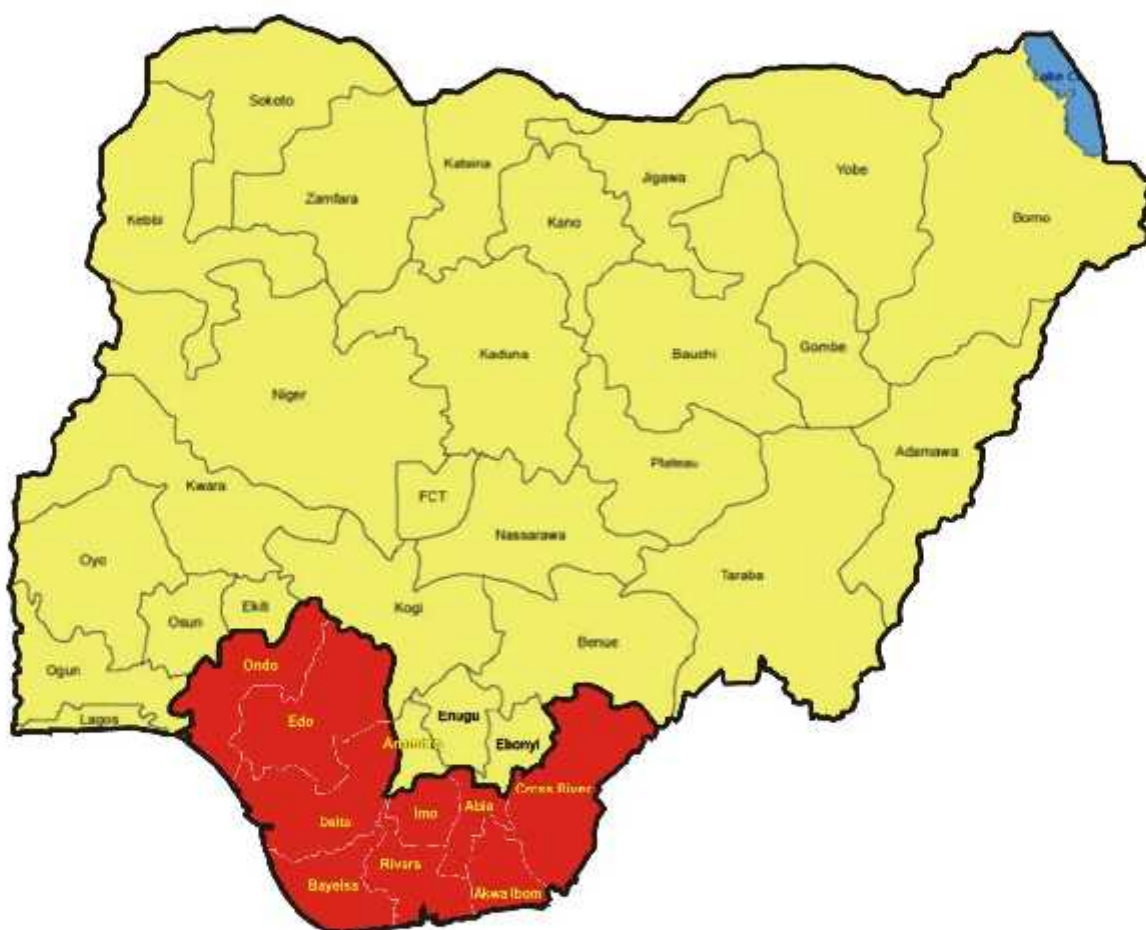


# ENVIRONMENTAL GOVERNANCE IN THE NIGER DELTA



African Centre for Leadership,  
Strategy & Development  
Centre LSD



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**Centre LSD**

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### ACRONYMS:

DPR	Department of Petroleum Resources
FME	Federal Ministry of Environment
FEPA	Federal Environmental Protection Agency
NOSDRA	National Oil Spill Detection and Response Agency
NESDREA	National Environmental Standards and Regulations Enforcement Agency

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### Summary

This is the report of research commissioned by the African Centre for Leadership, Strategy and Development (Centre LSD) with support from Cord Aid. Relying on secondary and primary data via content analyses of relevant documents and interview notes, the study focused on the following objectives:

1. Review Nigeria's environmental policies and procedures in terms of their effectiveness in regulating activities of individuals and companies operating in the environment of the Niger Delta.
2. Analyse the level of enforcement of the environmental policies by the different statutory agencies of government and how well they have fared.
3. Analyse the roles of different stakeholders including Companies, Community etc in ensuring environmental safety.
4. Review the factors that contributed to the issues and concerns in the environment of the Niger Delta.
5. Assess the level of implementation of emergency measures in the Niger Delta clean up.
6. Suggestions on the way forward.

### Key Findings

- Nigeria has more than twenty-five environmental policies which if fully implemented can take care of rising threat of environmental insecurity in the Niger Delta.
- When it comes to environmental governance in the Niger delta, the government, oil companies and local communities are easily implicated in the lack of full implementation of environmental policies.
- One key problem around oil related environmental issues in the Niger Delta is its link to economic survival of those at the receiving end—local community people—who see struggle for the environment as that of life and death in an atmosphere of an oil industry that formally excludes them.
- The judiciary in Nigeria has not helped matters. Seeking and achieving environmental justice through the court in Nigeria is mainly difficult for community people. Justice is difficult to achieve, making the option of going to foreign courts necessary. The cost of doing so remains high and further disappointing.
- Oil related environmental problems are framed as development problems in the Niger Delta. This suggests a holistic approach to governing the environment and managing the oil.

### Recommendations

#### *Government*

- Implement existing environmental legislation.
- Repeal obsolete environmental laws in line with changes in society.

- Make governance of the environment and oil more inclusive with local communities in the Niger Delta who bear the greatest brunt from legitimate and illegitimate access to crude oil as major stakeholder in order to reduce the problem of violent conflict in the region.
- Plan for a low carbon energy system and economy.
- Separate regulation from business interests.

### *Local Communities in the Niger Delta*

- Pursue environmental justice with non-violence.
- Protect the local environment.

### *Oil Companies*

- Protect the environment.
- Comply fully with all environmental regulations.
- Clean up all polluted sites in the Niger Delta.
- Stop flaring gas.

### Introduction

The subject of good environmental governance is very much an issue of concern today, at all fronts in the sustainable development discourse. Formal and informal economic activities, of both government and the private sector, especially in the extractive sector, pose a lot of threat to the safety of people and their environment. Adequate attention has not yet been given to the environmental consequences of efforts aimed at meeting economic needs. Here lies the real issue of what good governance systems can do to save humanity from self-destructive behaviours. As the world continues to look for opportunities to meet its energy needs, and people continue to search for their own means of survival, the environment becomes, indisputably an issue. Sustainable relationship to nature is desirable for the protection of the environment. Regrettably this has not been the case in many parts of the world. It is even worse for developing countries, as experience has shown that most of the environmental problems they have faced in the last five decades or so, since discovery of natural resources in these countries, are linked to how the resources are being managed. At issue is protection of the environment and good management of natural resources (Walter and Ugelow 1979: 102).

The sustainable development discourse calls for steps towards preserving the life of the environment through adequate policy attention to the mode of extraction of resources, political process, and effective integration of economic and environmental concerns of affected segments of society in the designing and implementing policy response. The point being made here relates to the need for the present generation to guarantee and not foreclose the chances of future generations access to the environment.

In nearly all oil endowed countries political leaders tend to count themselves lucky for one reason: huge financial benefits, defined as economic growth. But popular natural resource curse theory, manifests in different ways, including environmental issues. This easily turns out, a counterweight against the growth premise.

Shell and Nigerian politicians hoping soon to take over political leadership in a post colonial state, celebrated the discovery of oil in commercial quantity in Oloibiri, in 1956, only for the reason that the industry would support economic growth and good returns on investment in the sector, without a clear plan for the protection of the environment. Sixty years later, questions relating to environmental issues, such as regular oil spills and gas flaring are yet to be properly handled (Benneth 2015: 304; Mailand and Chapman 2014: 3; Gravel and Lavoie 2009: 5; Lemons and Agrawal 2006: 2; Biermann 2004: 3). The literature suggests that progress has been made in terms of policy formulation but not in the area of implementation. This is a matter that deserves more attention in respect of what actors are doing to protect the environment and manage the oil resource.

Against this backdrop, this report looks at the nature of environmental governance in the Niger Delta. The African Centre for Leadership, Strategy and Development (LSD) commissioned this study with support from Cord Aid. Below are the specific objectives of the study:

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<sup>1</sup>Good environmental governance has been suggested as the sure way to tackling the many environmental problems that the world faces today. From international to local fronts, this means, among others, recognizing the role relevant government agencies, companies, inter-governmental organizations, multilateral organizations, civil society, communities and individuals can play in ensuring the environment and natural resources are properly managed. As with the case of the Niger Delta, resolving the huge environmental crisis, caused mainly by the petroleum industry, has to be linked to good management of the environment and oil and gas, where all stakeholders, including communities directly impacted by regular oil spills, gas flaring, and improper waste disposal, are seen to be active partners. Related to this, or even as an important issue in the environmental governance discourse is environmental democracy. Both concepts reflect a concern about the extent of inclusiveness in the management of the environment and natural resources.

1. Review Nigeria's environmental policies and procedures in terms of their effectiveness in regulating activities of individuals and companies operating in the environment of the Niger Delta.
2. Analyse the level of enforcement of the environmental policies by the different statutory agencies of government and how well they have fared.
3. Analyse the roles of different stakeholders including Companies, Community etc in ensuring environmental safety.
4. Review the factors that contributed to the issues and concerns in the environment of the Niger Delta.
5. Assess the level of implementation of the emergency measures in the Niger Delta clean up.
6. Suggestions on the way forward.

### Methodology

The study relied mainly on secondary data and observation. It benefitted from information provided in the website of some oil companies. Being basically qualitative in design, analyses of data followed that tradition, by addressing each of the objectives with content analysis of the data. This approach enabled the categorization of qualitative data into relevant themes in relation to the questions posed. While no hypothesis was tested, a key assumption, supported by the data and literature is the failure of government agencies, oil companies and local communities to fully enforce existing environmental policies, regulations and laws meant for the protection of the environment.

### State of the Environment in the Niger Delta

The Niger Delta is Africa's largest wetland, covering 700,000 km (World Bank Report 1995: 2). The region has four main ecological zones, namely, mangroves, coastal islands, fresh water and swamp forest and rainforests (Adao, E.A. and Anurigwo 2002:443; Fentiman 1986: 87).

<sup>2</sup>The region is the centre of Nigeria's petro-capitalist business, on which the country depends mainly for the bulk of her national income and foreign exchange. <sup>3</sup>The region remains one with proven huge deposits of oil and gas on which the government may continue to depend for national income and foreign exchange for some more years (Aborisade 2010:31).

In 1908 and 1914, the Nigerian Bitumen Corporation<sup>4</sup> and British Petroleum had started prospecting for oil in the region, though unsuccessfully because of the outbreak of the First and Second World Wars. Exploratory activities resumed after those wars. Dutch and Anglo Shell D'Acy blazed the trail by discovering oil in commercial quantity, for the first time, in the region.

<sup>2</sup>An account of how the oil has industry has impacted Oloma community, on the Bunny Island in Rivers State is quite symbolic. Prior to colonialism, fish farming was the main economic activity in the community. Regular oil pollution has changed all that in years. The waterways, creeks, and swamps on which this community and others depend for livelihoods have been desecrated by busy oil business. This story is similar to what is happening to other communities in the Niger Delta where oil business is carried out, including Okrika, Andoni, Ogoni, Joinkrama, in Rivers State, and Okordia in Bayelsa State.

<sup>3</sup>This a political meaning attached to the Niger Delta, with Abia, Akwa Ibom, Bayelsa, Delta, Edo, Cross River, Ondo, Imo and Rivers States as constituents.

<sup>4</sup>A German company.

As insinuated, the oil industry has altered the environment while serving as the main source of national revenue and foreign exchange to the Nigerian government. Oil-related environmental problems in region are highly controversial when it comes to identifying the causes and underlying drivers. On the one hand, oil companies and government officials in relevant agencies and Ministries ventilate similar views. They blame most of oil spill cases on sabotage, pointing to local aggrieved armed groups as mainly responsible. Rising rate of oil theft, artisanal refining and vandalization of oil pipelines have fed this narrative. The implications on the environment are many-sided, for policy formulation and implementation. On the other hand, local communities admit their own contribution through activities of those involved in illegal oil activities such as vandalization of pipelines and stealing of product for transportation to selling or local production points. These perspectives do not in any way discount the reality of damage caused for many years, through activities of those who illegally or legally participate in the industry in pursuit of economic interests.

No meaningful analysis of the state of the environment in the Niger Delta is possible without understanding the sources of environmental problems in the region. Studies conducted consistently show that environmental problems in the region, in the last five decades, are closely associated with the oil economy. With huge carbon footprints or emission of green house gases into the atmosphere, the region's oil industry makes substantial contribution to climate change.. Greenhouse gases are responsible for the problem of climate change, for which Nigeria is a victim, as reflected in the continuous conflict between herdsmen searching for grazing land and farmers struggling to protect crops from invasion.

At the local fronts, the oil and gas industry is a source of numerous environmental challenges faced, not only by locals but by every Nigeria resident. United Nations Environment Programme (UNEP) report on environmental assessment of Ogoniland, submitted to the federal government, has turned out to be one of the most illuminating and educative on the likely state of the environment in the rest of the Niger Delta (UNEP 2011: 20). UNEP undertook the assessment at the behest of the Federal Government. Issues such as 'contaminated land, groundwater, surface water and sediments, vegetation, air pollution and public health,' were critical areas of interests. Typically, the results of that assessment revealed severe damage to Ogoni land. Shell, which represents an existing wave of globalization, in a natural resource crazy world, operated in Ogoniland, in joint venture with the Nigerian government, exploring and producing oil in Nigeria until the 1990s when the Movement for the Survival of Ogoniland (MOSOP) forced her out of the community. Resistance against the company met the wrath of the Nigerian state after it turned violent with the result of death of four prominent members of Ogoniland. MOSOP leader, late Kenule Saro Wiwa, stood trial, along with nine other prominent members of the group, for murder of the four Ogoni men, who were actually victims of the anger of youths asking for development and clean environment from Shell and the Nigerian government. The story of oil related pollution is common to all communities in the Niger Delta. The entire region is encumbered with a complex array of concealed and surface pipelines interlacing villages, farmlands, forest, rivers, creeks, laid by oil companies. Legitimate industry processes span exploration; production and transportation of product from one point to the other, either for the purpose of refining or export. The illegal aspect of the oil economy has to be viewed with seriousness as well. It is equally environmentally dangerous.

There are three main popular sources of oil pollution in the region, namely, regular oil spill, gas flaring, and improper waste disposal. These continue to endanger human and non-

human members of society. This occurs at different stages in the business. It is worth noting that even before production, seismic activities, for example, pose severe threat to locals and their environment. The use of dynamite by companies, in this process, causes severe vibration on land. This has impact on animals, which local hunters go for in course of looking for food in the forest. Locals depend on the peasant economy for survival. Before oil, they knew nothing other than the environment as a sustainable source of food and medicine. Interviews with participants in this study hold the common view that decades of pollution have disempowered communities. This problem reflects failure on the part of government and oil companies to protect the environment.<sup>5</sup>

### Issues and Concerns in the Niger Delta

More than thirty million people inhabit the political Niger Delta, defined as the nine states endowed with the oil resource. As a matter of livelihood, fishing and farming are the main traditional occupations of the people, especially for those living in the rural areas of the region. This is critical in any assessment of the state of the environment in the region and what that means for economic survival of the people. Here lies the problem of pollution from regular oil spills, gas flaring, and improper waste disposal. Those who live in the coastal areas complain of the impact of large-scale oil pollution from leakages caused by breakages of oil pipelines or accidental leaks due to old age or failure of oil companies to replace worn-out facilities. Either way, the environment suffers heavily. Local armed groups controversially interpret a thriving illegal oil economy, so seen in the eyes of law, as a coping mechanism in an oil economy that basically deny them formal involvement. It was not as bad as it is today before 1999. The federal government offered nearly thirty three thousand ex-militants, who blew up oil pipelines and other facilities belonging to oil companies and the government, vocational and skill acquisition, as well as scholarship opportunities, along with monthly stipends of about Sixty Thousand Naira, under an amnesty programme in 2009. This was done to secure the facilities in order to give the government leverage for a sustained flow in production. Before then, production volume had dropped from 2.1 million barrels per day to somewhere below 1.5. The implication for a country that depends on the oil for the bulk of her national income and foreign exchange is huge.

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The idea of amnesty was based on government position of securing the industry, as traditional use of force was proving difficult to calm situation and guarantee peace for business. But the ex-militants, the Movement for the Emancipation of the Niger Delta (MEND), as the main group attacking oil facilities and kidnapping oil workers, argued that it was all in protest against what they saw as injustice in the way the environment and oil resource are being managed by the government and oil companies. Perceptions of marginalization of local communities from the legitimate oil business, especially in the face of poverty, hunger and the threat of loss of livelihoods from regular oil pollution, fueled anger and frustration among the main group attacking facilities, MEND.

Return of militancy seems very much obvious today since former President Goodluck Jonathan lost the 2015 presidential elections to President Muhammad Buhari of the All Progressive Party (APC). Ethnic view of the outcome of that election, and the perception of

<sup>5</sup>The dumping of radioactive waste by an Italian company in Koko village at the twilight of the 1980s was a big lesson for the federal government. It stirred almost immediate response that further motivated processes for initiating policy response to threats to environment.

anti-corruption fight of the present government by sections of the political class in the Niger Delta, seem clearly to have further fueled old arguments about environment issues and management of the oil resource. Clearly, for the people of the region, environmental problems are rightly framed as development issues. Activities of recent armed groups, with the Avengers as the first to emerge, point to possible return of militancy, suggesting that the amnesty programme of the federal government is yet to truly take the groups away from the creeks or a new set of groups have emerged to press for the attention in order to be able to determine policy outcome. In any case, members of these groups are currently faceless. But are causing destruction to oil facilities, to the point that the federal government has consistently blamed the current economic hardship in the country to drastic cuts in the volume of oil production, resulting from the activities of the new militant groups. The situation is worsened by fall in the price of product at the global market, where in more than twelve months, price per barrel has fluctuated between \$30 and \$51.

With limited income coming in, it is difficult for the government to take up responsibilities of clean up of all polluted areas of the Niger Delta, something it failed to do when the price of oil was more than \$100 per barrel. Meanwhile, by virtue of the joint venture relationship the federal government has with the oil majors, of owning fifty five and sixty percent equity, depending on company, government should provide the bulk of money and technology needed for addressing environmental problems resulting from activities of companies in the sector. This may have to wait longer than expected except the government looks elsewhere for alternative national income and foreign exchange.

At the moment, the cost of breakage of pipelines and siphoning of product for local refining and consumption, or export, through waiting ocean going vessels, nautical miles from shore, is not only harming the economy, the impact on the environment is vicious. The amount of pollution done to water, mangroves and soil through this processes, have been well acknowledged even by ordinary people who look for sea foods in cities and villages. “I no see oporo to buy for this whole village, nawao, na these boys and the work them dey do inside water for oil causa am” was how a local woman in Buguma, Rivers state, in an interview for the purpose of this research, responded to questions about her assessment of illegal oil business in the waterways.<sup>6</sup> What she means is, Oporo (also known as prawn), is no longer easy to find in the village because of regular oil spills on the water. Fishermen now have to paddle their canoes distances away to be able to find little. Illegal oil business adds a dangerous dimension to the destruction of environmental resources which locals access for nutrition and meals generally. Worse, is the social and economic long- term impact on the wellbeing of people.

Meanwhile, formal governance of the environment, which ought to involve all stakeholders, mainly excludes communities directly facing the burden of externalities imposed by processes which they have no control. For a good number of people from the region, politicians in the Niger Delta have denied locals of chances of better life by failing to effectively utilize monthly allocations from the Federation Account. Instead, much of that money has been stolen through direct diversion or inflated contracts. Local and state governments, as well as various federal agencies and ministries, such as the Oil mineral Producing Areas Development Commission (Now moribund), Niger Delta Development Commission, Ministry of Niger Delta Affairs, have had marginal impact on the wellbeing of people in the region because of corruption.

<sup>6</sup>Interview with a local woman in Buguma (anonymous) on 26 January 2012.

### The Role of Stakeholders

The question of ownership of the oil resource is crucial for understanding the level of participation of stakeholders in policy-making processes. By law, oil and gas belong to the federal government. The Land Use Act of 1978 confers ownership of land and all natural resources on the government. In principle, this Act takes away what the government would see as unnecessary obstacles in the form of community input in the use of land for the purpose of oil exploration and production, or for any other matter of public interest. Customary title to land becomes inferior to public interest, which the government must defend. Companies are well aware of the status of communities when it comes to land grabbing for the purpose of oil and so, are more disposed to the government. This collaboration in complete neglect of communities spells problems for implementation of policies, in which the same communities are expected to informally participate to ensure compliance.

The Department of Petroleum Resources (DPR), Federal Ministry of Environment (FME), National Oil Spill Detection and Response Agency and the National Environmental Standards and Regulations Enforcement Agency (NESREA) are key federal establishments with statutory regulatory and enforcement powers in matters of protection of the environment in the Niger Delta, derived from the 1999 constitution of the Federal Republic of Nigeria. But their effectiveness in carrying out their duties fall far below expectation for a number of reasons: lack of technical and logistical capacity; as well as insufficient tools such as laboratories and weak readiness for deployment of expert knowledge when needed (Okonkwo and Etemire 2017: 42; Elenwo and Akankali, 2014: 884).

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### Environmental Policies and Procedures: Regulatory Activities

As with many developing countries, environmental legislation in Nigeria arrived rather late (Ogunba 2016: 673). However, currently, the country has more than twenty-five federal environmental legislations, guidelines, and regulations for the protection of the environment and management of natural resources (Offiong 2011: 420). In addition, Nigeria is signatory to a number of international conventions. This means, notwithstanding the late start, the country has come along way. But environmental outcome has remained mainly unsatisfactory or controversial. Every environmental legislation provides some form of procedure on implementation and compliance. Monitoring, inspection, prosecution, prevention, are some of the approaches defining procedures for regulating human activities for the purpose of protecting the environment and managing the oil in the region.

The question of whether Nigeria's current environmental regime is adequate for the protection of environment is hardly an issue among environmental activists with good knowledge of what and how government, oil companies, and local communities are responding to the threats posed to the environment. Table 1, below shows that Nigeria's environmental regime has evolved, with environmental laws, regulations and policies, as well as institutions for tackling environmental problems in the Niger Delta.<sup>7</sup>

<sup>7</sup>Telephone interview with Mike Karikpo of Environmental Rights Action, 30 January 2017. Mike is also lawyer for many years with good knowledge of the legal framework for governance of the environment and natural resources in the Niger Delta.

It means understanding this process of evolution or changes in the development of environmental legislation is necessary for appreciating environmental governance in the region. The period, 1861-1960, was marked by lack of environmental legislation, excluding provisions contained in the Public Health Act of 1917.<sup>8</sup> The government at that time was only interested in trading activities and would consider any call for formal protection of environment as inimical to its core values and goals. Below are some environmental legislations and guidelines for protecting environment and natural resources:

**Table 1: Legislations for governance of natural resources in Nigeria, 1861-1960**

S/n	Environmental Legislation	Remarks
1.	Mineral Oils Ordinance 1914	These legislations served some purposes regarding management of natural resources by were not focused on protection of environment.
2.	Mineral Ordinance 1916.	
3.	Minerals Act of 1945	
4.	Quarantine Act 1926	
5.	Hides and Skin, 1942	
6.	Public Health Act 1917	
7.	Criminal Code Law 1916 ( <i>lack environmental protection content</i> )	
8.	Forest Ordinance 1937	
9.	Mineral Oil (Safety) Regulation 1963	This Act has provisions (Section 37 and 40) that demands best practice in the protection of personnel and equipment in courser of drilling and production of oil.
10.	Oil Pipelines Ordinance (CAP) 145, 1956 and Oil Pipelines Act (as amended) 1965 Oil pipelines Act 1990.	This Act has provisions for issuance of authorization to appraise pipeline tracks from the Minister of Petroleum Resources.
11.	Petroleum (Drilling and Production) Regulations 1969.	The Act aims at securing environmental accountability for infractions in the course of oil production, by companies in question and contractors and agents associated with them.

<sup>8</sup>Not only were environmental issues seen as secondary, the goal of the colonial state of Nigeria was ideologically incompatible with any argument that portrayed ecological or environmental rights. Access to natural resources by British colonial officials, was a key aspiration that could not be traded with environmentalism. To be sure, environmental concerns were incidental and seen to be of lesser value in the face of the economic incentives that in the first place stired struggle among European powers for foreign territories. They were not primed elements of the post-colonial environmental dynamic. Economic growth aspirations held sway and undercut environmentalism. That is also to say that the colonial state was devoid of systematic efforts at protecting the environment.

12.	Federal Environmental Protection Agency (Now Federal Ministry of Environment) Act No. 58, 1988.	This the main Federal Government Ministry in charge of environmental protection in Nigeria.
13.	Federal Sectoral Procedural Guidelines for Oil and Gas 1995.	Procedures for carrying out EIA are contained in this document.
14.	National Environmental Protection Management of Solid and Hazardous Wastes Regulation 1991 (Federal Ministry of Environment).	The Act spells out toxic wastes that are hazardous to environment and public health for the purpose of monitoring and detoxification and safe disposal. It urges companies to set up systems for keeping records and storing dangerous wastes pending time for safe disposal or recycling, for which they are also encouraged to research into.
15.	Environmental Impact Assessment Act No. 86, 1992 (Federal Ministry of Environment).	Provides guidelines or procedures for EIA. The EIA is mandatory for all development projects.
16.	National Guidelines on Waste Disposal through Underground Injection 1999 (FEPA, now Federal Ministry of Environment).	Suggest methods for waste disposal in Nigeria.
17.	Nigeria's National Agenda 21 (FEPA, now Federal Ministry of Environment) 1999.	This document considers environment basis of sustainable development and urges integration of it with all development plans on inter-sectoral basis.
18.	National Policy on Environment, 1989 (FEPA, now Federal Ministry of Environment).	This policy identifies the goal of environmental policy in Nigeria as sustainable development, strategies for implementation.
19.	Land Use Act, 1978.	This Act is couched or framed in terms of providing citizens with opportunity to use and enjoy land as a matter of rights.
20.	National Inland Waterways Authority Act No. 13 of 1997.	This Act seeks protection of the inland waterways.

21.	Forestry Law CAP 511994.	It was enacted in 1958 and amended as Forestry Law CAP 51 in 1994, to prevent damage to forest resources. It provides a framework for management of forest resources.
22.	National Oil Spills Detection and Response Agency (NOSDRA) 2006.	Clean up and remediation is key response goals by NOSDRA, established to be a leading real-time agency of government to handle oil spills in Nigeria.
23.	National Environmental Standards Regulatory and Enforcement Agency (NESREA).	NESREA is a parastatal under the Federal Ministry of Environment, charged with responsibility to execute all environmental laws, regulations and guidelines.
24.	Endangered Species (Control of International Trade and Traffic) Act 1985.	This Act was enacted to conserve endangered species. Hunting and trading in species identified are by virtue of relevant provisions this Act illegal.
25	<ul style="list-style-type: none"> <li>-National Policy Guidelines on Sanitary Inspection of Premises .</li> <li>-National Policy Guidelines on Solid Waste Management</li> <li>-National Policy Guidelines on School Sanitation.</li> <li>-National Policy Guidelines on Pest and Vector Control</li> <li>-National Policy Guidelines on Market and Abattoir Sanitation</li> <li>-National Policy Guidelines on Excreta and Sewage Management.</li> <li>-National Action Plan on Environmental Sanitation.</li> <li>-Training Manual on Food Sanitation for Food Handlers</li> <li>-National Policy Guidelines on Food Sanitation</li> </ul>	

Sources: Ogunba 2016; SPDC 2015.

Table 1, above shows that the development of environmental legislation, which is a key component of governance of environment and natural resources in any clime, was not primed during the era of colonialism in Nigeria. This is understandable. The colonial state was mainly interested in securing natural resources for the economic growth of Britain. Even without the knowledge that the Niger Delta had huge oil and gas reserves, the region would serve as an anchorage of sort, for achieving this aim. Palm oil and several other agricultural products, after an initial inter-continental immoral trade in slaves, in which British businessmen actively participated, were of high demand in a region that became a key trading post and unequal resource exchange in the entire Gulf of Guinea.

The region, then and later, effectively served the interest of the industry in the colonizer's home country and was a significant part of the imperial property of Britain. There were laws such as Mineral Oils Ordinance of 1914; Criminal Code Law of 1916 (lack environmental protection content) Mineral Ordinance of 1916; Public Health Act of 1917; Quarantine Act of 1926; Forest Ordinance of 1937; Hides and Skin of 1942; Minerals Act of 1945; and Oil Pipelines Ordinance (CAP) 145, 1956. These laws were not environmental laws as such, and could not be deployed expressly for wholesale protection of the environment and natural resources in the interest of the colonized. They were however useful for the state at that time, because they served needs of the colonial government, though the colonized was clearly not part of the policy community. They were rather excluded from the process, suggesting a governance system that did not recognize a section of the community of people that ought to have been part of the public decision-making process, by modern democratic standards or bottom-up approach to governance. This posture has continued to hunt Nigeria's postcoloniality.

The policy making process can be highly political in democratic settings. The colonial state was not democratic even though Britain, from 1861 to time it left in 1960, had made huge progress in its traditional democratic politics and formal representational government. Opposition politics of policy formulation and implementation was not expected in an atmosphere of dictatorship. The dictatorship of colonialism meant that only policies with prospects of advancing the economic interest of Britain were needed. Others were good enough, to the extent they helped advance this interest, through effective regulation of actions and behaviour of the colonized. For a governance system that was based on notions of racial superiority, governance generally under the colonial state, could not be any better.

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Clearly, as indicated in the above table, environmental laws were mainly lacking during the colonial period. British presence on the soil of country, as colonizers were driven by economic motives, for which no one would expect opposition through legislations. In the first instance, these legislations were not driven by considerations for locals' interests. Governance at this time lacked democracy in any sense of the world, as consultations and opportunities for all stakeholders to have a say in public decisions on issues of public interest were lacking. To be sure, environmental problems and access to natural resources were not issues on the political and policy agenda of the colonial state, let alone issues of legislative concern. The Public Health Act was probably the closest to what could be said to have had provisions for protecting the health of British officials. The rest of the legislations were mainly in furtherance of ways of regulating economic activities for the purpose of achieving the overall economic goal of the state at the time.

The second phase in the development of environmental legislation in Nigeria (1956-1970s), was mainly in response to the needs of an emerging petroleum-based economy. This is significant in many ways. There were still no systematic efforts at protecting the environment. Oil had just been discovered in commercial quantity, creating enormous interest for the mainly foreign business community, and huge possibilities of a neo-colonial state under the influence of the colonizer and other agents of globalization. Interestingly, entrenched environmental issues and need for effective exploration and production of the oil would, without negotiation, demand environmental protection provisions in petroleum policies and laws.

In addition to rising petroleum regulatory activities of government, this period saw, specifically in 1964, the emergence of regulations for the protection of the environment in the agricultural sector. The risk of destruction of crops by diseases and pests was a crucial

concern for a traditional agriculture-driven economy, even though oil had already emerged as the alternative.

Between the 1970s and the time just before 1987, when Nigeria was threatened by the dumping of toxic waste materials by an Italian company, the country made progress with response, not only to threats posed by oil prospecting and production activities, but also to control of dangerous waste. To be sure, toxic waste dumped in Koko village (in then Bendel State), by the Italian company, ignited wide condemnation by civil society, individual citizens, and the Nigerian federal government, thanks to a Nigerian in diaspora, who alerted the country of the ordeal. This period marked the third phase in the development of environmental regimes. The federal government responded by enacting the Harmful Waste Act (Special provisions), and made activities relating to sale, transportation, importation, export, purchase, and storage of harmful waste a criminal offence.

As well, a number of other environmental laws were enacted, including the controversial Land Use Act of 1978; Energy Commission Act of 1979; and Endangered Species (Control of International Trade and Traffic) Act. Environmental awareness among government and civil society actors grew within this period due to series of workshops and conferences facilitated by United Nations Environment Programme (UNEP). The one of 1972, in Stockholm, in which officials of the federal government of Nigeria participated, was particularly inspiring. They did not only return with fresh zeal, the actions that followed, such as the establishment of a ministry in charge of environmental protection, injected a new level of interest in issues of environmental protection, that reflected in the country's 1975-1980 Development Plan. Urban Development and Environment unit in the Economic Development ministry was created in 1975. This was a significant headway. It was not surprising that the Fourth Development Plan (1981-86), mentioned environmental impact assessment as part of the requirement for project feasibility and viability studies in public and private sectors. Since the dumping of toxic waste in Koko village (1987 to present) a number of changes have taken place, with regards to policy response to the challenges facing the country.

Nigeria is signatory to the following international conventions: Stockholm Convention on Persistent Organic Pollutants (POPs); Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain Hazardous Chemicals and Pesticides in International Trade 1998; Protocol on combating pollution during emergency; Bamako Convention on Ban of import into Africa, Trans-boundary Movement of Toxic and Hazardous Waste 1991. Others are, International Plant Protection Convention 1951; Convention on International Trade in Endangered Species of Wild Fauna and Flora; Cartagena Protocol on Bio-safety to the Convention on Biological Diversity; Convention on Biological Diversity 1993; Bonn Convention on the Conservation of Migratory Species of Wild Animals 1979; United Nations Framework Convention on Climate Change (U.N.F.C.C.C.); Convention on Fishing and Conservation of the Living Resources of the High Seas; International Convention for the prevention of pollution from ships 1973 (amended by protocol 1978 (MARPOL) 73/78; Ramsar Convention on Wetlands of International Importance; Convention on Co-operation in Protection and Development of Marine and Coastal Environment of West and Central Africa Region (Ibrahim and Imam 2015; Abdullahi 2013: 78; Adekolo, Whanda and Ogwu, 2012:668 ). Others are International Convention to Combat Desertification and Drought Mitigation; Convention on oil pollution in high seas during emergencies 1969; United Nations Convention on the Law of the Sea; Convention on prevention of Marine Pollution by Dumping of Wastes and other Materials, 1972; Convention on control and management of Ship's ballast water and Sediments.

In addition to these, Nigeria has several guidelines and standards meant for the protection of the environment. For example, the National Guidelines and Standards for Environmental Pollution Control, Environmental Guidelines for the Petroleum Industry; National Bio-Safety Guidelines and National Technical Guidelines on Erosion Control.

Understanding the goal of environmental policy and how it protects people and their environment, as well as procedures for achieving those, is a crucial aspect of policy analysis. Generally, policies are a function of the nature of problems they seek to address. In the past fifty years or so, environmental problems created by the petroleum industry in the Niger Delta have been highlighted more than other sources. Incidentally these problems are essentially the same in all the communities in the region where companies undertake oil and gas business. Companies' exploratory and production activities are replete with pollution of air, soil, creeks, swamps, mangroves, as well as pollution emanating from informal economic processes around the oil business, tends closely towards the same outcome. The entire industry process is replete with environmental issues that require policy attention.

Mounting importance, attached to oil and gas by government, companies, local community people, network of local and international businessmen and importing countries, has imposed worry about how to reconcile this interest with the need to tackle environmental issues usually associated with many natural resource based economies in the developing world. Many believe these environmental problems can only be managed or reduced, as the industry itself cannot completely take away the risk. Regular oil spills, gas flaring and improper waste disposal contribute enormous amount of pollutants to environment and remain areas in which specific policies and actions of government agencies, relevant ministries, oil companies and local community people are expected to play a significant role. At its beginning, the oil industry in Nigeria lacked environmental regulations with specific attention on protection of people and their environment outside simple public health concerns which characterized the colonial state. In fact, environmental issues were least considered in a colonial state where the economic interest of Britain was pivotal. This section looks at the development of environmental policies or regulations from a historical point of view, on the basis of emerging environmental problems in Nigeria and the Niger Delta.

This research found that at the beginning of the oil industry in Nigeria, environmental concerns, beyond public health matters, on the part of companies and government, were completely lacking. This attitude did not change for a long time, even up to the late 1980s. Like many other countries in the world, general national environmental policies, let alone, those intended to regulate activities of companies involved in oil prospecting and production, did not come early enough on the political and policy agenda. Neither government nor companies had clear positions on people-oriented environmental protection. Industrial revolution in Europe and the desire of leaders of developing countries to follow in that tradition of development means a lot for the manner and ways in which they want to voluntarily address environmental problems.

It was not a surprise therefore, that Nigeria's Oil Ordinance Act of 1914 was not framed to promote sustainable exploration and production of oil. The law made provisions for registration of companies in the colonial state of Nigeria or Britain in order to secure license to prospect for oil in Nigeria. Significantly, it was the same year the Southern and Northern Protectorates were amalgamated by Governor General Fredrick Lugard. Petroleum laws have developed piecemeal since then, in response to the growing importance of the product. In the same vein, volume of production was progressive until the 2000s when militancy

started having a toll on the industry. To be sure, in 1958, 1.88 million barrels were produced daily. It increased to 24.68 and 116.56 in 1962 and 1967 respectively. In 1972, production further rose to 655.30 and reached 845.46 million barrels daily in 1979 (Ikporukpo 2011:5).

### Implementation of Environmental Policies

It is difficult to tell which government policies are being implemented and those that are not. The reason is that none is actually being fully or effectively implemented. Implementation of policies, which is the responsibility of wide ranging members of the policy community, require visible behavioural change and results that clearly show that situations are or have changed. In this case, the Niger Delta, where current environmental problems are mainly associated with both formal and informal activities of corporations and people in the oil industry, oil companies, over the years have developed environmental policies and created safety and environmental units, but compliance with relevant regulations has been an issue. When it comes to addressing environmental problems in the Niger Delta, for which several legislations, regulations and guidelines now exist, relevant agencies of government have not done as much as expected to put an end to many of the environmental abuses recorded in the region. For example, as at 2008, more than 400,000 tons of oil had already spilled in the Niger Delta (Friends of the Earth Netherlands). Government agencies with responsibility for implementing environmental legislations have yet to fully implement such laws. Oil spill and gas flaring are two main areas that speak to the failure of policy at the level of implementation. This failure is attributed to a number of factors, including lack of equipment for government officials to carry out their legitimate responsibilities of regular inspection, monitoring, prosecution and so on (Allen 2012/13: 46; Allen 2012: 4). The most crucial point is the lack of political will to ensure oil companies conduct their affairs in a manner compatible with global best practice.

Oil companies, government agencies such as NOSDRA, NESREA, Federal Ministry of Environment, and Department of Petroleum Resources, and local communities have important roles to play in the management of the environment and natural resources in the Niger Delta. Shell Petroleum Development Company, on behalf of its joint venture partners, claims substantial progress in the management of the environment. In a recent publication by the company, it claimed success in compliance with national regulations and policies. In addition, it claims to be carrying out its activities on the basis of guidelines set by Shell International. The company has developed principles to guide its operations. Claims of business principles that consider important, health, safety and environment in its operations have been made in its health, safety and environmental policy of 1998. This policy aims at protecting the environment, health, and safety of oil workers and those of local community people. Overall, the policy mentions host communities as key partners in the system. In reality companies are yet to comply fully with the existing regimes.

Despite existing petroleum and environmental legislations aimed at protecting the environment and regulating human activities towards natural resources, oil spill, gas flaring, unsafe waste disposal, as well as rising environmentally destructive behaviours of local community people and activities of armed youths are yet to be contained.<sup>9</sup>

<sup>9</sup>Illegal oil business, meeting local energy needs with charcoal from wood, are coping mechanisms in an atmosphere of deep sense of exclusion from legitimate oil business. The net result of all this includes loss of livelihood opportunities for local people. Creeks, waterways, and swamps, forests, and soil that previously served as source of living through fishing and farming, have drastically declined. What this means is that access to basic local income and food has declined, forcing people to look for alternatives by all means, amidst lack of social security and basic social amenities.

Instead, the environment in the region has become even more polluted. The proliferation of sites for illegal production of crude oil and response of the Joint Military Task Force, responsible for protection of oil facilities, add a dangerous dimension to the problem of the environment in the entire coastal Niger Delta. For example, the practice of setting ablaze confiscated products further maligns present management of the environment and natural resources.

Full implementation of all environmental legislations, regulations or policies, require implementing agencies with capacity and tools to enforce compliance. This has not been the case, though in principle, corporations, such as oil companies. Meanwhile, these companies now have internal environmental policies and measures for addressing environmental concerns. There is apparent lack of synergy and clear responsibility demarcation among agencies of government. For example, NOSDRA, NESREA and DPR have conflicting roles in the protection of the environment from oil pollution and gas flaring. Whereas, the Minister of Environment continues to exercise overall power in gas flare out possibilities in the Niger Delta on the basis of time, the other agencies of government with mandate to protect the environment are handicapped in any likely initiative of criminalizing gas flaring.

Laws or policies enacted without involvement of the relevant policy community are likely to be problematic at the point of implementation. This is the case with environmental regimes in Nigeria. Local communities are hardly part of the environmental governance process. This exclusion easily results in positions that work against full implementation of policies because of its vulnerability to destructive conflict. The cost to Nigeria in terms of environmental destruction and economic loss, further provide lessons of how not to govern natural resources.

Full implementation of environmental regulations in the delta has suffered huge set backs. First, is the limitations imposed by the blindness of Nigeria's constitution to environmental justice. The 1999 constitution does not treat the environment as a human rights issue (Sammy, Lokpobiri and Dawodu 2015: 132). As mentioned earlier, securing justice through the judiciary has therefore been difficult for communities demanding full implementation of regulations. So far, environmental justice through the judiciary has only been possible in courts outside Nigeria. Victims of two major oil spills that occurred at SPDC facilities in 2008, in more than forty fishing and farming communities in Bodo, Ogoniland, could only secure compensation in a London court. The company offered fifty five million pounds out of court settlement in course of the litigation (Allen 2016: 3).

The Joint Investigative Visit (JIV) is a mechanism for responding to cases of oil spills. It comprises representatives of relevant government agencies such as NESREA, NOSDRA, oil companies and civil society. The aim is to identify the cause of an oil spill and come up with a consensus report.. The process has been criticized and discredited for a number of reasons, including the perception that oil companies simply use it as bait to leverage good public image when in real sense the visits are often manipulated. Communities complain about weak response and doctored reports of the visits to suit the interest of oil companies who often sponsor the visits.

Substantial progress has been made in the area of reduction in gas flaring through implementation of government's gas utilization policy. Utilization of associated gas in the

electricity sector has been lauded, despite threats posed to it from regular attacks on pipelines by aggrieved armed groups in the region and failure of companies handling distribution to effectively meet consumer needs. The establishment of Nigeria's liquefied gas company in Bonny is perhaps the boldest effort taken by the government. It has reduced flaring of associated gas. However powers conferred on the Minister of Environment towards protection of the environment, as well as those in relevant agencies such as NESREA, DPR and NOSDRA, and the issue of terminal date for gas flaring has remained difficult to achieve.

To be sure, gas flaring became illegal in Nigeria in 1984, by virtue of the Gas Reinjection and utilization policies of the government. The Minister of Environment continues to exercise powers leading to shifting of the deadline for complete gas flare out on a regular basis. Reasons are related to the difficult situation the government has found itself as regulator and owner of substantial equity in the oil business with the oil majors.

### Emergency Measures and Clean Up of the Niger Delta

The only emergency measure or credible clean up of the Niger Delta is likely to be seen in the Ogoni case, if implementation of the report on environmental assessment in that community, conducted by United Nations Environment Program (UNEP), finally starts in earnest. Otherwise, there are currently no emergency measures for cleaning up all oil spill cases in the region.<sup>10</sup> The report states that it will take thirty years to clean up Ogoniland, suggesting the heavy task and cost this entails. Both the government and oil companies have found emergency measures and clean up of the entire region difficult. On the side of the government, this will mean providing the largest amount of money needed because of the joint venture arrangement it has with the oil majors. The federal government holds fifty-five percent equity, under that arrangement, which means it has huge financial obligations to meet when it comes to environmental liability. The issue lies with the fact that the government is both regulator and investor.<sup>11</sup> The government and its agencies cannot fully enforce compliance in matters of environmental protection under this situation. The cost of cleaning up the region remains high. Government has yet to deploy the political will and set aside money for purchase of technology as part of its obligation with the oil majors to address the question of clean up. In other words, enforcing compliance in matters of clean up or even overall protection of the environment will remain difficult. In any case, the UNEP report on Ogoni, is expected to provide a template which communities and the civil society will be able to seek replication in the rest of the region.

### Conclusion/Recommendations

Nigeria has a framework for protecting the environment in the Niger Delta, comprising petroleum laws with environmental protection content, environmental legislations, implementing agencies, and guidelines, along with a number of international conventions.

<sup>10</sup>What oil companies often do in the name of cleaning spilled oil is more or less deceitful, involving burying spilled oil underground. Technology is required for safe cleaning but neither the government nor the oil companies have paid the required price for it. This habit takes away the bulk of spilled oil from the surface ground for a while. The swampy nature of the Niger Delta, along with the fact that region is mainly coastal, soon expose the trick of burying oil underground.

<sup>11</sup>Telephone interview with staff of Nigeria National Petroleum Company –NNPC-(anonymous) on 30 January 2017.

Full implementation, however, has not been achieved as the government continues to suffer setbacks. Government's doubling as regulator and investor works against the environment and contributes to the problem of poor implementation of policies. Others relate to various issues of exclusion of local communities among members of the policy community.

### Recommendations

#### *Government*

- Implement existing environmental legislations.
- Repeal obsolete environmental laws in line with changes in society.
- Make governance of the environment and oil more inclusive with local communities in the Niger Delta, who bear the greatest brunt from legitimate and illegitimate access to crude oil, as major stakeholders in order to reduce the problem of violent conflict in the region.
- Plan for a low carbon energy system and economy.
- Separate regulation from business interests.

#### *Local Communities in the Niger Delta*

- Pursue environmental justice with non-violence.
- Protect the local environment.

#### *Oil Companies*

- Protect the environment.
- Comply fully with all environmental regulations.
- Clean up all polluted sites in the Niger Delta.
- Stop flaring gas.

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