

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

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Abstract

Admittedly, environmental crime or green criminology as sub-filed or a separate section of legal jurisprudence is struggling to evolve in Nigeria. This is particularly so in the light of lax legislation regulating the Nigeria oil industry. This 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; which crime is increasing unabated in the Nigeria Delta region of Nigeria, with huge human security implications. The environment is the life and sustainer of humanity, unfortunately 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 of the activities associated with industrialization and development instead of ameliorating has rather deepened the poverty and misery of the Niger Delta. 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 theory. Data were purely qualitative, and generated from secondary sources and subjected to content analysis. The fundamental finding of this paper is that the trouble with environmental governance in Nigeria is not the want of regulations, albeit weak but the weak extractive and regulatory capacity of the Nigeria state to enforce compliance. The paper recommends very strongly that the Nigerian state must assert its stateness, effectively perform its regulatory roles, and criminalize all acts of environment violations.

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

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1. Introduction

The reality of the Nigerian economy is based on exploitation of natural resources. Natural resources are wealth, sources of wealth and in the case of Nigeria national assets endowed by creation are embedded in the environment. In divine demonstration that the environment is not just a common heritage but a source of life for present and future generation, sacred and

religious book such Judeo-Christian golden book (the bible) (Genesis 1:28) and also the Muslim Holy Book (Surah 6:165; Qur'an 2:60) places a duty of care on man. That duty of care places on man right to subdue the earth and the obligation to replenish it. To replenish earth means exploiting it in a sustainable manner. Unfortunately man has rather been more pressured to the destruction of the "very means by which (his) life is sustained" (Opka *et al*, 2020, p.39). The activities of man in pursuit of development has rather become a negation of the vision of sustainable development; whereby the drive to explore and exploit the earth for 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.

The point is that man's drive for industrialization and development as carried by mostly the oil multinational corporation with the tacit connivance or under the guidance of the state has come with some environmental menace. This is described in paper and within the context of green criminology as environment crime, which is a crime committed against humanity through human actions and inaction that negatively impact the environment. This is accentuated by the logic and rationalization of the drive for gains. It is against the this background that this paper argues strongly that that the misguided exploration, exploitation and management of natural resource wealth had further accentuated the *resource curse* or the *Dutch disease* phenomenon (Anty, 2000; Sach & Warner, 1995) in the Niger Delta of Nigeria amount environmental crime; and that this undermine human security.

By way of *problematizing* the issues of this paper, it is important to point out that 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 follower of developments in Nigeria. Drinking water in that area contains carcinogen level at over 900 times above World Health Organisation standard (UNEP, 2011). This had occurred as the result of pursuit for development particularly through activities associated with oil exploration and exploitation. The activities of oil exploration and exploitation have occasioned the environmental burdens highlighted by the Yale Centre for Environmental Law and Policy as well as the UNEP Report as cited above. 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.

2. Conceptual Clarification

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). The environment 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; NESREA, 2010). The environment as the external surrounding that support life, influences development and behaviour could also be expanded to include socio-cultural setting of humans and other living organism that lives in it (Havyar & Thomas, 2012).

The environment is considered polluted degraded or denigrated 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” (Ola, 1984, p.155). These are act of environmental pollution and degradation. This deliberate alteration and distortion of the composition of the environment by man in way that undermine the suitable use of the environment, which acts has resulted in threat to lives and livelihood is discussed in this paper as environmental violence and environmental crime.

Environmental Crime

The concept of environment crime otherwise referred to as ecocide, originate from the Greek words of *oikes* and *caedere*, which means *household or home killing* (Malhotra, 2017). 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. Environmental crime according to Sutherland (1983) is “a crime committed by a person of respectability and high social status in the course of his occupation” (p.7).

Corporate crime otherwise referred to as *white collar crime* and corporate environmental crime also referred to as *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). According to Reason cited in Oraegbunam (2019), they 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)” (p. 44). They involve illegal behaviour 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).

Largely, environmental crimes are contravention of pre-existing laws sanctioning illegal conducts with criminal penalties and based on environmental management regulations. Unfortunately, the definition of environmental crime or corporate environmental crime However, provided about does not fit into Nigeria. This is because environmental crime or green crime is novel and yet properly codified in Nigeria legal jurisprudence. It is merely described as environmental violation. In international green criminology and in climes where environmental crimes are codified, they are treated as strict liability crime (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. Ordinarily, in green criminology the doctrine of vicarious liability holds corporations responsible for the acts, omissions and commissions of committed by their employees. Inversely, it is the *actus reus* (act or omission that comprise physical element of a crime) and

the *mens rea* (criminal intent or knowledge of wrongdoing that constitute a crime) of the employees or individuals acting on behalf of the corporation that are automatically attributed to the corporation.

State-Corporate Environmental Crime

Environmental crimes may be classified either as state-corporate environmental crime or corporate environmental crime or a crime of globalization (Rothe, 2009). State crimes sometimes called state organised crimes are committed by state against the environment or against humanity. They may also occur by act of negligence of the state to perform its regulatory function. These crimes are rooted in the drive for capital accumulation by the modern state, which many times result in violation of human rights (Green & Ward, 2000). Within the context of this paper, oil spills and gas flaring and their associated damages by the activities of the MNOCs, with the tacit connivance of the Nigeria state is the closest proximate state-corporate environmental crime. They are state-corporate socially injurious behaviour. State-corporate socially harmful violations of civil and law and environmental regulations are criminal because they are many times intentional. There is therefore the presence of *actus reus and mens rea* in state-corporate environmental crime. However, the drive for gain causes the violators to overlook the legal restraints on socially harmful behaviour that undermine the environment.

State-corporate environmental crime for this paper is purely state-initiated or allowed environmental crime. Michalowski and Kramer (2006) provide a sharp perspective when they stated that state-corporate environmental crime occurs when:

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 (p.21).

The corporations that violate environmental law are employed by the state, or there is a partnership otherwise called joint venture relationship between the state and corporations. There is no doubt there are regulatory framework and institutions in for the environmental regulation, governance and sustainable development in Nigeria. There is rather collusion

between the Nigeria state and MNOCs in adherence to shared and protection of economic interest, mindless it impacts. It is this collusion or cozy relationship between these parties (the state and the MNOCs) that has undermined environmental governance in Nigeria. It is this that has made environmental violence such as the oil spills and gas flaring to continue. The lax environmental regulatory framework and their enforcement are done in the protection of the joint venture interest.

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* (2002) 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” (p.59). The core human values are truth, honesty, loyalty, love and peace. Human insecurity which is the absence of human security can undermine these core human values. The UNDP (1994) explain human security as the assurance “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” (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.

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 according King and Murray is more concerned with higher individual expectation of a secured that is devoid

of experiencing a 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” (cited in Alkire (2000, p.3). The UNDP (1994) in furtherance of this assertion 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, (p.19).

The above draw the link between environmental degradation, environment crime and human security. More on this is discussed in a subsequent section of this paper. However, it important to note that safeguard of human security therefore is a precondition to human development. This is because human security the core of all human lives “from critical pervasive threat, in a way that is consistent with long human fulfilments” (Alkire, 2003, p.2). Human being must be deliberately protected from the fatal threat of events around them which many times are beyond their local control, such as environmental pollution. This therefore requires institutionalized, responsive and preventive safeguard of humans and the environment. 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

There is geographical or geographical as well as an official economic-political and the Niger Delta (Ochuba & Idoniboye-Obu, 2020). Geographically, the Niger Delta is typified by an area

which is criss-crossed by interconnecting distributaries, estuaries and other seasonal streams. The geographical or otherwise called the actual Niger Delta covers a land area of 26,640 km and comprises of Rivers, Bayelsa and Delta States (Aston-Jones, 1998). The area comprise of communities found in wetland and marine habitat southern Nigeria. It is third largest delta in the world after Missipipi delta and Pantanal delta in South West Brazil (Oku, 2003); and one of ten most important wetlands with marine ecosystem in the world (Pegg & Zabbey, 2013). The political Niger Delta consists of nine (9) states and 15 Local Government Area; of about forty (40) ethnic group spreading across 5,000 communities which occupies a total land area of 70,000k (NDDC, 2003); with a population of about 31million people (Oluduro, 2019). The states of the political Niger Delta are: Abia, Akwa Ibom, Bayelsa, Delta, Cross Rivers, Rivers, Edo, Ondo, and Imo. Meanwhile, with the recent discovery of oil or boundary adjustment establishing the presence of oil in Anambra and Kogi, are likely to be added as part of the states making up the official economic-political Niger Delta. However, this study focuses on the core, actual and geographical Niger Delta.

The Niger Delta by the rich endowment of oil and gas resources is economic livewire of the oil dependent Nigerian state. The region has an estimated 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). The region is therefore famous due to the presence of these resources and the associated activities of oil and gas exploration and exploitation by Multinational Oil Corporations. However, the traditional source of livelihood of the Niger Delta people (except for Anambra) is mainly agriculture (farming and fishing, hunting etc). These activities rely 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 as well as the *kpofire* boys are also having their field day and therefore perpetrators of environmental crime. This happens largely due to the negligence and failure of the state of the Nigerian state in effectively performing its regulatory role. This is compounding the menace.

Astonishingly, despite the mineral resource endowments, the people of the Niger Delta wallows 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). This is because of poor

resource governance, which obfuscates the ability to mobilize and utilize resource endowment for social and economic development. Same also open the floodgates for oil pollution and gas flaring resulting in colossal despoliation of the traditional livelihood support structures and the people and well as huge health threats. These have huge implication for human security. Contrasting the wealth of the region with its stark negative development narrative indicate that the region is suffering from the *resource curse* phenomenon. 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.

3. Theoretical Paradigm

The argument of this paper is anchored on resource curse theory (Auty, 2000; Sach & Warner 1995). By the proposition of the resource curse theory otherwise called the paradox of plenty or poverty paradox, natural resource abundance in many countries most especially Nigeria has turned a curse than a blessing for accelerated development. This is because resource rich countries exhibit dysfunctional qualities that undermine their capacity to adequately mobilize and effective utilize rich resource potentials to spur (economic) development. There is often the problem of resource governance in such country. The abundance has caused unsustainable drive for capital accumulation. These have many times resulted in the violation of the environment.

The fundamental issue with poor resource governance is that oil is at the heart of the survival of the Nigerian state. Unfortunately Nigeria lack the technology and extractive capacity required for a functional and sustainable development oriented oil economy such as could be found in Norway. Yet, Nigeria largely depend on rents and royalties from the oil and gas industry for the performance of its duties, responsibilities and obligation to it citizens and the survival of the state. To access resource and the economic benefits accruable therefrom and due to poor technological strength, the Nigerian state entered a joint venture economic relationship with the MNOCs. In this relationship there is pressure for mutual accommodation between the Nigerian State and the MNOCs as a major player in the Nigeria oil and gas industry. This mutual accommodation gives way to lax environmental regulation and enforcement, which is done to give way for capital accumulation for the state and the MNOCs. It is largely due to these factors that a robust and enforceable environmental law jurisdiction

has not evolved in Nigeria. It is also by virtue of these that the Nigerian state as a regulator and the oil multinational corporations has become prime offenders and violators environmental laws and regulations. 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 parts 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 enhanced 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 & Okogbule, 2020, p.20). This has largely undermined development and portrays snares on the path of achieving key components of the sustainable development goals.

The argument of this paper therefore is that 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 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.

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 Instruction No.8, 1991; Associated Gas Re-injection Act, Cap A25; LFN 2004; Associated Gas Re-Injection (Continued Flaring Of Gas) Regulation, LFN, 2004; National Environmental (Soil Erosion and Flood Control) Regulations, 2011; Oil in Navigable Water Act, Cap 06, LFN, 2004; Water Resources Act, Cap W2, LFN, 2004 National Environmental (Surface and Ground

Water Quality Control) Regulation, 2011; Petroleum Industry Act 2021, etc. (FGN, 2021, Fagbohun ,2013; Amokaye,2004; Okorodudu, 1999; Oluduro, 2019; Brown & Okogbule, 2020). Any contravention of the above outlined and many other laws and regulations amount to violation, hence environment crime.

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 traditional livelihood structure 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 (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 our purpose here also indicate 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, the present and future generations of the Niger Delta locals 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).

The discourse so far has presented two sets principal of victims of environmental crime. They are the environment; and the individuals (Niger Delta locals). The environment is the principal victim of environment crime; and this is quite broad. Recall that 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 human and non-human species, nature itself as well as the future generation. It 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 of 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 the burdens 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 time and commitment of huge financial and human resources to recover and restore such environment to a level that it can meaningfully support lives.

There are offenders or violators of environmental crime just as there are victims. From the data presented above, the biggest culprits of environmental crime in the Niger Delta are the Nigerian state and Multinational Oil Corporations. The state is the greatest offender of environmental crime. This is because it 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; and need for economic resources for the performance of its functional and its survival. 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 to those doing business with it. To ensure its sustenance, it has to accommodate the MNOCs that dominant the oil sector. This accommodation and compromise will rather exacerbate the poor environmental condition of the Niger Delta, a situation described by Oluduro as *armageddon* (Oluduro, 2019). Truly, in the light of the environmental crime committed by the MNOCs and the Nigeria State; and against

environmental and human security situation, the Niger Delta faces an Armageddon. This is except a holistic environmental mitigation and restoration measures are drastically taken (not the type currently going on in Ogoni area of the region). In any case, how the people have managed to survived is Armageddon is even a misery. This is because even internationally publicized spill in the Gulf of Mexico in 2010 (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 to 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 labouring 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, and nationality, 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 aggressed. 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 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 crimes committed by corporations.

Meanwhile, most crimes committed by corporations are in the realm of failure or violation of statutory liabilities. It is much less about liabilities for basic offences which are difficult to proof against a corporation in the prevailing criminal jurisprudence in Nigeria. But to my mind has 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 its officials has been indicted for criminal breach of environmental care. Only fines and charges of damages have been imposed. Still no deterrent fine commensurate with environmental offence has been imposed by a Nigerian court.

One major argument here is that regulatory policies and fines or punishment for their violations 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 as well as offender and the corporations as violators or offenders is akin to the description of weak enforcement given by Denzin when he averred that:

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 relates to environmental violations and crimes. The MNOCs (corporation) and the Nigerian state through its regulatory agencies work together and protect common interest, which is nothing more than more revenues, profits and rents. The establishment of a cozy relationship from these means the state must protect the industries. It needs that be added even on this point that Nigeria state commits environmental crime against humanity. Recall that Nigeria state has shares in the oil and gas production. In fact, it is a 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, many times explained as the character of the Nigerian state, provides some explanations for the ineffective regulatory role it plays. Nigeria is a crawling or pseudo capitalist society, where the forces of production are yet immature. It is therefore not a productive capitalist society (Agbesa, & Kieh, 2014). Since it is not a productive capitalist, regulations and implementations are 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 Simson, *et al* (2013) implies strategies that dictate compliance and rely on threat of formal legal sanction to achieve compliance.

The point has been earlier been made 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 to escape culpability. This is made possible through Nigeria's weak environmental regulatory and enforcement system. The law also makes many exceptions for civil and criminal liability in the case of sabotage, except where negligence is proven. But these are exceptions too many in environmental violation matters. These exceptions open the floodgate of environmental crimes that infringes 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 un-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 it mandate to enforce sanction. This has rather being enforced arbitrarily and insignificantly or largely enforced in the breach. 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 ₦ 500,000 per day of default and ₦ 1million further fine for non-remediation (See section 6 (2) & (3) of NOSDRA Act, 2006). This does not demonstrate regulator's commitment to enforcement and compliance. The penalty is even too paltry. Imagine the fine of N10.00 for every cubic feet of gas flared. That is quite ridiculous. If this is the fine for polluter pays principle, then the potential polluters leveraging on mathematical cost-benefit rationalization will rather exploit unsustainably, pollute and pay the paltry sum.

Also 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.

The Nigerian state is therefore culpable of environmental crime. This needs more 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 time. The indication is that 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. This latitude is provided for in Section 277(1) and Section 201) which give the Minister the power to permit gas flaring and ; determining cessation date of gas flaring (Section 275). By these provisions, the act of state-corporate environmental crime is likely Nigeria for decades to come. This is due largely to the cozy relation between the Nigerian state and the corporations. The regulatory policies are just rather solely co-operative and accommodating with the corporations.

How MNOCs sponsor the operational activities of regulatory agencies EGASPIN, NOSDRA and NESREA is also worrisome as it is likely to undermine the extractive powers of the regulators. It leaves the intent of the supposed gestures by the corporations in circumspect. This is substantiated fact. In one discussion , 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 oil spills (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 polluter (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. The legal framework and enforcement of environmental crime in Nigeria is grossly defective. Victims of environmental crime are also confronted with the many challenges in accessing environmental justice (restitution and compensation) 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 my considered 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 (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 of civil societies in environmental activism. The Ogoni – Shell crisis, Wilbros - Choba crisis, Umuechem -Saipem crisis etc, demonstrated the use of negative publicity. In these crises, environmental activist groups like Environmental Right Action, Mother Earth, Friend of the Earth, Africa, MOSOP, etc waged 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 achieve this, 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.

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