carolina, U.S.A, July 24, 2005, 6

⁴² Ibid

⁴³ Alagoa E.J., *A History of the Niger Delta*, Port Harcourt: Onyoma Research Publications, 1972; Alagoa E.J. (ed.), *The land and People of Bayelsa State: Central Niger Delta*, Port Harcourt: Onyoma Research Publications, 1999

William Moore, *History of Itsekiri*, London: Frank Cass & Co. Ltd, 1970; Michael Crowder, *Colonial West Africa* London, Frank Cass & Co. Ltd, 1978.

⁴⁴ See the provision of section 1(1)(2) and (3) of the Constitution of Federal Republic of Nigeria 1999 (as amended in 2011)

⁴⁵ See the provisions of the chapter II of the Constitution of the Federal Republic of Nigeria 1999 (as amended in 2011).

⁴⁶ Ibid.

⁴⁷ Ibid.

level of regards placed on the environment.⁴⁸ It is also an indication that the country is environmental conscious because the constitution is a political agreement that should make the environment conducive for its people. In spite of the laudable provision of section 20 in the constitution, the question remains whether an individual or aggrieved person has a right or the *locus* to approach the court to enforce the provision. In answering this question, it is pertinent to examine the provision of section 6(6)(c) of the Constitution which is reproduced below.

The judicial powers vested in accordance with the foregoing provisions of this section shall not extend to any issue or question as to whether except as otherwise provided by this constitution, any act or omission is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this constitution.

It should be stated that the provision of section 20 falls under the fundamental objectives and directive principles of state policy set out in chapter two of the constitution and which by section 6(6)(c) are generally not enforceable. Thus, it serves as a hindrance to the provision of section 6(6)(c) of the Constitution. On this note, Chinonye Obiagwu comments that the provision of states policy of 6(6)(c) serve as an ouster clause which deny the court the power to entertain matters relating to the whole provisions of fundamental objectives and directives principles of states policy for which Section 6(6)(c) is a defeat of purpose. That is, it has essentially defeated the purpose for which section 20 has been included in the constitution.⁴⁹ The Nigerian Court of Appeal has put to rest the judicial implication of the provision of section 6(6)(c) on the justiciability of the general provisions of fundamental objectives and directives principle of state policy in the case of *Okogie (Trustees of Roman Catholic Schools) and other v. Attorney-General, Lagos State*.⁵¹ This case was based and decided on the similar provision of the 1979 Nigerian Constitution. The issue in this case was on the Plaintiffs' fundamental right under section 32(2) of the 1979 Constitution to own, set up and manage private primary and secondary schools for the purpose of imparting ideas and information, and the constitutional responsibility of the Lagos State government to guarantee equal and adequate educational activities at all levels under section 18(1), Chapter II of the 1979 Constitution. The Court of Appeal, while considering the constitutional status of the said Chapter held that the same Constitution makes it clear that no court has jurisdiction to pronounce on any decision as to whether any organ of government has acted or is acting in conformity with the Fundamental Objectives and Directive Principles of State Policy. The effect of this is that the whole provisions of chapter II of the Constitution inclusive of section which deals with environmental protection are not justiciable in the law court. It is therefore concluded that the Nigerian Constitution lacks express provision for the protection of a right to healthful environment.

However, in some jurisdiction like India, the court has extensively interpreted right to life, which is the same provision in section 33 of the Nigerian Constitution to include right to a healthful environment. For instance, in the case of *Charan Lal Sahu v Union of India*,⁵² One of the issues for determination was whether the Bhopal Gas Leak Disaster caused by substantial escape of lethal gas from the MIC Storage tank at the Bhopal plant where thousands of people

⁴⁸ See Abdulkadir B.A., "The Right to a Healthful Environment in Nigeria: A Review of Alternative Pathways to Environmental Justice in Nigeria" (2014), 3(1) Journal of Sustainable Development Law and Policy, 118-131

⁴⁹ Obiagwu C *Promoting Economic, Social and Cultural Rights Using Domestic Mechanisms* paper presented at a Human Rights Seminar by LEDAP held in June 2005 at Owerri, Nigeria

⁵⁰ Ibid.

⁵¹ (1981) 2 NCLR 337.

⁵² [1990] AIR SC 1480

suffered injuries and claimed a tragic death of about 3,000 people constitutes a breach of right to life guaranteed under article 21 of the Constitution. The Supreme Court of India in its affirmative judgment held that the right to life under article 21 of the Indian Constitution has been breached because it has exposed the citizens to imminent of danger to their existence. The court further held that the right to life also includes the right to a healthy environment and right to enjoy a polluted free air and water. Also, in the case of *Subash Kumar v State of Bihar*,⁵³ the Indian Supreme Court held that the right to life stated under Article 21 of the Constitution includes the right to enjoy a polluted free water and freedom from other activities likely to affect life.

The above two decisions are to the effect that even where there is no express provision in the Constitution on the right to a healthful environment, the provisions of fundamental rights can go a long way to ensure a healthy environment. The Nigerian Federal High Court has taken a similar position with respect to a particular case instituted by the aggrieved party in the Niger Delta. This will be focus of discussion in the next part of this paper.

4. The Right To Health

There is no specific provision in the Nigerian Constitution on the right to health. However, the African Charter on Human and Peoples' Rights, which is justiciable in Nigeria in its Article 16 provides for the protection of the right to health. It states:⁵⁴

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

The provision of paragraph 16(2) imposes a positive obligation on the state to take measure necessary to ensure adequate protection of peoples' health. Although, this is an economic right, which is not generally enforceable under the Nigerian Law. However, the right to life has been interpreted broadly to include the right to health. For instance, in the case of *Murli S. Deora .v. Union of India & Ors*,⁵⁵ the issue was whether smoking in public places is a violation of the right to life. The court held that the right to life guaranteed under article 21 of the Indian Constitution includes the right to live in an environment free of activities likely to affect the health of the people. The court in this case held in favour of the petitioner that smoking is harmful to health and may injure the health of smokers but there is no reason that the health of non-smokers should also be injuriously affected and that non-smokers should not be compelled to be helpless victims of air pollution. Also, in the Nigeria case of *Johnah Gbemre v Shell Petroleum Development Company of Nigeria Limited*,⁵⁶ the Federal High Court held that the act of gas flaring in Iwherokan Community, a community in the Niger Delta of Nigeria greatly violated the right to life as stated in section 33(1) of the Constitution of Federal Republic of Nigeria and article 16 of the African Charter on Human and Peoples Rights (Ratification and

⁵³ [1991]AIR SC 420; [1991] 1 SCC 598

⁵⁴ See the African Charter on Human and Peoples' Rights, 1982

⁵⁵ [2002] AIR SC 40

⁵⁶ Suit No. FHC/CS/B/153/2005 [Unreported]

Enforcement) Act that guaranteed the right to health. The implication of this two decisions is that the right to health can be secured using other justiciable provision under the Nigerian law. In spite of our age, sexual category, socio-economic or ethnic background, we deem our health to be our most primary and indispensable asset. Ill health, on the other hand, can keep us from going to school or to work, from taking care of our family household tasks or from involving fully in the activities of our society.⁵⁷ The right to health is a basic part of our human rights and of our accepting of a life in dignity. The right to the enjoyment of the maximum achievable standard of physical, mental and social well-being and not merely the absence of disease or infirmity.⁵⁸ The preamble of the 1946 Constitution of the World Health Organization (WHO), whose introduction defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity" is one of the further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."⁵⁹

We often relate the right to health to the construction of hospitals. This is correct, but the right to health is far more than that. It includes a broad series of factors that can help us leave a healthy life.⁶⁰ The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights, refers to these factors as the "underlying determinants of health".⁶¹ They include: Safe drinking water and adequate sanitation; Safe food; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and information and Gender equality.⁶² The right to health also implies prevention, and control of diseases and any act or activities likely to cause diseases or ill health.

Human rights are interdependent, inseparable and interconnected. This suggests that violating the right to health may frequently prejudice the enjoyment of other human rights, such as the rights to education or work, and vice versa.⁶³ The significance given to the "underlying determinants of health", that is, the features and circumstances which protect and support the right to health beyond health services demonstrates that the right to health is dependent on, and serves as a factor to the realization of numerous human rights.⁶⁴ These include the rights to food, to water, to adequate housing, to an adequate standard of living, to privacy, to access to information, to freedom from discrimination and the right to benefit from scientific progress and

⁵⁷ Gruskin S, Loff B, "Do Human Rights Have a Role in Public Health Work? (2002) *The Lancet*, 360:1880 quoted in Judith Asher, "The Right to Health: A Resource Manual to NGOs" London, Commonwealth Medical Trust, 2004

Retrieved from <http://shr.laas.org/manuals/health/RTH.pdf> [accessed on 24th November, 2011]

⁵⁸ Similar provisions is contained in the World Health Organization Basic Documents Forty-Fifth Amendments Edition adopted by the Fifty first World Health Assembly, 2006 available at http://www.who.int/governance/eb/who_constitution_en.pdf [accessed on 26th November, 2011]

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ See the Committee on Economic, Social and Cultural Rights, General Comments No. 14 (2000) on the Right to Highest Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, Para 15.

⁶² Ibid

⁶³ Lain Byrne, "Enforcing the Right to Health: Innovative Lessons from Domestic Courts" Retrieved from http://www.swisshumanrightsbook.com/SHRB/shrb_03_files/37_453_Byrne.pdf [accessed 24th November, 2011]

⁶⁴ Ibid.

its applications and to participation. The UN Committee on realization and enforcement of the International Covenant on Economic, Social and Cultural Rights has elucidated that⁶⁵ The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as a healthy environment

Today, and ever since the inception of oil operations in the Niger Delta Region of Nigeria, the people of the region have been experiencing serious and dangerous environmental activities which has put the life of the people in danger and the right to health which includes a healthy environment has been negatively affected.⁶⁶ The water system is contaminated and numerous people still rely on the streams and creeks for drinking water.⁶⁷ In spite of the peoples' agitations concerning the health repercussions of drinking polluted water, no methodical monitoring of water quality are done.⁶⁸ At time, the polluting companies offer emergency water supplies to communities when an oil spill happens but this does not meet the needs of those beyond the immediate spill locality.⁶⁹ The Amnesty International with specific reference to the Niger Delta quoted a medical expert to have said:⁷⁰

While there is no direct evidence of impacts of gas flares on pregnant women, they are more likely to be vulnerable to any airborne contaminants during this period and exposure to oil-related contamination have been shown to be linked to maternal outcomes such as spontaneous abortion in other settings.

The government of Nigeria continues to front humanitarian assistance to other jurisdictions experiencing environmental disaster while abandoning its own immediate and most paramount environment. In fact, the African Commission found Nigeria to be in violation of this duty and stated that: "pollution and environmental degradation in Ogoniland in the Niger Delta were at a level that was humanly unacceptable and has made living in the Ogoniland a nightmare."⁷¹ One need to add to this statement of the African Commission that living is not only made practically impossible in Ogoniland but cut across the entire area popularly known as Niger Delta of Nigeria.⁷²

⁶⁵ See the Committee on Economic, Social and Cultural Rights, General Comments No. 14 (2000) on the Right to Highest Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4, Para 15.

⁶⁶ Ill health is linked to contact with perilous water, lack of clean water, lack of cleanliness, and poor running of water resources. Nearly all diarrhoeal disease in the world is attributable to unclean water, sanitation and hygiene. In 2002, diarrhoea attributable to these three features resulted into approximately 2.7 per cent of deaths (1.5 million) worldwide

⁶⁷ For more detail view see, Amnesty international, "Nigeria: Petroleum, Pollution and Poverty in the Niger Delta" Amnesty international, London, 35

⁶⁸ *ibid*

⁶⁹ *Ibid.*

⁷⁰ Amnesty international, "Nigeria: Petroleum, Pollution and Poverty in the Niger Delta" Amnesty international, London, 36.

⁷¹ African commission on Human and Peoples' Rights, Decision on Communication of the Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), Para 70. Decision of the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001.

⁷² Pan American Health Organization, "Human Rights and Health: Indigenous Peoples" Retrieved from http://www.paho.org/englis/h/dd/pub/10069_IndigPeople.pdf [accessed on 24th November, 2011]. Vera Coelho and Alex Shankland, "Making the Right to Health a Reality for Brazil's Indigenous Peoples. Innovation, Decentralization and Equity" http://www.medicc.org/mediccreview/articles/mr_211.pdf [accessed on 24th November, 2013]

4. Conclusion

If the preposition that health is wealth has a philosophical basis, there is the need to look at the health dimension of environmental challenges. In the Niger Delta, oil spillage and gas flaring are activities that culminated in the pollution of the environment to the detriment of the health of the people. Human health is primary for sustainable development because without health, human beings would not be competent to engage in development, resist poverty and care for their environment. The vital idea of protecting the environment is to guarantee the health of the populace. This was fittingly summarized in Principle 1 of Rio Declaration on Environment and Development when it stated that: "human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature." Thus, health is a determinant factor to human and society development and as such it must be protected from activities likely to endanger its realization. Most environmental challenges in the Niger Delta occur owing to lack of prior environmental impact assessment of project. The reason is that where impact assessment has been carried out, the possible impacts would have been noted and remedial measures would have been put in place to minimize the adverse effects. It is therefore imperative for the government to embark on an immediate environmental audit of activities of oil and gas companies in the Niger Delta to ensure that their operation comply with the standard of good oil field practices. It must also ensure that subsequent project embark on mandatory EIA to ensure sustainable development and promote human rights.