

## Environmental Ethics and the Nigerian Oil and Gas Industry: Rumpus and Resolution

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### ABSTRACT

*The highlights and assess ethical questions that arise from the impact of Nigeria's oil and gas industry on the environment, and suggests ways for addressing revealed ethical challenges using tools provided by theories connected with environmental ethics. It is contended that activities of industry operators do not meet relevant standards of environmental ethics, especially as the laws and practices of the industry engender intra/inter-generational inequity as well as significant negative transboundary effects. The paper demonstrates how several theoretical approaches, including consequentialism, deontology, virtue ethics and environmental pragmatism, may be useful in turning the tide.*

### 1. INTRODUCTION

The principal geographical focus of this paper is the Niger Delta region of Nigeria, which is the major theatre of (several decades of) oil and gas exploration in the country, with over 35 billion barrels of proven crude oil reserve and an even larger deposit of natural gas.<sup>1</sup> It is well established that this region has had a tragic history of massive environmental pollution (damaging land, forests and rivers etc.), majorly caused by recurring oil spills and continuous gas flaring from the activities of multinational oil companies that commonly fail to take steps to

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<sup>1</sup> T Okonkwo and U Etemire "Oil Injustice" in Nigeria's Niger Delta Region: A Call for Responsive Governance' (2017) 8 *Journal of Environmental Protection* 42, 43.

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adequately remedy this harm.<sup>2</sup> It is also on record that pollution from the oil and gas industry has severely compromised the health of those in the region, especially communities in the oil producing areas. It has also negatively affected their social, cultural and economic wellbeing, considering that their major occupation includes farming, fishing and hunting.<sup>3</sup> Despite the billions of dollars that have been generated over the years from the industry, the region continues to suffer a lack of basic amenities.<sup>4</sup>

All these have happened with the complicity of the Nigerian government, which holds a major stake in the industry through the Nigerian National Petroleum Corporation's (NNPC)<sup>5</sup> contractual arrangements, especially the Joint Venture Arrangements (JVA) and Production Sharing Contracts (PSCs) with multinational oil companies.<sup>6</sup> Indeed, the Nigerian economy depends heavily on its oil industry, with petroleum resources accounting for about 80 per cent of Nigeria's revenue and 95 per cent of its export earnings.<sup>7</sup> Hence, the government has over the years demonstrated its reluctance to properly hold the industry accountable for its human and environmental impacts; this is so considering its own involvement, as not just a regulator, through the Department of Petroleum Resources (DPR),<sup>8</sup> but a commercial player in the industry, as well as the fear that such action may affect the economic fortunes derived from the industry for both the nation and the multinational oil companies that have invested massive resources in money and expertise.

This paper primarily aims to highlight and assess the ethical questions that arise from the human and environmental impacts of Nigeria's oil and gas industry, as well as suggest ways for addressing the ethical challenges arising therefrom using theoretical tools connected with environmental ethics. To realize this aim, the next section will clarify the meaning of the terms 'environment' and 'ethics' as employed in this paper; the third section will examine the ethical

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<sup>2</sup> IL Worika 'Deprivation, Despoliation and Destitution: Whither Environment and Human Rights in Nigeria's Niger Delta?' (2001) 8 (1) *International Law Students Association (ILSA) Journal of International and Comparative Law* 1-30.

<sup>3</sup> See United Nations Development Program *Niger Delta Human Development Report* (UN Development Program Publication, Nigeria, 2006) 76.

<sup>4</sup> R Boele, H Fabig and D Wheeler 'Shell, Nigeria and the Ogoni: A Study in Unsustainable Development: The Story of Shell, Nigeria and the Ogoni People – Environment, Economy and Relationships: Conflict and Prospect for Solution' (2001) *Sustainable Development* 74.

<sup>5</sup> Nigerian National Petroleum Corporation (NNPC) available at: <https://www.nnpcgroup.com/Pages/Home.aspx>

<sup>6</sup> BR Konne 'Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland' (2014) 47 *Cornell International Law Journal* 181, 183.

<sup>7</sup> United Nations Environmental Programme (UNEP), *Environmental Assessment of Ogoniland* (UNEP (now UN-Environment), 2011). (UNEP Report)

<sup>8</sup> See Department of Petroleum Resources Petroleum Regulatory Agency of Nigeria at: <https://www.dpr.gov.ng/>

issues arising from the environmental impact of the operations in the oil and gas industry from the perspectives of intra-generational equity, inter-generational equity, and transnational effect. And before the conclusion, the fourth section will examine in what ways theoretical tools related to environmental ethics, including consequentialism, deontology, virtue ethics and environmental pragmatism, reveal how the approach of oil industry actors might be made more responsive to the positive values and principles of environmental ethics.

## 2. CONCEPTS OF ENVIRONMENT AND ETHICS

A basic understanding of the meaning of the central concepts of this paper, environment and ethics, is critical for adequate examination of oil and gas activities in Nigeria in relation those concepts. Early definitions of ‘environment’ are similar to Einstein’s definition, stating that ‘the environment is everything that isn’t me.’<sup>9</sup> Broad as this definition is, it is limited in that it does not conceive of humans as part of the environment. Latter definitions are beginning to recognize humans as part of the environment. For instance, Section 37 of Nigeria’s National Environmental Standards and Regulations Enforcement Agency (NESREA) Act<sup>10</sup> reflects this current wider approach, as it defines ‘environment’ to include: ‘water, air, land and all plants and *human beings* or animals living therein and the inter-relationships which exist among these or any of them.’

On the other hand, ‘ethics’ (or moral philosophy) ‘involves systematizing, defending, and recommending concepts of right and wrong behavior.’<sup>11</sup> It deals with moral standards that ‘regulate right and wrong conduct... that may involve articulating the good habits that should be acquired, the duties that should be followed, and the consequences of human actions and inactions on others.’<sup>12</sup> Indeed, ethics engages with issues of human morality, and strives to not only unravel and resolve questions of justice and injustice/crime, but those of good and bad, right and wrong, and, of course, virtue and vice. In fact, to a large extent, ‘ethical questions are those about what we ought to do’, and they are ‘prescriptive... normative and aspirational, describing

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<sup>9</sup> Cited in DS Olawuyo *The Principles of Nigerian Environmental Law* (Afe Babalola University Press 2015) 6. See the definition of ‘environment’ in United States Environmental Protection Agency (USEPA) *Terms of Environment: Glossary Abbreviations and Acronyms* (USEPA, 1992); and s. 20 of Nigeria’s Water Resources Act, Cap W2 Laws of the Federation of Nigeria 2004.

<sup>10</sup> NESREA Act, Federal Republic of Nigeria Official Gazette No 92, Vol 94 of 31 July 2007 (emphasis added).

<sup>11</sup> Internet Encyclopedia of Philosophy (a peer-reviewed academic resource), <https://www.iep.utm.edu/ethics/>.

<sup>12</sup> *Ibid.*

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the behaviors, practices, and character traits for which we ought to strive [arguably because of their innate goodness and the better outcomes they ensure], even if these are difficult to achieve.<sup>13</sup> In this light, ethical consideration, including as it relates to the environment, may include, as well as go beyond what might already be provided in or enforceable through the law. This makes the concept of ethics exceedingly relevant for the making and implementation of efficacious laws and, to that end, the review and strengthening of existing but weak laws and practices.

However, age-long debates by philosophers, lawyers, policy-makers, economists, industrialists, environmentalists, and the general public, on ethical considerations within the context of the environment, eventually crystalized in the 1970s into the modern concept of ‘environmental ethics’ – a subfield of philosophy.<sup>14</sup> This development grew out of the increasing consciousness in the 1960s of the significant negative impact that technology, industry, and economic expansion, coupled with population growth, were having on the environment.<sup>15</sup> As a result of awareness, public interest increased in questions about humans’ moral relationship with the rest of the natural world, including the boomerang effect of this relationship. This is what environmental ethics is about – ‘the study of ethical questions raised by human relationships with the nonhuman environment’;<sup>16</sup> and ‘the collective of universal values, treating each human equally, acknowledging human and natural rights, obeying the law of [the] land, showing health and safety concerns, [and] caring for [the] natural environment.’<sup>17</sup>

What is more, the burden of environmental ethics is to set out society’s moral obligations in the face of increasing environmental pollution and natural resource degradation. It has been noted that the two basic questions environmental ethics must address are: ‘what duties do humans have with respect to the environment, and why?’<sup>18</sup> Whether, as some philosophers argue, those duties are born out of the instrumental value of the environment or, as others posit, arise from its intrinsic value, all are in agreement that the environment is extremely valuable and

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<sup>13</sup> C Palmer, K McShane, and R Sandler, ‘Environmental Ethics’ (2014) 39 *Annual Review of Environment and Resources* 419.

<sup>14</sup> H Rolston, *A New Environmental Ethics: The Next Millennium for Life on Earth* (Routledge, 2012) 20.

<sup>15</sup> See R Carson, *Silent Spring* (Houghton Mifflin, 1962); and PR Ehrlich, *The Population Bomb* (Sierra Club Books, 1968).

<sup>16</sup> Palmer *et al* (n 13 above).

<sup>17</sup> Internet Encyclopedia of Philosophy (a peer-reviewed academic resource), available at: <https://www.iep.utm.edu/ethics/>.

<sup>18</sup> Internet Encyclopedia of Philosophy (a peer-reviewed academic resource), available at: <https://www.iep.utm.edu/envi-eth/>.

deserving of adequate protection.<sup>19</sup> Similarly, Palmer *et al* further posit that the important task of environmental ethics is to determining ‘how and why’ elements of the environment are valuable, and ‘how we ought to consider these values in deliberations about principles, actions, practices, and laws.’<sup>20</sup>

With the above queries, the goals and methods of environmental laws, policies, strategies and practices can then be assessed and evaluated, ‘in terms of how responsive they are to what is valuable in the environment, and how well they embody the principles that those values justify’, and also ‘in terms of what is right and good, in addition to what is efficient or expedient.’<sup>21</sup> This task is crucial in understanding and measuring the appropriateness of environmental laws and actions by various actors, and in taking steps to regulate and improve the moral status of their relationship with the environment. This is the task that is undertaken in the next section with respect to the activities of the relevant actors in Nigeria’s oil and gas sector as it affects the environment.

### **3. ENVIRONMENTAL ETHICS AND THE NIGERIAN OIL AND GAS INDUSTRY**

In this section, the ethical issues arising from the environmental impact of operations in Nigeria’s oil and gas industry will be examined from the perspectives of intra-generational equity, inter-generational equity, and transnational effect. These perspectives are relevant as they provide for a robust discussion of the scope of the industry’s effects, which includes the present generation of Nigerians, the future generations and people/jurisdictions beyond Nigeria.

#### **3.1 Intra-generational Equity and the Oil Industry**

The theory of intra-generation equity is, among other things, concerned with the environmental welfare of people in the present generation. This theory is indeed at the core of environmental ethics, as reflected in the definition of the environmental ethics in the preceding section. Particularly, intra-generational equity embodies the notion of a right to fair distribution of (the benefits of natural) resources as well as environmental risks and burdens, among members of the

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<sup>19</sup> See K McShane, ‘Environmental Ethics: An Overview’ (2009) 4 (3) *Philosophy Compass* 407, 407-410.

<sup>20</sup> Palmer *et al* (n 13 above) 421.

<sup>21</sup> *Ibid.*

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existing generation.<sup>22</sup> In other words, it discourages inequitable access to resources and distribution of environmental hazards among people of the existing generation, not just on a global scale, but also at the domestic level.<sup>23</sup> Intra-generational equity likewise encompasses the concept of ‘environmental justice,’<sup>24</sup> which concept has been noted as ‘a key concern of environmental ethics.’<sup>25</sup> And to be sure, environmental justice is defined as ‘the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.’<sup>26</sup> Thus, intra-generational equity includes both distributive and participative (or procedural) justice issues concerning the environment.

The (un-)fair allocation of benefits and burdens is the primary concern of distributive justice. In this regard, research has shown that, globally, poor and minority communities, like those in the Niger Delta region, are disproportionately exposed to environmental hazards and burdens.<sup>27</sup> Oil exploration and exploitation activities, as earlier noted, have resulted in massive air, water and land pollution in many communities in the Niger Delta region, way beyond the environmental impact of the oil and gas industry in the rest of the country. For example, recent research has shown that infant mortality rate in the many Niger Delta communities with oil spill sites is about a 100% higher, (76 deaths per 1000 births) than the national average (38 deaths per 1000 births), as a result of the pollution from oil spills.<sup>28</sup> This unfair distribution of the industry’s environmental burden has been occasioned mostly by the severe inadequacy of the environmental protection regulatory framework applicable to the industry.<sup>29</sup> In support, the UNEP Report notes that the environmental laws applicable to the industry cannot sufficiently guarantee the prevention of environmental harms and the restoration of degraded environment in

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<sup>22</sup> EB Weiss ‘The Rise or the Fall of International Law?’ (2000) 69 (2) *Fordham Law Review* 345, 369.

<sup>23</sup> TJ Wu, *Intergenerational and Intragenerational Equity and Transboundary Movements of Radioactive Wastes* (Master of Laws Thesis, McGill University, July 2002) 30. See also SL Smith, ‘Ecologically Sustainable Development: Integrating Economics, Ecology, and Law’ (1995) 31 *Willamette Law Review* 261.

<sup>24</sup> JR Des Jardins *Environmental Ethics: An Introduction to Environmental Philosophy* (Wadsworth, 1997) 228.

<sup>25</sup> Palmer *et al* (n 13 above) 424.

<sup>26</sup> US Environmental Protection Agency (EPA), *Plan EJ 2014 Progress Report* (EPA, 2013) 2.

<sup>27</sup> D Camacho, *Environmental Injustices, Political Struggles: Race, Class, and the Environment* (Duke University Press, 1998).

<sup>28</sup> A Bruederlea and R Hodle, ‘Effect of oil spills on infant mortality in Nigeria’ (2019) 116 (12) *Proceedings of the National Academy of Sciences* 1 – 5.

<sup>29</sup> See generally IL Worika U Etemire and PS Tamuno ‘Oil Politics and the Application of Environmental Laws to the Pollution of the Niger Delta: Current Challenges and Prospects’ (2019) 17 (1) *Oil, Gas and Energy Law Journal* 1, 7.

affected communities, due to their general weakness and poor enforcement by government regulators.<sup>30</sup>

For example, Section 6(3) of the National Oil Spill Detection and Response Agency (Establishment) (NOSDRA) Act<sup>31</sup> stipulates a ₦1,000,000 (roughly \$2,500) fine for failure by a polluting oil company to clean up oil spill sites. Considering the financial size of oil companies, that fine is too low to motivate oil firms to commit time and material resource to improving their operations with the aim of preventing environmental harm that may emanate therefrom.<sup>32</sup> Another is the Oil Pipelines Act<sup>33</sup> which appears to facilitate rather than prevent environment harm. Section 5 of the Act grants those licensed to install oil pipelines and ancillary facilities, the right to conduct environmentally harmful activities on land covered by their permits in the process of executing their rights, without any corresponding obligation to restore the damaged environment after the permitted activity is concluded.<sup>34</sup>

Furthermore, there is the 2018 revised Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN),<sup>35</sup> an important regulatory instrument in the oil and gas industry, which outlines environmental standards that must be complied with by oil operators, to prevent, minimise, and control pollution from the oil industry. However, research reveals that while the EGASPIN ‘seeks to adopt best practice, using methods and guidelines that are consistent with international standards’, contrary to international best practice in the field, it contains a number of gaps that limit its overall efficiency and capacity to prevent pollution and ensure remediation of damaged ecosystems.<sup>36</sup> For example, developed countries like the US, UK, Norway and Canada have achieved a much healthier and ethical relationship between their oil industries and the environment compared to Nigeria. This is because international best practice, as reflected in the oil industry environmental guidelines in those developed countries, set a low (and strict) threshold for intervention values<sup>37</sup> and target values<sup>38</sup> in order to discourage

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<sup>30</sup> UNEP Report (n 7 above) 217-219.

<sup>31</sup> Vol 93 (No 72) Federal Republic of Nigeria Official Gazette, 29 December 2006.

<sup>32</sup> Amnesty International *Nigeria: Joint Memorandum on Petroleum Industry Bill March 2012* (Amnesty International 2012) 3-4.

<sup>33</sup> Cap O7 Laws of the Federation of Nigeria, 2004.

<sup>34</sup> Section 6(2) of the Act only *encourages* caution, calling on the holder of a permit under section 5 of the Act to ‘take all reasonable steps to avoid *unnecessary damage*...’ Emphasis added.

<sup>35</sup> EGASPIN (Lagos: Department of Petroleum Resources, 1991 (revised in 2002, 2016 and 2018)).

<sup>36</sup> DS Olawuyi and Z Tubodenyefa *Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)* (OGEES Institute November 2018) 3.

<sup>37</sup> The criteria for oil spill and contaminated site management which triggers remediation.

pollution, whereas the values indicated in EGASPIN are 'extremely high and not strict enough to deter pollution.'<sup>39</sup> This is further exemplified by the fact that:

[Under EGASPIN] the maximum tolerated concentrations for heavy metals such as benzene, toluene, mercury, lead, and cadmium are very high and are roughly three times as high as those laid out in guidelines by international organisations such as the World Health Organization (WHO), the European Commission, the Organisation for Economic Co-operation and Development (OECD), and the International Organization for Standardization (ISO).<sup>40</sup>

Furthermore, EGASPIN does not cover several poly-aromatic hydrocarbons (PAHs) and pollutants that are well known to be toxic and harmful to the environment. For instance, only 10 PAHs are included in EGASPIN for groundwater values,<sup>41</sup> even though the US standard for example has 16 PAHs.<sup>42</sup> This lacuna leaves room for unchecked pollution from those excluded pollutants. Another issue is that the DPR which is the licensing and permitting authority for oil operations (under the Ministry of Petroleum Resources, charged with maximizing revenue from oil production), also has the responsibility of enforcing environmental compliance in the industry through EGASPIN.<sup>43</sup>

The UNEP Report concluded that bearing both responsibilities amounted to a conflict of interest which has undermined the DPR's ability to effectively enforce environmental compliance in the industry. It further noted that international best practice requires that environmental regulation and enforcement in the oil and gas industry be placed under a different agency, like the Ministry of Environment, to avoid a conflict of interest, as is the case in most oil producing countries, including (the aforementioned developed countries<sup>44</sup>) and those in the Middle East.<sup>45</sup> Indeed, even though Section 4(7) of EGASPIN provides for the revocation by government of the lease and license of any company in violation of the Guidelines, there is no known case of such revocation despite evidence that violation of EGASPIN is persistent and

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<sup>38</sup> The criteria for oil spill and contaminated site management which indicates when the remediation process can be shut down.

<sup>39</sup> Olawuyi and Tubodenyefa (n 36 above) 3.

<sup>40</sup> Ibid.

<sup>41</sup> EGASPIN, Table VIII-F1, p. 279.

<sup>42</sup> Olawuyi and Tubodenyefa (n 36 above) 4.

<sup>43</sup> Ibid 5.

<sup>44</sup> Ibid.

<sup>45</sup> UNEP Report (n 7 above) 139.



widespread.<sup>46</sup> Hence, the above laws and practices fall below the standards of, and cannot reasonably guarantee environmental ethics in the Nigerian oil industry, hence leaving poor and minority communities of the Niger Delta disproportionately exposed to environmental harm.

The second aspect of distributive justice relates to access to and fair distribution of benefits from natural resources. Although the unequal exposure to environmental hazards of communities in the Niger Delta is unjust and unethical, it may be considered less so if those communities that 'shoulder the burdens also get associated benefits.'<sup>47</sup> But that is not the case. Rather, the destruction of forests, land and rivers by oil spills and gas flare pollution has pushed members of the affected communities further below the poverty line considering that their major occupation is hunting, farming and fishing.<sup>48</sup> What is more, even though special mechanisms have been setup by government and oil companies to purportedly convey financial and developmental benefits to these affected communities, the effects of these efforts have not been felt at the community level.

For example, environmental scholars, oil-producing communities, and even officials of Nigeria's Revenue Mobilization Allocation and Fiscal Commission have argued that the 13% of oil and gas revenue paid to state governments in the Niger Delta is being mismanaged by them, especially against the interest of many of those oil-producing communities that, more than others, suffer directly and disproportionately the impact of activities in the industry.<sup>49</sup> Also, the impact of the activities of the federal government-established Niger Delta Development Commission leaves much to be desired. It has been alleged that corruption and mismanagement within the agency has inhibited its ability to deliver developmental benefits to communities in the Niger Delta.<sup>50</sup> Even the Corporate Social Responsibility (CSR) projects executed by multinational oil companies in their host communities are like 'a drop in the ocean'. They have

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<sup>46</sup> Amnesty International (n 32 above).

<sup>47</sup> Palmer *et al* (n 13 above) 424.

<sup>48</sup> See CO Opukri, 'Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta' (2008) 10 (1) *Journal of Sustainable Development in Africa* 173.

<sup>49</sup> See E Elebeke, 'Oil Communities Allege Misappropriation of 13% Derivation Funds', *Vanguard*, 20 December, 2012, available at: <http://www.vanguardngr.com/2012/12/oil-communities-allege-misappropriation-of-13-derivation-funds/>; Premium Times, 'Delta, Ondo Oil Communities Demand Control of Derivation Money', *Premium Times*, 12 May, 2014, available at: <http://www.premiumtimesng.com/national-conference/delta-ondo-oil-communities-demand-control-derivation-money/>; and Okonkwo and Etemire (n 1 above) 51-54.

<sup>50</sup> TA Todo, J Osahon and I Akpan-Nsoh, 'A Tale of Sleaze, Corruption in NDDC', *the Guardian*, 11 August 2019, available at: <https://guardian.ng/saturday-magazine/cover/a-tale-of-sleaze-corruption-in-nddc/>.

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generally not improved the socio-economic status of the host communities, especially as most of them are not properly targeted at addressing the most pressing community needs.<sup>51</sup>

The last concept which is central to intra-generational equity, environmental justice and environmental ethics, is participative justice. In an environmental context, participative justice means the full, informed and meaningful involvement of those affected or concerned about decisions with environmental effects in the process of making those decisions. This is because, among others reasons, it enables a more wholistic consideration of the issues relevant for making an effective and environmentally protective decision.<sup>52</sup> Indeed, it is widely accepted that environmental problems, such as those emanating from Nigeria's oil and gas industry, are best avoided or addressed with the participation of the concerned public in the environmental decision-making processes relating to the industry.<sup>53</sup> Yet, as with many places around the world,<sup>54</sup> members of oil-bearing communities in the Niger Delta who are adversely affected by laws, policies and decisions about environmental matters have no meaningful say in their formulation.<sup>55</sup> And this situation has been allowed and sustained by weak laws and practices which should, but fails to, enable meaningful public participation.

For example, there is the Environmental Impact Assessment (EIA) Act<sup>56</sup> which aims to check potential environmental harm that might emanate from the execution of a proposed project, including in the oil and gas industry, mainstreaming environmental considerations into the decision-making process concerning such a project.<sup>57</sup> To achieve this aim, it is globally accepted as a general principle that '[p]ublic participation is a fundamental component of the ... [EIA] process.'<sup>58</sup> However, the EIA Act makes a very weak and inadequate provision for public

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<sup>51</sup> R Enuoh and A Eneh 'Corporate Social Responsibility in the Niger Delta Region of Nigeria: In Who's Interest' (2015) 5(3) *Journal of Management and Sustainability* 74.

<sup>52</sup> See generally, U Etemire, *Law and Practice on Public Participation in Environmental Matters: The Nigerian Example in Transnational Comparative Perspective* (Routledge, 2015).

<sup>53</sup> Principle 10 of the Rio Declaration on Environment and Development (1992) 31 ILM 874 (Rio Declaration). See also J Foti 'Rio+20 in The Rear View: Countries Commit to Improve Environmental Democracy', *The Access Initiative*, 10 July, 2012, available at: <https://accessinitiative.org/blog/rio20-rear-view-countries-commit-improve-environmental-governance>

<sup>54</sup> K Shrader-Frechette, *Environmental Justice: Creating Equality, Reclaiming Democracy* (Oxford University Press, 2002).

<sup>55</sup> KSA Ebeku, 'Niger Delta Oil, Development of the Niger Delta and the New Development Initiative: Some Reflections from a Socio-Legal Perspective' (2008) 43 *Journal of Asian and African Studies* 399, 415.

<sup>56</sup> Cap E12 Laws of the Federation of Nigeria, 2004.

<sup>57</sup> IL Worika 'Environmental Impact Assessment of Oil and Gas Projects' (2003) 1 (5) *Oil, Gas and Energy Law Journal* 53.

<sup>58</sup> N Hartley and C Wood 'Public Participation in Environmental Impact Assessment – Implementing the Aarhus Convention' (2005) 25 *Environmental Impact Assessment Review* 319.

participation. It fails to create such a right or opportunity for the relevant communities in any meaningful way.<sup>59</sup> While, for instance, Section 7 of the EIA Act provides that the public be given the opportunity to make comments on the EIA of a proposed activity before a final decision is taken on it, Section 14(1) of the Act, contrary to international best practice, grants the relevant government authorities arbitrarily wide powers to exclude a proposed project from the EIA and public participation process, which powers they have frequently exercised to the detriment of the environment.<sup>60</sup>

Further, whereas EGASPIN contains a requirement for an operator to ‘identify and discuss the management and/or implementation of environmental impacts with stakeholders’, it says nothing on who qualifies as a stakeholder, nor does it provide comprehensible direction on the methods that interveners can use to provide input.<sup>61</sup> In the operations phase, communities that are supposed to be involved in any oil spill or clean-up investigation are largely excluded. Local communities in Bodo, as well as other Niger Delta communities, have persistently claimed that Joint Investigation Visit (JIV) investigations proceed without the local chiefs, kings, youths, or community members being informed and involved in the process.<sup>62</sup> The shortcomings in the participatory provisions of the EIA Act and EGASPIN enable participative injustice which, according to environmental ethicists can be avoided by making room for meaningful participation, especially by those whose health and welfare might be affected by an environmental decision.<sup>63</sup>

### 3.2 Inter-generational Equity and the Oil Industry

The theory of inter-generation equity attempts to explain ‘the optimum basis for the relationship between one generation and the next’, particularly requiring ‘each generation to use and develop its natural [environment]... in such a manner that it can be passed on to future generations in no

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<sup>59</sup> See RT Ako ‘Ensuring Public Participation in Environmental Impact Assessment of Development Projects in the Niger Delta of Nigeria: A Veritable Tool for Sustainable Development’ (2006) 3 (1-2) *Envirotopica* 13.

<sup>60</sup> Y Omorogbe ‘The Legal Framework for Public Participation in Decision-making on Mining and Energy Development in Nigeria: Giving Voices to the Voiceless’, in DN Zillman, AR Lucas and G Pring (eds), *Human Rights in National Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resource* (OUP 2002) 549 568.

<sup>61</sup> Olawuyi and Tubodenyefa (n 36 above) 8.

<sup>62</sup> Amnesty International, *Bad Information: Oil Spill Investigations in the Niger Delta* (Amnesty International, November 2013) 48, available at: <https://www.amnesty.org/download/Documents/12000/afr440282013en.pdf>.

<sup>63</sup> See B Bryant (ed.), *Environmental Justice: Issues, Policies, and Solutions* (Island Press Washington 1995).

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worse condition than it was received.<sup>64</sup> Even the popular definition of sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs,’<sup>65</sup> emphasizes the centrality of inter-generational equity. Inter-generational equity is gaining increasing relevance in international environmental law as it clearly underlies a number of international treaties and soft-laws.<sup>66</sup> In fact, Weiss argued that inter-generational equity is now part of international law.<sup>67</sup> While this may not yet be the case given contrary arguments,<sup>68</sup> it is clear that, at least, inter-generational equity constitutes a forceful, evolving moral and quasi-legal standard for regulating the environmental relationship between the present generation and the next.

Indeed, the idea of a moral responsibility for future generations is well established in scholarly writings.<sup>69</sup> Particularly, environmental ethicists, who traditionally strive to determine ‘what we owe to people who are distant from us across space and time, particularly those who do not yet exist’,<sup>70</sup> have largely embraced the notion of inter-generational equity for its potential to engender a healthy and ethical relationship between people/organizations and the environment.<sup>71</sup> To be sure, this idea is not alien to traditional indigenous societies in Nigeria. In their interaction with the environment and their usage of natural resources, traditional societies were keen about inter-generational equity.<sup>72</sup> For instance, a traditional ruler, Chief Elesi of Odogbolu, expounded on this point in his conceptualization of ‘land’ among the Yoruba people before the West African Lands Commission in 1908, thus: ‘I conceive that land belongs to a vast family of which many are dead, few are living and countless members are still unborn.’<sup>73</sup> Little wonder why the

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<sup>64</sup> P Birnie A Boyle and C Redgwell *International Law and the Environment* (OUP 2009) 119.

<sup>65</sup> World Commission on Environment and Development *Our Common Future* (Oxford 1987) 43.

<sup>66</sup> See Principle 3, Rio Declaration; and Art 3(1), United Nations Framework Convention on Climate Change (1992) 31 ILM 849.

<sup>67</sup> B Weiss *In Fairness to Future Generation* (Dobbs Ferry 1989).

<sup>68</sup> The contrary arguments including the fact that relevant international instruments mainly demonstrate concern for future generations but do not confer future indeterminate generations with justiciable rights, and that international courts are yet to expressly recognize the right to future generations. G Supanich ‘The Legal Basis of Intergenerational Responsibility: An Alternative View – The Sense of intergenerational Identity’ (1992) 3 *Yearbook of International Environmental Law* 94; and Birnie (n 64 above) 121.

<sup>69</sup> J Rawls *A Theory of Justice* (Harvard University Press 1971); A Gillespie *International Environmental Law, Policy and Ethics* (Clarendon Press 1997) ch 6.

<sup>70</sup> Palmer *et al* (n 13 above) 425.

<sup>71</sup> See generally S Gardiner *The Perfect Moral Storm: The Ethical Tragedy of Climate Change* (OUP 2009).

<sup>72</sup> J Osei, ‘The Value of African Taboos for Biodiversity and Sustainable Development’ (2006) 8 (3) *Journal of Sustainable Development in Africa* 42, 47-48.

<sup>73</sup> Quoted in Y Oke, ‘Intergenerational Sustainability and Traditional Knowledge in Africa: The Natural Resource Management Perspective’, in CL Soskolne (ed) *Sustaining Life on Earth: Environmental and Human Health Through Global Governance* (Lexington Books 2008) 227 234.

traditional norms and practices are generally considered more environmental friendly and ethical than the now dominant state-based regulatory mechanisms,<sup>74</sup> as acknowledged in Nigeria's latest National Policy on the Environment.<sup>75</sup>

The massive ecological damage being perpetuated by actors in the oil and gas industry in Nigeria is certainly of trans-generational effect, in that, the ecological conditions of both the present society and future generations are being severely compromised by industry actors, as partly enabled by weak laws and unsustainable practices in the industry. Indeed, according to Gundling, 'without equity within the present generation, we will not be able to achieve equity among generations.'<sup>76</sup> For instance, more than 60 years after crude oil in commercial quantities was first discovered in Nigeria among the Oloibiri community in the Niger Delta region, the current inhabitants continue to suffer the negative effects of environmental pollution from Shell's exploration.<sup>77</sup>

Even though oil production activities have since ceased in the community, pollution of the environment through oil spills from several decades ago continue to damage the health of the villagers and compromise their economic ability to meet their basic needs. Also affected are children and young members of the community who did not even witness the oil production activities.<sup>78</sup> To further exemplify the inter-generational effect of pollution by the industry, the UNEP Report reckons that it will take about 30 years to restore oil spill contaminated sites in Ogoniland in the Niger Delta, some of which sites were polluted more than 40 years ago, and remained so despite claims that they had been cleaned-up.<sup>79</sup> Obviously, the laws and practices which enable such situations, setting-up the next generation for ecological and economic hardship, fall below all known standards of, and do not reflect environmental ethics.<sup>80</sup>

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<sup>74</sup> VM Toledo 'Indigenous Peoples and Biodiversity' in GC Daily et al (eds) *The Encyclopaedia of Biodiversity* (Academic Press 2001) 6.

<sup>75</sup> National Policy on the Environment (Revised 2016) 22, (on file with author.)

<sup>76</sup> L Gundling 'Our Responsibility to Future Generations' (1990) 84 (1) *American Journal of International Law* 207, 211.

<sup>77</sup> S Oyadongha and E Idio '60 Years after Nigeria's First Crude: Oloibiri Oil Dries Up, Natives Wallow in Abject Poverty' *Vanguard* 13 March, 2016, available at: <https://www.vanguardngr.com/2016/03/60-years-after-nigerias-first-crude-oloibiri-oil-dries-up-natives-wallow-in-abject-poverty/>.

<sup>78</sup> *Ibid.*

<sup>79</sup> UNEP Report (n 7) 9 and 226.

<sup>80</sup> See T Mulgan *Future People* (Oxford University Press 2004); and M Roberts and D Wasserman (eds) *Harming Future Persons* (Springer 2009).

What is more, 'distribution of costs and benefits' flowing from environmental exploitation is not only relevant to intra-generational equity,<sup>81</sup> but also to inter-generational equity. To be sure, serious ethical questions arise when the present generation unsustainably and destructively extracts benefits from the environment, and passes much of the costs to the next generation; more so when, like the Nigerian situation, the benefits are hardly utilized in a manner that will reasonably benefit future generations upon their arrival, but is mostly stolen, squandered and (mis-)managed by the benefiting generation against the interest of those yet to be born.<sup>82</sup> Indeed, it is trite that the huge revenue generated by the Nigerian government and multinational companies from oil exploration in the Niger Delta has not translated into a better economic status for oil-producing communities, or greater hope for its future generations. They severely lack access to basic amenities and continue to suffer extreme poverty mostly resulting from the pollution.<sup>83</sup> Thus, children born into those communities are ecologically and economically worse-off than their progenitors were before oil exploration began in Nigeria.

The above situation shows a lack of plan for the future generation to inherit nothing but environmental degradation, despoliation and destitution of present day environmental and natural resource exploitation. In the least, this is unfair to those unborn. And it is particularly worrisome considering that oil and gas resources are finite in nature, and that commercial production of oil and gas in the region may only last a few more decades.<sup>84</sup> Yet, environmental ethics require actors in that industry to prioritize the interest of future generations in deciding on their current environmental activities. Indeed, the general dearth of justiciable environmental rights for future generations in international law and globally and at the national level, arguably, does not exclude industry actors from certain 'generational responsibilities' for which they may be held accountable by members of the present generation. A persuasive authority on that point is the

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<sup>81</sup> BJ Richardson 'The Emerging Age of Ecological Restoration Law' (2016) 25 (3) *Review of European Community and International Environmental Law* 1, 11.

<sup>82</sup> A Esan, 'David-West: Nigeria Needs Good Leaders, Not a New Constitution', *National Mirror*, 29 August 2012, available at: <http://nationalmirroronline.net/index.php/interviews/46834.html>.

<sup>83</sup> Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* (Amnesty International Publications, 2009).

<sup>84</sup> Eboh, 'Recession: Nigeria's Oil, Gas Reserves Running Out, NNPC Warns', 2016, <http://www.vanguardngr.com/2016/10/recession-nigerias-oil-gas-reserves-runningnnpc-warns/>; and CS Peterside, 'What Happens in Nigeria When the Oil Wells Run Dry?' 2014, <http://www.resilience.org/stories/2004-11-05/what-happens-nigeria-when-oil-wellsrun-dry>

case of *LCB v United Kingdom*<sup>85</sup> in which the respondent government was held to owe a duty to protect the offspring of servicemen engaged in nuclear tests.

In Nigeria, ‘future generations’ do not possess justiciable environmental rights that can be enforced on their behalf by members of the present generation. Partly for this reason, their interests have also not received adequate consideration in environmental decision-making in the oil industry. However, the Nigerian National Policy on the Environment includes the ‘principle of inter-generational equity’ as one of its guiding principles for achieving the aims of environmental protection, sustainable use of natural resources, and restoration of degraded environments.<sup>86</sup> Interestingly, in the recent Nigerian case of *Centre for Oil Pollution Watch v NNPC*,<sup>87</sup> the appellant brought an action against the respondent for the remediation of oil-polluted rivers (that were the major source of water supply for the affected communities), and the treatment of victims whose health had been impacted over the years by the decades-old oil spill. The Supreme Court, unanimously allowing the appeal, and seemingly for the first time, made reference to the need for adequate environmental protection ‘for the benefit of the present and the future generations.’<sup>88</sup>

While the above references may not amount to the recognition of an environmental right for future generations, they demonstrate the need for actors in the oil industry to take their generational responsibilities more seriously and be ethical in their interaction with the environment. The urgency of this need for a change in approach is brought alive by the earlier referred scientific study which found that, in the Niger Delta, oil spills alone increase infant mortality after the first few months of life – from the national average of 38 deaths to about 76 deaths per every 1,000 live births – and continue to have negative effects on the health of surviving children, if the mother lived within 10 kilometers of an oil spill site before the conception.<sup>89</sup> Against this backdrop, the wide discretion EGASPIN grants to the DPR to intervene and permit discharges even when limitation standards are exceeded, coupled with the fact that DPR acts in a dual capacity of being a licensing/permitting authority as well as

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<sup>85</sup> 27 EHRR (1999) 212.

<sup>86</sup> National Policy on the Environment (n 75 above) 13.

<sup>87</sup> (2019) 5 NWLR (Pt 1666) 518, 580-581 and 599-600.

<sup>88</sup> Ibid 580-581 and 599-600.

<sup>89</sup> Bruederlea and Hodle (n 28) 2-3 The study also found that ‘the effect on neonatal mortality decreases slightly as the distance increases and levels off at distances above 10 km’, and that the effect of oil spill on neonatal mortality rate ‘is fairly uniform across girls and boys, socio-economic backgrounds, and locations.’

enforcement authority of environmental guidelines and standards does not augur well for inter-generational equity and ethical principles.

### 3.3 Transnational Effects and the Oil Industry

It is usually difficult, and many times impossible, to geographically contain the effects of environmental hazards, especially when they exceed certain proportions. Pollution may occur in one country, but its negative effects may be felt in another or across the globe. This phenomenon, according to Palmer *et al*, has gained the attention of environmental ethicists who, under the concept global environmental justice, engage with the ethical question of ‘what we owe to people who are distant from us across space.’<sup>90</sup> Indeed, where distant contemporaries in other countries do not directly share in the benefits of the consumptions in the country that caused the transboundary environmental harm, but is made to inherit a host of environmental challenges therefrom, such a situation can only be termed unjust, unfair and unethical,<sup>91</sup> including any law and practice that may allow for such a state of affairs.

In that light, Principle 2 of the Rio Declaration states that the right of states to exploit their natural resources goes with ‘the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction [i.e. the global common, including the high seas, deep sea-beds etc.]’<sup>92</sup> This is actually a requirement for states to take appropriate measures to prevent or minimize as far as possible the risk of significant transboundary harm.<sup>93</sup> To be sure, Principle 2 has been confirmed by the ICJ in the case of *Nuclear Weapons Advisory Opinion*<sup>94</sup> to have attained the status of an obligatory rule of customary international law applicable to all countries, including Nigeria. It is important to note that the origins of a rule on transboundary harm can be traced to the popular *Trail Smelter Arbitration*,<sup>95</sup> where the US was awarded damages by the tribunal, which also ordered the control of future emissions from a Canadian smelter that had

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<sup>90</sup> See Palmer *et al* (n 13 above) 8; and P Singer *One World: The Ethics of Globalization* (Yale University Press, 2004).

<sup>91</sup> Palmer *et al* (n 13 above) 8.

<sup>92</sup> Similar to Principle 21 of the Stockholm Declaration on the Human Environment (1972); and UN General Assembly Resolution 2995 XXVII (1972).

<sup>93</sup> Birnie (n 64) 143-150. See also PM Dupuy *Legal Aspects of Transfrontier Pollution* (OECD 1977) 345.

<sup>94</sup> ICJ Report (1996) 226, para 29. See also, *Iron Rhine Arbitration*, PCA (2005) paras 222-3.

<sup>95</sup> 35 *AJIL* (1941) 684.



caused air pollution damage in the US. It held that ‘no state had the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.’<sup>96</sup> This customary international law rule is also reflected in Article 194(2) of the UN Convention of the Law of the Sea,<sup>97</sup> which requires states to ‘ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment... [or to areas beyond their jurisdiction.]’

This is another area where activities in Nigeria’s oil and gas industry raise serious environmental ethical questions. First, major oil spills in the Niger Delta negatively affect other countries, their environment, and areas beyond Nigeria’s jurisdiction, potentially creating international liability issues for the country in light of the customary and treaty rule outlined above. ‘Between January 2005 to July 2014 alone there were 5,296 recorded oil spills in the industry,<sup>98</sup> most of which, from the records, were unrecovered, and of which about 70% of the oil spilled was in offshore environments.<sup>99</sup> Thus, it is not surprising that ‘some areas in neighboring Cameroon have... [complained] that oil spills in the Niger Delta have produced cross-border effects.’<sup>100</sup> Also, among many other large scale offshore oil spills, ‘Nigeria’s largest spill was an offshore well blow out in January 1980 when an estimated 200,000 barrels of oil (8.4million US gallons) spilled into the Atlantic Ocean from an oil industry facility’<sup>101</sup> which will no doubt compromise international waters beyond Nigeria’s jurisdiction. It has also been noted that:

‘Given the migratory/transboundary nature of fish and the fact that an estimated 60 per cent of the fisheries species in the Gulf of Guinea breed in the mangrove of Niger Delta, the continued pollution of the marine environment in

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<sup>96</sup> *Ibid*, 716.

<sup>97</sup> 21 ILM (1982).

<sup>98</sup> National Oil Spill Detection and Response Agency (2014) Nigerian Oil Spill Monitor [Dataset], available at: <https://oilspillmonitor.ng>, accessed September 18, 2014.

<sup>99</sup> PC Nwilo and OT Badejo, ‘Oil Spill Problems and Management in the Niger Delta’ (International Oil Spill Conference Proceedings, May 2005) 565.

<sup>100</sup> DS Olawuyi, *Extractive Industry Law in Africa* (Springer, 2018) 285.

<sup>101</sup> Nwilo and Badejo (n 99 above).

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the Niger Delta is likely to undermine the fish food security of coastal communities in other countries in the Gulf of Guinea.’<sup>102</sup>

Furthermore, Nigeria holds the unenviable position as one of the world’s biggest gas flaring countries. Gas flaring, i.e. the burning of natural gas associated with oil extraction, which includes a cocktail of greenhouse gases, is a major contributor to atmospheric pollution and climate change,<sup>103</sup> the effects of which are both national and transboundary in nature especially considering its massive scale. It is estimated that Nigeria’s gas flaring was responsible for around 48 million tonnes of emissions in 2010 alone,<sup>104</sup> and has contributed more greenhouse gases to the atmosphere than all of sub-Saharan Africa combined.<sup>105</sup> It has also been noted that Nigeria has

‘an estimate of 123 gas flaring sites... with an estimate of 45.8 billion kilo watts of heat discharged into the atmosphere daily. Hence Nigeria is reported to have over 25% share in the global gas flaring... [F]rom Shell-BP alone, an average of a thousand cubic feet of gas is flared per barrel; which when computed, sums up to 22.8 trillion between 1958 and 2003.’<sup>106</sup>

This grand atmospheric pollution and contribution to regional and global climate change has continued because: (1) Nigerian oil industry actors have neglected to modernize their operations in relation to the handling of gas associated with oil extraction; and (2) the law and government (in)action have enabled and encouraged the practice. Particularly, gas flaring in Nigeria has for many years been enabled by Section 3 of the Associated Gas Re-injection Act.<sup>107</sup> That provision generally prohibits gas flaring, but gives the Minister of Petroleum wide discretionary power to authorize a company to flare gas with conditions and upon payment of a stipulated penalty. The Minister has consistently exercised this power in favour of gas flaring,

<sup>102</sup> I Okafor-Yarwood ‘The Effects of Oil Pollution on the Marine Environment in the Gulf Of Guinea—The Bonga Oil Field Example’ (2018) 9 (3-4) *Transnational Legal Theory* 254, 261.

<sup>103</sup> KK Aaron ‘Human Rights Violation and Environmental Degradation in the Niger Delta’ in E Porter and B Offord (eds) *Activating Human Rights* (Peter Lang 2006) 193-215.

<sup>104</sup> Nigeria’s Intended Nationally Determined Contribution (Federal Ministry of Environment, October 2015) (‘Nigeria’s INDC’) 13, available at: [http://www4.unfccc.int/ndcregistry/PublishedDocuments/Nigeria%20First/Approved%20Nigeria's%20INDC\\_27111\\_5.pdf](http://www4.unfccc.int/ndcregistry/PublishedDocuments/Nigeria%20First/Approved%20Nigeria's%20INDC_27111_5.pdf).

<sup>105</sup> The Climate Justice Programme and Environmental Rights Action/Friends of the Earth Nigeria, *Gas Flaring in Nigeria: A Human Rights, Environmental, and Economic Monstrosity* (2005), available at: <http://www.climatelaw.org/media/gas.flaring/report/gas.flaring.in.nigeria.html>.

<sup>106</sup> C Chuks-Ezike ‘Environmental Crime Liability of the Nigerian Government in its Oil Pollution Menace’ (2018) 2 (2) *Environ Risk Assess Remediat* 1, 2.

<sup>107</sup> Cap A25, Laws of the Federation of Nigeria, 2004.

including prescribing meagre penalties that make it cheaper for the companies to flare gas than to modernizing their processes to avoid flaring gas.

For many years, the gas flare penalty has been set by the Nigerian government at a paltry ₦10 (equivalent US\$0.03) per 1000 standard cubic feet flared, compared to \$10 required in some developed countries which has discouraged gas flaring in such countries.<sup>108</sup> However, the recent 2018 Flare Gas (Prevention of Waste and Pollution) Regulation,<sup>109</sup> provides in Section 13 that a producer in a field that provides 10,000 barrels of oil or more per day shall be liable to a payment of US\$2 per 1000 Standard Cubic Feet of gas flared, and for producers of fields that provide less than 10,000 barrels of oil a day it shall be a fine of US\$0.50 per 1000 Standard Cubic Feet of gas flared. The new US\$2 and US\$0.50 fines, though an improvement on what existed, significantly fall short of the US\$10 fines in some other jurisdictions, (which contributed to the significant drop in gas flaring),<sup>110</sup> and are largely inadequate to compel the relevant oil companies to improve their gas handling process.

This approach of one industry, needlessly contributing so much to climate change and atmospheric pollution, is clearly unethical from a least two perspective: (1) placing profit before and above the environmental wellbeing of the regional and global public; (2) imposing environmental challenges on people in other countries who do not directly enjoy the benefits of the exploration and commercial activities in the industry. From the standpoint of climate justice, the above practices and the enabling laws have been described by environmental ethicists as ‘unjust from both an intergenerational [earlier discussed] and global perspective.’<sup>111</sup> And the fact that much of it is being permitted by law and government (in)action did not prevent the Nigerian Supreme Court in the recent case of *Centre for Oil Pollution Watch v NNPC*<sup>112</sup> from noting, seemingly for the first time, the ‘increasing concern about climate change, depletion of the ozone layer... [and] global warming’,<sup>113</sup> - all being trans boundary effects resulting from the likes of gas flaring – as part of the basis for its favourable disposition in that case to environmental accountability in the oil and gas industry.

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<sup>108</sup> Nigerian Gas Flare Commercialization Programme (NGFCP), ‘Flare Gas (Prevention of Waste and Pollution) Regulation, 2018’, available at: <https://ngfcp.dpr.gov.ng/resources/regulations/ngfcp-regulations/>.

<sup>109</sup> Vol. 105 No. 88 Federal Republic of Nigeria Official Gazette 9 July, 2018.

<sup>110</sup> C Evoh, ‘Gas Flaring, Oil Companies and Politics in Nigeria’, 18 February, 2002, available at: <http://waado.org/Environment/OilCompanies/GasFlaresPolitics.html>

<sup>111</sup> Palmer *et al* (n 13) 425.

<sup>112</sup> (n 87).

<sup>113</sup> Ibid 580-581.

#### 4. REFLECTING ENVIRONMENTAL ETHICS: RETHINKING CURRENT INDUSTRY APPROACHES

The above analysis indicates that the laws and practices in Nigeria's oil and gas industry significantly fall below, and do not reflect the standards of environmental ethics. However, as mentioned earlier, the philosophy of environmental ethics does not only create a basis for measuring the moral status and appropriateness of laws and practices as it concerns their relationship with the environment, it also contains 'tools' that are useful for making such laws and practices more responsive to the values and principles of environmental ethics 'in terms of what is right and good, in addition to what is efficient or expedient.'<sup>114</sup> These 'tools' are theoretical approaches or schools of thoughts propagated by different environmental ethicists, which may sometimes conflict with one another, but are separately valuable for ensuring a healthy relationship between entities, like the major actors in Nigerian oil and gas industry, and the environment. They will now be discussed, (without delving into some of their intricacies and relationships which are not useful for the largely practical purpose of this section), and then related to and applied towards solving the environmental ethical challenges of the Nigerian oil and gas industry.

##### 4.1 Consequentialism and the Oil Industry

The first of these ethical theories under environment ethics is *consequentialism*. Consequentialism posits that 'the value of an action', which is its ethical character, 'derives entirely from the value of its consequences.'<sup>115</sup> In its original form, as set out by Jeremy Bentham and developed by John Stuart Mill between the eighteenth and nineteenth century, consequentialism maintains that the highest good, which it regards as the ultimate ethical criterion, is the greatest happiness or pleasure of the greatest number of people.<sup>116</sup> Aristotle arrived at a similar conclusion – that the goal of ethics is happiness.<sup>117</sup> It is for this reason that

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<sup>114</sup> Ibid.

<sup>115</sup> S Blackburn *The Oxford Dictionary of Philosophy* (OUP 1994) 77.

<sup>116</sup> P Curry *Ecological Ethics: An Introduction* (Polity Press 2006) 36.

<sup>117</sup> Ibid 33.

this school of thought is sometimes referred to as *utilitarianism*. In simpler and practical terms, consequentialism is thus an ethical theory that demands ‘that we should aim at bringing about best consequences through our actions, rules, or practices.’<sup>118</sup>

Weighed against the demand of consequentialism, it is obvious that the environmental rules and practices in Nigeria’s oil and gas industry have not brought about the best environmental outcomes and the highest good for oil-producing communities in the Niger Delta and beyond. They have certainly not led to the greatest happiness or pleasure of the greatest number of people, as evidenced by: (1) the high rate of poverty in the region that is linked to its ecological degradation caused by the oil industry; and (2) the (consequential) oil-related conflicts, violence and vandalism that have plagued the Niger Delta region, increasing sharply the cost of doing business in the industry and,<sup>119</sup> many times, significantly reducing oil production and revenue from the industry,<sup>120</sup> whose effects reverberate across the nation.<sup>121</sup> This situation is unlike that of other oil-producing countries like Norway where, with less oil and gas pollution, the socio-economic conditions of its people have been vastly improved by the industry.<sup>122</sup> These failings, including as it relates to achieving intra/inter-generational equity and respect for areas and peoples beyond the boundaries of Nigeria, call for a wholistic reconsideration and revision of the environmental laws and practices applicable to the Nigerian oil industry. They must be re-designed with the aim of producing better consequences in order to meet the goal of environmental ethics.

Incidentally, the above proposal broadly aligns with some of the recommendations, (most of which are yet to be implemented), in the report produced by Nigeria’s 2014 National Conference, aimed at proffering solutions to the diverse challenges facing the country and defining pathways for national development.<sup>123</sup> The Conference recommended that the Oil Pipelines Act be replaced with a ‘new law on oil and gas pipelines’ that meets international

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<sup>118</sup> Palmer *et al* (n 13) 431.

<sup>119</sup> EN Ekong EB Essien and KU Onye *The Economics of Youth Restiveness in the Niger Delta* (Strategic Book Publishing and Rights Co. 2013) 160-161.

<sup>120</sup> Premium Times, ‘How Pipeline Vandalism Reduced Nigeria’s Oil Production by 40% - NNPC’, *Premium Times*, 14 September, 2017, available at: <https://www.premiumtimesng.com/news/headlines/243204-pipeline-vandalism-reduced-nigerias-oil-production-40-nnpc.html>.

<sup>121</sup> See RG Timsar ‘Amnesty and New Violence in the Niger Delta’ *Forbes* 20 March 2018, available at: <https://www.forbes.com/sites/uhenergy/2018/03/20/amnesty-and-new-violence-in-the-niger-delta/>; and International Crisis Group, *The Swamp of Insurgency: Nigeria’s Delta Unrest* (International Crisis Centre, 2006).

<sup>122</sup> C Recknagel, ‘What Can Norway Teach Other Oil-Rich Countries’ *Radio Free Europe/Radio Liberty*, 27 November 2014.

<sup>123</sup> 2014 National Conference Report, 2-3, and 23. (on file with author)

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standards and better addresses the compensation and remediation needs of those whose interest suffer injury as a result of the execution of powers granted under the Act.<sup>124</sup> It also recommended the excision of ‘the provision [of the Associated Gas Re-injection Act] that empowers the minister to authorize the flaring of gas’, and the imposition of ‘stiffer sanction[s]’ sufficient to pressure oil companies to stop the unhealthy and wasteful practice of gas flaring.<sup>125</sup>

The Conference also alluded to the need to revise the EIA Act so that it supports, rather than enable, (as it currently does), the easy exclusion of public participation in environmental decision-making in the oil industry in order to engender more human and eco-friendly industry decisions.<sup>126</sup> The NOSDRA Act should also be revised to provide a much stiffer sanctions regime for oil companies that fail to clean up oil spill sites, which will constitute a real deterrence to environmental harm, compared to the current meagre penalties that apply which are incapable of causing oil industry actors to adopt an environmentally-friendly approach in their operations. And in line with international best practice, EGASPIN requires further review to, among other things, include a more comprehensive list of toxic pollutants, as well as a more stringent set of intervention and target values, in order to better prevent pollution and ensure remediation. In addition, to avoid the current conflict of interests, the enforcement of environmental compliance in the oil and gas industry, including through EGASPIN, must be transferred from the Minister of Petroleum/DPR to the Ministry of Environment. Essentially, the regulatory regime in the Nigerian oil industry must be reviewed with the aim of informing better practices that will engender better consequences for the environmental and socio-economic wellbeing of the people.

## 4.2 Deontology and the Oil Industry

*Deontology* is the next relevant ethical theory under environmental ethics. With Immanuel Kant as its modern founder, the focus of this theory is the duty we owe to one another, and not necessarily whether or not the actions born out of the duty lead to a better or worse environment

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<sup>124</sup> Ibid 202.

<sup>125</sup> Ibid 203.

<sup>126</sup> Ibid The Conference particularly recommended that the EIA Act ‘be reviewed to provide for the social dimension in environmental management’, which dimension will necessitate public participation in relevant decision.

in particular instances.<sup>127</sup> It emphasizes the strengthening of rules, principles, duties, rights and guides as to how to behave and what to do, as the way to ultimately achieve high standards of environmental ethics. In contrast to consequentialism, deontological thinkers posit that ‘actions fulfilling duty are morally right regardless of their consequences.’<sup>128</sup> Thus, under this theory, one finds strong rights theorists like Hayward who argue that humans have a right to a healthy environment which should be constitutionalised;<sup>129</sup> and Regan, who extends deontology to animals, arguing that as beings with some interests, they are qualified right bearers, as ends in themselves (and not just as means to human satisfaction);<sup>130</sup> as well as Taylor that argues for plants’ rights.<sup>131</sup> While these arguments for rights of the various components of the environment vary in intensity and acceptability, it is clear that deontological thinkers are united in the fact that rights possession provides the possessor with very strong protection that ultimately benefit the environment.

In Nigeria, the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act,<sup>132</sup> in accordance with section 12 of the 1999 Nigerian Constitution (as amended), domesticates the African Charter on Human and People’s Rights (African Charter).<sup>133</sup> The latter provides in Article 24 for a human ‘right to a general satisfactory environment’. This right is potentially useful in protecting communities against the negative environmental (and related socio-economic) impacts of the oil industry and holding the industry accountable for their actions. In the case of *Gbemre v Shell Petroleum Development Company Nigeria Ltd and Nigerian National Petroleum Corporation and Ors*,<sup>134</sup> the Nigerian Federal High Court held that gas flaring must be immediately stopped as it was a violation of the right to life under section 33 of the 1999 Nigerian Constitution<sup>135</sup> (as amended) and the right to a healthy environment under

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<sup>127</sup> Ibid.

<sup>128</sup> Curry (n 116 ) 33. ‘Deontological views, by contrast, maintain that maximizing the good is not all that matters and that we are permitted, and sometimes required, not to maximize the good, perhaps, where doing so would require us to be unjust.’ Palmer *et al* (n 13) 431. From a deontological perspective, consequentialist approaches to environmental ethics may create problematic commitments. For example, ‘they may imply that we should minimize wild animal suffering. But ultimately this could require us to manage ecosystems in ways that change their structure, including reducing the number of pain-inflicting carnivorous animals or feeding wild animals in times when food is scarce.’ J McMahan, ‘The Meat Eaters’ *New York Times* 19 September 2010.

<sup>129</sup> T Hayward *Constitutional Environmental Rights* (OUP 2005).

<sup>130</sup> T Regan *The Case for Animal Rights* (University California Press 1983).

<sup>131</sup> P Taylor *Respect for Nature* (Princeton University Press 1986).

<sup>132</sup> Cap A9 Laws of the Federation of Nigeria 2004.

<sup>133</sup> 27 June 1981, 1520 UNTS 217.

<sup>134</sup> Unreported, Suit No: FHC/B/CS/53/05, 14 November 2005.

<sup>135</sup> Cap C23, Laws of the Federation of Nigeria, 2004.

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Article 24 of the African Charter.<sup>136</sup> However, the aftermath of this decision suggests a high level of state interference and complicity in ensuring that this victory does not materialize (given the fact that the Nigerian government is a joint venture partner with the major oil companies and will be affected by the financial implications of the decision).<sup>137</sup> First, the judge was suddenly transferred to another judicial division; the case file mysteriously went missing; and the respondents were subsequently granted a stay of execution order, (with no known conditions attached), which has enabled the continuance of gas flaring.<sup>138</sup>

Nevertheless, in accordance with deontological thoughts and the particular position of Hayward noted above, the 2014 National Conference recommended that the environmental right in Article 24 be elevated and enshrined in the 1999 Nigerian Constitution as a justiciable right.<sup>139</sup> The implementation of this recommendation will arguably help to strengthen the position of environmental rights in Nigeria, especially against other constitutionally protected interests, and improve its capacity to secure a satisfactory environment.<sup>140</sup> This is particularly so, as the enforcement of Article 24 of the Charter may easily be trumped when faced with a counter or competing constitutional provision, given that the constitution is the highest law of the land.<sup>141</sup> Also, while in *Gbemre's* case the Federal High Court judge innovatively derived a right to a healthy environment from the traditional right to life, an express constitutional provision recognizing environmental rights will further ensure that higher courts, (i.e. the Nigerian Court of Appeal as well as the Supreme Court), that are not bound by decisions of lower courts, (like the Federal High Court), respect, prioritize and protect the environmental rights and welling of litigants in their decisions.

Furthermore, the Conference, considering the 'vital need to preserve the integrity of the Nigerian environment and thus secure its sustainability for present and future generation',<sup>142</sup>

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<sup>136</sup> *Gbemre's Case* (n 134) 30 – 31. The court also held that the Associated Gas Re-Injection Act and other regulations under which gas flaring may be permitted are inconsistent with the aforementioned provisions of the Constitution (and the African Charter) and are therefore unconstitutional, null and void. *Ibid.*, 31.

<sup>137</sup> B Faturoti and G Agbaitoro 'Environmental Protection in the Nigerian Oil and Gas Industry and Jonah Gbemre v. Shell PDC Nigeria Limited: Let the Plunder Continue?' (2019) 27 (2) *African Journal of International and Comparative Law* 225, 235 – 236.

<sup>138</sup> Amnesty International, (n 83 ) 77.

<sup>139</sup> 2014 National Conference Report, 199 – 200.

<sup>140</sup> U Etemire 'The 2014 Nigerian National Conference and the Development of Environmental Law and Governance' (2014) 4 *Journal of Law and Politics in Africa, Asia and Latin America* 482, 484.

<sup>141</sup> The 1999 Constitution, s. 1 (1) and (3). An example of such potentially trumping constitutional provisions may be section 43 on the right to acquire and own immovable property.

<sup>142</sup> 2014 National Conference Report 199.



proposed the creation of a new kind of environmental right for the country that should be enshrined in the Constitution, namely, ‘the right of nature to maintain its natural cycles without disruption.’<sup>143</sup> While this proposed right aligns with the deontological views of Regan and Taylor who, (as mentioned earlier), respectively argue for animal and plant rights, it goes beyond those to include other aspects of the environment. What is new about this proposed environmental right is that it is generally less anthropocentric than the aforementioned Article 24 environmental human right; it is a right *for* nature, which does not prioritize human interests. This proposed new environmental right would potentially expand the scope for environmental protection in Nigeria as it relates to oil and gas activities. This is so, as the new environmental right can be enforced solely for the good of the environment and in situation where environmental damage caused by the oil and gas industry cannot easily be linked to human injury (or the threat of it), this link being necessary for the successful enforcement of environmental human rights.

What is more, earlier discussions revealed that especially long term and irreversible environmental harm emanating from the Nigerian oil industry activities will result in inter-generational *inequity*, which goes against the ideals of environmental ethics. To achieve inter-generational equity by obliging actors in the present generation to consider seriously the interests of future generations in their plans and decisions, there is the need to improve the present environmental legal status of future generations in Nigeria, and not only that of the present generations. In line with the theory of deontology, one major way of achieving inter-generational equity is to explicitly establish environmental legal duties for present generations to promote the interests of future generations, and recognize the environmental rights of future generations that are enforceable on their behalf through public interest litigation.<sup>144</sup> Weiss, while recognizing the interest of the present generation, highlights the need to give right to future generations thus:

‘[L]imitations [on the present generation] should be applied very narrowly, lest the rights of future generations develop into an all-purpose club to beat down any and all proposals for change. But surely long-term environmental damage is a good place to begin. Future generations really do have the right to be assured that we will not pollute ground water, load lake bottoms with toxic wastes, extinguish habitats and species or change the world’s climate

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<sup>143</sup> Ibid 200.

<sup>144</sup> Science & Environmental Health Network (SEHN) and International Human Rights Clinic (IHRC), *Models for Protecting the Environment for Future Generations* (SEHN & IHRC, October 2008) 6.

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dramatically, all long-term effects that are difficult or impossible to reverse, unless there are extremely compelling reasons to do so, reasons that go beyond mere profitability.<sup>145</sup>

To be sure, some countries are beginning to give constitutional recognition to the environmental rights of future generations. Bolivia and Norway have enshrined this right in their constitutions.<sup>146</sup> Several states in the US, such as Hawaii,<sup>147</sup> Illinois<sup>148</sup> and Montana,<sup>149</sup> have also established in their constitutions the duties of the present generation to protect the environment for the benefit of future generations. This implies that the future generations in those states in the US have a right to a healthy environment, given the fact that every duty arguably has a corresponding right.<sup>150</sup> It is recommended that Nigeria tow the same path, as ‘[r]ights’ and ‘duties’ have a strong normative impact that elevates the interests of future generations.<sup>151</sup> And this would further pressure actors in Nigeria’s oil and gas industry to prioritize the interests of future generations in deciding on their environmental activities.

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<sup>145</sup> EB Weiss ‘Our Rights and Obligations to Future Generations for the Environment (1990) 84 *American Journal of International Law* 198, 206.

<sup>146</sup> The Bolivian Constitution of 1967 (as amended in 2009), Article 33, (available at [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf)) states: ‘Everyone has the right to a healthy, protected, and balanced environment. The exercise of this right must be granted to individuals and collectives of present and future generations’. Article 108 (15) of the same constitution also provides that the duties of Bolivians are ‘To protect and defend the natural resources, and to contribute to their sustainable use in order to preserve the rights of future generations ...’. The Norwegian Constitution of 1814 (as amended in 2016), Article 112, (available at [https://www.constituteproject.org/constitution/Norway\\_2016.pdf](https://www.constituteproject.org/constitution/Norway_2016.pdf)) provides: ‘Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.’

<sup>147</sup> The Constitution of Hawaii, Article XI, s. 1, (available at <http://www.lrbhawaii.org/con/conart11.html>) provides: ‘For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.’

<sup>148</sup> The Constitution of Illinois. Article XI, s. 1, (available at <http://www.ilga.gov/commission/lrb/con11.htm>) states: ‘The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations.’

<sup>149</sup> The Constitution of Montana. Article IX, s. 1, (available at <https://courts.mt.gov/portals/189/library/docs/72constit.pdf>) states: ‘The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.’

<sup>150</sup> *Black’s Law Dictionary* (8th ed. 2004) 543 defines ‘duty’ as a ‘legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.’ See also L Gündling ‘Our Responsibility to Future Generations’ (1990) 84 *American Journal of International Law* 207, 210-211.

<sup>151</sup> SEHN and IHRC (n 144) 9.

### 4.3 Virtue Ethics and the Oil Industry

Virtue ethics is the oldest of the ethical theories. Although it emerged from Plato's philosophy and was further developed by Aristotle, it has only recently been revived and embraced by environmental ethicists like Hill<sup>152</sup> and Sandler,<sup>153</sup> who argue, forcefully, for environmental virtue ethics. The approach of virtue ethics is to appraise actions, practices, and policies in terms of whether, or the extent to which, they 'express or achieve' virtue.<sup>154</sup> Hence, the major focus of virtue ethics is on 'developing a virtuous character, such that good or right actions flow naturally from its disposition.'<sup>155</sup> Accordingly, virtue ethicists are concerned with specifying and promoting character traits that are virtues, such as 'respect, humility, compassion, courage, ecological sensitivity, efficiency, and simplicity', while discouraging those that are vices, such as 'callousness, shortsightedness, arrogance, cowardice, profligacy, and laziness [including, greed].'<sup>156</sup> Indeed, people's character traits are vital in addressing environmental challenges. As regards the environment, character traits affect whether people act virtuously, engender good consequences, and do their duties.<sup>157</sup>

Clearly, the laws and practices in Nigeria's oil and gas industry, which have largely engendered or allowed significant environmental degradation, and do not sufficiently encourage adequate environmental restorations as discussed above, fall short of expressing or achieving virtue in any reasonable measure. This, in line with virtue ethics, reveals a major deficit in the virtue or moral character of oil industry actors, particularly the government and the oil companies that are responsible for the laws and practices in the industry. There is, therefore, the need for these actors to develop their virtuous or moral character, through reorientation, in order for better and more environmentally protective laws and environmental best practices to emerge from them.<sup>158</sup> For example, the continuance of gas flaring over decades reveals in industry actors the vices of 'shortsightedness,' 'greed,' 'lack of compassion,' and 'environmental insensitivity,'

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<sup>152</sup> TE Hill 'Ideals of Human Excellence and Preserving Natural Environments' (1983) 5(3) *Environmental Ethics* 211.

<sup>153</sup> R Sandler *Character and Environment: A Virtue-Oriented Approach to Environmental Ethics* (Columbia University Press 2007).

<sup>154</sup> Palmer *et al* (n 13) 432.

<sup>155</sup> Curry (n 115) 31.

<sup>156</sup> See Palmer *et al* (n 13) 432; R Sandler and P Cafaro (eds) *Environmental Virtue Ethics* (Rowman & Littlefield, 2005).

<sup>157</sup> Palmer *et al* (n 13) 432.

<sup>158</sup> See generally Birnie (n 64) 143 – 148.

which all reflect: (1) in their failure to consider the long-term negative impact of their (in)actions, including for future generations, and reform laws and practices accordingly; and (2) in their prioritization of financial gains for the industry above general environmental and human wellbeing, rather than investing the resources required to modernize their processes and end gas flaring.

Indeed, law and practice reforms in the oil industry, as required under the theories of consequentialism and deontology, will best be executed and implemented when aforementioned vices of industry actors are extinguished or minimized, and moral character reasonably strengthened with the relevant virtuous traits through reorientation.

#### 4.4 Environmental Pragmatism and the Oil Industry

Evidently, the above theoretical approaches to environmental ethics provide different ‘lenses’ through which one can understand and suggest solutions to the negative and unethical impact of the Nigerian oil and gas industry on the environment. However, unlike the proponents of those theories who hold out their individual views (to the exclusion of others) as embodying the solution, one school of thought, environmental pragmatism, neither shares such stiff theory-oriented commitment, nor believes that a single theory can adequately and successfully champion the course of environmental ethics. Thus, to effectively address environmental challenges, environmental ethicists tend to be highly pluralistic in approach. They stress the importance of inclusive and collaborative discourse in the evaluation and justification of laws and practices.<sup>159</sup>

Environmental pragmatists harbour a strong practical commitment to achieving effective outcomes and environmental solutions by ‘using whatever conceptual resources are needed for this.’<sup>160</sup> They believe that to achieve effective environmental outcomes, the different theoretical perspectives can and should converge in practice when assessing or making laws and decisions, or taking actions.<sup>161</sup> Pragmatists can appeal to any of the above theories, or a mixture of any of them, if they see that that will enable them get the desired result in a particular environmental situation. As against a dogmatic attachment to any particular theoretic position, this pragmatic

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<sup>159</sup> See A Light and E Katz (eds) *Environmental Pragmatism* (Routledge 1996).

<sup>160</sup> Palmer (n 13) 434.

<sup>161</sup> See BA Minter *Refounding Environmental Ethics: Pragmatism, Principle, and Practice* (Temple University Press 2012).

approach should be adopted by Nigerian law and policy-makers and actors in the oil and gas industry in analyzing and applying the recommendations and solutions that emanate from the other ethical theories discussed above (i.e. consequentialism, deontology and virtue ethics).

## 5. CONCLUSION

This paper primarily aimed to highlight and assess the ethical questions that arise from the impact of Nigeria's oil and gas industry on the environment, as well as suggest ways for addressing the revealed ethical challenges using tools provided by theories connected with environmental ethics. The analysis revealed that, from the perspectives of intra/inter-generational equity and transnational effect, the level of human and environmental impact of the Nigerian oil and gas industry is not in consonance with, and goes against the values and principles of environmental ethics. Much of the practices and laws regulating the environmental impact of the industry fall below relevant standards of environmental ethics, in that, they lead to and are directly or indirectly permissive of significant damage to the environment, and contain (if at all) inadequate mechanisms for remediation and restoration. In other words, the industry's environmental laws and practices are mostly not aligned with, and do not reflect, the clear moral obligation to protect the environment, considering the scale of degradation that they engender or allow.

Given this situation, the paper went on to examine how different theoretical approaches connected to environmental ethics can be useful for rethinking and reshaping the relationship between the oil and gas industry and the environment, by making the applicable laws and practices more responsive to the values and principles of environmental ethics in terms of what is right, good, efficient and effective. These theoretical approaches include consequentialism, which requires relevant industry actors to adopt only laws and practices that produce the best environmental outcomes; deontology, which postulates the establishment and straightening of environmental rights and duties as a means of achieving high standards of environmental ethics; virtue ethics, that calls for the development of virtuous or positive moral and environmentally sensitive character in stakeholders, as a way of ensuring that the laws and practices that naturally flow from them reflect high standards of environmental ethics; and, environmental pragmatism, which advocates the practical approach of employing one or more of the theories as may be

required to solve a particular environmental problem, as the dogmatic adherence to one may be insufficient to address every environmental challenge.

Surely, should the actors in the Nigerian oil and gas industry be made to embrace and implement the messages in these schools of thoughts, the relationship between the industry and the environment will be a lot more ethical than is presently the case. In this regard, the civil society, including civil society organisations, has a major role to play in collaborating with and pressuring industry actors (including through activism and litigation) to bring about the desired ethical changes in the industry's relationship with the environment.<sup>162</sup>

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<sup>162</sup> See R Ako and EO Ekhaton, 'The Civil Society and the Regulation of the Extractive Industry in Nigeria' (2016) 7 (1) *Journal of Sustainable Development Law and Policy* 184; and EO Ekhaton, 'Improving Access to Environmental Justice under the African Charter: The Roles of NGOS in Nigeria' (2014) 22 (1) *African Journal of International and Comparative Law* 63.