STATE-CORPORATE ENVIRONMENTAL CRIME AND HUMAN SECURITY IN THE NIGER DELTA, NIGERIA

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Abstract

This theoretical paper advanced the argument that all human acts such as oil spills, gas flaring and other forms of environmental degradation in contravention of existing environmental legislation amount to environmental violence; and constitute environmental crime within the context of this paper. Environmental crime in the Nigeria Delta is increasing unabated and huge implication of human security. The environment is life and sustainer of humanity both present and future. But man has become a destroyer instead of a protector and replenisher of the environment on account of the unsustainable drive for capital accumulation for industrialization and development. The outcomes have deepened the poverty and misery of the Niger Delta people instead of ameliorating them. The acts of ecocide and genocide committed by the Multinational Oil Corporations with the tacit connivance Nigerian state had continuously threatened human security, without commensurable commitments to halting the impending Armageddon. The argument of this paper is guided by resource curse, Dutch disease and state failure theories. Data used to advance this argument are purely qualitative and generated from secondary sources. They are subjected to content analysis. Admittedly, environmental crime or green criminology as sub-filed or a separate section of legal jurisprudence is struggling to evolve. Our finding is that the trouble with environmental governance in Nigeria is not the want of regulations, albeit weak, but the problem of enforcement. This implies that the bulk stops at the state. The state must assert its stateness, effectively perform it s regulatory roles, and place environment violation where they belong, as environmental crime.

Keywords: Corporate Environment Crime, Human Security, Niger Delta, Environmental Justice, Sustainable Development.

DOI: 10.31039/jgss.v3i12.108

1. Background

The reality of the Nigerian economy is based on exploitation of natural resources. Natural resources as wealth as well as sources of wealth are embedded in the environment. They are also national assets endowed by creation. What is therefore common is that man is “seen destroying the very means by which life is sustained” (Opka et al, 2020, p.39). This is a
negation of the vision of sustainable development whereby the drive to explore and exploit the earth for life sustenance has not been effectively replicated with the ordinance of replenishing it. One act in pursuit of development has negatively impacted on the livelihood of the people, through damages caused to the environment. In divine demonstration that the environment is not just a common heritage but a source of life for present and future generation, available sacred and religious book such Judeo-Christian golden book (the bible) (see Genesis 1:28) and also the Muslim Holy Book (see, Surah 6:165; Qur’an 2:60) give man command to subdue the earth and replenish it in a sustainable manner.

To be sure, the drive for industrialization and development by the state and the corporations has come with some environmental menace. This in the study of green criminology is described environment crime. Environmental crimes are crimes committed against humanity through environmental destruction. This is accentuated by the logic and rationalization of the drive for gains, which has shortchanged the state and associated corporations to see the need to protect human and animal from environmental hazard (See, Lynch 1990).

The argument here is that the unguided and misguided exploration, exploitation and management of natural resource wealth had occasioned the resource curse or the Dutch disease (see, Anty, 2000; Sach & Warner, 1995). A deeper understanding of this throws up the fact that poor environmental care is also as a fall out of resource curse and the Dutch disease. This has resulted in environmental (violation) crime. In 2012, an environmental performance index of 132 countries in the world was compiled from studies done by Yale Centre for Environmental Law and Policy. 22 performance indicators in the 10 policy categories were used. These included environmental burden of disease, water, air pollution, climate change, biodiversity, fisheries etc. Overall, Nigeria ranked 119th scoring 40.1%. This indicates poor performance (Okpi, 2012). The findings of the UNEP report are still fresh on mind of any avid reader of developments in Nigeria. Drinking water in that area contains carcinogen level at over 900 times above World Health Organisation standard (UNEP, 2011).

The acts of degradation of environment with corresponding demand for environmental justice in the Niger Delta have accentuated the manifestation of the resource curse. Many times, the reaction of the Nigerian state as a regulator; and the oil multinational corporations are prime offenders and violators has been quite unpromising. Because of the underhand dealings of the Nigerian state as a regulator of the oil and gas business, it has yet evolved a robust and enforceable environmental law jurisdiction in Nigeria. This is to extent of codifying
environmental violation as a crime and to the extent of criminalizing corporate offenders. As Brown and Okogbule (2020) observed, environmental violation (crime) in Nigeria and many part of the global south is still in the bowel of civil litigation with paltry and ridiculous monetary sanctions as the highest consequences. This has not amounted to due deterrence. The above coupled with the poor handling of cases relating to environmental (violation) crime has “weakened the environmental regulatory architecture” in Nigeria (Brown and Okogbule, 2020, p.20). This has largely undermined development and portrays snares on the path of achieving key components of the sustainable development goals.

This study therefore attempts to explain the implication of these on human security, with focus on the attainment of social and environmental justice. In doing so, a theoretical approach is adopted. As such the data for the study were purely quantitative. They were generated from secondary sources and critically analyzed using content analysis. This method also throws up some figure to illustrate the occurrence and dimension of oil spills and gas flaring in the Niger Delta advanced the argument of the paper. This is done by looking at general perspectives and not any specific details.

The argument of this paper is guided by resource curse/Dutch disease phenomenon (see Auty, 2000; Sach & Warmer 1995) as well as the theory of state failure (Agbesa, & Kieh. 2014). By the proposition of the resource curse theory otherwise called the paradox of plenty, natural resource abundance in many countries most especially Nigeria has turned a curse than a blessing for accelerated development. The abundance has caused unsustainable drive for capital accumulation. These have many times resulted in the violation of the environment. It is the unsustainable exploration and exploitation of the environment that result in environmental crime and attendant negative impact on livelihood structures provided by the environment. The cumulative implication of these, coupled with mismanagement of the proceeds from natural resources had deepened poverty, with huge implication for human security. Also, it is the failure of the Nigerian state in emerging from the wood to remake herself and assert her stateness in order to effectively perform it regulatory role that underlies the crisis discussed in this paper. The explanations of the resource curse and the theory of state failure provide valid explanation for the argument we shall advance in this paper as causes of corporate environmental crime and human security in Nigeria’s Niger Delta.
2. Clarification of Basic Concepts

The Environment

The environment according to Brundthand (1987) is simply “where we all live”. Extending this definition, the revised National Policy on the Environment, says it is “the life supporting system for human existence and survival and provides much of the physical milieu and the raw material for socio-economic progress” (NPE, 2016, p. 7). It is everything which naturally surrounds us and that permit the development of life. This includes water, air, land and all plants and human being or animals living therein and the inter-relationship which exist among these or any of them (FEPA, S. 38, see also NESREA, 2010). The environment as the external surrounding that support life, influences development and behaviour. This is also expanded to include socio-cultural setting of humans and other living organism that lives in it (Havyar & Thomas, 2012). According to Ola (1984, p.155), the “environment is considered polluted when it is altered in composition or conditions directly or indirectly as a result of activities of man so that it becomes less suitable in its natural uses”.

State-Corporate Environmental Crime

Environment crime originates from ecocide, which from the original Greek source of oikes and caedere means household or home killing. It is translated to mean extensive damage or destruction of the ecosystem whether by acts of human agency or other causes to the extent that peaceful enjoyment by the inhabitant of the damaged area is severally diminished (Malhotra, 2017). It mostly manifest in corporate crime and corporate environmental crime. Corporate crime is also referred to as white collar crime (Simpos, Gibbs, Rorie, Slocrum, Cohen & Vandenbergh, 2013).

Environmental crime is synonymous with corporate crime; and as part of the broader spectrum of white-collar crime, it is according to Sutherland “a crime committed by a person of respectability and high social status in the course of his occupation” (1983, p.7). Corporate crimes according to Reason are “illegal acts, omissions or commission by corporate organisations themselves as social or legal entities or by officials or employees of the corporation acting in accordance with the operative goal or standard, operating procedures and cultural norms of the organisation, intended to benefit the corporation(s)” (cited in Oraegbunam, 2019, p. 44). They involve illegal behavior by firm and their agents (executives and managers) in the pursuit of corporate benefits. Within the eco-justice framework, it
describes the “the physical and mental injury or moral wrongdoing to human or other living organism or interference with the ecological system of which form a part including human senses or human property” (Hughes et al., 2005, p.54). Corporate environmental crime otherwise called green crime, are crime committed in course of employment or business which act are violation of those duties which an individual owes to the community in relation to the environment, the breach of which are punishable by law (Eman, et al, 2009).

Skinnider (2013) refers to environmental crime as contravention of pre-existing law sanctioning illegal conducts with criminal penalties, typically based on environmental management regulation. However, this definition does not fit Nigeria where environmental crime or green crime is novel and yet properly codified, but merely described as environmental violation. In international green criminology and in climes where environmental crimes are codified, they are treated as strict liability crime (See, Oluduro, 2019; Fagbohun, 2012). Strict liability because the corporate violator (defendant) is held liable even though they are ignorant of the act of commission or omission, described as act of negligence or recklessness. For example: discharge of oil or mixture of oil from a vessel, place, and land etc into the water as an offence under the Navigable Water Act, become corporate environment crime as they contravenes what Gustafsson (2018) describes as negative injunctive duties. In green criminology, it is the doctrine of vicarious liability that holds corporations responsible for the acts, omissions and commissions of committed by their employees. It is actus reus and the mens rea of the employees or individuals acting on behalf of the corporation that are automatically attributed to the corporation.

Rothe avers that “environmental crimes can be classified either as state/corporate crime or a crime of globalization (2009, p.24). State crimes are committed by government through the concept of state organized crime. They are rooted in the drive for capital accumulation by the modern state, many times resulting in violation of human rights (Green & Ward, 2000). Oil spill and gas flaring in Nigeria could be properly described as state/corporate crime. They are state/corporate socially injuries behavior; which defines socially harmful violations of civil law as criminal. Corporate environmental crime for this paper is purely state-initiated corporate crime. They occur when according to Michalowski & Kramer:

Corporation(s) employed by government engages in organizational deviance at the direction or with the tacit approval of that government. State- facilitated corporate crime occur when government institutions of social control are guilty of clear failure to create regulatory institutions capable of restraining deviant business
activities either because of direct collusion between the business and government or because they adhere to shared goals, whose attainment would be hampered by aggressive regulation (2006, p.21).

Oil spills and gas flaring are not the only acts of environmental crime and violence. Illegal logging and indiscriminate gaming also constitute environmental crime. Illegal logging causes deforestation and forest degradation and loss of biodiversity; together with indiscriminate gaming they negatively impact on the livelihood matrix and human security of those who rely on them and as well as their socio-ethical contribution to society. In any case, bunkering, oil theft and kpofire constitute environment crime, but much attention is not given to them in the present work. This is because their emergences are indicators of the failure of the state in asserting its stateness; in performing its regulatory role; and in meeting up its obligations to the people and the environment.

**Human Security**

Hampson et al defined human security as “the absence of threat to core human values including the most basic human value of the physical safety of the individual” (2002, p.59). According to the UNDP human security means “that people exercise their choices safely and freely and that they can be relatively confident that the opportunities they have today are not totally lost tomorrow” (1994, p.23). This view human security from the perspective of freedom: freedom from fear and from want; and freedom from poverty both dovetailing into economic and social security. Where social security implies safety or freedom from daily threat such as hunger, disease and repression; and economic security connotes protection from any abrupt and disruption in the pattern of daily lives or livelihood structure. This would also mean freedom from environmental violence (Barigbon, 2021b).

As the UNDP (1994) rightly remarked, human security is therefore not just concerned with weapon; it is more concerned with the individual human life and dignity. It is the individual expectation of life without experiencing the state of generalized poverty, which include “only those domain of well being that have been important enough for human beings to fight over or to put their lives or property at gave risk” (King & Murray, cited in Alkire (2000, p.3). The UNDP in furtherance of this strongly avers that:

The poor are not pre-occupied with the loud emergencies of global warming or the depletion of the ozone layer. They are pre-occupied with the silent emergencies – polluted waters, degraded land, that put their lives and their livelihood at risk (1994, p.19).
The above draw the link between environmental degradation, environment crime and human security. More on this in a subsequent section of this paper, but in the main, human security therefore is a precondition to human development (see Leaning & Arie, 2000); as it safeguard the core of all human lives “from critical pervasive threat, in a way that is consistent with long human fulfillments” (Alkire, 2003, p.2). Profoundly “safeguard” implies that human is deliberately protective from the fatal threat of events around them which many times are beyond their local control, such as environmental pollution. This therefore requires institutions to offers protection which are institutionalized, responsive and preventive. The commitments of corporations keeping to these expectations are very serious issues in Nigeria. As such safeguarding human lives implies not only those institutions that intend to promote human security overtly but also institutions that unintentionally undermine it.

Human security is also the core of the fundamental human right which persons and institutions are under obligation to respect, protect and safeguard. These vital cores also deal with survival, livelihood and basic dignity. To this effect, the Global Environmental Change and Human Security Science plan (1999) opined that human security is achieved when and where the individual and communities have the options necessary to end, mitigate or adapt to threats to their human, environmental and social rights; have the capacity and freedom to exercise their options, and actively participate in pursuing the options. Understanding this implies challenging the structures and processes that engender insecurity and also hinders development.

The Niger Delta

The literature distinguishes between an official economic-political and the geographical or geomorphological Niger Delta (Ochuba & Idoniboye-Obu, 2020). By and large, the Niger Delta is one of ten most important wetlands with marine ecosystem in the world (Pegg & Zabbey, 2013). It consists of nine (9) states and 15 Local Government Area; of about forty (40) ethnic group spreading across 5,000 communities (Niger Delta Development Commission, 2003); with a population of about 31million people (Oluduro, 2019). The states are: Abia, Akwa Ibom, Bayelsa, Delta, Cross Rivers, Rivers, Edo, Ondo, and Imo. With the recent discovery of oil or boundary adjustment establishing the presence of oil in Anambra and Kogi, these states may soon be added to the official economic-political Niger Delta.
The Niger Delta as the economic livewire of the Nigerian state is famous due to the activities of oil and gas exploration and exploitation by Multinational Oil Corporations. This is because the area is endowed with massive natural resources especially oil and gas estimated at 37.4 Trillion barrel oil reserve, 104.7 trillion cubic feet (tcf) gas reserve (OPEC, 2013). The oil and gas produced in the Niger Delta account for 95% of Nigeria foreign exchange earnings and 80% of government revenue (Courson cited in Ajala, 2015). However, the traditional source of livelihood of the Niger Delta people (except for Anambra) is mainly agriculture (farming and fishing, hunting etc). These activities relies directly on the environment. The area as the epicentre of oil and gas production activities has experience massive environmental crimes perpetuated by the corporations with tacit connivance of the state. The uninformed and brute entrepreneurs and the kpafire boys having their field day due to the negligence and failure of the state are also compounding the menace.

Astonishingly, despite the mineral resource endowments, the people of the Niger Delta still wallow in wanton poverty and misery which according to UNDP “is accentuated by administrative neglect, crumbling social infrastructure, high unemployment, social deprivation, endemic conflict filth, squalor and abject poverty” (20006, p.74). Contrasting the wealth of the region with its stark development narrative indicate that the region is suffering from the resource curse or the Dutch disease phenomenon (Aunty, 2000; Sach & Warner 1995). While the people suffer these negative social conditions, their livelihood and human security have been hampered by the outcomes of the activities that sustains and lubricate the continuous functioning of the Nigeria state and megalomaniac kleptocratic appetite of the “living bodies, dead soul” (Ndu, 2016) that run and control the affairs of the state. Environmental crime occasioned by oil pollution and gas flaring has caused colossal despoliation of the farmlands, creeks and aquatic lives. This has huge implication for livelihood and human security.

3. Environmental Crime and Human Security: Establishing the Nexus

It is important to note that Nigeria is not in want of environment laws and regulations. There are a plethora of such laws and agencies for enforcement in Nigeria. First and foremost, the 1999 Constitution of the Federal Republic of Nigeria (as amended) is the general environmental regulatory framework. Others are National Policy on Environment, act 42 of 1988; National Environmental Standards and Regulation Enforcement Agency Act NESRSEA, 2007; National Oil Spill Detection and Response Agency (Establishment) Act 2006; Environmental Impact Assessment Act, cap L12 LFN, 2004; National Effluent Limitation Regulation, Special

It is trite that “oil development can degrade the environment, impair human health and precipitate social disruption” (World Bank, 1995, p. 18). Social disruption threatens and many times undermines livelihood and impairs human security. The silent emergencies undermining their livelihood plunge them into poverty. This is similar to the crime of robbery, which deprive the property owner and enrich the robber. This is how the poverty of the majority rural people of the Niger Delta is generated. Emphatically, such poverty as potential source of conflicts is caused by exploitative acts of exclusion; deprivation and despoliation of sources of livelihood (see Wright cited in Gilbert & Barigbon, 2015). This is exactly the case with environmental crime (violence). While activities related with the acts are to the cost- benefit advantages of the offenders (polluters), the crime such as gas flaring and oil spill undermines the livelihood of the victims, most especially the rural people who rely on the environment for survival.

Data from Barigbon (2021a) and further calculated for the purpose of the present paper indicated that there is an increasing trend in the total volume of air pollution, gas flaring and oil spillage in Nigeria. As at 1980 the volume of gas flared was 22214000 cubic metre, and number of oil spills was 241 cases, while poverty rate at 36.2 %. It has to be noted that poverty is a measure of human security. As at 2017, 12557060268 cubic feet of gas has been flared into the atmosphere and there have been 11559 cases of oil spills and average poverty rate at for the period at 43.6%.

Another set of raw data from (NOSDRA, 2019) on Oil Spill in the Niger Delta and extensively calculated for the purpose of the present work also indicated that 79,303,861.04 litres amounting to 452,030.62 barrel of oil has been spilled between 2008 and 2018 from of 9,582 incidences of oil spills. By these acts, present and future generations are “injured as a consequence of changes to the chemical, physical, micro-biological, psychosocial environment brought about by the deliberate or reckless, individual and collective human action and
omission” (William cited in Oluduro, 2019,p.10). These acts amount to environmental crime because they contravene all existing laws earlier mentioned as governing activities and conduct of corporations and personnel engaged in oil and gas business; including the state (regulator).

There are principally two sets of victims of environmental crime. They are the environment and individuals (communities). The environment is the principal victim of environment crime; and this is quite broad. Yes, the environment covers all creatures within the environment including man, animal, aquatic lives, water, air etc as contained in NESREA definition of the environment. As such environmental crime impacts public, livelihood, non-human species, nature itself as well as the future generation. It has environmental crime has detrimental consequences on the economy and human security. The environment as victim of environmental crime suffers irreversible loss of biodiversity and ecological integrity. The individual livelihood structures are destroyed and the health quality undermined. Communities as a collective of individuals suffer economic losses and loss of identity; their culture, tradition and belief as a community are lost to environmental crimes. For instance, the degradation of mangrove forest and marine lives significantly affect the culture riverine societies who look up to the source as a cultural heritage. The spiritual and cultural activities associated with and done in such environment are forcefully extinguished.

Where environmental harms are chronic, cumulative and irreversible, the prospect of future generation is jeopardized, as they bear of burden of present unsustainable development drives. The individual victims may not be physically adversely affected; but the cumulative effects of the harm on the environment certainly would be wanton, colossal and devastating such that it will require a long spell and commitment of huge financial and human resources to recover and restore such environment to a level that it can meaningfully support lives.

There offenders or violator just as there are victims of environmental crime. The biggest culprits of environmental crime in the Niger Delta are the Nigerian state and Multinational Oil Corporations. The state has failed to perform effectively its regulatory role. May be it is undermined to effectively perform this regulatory role due to the overbearing influence of the MNOCs and the parent countries. Truly the state must survive and finance is the lubricant of state survival. The implication is that the source of state survival must be protected and treated in ways that are favourable operating to ensure that sustenance. The compromise has rather exacerbated the situation and created the situation of an armageddon as described by Oluduro. Oluduro (2019) truly likened the cases of environmental crime committed by the corporations
in the Niger Delta to an *armageddon*. How the people have managed to survived is even a misery. The internationally publicized spill in the Gulf of Mexico in 2010 (see Hartogs, 2013; Vaughn, 2011) is comparatively insignificant to the debilitating oil and gas pollution related environmental crime committed by the corporation in the Niger Delta. Yet very little is done to forestall the increasing trend of the crime.

Many times environmental violent crimes ignite agitations and confrontations from affected subject people against violators and polluters of the environment. This many times has been met with brute state force in defence of oil facilities and infrastructure by the corporation; and safeguard of flow of rents accruable from such ventures by the state. These have many times amounted to genocide (Barigbon, 2021b). As such the corporations commit the environmental crime of ecocide and genocide. The environmental tragedy of the Ogoni as captured by the UNEP report 2011 are *ecocidal*. The communities of Ogoni are still laboring meaninglessly under adverse environmental devastation that has destroyed their livelihood structure and desecrated their socio-cultural heritage, the fauna, flora and vegetations. Unfortunately these environmental crimes have not found expression in Nigeria’s criminal jurisprudence. Except in the area of sabotage and economic crime, little effort has been made in confronting and overcoming the menace.

**Continuous violation of the Environment: Poor Laws or Weak Enforcement?**

The existence of environmental crime calls for environmental justice, defined by the United States Environmental Protection Agency (USEPA) as “the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies” (cited in Owolabi, 2014, p.36). As such environmental justice must guarantee the sacredness of the earth; right to freedom from ecological destruction; right to ethical balanced and responsible usage of land and renewable production and disposal of toxic/hazardous waste that are likely to undermine fundamental rights of individual or group to clean water, air land, food and healthy living. Where it is established that the above has been breached, there must be remedy, *ubi jus ubi remedium*. Unfortunately compensation regimes have not been favourable to the rural poor who are more aggrieved. The rural poor suffer more but compensated less. It is the rich urban ruling class who are the leaders of the rural areas where these acts of environmental crime occurs that benefits more from compensation regimes (Barigbon, 2021a).
As it is has been shown above, the problem of corporate environmental crime (violence) in Nigeria is not the lack of regulatory legal frameworks and agencies. The problem is partly poor law and want of enforcement. Recall that a lot of lobbying is involved in law making. The underhand dealings and meddlesomeness of the MNOCs and sometimes in the formulation and enforcement of environmental legislation in Nigeria is a worrisome factor. Poor or weak natural resource governance in a weak state such as Nigeria results in MNOCs (corporation) neglecting or taking advantage of lax environmental regime. This is what Chevron, Elf, Eni, SPDC amongst others are doing in the Niger Delta and Nigeria by extension. They do the business of oil and gas exploitation and exploration with corporate impunity resulting in catastrophic environmental degradation, human right violation, ecocide and genocide. This is allowed to go on unabated because the activities of the corporation are at the soul of the survival of the Nigerian state. For whatever justification, government mantra echoes attention to environmental protection and regulation. Regrettably, this mantra has failed to resonate with effective environmental protection to the satisfaction of those at the receiving end of the impact of environmental crime committed by corporations.

Most crimes committed by corporations are in the realm of failure or violation of statutory liabilities. It is much less about liability for basic offences which are difficult to proof against a corporation in the prevailing criminal jurisprudence in Nigeria. But this seems to have been taken care of by the clarification of Company and Allied Matters Act (CAMA) 1990. Section 65 expressly provided:

> Any act of the members in a general meeting of the board of directors or managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself and the company shall be criminally and civilly liable therefore to the same extent as if it were a natural person.

Interestingly, section 65 to 69 also renders the corporation liable for the act of third party, any other officer or agents, except where it is established that the officer, agent or third party had acted fraudulently on forged document purporting to be sealed by or signed on behalf of the company. Unfortunately the provision of CAMA has not been applied to enactment of corporate environmental criminal laws in Nigeria. To this extent, no corporation or it officials has been indicted for criminal breach of environmental care. Only fines and charged of damages has been imposed. Still no deterrent fine commiserate with environmental offence has been imposed by a Nigerian court.
One major argument here is that regulatory policies and fines or punishment for their violation in Nigeria are not deterrent. Lack of commitment to regulation provides means by which criminogenic activities are allowed to take place in Nigeria. The relationship between the Nigeria state as a regulator and the corporations and violators or offenders is akin to the description of weak enforcement given by Denzin 1977. He averred:

Scarcity of penalties (severe) and weak enforcement of laws often allow the industry to operate unmolested. Structural ties between the political order and enforcement agencies (such as those between local liquor commission and the police) belie separation of power between the legislation and implementation. Such ties collapse into one unit the … essential ingredient of power, control and corruption (1977, p.918).

Although Denzin was reacting to the corruption in the regulation of liquor in the United States, but his observation coheres with regulations and enforcements in the Nigerian oil and gas industry as it relate to environmental violations and crimes. The MNOCs (corporation) and the Nigerian state through it regulatory agencies work together and protect common interest, which is nothing more that more revenues, profits and rents. The establishment cozy relationship from these mean the state must protect the industries. It need that be added even on this point that Nigeria state commit environmental crime against humanity. Recall that Nigeria state has shares in the oil and gas production. Infact, it is senior partner in the business. It is a major offender and violator.

It needs to be re-emphasized that the rentier character of the ruling class (elsewhere explained as the character of the Nigerian state), provide some explanations for the ineffective regulatory role it plays. From the insight provide by political economy, Nigeria is a crawling or pseudo capitalist society. The forces of production are not manufactured. It is therefore not a productive capitalist society (see, Agbesa, & Kieh. 2014). Since it not productive capitalist, regulations and implementations and framed and undermined to accommodate the corporations, from whose business activities rents are derived. This had adversely undermined the adoption of command-and- control strategies in Nigeria’s regulatory frameworks. Command-and control according Simpson, et al (2013) implies strategies that dictate compliance and rely on threat of formal legal sanction to achieve compliance.

The point has been made somewhere in this paper, that many times, environmental crimes are committed due to negligence and other times due to cost-benefit rationalization. This is so because cost of averting the occurrence of spill is huge. Therefore on a cost-benefit scale,
corporations easily close their eyes to the occurrence of the spill or the flares. For example, replacing crude oil pipelines buried in the Niger Delta over fifty years ago is a huge cost to the corporations. Old pipelines are allowed to rupture and spill oil while corporations manipulate the system and many times escape culpability through the Nigeria weak environmental regulatory and enforcement system. The law also makes many exceptions for civil and criminal liability in the case of sabotage, again except where negligence is proven. But these are exceptions too many in environmental violation matters. These exceptions open the floodgate of environmental crimes that infringe on the economic right of innocent third party victims. These third party victims are not culprit of environmental crime. Unfortunately, the law *blanketly* and disparagingly allows them to suffer restituted environmental crime.

The claim that the Nigerian state is not committed to environmental standard is further accentuated by certain section of the National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006. NOSDRA is an agency of the state. Aside from the core mandate of providing oil spill surveillance and ensuring compliance to environmental regulations and standards particularly in the petroleum sector, some sections of the Act gives mandate to enforce sanction, albeit arbitrarily and insignificantly. By the provision of the NOSDRA the polluter is mandated to report its own case of commission of an environmental crime such as oil spill. Ridiculously, failure by the polluter to report an occurrence of oil spill attract a fine of \( N \times 500,000 \) per day of default and \( N \times 1\text{million} \) further fine for non-remediation (See section 6 (2) & (3) of NOSDRA Act, 2006). This again does not demonstrate regulator’s commitment. The penalty is even paltry. Also imagine the fine of N10.00 for every cubic feet of gas flared.

If the above is the fine for polluter pays, then the potential polluters following mathematical cost-benefit rationalization will rather exploit unsustainably, pollute and pay the paltry sum. Relying on the polluter to know when an environmental crime has being committed is quite worrisome. This has sometimes accounted for conflicting figures on the date of occurrence and quantity of spills in Nigeria. For instance SPDC report on NODRA website put the number of occurrence of oil spill in Rivers state between 2007 and 2012 at; SPDC on its website the put the figure for same period at 1235; the Royal Dutch Shell Sustainability Report has 1037 cases for the same period; and reported 986 cases of oil spills for the same period under review (Amnesty International, 2013). These differences point at double standards in reporting themselves for environmental crime. This often leaves information emanating from this
industry in circumspect. It is like asking a criminal to report himself to the law enforcement agent in Nigeria.

It remains the contention of the present paper that the Nigerian state is culpable of environmental crime. This needs for elucidation. The Nigeria state commits state/corporate environmental crime against the people and the environment. The grant of permit to flare gas under the principle of polluter pays demonstrates this deeply. This has undermined the will to end gas flaring with deadline for same being postponed continuously from the first attempt in 1984 to present times. The end to gas flaring in Nigeria is certainly not in foreseeable sight. Regrettably, the recently signed Petroleum Industry Act, 2021 does not proffer any real time solution to the environmental crime of gas flaring. It gives the Minister latitude of power to exacerbate environment crime such as permitting gas flaring (see Section 277(1) and Section 201); determining cessation date of gas flaring (Section 275). The act of state-corporate environmental crime is likely to be here for sometimes. This is due to the cozy relation between the Nigerian state and the corporations. The regulatory policies are just rather solely cooperative with the corporations. How MNOCs sponsor the operational activities of regulatory agencies EGASPIN, NOSDRA and NESREA is worrisome. It leaves the intent of the supposed gestures by the corporations in circumspect. This is substantiated fact. A staff of NOSDRA recounted how the agency relies on operational vehicles, motorized boats etc from MNOCs such as Shell Petroleum Development Company (Nig.) Ltd (a subsidiary of Shell BP, Netherland, United Kingdom) and Nigeria Agip Oil Company (a subsidiary of Eni, Italy) to access the scene of environmental crime. This no doubt undermines the credibility of environmental audit report emanating from and affecting the MNOCs. This also explains why reports of environmental crime from these regulatory agencies have always suppressed the true damage done to the environment and livelihood of the Niger Delta. Save for the UNEP report, the exact damage done to the Niger Delta environment by act of environment crime has remained undetermined, un-quantified and unexplained despite the razzmatazz around it.

The above is made worse by the problem of access to environmental justice. Because the legal framework and enforcement of environmental crime in Nigeria is grossly defective, victims of environmental crime are confronted with the many challenges in accessing environmental justice in Nigeria. Aside legal limitations, there is also crisis of confidence. This provide justification for why many of these cases such the Bodo Oil spill case against SPDC, the Goi community oil spill case, were taken offshore to the Courts of the United Kingdom. It is the
researcher position the advantage has not been taken of the provisions of CAMA 1999 to strengthen enforcement of environmental right in Nigeria; and to the point of enacting criminal legislation, deterrent and enforceable punishments for environmental crimes beyond mere sanction and paltry fines. Leave could also be borrowed from the India legal jurisprudence where environmental violence offences are criminalized and codified (see Bare Act, Constitution of India, 1949).

But where criminalization of environmental violent crime is yet part of Nigeria’s criminal jurisprudence, the application of informal sanction at the moment could play some deterrent roles. Such informal sanctions against corporation involved in environmental (violence) crime could take the dimension of negative publicity. Multiple sources of properly coordinated negative publicity have the potential of damaging the public image of recalcitrant corporations. This could narrow the business prospect and chances of corporations. This is the decisive role civil societies in environmental activism. The Ogoni – Shell crisis, Wilbros - Choba crisis, Umuechem -Saipem crisis etc, demonstrated the use of negative publicity. In these environmental activist groups like Environmental Right Action, Mother Earth, Friend of the Earth, Africa, MOSOP, etc wage serious media wars that weakened the corporate violators of environmental protection policies in the aforementioned areas.

4. Conclusion and Recommendations

The environment is not just where man leaves. The environment is life. This paper has advanced the argument that the unsustainable drive for industrialization, development and capital accumulation has occasioned colossal environment damages by the action and inactions of corporations in connivance with the state. This is done in deviance to plethora of existing environmental legislations. These also make the Nigerian state and corporation operating sometimes within and other times above Nigeria weak environmental laws, offenders and violators. These violations which have occasioned ecocide and genocide in the Niger Delta are described as environmental crimes, themselves complicating the resource curse and Dutch disease phenomenon. The implication of these on human security is huge. The environment is made desolate; while the people who rely on it are enmeshed in unjustifiable poverty; others who live in it do not know when their death will come, as environmental crime result in slow death, acts of genocide. These acts also affect freedoms with untold implications for human security not only for the present generation but gravely for those to whom the environment is
held in trust. This is because human security is anchored on sustainable livelihood, social and economic security.

The conclusion is that environment crime in the Niger Delta by virtue of the cozy relation between the state and the corporations will abate soon; and that environmental crime or green criminology is still evolving and therefore yet codified is a self-defeatist excuse. It is self-defeatist because it shows the lack of moral discipline and the lack of sense of justice of the state and the corporations. CAMA, 1999 has already provided the road map for criminalization of corporate environmental crime in Nigeria. This together with other laws and regulation has to be made pragmatic. To make them pragmatic, the following recommendations are proffered:

There is the urgent need for the enforcement of strict liability in a very pragmatic manner and that protect the innocent people who rely on the environment as livelihood support structure. One way of doing this is by removing the overreaching exemptions cum limitations in environmental legislations. The exemptions appear to open too much leeway and escape routes for culpability by environment crime offenders.

It is discovered that at the moment civil liability that presently regulate environmental crime jurisprudence only accommodate injuries to persons and properties. However where damages done are incidental to the environment and therefore to persons and properties as in the case of damages occasioned by oil spill, common law liability rule should be invoked to accommodate other victims, such as the environment and future generations.

There is the need for cleaner technologies for a sustainable development that enhance human security. Exploration and exploitation of natural resource must be done and seen to have been done in an environmentally sustainable manner devoid of destroying the livelihood support base and fountain of human security. By so doing, the challenges of poverty, inequality, loss of biodiversity, unsustainable consumption exploitation and consumption of natural resource in ways to amount to environmental violence may be drastically addressed.

There is need for the codification of environmental violation and offences as crime with stricter and severe punishments. Borrowing a leave from Indian constitution, the federal government through the National Assembly should take urgent and decisive step to codify the right to a safe and cleaner environment as a constitutionally enforceable fundamental human right of citizens and threat to them treated as threat to life with criminal liabilities.
The court play very vital role in environmental violation adjudication by corporations. This role needs to be tackled with increasing assertiveness, innovativeness, judicial activism and in line with international best practices. The Nigerian Courts have not demonstrated robust sagacity. While there need to tighten the punishment for environmental crime through legislative enactments, the court should militant enough to invoke the laws and impose the true cost and penalty for environment crime in more punitive manners to ensure deterrence. This cannot be done without the transparency of regulatory agencies to ensure pre-crime and post crime enforcement actions. Pre-crime enforcement should be targeted at damage and hazard control. In all, it is better to prevent crime, than to control crime.

REFERENCES


Fagbohun, O (2012). Mournful remedies, endless conflicts and inconsistencies in Nigeria’s quest for environmental governance: Rethinking the legal possibilities for sustainability. 4th Inaugural Lecture, Nigeria Institute for Advanced Legal Studies.


Oluduro, O (2019) Surviving the Armageddon: The law as elixir for environmental crime in Nigeria’s oil industry. 14th Inaugural Lecture, Adekunle Ajasin University, Ondo State Nigeria.


