

**SURVIVING THE ARMAGEDDON: THE LAW AS ELIXIR FOR
ENVIRONMENTAL CRIMES IN NIGERIA'S OIL INDUSTRY**

**An Inaugural Lecture delivered at
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by

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14th Inaugural Lecture

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The Vice Chancellor,
The Honorable Members of the University Governing Council,
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The Registrar,
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The Dean of Faculty of Law,
The Dean of Postgraduate School, Other Faculties and Student Affairs,
Directors of Centres and Units,
The Heads of Department,
Professors and Distinguished Members of Senate,
My Lords Temporal and Spiritual,
Your Royal Highnesses,
My Academic Colleagues, the Congregation, and other staff of our University,
Members of my Family,
Special Guests, Well Wishers and Friends of the University,
Gentlemen of the Press,
Great AAUA Students,
Distinguished Ladies and Gentlemen.

Preamble

Mr. Vice Chancellor Sir, it is with humility and profound gratitude that I give honour and glory to God Almighty, the Creator of the universe and the All-knowing, for giving me this special privilege and opportunity to stand before this distinguished audience to deliver the 14th Inaugural Lecture of the Adekunle Ajasin University, Akungba-Akoko. Mr. Vice Chancellor, Sir, 14th as a number is symbolic as it stands for double perfection and represents salvation and deliverance (Exodus 12: 6; Esther 9:15; Ezekiel 40:1; Acts 27:27). This Inaugural Lecture testifies to double perfection by being the first from the Faculty of Law and the first from the field of Environmental Law. The most significant use of the number 14 is found in the date Nissan 14: on this date occurred the deliverance of Israel from the bondage of Egypt as well as the deliverance of the first born from death

by means of the blood of the Lamb sprinkled on the doorsteps. Indeed, all generations from Abraham to David are 14 generations and from David to the arrival of Jesus Christ were 14 generations. Delivering this 14th Inaugural Lecture on this complex environmental problem is apt and it is a confirmation that the Almighty God will surely deliver the oil producing communities in Nigeria from the human and ecological Armageddon. The number 14 as stated above thus represents a turning point, a total departure from the old and a new beginning. This 14th Inaugural Lecture therefore plants a major seed towards the future deliverance of the Niger Delta people from the environmental Armageddon to which the government and Multinational Corporations (MNCs) have subjected them to.

The journey of today's event started in 1998 when I was appointed as an Assistant Lecturer in the Faculty of Law at the then Ondo State University, Ado-Ekiti, with Prof. 'Yomi Dinakin as the Dean of the Faculty. Suffice it to say that my intention then was just to satisfy my immediate elder brother, Dr. Olubisi Oluduro who encouraged me to take up a career in the academia. On receiving the appointment letter, I saw that my monthly salary was only ₦4,000 as against the ₦10,000 which I was already receiving in the Law Firm I was working with in Lagos. This development further weakened my interest in the academic. However, soon after my appointment, I later found lecturing to be stimulating, interesting, alluring and challenging. Thank you, Dr. Olubisi Oluduro for the encouragement and push to hang on when I felt like quitting lecturing at the early stage of my career.

Mr. Vice Chancellor Sir, many professors have in the course of delivering their inaugural lectures stressed the importance of this exercise, thus, I cannot but follow this conventional trend. Inaugural lecture, a time-honoured tradition of high significance in an academic staff's career at the University, has been described as an intellectual enquiry into one or more identifiable problems of the society in which a scholar may be operating; and a kind of debt/academic obligation owed a University Community by a Professor which ought to be discharged before a final disengagement from the Institution. It is a contractual obligation which should be performed by a professor. The obligation of a professor to deliver an inaugural lecture vests the university with a corresponding right to demand that the professor delivers his/her inaugural lecture. The relationship between a university and her

professor can consequently be likened to that of a creditor and debtor with super-added obligations. Therefore, when a university requests a professor to deliver an inaugural lecture, it is legitimately asking him/her to furnish consideration for the appointment, and a professor who is able to deliver his inaugural lecture is simply repaying a debt owed. This debt can never be too early, too late or time barred for repayment; and this evidently explains the recent harvest of inaugural lectures at the Adekunle Ajasin University under the leadership of Professor Igbekele Amos Ajibefun as the Vice-Chancellor. This harvest of inaugural lectures is a testimony to his towering figure as a great scholar. I appreciate my Vice-Chancellor, Professor Igbekele Amos Ajibefun for the opportunity provided for the timely repayment of my debt to my University. I have chosen the topic of today in my research area to address the burning issue of environmental crimes in the Nigerian oil industry on how law could provide the desired panacea for countering the menace.

I. Introduction

Nigeria, one of the world's largest oil producers, is blessed with abundant human and natural resources, including oil which forms the main sources of revenue to the country. This makes the Niger Delta region which is the oil enclave, very strategic to the nation's economy. The Niger Delta consists of nine States (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers), with 185 local government areas. The Niger Delta region is home to about 31 million people and is one of the ten most important wetland and coastal marine ecosystems in the world. The region is of immense economic importance in Nigeria. Notwithstanding its abundant natural resources, the Niger Delta region presents horrendous examples of environmental degradation caused by the activities of the oil MNCs operating in the region right from the discovery of oil in commercial quantity in the area in 1956 at Oloibiri, now in Bayelsa State. Some of the MNCs operating joint-venture partnerships with the Nigerian Government include Royal Dutch Shell, Chevron-Texaco, Exxon-Mobil, Agip and Elf. Crimes committed against the environment have become so devastating and more damaging as a result of the uncontrolled exploration and exploitation of natural resources and other unsustainable activities that pollute the air, water and soil. Nowhere has the world seen such massive environmental cataclysm as is being wreaked on the oil

producing communities in Nigeria. The much widely publicised 2010 BP Gulf of Mexico spill in the USA was no doubt a major case of environmental pollution with debilitating effects on the local communities in the area. However, a much less publicised, but, by far, worse experience of environmental degradation has been ongoing in the Niger Delta region of Nigeria for over four decades as exemplified by the experiences of several communities in the region including Ogoniland. The situation has not substantially changed today. The violators are either not detected or not made to face the wrath of the law.

II. Clarification of Key Concepts (Environment, Crime, Environmental Crime):

Mr. Vice Chancellor, Sir, it is important to clarify the key concepts guiding our discourse, namely “environment,” “crime”, “Armageddon” and “environmental crime”, so as to give better understanding that could help in appreciating the relationships between crime and environment and how the tragedy of environmental crime could contribute to ecological and human Armageddon in Nigeria.

Environment: There is lack of certainty as to what the term ‘environment’ entails because of the difficulty involved in identifying and restricting the scope of such an ambiguous term. Little wonder, most treaties, declarations, codes of conduct, guidelines, etc. avoid defining it directly, because, as Caldwell remarks ‘it is a term that everyone understands and no one is able to define’. Also, it has been observed that environment may encompass everything, and almost everything that takes place in the society can implicate environment. In *Pedro Flores y Otros v. Corporacion del Cobre*, the Chilean Supreme Court described ‘the environment’ to encompass: ‘... everything which naturally surrounds us and that permits the development of life ...’ Section 37 of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act states that: “Environment” includes water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them.

What can be discerned from the above is that inevitably, any definition of the environment would have the quality of meaning that we want it to mean.

Armageddon: Biblically, Armageddon is the symbolic place of “the war of the great day of God the Almighty,” His war against the wicked. In Revelation 11: 18, the Bible foretold a time when man would ‘ruin the earth’; hence, the war is not to ruin the earth, but to save the earth from ruin by humankind. Man is already ruining and destroying the planet Earth by his eco-profit activities which is pushing the earth beyond its natural cycles. In this lecture, the word implies an event of great destruction. Hence, environmental Armageddon, as I will use the term, refers to any environment - local or global, national or regional, which is under assault, siege or war of any type which contributes to its destruction. Ecological Armageddon implies a universal and species-wide destruction; an ecological terrorism or annihilation; and the collapse or destruction of the ecosystem due to environmental degradation or pollution resulting in the death of nature and the extinction of humanity.

Crimes: It is often difficult to define a crime for all purposes. However, crimes may be taken to mean acts forbidden by a legislative body for having the potency to affect the security or well-being of the public generally and punishable at the instance of the State. To constitute a crime, there must be: (a) some wrong-doing, or indeed a wrongful situation; (b) ‘a legal wrong’; (c) a wrong where the State in whichever guise intervenes to punish the wrongdoer; and (d) a remedy for the wrong in terms of punishment.

The word, crime, is often used interchangeably with offence in the discussion of criminal law. Thus, the reference to crime is invariably a reference to offence. It is in this light that Section 2 of the Criminal Code defines offence as an act or omission which renders the person doing the act or making the omission liable to punishment under the law, or under any other law. The Nigerian court in *Odon v. Amange & anor* while giving judicial impetus to the definition of crime held that: “Put in simple language, a crime is an offence which is punished by law or activities that involve breaking the law or prohibited by the law.”

Environmental Crimes:

There has not been any clear definition of environmental crimes in many countries and this has resulted in the indiscriminate use of the term, thereby contributing to

confusion as to its meaning. As observed by Skinnider, while some have narrowly interpreted it to cover only activities prohibited by current criminal law, others suggest it should also include any illegal activities or formal rule-breaking, whatever form the rule might be (including administrative and regulatory sanctions); and some further suggest that it should include activities which are “lawful but awful” since many environmental disruptions are actually legal and take place with the consent of society. Hence, much of these definitions depend upon who is defining the harm and the criteria used in evaluating the nature or character of the activities being described. From the perspective of criminal law, environmental crimes are described as contraventions of pre-existing laws sanctioning illegal conduct with criminal penalties, typically based on environmental management regulations.

III. Environmental Crimes in the Nigerian Oil Industry

Mr. Vice Chancellor, Sir, at every stages of the production activity in the oil industry, business activities are generated, employments are created and huge investments are brought into the country. It is worth noting that in the process of oil exploitation and production, several environmental harms are caused to the environment and the people some of which constitute environmental crimes. Among the several reasons why companies commit environmental crimes are ignorance of its environmental obligations and slapdash treatment of staff, equipment and infrastructure. This is usually done with the knowledge that the act is illegal and will result in environmental harm.

Prior to the formation of the *Federal Environmental Protection Agency* (FEPA) in 1988, Nigeria responded to emergency situations which had or could have serious impact on the environment on an *ad hoc* basis. Environmental legislations in existence at the time were enacted in direct response to problems associated with the newly industrializing economy and the discovery and processing of oil. Post-1988, witnessed increased awareness of the damaging and irreversible consequences of pollution and the need to eliminate it in its various forms. This led to the attention given to the protection of environment and the sanctions provided for non-compliance as manifested in the environmental laws passed by the legislature post-1988. In addition to administrative and civil penalties, criminal

sanctions, including the likelihood of imprisonment for individual offenders, were included because of the recognition that some violators would not be deterred by civil or administrative penalties, and that some violations would be so grave that civil or administrative penalties would not serve as adequate punishment. Despite the above provisions to protect the environment, these laws have not achieved their intended objectives as they have not been diligently and faithfully enforced.

IV. Prioritizing Nature

Mr. Vice Chancellor, Sir, environmental caretaking from a biblical perspective is stewardship and takes its root from Genesis: 1: 28 wherein God told the people to “*fill the earth and subdue it*”. This has been (mis)interpreted to mean that man is superior to nature and so has the right to do whatever he wish to the Earth, hence the roots of modern ecological problems in the form of unsustainable and unrestrained exploitation of natural resource use. Attempt by man to conquer the earth and the creatures in it have resulted in the destruction of the environment and the entire ecosystem. However, this reasoning flies in the face of basic principles of proper ecological management. Genesis 1: 28 implies that the Earth is to be ‘held in trust’, and it is humans that have the responsibility to provide the needed stewardship to care for and preserve nature by protecting the land and natural resources against unsustainable exploitation and abuse. The Islamic perspective on environmental protection also gave credence on natural resource conservation and sustainable development. The Holy Quran states that: “*It is He who has appointed you viceroys in the earth ... that He may try you in what He has given you.*” (Surah 6:165). Elsewhere, it provides that: ““*And do not commit abuse on the earth, spreading corruption.*” (Qur’an, 2:60).

From the Islamic teachings and Prophet traditions, it can be asserted that as viceroys of Allah on this earth, Allah exhorts man to utilize natural resources in a sustainable manner, be keepers of all creation, including soil, air, water, animals and trees; and to build and maintain a healthy and clean environment which is devoid of any source of pollution and misuse. It thus negates the concept of ownership, domination and abuse to which the Earth had continued to be subjected to by man under the pretext of biblical sanction. It makes better sense to move from legal paradigm centred on rights to one centred on responsibilities by

committing to social goals and stewardship of nature and understanding rights in conjunction with responsibilities owed to nature as well as future generations. That is, embracing the idea of stewardship of nature that takes into consideration both the nature itself and the future generations. As environmental steward, man must realise that the earth is not only his common heritage but also the source of life. We undermine the very basis of our own lives and the lives of our future generations by failing to care for the environment. Thus, environmental protection is not an ethical or a moral issue, it is a survival issue. Ecological violence is an abuse of creation.

Mr. Vice Chancellor, Sir, in recognition of the need to promote harmony with nature and achieve sustainable development, a number of countries have recognized the rights of nature. Bolivia, Ecuador and New Zealand, have been taking measures towards institutionalizing and recognising ecosystems rights and the rights of nature. Ecuador became the first country in the world to recognize nature rights (*Pachamama*) in 2009 in its new Constitution. Bolivia also grants rights to nature in the context of the promotion of sustainable development. Similarly, some countries including Mexico, New Zealand and dozens of municipalities in the United States have also enacted laws granting rights to nature. For example, in March 2017, the New Zealand Parliament passed into law the bill recognising the Whanganui River, the Country's third-longest river, in North Island, as a living entity to become the first in the world to be granted the same legal rights as a person with their rights defended by stewardship bodies led by Maori. The courts in some of these jurisdictions have also given groundbreaking decisions concerning environmental law, human rights and the rights of nature. On 5 April 2018, the Supreme Court of Colombia delivered its opinion advancing the rights of nature in a case brought by a group of 25 young people where they alleged that the government violated their rights- to life, to health, and to enjoy a healthy environment- by failing to control deforestation in the Amazon region, thus contributing to environmental degradation and climate change. The Court held that, "for the sake of protecting this vital ecosystem for the future of the planet," it would "recognize the Colombian Amazon as an entity, *subject of rights*, and beneficiary of the protection, conservation, maintenance and restoration" that national and local governments are obligated to provide under Colombia's

Constitution. This decision is significant as it will go a long way in addressing the problem of deforestation and climate change besetting the country.

The inclusion of nature in the paradigm of rights such as the granting the rivers the same rights as humans is revolutionary and will help to protect them from further pollution as complaints can be filed under the rivers' names with the officials acting as their legal custodians. These are progressive developments premised on the 'paradigms of stewardship or trusteeship' as opposed to the concept of 'ownership'.

V. Victims of Environmental Crimes

Generally speaking, anyone or anything harmed by environmental disruptions may be seen as a victim. Criminologists and victimologists using an expansive definition of environmental crime categorized victims as including: individuals, communities (indigenous, farming, etc); non-human species; the environment (local and global) and future generations. For Williams, “environmental victims’ are: those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or omission.” We shall now briefly discuss some of the victims of environmental crimes.

a. Environment: Environment, indeed, is one of the victims. It focuses on how the illegal and criminal behavior in the form of unsustainable exploitation harms the biodiversity and ecological integrity of the planet rather than human beings. Sometime, the harms caused could be irreversible, such as extinction of species, destruction of natural landscapes, climate change, as well as harms to humans.

b. Individuals: Individuals may be negatively affected by environmental harm in the form pollution of air, water and land. This harm may impact on individual’s health and quality of life. It may result in financial loss arising from loss of his real or personal property; health risks such as cancer, heart disease, respiratory disease, birth defects and genetic mutations, miscarriages, lowered sperm count, and

sterility; emotional and psychological grief, loss of quality of their environment, among others.

c. Communities: The communities collectively can also be affected by the same harm experienced by individuals. The communities can suffer financial loss, increased health risks and loss of quality of their environment. They may suffer economic loss particularly where the community is one that depends on waters that are polluted for business and employment, fish breeding areas that are harmed, crops that are polluted or environments visited by tourists that are harmed. The culture, traditions and beliefs of the community may be lost, destroyed or eroded as a result of environmental damage which may lead to loss of identity. Thus, environmental offences that destroyed the environment of the community also harm the community including their sense of place, their relationship with the environment and their use and enjoyment of it.

d. Future Generations: The future generations as potential victims of environmental crimes is based on the principle of inter-generational equity: “The present generation has a right to use and enjoy the resources of the Earth but is under an obligation to take into account the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of humankind...” The loss of species, populations or ecological communities or the loss of natural or cultural heritage impoverishes future generations; and the ‘environmental harm may be chronic, deferred or cumulative and hence suffered by future generations.’ The environmental harm caused may require remediation of contaminated land and restoration of habitat of species, populations and ecological communities which may take years. Hence, the burden and the cost of remediation is passed from the present generations to future generations.

VI. Armageddon in the Niger Delta

Mr. Vice Chancellor, Sir, the ecological situation in the Niger Delta depicted by endemic water shortages; spate of oil spills on land and water, global warming and climate change; alarming reductions in biodiversity as species disappear or are threatened by extinction; depletion of fish stock, toxic and hazardous waste

substances, deforestation, all of which are negatively impacting on human, animal and plant life, and the like; is nothing but environmental catastrophe, showing that the ecological Armageddon is already a reality in Nigeria. The once Niger Delta ‘ecosystem of amazing richness, amazing biodiversity, amazing biological activity’ have been transformed into a ‘sort of Armageddon of blackness’ as a result of the oil exploration activities by the MNCs. The continuing human impact would no doubt end the planet’s ability to support human life, hence ecocide - an ecological Armageddon.

We shall now examine some of the environmental impacts of the activities of the MNCs in the form of oil spillages and gas flaring in the Niger Delta.

Oil Spillage: Environmental pollution as a result of oil spillage frequently occurs in the Niger Delta region. The causes of oil spillage in the region include: corrosion of aging facilities (mainly pipelines/flowlines), leading to leaks; operational error (equipment failure, engineering and human error); blow-out of oil wells; failure along pump discharge manifolds; hose failures on tanker loading systems; tank overflow due to excess pressure; and sabotage. Evidence abound that incidence of oil spills in the region, including the barrels spilled, has continued to be on the increase. In 1999, the Constitutional Rights Project, a non-governmental Organisation pointed out that “recent records show that an average of three *major oil spills* are recorded in the Niger Delta every month”.

Table 1
Oil Spills recorded in the Niger Delta between 1976-1998

Year	Number of Spills	Volume in barrels of oil
1976	128	26,157
1977	104	32,879
1978	154	489,295
1979	157	694,117
1980	241	600,511
1981	238	42,723
1982	257	42,841
1983	173	48,351
1984	151	40,209
1985	187	11,877
1986	155	12,905
1987	129	31,866
1988	208	9,172
1989	195	7,628
1990	160	14,941
1991	201	106,828
1992	367	51,132
1993	428	9,752
1994	515	30,283
1995	417	63,677
1996	430	46,353
1997	339	59,272
1998	390	98,272
Total	5,724	2,571,114

Source: Nigerian Department of Petroleum Resources (DPR), cited in Nnimmo Bassey, 2013

Indeed, in 2009, the Nigerian National Oil Spill Detection and Response Agency (NOSDRA) revealed that 2,122 oil spill incidents were recorded between 2006 and

2009. In 2016, Amnesty International reported that SPDC's operations in Nigeria's Niger Delta region in 2015 alone had resulted in about 130 oil spills. These figures are quite alarming, particularly the oil pollution on both water and soil thereby destroying vast areas of land for fishing, forestry, and agricultural activities. Evidence of environmental Armageddon is conspicuous throughout the Niger Delta.

Gas Flaring: This is one of the most hazardous aspects of oil exploration activities in the Niger Delta region and it concerns the flaring of associated gas. An estimated 168 billion cubic metres of natural gas is flared yearly worldwide and 13 percent of this is flared in Nigeria (at about 23 billion cubic metres per year); and the nation has lost about \$72bn in revenues for the period 1970-2006 or about \$2.5bn annually. Unfortunately, most of the flaring sites are located within human settlements areas which accounts for its damaging effects in the region. In the small village of Orugbiri, which is 'a small settlement not larger than 100 metres in length, two gas flaring sites exists therein,' in contravention of the rule that flare sites must be located far away from communities to avoid the hazardous effect of gas flaring to the health of the people. Shell and Agip still flare gas day and night, less than 500 metres from the residents of the local inhabitants in Obigbo and in Rumuola Road, Port Harcourt respectively. Even the flare sites that are located outside human settlement areas, that is, in the farmlands are not less destructive. The local population, mostly comprised of subsistent farmers, hunters and fishermen, are reporting lower yields due in part to the consequences of climate change occasioned by incessant gas flaring in the region. Heat containing toxic mix of chemicals from gas flares 'kills vegetation around the flare area, destroys mangrove swamps and salt marsh, suppresses the growth and flowering of some plants, induces soil degradation, and diminishes agricultural production.' The bright light from the flares disturbs the wildlife and this forces them to migrate, while the acid rain contributes to the pollution of water bodies thereby affecting aquatic life. Also, the air pollution from gas flares contaminates the foodstuff produced and/or marketed locally. For instance, kpokpo garri and fish routinely spread next to flare sites to be dried by the heat are often poisoned and harmful to human health. Ironically, the oil-companies aver that the heat produced in their flare sites serve an economic benefit as the inhabitants use them to dry their

foodstuff despite the obvious harmful consequences. These night lights from the gas flaring in these communities highlight one of the biggest challenges of the 21st Century: **climate change!** Indeed, the entire Niger Delta region - inhabitants and environment - are at risk of rising sea levels from warming temperatures as a result of global warming caused by gas flaring.

Images of Oil Exploration and Environmental Armageddon in Nigeria



Oil Spill Shell facility at Ogoni community in Rivers State. Photo ERA/FoEN 2004



Iwherekhan women of Delta State using gas flaring to dry their foods at Shell flaring site. Photo, ERA/FoEN 2008



Drinking water source polluted by an oil spill from a pipeline (Amnesty International, 2009)



Farmland in the Niger Delta community impacted by oil spillage (Ogwu, 2011)



Effects of Oil Spill at Shell facility in Ikarama community in Bayelsa State.

Photo by ERA 2008



Bomadi, Delta State: Effects of oil spillage from Shell pipeline 7 weeks after

Source:

Tuodolo, 2008



Gas Flaring at Shell site in Ubeji community, Warri in Delta State, 2011



PHOTO: ED KASHI; FROM 'WHAT MATTERS' BY DAVID ELLIOT COHEN, STERLING PUBLISHING, 2008

Oil pipelines in a community of Okrika (Circles of Blue, 2009)

These images clearly show that the massively destructive crude oil extraction in the Niger Delta region has effectively uprooted the people from the soil, polluted their waters and poisoned their air. The ongoing situation in the Niger Delta is a glaring example of human and ecological Armageddon! In the face of these ecological woes, the MNCs and the Nigerian government continue to reap profits, while the masses of the people in the oil region and beyond continue to bear the externalised costs and the attendant misery.

VII. Human Rights Impacts of Environmental Crimes

Mr. Vice Chancellor, Sir, environmental harm such as pollution, deforestation, exploitation of natural resources or climate change has the potential to impact on the communities and individual enjoyment of their rights such as the right to life, right to health, right to housing, right to an adequate standard of living, the right to self-determination, right to food. It can be asserted that a healthy environment is a necessary precondition for the promotion and enjoyment of several recognised rights. Thus, whenever environmental crimes are committed, human rights are massively and severely violated. We shall now consider few of the human rights that are impacted by environmental crimes.

i. Life: The right to life is not limited to protection against termination of life. The U.N. Committee on Civil and Political Rights has noted that the right to life has been too often narrowly interpreted and cannot properly be understood in a restrictive manner. It covers any activities whose effects may cause danger to life, and as such, serious environmental harm will have far reaching effect on the lives of the people exposed to such harms. In *Shell v. Enock*, part of the claim was that five children had died as a result of drinking oil-polluted water. In 2008, the Economist reported that ‘life expectancy, once just below 70 years in the Niger Delta, is now around 45’ far below the national life expectancy which hovers above 50 years. Gas flaring and oil pollution produce serious harm to the lives of individuals that justify been classified as environmental crimes. The apocalypses presence of these noxious chemicals in the atmosphere in Nigeria has not propelled the expected crescendo in environmental governance particularly in the control of gas emission.

ii. Health: The impact of pollution is extremely dangerous to human health. It has been observed that oil production releases into the environment a toxic mixture of gases and coated carbon particles which make up a deadly cocktail of carcinogens and particulate matter that lodges in the lungs which short-term exposure can aggravate asthma and coronary artery disease, with the long-term exposure leading to other problems, including cancers and skin diseases. Each flaming pillar of gas is estimated to contain over 250 toxins and these flames also contribute to greenhouse gases. The toxins permeate the soil, the water, and the streams, thus causing retardation to crops and contaminating the water residents need to drink and fish from in order to live. It also destroys rainforests and causes harm to the environment upon which all life depend thereby constituting a gross violation of the residents' right to life because the harms impair their right to health. In a study carried out in 2005 by the Environmental Rights Action and Climate Change Justice Programme, to assess the harm done by the toxic cocktail of pollutants, including benzene and dioxins, produced by gas flaring, it estimates that in Bayelsa State alone, flaring is likely to cause 49 premature deaths, 4,960 child respiratory illnesses among children, 120,000 asthma attacks, and 8 additional cases of cancer each year.

All these are few of the several common diseases experienced in the Niger Delta. They violate various international human rights instrument containing the right to health to which Nigeria is a signatory.

In *Social and Economic Rights Action Center (SERAC) and Anor v. Nigeria*, heard by the African Commission on Human and Peoples' Rights, SERAC and CESR sued the Nigerian government on behalf of the Ogoni people that the widespread contamination of soil, water and air and the destruction of homes were caused by oil production and government security forces. The Commission found that the Nigerian government violated various provisions of the African Charter including article 24 on the right of peoples to a satisfactory environment. The decision of the Commission reinforces the fact that environmental degradation in the form of pollution has implication for the enjoyment of other rights, to wit; right to life, health, family, property, satisfactory environment, housing, food etc.

In *SERAP v Federal Republic of Nigeria*, the plaintiff, the Socio-Economic Rights and Accountability Project (SERAP), an NGO, alleged violation by the defendants of the rights to health, adequate standard of living and rights to economic and social development of the people of Niger Delta and the failure of the defendants to enforce laws and regulations to protect the environment and prevent pollution. They noted that despite all the laws Nigerian government has adopted and all the agencies it has created, it failed to point out a single action that has been taken in recent years to seriously and diligently hold accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region. It held that it is precisely this omission to act, to prevent damage to the environment and to make accountable the offenders, who feel free to carry on their harmful activities, with clear expectation of impunity, that characterises the violation by the defendant of its international obligations under Articles 1 and 24 of the African Charter on Human and Peoples' Rights, and concluded that the defendant by comporting itself in the way it is doing, in respect of the continuous and unceasing damage caused to the environment in the Region of Niger Delta, has defaulted in its duties in terms of vigilance and due diligence to ensure that corporations in the Niger Delta do not violate human rights, and has violated Articles 1 and 24 of the African Charter. This case further reinforces the fact that environmental degradation caused by frequent oil spillage in the Niger Delta is not a one-off incident but a 'frequent, continuous and unceasing' one that calls for measures to hold the corporations accountable for their actions.

Even though the findings of the African Commission are not binding, and judgments of ECOWAS Court are binding but hardly complied with, they nevertheless would serve as important precedents that could guide Nigerian courts when deciding Articles 16 and 24 of the African Charter. Both decisions placed special importance on the victims' interests than on the economic interests of the State.

Furthermore, in *Jonah Gbemre v Shell Petroleum Development Company Nigeria Ltd and 2 others*, the plaintiff in a representative capacity for himself and the Iwherekan community in Delta State alleged that the gas flaring activities of the respondents (Shell and NNPC) violated his constitutional right to life and the

dignity of the human person in that they adversely affected his health, life and the immediate environment. Referring to the applicants' evidence linking gas flaring to greenhouse gas emissions and climate change, the court upheld the claim of the applicant. The Federal High Court decided that the alleged flaring of gas in the community affected the inhabitants' right to a healthy environment as articulated in the African Charter. The court also affirmed that the constitutionally guaranteed rights to life and dignity of persons inevitably includes the rights to a clean poison-free healthy environment and the actions of the defendants in continuing gas flaring was a violation of the rights. The court declared the provisions of section 3(2)(a), (b) of the Associated Gas Re-injection Act and section 1 of the Associated Gas Re-injection (continued flaring of gas) Regulations of 1984 under which the continued flaring of gas in Nigeria may be allowed as inconsistent with the applicant's right to life and/or dignity of human person and therefore unconstitutional. Despite this laudable pronouncement by the learned trial judge, environmental injustice, continuous gas flaring, and general insensitivity of the MNCs and government to environmental living conditions of marginalized groups living in the Niger Delta region still persists till date.

iii. Culture The inhabitants of the Niger Delta region are deeply spiritual and have over the years maintained close relationship with their lands and rivers which surround them which they viewed as not just natural resources. Their beliefs include the designation of certain forests as 'sacred forests' (those associated with benevolent gods) and 'evil forests' (those associated with 'evil spirits'). People are not allowed to access these forests without some prior sacrifice to the gods and acts of cleansing must be done in case it was entered mistakenly else they suffer severe consequences. The location of large oil and gas projects in the ancestral lands of these people causes disruption to the people, particularly where it causes displacement of the inhabitants and impact negatively on their culture and tradition. These acts violate the Petroleum Act which forbade extraction of oil in sacred shrines and forests. The people still held the belief that the eruptions and mysterious deaths in the community are as a result of the anger of the ancestors thus showing the dominant and pervasive African concept of spiritual attachment to nature and the environment.

iv. Displacement: Oil exploitation leads to uncontrolled environmental havoc, in the form of contamination of drinking water, loss of fish, low agricultural productivity, chemical contamination, and risk of disease, etc. All these factors force people to leave their abode. For instance, Goi, a predominantly farming and fishing community in the Gokana Local Government area in Niger Delta has been worst hit by various oil spills due to either sabotage or pipeline breakage of the Shell Petroleum Development Company (SPDC). The community has been abandoned by its inhabitants arising from the oil spills and has become either refugees or tenants in other communities. Even where the population is resettled, they experience a huge cultural loss, such as the extinction of languages, and the disappearance of local identity and cultural heritage of ethnic groups.

v. Food and water: Oil exploration activities lead to the production of wastes of different chemical compositions, which are generated at every stage of the operation. The disposal of these wastes in the Niger Delta by the oil MNCs has continued to pollute the land and water, damaging fisheries and agriculture, and affecting the rights of the communities to an adequate standard of living. In the same vein, the long term effect of repeated oil spills on the soil is always very grave, affecting the agricultural land thereby resulting in undermining the means of livelihood of the farmers that depend on farming for survival. The long-term effects, according to the communities include delayed germination of plants, stunted growth in trees and smaller fruit, and, in some cases, land is rendered unusable for years or even decades thereby severely affecting the socio-economic potentials of the people in the Niger Delta. With regards to water, the United Nations Environment Programme (UNEP) Report on Ogoniland which was released on August 4, 2011 revealed among others that public health is seriously threatened in at least 10 communities where drinking water is contaminated with high levels of hydrocarbons. In one of the communities, Nisioiken Ogale, in western Ogoniland, drinking water from wells that are contaminated with benzene, a known carcinogen, at levels over 900 times above the World Health Organization (WHO) guideline and hydrocarbons contaminations were generally found at levels 1000 times above Nigerian drinking water standards of 3 µg/l.

vi. Economy: The cost of environmental crime to the nation in the form of pollution has been very high. For example, with regards to gas flaring, it is observed that if “the amount of wasted, flared natural gas were captured and cycled through a modern power station, the volume produced ‘could fuel about a quarter of Britain’s power needs’ being ‘equivalent to more than one third of the natural gas produced in the UK’s North Sea oil and gas fields’ and enough to ‘meet the entire energy requirements of German industry’.” The gas could be put into profitably productive use instead of generating pollution that ‘has been measured at up to 50 million tonnes of carbon dioxide, with unknown quantities of the far more damaging greenhouse gas: methane’ to be borne by the communities and the environment. Further, environmental crimes places an immeasurable cost on the public treasury in contending with the still undetermined effects of the damage caused, in cleaning-up or remediating existing sites and in apprehending the violators. For example, the UNEP Report on Ogoniland suggests the creation of an Environmental Restoration Fund for Ogoniland, to be set up with an initial capital injection of US\$1 billion to be contributed by the oil industry and the government, to cover the first five years of the clean-up project. The clean-up of Ogoniland was expected to take 25 to 30 years- the reality of human and ecological Armageddon in the region! This amount was just for the clean-up of Ogoniland. The Environment groups estimated that about \$100bn would be needed to clean up the entire Niger Delta. This money would have been used for the socio-economic development of the region but for the extensive damage done to the region by pollution. Added to these is the fact that increased sickness caused by environmental damaging activities in a community will lead to higher health cost in that community.

VIII. Legal Framework for Curbing Environmental Crimes in the Nigeria’s Oil Industry

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

The Nigerian Constitution accords recognition to the importance of improving and protecting the environment. Section 20 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) provides: ‘[t]he State shall protect and improve the environment and safeguard the water, air, and land, forest and wildlife

of Nigeria.’ This provision is however contained in Chapter II of the Constitution entitled ‘Fundamental Objectives and Directive Principles of State Policy’, whose provisions are non-justiciable by virtue of Section 6(6)(c) of the Constitution which provides that judicial powers shall not, except as otherwise provided in the Constitution, extend to any issue or question as to whether any question, act or omission by any authority or person, any law or any judicial decision is in conformity with Chapter II.

2 Criminal Code Act

There are some sections of the Nigerian Criminal Code Act which, although not targeted against the activities of the oil companies, may be applied in instances of oil pollution of rivers and streams (including gas flaring). For example, section 245 of the Act provides that: ‘[a]ny person who corrupts or fouls water of any spring, stream, well, tank, reservoir, or place so as to render it less fit for the purpose for which it is ordinarily used, is guilty of a misdemeanour and is liable to imprisonment for six months.’ This section may be used as a protective measure against water pollution. Equally relevant is section 247 of the Act which may be used against gas flaring. It provides that any person who: ‘(a) vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or ... (b) does any act which is, and which he knows [is] ... likely to spread the infection of any disease dangerous to life, whether human or animal, is guilty of a misdemeanour, and is liable to imprisonment for six months.’ The classification of the offences as misdemeanours, and so treated lightly, is bizarre when recent information about pollution has revealed its seriousness.

3 Harmful Waste (Special Criminal Provisions etc.) Act 1988

This Act was enacted after the 1988 Koko Toxic Waste Incident in Koko town in the old Bendel State (now in Delta State), Nigeria. It prohibits the carrying, depositing, dumping, transporting, importing, selling, buying, etc. of harmful wastes within the territorial jurisdiction of Nigeria. Section 15 defines “harmful waste” to include “injurious, poisonous, toxic or noxious substances, if the waste is in such quantity as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental health”. Oil pollutants, no doubt, come

within the purview of the Act, as they are harmful, noxious and toxic. The Act provides for both criminal and civil liability. Violators are liable to life imprisonment upon conviction. Section 7 provides that where a crime has been committed by a body corporate and it is proved that it was committed with the consent or connivance of or is attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate; or any other person purporting to act in the capacity of a director, manager, secretary or other similar officer, he, as well as the body corporate, shall be guilty of the crime. The court may use this section of the Act to pierce the veil of incorporation in instances of human rights abuses perpetrated by corporate bodies, in order to hold both the company and the persons responsible for its management accountable for their transgressions. Unfortunately, the duty to prosecute under the Act is vested in the Attorney-General of the Federation or in some situations the Police, who are not adequately equipped to deal with environmental problems. Hence, violators are rarely prosecuted.

4 Oil in Navigable Waters Act

This Act was enacted in 1968 to implement the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (to which Nigeria is a signatory) so as to protect navigable waters from oil pollution. Generally, the Act prohibits the discharge of certain oils, such as crude oil, fuel oil, lubricating oil, and heavy diesel into the sea area. Considering the grave implications of oil discharge on the health, ecosystem and socio-economic life of the people, one is of the view that the fine of ₦2,000 naira (\$6.30 USD) is no more than a slap on the wrist for oil MNCs. It is a far cry from what the oil companies in developed countries pay as penalty for similar breaches.

Another challenge is that the Act contains too many sweeping defences. Section 4 of the Act creates several defences to the offences. With these ready-made defences and legal contradictions, it may be difficult to convict any pollution-related offenders under these provisions.

5 Oil Pipelines Act

This Act was enacted in 1956 as one of the earliest laws on oil pollution and contains some important provisions that could be used effectively to protect the Niger Delta people and their environment from the negative impacts of oil operations. It provides for the issuance of permits to survey, and for oil pipeline licences. The Act also makes provision for the duration of an oil pipeline licence, which is for a term not exceeding twenty years. This may be in recognition of the fact that ‘the nature of pipelines may make them less fit due to corrosion and other wear and tear arising from pressure and long usage.’ This provision is aimed at preventing the recurring incidence of oil spillages caused by ruptured old pipelines.

6 Associated Gas Re-Injection Act and the attendant Regulations

The Act provides that no company engaged in the production of oil and gas shall after 1st January, 1984 flare gas produced in association with oil without the permission in writing of the Minister. The penalty for non-compliance is forfeiture of the concessions which have been granted to the violator in the particular field (s) in relation to which the offence is committed. Rather than ensuring the enforcement of the law, the Minister made the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984 which provide for exemptions to the earlier general ban on flaring. The Regulations, which became effective from 1 January, 1985 stipulated conditions for the issuance of certificates for the continued flaring of gas. The regulations are so weak that they exempt about fifty percent of Nigeria’s oil fields from reinjection requirements and further appear to allow the Minister to exempt other oil fields at her discretion. Government introduced gas flare penalty to serve as a deterrent for burning the natural gas that is associated with crude oil when it is pumped from the ground to achieve the ultimate goal of ending air pollution and environmental degradation caused by gas flaring; and to encourage investment in gas infrastructure by the oil MNCs. The gas flare penalty rates used under various fiscal regimes are: 2K applicable from 1985 to June 1992; 50K applicable from July 1992 to December 1997; ₦10 applicable from January 1998 to March 2008; \$3.5 per 1,000 SCF of gas flared by the MNCs applicable from April 2008 to date. Unfortunately, the oil MNCs failed to comply with the latest rate of \$3.5. With penalties and procedures irregularly

enforced, oil MNCs are encouraged to continue to flare gas unchecked to the detriment of the economy and the environment as it is relatively cheap to flare gas than to re-inject or monetise it.

7 Petroleum Act 1969 and the Petroleum (Drilling and Production) Regulations

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

The legal duties imposed by this regulation are too vague. All the ‘operator is enjoined to do is to take prompt steps “to control and, if possible, end” the pollution in question.’ Also, the provision for the adoption of “all practicable precautions” may be difficult to apply in reality because present day economic pressures may be adduced to defeat the ecological and environmental concerns. The use of the term “up-to-date equipment” appears to be relative and vague as it does not assert certainty in terms of period or time in which a particular equipment must be replaced. This Regulation may partly explain why most oil companies in Nigeria use substandard and outmoded equipment in their operations, thus leading to the high frequency of oil spillages experienced. The use of poorly defined terms encourages maximisation of production as against protection of the environment. The law requires that oil operators ‘adopt all practicable precautions’ to prevent land and water pollution, and to comply with good oil field practice, failing which can result in revocation of a company’s oil license. However, as observed by Steiner, “while some oil licenses and leases have been revoked, as far as Amnesty International could discern revocation has never been done on the grounds of environmental damage.” Such failure on the part of the government to enforce the regulations when violated promotes culture of impunity which further aggravates the human rights violation and more damage to the ecosystem. Unfortunately, Regulation 45(1) which provides for a fine of ₦100 or imprisonment for a term of six months for improper disposal of refinery effluent has no deterrent effect on the oil companies.

8 National Environmental Standards and Regulations Enforcement Agency Establishment Act 2007 (NESREA)

The National Environmental Standards and Regulations Enforcement Agency (NESREA) was established as an agency of the Federal Ministry of Environment. By the NESREA establishment Act 2007, the FEPA Act was repealed. The Agency is empowered to enforce compliance, control and monitor environmental regulations generally *other than in the oil and gas sector*. However, while section 7(h) of the NESREA Act empowers NESREA to enforce compliance with any environmental legislation on, among others, disposal of hazardous chemicals and wastes, and any environmental regulations and standards on noise, air, etc *other than in the oil and gas sector*, section 7(c) of the same Act includes ‘oil and gas’ in the list of international treaties on the environment to be enforced by NESREA. Section 3(vii) dealing with the composition of the Governing Council of the Agency provides for a representative of the Oil Exploratory and Production Companies in Nigeria. The combined reading of section 3 and 7(c) gives the impression that NESREA still has some roles to play in conjunction with DPR in the monitoring and supervision of oil and gas sector.

9 National Oil Spill Detection and Response Agency (Establishment) Act 2006

The National Oil Spill Detection and Response Agency (NOSDRA), was established under the National Oil Spill Detection and Response Agency (Establishment) Act 15, 2006 as the institutional framework for the coordination and implementation of the National Oil Spill Contingency Plan for Nigeria (itself devised in accordance with the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) 1990, to which Nigeria is a state party).

An oil spiller is required by the Act to report an oil spill to the Agency in writing not later than 24 hours after the occurrence of the oil spill, in default of which the failure to report shall attract a penalty in the sum of Five Hundred Thousand Naira (₦500,000.00) (approximately US\$1574) for each day of failure to report the occurrence. By section 6(2) and (2), the failure to clean up the impacted site, to all

practical extent including remediation, shall attract a further fine of One Million Naira (₦1,000,000.00) (approximately US\$3149) per day. While these fines appear to be far above the fines levied for environmental crimes in some of the earlier legislations, they still lag far behind those that can be levied in the United States and developed countries. A situation where potential offenders find it cheaper on cost-benefit analysis to pollute and pay a fine than to comply with a regulatory regime, would hardly make the concept of deterrence to have a meaningful role in environmental crimes.

10 Environmental Impact Assessment Decree 1992

The Environmental Impact Assessment (EIA) Decree requires that before the commencement of any new project, its environmental impacts must be evaluated in order to mitigate its effects on the environment. Section 62 of the Decree makes it a criminal offence to fail to comply with the provisions of EIA. For individuals, on conviction the offender shall be liable to ₦100,000 fine or to five years imprisonment and in the case of a firm or corporation to a fine of not less than ₦50,000 and not more than ₦1,000,000. This, as with most of the earlier statutes considered, is rather too small to serve as a deterrent, particularly to corporate bodies, most especially, when the adverse effect of the projects are high and the environment cannot be restored back to its natural state.

Regional and International Legal Framework for the protection of the environment against Environmental Crimes

Mr. Vice Chancellor, Sir, there are several international and regional instruments that relate to exploitation and protection of natural resources and environment including the flora and fauna that are relevant to fighting environmental crimes. Some of these international instruments include the following: 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol); 1989 Basel Convention on the Control of Trans-Boundary Movements of Hazardous Wastes and their Disposal; 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (otherwise known as

the London Convention and updated in the 1996 Protocol); International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto (MARPOL 73/78 Convention); United Nations Framework Convention on Climate Change; Kyoto Protocol, etc. No doubt, these treaties contain sterling provisions on environmental protection.

IX. Challenges to Tackling Environmental Crimes in Nigeria

Corruption and complicity with the MNCs: Corruption plays a major role in the degradation of the environment and serves as a major challenge in the fight against environmental crimes in Nigeria. It undermines the institutions put in place to regulate the activities of the corporations and jeopardizes the achievement of the sustainable development goals as it relates to environment. Poorly paid officials having high level of discretion can be induced not only to exploit lacunae in laws and regulations, but also to take bribes during environmental inspections, issuances of licenses, permits, and the policing of illegal, environmentally related activities. They may therefore decide not to impose fines for non-compliance with environmental standards or even prosecute for violation of environmental laws. Corrupt police officers and regulators thus compromise standards at the expense of the people and environment by refusing to enforce laws that protect the environment. Since the oil corporations can essentially bribe their way out of regulation when corruption is prevalent, oil extraction results in numerous oil spills, toxic releases, and toxic wastes in environmentally sensitive areas, thereby amplifying environmental degradation as exemplified in countries such as Nigeria, Bolivia, Ecuador, and Columbia.

Operation of Double Standards by the MNCs: The application of different standards by the oil multinationals in oil exploration, prospecting, drilling, compensation and disaster management control between the developed and developing countries amounts to double standards. While 99 per cent of associated gas is used or re-injected into the ground in the United States and Western Europe, more than half the associated gas is flared in Nigeria. Also in terms of oil clean-ups, there have always been slow response by oil MNCs operating in the Niger Delta to clean-ups and more often, the clean-up of oil spills (often done by

contractors that do not have the technical skill in oil spill cleaning) is very superficial, ‘sometimes involving little more than turning the land so that the oil remains just beneath the surface of the soil.’ Whereas, when these occur in developed countries, like the 20 April 2010 explosion of its Deepwater Horizon oil rig that resulted in the death of eleven workers and causes serious ecological disaster in America’s Gulf coast in the Gulf of Mexico, BP, Halliburton and Transocean limited linked to the spill ‘engaged in purely voluntary actions at remediation in cleaning up, in offering compensations to individuals and companies and as well as offering \$170 million dollars within one month, to the US Gulf Coast States of Alabama, Florida, Louisiana, and Mississippi, even well before the effects and consequences of pollution become apparent.’ In June 2010, also BP agreed to place about \$20 billion in an escrow account to pay for damage claims resulting from the Gulf of Mexico oil spill. It can be submitted that the oil MNCs operating in the Niger Delta are not employing internationally recognized standards used in developed countries to prevent pollution and environmental damage. This discriminatory practice against victims of similar harmful oil pollution is an injustice to the economically dispossessed, socially disoriented and ecologically endangered people of Niger Delta.

Conflicting Roles by the Regulatory Agencies: Multiplicity of regulatory bodies with identical role in the oil spill reporting results in overlap of functions, thus leading to rivalry and clash of functions among the agencies, particularly NOSDRA and the Department of Petroleum Resources (DPR). This conflict situation calls for the Nigerian Government to clarify and define the roles of the various bodies/agencies responsible for the protection of environment. In order to ensure a quick, adequate, transparent and credible oil spill assessment process, it is suggested that matters relating to oil spill contingency programme for preventing and responding to spills should be handled by a single agency independent of the oil companies.

State Interests in Protecting Economic Development: The state through the Nigerian National Petroleum Corporation (NNPC) is into joint venture partnership with the oil MNCs and this constitute greatly to the poor enforcement of environmental laws. MNCs are emboldened by the passive attitude of the

government to their unwholesome practices arguably because the interests of the state and MNCs are interwoven. While the state is dependent on the corporate actors for the realization of its economic development policy, the corporate actors are reliant on a state willing and able to facilitate its corporate development goals. For example, the revenues from oil constitute 90-95% of the state's total budget revenues, and this accounted for why Nigerian government has been willing to take extreme measures to protect the interests of the oil industry in their country.

Problem of sentencing in environmental matters: Where an environmental offence is committed, the court is often faced with the difficult task of deciding the appropriate sentence to be meted out considering the various purposes to be achieved: retribution or punishment, denunciation, deterrence, protection of the community, rehabilitation of the offender, and restoration and reparation of the harm done. Though all these purposes are relevant, in environmental sentencing, the utilitarian purpose of achieving deterrence is of particular importance. As seen from the various penalties prescribed under the environmental laws in Nigeria for environmental crimes, the fines are often paltry that it could hardly achieve the deterrent value which is a relevant factor in the context of environmental crimes. For penalties to be able to achieve its deterrence value, the penalties must be extraordinarily high to deter polluters given that corporations are rational actors that calculate the costs and benefits of their behaviors.

The absence of specialty court on environmental matters: Environmental crimes in Nigeria are handled by the regular courts that handle general matters. Nigeria does not have Environmental Courts that should handle environmental and planning cases. Irregular exposure of these regular courts to such cases; the judiciary's comparative lack of training in dealing with the legal, scientific and technical nature of environmental law, in understanding fundamental principles underpinning environmental protection policy, and in understanding environmental offences and the consequences of the resulting harm results in the difficulties associated with successfully prosecuting environmental crimes. To achieve greater efficiency in the fight against environmental crimes, there is the need for the Nigerian government to set up a specialized court to hear environmental matters and ensure constant training for the judicial officers to raise their awareness to the

gravity of environmental offences and to encourage them to make full use of their powers.

Limited Resources: In developing countries, including Nigeria, budgets are always too low for procurement of modern equipment needed for effective investigative techniques to combat environmental crimes. Budgetary constraints for the enforcement of environmental regulations weaken institutions' organizational capacity to conduct effective regulatory control and closely monitor industry practices. This accounts for some failures encountered in proving the existence of criminal offences and the frequency of dismissed environmental criminal cases for want of evidence. Poor resources committed to environmental matters contributes to the dearth of technical expertise and analytical capability skills in monitoring and uncovering environmental offences by the regulatory agencies leading to the poor enforcement of environmental regulations and standards.

Disobedience of Court Orders: The administrative penalties by the regulatory agencies are hardly obeyed by the oil MNCs. In 2009, NOSDRA imposed a fine of ₦1 million on the Pipelines and Products Marketing Company (PPMC) (a government agency in charge of distributing and marketing petroleum products in Nigeria) over its failure to clean-up oil spills on some communities occasioned by its operations, in violation of section 6(3) of the NOSDRA Act. Following the refusal of PPMC to pay the fine, NOSDRA instituted a suit against the PPMC at the Federal High Court in Asaba, Nigeria. The court held that the PPMC violated section 6(3) of the Act when it refused to clean up and contain (remediate) the oil spill, and NOSDRA acted within its powers to impose the fine. The court further held that the PPMC was liable to pay the sum of ₦62.5m as damages accruing from the impacts of the oil spill on the communities and ordered it to clean up and remediate the affected areas. This judgment is yet to be enforced by the appropriate authorities till date. Moreover, Sterling Oil Exploration and Energy Production Company were fined ₦68 million and Chevron Nigeria Ltd, fined ₦21 million by NOSDRA for refusing to report oil spill and for refusal to clean-up impacted sites. Both companies have refused to pay the fines and to clean up the affected areas.

Transnational nature of some environmental crimes: Environmental crimes could be global, affecting more than one country particularly in cases involving transactions beyond one State. In developing countries, this creates difficulties for the victims and law enforcement agencies in identifying the perpetrators of the crime, of investigating and even prosecuting environmental crimes.

X. The Way Forward: Law as Elixir for Environmental Crimes

Mr. Vice Chancellor, Sir, surviving the environmental Armageddon in Nigeria is a great challenge, in that it requires strong political will, adequate resources, international cooperation and the determination to make the violators, particularly the MNCs, accountable for the ecological threats they pose. The accountability gap that exists at both the domestic and international level provides “the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.” This has led the civil society to resort to civil liability to seek redress against MNCs for their harmful environmental practices. As evident in the *Chevron-Texaco Case* in Ecuador, civil liability remains not only a costly, time-consuming, and ultimately unsatisfying alternative to the more rigorous process of criminal investigation and prosecution, it does not capture the gravity, the moral blameworthiness, and the harmful consequences that can characterize severe environmental damage. Also, the recent failed attempt at outsourcing environmental claim in *Bowoto v. Chevron, Kiobel v. Royal Dutch Petroleum* and more recently in a suit filed by Law firm Leigh Day against Royal Dutch in the UK on behalf of two communities in the Niger Delta, appeared to have limited the chances of corporate human rights victims of getting justice in the US or UK against the MNCs. These recent developments have created the need for Nigeria in her search for environmental justice for victims of environmental crimes to examine its existing legal and institutional framework, identify and fill the gap(s) therein.

Mr. Vice Chancellor, Sir, if the dangers to health, the irretrievable loss of species diversity and the ecological annihilation constitute the Armageddon, it must be averted. Law, therefore, has an important role to play in the fight against environmental crimes in Nigeria. Law can be a powerful instrument for producing social change in modern societies since it can be made to respond to situations

thrown up by a changing society, such as crime prevention, protection of environment, and energy utilization. With the high rate of increase in environmental crimes in the Nigerian oil industry, there has been growing concern as regards what tool or device can be used for bringing about an end to this menace. Law as a tool for social engineering is therefore considered as a desirable, necessary and highly efficient means of countering environmental crimes and inducing necessary changes, preferable to other instruments of change. The advantages of law as an instrument of effecting the preferred change can be attributed to the fact that law is seen as legitimate, more or less rational, authoritative, institutionalized, generally not disruptive, backed by mechanisms of enforcement; and more importantly, it can adapt itself to changed social circumstances without necessarily changing its form or structure. It is premised on this that the following legal reforms/recommendations are suggested as panacea for curbing environmental crimes in the Nigeria's oil industry.

Making Environmental Destruction an International Crime

Mr. Vice Chancellor, Sir, individuals and corporations who commit environmental crimes clearly shows a complete disrespect for the law and disregard for the safety of others, as they are motivated by a desire to enjoy the substantial profits that can be derived from such illegal activities. Notwithstanding the growing importance of environmental integrity and preservation in the global community, there is currently no international forum with jurisdiction over the hearing of major environmental crimes or over the adjudication of the socioeconomic impacts that stem from them. Apart from the environmental war crime in Article 8(2) (b)(iv) of the Rome Statute, environmental damage would not be pursued as a crime in itself but rather considered to be a means of committing the crimes of genocide, crimes against humanity or other war crimes. It is in a bid to remedy this lacuna, coupled with severe consequences of environmental damage in recent times that have led to the calls by some scholars and academics on the need to make ecocide, a crime against humanity before the International Criminal Court (ICC).

Higgins has defined ecocide as 'the extensive damage, destruction to or loss of ecosystems of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been

severely diminished.’ Ecocide is founded upon ecological damage which is both serious in terms of the harm caused and the numbers of people and species affected or with regards to its social and economic costs on the people; it is extensive or lasting. This definition includes acts done with knowledge of or reckless disregard for the immediate or long-term consequences on parts of the global ecosystems. This clearly described the situation in the Niger Delta region of Nigeria which has been negatively affected by the activities of the MNCs operating in the region.

Ecocide literally constitutes the environmental counterpart of genocide- a killing through the destruction of the environment. With regards to crimes against humanity, many acts or omission which results in serious environmental harm in the name of development could constitute individual criminal responsibility. In the words of Daniel Brook while examining the native Americans and the toxic wastes as perpetrated by the U.S. government and private corporations alike, he concluded that “toxic pollution is a *genocide through geocide*, that is, killing of the people through a killing of the Earth.” This extensive assault on the ecosystems and nonhuman animals as well as plants within the environment including humans, which is as result of human agency, no doubt, is an ecocide of sort.

In recognition of the menaces posed by environmental crimes to fundamental human rights and international peace and security; and in a bid to defend the environment against destruction, the International Criminal Court (ICC) had recently declared in a policy document that it would start treating cases involving environmental destruction, misuse of land, and illegal dispossession of lands as crimes against humanity in the same gravity as apartheid or genocide. Article 5a, section 41 of the document states:

“The impact of the crimes may be assessed in light of ... the social, economic and environmental damage inflicted on the affected communities. In this context, the Office will give particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.”

While it is accepted that this new policy is not a silver bullet in that putting alleged perpetrators of environmental crimes in jail won't "unharm" their victims, regrow the forest or clean up the oil slick, yet broadening the priority cases to include environmental crimes would recognise that mass human rights violations committed during oil exploration and exploitation activities by the MNCs in the name of profit could be just as serious as traditional war crimes. Thus, MNCs desirous of investing in [some] places risk being complicit in crimes against humanity. That environmental crimes are now being considered at the highest level of global criminal justice is a signal to the MNCs and individuals at corporations to desist from causing environmental destruction in their host communities by their activities as they may soon find themselves facing trial at the ICC for their actions.

Mr. Vice Chancellor, Sir, in view of the above, if the proposal to make environmental crime an international crime is adopted, massive pollution of the environment alongside climate change and global warming would not be an environmental problem only, but also international crime.

Constitutionalizing the right to environment: There can be no doubt that courts in countries such as India, Nepal and Pakistan have consistently been using the existing human rights framework to vindicate claims of victims of environmental harm by declaring that a healthy environment is implicit in the fundamental right to life. In reality, Nigerian courts, except in *Gbemre's case*, still faces difficulty in creatively interpreting the Constitution and deriving the cause of action from other constitutional rights to defend the right from violations, meet the needs of victims of environmental harms and meaningfully protect the environment. The inclusion of environmental objectives under the non-justiciable chapter II of the Nigerian Constitution in terms of 'Directive Principles of State Policy' creates the challenge of non-accountability when the environmental rights are violated. In the absence of justiciability of the provision, governments do evade their responsibilities to protect their environment, fulfil and ensure that third parties do not take measures capable of violating the rights of the people; and victims of environmental harms are deprived of constitutional remedies for violations of their right to live in a healthy environment.

Environmental constitutionalism is necessary for environmental protection because it serves as the broader means to defend environment-related rights and interests, limit government and private encroachment on these rights and interests and to make them to act affirmatively in fulfillment of their duties to respect, protect, promote and fulfill rights obligation. The inclusion of the right to environment into Nigeria's Constitution will help to strengthen environmental laws as this step would propel the need for comprehensive legal reforms of environmental laws and regulations, particularly on environmental procedural rights, including access to environmental information, participation in decision making, and access to justice, using the constitution as the guiding principle of these reforms.

Strong Enforcement of Environmental Laws and Regulations: Stricter enforcement of environmental regulations is needed to address issues of environmental crimes in the Nigerian oil industry.

Also, the frequent occurrence of preventable oil spills in the Niger Delta region with the significant harm to public health and the environment suggests that the weak enforcement of environmental laws coupled with rare use of criminal sanctions does not serve as an adequate deterrence to companies that do not place sufficient emphasis on environmental compliance. Having responded poorly to the "carrot" of administrative and civil cooperative measures to reduce pollution, it is high time the corporations are made to face the "stick" of strong criminal sanctions to deter and prevent further spills. Increase in the frequency of criminal prosecution is necessary in Nigeria to prevent pollution by corporations that significantly and repetitively ignored and flouted environmental regulations with impunity; and to send a message that it is totally unacceptable for MNCs to put profits before safety and the environment.

Furthermore, companies should be made liable for all their employees acts of pollution as opposed to the identification theory approach where corporate liability would only be established in cases where the employees responsible were of sufficient seniority to be viewed as the 'controlling or directing mind' of the company.

Use of private prosecution to address environmental harms that are considered offence: Private prosecution is a legal action brought before the criminal courts by an individual, or a group of individuals, other than the government official to enforce a law. Such a private prosecution can be done hand in hand with civil actions. Unfortunately, private prosecution as a legal tool is rare in Nigeria, not even as regards its being used to enforce environmental laws. The Administration of Criminal Justice Act (ACJA) and the Administration Justice Laws of various States makes provision for private prosecution. By section 381(c) ACJA, a private person can institute criminal proceedings by fiat of the Attorney-General of the Federation, by complaint as provided in section 89(3) ACJA, or by information, upon fulfilling the conditions specified in section 383 of the ACJA.

However, the use of private prosecution is subject to the overriding constitutional powers of Attorney-General to step in and take over the case, or discontinue it, as the case may be. Since there is no specific restriction to the use of private prosecution, as far as I know, it can thus be used for environmental offences. Private prosecution may serve as valuable weapon and indeed a valuable constitutional safeguard in the hands of environmental lawyers and NGOs to bring violators of environmental regulations to book, particularly, in the face of inertia or partiality on the part of the authority. It would also ensure access to justice and reduce the temptation on the part of individual victim of environmental harm, to take the law in his own hands. Through private Prosecutions, or a well-publicised threat of it, government sometimes is forced to bring public prosecutions. For instance, following the Sea Empress oil spill off the Pembrokeshire Coast in 1996, the threat by the Friends of the Earth to prosecute it if the Environment Agency would not prosecute, led to the decision of the Agency to commence a public prosecution, and which subsequent prosecution resulted in one of the largest fine for water pollution. Even when unsuccessful in court, “private environmental prosecutions have historically been very successful in setting positive legal precedents, influencing government policy, publicizing serious environmental concerns, and spurring industries (and government offenders) to greater action to prevent the continuation of breaches of statutory duties.”

Roles of Civil Society and NGOs in Curbing Environmental Crimes: The civil society and environmental NGOs can play a combination of advocacy and enforcement roles in the fight against environmental crimes in Nigeria. NGOs can act as monitoring agents of corporate entities and governments by getting information across to the public and sometimes investigate and prosecute crimes against the environment. In some cases, the resources and capabilities of a government to address largely complex issues of environment, particularly pollution, on their own is often inadequate; environmental regulatory agencies also often faced with challenges of low budgets, small staff and a general lack of prioritization of environmental issues on the agenda, hence NGOs may help to undertake an active role in the enforcement of environmental crime. They can also assist in educating the public through media campaign on the need to report incidents of potential environmental harm, garner popular support to lobby the government, support more efficient monitoring and enforcement actions, shame corporations and push for change in policy. NGOs can also assist in the area of training and capacity building in cooperation with regulatory agencies and governmental authorities. The role of NGO advocacy is obvious from the *Social and Economic Rights Action Center (SERAC) and Anor v. Nigeria* filed by two NGOs, the Social and Economic Rights Action Center (SERAC) based in Lagos and Center for Economic and Social Rights (CESR) based in the US and the *Jonah Gbemre v. Shell Petroleum Development Company & Others*, filed by Climate Justice Programme (UK Based) in conjunction with the ‘local’ Environmental Rights Action/Friend of the Earth Nigeria (FOEN). The involvement of NGOs in both cases in terms of financial resources, expertise and in the area of collaboration between local and international NGOs greatly contributed to the successes recorded in the two cases. More of these advocacy actions are needed in the fight against environmental crimes and injustice in Nigeria.

Review/Repeal of Laws: The current fragmented, separate, piecemeal and disjointed environmental laws in Nigeria create difficulties for the regulatory agencies in using them for the purposes of enforcement. These laws must be consolidated and reduced into a single comprehensive Environmental law capable of addressing all environmental offences. The Swedish Environmental Code that was adopted in 1998 and entered into force 1 January 1999 ‘constitutes a

modernised, broadened and more stringent environmental legislation aimed at promoting sustainable development.’ The Code which contains fundamental environmental rules is an amalgam of 15 previous environmental Acts. This provides an example from which Nigeria can emulate. There is the need to review the flaws identified in some of the environmental laws discussed above to make them more effective in protecting the environment and human beings before gathering the key environmental laws into a code, with the scope directly linked to the promotion of sustainable development. For instance, in line with the decision in *Gbemre’s case*, there is need to repeal the Associated Gas Re-injection Act and regulations made thereunder as they run in conflict with the enjoyment of fundamental rights of the people as contained under the Constitution and in the African Charter Ratification Act.

XI. Sustainable Development Goals and Environmental Crimes

Mr. Vice Chancellor, Sir, the consequences of environmental crimes such as pollution, deforestation, climate change and loss of biodiversity undermines sustainable development. Curbing environmental crimes is significant in helping to meet the UN’s Sustainable Development Goals (SDGs), because these goals can only be met in a healthy and sustainable environment. As can be seen from the SDGs and some of its targets, environment is at its core. Further, there is undeniable nexus between human health and the environment; thus, all the health-related goals in the SDGs can only be achieved in a healthy environment. Health risks arise largely as a result of severe and long-term pollution of the land, water and air which the people rely on, as witnessed in the Niger Delta region. For instance, Goal 3 of the SDGs has its foundation in environmental health, and this can only be achieved by reducing environmental health risks caused by severe pollution, among others. Reducing exposure to polluted air will reduce diseases and injuries such as respiratory infections, diarrheal diseases, cancers, asthma, congenital abnormalities, etc. Indeed, managing the environment in a sustainable manner provides a solid foundation for implementing the SDGs.

XII. Conclusion

Mr. Vice Chancellor, Sir, environmental crime is a serious problem within the global community because of the severe and horrific consequences of its impact to

human and the environment. Unfortunately, Nigerian government is not fulfilling the deterrence and punishment objectives of its environmental legislation. The rare prosecution of MNCs for environmental crimes committed downplays its seriousness and suggests that this type of crime is of less importance, despite the severe harm caused to the environment and human health arising from their business activities.

It is often echoed that the enforcement of strict environmental standards, especially in a developing country, may hinder rapid development and economic growth. The question is: For how long will the Nigerian government continue to make the nation a haven for polluters motivated by profit? When will the government stop from privileging economic development over the protection of Nigeria's land, water and air? The Armageddon is real. Their environmental, economic, social, cultural consequences are real and there exist sufficient data and facts to maintain this position. The Armageddon-like conditions in Nigeria call for the urgent need by the government to break from the current model of development at any cost (one leading to social dislocation, asphyxiation, ecological and human Armageddon) to development that is ecologically and humanely sustainable and which meet the needs of the present generation without compromising the capacity of the future generations to meet their own needs. As rightly captured by Bassey, the deepest violence in the Niger Delta "have not been inflicted by the power of gun, nor by the burning of Umuechem, the massacre at Odi or Odioma; the devastation of Ogoni and the extra-judicial murders of Ken Saro-Wiwa and other leaders. The greatest violence is the mass poisoning of communities through pollution." Until international mechanisms develop measures to hold MNCs who violate human rights accountable for their actions, prosecution at the domestic courts remain one of the only mechanisms for reining in their activities, hence the need to develop the domestic forum for criminal prosecution of violators of environmental crimes.

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