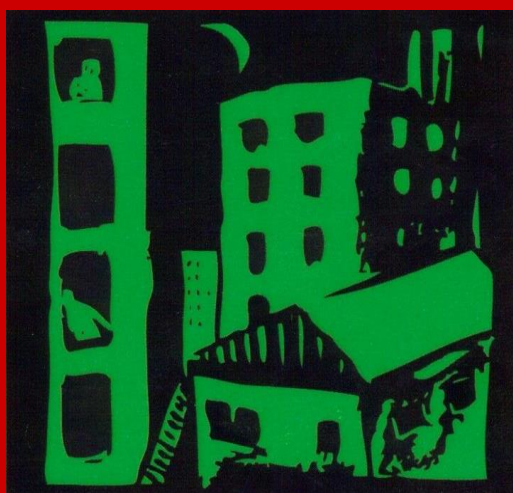
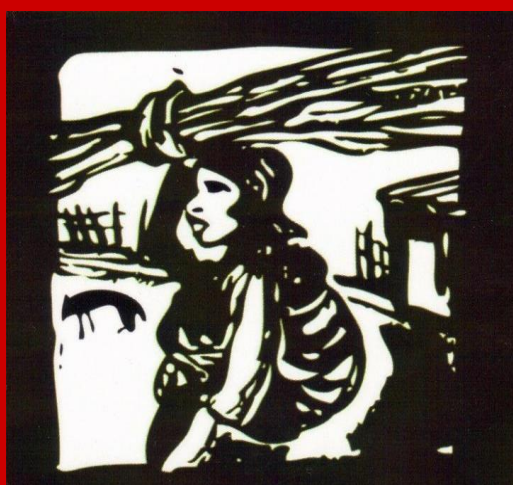


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## Engendering access to environmental justice in Nigeria's oil producing areas

FO NYEMUTU ROBERTS

*Research Professor: Political and Governance Policy Department, Nigerian Institute of Social and Economic Research, Ibadan, Nigeria*

<https://orcid.org/0000-0001-6659-4997>

### ABSTRACT

*This article interrogates engendering access to environmental justice in Nigeria's oil producing areas and its connection with poverty and disempowerment of women. Women already suffer from the fact that access to justice for the vast majority of Nigerians is challenging and restrictive. It is discriminatory against women. Access to environmental justice is, therefore, an additional burden on them, and of significant concern to the people in the country's oil producing Niger Delta region. Militant youths, women and communities have protested in diverse forms against the injustice they suffer as a result of oil and gas production in the region. However, the Nigerian State has often responded with brutal repression resulting in deepening environmental*

*insult in the region. The oil producing areas, therefore, suffer a triple jeopardy. First, access to justice remains a huge challenge for the people, including women. Secondly, there is the additional burden that they have to struggle for environmental justice against a State and international oil companies that are complicit in the adverse environmental desiderata, a disproportionate brunt of which is borne by women who, however, occupy an auxiliary position in the struggle. Thirdly, where there is policy intervention by way of environmental “clean up” projects, such interventions hardly face up to the need to involve women in developing and implementing key policies, which means that important issues for women are ignored and women continue to suffer substantive environmental injustice.*

**Keywords:** Access to justice, environmental justice, environmental remediation, gender and disempowerment, engendering access, Nigeria.

## 1 INTRODUCTION

Access to justice is a serious international concern as it is one of the sustainable development goals (SDGs). People around the world wish to live in a fair society, one in which laws are effectively implemented and respected and the justice system is also fair and accessible, implying that institutions, procedural rules and substantive laws function to empower individuals to pursue and obtain justice and wellbeing. Effective access should not just be an optional extra or luxury of economically advanced societies but, for all societies, there should be justice for all, meaning that justice should be available, accessible, inclusive and accountable. The United Nations (UN) Declaration on the Rule of Law emphasises the right of equal access to justice for all, including vulnerable groups, and reaffirms the commitment of Member States to taking all necessary steps to promote and provide fair, non-discriminatory and accountable access to justice for all.<sup>1</sup> Often the reality is otherwise.

It is reported that over a billion people globally, many in Sub-Saharan Africa (SSA), lack some form of access to justice. Without access to justice, people are unable to have their voices heard, exercise their rights, challenge discrimination or hold decision-makers to account. The reality in SSA seems to be that of severe deficits for many in respect of access to justice to eliminate deprivation and marginalisation and ensure improved wellbeing and development. There is much to be desired about initiatives that seek to improve on the protection and empowerment of the poor and marginalised to seek remedies for injustice, perhaps because access is not just or equitable, responsive or affordable. Women and girls, in particular, are disproportionately impacted by this deprivation.<sup>2</sup> The situation is complicated by societal mores and ineffective institutions, as we shall see in the case of Ogoni women in Nigeria’s oil producing Niger Delta region.

<sup>1</sup> UN “United Nations and the Rule of Law” (Not Dated) Access to Justice, available at <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> (accessed 24 April 2020).

<sup>2</sup> The Nordic Africa Institute, Call for Abstracts, Conference on *Engendering access to justice for development in Sub Saharan Africa*, University of Western Cape, Cape Town, South Africa (28-29 October 2019).

In Nigeria, access to justice is often stymied by lax or archaic laws, a lack of independent judicial institutions, police brutality, inhumane prison conditions, lengthy pre-trial detention, impunity for perpetrators of sexual and gender-based violence, lack of political will to enforce compliance with extant legal provisions, which define the acknowledged tardiness in the administration of justice in the country, and bad governance. Arising from bad governance, there is also the marginalisation of groups and even whole communities from the dividends of governance and development.

Political interference in judicial appointments and judicial decision-making makes the courts vulnerable to corrupt practices. In like manner, the paucity of female appointees to public office in general and in the ranks of judicial officers in particular constitutes lip service to the socio-political integration of Nigerian women, and therefore, “injustice” to women.<sup>3</sup> This does not mean that the appointment of more women onto the bench automatically improves availability, accessibility, inclusiveness and accountability of justice for women, as the experience of Lagos State confirms.<sup>4</sup> Victims of injustice searching for justice rarely possess the requisite level of resources to prosecute an effective legal challenge. Legal aid programmes, a central component of strategies to enhance access to justice, are hardly up to speed in the interest of vulnerable groups. For people living in the country’s oil producing areas, there is not just the problem of access to justice, but the additional burden of access to environmental justice.

The challenge of environmental justice is global as the world’s economies everywhere pollute the living environments of the poor, minorities and indigenous peoples. In SSA, most countries endowed with substantial oil reserves have been the sites of recent or protracted conflicts, violence and political repression, with the State and its security apparatus forging a complex relationship with the International Oil Companies (IOCs), leading to their complicity in notorious injustices and egregious human rights abuses of the people in the producing areas. Moreover, the accumulation of adverse political, economic and social effects brought about by the manner in which the oil industry is run and regulated and oil exploration and production carried out at local level tends to create grievances that lead to armed conflict, as in Chad, Sudan and Nigeria’s Niger Delta region.<sup>5</sup>

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<sup>3</sup> Emordi ATO *A re-assessment of women marginalization in politics and governance in Nigeria 1999-2011* (unpublished PhD thesis, University of Ibadan, 2014).

<sup>4</sup> In 2001, Lagos State appointed more women than men judges, including a female State Chief Judge. Of the 25 new judges appointed, 18 were females; and of 41 new magistrates appointed, 22 were women. However, these appointments did not necessarily improve women’s access to justice, as not all the female judges subscribed to a “progressive” legal philosophy.

<sup>5</sup> Calain P “Oil for health in sub-Saharan Africa: health systems in a ‘resource curse’ environment” (2008) 4(10) *Global Health* 10. See also Mmadu RA “The search for environmental justice in the Niger Delta and corporate accountability for torts: how *Kiobel* added salt to injury” (2013) 1(1) *Afe Babalola University: Journal of Sustainable Development Law and Policy* 73 at 73; Okonkwo T & Etemire U “‘Oil injustice’ in Nigeria’s Niger Delta Region: a call for responsive governance” (2017) 8 *Journal of Environmental Protection* 42 at 42-60.

Oil producing areas in Nigeria suffer injustice at two levels, at least. First, the oil industry is implicated in massive environmental degradation and pollution, which takes its toll on the health and socio-economic wellbeing of the people. Secondly, the financial benefits accruing from oil production are not reasonably and equitably shared with the producing communities. Anger over injustice in their membership of the Nigerian federation in general and externalities associated with the environmental desideratum in particular, constitute a *raison d'être* for activism in the region and commitment towards effecting environmental justice.<sup>6</sup> By 2000, there was already a connected concern for the twin problems of “the social status of Nigerian women ... [and] the real spate of neglect and dehumanization of Nigerian minorities, especially the Ogoni people”.<sup>7</sup>

It is important to focus on engendering access to environmental justice in Nigeria's oil producing Niger Delta because women are more severely impacted by environmental injustice caused by the deleterious consequences of oil production. Being the dominant population in agriculture in the Niger Delta, the constriction of the agricultural space created by the constant acquisition of new territory for oil exploitation directly affects women's appropriation of value from agriculture. Also, Niger Delta women very much depend on firewood and water for home subsistence use, which have been severely threatened by the degraded and polluted environment resulting from oil and gas exploitation, leaving them with diminished means to support their families.<sup>8</sup> A gender perspective is, therefore, required in relation to environmental justice because women often live and work in circumstances that are not environmentally friendly, and this has implications for their wellbeing. Yet, this environmental disadvantage often goes unacknowledged.<sup>9</sup> The intersection of gendered access to environmental justice, poverty and disempowerment needs to be methodically analysed to provide insights into how to improve justice for women.

Information sourcing and analysis for this article are based mainly on the content analysis of secondary communications, including grey literature, published and unpublished, dominantly focusing on the experience of those suffering from lack of access to justice. As Edwin Madunagu puts it, “the experience of the oppressed is the relevant experience and should be the basis of analysis”.<sup>10</sup> Our method of analysis is Analytical Narrative informed by insights from Political Economy.

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<sup>6</sup> See generally Okonkwo & Etemire (2017). See also Roberts FON *Managing the minorities and development problem in Nigerian federalism: the OMPADEC initiative* NISER Monograph Series 11 Ibadan: NISER (1998).

<sup>7</sup> Laka D “Against injustice” *The Guardian on Sunday* 7 May 2000 39.

<sup>8</sup> See Ihayere C, Ogeleka DF & Ataine TI “The effects of the Niger oil crisis on women folks” (2014) 6(1) *Journal of African Studies and Development* 14 at 14.

<sup>9</sup> Bell K “Bread and roses: A gender perspective on environmental justice and public health” (2016) 13(10) 1005 *International Journal of Environmental Research and Public Health* available at <https://doi.org/10.3390/ijerph13101005> (accessed 06 January 2021).

<sup>10</sup> Madunagu E “Women's freedom charter” *The Guardian* 20 June 2002 51.

## 2 CONCEPTUAL CLARIFICATIONS

Justice and injustice, as normative concepts of morality and politics, are flexible terms elastic enough to fit any idea of good or evil and, as such, have been treated to various definitions. Many people associate “justice” primarily with justice in the legal system, the punishment of malefactors, or requital or desert. Others tie the concept (and fairness and equity) closely to the correct carrying out of certain social decision procedures.<sup>11</sup>

Justice, as a political value, has two aspects: procedural and substantive or “social” justice. Procedural justice involves technical questions of due process, fair trials, equality before the law, and so on. Substantive justice refers to the overall fairness of a society in its division of rewards and burdens. The main meaning of social justice is about giving people what they are entitled to. Justice, according to the moral philosopher, can be applied to any or all of the three stages of action – the intention, the act, and the result. However, justice at one stage rarely guarantees justice at another. Justice, in its most general sense, therefore, means according individuals or groups what they actually deserve or merit, or are in some sense, entitled to. Thus, justice as a political value is, in fact, often described as “distributive” justice.<sup>12</sup> From this perspective, justice is the name for “a fair result”, indicated, at the substantive level, by giving people what they are entitled to, while the flip side is injustice, that is, “a situation in which people are treated very unfairly and not given their rights”.<sup>13</sup>

“Access to Justice”, in its narrowest sense, represents only the formal ability to appear in court. Beyond this, it engages the wider social context of the court system, namely, the institutions, procedural rules, and substantive laws that empower (or hinder) different members of the community to pursue and obtain justice. Our perspective argues that true access to justice must be considered in the light of social variables which have historically had a negative impact on the ability of certain individuals or groups to access justice by hindering availability, accessibility, inclusiveness and accountability of justice. Such variables include ethnic minority status, racialization, class, gender, and disability, in addition to elements from the narrower conceptions, including the use of simplified court procedures, alternative dispute resolution, etc.<sup>14</sup> The impact of not being able to seek or obtain justice, as a form of disempowerment, is correlated with causing and perpetuating a chronic state of poverty and marginalization. This is especially so in the quest for environmental justice.

The concept of environmental justice may be summarised as the multi-dimensional demand for, and/or achievement of, a healthy environment for all; equal access (across

<sup>11</sup> Barry B *Political argument* London: Routledge & Kegan Paul (1965).

<sup>12</sup> See generally Robertson D *The Penguin dictionary of political science* London: Penguin Books (1986); Goodwin B *Using political ideas* 7<sup>th</sup> ed Chichester: John Wiley & Sons Ltd (1982).

<sup>13</sup> Nwannekanma B “Towards improved access to justice sector in Nigeria” *The Guardian* 3 June 2014 77.

<sup>14</sup> ACLRC “What is Access to Justice? Five Different Ways of Considering Access to Justice” (Not Dated) Calgary, AB, Canada: Alberta Civil Liberties Research Centre, available at <http://www.aclrc.com/what-is-access-to-justice/> (accessed 24 April 2020).



social groups) to environmental goods; equal protection from environmental harms; equal access to environmental information; and equal participation in environmental decision-making. When these values are non-available or available in insufficient quantity and quality, it amounts to environmental injustice. Environmental injustice is usually framed as being caused by one, or a number, of a combination of factors: discrimination, power inequities, industrialisation, market dynamics, lifestyles, discourses and capitalism.<sup>15</sup>

The majority of the environmental justice literature focuses on distributional justice. This includes the distribution of environmental goods (eg water and green space) as well as environmental burdens (eg air pollution and flood). However, it is increasingly being recognised that procedural justice, ie, democratic and equitable control over environmental decision-making, is a necessary component of environmental justice. Yet, even moving from distributional justice to include procedural justice would still only guarantee participation in debates to secure a more equal allocation of environmental problems. Therefore, in addition to distributional and procedural justice, we also need substantive justice.<sup>16</sup> Thus, it is observed that the justice in environmental justice refers, in one key respect, to the inequity in the distribution of environmental risks,<sup>17</sup> while the outcomes to environmentally mediated hazards “are first and foremost injuries and justice problems”.<sup>18</sup>

Generally, to engender is to call a situation into existence or to empower; to embolden. In this article, the concept is deployed as an anti-sexist expression aimed at making a situation or process fairer to women’s involvement on equal terms with men so women can flourish and contribute to both the social and market economies with freedom, dignity, and justice. To engender is to counter sexism and its detrimental effects in all spheres of society.<sup>19</sup> To engender access to environmental justice is to ensure both men and women have access to environmental justice on equal and unfettered terms. Our gender perspective acknowledges that “women suffer specific oppression in society as women, that this oppression is largely structural and that action is required ... to change these structures”.<sup>20</sup>

### **3 ENVIRONMENTAL EXTERNALITIES OF OIL PRODUCTION AND ACCESS TO ENVIRONMENTAL JUSTICE**

For long, the mining sector, other than petroleum, was not regulated. And so the environmental consequences have been virtually overlooked. The situation is different

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<sup>15</sup> See generally Bell (2016).

<sup>16</sup> See generally Bell (2016).

<sup>17</sup> Schlosberg D *Environmental justice and the new pluralism: the challenge of difference for environmentalism* Oxford: Oxford University Press (1999).

<sup>18</sup> Williams C *Environmental victims: new risks, new injustice* London: Earthscan Publications Ltd (1998) at xiv.

<sup>19</sup> Adapted from the profile of Engender, an anti-sexist organisation based in Edinburgh but also operating in other parts of Europe.

<sup>20</sup> See Madunagu (2002) at 51.

in the Nigeria's oil producing Niger Delta region, where although the industry was reasonably regulated, the adverse environmental externalities of oil exploitation were significantly damaging and unbearable and could hardly be ignored.<sup>21</sup>

The Niger Delta in southern Nigeria spans over 70 000 sq km, about 7.5 per cent of Nigeria's land mass. It is inhabited by over 30 million Nigerians, mostly minority ethnic groups, in hitherto pristine agrarian communities. In terms of Nigeria's geopolitical zones, it is coterminous with the South-South zone, which consists of six of the nine oil producing states, Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers States, the others being Abia, Imo and Ondo. Over the years, the great majority of the people of the Niger Delta have lived and continue to live in poverty.<sup>22</sup> The problem of poverty and underdevelopment in the zone is fundamentally shaped by two factors, namely, the region's geography and the impact of oil exploration and production.<sup>23</sup>

The Niger Delta is among the biggest expanses of wetlands in the world, with 6 000 sq km of mangrove forest and 11 700 sq km of freshwater swamp. The ecosystem is complex and fragile,<sup>24</sup> making the region a difficult terrain to develop.<sup>25</sup> Petroleum exploration and production have aggravated this physical environment. The Niger Delta is rich in hydrocarbon deposits and is the source of the oil that makes Nigeria a major crude oil exporter. As such, it bears the brunt of catastrophic environmental degradation and gross human rights violations associated with IOCs extracting oil and gas with corporate impunity.<sup>26</sup> The oilfields are interwoven with the host communities.<sup>27</sup> Therefore, the impact of IOCs operating in the Niger Delta is severe on the environment and the people.

Oil and gas operations impact on the environment in many ways. However, the most devastating impact and most politically salient incidence of environmental insult on the communities come in the form of oil spills and gas flaring. How these two insults affect women is discussed in the next Part. Oil spills of varying magnitude occur at various stages of product handling, but about 96 per cent of the spills is associated with the

<sup>21</sup> Barikor-Wiwa D "The role of women in the struggle for environmental justice in Ogoni" (1997) 21(3) *Cultural Survival Quarterly* 46 . See also Ebiri K "How politics of OML 11 reignites Ogoni resistance against expropriation" *The Guardian* 13 October 2019 8.

<sup>22</sup> Roberts FON "Environment and livelihoods in the Niger Delta" in Fayemi K, Amadi S & Bamidele O (eds) *Towards an integrated development of the Niger Delta* Lagos: Centre for Democracy and Development (2005) 77.

<sup>23</sup> Roberts FON, Adeyeye VA, Ogundele O, Oladeji A, Merem EN, Carim-Sanni A, Offiong PA, Ekaette MN & Tijani HO *Oil exploration and socio-economic development of the South-South zone of Nigeria* Ibadan: NISER (2013).

<sup>24</sup> Ekine S *Blood & oil: testimonies of violence from women of the Niger Delta* London: Centre for Democracy and Development (2001) at 15.

<sup>25</sup> See generally Roberts (1998).

<sup>26</sup> Roberts N *The state, accumulation and violence: the politics of environmental security in Nigeria's oil producing areas* NISER Monograph Series 1 Ibadan: NISER (1999).

<sup>27</sup> UNEP *Environmental assessment of Ogoniland* Nairobi: United Nations Environmental Programme (2011).

exploration and production stage and therefore localised in the oil producing areas.<sup>28</sup> At the dawn of the millennium, oil spills had become a daily occurrence in the Niger Delta, with over 1000 spills per annum spewing oil into rivers, streams, farmlands and neighbourhoods.<sup>29</sup> Such spills cause massive damage to farmlands, aquatic life and human health. The cumulative health impact is such that while life expectancy in Nigeria stands at 55 years, it is about 45 in the Niger Delta. Inadequate oil spill clean up, due in part to the chronic character of the contamination,<sup>30</sup> aggravates the plight of polluted communities. Over 60 years of oil spill has adversely affected the means of livelihood of the people, thus further driving them into poverty.

Gas flaring has continued unabatedly since 1956 when commercial oil production began. According to the *Environmental Assessment Report on Ogoni*,<sup>31</sup> about 1.8 billion cubic feet of gas is flared daily resulting in about 45.8 billion kw of heat released into the atmosphere. In 2017, the Federal Government (FG) acknowledged 178 gas flare sites across Nigeria contrary to the general speculation of there being 140 sites. Nigeria is among the largest gas flaring countries in the world.

The negative impacts of gas flaring in Nigeria are enormous. Gas flaring has major adverse environmental impacts which include atmospheric pollution; thermal pollution of air, land and water; destruction of vegetation and associated wildlife; and damage to soil and crops by heat and deposition.<sup>32</sup> The various toxins and greenhouse gases that it emits contribute to climate change. The roaring from gas flares constitutes noise pollution. Gas flaring has a devastating impact on health in Niger Delta communities, including, premature deaths, respiratory illnesses, acute leukemia, asthma and cancer. Deformities in children, lung damage, skin problems, and reproductive and developmental effects have also been reported.<sup>33</sup> Gas flaring is also a waste of a valuable economic resource. There is a loss in continuous importation of over 80 per cent of Liquefied Petroleum Gas despite daily production of about eight billion (bn) tcf of gas. About 82 per cent of cooking gas consumed in Nigeria in December 2019 was imported, whereas Nigeria flared N460.5 billion (bn) worth of natural gas in 2019 alone.

The problem of gas flaring has lingered for over 60 years. The IOCs treat official gas flaring deadlines with disdain as Nigeria's dependence on petroleum denies the country a position of strength.<sup>34</sup> If the government is powerless in seeking and enforcing an end

<sup>28</sup> See generally Roberts (1999).

<sup>29</sup> UNDP *Niger Delta human development report* Lagos: United Nations Development Programme Nigeria (2006).

<sup>30</sup> Oloff L & Palsson J "Oil contamination in Ogoniland, Niger Delta" (2013) 42(6) *AMBIO A Journal of the Human Environment* 685.

<sup>31</sup> See generally UNEP (2011).

<sup>32</sup> Agbese P & Ogbondah C "Environmental justice: beyond ethnic mobilization" (1998) 1(2) *The International Journal of African Studies* 73 at 73.

<sup>33</sup> Nelson N "National energy policy and gas flaring in Nigeria" (2015) 5(14) *Journal of Environment & Earth Science* 58.

<sup>34</sup> Iguh N "Gas Flaring in Nigeria. An abridgment of human/fundamental rights" (2016) 2(2) *Pinnacle Sociology & Anthropology Journal* 10 57.



to gas flaring and its environmental hazards, citizens are in a near hopeless situation. On 14 November 2005, a Nigerian Federal High Court declared the continued flaring of gas in Nigeria inconsistent with the right to life and/or dignity of a person enshrined in the Nigerian Constitution and the African Charter on Human and Peoples' Rights as domesticated, and therefore, unconstitutional, null and void.<sup>35</sup> But securing a favourable ruling in court is no guarantee that the judgment will be enforced, and much less, that remedies will be provided. In contravention of the High Court ruling, Shell and other IOCs have continued to flare gas. It is apparent that environmental injustice is widespread in the oil producing areas, where it disproportionately targets the disadvantaged. Yet, the Nigerian government and IOCs have paid little attention to their cry for environmental justice.<sup>36</sup>

The quest for environmental justice in Nigeria's oil producing areas is most clearly exemplified by the case of Ogoni people in Rivers State. Ogoniland, the site of oil industry operations since the late 1950s, has a tragic history of oil pollution from spills and well fires,<sup>37</sup> for which the people have historically struggled for justice. The Box below illustrates the pains communities go through in the quest for environmental justice. They have to match the economic power and influence of the oil companies in legal costs and access to the best lawyers, endure prolonged and delayed litigation, and difficulties in enforcing judgments against the State and IOCs.

#### **Box: The Ejama-Ebubu Quest for Environmental Justice**

In 1970, Ejama-Ebubu community in Eleme, Rivers State, experienced a huge explosion at a high-pressure crude oil pipeline owned by Shell. The fire was sustained by a geyser of crude oil that spewed thousands of barrels of oil into hectares of arable agricultural land, devastating fishing swamps and rivers. The spill area was a scene of sheer ecological carnage.

The Shell Petroleum Development Company of Nigeria (SPDC) accepted responsibility, paid N300,000 compensation to the community in 1986, and promised remediation of the area, but to no avail. The Ejama-Ebubu community, in 1999, sought redress in the High Court of Rivers State, Nchia Division, for the environmental injustices inflicted on them. The Court ordered Shell to pay N1bn to the community, and clean up the spill or pay N6bn in lieu thereof. Shell appealed the judgment, but during pendency of the appeal, the jurisdiction of the State High Court was transferred to the Federal High Court. The Ejama-Ebubu community conceded Shell's appeal without a formal hearing.

<sup>35</sup> See generally Iguh (2016).

<sup>36</sup> Benjamin SA *Assessing the crisis resolution strategies in the Niger Delta* Policy Analysis Series No 5, Abuja: Policy Analysis Research Project (PARP), National Assembly (2010).

<sup>37</sup> See generally UNEP (2011).

In 2001, a fresh suit was filed in the Federal High Court, Port Harcourt, against Shell and its parent companies – Royal Dutch Shell and Shell United Kingdom. The case passed through four different justices of that Court until judgment was delivered in June 2010. Shell and its parent companies appealed the judgment but gave a Bond Guarantee, stipulating that First Bank of Nigeria (FBN) would pay the community the value of the judgment debt and interest thereon, if its appeal failed. The appeal passed through six different panels and in 2017, Shell lost. But after losing the appeal, Shell instructed FBN to dishonour their guarantee. This gave rise to six different actions in various courts against FBN and the Central Bank of Nigeria.

Determined to protect its interests, Shell and its parent companies approached the Supreme Court in 2017 to reverse the two judgments against them. But the apex court affirmed the appellate court's verdict. All this while, Shell had reneged on the judgment debt on the ground that it had lodged an appeal in the Supreme Court. The enforcement cases passed through many legal jurisdictions in six different lawsuits, but in January 2019, Shell's appeal was dismissed by the Supreme Court.

**Source:** Ebiri K "How politics of OML 11 reignites Ogoni resistance against expropriation" 13 October 2019 *The Guardian* at 8.

In recent decades, the Ogoni struggle has been waged under the aegis of the Movement for the Survival of Ogoni People (MOSOP). Formed in 1990, MOSOP, led by the environmental rights activist, Ken Saro-Wiwa, demanded self-determination and the right to use oil revenues derived from Ogoniland for the benefit of Ogoni people.

The Ogoni struggle for "social justice" adopted sundry approaches, including advocacy, protest marches, civil disobedience, sabotage, and the blockade of oil installations. The campaign assumed a violent turn when the Nigerian State responded with coercive measures.<sup>38</sup> In November 1995, at the apogee of the crisis, the Federal Military Government executed Saro-Wiwa along with eight of his kinsmen. Contrary to expectations, the judicial murder of the activists escalated the struggle. What began as an Ogoni problem soon became a Niger Delta-wide crisis marked by low-level armed resistance carried out mostly by unemployed youths.<sup>39</sup> The militants threatened continued hostilities until their demands – resource control, justice and equity - were met.<sup>40</sup>

<sup>38</sup> Roberts FON "Natural resource governance in federal democracies: oil and gas governance and militancy in Nigeria's Niger Delta" in Ibaba I S & Etekpe A (eds) *Trapped in violence: Niger Delta and the challenges to conflict resolution and peace building* Port Harcourt: University of Port Harcourt Press Ltd (2013) 53.

<sup>39</sup> CLO *Blood trail: repression and resistance in Niger Delta* Lagos: Civil Liberties Organisation (2002) at ix.

<sup>40</sup> Roberts FON "Resource control" in Owosekun AA, Ojowu O & Egwaikhide F (eds) *Contemporary issues in the management of the Nigerian economy: essays in honour of HMA Onitiri* Ibadan: NISER (2005) 323.

The repression and militarization of restive oil areas left a trail of blood with a heavy toll on human rights in the areas. State brutality portrayed the insensitive response of the ruling elite, military and civilian, to “the just demands for justice” by the oil-bearing communities.<sup>41</sup> Notwithstanding the return of democracy in Nigeria, the Nigerian State and IOCs remain intransigent. On 12 October 2018, the System 2E Nigerian National Petroleum Corporation pipeline exploded in Osioma, Abia State, destroying human and animal lives and property. The oil companies treated the victims with utter indifference. Against this background, Access to Justice filed a N3 215 bn suit against the FG over the alleged abandonment of the victims.<sup>42</sup> If access to justice for Nigerians is challenging, for Nigeria’s oil producing communities their quest for environmental justice constitutes a double whammy.

#### **4 WOMEN’S QUEST FOR ENVIRONMENTAL JUSTICE IN THE OIL PRODUCING AREAS<sup>43</sup>**

In March 2003, the National Consultative Committee on Justice Sector Reforms in Nigeria began deliberations on issues of access to justice by the disadvantaged. The “disadvantaged” included women. Four years later, the Minister of Justice announced a five-point agenda to overhaul the administration of the justice system in the country, to create a justice system that would be more responsive to the needs of the people, regardless of their ethnic group, gender, marital status, etc. The Office of the Attorney General, in 2012, requested the Legal Aid Council (LAC) to provide more access to justice for Nigerians. These recent efforts to ensure access to justice for Nigerians notwithstanding, women’s access to justice remains elusive.

Niger Delta women live in environmental degradation, deprivation, poverty, dehumanisation, fear, etc, and face many tragedies flowing from irresponsible oil exploration and production. This is in addition to the “numerous hangovers” they suffer in a typical African patriarchal society. Patriarchy, and capitalism, have foisted on Niger Delta women certain socio-economic responsibilities within the family as wives, mothers and farmers, principal caregivers in the home, and expected wage earners. Since most of them are uneducated and, therefore, unemployed outside the home, their main source of income is agriculture. As a result, they tend to resist conditions that impede the realisation of these duties.<sup>44</sup>

Women who, unlike young men, cannot easily migrate to urban areas, suffer most from the deleterious consequences of oil production. Traditionally, when an Ogoni woman gets married, her husband gives her a piece of land to farm. This emphasises the value of land. However, the constant acquisition of new territory for oil exploitation and

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<sup>41</sup> See CLO (2002) at 19.

<sup>42</sup> Access to Justice is a Nigeria-focused justice advocacy group working, inter alia, to expand access of marginalised people to equal and impartial justice.

<sup>43</sup> The core of the narrative in this part relies on Barikor-Wiwa (1997); Ekine (2001); CLO (2002) & Keys DD *For the survival of Ogoni people: women’s contribution to movement-building in Nigeria and the United States* (unpublished PhD thesis, University of California, 2019).

<sup>44</sup> See Ihayere, Ogeleka & Ataine (2014) at 14.

the resulting pollution from the industry, has left Ogoni women with diminished means to support their families. This gives rise to tension in the home and community. Polluted streams mean women travel further away from home to get water for their domestic chores. In communities where drinking water is found to be dangerously contaminated, women already struggling financially due to damage to their agricultural vocations now have to buy water. Gas flares are also known to account for a high number of miscarriages and other health problems.<sup>45</sup> Unemployed young men and women remain a continuing burden for their mothers long after they should have been independent. Oil has not only devastated the land but has impoverished the women and their community.

Niger Delta women also suffer associated physical, social and psychological effects. Since they staged a grand protest on 4 January 1993, Ogoni women have experienced, first-hand, the violent reprisals instigated by the Nigerian military and their Shell counterparts, including mental torture from the killing of their sons and husbands. According to Ukoko,<sup>46</sup> in 1995 the women of the Niger Delta watched “in agony and helplessness” as Ogoniland was attacked and occupied by soldiers, and women suffered the effects, including brazen rape, as well as being exploited as comfort workers, on account of their poverty. In November 1999, the FG ordered a military attack on Odi in Bayelsa State. As Odi was destroyed many mothers buried their sons, brothers and fathers.

During each military incursion, the greatest numbers of casualties recorded are women and children. Unarmed, they are at the mercy of Nigerian soldiers, and even the militants. Incidents of rape during military invasions of oil communities are rife, exposing the women to a high incidence of the HIV/AIDS scourge and other venereal diseases. The Niger Delta is one of the regions most affected by HIV/AIDS infection in the country.<sup>47</sup> The women are double victims of rape. Patriarchy means that the average Ogoni man is unable to live with the reality that rape is an accident. So, rape incidents have to be kept secret.

In respect of the economic effects, Ogoni is a strong patriarchal society, which ab initio put women in a subordinate economic position. Their economic power is worsened during conflict as they cannot farm or trade, while they lose their market wares to the rampaging soldiers. The economic impact of the conflicts includes a very high cost of living, while the standard of living declines. Ironically, women have to take on non-traditional female roles because of conflict induced widowhood. The responsibility of caring for children that have been orphaned also falls on them, while a girl child has to sacrifice her schooling for a boy when family income is threatened.

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<sup>45</sup> Bruere W “Slippery justice for Niger Delta's polluted communities” 30 November 2011 *The New Humanitarian* available at <http://www.thenewhumanitarian.org/report/94340/nigeria-slippery-justice-niger-deltas-polluted-communities> [accessed 24 April 2020].

<sup>46</sup> Ukoko A “The Tragedies of the Oil Richness of the Niger Delta Region of Nigeria” *Women of Africa* (2005). Available at <http://www.womenofafrica.org> (accessed 10 November 2009)

<sup>47</sup> See generally Bruere (2011).

According to Ihayere, Ogeleka and Atanie,<sup>48</sup> women's mass protests against IOCs began with the Ogharefe women's protest in Delta State in 1984 when 47 women mobilised and protested against US Pan Ocean, demanding payment for pollution damage and land seized and used as oil fields. Protests escalated in the early 1990s when conditions in the region degenerated. On 29 April 1993, an Ogoni woman found her farm, her means of livelihood, destroyed by the activities of Wilbros, an American company contracted by Shell to lay crude petroleum pipelines under the protection of the Nigerian military. Brutal violence was meted out to her and other women who joined her in protestation. Many women were called to the cause after this specific development, emboldening them to speak up against injustices committed by the government and IOCs. For this purpose, the Federation of Ogoni Women's Associations (FOWA) was formed.

The formation of FOWA re-oriented the political perspective of Ogoni women from "lack of political standing" under the patriarchal Ogoni leadership. They no longer needed anyone to champion their cause. The women organised various forms of "civil resistance", including meetings, dancing, singing, and fasting and prayer. Their songs educated Ogoni people about the issues and encouraged them to support the movement and, like prayer and fasting, boosted morale critical for sustainable struggles and unity. On 25 April 1997, over 300 women leaders in Ogoni who represented FOWA's 57,000 registered members resolved that Shell must not be allowed in Ogoni again. Although Ogoni women suffered spectacular losses from the genocidal war fought against them, they did not stop their activities. For Ogoni women, justice came first.

Elsewhere, persistent human rights violations and broken promises prompted Egi women to take action. On 21 September 1998, over 15 000 women staged a peaceful protest against Elf to press home their demands, which included environmental protection, employment for their husbands and children, the provision of social amenities, etc. On 15 August 2016, angry women from 10 communities in Delta State shut three flow stations operated by the Nigerian Petroleum Development Company. The flow stations have a total production capacity of about 90,000 bpd, which was lost to Nigeria as a result of the shut-down.

The nature and dimension of the crisis in Nigeria's oil producing areas today portrays it as gender-based violence. During a crisis, women are victims occupying an insignificant auxiliary position. Inequalities of power lead to dependence and subordination, depriving them of dignity and autonomy. Current models of engagement also short-change women. Women in Extractives (WIE) observes that the current benefits transfer mechanism seriously marginalises women in the region. Most scholarships as well as contracts go to men, even though women are more impacted by challenges in the region.<sup>49</sup> Transforming women's disempowerment in the region, by transforming patriarchy and women's rights and protection, remains a challenge. Oil

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<sup>48</sup> See Ihayere, Ogeleka & Ataine (2014) at 14.

<sup>49</sup> Jeremiah K "Why N'Delta remains in ruins despite N4t benefits transfer" 27 October 2019 *The Guardian* 27 October 2019 1.

Council, Africa Assembly, has thus canvassed for gender equality in the oil and gas industry.<sup>50</sup>

## 5 ENVIRONMENTAL REMEDIATION AND THE Ogoni CLEAN-UP

There are at least 43 statutory instruments regulating the petroleum industry, and a few principal Acts, along with the constitutional provisions. Also, certain legal and practical principles regulate the payment of compensation for damage resulting from oil spills. The common law rules are, however, beset with problems, including proof of causation and procurement of expert witnesses. As a result, claimants often find it difficult to secure justice.<sup>51</sup> Overall, the regulatory mechanisms are largely inadequate, especially in terms of their coverage and quality.<sup>52</sup> In practice, therefore, remediation did not meet the local regulatory requirements or international best practices, and so was not effective.<sup>53</sup>

Environmental insults in the Niger Delta fester without remedy because key legislation lacks internal consistency, there are overlapping authorities and responsibilities between ministries, and a lack of resources within key agencies. Further, there is express exemption of environmental pollution within the oil and gas sector from the purview of enforcement by the National Environmental Standards and Regulations Enforcement Agency (NESREA). In addition, the government agencies concerned lack qualified technical experts and resources.<sup>54</sup> The result is that there is weak and ineffective enforcement of environmental laws. These problems are compounded by “restive” judicial interpretation of extant legislation.<sup>55</sup>

At the request of the Nigerian government, the United Nations Environment Programme (UNEP) assessed the environmental and public health impacts of oil pollution in Ogoniland. The study, released in 2011, found that oil contamination in Ogoniland was widespread and severely impacted many components of the environment. At Ejama-Ebubu, heavy contamination was still present 40 years after the oil spill occurred, despite repeated clean-up attempts. The UNEP indicated significant effects on livelihoods and long-term health impacts. The ecological system of the area was so devastated that total clean-up and environmental restoration would take over three decades.<sup>56</sup>

The UNEP report was explicit on how to go about the clean-up, even itemising emergency measures that should be implemented first. Such measures included the provision of potable water for the people and a health audit in the impacted communities to enable early action on identified health impacts. The report also

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<sup>50</sup> *The Guardian* 7 July 2019 at 5.

<sup>51</sup> See CLO (2002) at 9.

<sup>52</sup> See Okonkwo & Etemire (2017).

<sup>53</sup> See UNEP (2011).

<sup>54</sup> See UNEP (2011).

<sup>55</sup> See Bruere (2011).

<sup>56</sup> See UNEP (2011).



recommended the establishment of an Integrated Contaminated Soil Management Centre (ICSMC) to handle contaminated wastes, as well as a Centre of Excellence for Environmental Restoration to promote learning and training. Other recommendations include the establishment of an Environmental Restoration Authority to oversee implementation of the report's recommendations and an Environmental Restoration Fund with an initial capital injection of USD 1 bn contributed by the oil industry and the Government.<sup>57</sup>

In 2012, the Nigerian government under President Goodluck Jonathan, established the Hydrocarbon Pollution Restoration Project (HYPREP) to implement the UNEP recommendations on the Ogoni environment clean-up. Jonathan's administration did not deliver on the clean-up of the region. The programme suffered severe structural defects and a clear lack of official commitment.<sup>58</sup> In 2015, the Muhammadu Buhari administration announced a fast-tracking of the implementation process. On 2 June 2016, in Bodo, Rivers State, the FG officially flagged the clean-up of Ogoniland and other impacted communities in the Niger Delta region. A major government programme for the polluted areas, it was anticipated that the project would also engage youths and women to generate employment.<sup>59</sup>

President Buhari did not bring any radical change to the clean-up programme.<sup>60</sup> Actual clean-up commenced only with the reactivation of HYPREP, in January 2019, when 16 contractors moved on site. Since then, about 21 sites have been handed over to contractors by HYPREP. The FG planned to hand over 36 impacted sites under Batch 1, Phase II remediation works to contractors on 13 February 2020. The HYPREP claimed that each contract provides a minimum of 35 local job opportunities, but without clarity as to the nature of the jobs, if they are permanent placements, the level of employees, and their duration.<sup>61</sup>

Women from all the Niger Delta states met on 22 and 23 November 2016 to discuss the implementation of the UNEP report and the clean-up process in Ogoniland and other Niger Delta communities and to strategise on ways to ensure adequate and effective representation of women in the clean-up processes. From their experience as bearers of the brunt of oil activities that have affected them economically and socially, the women made the following women-specific demands, among others:

- Alternative means of livelihood should be provided for women while the environment is being remediated and the choice of alternatives should be generated

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<sup>57</sup> See UNEP (2011).

<sup>58</sup> See generally Uwaegbulam C "ERA/FOEN, communities take stock of Ogoni clean-up" 19 *The Guardian* 19 August 2019 41.

<sup>59</sup> See Uwaegbulam (2019).

<sup>60</sup> Editorial Board "The Ogoni clean-up mess" *The Guardian* 28 February 2020 16.

<sup>61</sup> Editorial Board (2020) at 37.

after due consultation with grassroots women in order to adequately capture their needs and interests;

- Widows should be empowered with new skills and provided with grants to support their businesses;
- Increased economic empowerment opportunities for women with access to credit facilities;
- Women should be trained in monitoring oil spills to ensure that best international standards are followed;
- There should be adequate and quality representation and inclusion of women and gender sensitive composition in the governance structures in the implementation of the UNEP report and clean-up in Ogoniland; and
- The FG should set up a Compensation and Development Fund for women in Niger Delta communities.<sup>62</sup>

The Presidency claimed, in January 2020, that the progress recorded in the Ogoni clean-up project was attracting positive local and international commendation. But other assessments differ. For instance, it has been observed that nearly four years after the FG flagged the Ogoni clean-up, nothing tangible has been achieved. In an unflattering assessment of the status of the exercise, Civil Society Organisations (CSOs) and communities raised the alarm that the initiative had deviated from the recommendations of the UNEP report. The Environmental Rights Action/Friends of the Earth, Nigeria (ERA/FOEN) identifies issues with the level of transparency and accountability of the process, militarisation of the clean-up process, stakeholder participation, the politics of funding, the status of the Centre of Excellence and the Integrated Contaminated Soil Management Centre (ICSMC), as well as the fate of the emergency relief recommended in the UNEP report.<sup>63</sup> It was noted by ERA/FOEN that concerns were raised about the delay in the commencement of work generally, and specifically the ICSMC and the other emergency measures. The construction of the ICSMC should have commenced before the award of remediation contracts. Perhaps, the facility would have provided a more secure basis for storing waste whilst treatment was ongoing than bio-cells favoured by HYPREP, which leave contaminated soils to the vagaries of the weather.<sup>64</sup> As the UNEP report acknowledges, the timing of programme implementation is crucial.

Although a framework for intervention was provided by the UNEP report, many of the relevant issues are yet unresolved. Rather, the institutional issues as well as

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<sup>62</sup> HOMEF, Niger Delta women declaration on the clean-up of Ogoniland, Health of Mother Earth Foundation (2016).

<sup>63</sup> Independent monitoring of different sites by ERA-led allies in the communities, volunteers, Oilwatch Nigeria and other CSOs in the first half of 2019. Mike K & Ojo G U Ogoni Cleanup: When will clean up start and when will the first drop of oil be cleaned? Special Report, Environmental Rights Action/Friends of the Earth Nigeria (2018).

<sup>64</sup> See Uwaegbulam (2019) at 41.

recommendations and steps to be followed in carrying out the exercise appear to have been politicised. In fact, CSOs claim that the handover of 21 sites to contractors was riddled with allegations of corruption, unwholesome compromises and nepotism.<sup>65</sup> Given that the current HYPREP has operated for approximately two years, it could be expected that short-, mid- and long-term measures for providing potable water and health facilities in impacted communities should have been developed and implemented. Hardly any of these has been done. Out of 10 communities where drinking water was found to be dangerously contaminated, only two had been provided with safe water. The dynamic nature of oil pollution and the extent of contamination mean that failure to begin addressing these concerns and commencing a clean-up will only exacerbate and unnecessarily prolong the sufferings of the people. Accordingly, there has been passive community engagement and loss of confidence in HYPREP and the entire clean-up.<sup>66</sup>

The result is that in over three years, HYPREP has been unable to make any meaningful progress. The ERA/FOEN lamented that the clean-up project has been corrupted as political patronage for politicians to the detriment of the poor impacted victims. Stakeholders and concerned indigenes of the larger oil-producing communities have said they would not accept the Ogoniland clean-up without provision of an alternative and sustainable means of livelihood. Ogoni women have also protested the failure of HYPREP to implement the UNEP report, particularly the emergency measures, which were severely affecting the women. The women also protested the exclusion of women from critical stages of developing and implementing key intervention policies in the Niger Delta region in general and HYPREP in particular, which meant that important issues for women were ignored. They considered it a “grievous omission” for HYPREP not to disclose a clear and coherent gender policy in tune with international best practices considering that the Ogoni clean-up would set a template for other remediation activities in the region. The proposed training of only 1 200 Ogoni women in livelihood activities was also considered “an insult” to their sensibilities and a gross underestimation of the scale and complexities of women’s needs.<sup>67</sup>

## 6 ENGENDERING ACCESS TO ENVIRONMENTAL JUSTICE: WHAT LESSONS?

Women in Nigeria’s oil producing areas experience distributional, procedural and substantive impacts. It is evident that women’s participation in the HYPREP environmental remediation project in Ogoniland, from decision-making to implementation, is almost non-existent. They lack access to environmental resources, carry an inequitable burden of environmental harm, and are constrained in terms of influence over environmental decision-making. What have we learnt? We discuss four issues: need for radical response; engaging the judicial process; community

<sup>65</sup> See Uwaegbulam (2019) at 41.

<sup>66</sup> See Uwaegbulam (2019) at 41.

<sup>67</sup> Godwin A “Ogoni women protest against the activities of HYPREP, threaten legal action” *The Guardian* 26 June 2020 30.

participation and social movements; and dismantling underlying structures that impede the role of women.

First, the underclasses have to be alert or justice will elude them. Ihayere, Ogeleka and Ataine advocate “radical rethinking” or “defensive radicalism” to bind respect for the social and human rights of the people and end systematic exploitation of women.<sup>68</sup> Radicalism means the people have to speak out and draw international attention to their plight. In particular, women must mobilise their voices, and in so doing, their choice of words should represent a choice of arms. According to the Archbishop of York: “We need words that actually express the truth ... When you talk about environmental ‘degradation’, it sounds as if it is bad but not really too bad, whereas ‘genocide’ is a tough word (suggestive that) you are actually killing”.<sup>69</sup> “Environmental terrorism”, for instance, suggests that there are hardened perpetrators and innocuous and defenseless victims. Women are defenseless victims. Until Ogoni women took up the gauntlet and spoke out under the aegis of FOWA, they were hardly reckoned with. It is also imperative that women must seek justice amongst men, even if they have to take it by force.<sup>70</sup> This understanding will set the parameters for active response.

Radicalism also means actionable expressions. Detailed narratives on environmental injustice in Nigeria’s oil producing areas evoke horror. But “horror” is a passive expression that does not immediately motivate action. A much more appropriate reaction and effective response is anger, which can assume the form of an act of resistance as it forces action. It is action that is needed.<sup>71</sup> As noted earlier, anger over injustice about the externalities associated with the environmental desideratum has been a sufficient reason for activism in the region and commitment towards effecting environmental justice. Evidence confirms that women make up a high proportion of the victims. These women have also resisted this unaccountable and illegitimate power in various ways.<sup>72</sup> In the bid to hold oil companies and the Nigerian government to account for catastrophic pollution, the longer women and their communities wait for action to be taken, the worse the impact on their health and livelihoods gets. The longer they wait for clean-ups, the more the situation deteriorates with higher costs as liabilities go up daily.<sup>73</sup> Even when IOCs accept responsibility, women and their communities still have to “fight” for compensation and remediation. Resistance forces action.

Secondly, in a country that proclaims the rule of law, the people, and indeed local communities, have little choice but to engage the judicial process to avoid a resort to self-help. Currently, the justice sector in Nigeria needs reform. Legal services are highly

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<sup>68</sup> See Ihayere, Ogeleka & Ataine (2014) at 14.

<sup>69</sup> Osahon J “Bayelsa facing environmental genocide, says Archbishop of York” *The Guardian* 27 May 2019 9.

<sup>70</sup> See Enakimio I “A chameleon called justice” *The Guardian* 18 December 2005 58.

<sup>71</sup> See Ekine (2001) at 11.

<sup>72</sup> See Ekine (2001) at 11.

<sup>73</sup> See generally Bruere (2011).

commercialised and beyond the reach of poor women, who are thus denied access thereto. Nigeria's legal aid institutions are hardly up to speed concerning the interest of women. Poverty and disempowerment mean that individual women in the oil producing communities, on their own, cannot afford to mount effective legal challenges for environmental justice. Critics of current access to justice initiatives have called for change beyond the legal realm, by encouraging the justice system to develop more holistic solutions that focus on solving the problems of community members in their daily lives.

In the absence of a justiciable constitutional right to a clean environment, women's access to environmental justice can be promoted by efficient deployment of the "class action", a form of suit in which a large group of people collectively bring a claim to court or in which a class of defendants is sued. The advantages of a class action that enhance access to justice include that: (i) the outcome of the suit will bind everyone falling into the same class whether or not they were named as parties; (ii) aggregation of claims increases efficiency of the legal process, and lowers the costs of litigation as the claims are heard in a single suit; (iii) it also helps to avoid multiple suits arising from the same subject matter, which can result in conflicting decisions of courts or different outcomes; (iv) there is finality in the outcome of the suit over the subject of the class suit; and (v) it can be used to change the behaviour of a class of which the defendant is a member. A class action is one of the most effective legal mechanisms to remedy mass wrongs in a globalised world.<sup>74</sup> The focus of a remedial class action needs to be on the experience of those suffering from lack of access to environmental justice, the experience of women.

Also, oil producing communities have begun to take their grievances to overseas courts, and so should women's groups. In 2011, the Bodo community took Shell to court in the United Kingdom for the 2008 oil spills. Shell accepted responsibility and the community is now seeking compensation. In October 2011, Ogale village in Rivers State, described by UNEP as one of the world's most polluted places, filed a case against Shell in a United States federal court, seeking US\$1 bn in compensation for negligence. In 2017, ERA/FOEN and the Ikebiri community filed a suit in Milan against the Italian oil company, Eni, demanding compensation for damage caused by an oil pipeline explosion in 2010. Such actions are expected to embolden Niger Delta communities to institute more cases to demand environmental accountability from IOCs. Communities resort to Western courts due to a lack of faith in the Nigerian system, where apart from lengthy delays, the IOCs sometimes refuse to comply with orders from Nigerian courts to pay compensation or, for that matter, end gas flaring.<sup>75</sup>

Thirdly, we noted above that there has been passive community engagement in the work of HYPREP and the entire clean-up because the Ogoni communities do not feel

<sup>74</sup> Onyekwere J "Efficient deployment of class action would promote access to justice" *The Guardian* 29 May 2018 46.

<sup>75</sup> See generally Bruere (2011); Omorogbe P "Pollution: Taking Shell to court will help Niger Delta communities, environment group says" (2018) available at <https://tribuneonline.ng/pollution-taking-shell-to-court-will-help-niger-delta-communities-environment-groups-say/> (accessed 24 April 2020).

they have been adequately consulted in the clean-up project. Local participation as a key deliverable, both in decision-making and in project implementation, had not been clearly articulated, let alone achieved. The HYPREP was not known to be growing local participation and expanding sustainable opportunities for the Ogoni people, let alone Ogoni women. This is how not to engender success in project implementation. Community participation would have obviated some of the problems that have festered in the oil producing areas and at the same time ensured community ownership in project implementation. The imperative is to get indigenes, particularly women, involved directly or indirectly in clean-up projects to ensure project ownership and their secure future. The role of women in environmental remediation and their access to justice in Nigeria are relevant in the context of the search for new ways to connect and engage the female population globally, as well as the fact that Nigeria is a signatory to many global and regional conventions aimed at enhancing the social status of women as well as protect their interests against suppression and exploitation.

We should also learn that factors undermining environmentalism are best challenged by social movements identifying a common cause. The relentless efforts channelled towards environmental justice by the impoverished Ogoni people culminated in the birth of MOSOP, and subsequently FOWA. However, the complications of issues entrenched in the disagreement among people, government and the IOCs, severely hindered MOSOP's principal goal of ending further ecological damage and the revitalisation of the polluted environment. To succeed, ethnic-minority rights groups, youth groups, women's groups, and environmental and other groups need to understand and articulate how their struggles intersect, and leverage on their united strength for change. Solidarity helps to grow selflessness and team work. For this to happen there should be "mass consciousness" as epitomised in FOWA mobilisation strategies.<sup>76</sup> In this way, grassroots women are "conscientised" about their rights and enabled to identify causes from which others benefit to their detriment. Niger Delta women have been relatively successful at this.<sup>77</sup> They have been known to stand together in solidarity and unity working for the success of the clean-up process in the Niger Delta.<sup>78</sup>

Fourthly, although environmental degradation impacts severely on Nigerians, the lack of access to justice ensures that the struggle for access to environmental justice is even more difficult, and so the status quo remains. There is, therefore, structural difficulty in redressing environmental injustice in Nigeria, and in engendering redress. In addressing environmental justice for vulnerable groups, there is need for countermeasures to uncouple the structural impediments. To ensure environmental

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<sup>76</sup> These include: meetings – for strategy formation; dancing – used interpretively as a method of gathering community support; singing – as a "fight" weapon that honours heroes, publicly shames criminals, and denounces the anti-people practices of the Nigerian government and oil companies, and *gu sa!* (palm frond), a metonym for non-violent resistance and a symbol of direct action used during demonstrations. See Keys (2019).

<sup>77</sup> See generally Ihayere, Ogeleka & Ataine (2014).

<sup>78</sup> See generally HOMEF (2016).



gender justice requires explicit critique of the economic and structural sources of the unhealthy and inequitable existential conditions of women.<sup>79</sup> In essence, we should first address patriarchy (as it affects Niger Delta women) and capitalism (as it affects the role of IOCs in collusion with the state) as the underlying causes of the poverty and inequality that result in women's environmental injustice. These issues are implicated in the specific victimisation of women in the Niger Delta crisis, for example, the response of Ogoni men to the rape of Ogoni women, and the inadequate and ineffective, if not non-existent, representation of women in the Ogoni clean-up processes.

When women struggle, patriarchal and capitalist values harden the more against them. Women, therefore, need to find more effective ways to help each other counter the increasingly numerous attacks from men in and out of government, and the oil industry. If women had adequate and quality representation and inclusion in a gender sensitive composition of the governance structures for the implementation of the UNEP report and clean-up in Ogoniland, then they would have been in a position to push for alternative means of livelihood for women while the environment was being remediated as advocated by the coterie of Niger Delta women. Women organisations, especially apex organisations, like FOWA, need to commit to being a forum for dialogue and collective action dedicated to engendering access to justice. Overall, government and political parties need to be committed to implementation of the declared affirmative action plan and introduce policies that can encourage women to enter politics, which would give them access to key decision making roles.

## 7 CONCLUSION

Access to justice for the vast majority of Nigerians is challenging and restrictive. It is also gender blind, and, therefore, discriminatory against women. Engendering access to environmental justice is of great concern to the people of Niger Delta. Militant youths, women and communities have protested in diverse forms against the injustice they suffer as a result of oil and gas production in the region. Such protests are often met with state repression and brutal force resulting in a spiral of conflicts in the region. In the event, the state, IOCs and the people have suffered to varying degrees. This article draws some critical lessons on the nexus between the impact of the adverse environmental externalities of mining activities in Nigeria's oil activity areas on the people, defective or absent justice and the people's lack of access to environmental justice, and gender disempowerment.

Evidence from Nigeria suggests that oil producing areas suffer a triple jeopardy. First, due to a combination of institutional, socio-economic and political factors, access to justice remains a huge challenge for the masses of the people, especially women. Secondly, there is the additional burden that Nigerians have to struggle for environmental justice against a State that, together with IOCs, is complicit in the adverse environmental desiderata in the oil producing regions, of which women bear a disproportionate brunt but occupy an auxiliary position in the struggle. Thirdly, where there is a modicum of policy intervention by way of token environmental remediation

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<sup>79</sup> See generally Bell (2016).

or “clean-up” projects, such interventions hardly face up to the need for gender inclusiveness, meaning that women continue to squirm in substantive environmental injustice.

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