THREE

AIR POLLUTION IN THE OIL AND GAS INDUSTRIES IN THE NIGER DELTA REGION OF NIGERIA: THE HUMAN RIGHTS PERSPECTIVE

By

OYEPHO AKEUSEPH*

Abstract

One of the causes of air pollution is the emission of sulphur dioxide by the combustion of fossil fuel such as gas, petroleum and coal into the air. Pollution had caused so many diseases such as respiratory irritation, shortness of breath, impaired pulmonary functions, increased susceptibility to infection, illness to lower respiratory tracts and so on. This work examined air pollution occasioned by the activities of oil and gas companies operating in Niger Delta Region of Nigeria and its implications on human rights. Air pollutants such as carbon dioxide, carbon monoxide, Nitrogen Oxide, sulphur oxide and Hydrocarbons are emitted from the activities of oil and gas companies in Niger Delta, causing untold environmental degradation and pollution, which eventually harm human lives in the region. The aim of this study was to investigate air pollution caused by the activities of oil and gas companies and consequential human rights infractions. Its objectives were to ascertain whether air pollution caused by oil and gas companies had grave human right infractions. The doctrinal research methodology was adopted. It was discovered that air pollution cause by the activities of oil and gas companies in the Niger Delta was the result of dangerous diseases in the lives of the people in the regions and most times resulted to death. It was further discovered that the right to life, the right to live in a wholesome environment and the right to a standard of living adequate to health and wellbeing were severally violated. It was recommended that our laws permitting the Minister of petroleum to issue permits to operators in oil and gas industry to continue to flare gas be amended.

Keywords: Air, Air Pollution, Oil and Gas Companies, Human Rights, Niger Delta Region, Nigeria, Contraventions.

1.1 Introduction

Pollution is the introduction by man directly or indirectly of substances or energy into the environment, harmful to living resources, hazardous to human health, a hindrance to human marine activities including foiling, impairment of quality and use of water and reduction of amenities.[1]Any harmful substance or toxic substance, which constitutes nuisance when it is present in a significant volume in an unwanted place, is a pollutant[2]. It is a substance, which is either harmful or toxic or creates a nuisance when present in an inappropriate place in a significant concentration.[3] The presence of pollutions threatens natural systems, human health and aesthetic sensibilities.[4]

Pollution can be grouped into atmospheric pollution (air pollution), freshwater and sea pollution (water pollution) and land pollution.[5] It is important to note that transfers can result in both direction between atmospheric, water, and land pollutions, which consequences may affect land, atmosphere and water in the same manner. For example, the emission of sulphlurdioxide caused by combustion of fossil fuels such as gas, petroleum, and coal into the air can result in the acidification of soils and lakes when it

*LLB, LLM (RSU), BL (Abuja), Ph.D Research Candidate (RSU), Managing Solicitor, Oyepho, Oyepho& Co, No. 10a Deacon Iheke Street, Mgbuoba, Off NTA Road, Port Harcourt, Rivers State. Email: oyepho2008@yahoo.com

[1] A Omaka, *Municipal and International Environmental Law* (Lagos; Lion Unique Concepts 2012) 59

[2]*Ibid,* at 60

[3]*Ibid`*

[4]*Ibid*

[5]C A Omaka (n1)

reaches the earth's surface.[6]Air pollution is caused by the emission of sulphur dioxide by the combustion of fossil fuel such as gas, petroleum and coal into the air.[7]

The Niger Delta Region of Nigeria has been noted as one of the significant wetland and marine ecosystems in our planet; the oil and gas industries operating in the region have made unarguably valuable contributions towards growth and development of the entire Nation. Conversely, oil and gas exploration activities have caused the region to be among 'the five most severely petroleum damaged ecosystems in the world.[8]

The activities of oil and gas companies in the Niger Delta Region have occasioned untold air pollution in the region, thereby making life relatively unbearable. Gundling defines air pollution as 'the introduction by man directly or indirectly of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources, ecosystem and material property, and impair or interfere with amenities and other legitimate uses of the environment'.[9]

The multinational and indigenous oil and gas companies, such as Shell Petroleum Development Company of Nigeria Ltd, Agip Oil Company, Chevron, Mobile, unlimited, NLNG Company Ltd, Niger Delta Resource Ltd, Belema Oil Nigeria Limited and Sterling Global Resources Ltd and so on, continually cause air pollution in the region through gas faring, oil or gas pipeline explosions as a result of equipment failure or vandalism. Also, carbon-dioxide emission by their power plants and other human activities that involve burning of fossil fuels.[10]

Obina[11] has posited that gas flaring, oil spills, oil well blow out, floating platforms, and offloading facility blow out are conditions that cut life short in the Niger Delta region of Nigeria. The life expectancy of people of the region has declined to forty-one (41) years as a result of pollution by the operation of oil and gas companies.[12] There are a lot of diseases caused by air pollution occasioned by the activities of oil and gas companies in the region. The following are air pollutants and the associated diseases; (i) Carbon dioxide: Reduces the quality of O^2(Oxygen) transported to tissues, hence, can impress extra burden on those suffering from anaemia, chronic lung conditions, heart and blood vessel diseases, brain damage, impaired perception, eye and nasal irritation, lung damage respiratory tract disease.[13](ii) Photochemical oxidant (e.g Ozone): Long exposure to it can cause reduced eye-sight, fatigue, pneumonia, pulmonary headache, breathing difficulties, chest pain, burning sensation to the throat and eye, respiratory diseases, aging of lungs and respiratory tissues.[14] (iii) Sulphur oxide: Respiratory irritation, shortness of breath, impaired pulmonary function, increased susceptibility to infection, illness to lower respiratory tracts (particularly in children), chronic lungs disease, pulmonary fibrosis.[15](iv) Nitrogen oxide: Reduction in lungs function, increase in mortality, increase in airway allergic inflammatory reaction, and increased probability of respiratory symptoms.[16] The rights to life, dignity of human person, clean air and healthy environment amongst other human rights are elusive to

[6]C A Omaka (n1)
[7]*Ibid*
[8]K A Ayuba, 'Oil Exploration and Spillage in the Niger Delta of Nigeria' (2012) (2) (3) *Civil and Environmental Research* 38
[9]L Gundling, *International Environmental Law: Atmosphere, Fresh-water, and soil* (Switzerland: Unital 1978) 6
[10]National Geographic Society, 'Air Pollution' <https://www.nationalgeographic.com/environmental/global-warming/pollution> accessed 24th April, 2023.
[11]O. Nwaoka, 'Environmentalist Lament decline of life expectancy in Niger Delta to 41 years'. The guardian (Port Harcourt. March 2022) <https://guardian.ng> access 23th April, 2023
[12]*Ibid*
[13]A N Nwachuwkwu and others, 'A Survey on the effects of air pollution on diseases of the people of Rivers State, Nigeria' (2012) (6)(10) *African Journal of Environmental Science and Ecology* 371
[14]A N Nwachukwu (n13)
[15]*Ibid*
[16]A N Nwachukwu (n12)

the people of the Niger Delta region, particularly the rural dwellers as a result of air pollution by the operations of oil and gas companies.
Accordingly, this work focuses on the human rights considerations or implications of continuous air pollution in the Niger Delta region of Nigeria by oil & gas companies, showcasing its grave effects on human rights and proffering solutions to this problem.

2.0 Conceptual Framework

Conceptual terms and phrases such as pollution, air pollution, Niger Delta Region of Nigeria, Human Rights Shall herein under be defined for succinct understanding of the work.

2.1 Pollution:

The Black's Law Dictionary[17]defined pollution as, 'the harmful addition of a substance or thing into an environment, especially the introduction of man-made products… waste products into a natural area'. It further defined it as 'the state or condition of being polluted'.[18]

2.2 Air Pollution:

It is 'the artificial introduction … of contaminants into the atmosphere; the emission of impurities into the air'.[19] Any harmful substance or energy emitted directly or indirectly into the air, especially if the harm is to the environment or to the public health or welfare.[20]

2.3 Rights:

The world 'Rights' is derived from the Latin word *rectus* which means correct, straight or opposed to wrong. It may also mean in accordance with law, morality and justice.[21] The Black's Law Dictionary defined right to mean 'that which is proper under law, morality, or ethics'.[22] It also mean anything to which somebody can make a just and valid claim.[23]Oputa has this to say on the definition of 'right':

> A right in its general sense is either a liberty (protected by law) of acting or abstaining from acting in a certain manner or the power (enforced by law) of compelling a specific person to do a particular thing…[24]

A right is an interest recognized and protected by law.[25]The key idea in the concept of right is entitlement. To say that you have a right to something is to say that you are entitled to it, such as the right to life, liberty and dignity of human person and so on.

2.4 Human Rights

They are those rights which all human beings enjoy by virtue of their humanity, whether black, white, yellow or red.[26] Human rights are … cherished entitlements endowed upon every person by virtue only of being a human being and which are not extinguishable by derogation… as they carry the status of innateness, being inherent, inalienable and therefore immutable.[27] The freedoms, immunities, benefits that according to Modern Values all human beings should be able to claim as a matter of right in the society in which they live.[28]

---

[17]B A Garner (ed) *Black's Law Dictionary* (11th edition, Thomas Reuter 2014) 1403
[18]*B.A Garner (n17)*
[19]*Ibid*
[20]*Ibid*, 1403
[21]C A Oputa, *Human Rights in Political and Legal Culture in Nigeria* (Lagos Nigeria; Law Publishers 1989) 38
[2222] B A Garner (n17), 1581
[23]C A Oputa (n21) 38
[24]*Ibid*
[25]*Afolayan v Igunride* (1990) NWLR (Pt. 127) 391
[26]M A Ajomo and Okagbue I E (ed) *Human Rights and Administration of Criminal Justice in Nigeria* (Lagos: Nigerian Institute of Advance Legal Studies 1991) 1-10
[27]O. W Igwe, *Preliminary Studies in Human Rights law* (1stedn Lagos: Rings and Favolet Ltd 2002) 6
[28]B A Garner (n17) 889

3.0 Legal Framework on Pollution and Mitigation in Nigeria

The Constitution of the Federal Republic of Nigeria, (CFRN) 1999 (as amended) provides that 'the state shall protect and improve the environment and safeguard the water, air land, forest and wildlife of Nigeria.[29]One of the functions of Local Government Council, as provided for in the fourth schedule to the CFRN 1999 includes the provision and maintenance of public conveniences, sewage and refuse disposal; if not properly maintained will cause air pollution and it will be dangerous to public health and wellbeing. It is worthy to note that section 6(6)(c) of the Constitution[30] renders Section 20 and all the provisions in chapter two non-justiciable. The duty of the Federal Government to safeguard the environment is also contained in the National policy on Environment. One of the policy objectives of the National Policy on the Environment is securing a quality of environment adequate for good health and wellbeing.

The African Charteron Human and Peoples' Rights made it a fundamental right to have a satisfactory environment favourable to development.[31] The right to health as provided for in International Human Rights Instruments[32] implies the existence and maintenance of quality air and environment.

There exist a wide range of statutes controlling air pollution in Nigeria. These statutes can be categorized into pre and post 1988, taking into consideration the unique importance of the Koko toxic waste incident for the development of Nigeria's Environmental law. The pre-1988 statutes includes: Nigerian Atomic Energy Act 1979; Factories Act 1987 and Associated Gas re-injection (Amendment) Act, 1979.

The Factories Act has it that 'accumulation of dirt and refuse shall be removed daily by a suitable method from the floors and benches of work rooms, and from the staircases and passages'.[33] For adequate ventilation on factory, the Act provides that effective and adequate provision shall be made for securing and maintaining the circulation of fresh air in each workroom.[34] The Associated Gas Re-injection Act Prohibits from January 1st 1984 all companies engaged in the production of oil or gas to flare-gas produced in association of oil without the written permission or consent of the Minister for a continuance of gas flaring after this date, is subject to fee for a certain amount of gas flared.[35]

The post 1988 Anti –air pollution Statutes include (a) The Harmful Waste (Special Criminal Provisions, etc) Act, which provides that '… all activities related to the purchases, sale, importation, transit, transportation, deposit, storage of harmful waste are hereby prohibited and declared unlawful'.[36] Any person who carries out any of these prohibited acts or activities is guilty of a crime.[37] The Act is pertinent to air pollution control because harmful waste dump emit gases that contaminate the air. The National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations, has as one of its goals to ensure that no industry or facility in Nigeria releases hazardous or toxic substances into the air beyond the limits approved by NESREA.[38] The Regulation has provided measures for attaining this goal. It provides that every industry or facility shall have a pollution

[29]CFRN 1999, s.20
[30]CFRN 1999, s. 6(6)(c)
[31]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, cap A9, LFN, 2004, art 24; *Fawehimi v Abacha* (1996) 6 NWLR (pt 425) 710 at 747
[32]Universal Declaration of Human Rights 1948, art 25; International Covenant on Economic, Social and Cultural Rights 1966, art 12 (1); International Convention on the Elimination of all forms of Racial Discrimination 1965, art 11(1) (f); International Convention Against All Forms of Discrimination Against Women 1979, art 12; Convention on the Right of the Child of 1989, art 24
[33]Factories Act, 1987, s. 7(1) (a)
[34]*Ibid*, s. 9(1)
[35]Associated Gas Re-injection (Amendment) Act, 1979, s. 3
[36]The Harmful Waste (Special Criminal Provisions etc) Act, 1988, s. 1(1)
[37]*Ibid*
[38]National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations, 1999, Reg 1

monitoring unit in its premises[39] and shall also have on site pollution control unit or apportion the responsibility for pollution control to a person or body corporate accredited by NESIREA.[40]

The Environmental Impact Assessment Act (EIA)[41] Mineral and Mining Act and the Mineral and Mining Regulations,[42] have provisions concerning pollution control as well.

3.1 Institutional Framework for Air Pollution Control.

NESREA and NOSDRA are two basic institutions saddled amongst other things, the responsibility to control air pollution in Nigeria. On air pollution control, NESREA has the responsibility to enforce compliance with provisions of international agreements, municipal policies, legislations, and guidelines on hazardous waste, Ozone depletion, environmental health and sanitation pollution abatement and air quality.[43] The law-enforcement powers of NESREA does not extend to the oil and gas sectors.

4.0 Causes of Air Pollution in the Niger Delta Region of Nigeria

Air pollutants can be categorized into two main groups: particulate and gaseous.

(a) **Particulate Matter:** particulate pollutants include solid airborne particles such as dust, fly ash, smoke, fog, soot, and fumes. [44]

(b) **Gaseous Pollutants:** Gaseous pollutants include carbon monoxide which consists of one oxygen atom and one carbon atom, which are further attached together by a triple bond consisting of two covalent bonds. The chemical formula of carbon monoxide is Co, carbon dioxide, hydrocarbons, oxides of Sulphur (sulphur oxide- So), and sulphur dioxide (SO_2) and Oxides of Nitrogen oxide (No),] and Nitrogen Dioxide (N_2O).[45]

(i) **Carbon Monoxide (CO):** It is a colourless, tasteless and odorless gas that is produced from incomplete combustion of fossil fuels and woods.[46] It can be harmful to life when included in large quantities by reducing the amount of oxygen in the blood stream to important organs like the heart and brain.[47]

(ii) **Nitrogen Oxide (NO):** Nitrogen ordinarily is an important element or component of the air.[48] Under intense temperature, it works with atmospheric oxygen to constitute or form nitrogen oxide. Also, nitrogen is further emitted into the air by the burning of fossil fuels.[49]

(iii) **Sulphur Dioxide (SO_2):** Sulphur dioxide pollution emanates from the burning of fossil fuels.[50]Sulphur-dioxide under humid state or condition constitutes or forms sulphuric acid. Sulphur dioxide in the air causes smog which is harmful or dangerous to human lives specifically asthmatic patients, people with heart diseases, aged people and children.[51]
Acid rain occurs when Nitrogen Oxides (N_2O) and sulphur dioxide (SO_2) produced by fossil fuel combustion encounter wind, light and other natural and manmade elements.[52] In the process,

[39]*Ibid*, Reg 2
[40]*Ibid*
[41]EIA 1992, s.1 (a)
[42]Mineral and Mining regulations 2011 Reg 160(3)(i)(k)
[43]National Environmental Standards and Regulations Enforcement Agency Act, s. 7(e)(d) & (h)
[44]Geographic Society, Global Warming <https://www.nationalgeographic.org/encyclopedia/global.warming> accessed 16th June, 2023
[45]*Ibid*
[46]J O Eze, Securing the Right to Life Through Pollution Control in Nigeria <https://journals.ezenwaohaetorc.org> accessed 10 June, 2023
[47]*Ibid*
[48]J O Ezeanokwasa, 'Legal Regulations on Air Pollution Control and Industrialization in Nigeria' (2018) (1) (1) '*Unizik Journal of Business* 106
[49]J O Ezeanokwasa (n48)
[50]*Ibid*
[51]*Ibid*
[52]C A Omaka (n1) 265

chemical reactions occur and transform them into sulphates, nitrates and sulphuric acid (H_2SO_4), and Nitric acid (HNO_3).[53]Sulphur acid is also known as hydrogen Sulphur. Nitric acid has one hydrogen atom, one Nitrogen atom and three oxygen atoms.[54] The sulphates, nitrates sulphuric and nitrates acids disseminate into the atmosphere and subsequently deposited far away distances due to its air borne nature.[55] The depositions which may either take wet or dry fall down in vapour dense air or snow on top of vegetation, marine life and on human useable air, as acid rain.[56] Acid rain causes great damage to vegetation, as well as lead to drying of lakes. It also causes corrosion in houses, industrial water, pipelines, monuments and human skins.[57]

(iv) **Hydrocarbons**: Hydrocarbons are compounds containing hydrogen (H) and carbon (C); An example is methane (CH_4).[58] They are greenhouse gases which cause global warming. Halogenated hydrocarbon like chloro fluorocarbons (CFCS) and hydro chlorofluorocarbons (HCFC) are ozone depleting substances (ODS).[59] They come from sources like refrigerants, fire extinguishers, solvents for cleaning and agricultural fumigants.[60] Methane comes from solid waste dumps and livestock[61] Methane in Nigeria is also lightly evicted through poor `management of waste dumps, rampant use of generating plants which entails burning of gasoline and emission into the atmosphere. Such as oxide of Nitrogen and sulphur, carbon monoxide and carbon dioxide.[62] Gas flaring and the activities of kpo-fire operators (illegal refining of crude oil) in the Niger Delta region are major causes of air pollution in the region too.

5.0 Effects of Air Pollution

Air pollution is responsible for many diseases in human beings and also has dangerous effects on natural ecosystem.[63] The following are the effects occasioned by air pollution on human, health:

(a) **Carbon monoxide:** It reduces the quality of Oxygen (O_2) transported to the tissues accordingly, it can impose extra burden on those suffering anaemia (which may result to death) chronic lung conditions, heart and blood vessel diseases, brain damage, impaired perception, eye and nasal irritation.[64] It has been expressed that carbon monoxides if inhaled in high amounts, can lead to dizziness, unconsciousness and death.[65]

(b) **Nitrogen oxide:** As earlier states, it is emitted into the air by combustion of fossil fuel and when inhaled in reasonable quantity leads to reduction in lungs function, increase in mortality, increase in airway allergic inflammatory reaction and increase probability of respiratory symptoms.[66]

---

[53]*Ibid*
[54]Turito, Nitric Acid (HNO_3) – formular properties, mola mass and uses <https://www.turito.com>accesed 18th June, 2023
[55]C A Omaka (n21), 265
[56]*Ibid*
[57]*Ibid*
[58]Jude (n46)
[59]L Wachowski and Others, 'Ecological Replacements of Ozone'- (2001)(10)(6) *Polish Journal of Environmental Studies* 415
[60]Jude (n46)
[61]O Rafiu and others, 'Greenhouse Gas Emissions: Quantifying Methane Emissions from Livestock' (2012)(5)(1) *American Journal of Engineering and Applied Sciences* 1-8
[62]A Dimitoriou and V Christidou, causes and Consequences of Pollution and Environmental Injustice as Critical Issue for Science and Environmental Education, the Impact of Air Pollution on Health, Economy and Agricultural resoruces<https://www.intechopen.com/books/the-impact-of-air-pollution-on-healtheconomy-environment-and agricultural-sources/causes/consequences-of-air-pollution-and environmental injustice-as-critical-issue-for science> accessed 18th June, 2023.
[63]Nwachukwu (n13)
[64]Jude (n46)
[65]Ibid
[66]*Ibid*

(c) **Sulphur Oxide:** It produces these bad effects on human beings: respiratory irritation, shortness of breath, impaired pulmonary functions, increased susceptibility to infection, illness to lower respiratory tracts (particularly in children) chronic lungs disease, pulmonary fibrosis.

(d) **Hydrocarbons**: Halogenated hydrocarbons like chlorofluorocarbons and hydro-chlorocarbons are compounds of hydrocarbons and are ozone-depleting substances.
It is instructive to note that, the above pollutants and their corresponding devastative effects, are more in the Niger Delta Region as a result of the activities of gas and oil companies. The activities of kpo-fire (illegal refining of petroleum) have worsen the case.

6.0 Human Rights Infractions by Air Pollution from Oil and Gas Companies in the Niger Delta.

The right to life,[67] right dignity of human person,[68] right to clean air, right to good work environment and the right to quality health[69]are elusive to inhabitants or indigenes of the Niger Delta people as a result of the prevalence of severe air pollution in the region. The air pollution in the region is heavily caused by the activities of oil and gas companies concentrated in the region. These rights are violated by air pollution caused by oil and gas companies:

(a) **Rights to life:** The Constitution of Nigeria guarantees the right to life as follows: 'Every person has a right to life, and no one shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.[70] The African Charter on Human and Peoples' Right (Ratification on Enforcement) Act, provides for the right to life as follows: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one maybe arbitrarily deprived of this right.'[71] The right to life as provided for under the African Charter on Human and Peoples' Rights is absolute, however, under the Constitution of Nigeria 1999 (as amended), the right to life can be derogated from by virtue of Sections 33(1) (2)(a)(b)(c) and the proviso to Section 45(2). It is instructive to state that even though the right to life as guaranteed under the African Charter on Human and Peoples' Rights is absolute, the qualified right to life as contained in the Constitution prevails.[72] But, in relation to other legislations in Nigeria, the Charter has greater vigour.[73]

The Constitution has provided five instances where a person could be deprived of his right to life. They include:

(a) In execution of a court sentence (death Sentence) passed by a court of law[74]
(b) When death occurs on the defence of any person from unlawful violence or defence of property.[75]
(c) when death occurs in the process of effecting a lawful arrest or when preventing the escape of a person in lawful custody.[76]
(d) When death results in the process of suppressing a riot or insurrection or mutiny[77]and (e) death as result of war.[78]

Death through air pollution is not one of the derogations from the right to life as contained in the Nigerian Constitution; accordingly, death occasioned by air pollution in my humble view is a violation to the

[67]CFRN 1999, s. 33(1); UDHRI948, art 3
[68]*Ibid*, s. 34
[69]Universal Declaration of Human Rights, art 24
[70]CFRN 1999, s. 33(1)
[71]African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN, 2004, art 4
[72]Abacha v. Fawehinmi (2002) FWLR (pt. 4) 533
[73]*Ibid*
[74]CFRN (n67)
[75]*Ibid*, s. 33 (2)(a)
[76]CFRN (67) s. 33(2)(b)
[77]*Ibid*, s. 33(2)(c)
[78]*Ibid* s. 45 (2)

right to life. Section 1(3) of the Constitution says that 'if any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void'[79] Nigerian Law allowing gas flaring by oil and gas companies such as… Associated Gas re-injection Act 1979[80] which empowers the Minister of Petroleum permission for continuous gas faring, appears to be inconsistent with Constitution; granted that the issuance of such permits to continue to flare gas pollutes the air which results in death, as it does not constitutes exceptions through which the right to life can be derogated from, the courts when called upon to void such laws should muster courage and declare the provision unconstitutional null and void.

The right to live as guaranteed by the Constitution is meaningless under an air polluted environment. In consonance with the above reasoning, the Indian Supreme Court in *Subash Kumar v State*,[81] held that the right to life as a fundamental right under Article 21 of the Indian Constitution includes the right to enjoyment of pollution free air… for full enjoyment of life. Section 33 of the Nigerian Constitution should be partly considered as a mandate for all to protect and safeguard the environment. A Nigerian court has similar view with the Indian Supreme Court when it was decided in *Gbamre v. Shell*[82] that the constitutionally guaranteed fundamental rights to life and dignity of human persons provided for by Section 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 respectively, includes the right to clean, poison- free, pollution free and healthy environment.

(b) **The Right to live in a Health Environment:**

The right to live in a healthy environment has long been declared a human right. The African Charter on Human and peoples' Rights (Ratification and Enforcement) Act, provides that, 'All Peoples' shall have the right to a general satisfactory environment favourable to their development.[83] It therefore implies that an unsatisfactory environment such as an air polluted environment prevalent in the Niger Delta Region of Nigeria is unfavourable for the development of her people, consequently a gross violation of their right to live in a healthy environment. The Government of Nigeria has as one of its cardinal objectives to "… protect and improve the environment and safeguard the … air and land forest and wild life of Nigeria'.[84] Though, the provisions of the Constitution of Nigeria in its chapter two cannot be enforced by virtue of Section 6 (6)(c) which renders the Fundamental Objectives and Directive Principles non-justifiable; it is advised that Nigerian Supreme Court borrows from the India Court decision in ***A.P. Pollution Control Board II v Prof. M.C. Nayadu,***[85]to the effect that the right to healthy environment and to sustainable development are fundamental human rights implicit in the right to life, will certainly help to create good environmental citizens. Implied in the right to life is the right to free and unpolluted environment.[86]

It is instructive to note that Sections 6(6)(c) makes Section 20 of the 1999 Constitution impotent. The section provides 'that the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria', The impotency of section` 20 by virtue of Section 6(6)(c) does not incapacitate Section 33(1) which states that every person has right to life inherently and included in the right to life is the right to a pollution free air.[87]To give effect and life to the provisions of Chapter Two of the Nigerian Constitution, Nigerian courts should muster grit and apply the jurisprudence of the India Supreme Court Case of *Mineava Mills Ltd v Union of India*,[88] when it held that the directive principles in part iv (which is similar to chapter II of the Nigerian Constitution) Indian Constitution are

[79]CFRN (n67), s. 1(3)
[80]Associated Gas Re-injection Act (n36), s. 3
[81](1991) 1 SCC 598 (85)
[82]C T Emejuru, 'Human Rights and Environment: Whether Nigeria?' (2015) (35) *Journal of Law, Policy and Globalization* (113)
[83]African Charter (n32), art 24
[84]CFRN 1999 (n67), s. 20
[85]1984 (3) SCC 161
[86]C T Emejuru (n82)
[87]T.C. Emejuru (n82)
[88]Air 1980 SC 1789

not mere show –pieces in the window dressing but they are ‘ fundamental in the governance of the country’.

7.0 Conclusion and Recommendation

This work x-rayed air pollution caused by oil and gas companies operating in the Niger Delta region of Nigeria and its consequential human rights infractions. The causes of air pollution are particulate matter which include dust, smoke, soot and gaseous pollutants which include: carbon monoxide, Nitrogen oxide, sulphur dioxide and hydrocarbons. Those pollutants generated and spread by the activities mostly of oil and gas companies in the Niger Delta have corrosive consequences on the lives of the inhabitants of the region. The contamination of the air environment of the region has made the inhabitants suffer blood vessel diseases, brain damage, impaired perception, eye and nasal irritation, dizziness, chronic lings’ conditions, inflammatory reactions. Shortness of breath, impaired pulmonary functions, illness of the low respiratory tracts and so on. The right to free and unpolluted environment is implicit in the right to life; accordingly. Polluted air and its consequential effects violate the rights to life, dignity of human person, and the rights to clean air, right to food, right to health and satisfactory environment.

It is recommended that our laws which authorize the Minister of Petroleum to issue permits upon application by operator in the oil and gas industry to continue to flare gas be amended.