

THE ROLE OF THE NIGERIAN JUDICIARY IN THE ENVIRONMENTAL PROTECTION AGAINST OIL POLLUTION: IS IT ACTIVE ENOUGH?

S. GOZIE OGBODO*

1. INTRODUCTION:

Foreign exchange earnings from crude oil sources account for the single most important source of Nigeria's foreign exchange. Infact, at present, crude oil earnings is estimated to constitute over "90% of Nigeria's earning of foreign exchange"¹. Since oil was discovered in the Niger Delta region of the country in commercial quantities in 1956², there have been increased activities in the oil sector in the areas of exploration and exploitation, refining, export, and domestic distribution. As Nwazi³ rightly stated:

"While these oil activities have generated immense financial benefits for the country, they have also created serious health and environmental problems".

Professor Nwogugu⁴ enumerated the sources of these "serious health and environmental problems" as follows:

1. At the exploration stage i.e when different explosives and drilling methods are employed and the concomitant consequences.
2. At the production stage after the discovery of oil in commercial quantities.
3. At the refining stage during which wastes, both controlled and toxic, are generated.
4. At the distribution stage i.e. during the transportation of crude oil for export or the distribution of refined oil through pipelines for domestic use.

These sources of oil pollution take different forms, ranging from oil spillage, oil blow -outs⁵, drilling rigs explosion, pipeline bursts ad vandalisation etc.

Their consequences on the citizens and the environment are enormous and include "degradation of the environment, contamination of drinking water, destruction and extinction of wild life habitat, plants and marine life, fire outbreak, destruction of farmlands, other property and means of livelihood of the inhabitants, depletion of forests and ozone layer and health risk to mankind"⁶.

With the increase in the oil activities and the concomitant consequences, it became increasingly clear that the common law remedies were not easily available to the victims of the pollution from the oil industry.⁷ Further, there was lacking a comprehensive national policy and enforcement statute for the country's environmental

-
- S. Gozie Ogbodo, LL.B (Hons), LL.M (USA), S.J.D (USA), B.L; Lecturer, Faculty of Law, University of Benin, Benin City, Nigeria; formerly, Adjunct Professor, Golden Gate University, San Francisco, USA E-mail: gozieogbodo@yahoo.com
- 1 Onosode, G., "Environmental Management and Sustainable Development in the Niger Delta" in Environmental Problems of the Niger Delta, Lagos, Fredrick Ebert Foundation, 2000 (Osuntaken, A. ed). Referenced by Nwazi, J.N., The Remedies Available to Victims of Oil Spillage in Nigeria, International Journal of Law and Contemporary Studies, vol. I, No. 1 & 2, P. 283.
 - 2 See Oluwagbami, D.A., "Genesis of The Nigeria Oil Industry" Modern Practice Journal of Finance & Investment Law, vol. 5, No. 3, 2001, p. 369-371.
 - 3 Nwazi, J.N. supra Note 1
 - 4 Nwogugu, E.I. , Law and Environment in the Nigerian Oil Industry, (1975) 1 Earth Law Journal, pp. 91-105, referenced by Nwazi, Ibid
 - 5 For example, the Fumwa Oil Well blowout caused by Texaco on 17 January, 1980, which is reputed to be the largest spill in the country.
 - 6 Olopade, O and Izevbuwa, O.G., "Effects of Gas Pollution on the Environment" in (2005) 1 (1) Journal of Public and International Law, Igbinedion University, Okada, Vol. 1, No. 1, Feb 2005.
 - 7 The common law torts include nuisance, trespass, negligence and the Rule in Rylands v Fletcher. These torts, we shall analyse later, pose serious legal challenges for the rural victims that predominantly suffer the deleterious consequences of oil pollution.

protection against oil pollution. It took the 1988 Koko⁸ toxic waste dump for the country to fashion a National Policy on the Environment with supporting statutory legislations⁹. However, the vitality and availability of any remedy, inclusive of environmental protection remedies, depend heavily on a progressive minded judiciary.¹⁰

Part II will analyse the concept of environmental pollution in Nigeria, particularly as a consequence of oil pollution.

Part III will review oil pollution remedies, both the statutory and common law causes.

Part IV will review the role of the Nigerian judiciary in the environmental protection crusade against oil pollution.

Part V will proffer recommendations and solutions, while Part VI will summarise.

II. CONCEPT OF ENVIRONMENTAL POLLUTION ENVIRONMENT

Environment has been given different definitions with different connotations. Black's Law Dictionary¹¹ defines it as:

"The totality of physical, economic, cultural, aesthetic and social circumstances and factors which surround and affect the desirability and value of property and which also affect the quality of peoples' lives".

The Oxford English Dictionary¹² defines it as " the conditions under which any person or thing lives or is developed, the subtotal of influences which modify and determine the development of life or character".

Under a Nigerian Law¹³, "environment" includes 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.

These definitions cover the broader concept of 'environment'. In that respect, they embrace "everything within and around man that may have effect on or be affected by man, in other words, human environment as contrasted with physical environment"¹⁴ The broader concept of environment is, therefore, synonymous with the human environment¹⁵.

Environmental Pollution

The NESREA Act¹⁶ defines "pollution" as "... man- made or man- aided alteration or chemical, physical or biological quality of the environment beyond

8 The dumping of toxic waste by an Italian company in Koko, southern Nigeria in 1988, compelled the Nigerian government to immediately formulate a national policy on the environment and enact legislations to back it up.

9 These statutes include the Federal Environmental Protection Act (FEPA) Cap 131 LFN, 1990, which was repealed on 31st July 2007 by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007. Also enacted was the Harmful Waste (Special Criminal Provisions) Act Cap 165, LFN, 1990, the Environmental Impact Assessment Act 1992, etc

10 See Oputa, C., "Towards Greater Efficiency in the Dispensation of Justice in Nigeria" in Yemi Akenseye –George (ed), Law, Justice and stability in Nigeria: Essays in Honour of Justice Kayode Eso (Ibadan, JSMB, 1993) 1 at 37, referenced in C.C. Nweze "Justice in the Judicial Process: Essays in Honour of Honourable Justice Eugene Ubaezonu, JCA, Fourth Dimension Publishers 2002, 14.

11 6th ed

12 See Ajai, O., "Law, Judiciary and the Environment in Nigeria" in Perspectives in Law and Justice: Essays in Honour of Justice Eze Ozobu, Umezulike, I.A. and Nweze C.C. (eds), Fourth Dimension, Publishers 240.

13 National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007.

14 Ajai, O., "Law, Judiciary and the Environment in Nigeria," *Supra*.

15 *Ibid*

16 *Supra*, note 13

acceptable limits...” The United Nations Conference at Stockholm¹⁷ defines pollution as, “The discharge of toxic substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless”.

Pollution, therefore, is any undesirable change in the natural characteristic of the environment in any state of matter.¹⁸

Oil pollution in Nigeria has been a consequence of the oil prospecting activities¹⁹. The Niger Delta region of the country has witnessed the bulk of the degrading effects of oil pollution.²⁰

III. OIL POLLUTION REMEDIES

Under Nigerian legal system, victims of oil pollution can seek judicial redress either under the statutes governing such pollution or under the common law torts.

A. Statutory Remedies

The Nigerian Constitution,²¹ which is the grundnorm, lacks an elaborate provision on environmental protection. The most relevant provision therein is under *section 20*, which states as follows:

“The State shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria”.

Section 17(2) (d) of the Constitution complements the aforesaid provision by stating that:²²

“Exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented”.

Majority of the laws on environmental protection²³ were enacted under the long duration of military rule in the country²⁴. Upon the adoption of the 1999 constitution, they were inherited as “existing laws” by virtue of *section 315(1)* of the Constitution.²⁵ The section reads as follows:

“Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution....”

17 The conference, which was held in 1972, gave birth to the United Nations Environmental Programme (UNEP).

18 See Atsegbua, L. et al, Environmental Law in Nigeria, 2004, Ababa Press, P. 70

19 See Nwazi, supra note 1

20 It is estimated by the Ministry of Petroleum Resources, that between 1976 and 1990, the Niger Delta Region experienced 2,676 reported cases of oil spillages. Green peace estimates that between 1976 and 1991, there were almost 3,000 oil spills, averaging 700 barrels each. For further details see Wilson, I. “Liability for Oil Pollution in Nigeria”, Modern Journal of Finance and Investment Law, 1999, Vol. 3 No. 2, P. 329, referenced by Dr. Akpo Mudiaga – Odje in “Niger Delta Region and the Principle of Self-Determination” being a paper delivered at the Uniben Law Students’ Association Distinguished Graduates Award Ceremony on October 8, 2008, at p. 7

21 The 1999 Constitution of the Federal Republic of Nigeria, Cap C20 LFN 2004.

22 Ibid

23 See note 9, *ibid*. With specific respect to oil industry, they include Petroleum Regulations 1967, Petroleum Drilling and Production Regulation 1969, Petroleum Refining Regulations 1974, etc

24 The Nigerian military took over power in January 1966 and handed over to a democratic government on October 1, 1979, a total of thirteen years. After a period of four years, on 31st December 1983, they took over again and stayed until May 29, 1999, when they handed over again. In all, out of the forty-eight years of independence, the military ruled for a combined period of twenty-nine years!

25 Ibid

Thus, these laws were inherited under the constitution and enforced by the judiciary as if enacted under and by virtue of the Constitution.

Typically most statutes provide for their enforcement mechanisms²⁶. The rights sought to be protected generally fall under the public or group rights²⁷. Consequently, the public agency involved and its enforcement units are entrusted with the enforcement powers under the relevant statute²⁸.

Although these laws exist, yet they have failed to adequately protect the environment and the victims from the deleterious consequences of oil pollution. Some of their shortcomings include the out-dated penalty sections²⁹, the incapacitation of the enforcement officials³⁰, the attitude of prosecution lawyers with respect to environment pollution cases³¹, the attitude of the courts, etc

B. Common Law Remedies

Victims of oil pollution can seek judicial redress under one of the common law torts, for example, nuisance, trespass, negligence or the Rule in *Rylands v Fletcher*.

Nuisance

Prior to the inception of the 1999 Constitution, in keeping with the common law tradition, nuisance was divided into private and public nuisance. While a private nuisance is defined as the substantial or unreasonable interference with a person's use and enjoyment of land occupied by him³², public nuisance is deemed a crime that can only be prosecuted by the Attorney General or by a relator action³³. In order to bring an action under public nuisance, a plaintiff was expected to prove 'special damages by way of personal injury, property damage or pecuniary damage over and above that suffered by members of the general public'.³⁴ This standard of the law informed the Nigerian Supreme Court's decision in *Amos v Shell BP petroleum Development company of Nigeria Ltd*³⁵.

Unfortunately, by the application of the Amos standard, many aggrieved victims of environmental pollution were denied access to judicial redress under public nuisance claim. According to Awa Kalu, SAN³⁶, it took the supreme court seventeen years to reverse itself in *Adeniran and Anor v Inter – Land Transport Limited*³⁷. Apparently with a view to achieving social justice, the Supreme Court interpreted section 6(6) (b) of the 1979 Constitution as entitling a private citizen to sue in public nuisance without obtaining the leave of the Attorney General or without joining him as a party³⁸. By so doing, the Supreme Court expanded judicial access to victims of environmental pollution.

26 See notes 9 and 32

27 The Attorney General is vested with the prosecutorial power under section 150 of the 1999 Constitution as the Chief Law Officer of the Federation.

28 Ibid, notes 9 and 32

29 See Atsegbua., L. supra. See also Adewale O., "Rylands v Fletcher and the Nigerian Petroleum Industry" 1987/1988, vols. 8 & 9, J.P.P.L. 37 at 50, cited by Atsegbua, supra.

30 Ibid

31 Ibid

32 See Salmond and Houston on the Law of Torts (London: Sweet and Maxwell, 1992) pp. 57-58, referenced in Atsegbua, L., et al, Environmental Law in Nigeria, supra, p. 181.

33 Ibid

34 Ibid, p. 183

35 (1977) S.C. 109

36 In a paper delivered at the Nigerian Law Conference, entitled; On Challenge of Legal Practice in 21st Century Nigeria (25 and 27 Nov. 1997) referenced in Atsegbua, L. et al, supra, at p. 184

37 (1991) 9 NWLR, pt 214, at 155

38 Ibid

Trespass

A victim of oil pollution can sue in trespass if he is the owner or he is in rightful possession of the land trespassed upon.

Trespass arises when there is unjustifiable intrusion by one person upon the land in the possession of another³⁹. Oil pollution can, and is, a good example of environmental trespass. In *Southport Corporation v Esso Petroleum*⁴⁰, the court found the defendants liable in trespass when oil from the defendant's tanker polluted plaintiff's shore.

Negligence

According to a commentator⁴¹, negligence is the breach of duty of care imposed by common law or statute law and resulting in damages to the complainant. In order to succeed, a plaintiff must prove duty, breach and damage.

In *Donoghue v Stevenson*⁴², Lord Atkin expounded the duty of care principle. Consequently, a plaintiff suing for negligence as a result of oil pollution ' must prove that the defendant company which caused the pollution owed him a duty of care, that the duty has been breached and that the damage of which he complained was caused by that breach of duty'.⁴³

Although an action in negligence affords victims of oil pollution access and opportunity for judicial redress, yet the burden of proof is a major hurdle for the rural plaintiffs to scale. As a result of their lack of education and resources to hire the services of expert witness they invariably fail to discharge the burden of proof.

Plaintiff in an action in negligence can discharge his burden by pleading *res ipsa loquitor* or that the facts speak for itself. The defendant can seek to rebut the inference of negligence by calling expert witness to prove that he took all reasonable care in his operation. If the defendant succeeds in the rebuttal, the plaintiff would still be expected to meet his burden or fail. Thus, the doctrine is not a water –tight safety net for a plaintiff in a negligence action⁴⁴.

The Rule in *Rylands v Fletcher*⁴⁵

Under this rule defendant is held strictly liable if plaintiff proves that there was escape of something dangerous from the defendant company's land or premises to somewhere outside his occupation or control.⁴⁶ Also, the plaintiff will be required to prove that there was a non – natural use of the land or premises.⁴⁷

The Nigerian Supreme Court applied the rule in *Umudje v Shell BP Nig Limited*⁴⁸ and held the defendants/ appellants liable for the damage to the ponds and lakes of the plaintiffs/ respondents.

39 Clark and Landsell on Tort, 13th ed., (1969) at p. 1311, referenced by Atsegbua, L. et al , supra, at p. 189

40 (1956) A.C. 218, cited in Atsegbua, Ibid, at p. 189

41 Charlesworth on Negligence, 5th ed (London: Sweet and Maxwell, 1997) at p. 11, referenced in Atsegbua, L. et al, supra, p. 185.

42 (1932) A.C. 502

43 Atsegbua, L. et al, supra, at P. 186

44 Ibid

45 (1866) L.R. Ex 265

46 See Read v Lyons (1947) A.C. 156, cited in Atsegbua, L. et al, supra, at p. 188

47 See Richards v Lothians (1913) A.C. 263, cited in Atsegbua, L. et al, supra, at p. 188

48 (1975) 9-11 S.C. 115

A defendant faced with a suit premised on the Rule in *Rylands v Fletcher* can avail himself of any of the defenses such as act of God, act or default of plaintiff, consent of plaintiff, independent act of third part and statutory authority⁴⁹.

Hence, a victim of oil pollution has no water – tight legal arsenal to hold the polluter fully responsible for his deleterious act or omission.

IV. THE ROLE OF THE NIGERIAN JUDICIARY

The primary role of the judiciary is the interpretation and expounding of the law. Under the Nigerian Constitution, the judiciary is vested with the judicial power i.e the power to interpret and expound both the letter and spirit of the law.⁵⁰ The importance of the role of the judiciary in Nigeria is underscored by the appreciation that “it is not the words of law but the internal sense of it that makes the law. Letter of law is nobody, sense and reason of law is the soul”.⁵¹

Environmental Litigation

The court’s jurisdiction in respect of environmental protection can be invoked by either public litigation or private litigation.

Public Litigation

Public litigation is conducted by the State prosecutors on behalf of the Attorney General in the enforcement of the environmental laws.⁵² It is undertaken in the public interest and for public benefit.⁵³

Unfortunately, there is a paucity of public litigation in the enforcement of environmental laws in Nigeria. Some of the factors that contribute to this unfortunate situation can be traced to the attitude of the courts and the state prosecutors, informed largely by their ‘uncomfortability’ in the area of environmental law⁵⁴. The ‘scientific basis of environmental proof’ also serves as a major disincentive to the attitude of both the courts and the prosecutors⁵⁵. Lack of judicial precedents in the area of environmental protection litigation has not helped the system⁵⁶. Further, the economic and financial interest of the government in the culprit trans-national corporations (TNCs) which cause the majority of the oil pollution serves as a ‘chilling’ effect on the enthusiasm of prosecutors to bring such action⁵⁷. Such a prosecution of a TNC is mistaken and misinterpreted as an action indirectly against the government⁵⁸. Incidental to this perception is the tendency of the prosecutors to place overriding priority in the economic

49 See *Ikpede v Shell BP Development Company of Nigeria Limited* (1973) A. U. N.L.R. 61, where defendants were held not liable under the Rule because their pipeline was laid pursuant to a license obtained under the Oil Pipeline Act i.e statutory authority.

50 See S. 6(1) of the 1999 Constitution

51 See *Judicial Activism: A Theory of Judicial Philosophy* by Justice A.D. Mane, Judge, High court of Bombay, Benchat Aurangabad.

52 S. 150 of the 1999 Constitution, Cap 192 LFN.

53 *Ibid*

54 See Uwais, M., former chief Justice of Nigeria in his paper presented at the Global Judges Symposium on Sustainable Development and the Role of Law, titled “Recent Development in Nigeria Strengthening Legal and Institutional Framework for promoting Environmental Management”, held in Johannesburg, South Africa, 18-20 August, 2002.

55 *Ibid*

56 *Ibid*

57 *Ibid*

58 *Ibid*

activity over and above the environmental consequences of such activity. Thus, the prosecutors contend with the dilemma of choosing between our collective 'survival' (which entails a rigorous enforcement of environmental laws) and the sustenance of our 'good life' (which entails the tolerance of the pollution caused by the TNCs)⁵⁹

Private Litigation

Private litigation commands two aspects as follows⁶⁰

1. Actions relating to injury to private property and other personal rights and
2. Public interest litigation or "citizen standing".

Most of the actions in Nigerian courts with respect to environmental law, particularly oil pollution, are founded on the injury to private or communal property and other personal rights.

According to Nigeria's Chief Justice, Justice M. Uwais (as he then was)⁶¹

"With regard to issues involving the violation of private right, especially in land and water right, there has been no shortage of cases in Nigeria, seeking declaration, compensation, restitution, injunction and other remedies within our legal system".

The same cannot be said of the public interest litigation (PIL) or "citizen standing"⁶².

Infact, there is a remarkable paucity of public interest litigation in the country. Justice Uwais attributes this to a number of factors as follows⁶³.

"Some of them are because the greater proportion of the citizenry are oblivious of the environmental damage surrounding them especially when the damage is caused by "intangible" process. The cost implications of legal action including the cost of procuring technical evidence and the remoteness of institutions for redress deter even those who are aware of damage. Environmental damage palliatives, which now exist, and the belief that actions instituted against polluting facilities, in which government has an interest, is perceived as an action against government itself".

I dare to add to the list the non-existence of viable non- governmental organizations (NGOs) (in the league of Green Peace or Friends of the Earth) which command the requisite resources and reputation to effectively pursue public interest litigations.

59 This distinction was formulated by Dean Burton Laub of the Dickson Law School in his essay "The Role of Judges in a changing society" See Justice Portia Alino Hormachuelos of the Court of Appeals of the Philippines in a paper delivered at the Judges Forum on Environmental Protection Philippine Environmental Law, Practice and the Role of Courts, entitled "The Duty of the courts in Environmental Protection" held at the PHILJA Development Center, Tagaytay City, on August 14, 2003/

60 See Uwais, M. supra.

61 Ibid

62 Ibid

63 Ibid

RECOMMENDATIONS AND SUGGESTIONS

Interpretation Role

It is a trite knowledge that judges interpret or expound and not make the law. In spite of this, judges can, and do, greatly shape the essence of the law in their interpretative role. The great Lord Denning confirmed it when he said⁶⁴.

“In theory the judges do not make law, they merely expound it. But as no one knows what the law is until the judges expound it, it follows that they make it”.

The goal of the judiciary should be aimed at not just interpreting the law, but in doing so with a view to achieving social justice. According to **Justice Krishana Iyer**⁶⁵ one of India’s most activist judges;

“After all, social justice is achieved not by lawlessness process, but legally tuned affirmative action, activist justicing and benign interpretation within the parameters of Corpus Juris”.

With respect to the Nigerian environment and its protection against the degrading effects of oil pollution, it is our hope that the Nigerian judiciary will strive to achieve social justice as they interpret, expound and expand the law on environmental protection.

Doctrine of Locus Standi

The doctrine of locus standi under the Nigerian legal jurisprudence and the hitherto stringent interpretation by the courts have greatly hindered the accessibility of the Nigerian courts to the citizens. Under *Adesanya v the President of Nigeria*⁶⁶ the apex court stated that in order to possess locus standi, a citizen must prove special interest in the subject matter as well as special damages resulting therefrom.

However, in *Akilu v Fawehinmi*⁶⁷ the apex court widened the scope of the doctrine beyond the limited scope enumerated in *Adesanya*. In that case, Nnaemeka – Agu, JSC (as he then was) stated that:

“.... This court which was in that case considering the issue of locus standi decided to widen the scope of locus standi in such matters, by considering the purpose of the proceedings, a departure from its rather constricted stance in Adesanya v The President of Nigeria (1981) 1 All N.L.R. (Pt 1) 1. It had in Attorney – General of Kaduna State v Hassan (1985) 2 N.W.L.R. (pt. 8) 483, shown its discomfort with the position of locus standi, as by Adesanya decision..... Thus, consciously, this court was widening the scope of the application of the doctrine of locus standi. Fawehinmi v Akilu (supra) represents the new trend – the widened scope of the application of the doctrine”

Encouragingly, subsequent judicial pronouncements have followed this progressive trend by relaxing and widening the scope of the application of the doctrine⁶⁸.

64 Referenced by Prof. Chianu Emeka in “The Horse and Ass Yoked: Legal Principles to aid the weak in a world of unequals” Inaugural Lecture Series, 91, University of Benin, September 20,2007.

65 Referenced by Justice Mane, Judge of the High Court of Bombay, Bench at Aurangabad, in a paper titled “Judicial Activism: A Theory of Judicial Philosophy”.

66 (1982) 1 ANLR 1

67 (No.2) (1989) 2 NWLR (pt 102) 122 at pp. 192-193

68 See Shell Petroleum Dev. Company v Nwauka (2001) 10 NWLR (pt. 720), 64. See also Fawehinmi v President FRN (2007) 14 NWLR (pt 1054) 275.

With particular reference to the prosecution of environmental degradation cases caused by oil pollution, public interest litigations (PILs) can only thrive with easier accessibility to the courts.

Jurisdiction

The Constitution confers jurisdiction on the Federal High Court with respect to:⁶⁹
“Mines and Minerals (including oil fields, oil mining, geological surveys and natural gas)”

In addition, most of the statutes regulating the environment confer jurisdiction on the Federal High Courts.

These courts are located not in all the states of the federation, but in some states representing the different regions of the country⁷⁰. More important, they are located in the State capitals, away from the rural communities where the effects of the oil pollution are mostly felt. The victims of such pollution must travel a long distance in order to access these courts for redress.

Furthermore, the exorbitant filing fee paid in order to commence an action in the Federal High Court can deter some indigent victims from seeking judicial redress.⁷¹ Consequently, aggrieved victims may be compelled to resort to extra-judicial actions or self-help.⁷²

Others

The Nigerian judiciary should endeavour to integrate both the procedural⁷³ and substantive⁷⁴ aspects of environmental protection driven by the conviction that a clean and healthy environment is an intrinsic component of human rights.

The National Assembly should, pursuant to their power under *section 4(1)* of the 1999 Constitution, establish special national environmental courts composed of judges highly qualified in environmental law.⁷⁵

The courts should apply innovative approaches to dispute resolution with respect to environmental protection cases. Some of the approaches should include prior consultation, fact-finding, commissions of inquiry, conciliation, mediation, non-compliance procedures, arbitration and judicial settlement of disputes.⁷⁶

VI. CONCLUSION

The importance of the judiciary, indeed a proactive one, is critical for the peaceful and orderly development of any society⁷⁷. In a developing country like Nigeria, faced

69 Section 251 (1) (n) of the 1999 Constitution

70 Ibid

71 It is said that a claim of N50 million incurs a filing fee of N50, 000. See Akpomudje (SAN) in his paper entitled, “Environmental Claim, the Law, Regulations and Practice”, delivered at the Nigerian Bar Association Conference in Enugu. This was referenced by Dr. Akpo Mudiaga – Odje, *supra*.

72 The increasing spate of violence, sabotage and kidnapping in the Niger Delta region is a case in point.

73 These include information, participation and access.

74 These include right to water, food, clean and healthy environment

75 The Supreme Court of India has recently demanded such courts. See Rest, Alfred, “Enhanced Implementation of International Environmental Treaties by Judiciary – Access to Justice in International Environmental Law for individuals and NGOs: Efficacious Enforcement by the Permanent Court of Arbitrations” *MqJICEL* (2004) Vol. 1, 8.

76 See paragraph 39. 10 of Agenda 21 in Principle 26 of the Rio Declaration 1992

77 *Supra*

with the increasing challenges of oil pollution as a consequence of the oil producing activities, the importance of a vibrant judiciary becomes more critical⁷⁸.

As long as Nigeria depends heavily on the revenue generated by the oil industry, so long shall the incidence of oil pollution be a challenge for the country's environment. Victims of these polluting activities will seek redress either through the courts or resort to extra-judicial means/ self -help⁷⁹.

It is at this juncture that the courts must live up to their constitutional role or risk the abandonment of these victims to society's ultimate detriment. The courts must ensure that their gates of justice are not only visible to these victims, but are equally accessible, regardless of their position in the societal pecking order.

Our judges must be knowledgeable⁸⁰ in the area of environmental law and be willing to exhibit judicial courage when faced with the issues of oil pollution, which are frequently caused by the trans-national corporations (TNCs) working in concert with the Federal government. Where necessary, the judges must be willing to shed their conservative toga of judicial restraint⁸¹ in favour of judicial activism⁸² in order to achieve social justice. They should be emboldened by the words of Justice Chukwudifu Oputa of the Supreme Court of Nigeria (as he then was) that:⁸³

"The law will have little relevance if it refuses to address the social issues of the day. Legislators make laws in the abstract but the court deals with the day- to- day problems of litigants and attempt to use the laws to solve these problems in such a way as to produce justice..."
(Emphasis mine)

With profound respect, I make bold to assert that oil pollution is one of the pressing social issues of the day in Nigeria.

78 Ibid

79 Supra

80 Supra

81 This is premised on *ius dicere* i.e to interpret law

82 This is premised on *ius dare* i.e to make law.

83 See Oputa, C., "Towards Greater Efficiency in the Dispensation of Justice in Nigeria" in Yemi Akinseye – George (ed), *Law, Justice and Stability in Nigeria: Essays in Honour of Justice Kayode Eso* (Ibadan, JSMB, 1993) 1, 37.