

Women and Environmental Justice Issues in Nigeria: An Evaluation

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Introduction

Global frameworks such as human rights and Sustainable Development Goals (SDGs) reflect internationally agreed-upon minimum standards for human development outcomes in a way that suggests universality of human needs and priorities. Nonetheless, details of what constitutes a just outcome differ both within and across diverse groups of people, depending on individual and collective values, worldviews, identities, perceptions, and experiences with institutions and other people, across temporal and spatial divides. Similarly, environmental justice has varied meanings, strategies of access, and implications in various contexts (Allen, Fanucchi, McCormick and Zierold, 2019).

Although access to justice, especially environmental justice, continues to be a challenge for “many vulnerable and marginalised groups, women particularly encounter serious barriers to access to justice in society” (Durojaye et al, 2020: p. 224). The experiences of women and their involvement in environment justice can be context-specific and influenced by other factors, such as colonialism, political-economic structure, and patriarchy among others (MacGregor, 2021). This is reflected in the Niger Delta, where women who live in rural areas are poorer and bear most of the brunt of environmental injustices arising from oil multinational corporations (MNC) operations (because they live closer to the oil exploration sites).

Some scholars argue that the contributions of women to the environmental justice paradigm have been relegated to the background in mainstream scholarship on environmental justice (Gaard, 2018; MacGregor, 2021). Even though there has been a plethora of academic publications on women in the Niger Delta, there is a paucity of research on the gender aspects of environmental justice in Nigeria, especially from a legal perspective.

This chapter focuses on the use of protests and the potential of reliance on litigation in improving access to environmental justice for women, particularly in the rural parts of the Niger Delta region, where there are significant environmental impacts from the operations of the oil and gas industry. The methodology adopted for the chapter is of a doctrinal nature that relies on the analysis of relevant legislation, scholarly publications, and case reports through an environmental justice lens, with emphasis on gender aspects. As defined by the Pearce

Committee (1987 in Hutchinson and Duncan, 2012: p. 101) in their report on legal research in Australia, doctrinal research is “Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments.” This is distinguishable from other forms of legal research, including reform-oriented research which focuses on the evaluation of existing laws and makes recommendations for review, as required; theoretical research which explores the conceptual underpinnings of legal principles and rules; fundamental research which expounds on 'law as a social phenomenon' (Hutchinson and Duncan, 2012: p. 102); and socio-legal research which entails an interdisciplinary analysis of law also involving sociological theory (Banakar and Travers, 2005).

Doctrinal legal research builds on law’s intuitive legal research tradition (Hutchinson and Duncan, 2012). It entails the interpretation of primary sources of law, including statutes and cases, to highlight or formulate rules and principles that are relevant for understanding legal processes (Banakar and Travers, 2005). Doctrinal legal research is therefore essentially preoccupied with understanding the legal rules and principles relevant for any given legal question as a basis for normative analysis. This is especially appropriate for our research which is focused on understanding the legal underpinnings for a gender-sensitive analysis of environmental justice in Nigeria. This provides a strong methodological basis for the recommendations for improving women’s access to environmental justice, based on the existing laws and environmental justice and women’s rights cases from regional courts and quasi-judicial systems and other jurisdictions.

The choice of doctrinal legal research methodology therefore informed the data collection process and analysis (of statutes, judicial decisions, and scholarly literature) for this chapter. The chapter consists of five sections. The first presents a conceptual framework that focuses on links between gender and environmental justice. The second section analyses the outcomes of women-led protests in the Niger Delta as a strategy for improving women’s access to environmental justice. The third section explores the potential of litigation as an alternative strategy for addressing the limits of protests and promoting a gender-sensitive conceptualization of environmental justice through the decisions of domestic, sub-regional and regional courts, and courts in foreign jurisdictions. The fourth section highlights recent

domestic judicial and legislative developments impacting prospects for improving women's access to environmental justice. The final section is the conclusion.

Conceptualizing the Gender Aspects of Environmental Justice

The history of environmental justice doctrine and movement is traced to the United States, where it served as a counterpoint to the discontent for racist government policies in the 1960s and 1970s (Ekhtor, 2017). A plethora of studies highlight the inordinate burden of differential environmental harms on minorities (Bullard and Johnson 2002; Holifield, Chakraborty and Walker, 2018). Hence, environmental justice "...is the first paradigm to link environment and race, class, gender and social justice in an explicit framework" (Taylor 2000: p. 542). The dimensions of environmental justice broadly consist of the distribution of costs (distributive justice); compensation for historic inequities and prevention of future occurrences (corrective justice); open, informed, and inclusive decision-making processes (procedural justice); and the intersections between environmental struggles and social and economic justice (Gonzalez, 2013).

Environmental justice doctrine has flourished globally, especially in places with a history of environmental degradation (Ekhtor 2014). The environmental justice paradigm has become a global movement that is no longer limited to the experiences of ethnic minorities in the United States (Sikor and Newell, 2014; Agyeman, 2014; Martinez-Alier *et al* 2016). Furthermore, Julian Agyeman (2014: p. 237) argues that "... there has been an acceptance among senior figures in the US environmental justice movement that while race is a major factor in US struggles, in other parts of the world a broader set of socio-economic issues are at least as influential."

Different conceptualizations of access to (environmental) justice could be possible, depending on the prevailing circumstances in each country or context. In its narrow conceptualization, access to justice is simply access to the courts, but in its wider meaning it embraces access to the political order and to the benefits arising from social and economic developments in society (Okogbule, 2005; Ugochukwu, 2020). Moreover, public participation and consultation are central to the environmental justice struggle in industrialized countries, whereas in developing countries – especially resource-rich countries – access to or control of natural resources is fundamental to the environmental justice paradigm (Ekhtor 2017). Environmental justice entails considering how the governance architecture of environmental resources affects

different individuals and groups, particularly the vulnerable and marginalized, whether changes to/within environmental governance institutions are considered fair by diverse stakeholders, and how human interests can be reconciled with environmental sustainability (Holifield, Chakraborty and Walker, 2018).

Both feminism and environmental justice are linked to women's shared experiences of injustice in different spheres of life (Gaard, 2017). However, the distinct intersections between gender and environmental justice have hardly been explored, except for ecofeminism. Ecofeminist researchers or scholars have played an integral role in informing modern-day scholarship about justice and human-environment interactions (MacGregor in Coolsaet, 2021: p. 234). It has evolved since the 1970s from exploring the linkages between gender, the environment, and species, to uncovering the experiences of women of different races and nationalities in connection with patriarchy and the oppression of women linked to environmental degradation (Besthorn and McMillen, 2002). One main crux of ecofeminist perspective is that gender should be "central to the study of environmental justice" (MacGregor 2021: p. 234). Thus, the understanding or awareness of gender inequalities is germane to the study of environmental justice (MacGregor 2021).

Nancy Unger (2008: p. 115) contends that women suffer "uniquely from environmental injustices" in different parts of the world. Gender roles determine vulnerability to climate change and other negative environmental externalities, as well as the allocation of and access to environmental goods, with women being often worse off (Onwutuebe, 2019; Hughes, 2021). Other critical gender dimensions of environmental justice include women's exclusion from decision making on environmental issues (IUCN, 2015), poor consideration of the impact of degrowth and conservation/environmental protection policies on women's livelihoods, and the disproportionate risk of exposure to pollution borne by women because of the siting of polluting industries.

Emphasis on women's vulnerability to climate change and their environmental protection interest could however underemphasize the power differentials that result in this situation across institutions and inadvertently legitimize traditional gender roles that reinforce patriarchy (Bell, 2016). Moreover, the motivations of women in environmental justice movements can be remarkably diverse and include factors beyond vulnerability to climate change (Gomez *et al*, 2011; Murdock, 2021; Stover and Cable, 2017).

As women are often marginalized from the environmental decision-making process and the environmental injustices impacting them in many parts of the world, they (especially women of color) are at the forefront and sometimes are leaders of environmental activism or action and grassroots (local) environmental movement or change (Murdock 2021). Similarly, due to women in Africa historically suffering extensive impacts arising from environmental degradation, women also play an integral role in environmental justice movements and the development of environmental conservation practices (Boshoff, 2020). For example, in Kenya, the late Nobel Peace winner Wangari Maathai founded the Green Belt Movement in 1977. The Movement (similar to occurrences in other parts of Africa, especially Nigeria, Cameroon, Uganda, and Liberia) was at the forefront of the mobilization of women promoting sustainable livelihoods and environmental justice. Overall, gender aspects of environmental justice buttress the connections between women, environmental justice, access to justice, and African women's resistance movements in the burgeoning global environmental justice paradigm and related scholarship.

Women and Environmental Justice in Nigeria

The United Nations Environment Programme (UNEP) 2011 report on Ogoniland revealed the shocking levels of oil pollution in Ogoniland in the Niger Delta caused by the operations of Shell Oil Company that are yet to be cleaned up. As one of the most affected groups in Nigeria, women have been actively involved in seeking redress for the negative environmental impacts flowing from operations of oil MNCs in the Niger Delta. The Niger Delta region where oil MNCs maintain significant presence has become a center of incessant violent conflicts with local groups and widespread protests and demonstrations against MNCs accused of exacerbating environmental pollution issues and related health problems (Amnesty, 2020a; 2020b). A recent study demonstrates that children and babies in Nigeria are “twice as likely to die in the first month of life if their mothers were living near the oil spill before falling pregnant” (Hodal in Guardian, 2017; Bruederle and Hodler, 2017). The activities of MNCs in the oil and gas sector have also negatively impacted the economic, social, and physical means of subsistence of women (Babatunde, 2020).

Although access to justice continues to be a challenge for “many vulnerable and marginalised groups, women particularly encounter serious barriers to access to justice in society” (Durojaye

et al, 2020: p. 224). Nonetheless, women have been actively involved in seeking redress for the negative impacts flowing from MNC operations in the Niger Delta and have in so doing contributed to improving access to environmental justice in Nigeria by relying on both informal (such as protests and customary processes) and formal (such as litigation) strategies (Turner and Brownhill, 2004).

Women-led Protests in the Niger Delta and Environmental Justice

Protests by women are not a new phenomenon in Nigeria and have been successful in achieving wider social and political reforms (Obani, 2021). This was evident in women-led protests during the colonial era, including the Aba Women's War in 1929 (in what is now SouthEast Nigeria) due to rumors that women were going to be taxed, and the revolt by Abeokuta women in 1948 (Aghedo and Osumah, 2015; Obani, 2021). Post-independence, the Federation of Ogoni Women's Association (FOWA) has been at the forefront of mobilization of women via protests and demonstrations against the negative consequences arising from the operations of Shell and Chevron Corp. in the Niger Delta region (Ikelegbe, 2005; MacGregor, 2021: p. 240).

Women played an active role in peaceful agitations for the development of Ogoniland led by Ken Saro-Wiwa and the Movement for the Survival of the Ogoni People (MOSOP) during the 1990s (Ikelegbe, 2005). Women often led MOSOP demonstrations or protests, marching at the front to bring attention to the nonviolent nature of these demonstrations (Mai-Bornu, 2019). Ogoni women were said to have played an integral role in ensuring that nonviolence became the crux of the Ogoni struggle (Mai-Bornu, 2019; Keys, 2021). Also, Ogoni women's involvement in the struggle led to inclusion of women's issues such as girls' and women's education as important slants of the Ogoni protest (Barikor-Wiwa, 1997; Keys, 2019). It should be noted that MOSOP's nonviolent protests have had a massive impact on Shell's operations in Ogoniland; for more than 25 years, Shell has not operated any of its facilities in Ogoniland due to its rejection by the Ogoni people (Ekhatior 2016). This is notwithstanding that under Nigerian laws, Shell has the right to operate in the region.

Oil companies are not the immediate cause of women's marginalization in the Niger Delta. However, they amplify it in their dealings with oil communities (Renouard and Lado, 2012). The increase in women's engagement in the resource agitation in the Niger Delta has been partly because of the failings in the existing resources governance structure and the appropriation of the incidental benefits to the elites (youth, men, and traditional/community leaders) to the detriment of women (Ikelegbe, 2005; Babatunde, 2018; Babatunde, 2020).

Protests by women are considered as not remarkably successful in the 1990s in the Niger Delta, and many concessions from the oil firms appeared to be token gestures (Ikelegbe, 2005). Charles Ukeje (2004: p. 612) argued that “the demands of the women were essentially ‘bread-and-butter’ in nature.” Also, Evaristus Oshionebo (2009; p. 99) averred that “it is of course debatable whether such aggressive tactics [of the women] have effected substantive changes in the behaviour of TNCs.” Furthermore, Munir (2021) argues that scholars should be more nuanced in their analysis of the contribution of women to protests in the Niger Delta.

Overall, women-led protests have had modest but significant impacts on oil MNCs operating in the Niger Delta. For example, some protests and actions led by women have impacted positively on resource governance processes and led some oil and gas firms to establish technical-skills acquisition programs for women’s empowerment in the Niger Delta (Ikelegbe, 2005, Munir, 2021). Unsurprisingly, there has been a proliferation of women issues-based groups there (Ikelegbe, 2005). Conversely, some women also have held influential positions in militant groups and played active roles in the insurgency in the region (Ekine, 2008; Oriola, 2012; Oriola, 2016; Obi and Oriola, 2018). For example, women acted as spies, armed combatants, cooks, spiritual advisers, mediators in kidnapping incidents and gunrunners amongst others (Oriola, 2012; 2016).

Given the continued neglect of the Niger Delta by oil MNCs and the Nigerian government, to further ground community protests, some groups became involved in armed militancy and others (especially women) utilized unique ways to protest (Oriola, 2012). Niger Delta women have relied on dramatic strategies in protesting the activities of oil MNCs (Oshionebo, 2009; Okogbule, 2012; Munir, 2021). According to Munir (2020) and (Ikelegbe (2005), some strategies used by women included singing and dancing in front of the offices of oil MNCS in the Niger Delta, demonstrating in the nude, and the indigenous concept of “sitting on a man,” which according to Turner and Brownhill (2004), was a tool used by Niger Delta women to physically block the entry of oil workers to oil sites.

In July 2002, women in the Ugborodo community (an oil-producing community in Nigeria’s Delta state) took over the premises of Chevron and other oil MNCs and stripped themselves naked. This is a local shaming mechanism and, in some communities, can be used to lay curses on people and objects (Oshionebo, 2009; Okogbule, 2012). As a result of this protest, Chevron/Texaco was forced to declare “a *force majeure* clause in its contracts with its exporters,” which led to massive revenue losses (Okogbule, 2012: p. 256). This prompted the

company to seek a truce with the women and sign a memorandum of understanding (MOU) with the Ugborodo community (Okogbule, 2012: 256). The MOU included terms beneficial to the larger community, such as: upgrading 15 members of the communities who were contract staff to permanent-staff status; employment of an individual from each of the five Ugborodo villages every year; building of one house each for traditional rulers of the communities; provision of vital infrastructure, including a community hospital; and payment of monthly allowances to the elderly and establishment of income-generating initiatives (Turner and Brownhill, 2004; Okogbule 2012). Unfortunately, the MOU is yet to be fully implemented by Chevron (Vanguard, 2020).

At the time of writing, protests led by women were still taking place in the Niger Delta. In March 2020, hundreds of women from the Egbema community in Imo state in southeastern Nigeria shut down Sterling Global Oil Company for refusing to pay for funeral arrangements for three members of their community (Onyejiuwa, 2020). Also, in September 2020, women in Ugborodo protested the non-implementation of some MOU provisions and alleged breach of the MOU (Idowu, 2020). It is noteworthy that the MOUs entered between oil MNCs and communities in the Niger Delta are not legally binding contracts, although the Niger Delta communities often consider them to be binding against defaulting oil and gas MNCs (Ekhatior, 2016).

Despite various criticisms of the utility of women's protests in the Niger Delta, the protests have also impacted other protests and actions in the country and served as inspiration for similar protests in the other parts of the world (Turner and Brownhill, 2004; Fallon and Moreau, 2016). For example, in 2002, women in California protested naked, and this has become a new anti-war protest tactic. According to Turner and Brownhill (2004: p. 71) (relying on Ivan Gale, 2002), women's protests in the Niger Delta were the inspiration for the women in California and show how this style of protesting has become a global phenomenon.

Furthermore, women-led protests are not limited to Nigeria and are widespread in other parts of Africa, including the Mano River Women's Peace Network of Guinea, Sierra Leone, and Liberia, and the women of Somali who contributed to the Mudug Region Peace Agreement (Keys, 2019). This theme of women-led protests, including naked protests, has been explored by plethora of African feminist writers including Tamale (2014; 2016), Ahikire *et al* (2017), Oyěwùmí (1997; 2016) and Amadiume (1997). Hence, Sylvia Tamale (2016: p. 7) suggests that "In Africa, women have used their bodies to protest extremities; it is usually a weapon of

last resort when they find themselves pushed to the edge of the cliff. It is very powerful and always effective in that it draws attention to the issue under dispute. The act of public stripping is even more potent if the women are married and/or mothers.”

The limited success of some protests in achieving environmental justice for women in the Niger Delta has resulted in women litigants instituting cases in foreign jurisdictions. The next section highlights the potential of reliance on litigation in improving access to environmental justice of women in Nigeria.

Litigation as an Alternative Strategy for Access to Environmental Justice

There is a plethora of cases in different jurisdictions or countries by Nigerian litigants who allege that they are victims of environmental injustices perpetuated or arising from the activities of oil MNCs in Nigeria (Amnesty International, 2020b). A soaring number of oil and gas pollution-related cases filed both in Nigeria and abroad by, or with the support of civil society organizations (CSOs) is a sign of rising reliance on litigation (Ako and Ekhaton, 2016; Enneking, 2012; Enneking, 2019). For instance, while *Gbemre v. SPDC* was initiated in a Federal High Court in Nigeria; *Bowoto v. Chevron* and *Wiwa v. Shell* were litigated in the United States; *Akpan v. Shell* was heard at The Hague, Netherlands; while *Bodo Community v SPDC* was heard in the United Kingdom (Ako and Ekhaton, 2016). This section focuses on the gender dimensions of access to justice in the context of oil-related cases filed before domestic courts in Nigeria, sub-regional and regional courts in Africa, and foreign jurisdictions.

Litigation in Domestic Courts

In the absence of an explicit international framework on regulation of the cross-border activities of MNCs, litigation by domestic courts is one of the strategies that has been relied upon to hold “corporate actors accountable for the adverse human rights and environmental impacts of their activities” (Enneking, 2019: p. 513). Unfortunately, domestic courts in Nigeria have been unable to provide justice or meaningful avenues for providing succour for victims of environmental injustices in the country (Amnesty International, 2020b). Some challenges or obstacles “associated with litigation in Nigeria include limited resources of litigants, delays in the judicial process, the strict requirement of *locus standi proof*, and the overreliance on common law torts such as trespass, negligence and nuisance in suits by litigants (in the absence of an effective framework on oil pollution control or litigation), amongst others” (Ekhaton,

2014: p. 68; CEHRD Report, 2015). Another significant barrier is the financial strength of MNCs (Okogbule, 2005; Ekhatior, 2014).

Many women in Nigeria who are victims of environmental injustice are poor and unable to afford litigation in many instances (Okafor and Ugochukwu, 2015). This is exemplified in *General Oil Limited v Oduntan*, wherein Justice Niki Tobi of the Court of Appeal stated that it is widespread knowledge that litigation is an awfully expensive “thing in this country, and the present economic situation has made the position worse. Filing fees have over the years risen. So have fees for counsel” (Okafor and Ugochukwu, 2015: p. 405; Brems and Adekoya, 2010). This is the norm in the Niger Delta, where many communities and litigants, including women, are unable to get justice due to paucity of funding and exorbitant costs of litigation (Frynas, 2001; Munir, 2020).

Notwithstanding the hundreds of cases filed against oil MNCs operating in Nigeria, environmental degradation and environmental injustices associated with operations of MNCs remain rife (CEHRD 2015; Frynas, 2001). Nonetheless, litigation (especially public interest or strategic impact litigation) is one of the most successful strategies used by CSOs, individuals (including women), and communities in Nigeria to influence the regulatory process and activities of MNCs in the oil and gas sector (Ekhatior 2014; Ako and Ekhatior 2016). For example, Environmental Rights Action (ERA), the Nigerian affiliate of Friends of the Earth (FOE), has been at the forefront of holding oil MNCs accountable by filing cases in Nigeria and other countries (Greyl *et al*, 2013). Notwithstanding that litigation as a regulatory strategy is beset by many impediments, public interest litigation could result in the establishment of new precedents and rules and could lead to litigation being pursued on behalf of poor and marginalized individuals, or groups whose voices and concerns might otherwise be drowned out by the legal system (Greyl *et al*, 2013; Okafor and Ugochukwu, 2014; Ugochukwu, 2020).

In this regard, public interest litigation could be distinguished from strategic litigation *per se*. Okafor and Ugochukwu (2014: p. 437) assert that “While public interest litigation focuses on the ‘interest’ being pursued through a lawsuit, strategic litigation is more about the ‘impact’ expected from a single judicial decision. It is often anticipated that strategic cases will generate an impact that goes well beyond the actual outcome of the individual case.” In Nigeria, public interest litigation has been used for a plethora of issues including women’s rights,

environmental justice, and the constitutionality of the death penalty (Ugochukwu, 2020; Amechi, 2015).

Most court cases involving women in domestic courts have been mainly focused on issues of women's rights broadly rather than women's access to environmental justice *per se* or the violations of rights and livelihoods of women in the Niger Delta (Ugochukwu, 2020). There have been hundreds of oil cases in Nigeria; however, they have been mainly instituted by male litigants and local community chiefs due to the patriarchal nature of the Nigerian society and lack of ownership of lands by many women in the country (Munir, 2020). Because of these obstacles, victims of environmental injustices in the Niger Delta, including women, are now accessing courts in foreign jurisdictions instead to secure justice.

Litigation in sub-regional and regional courts in Africa

Due to the difficulties of accessing environmental justice at the domestic level, women in Nigeria and other parts of Africa have relied on the African Charter on Human and Peoples' Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and other international conventions to air their grievances in subregional and regional judiciaries (including quasi-judicial tribunals). These include the African Commission on Human and Peoples' Rights, African Court of Human and Peoples' Rights and the different subregional judiciaries, such as the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ).

The African Charter on Human and Peoples' Rights was domesticated into Nigerian law via the instrumentality of the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983. In Nigeria, courts have relied on the provisions of the African Charter to invalidate discriminatory practices against women (Arowolo, 2020; Okongwu, 2021). In the case of *Mojekwu v Ejikeme*, the Nigerian Court of Appeal relied on the provisions of the African Charter and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to invalidate a customary practice (law) that precluded daughters of a dead man from inheriting his property (Arowolo 2020)

Also, the African Charter is "often heralded as the first international law instrument to have expressly recognised a generally satisfactory environmental as a human right" (Du Plessis, 2011: p. 36). Article 24 of the African Charter states that: "All peoples shall have the right to

a generally satisfactory environment favourable to their development.” Furthermore, Article 2 of the African Charter, which is the non-discrimination provision, explicitly prohibits discrimination based on sex, and this provision applies equally to men and women in Africa. However, some scholars have argued that the African Charter has been ineffective in addressing or resolving numerous discriminatory issues that African women encounter in different parts of the continent (Aniekwu, 2009; Okongwu, 2021).

Criticisms over the apparent neglect of women issues in the African Charter led to adoption of the Maputo Protocol in 2003 (Okongwu, 2021; Ezeilo, 2020). The Maputo Protocol is designed to provide further protection for women’s rights that are not specifically enshrined under the African Charter or under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Viljoen, 2009). The Maputo Protocol was signed and ratified in Nigeria in 2004 but has yet to be domesticated into Nigerian law. This impedes its applicability in Nigeria. Notwithstanding that many African states have signed and ratified the Maputo Protocol, its application in national, regional, and sub-regional courts and implementation in some African countries have been problematic (Mwikya, 2020).

While the African Charter provides the right of all peoples to a generally satisfactory environment, provisions on the environment enshrined in the Maputo Protocol are more far-reaching (Chenwi, 2018). For example, Articles 18 and 19 pledge that all women shall have the right to live in a healthy and sustainable environment and the right to sustainable development (Chenwi, 2018).

There have been few cases dealing with environmental justice issues in the African Commission on Human and Peoples’ Rights; however, none has focused on improving access to environmental justice for women (Boshoff, 2020). For example, in *SERAC and CSER v Nigeria* (popularly known as the *SERAC* case), the African Commission held that the Nigeria government and its agencies were in violation of the African Charter. The African Commission did not exercise jurisdiction over oil MNCs; thus, they were not held culpable for the environmental degradation in the Niger Delta.

In 2012, in the case of *SERAP v Federal Republic of Nigeria*, the ECOWAS Court of Justice held that the Nigerian government violated Articles 1 and 24 of the African Charter and ordered that the Nigerian government take effective measures within the shortest possible period to restore or remediate the environment of the Niger Delta (Ekhaton, 2014; Ekhaton, 2020). Notwithstanding that women were not the plaintiffs or litigants in the *SERAP* case, some

women's groups in the Niger Delta, such as the Niger Delta Women Movement for Peace and Development (NDWPD), have claimed that this decision will have positive impacts on women's rights in the region (Omoniye, 2013). Omoniye argues that the *SERAP* decision is an important precedent that upholds the human right to a healthy environment and confirms the human right of the Niger Delta people to live in a pollution-free environment. Unfortunately to date, this decision is yet to be enforced by the Nigerian government.

The ECOWAS Court of Justice (ECCJ) and the African Court of Human and Peoples' Rights have declared acts of government agencies or laws as violation of the Maputo Protocol in several cases involving women litigants, such as *Dorothy Njemanze & 3 Others v Nigeria*, and *APDF and IHRDA v the Republic of Mali*, respectively. For the first time in its history, the African Court of Human and Peoples' Rights found a breach of the Maputo Protocol in the *APDF and IHRDA v the Republic of Mali* (Capone, 2020; O'Connell, 2019; Rachovitsa, 2019). Thus, notwithstanding the strident criticisms of the utility of the African Charter and Maputo Protocol on the protection of women's rights and paucity of cases on environmental justice and women in various domestic, subregional, and regional courts in Africa, it can be contended that the African Charter and Maputo Protocol have had direct and positive impacts on women's rights on the continent (Ekhaton, 2019; Ayeni, 2016).

Furthermore, although Nigeria is yet to implement or enforce the ECCJ judgment in *Njemanze*, scholars including Mwikya (2020) and Ojigbo (2020) have argued that the decision has had some positive impacts in Nigeria. For example, it has led to improved media awareness (advocacy) of women rights in the country and has enhanced the potential of the ECCJ as a forum that women in Nigeria can use to air their grievances and claims (including environmental justice issues). Besides, CSOs and individuals – especially representatives of local communities in the Niger Delta – have instituted environmental justice cases at the ECOWAS Community Court of Justice (ECCJ) on behalf of themselves and Niger Delta communities (Ekhaton, 2020). This was reflected in the *SERAP* case judgment by the ECCJ in 2012. Thus, women litigants from Nigeria can sue the Nigerian government in the ECCJ for environmental injustices arising from the activities of oil MNCs and governmental agencies in the country. However, at the time of writing, cases involving environmental justice and women are yet to be filed at the ECCJ.

On the other hand, in addition to the *Njemanze* case, recent case law on women rights at the ECCJ include *Aminata Diantou Diane v. République du Mali*¹ and *Mary Sunday v. Federal Republic of Nigeria*². These cases according to Addadzi-Koom (2020: p 165) “have given a voice to the Maputo Protocol towards eliminating human rights violations that have for so long lurked privately and silently amongst women.”

Litigation in Foreign Jurisdictions

Many victims of environmental injustice now institute cases in foreign jurisdictions, especially the home states of the MNCs, because they believe they will get justice in those courts (Enneking, 2019). Due to judicial and other institutional impediments in holding oil MNCs culpable for their actions in Nigeria and other developing countries, CSOs have initiated civil actions in foreign jurisdictions, especially in the United States via the Alien Tort Claims Act (ATCA) 1789. The ATCA allows only non-United States nationals to sue in U.S. courts for violations or torts under international or United States laws (Emeseh *et al*, 2010; Katuoka and Dailidaitè, 2012). Munir (2020) argues that in environmental litigation, Niger Delta women can take a cue from rural women of the Oriente region of the Ecuadorian Amazon, who instituted lawsuits against Texaco in U.S. courts under the ATCA.

The ATCA jurisprudence on MNCs has been beset by many impediments, as courts in the United States have consistently narrowed the application of the ATCA (Stephens, 2020; Stewart and Wuerth, 2013; Oshionebo, 2009). Indeed, very few cases have been decided on their merits, including *Kiobel v. Royal Dutch Petroleum Co.*,³ which further restricted the remit of the ATCA toward MNCs. In *Kiobel* (this case was instituted by Esther Kiobel on behalf of her husband, who was put to death by hanging by the Nigerian government), the United States Supreme Court dismissed the suit against Shell brought by victims of alleged Shell’s complicity in state crimes committed against the Ogoni people and held that Shell’s connection to the United States was unconvincing (Hitchon, 2013).

The court held that it had no jurisdiction on the matter. This decision was reached despite Shell having business offices in the United States, and hence, the ATCA was held to be inapplicable. In an earlier case, *Wiwa v. Shell*, which also was instituted in the United States, Shell settled out of court with the plaintiff rather than go through the judicial process inherent in the ATCA jurisprudence (Ako and Ekhaton, 2016). These cases illustrate how local communities seek to enforce their rights through judicial processes outside Nigeria and provide judicial options to Niger Delta communities and individuals that suffer from environmental injustice accentuated by the activities of oil MNCs in Nigeria.

The Kiobel case is germane to the crux of the argument in this paper as it illustrates how some women litigants originally from the Niger Delta who did not get justice in United States courts are now reinstituting their cases as a deliberate strategy in other jurisdictions in the world. Because of difficulties in accessing (environmental) justice in different fora (including Nigeria and under the ATCA in the United States, some widows of Ogoni leaders slain by the Nigerian state subsequently instituted court action in the Netherlands. In 2017, Esther Kiobel and three other widows (Victoria Bera, Blessing Eawo and Charity Levula) of the Ogoni Nine brought a claim against Shell in the Netherlands, and this case is going through the judicial process in Dutch courts (Amnesty International, 2020b). According to media reports, “[A]t the case’s first hearing in February 2019, Esther Kiobel and Victoria Bera gave moving testimonies regarding their late husbands and subsequent struggles for justice. It was the first time either had an opportunity to speak in court” (Amnesty International, 2020b: p. 14). This action by the plaintiffs can be termed feminist or women-led because they are the drivers of the process.

Prospects for Enhancing Women's Access to Environmental Justice

Although legal representation may be a barrier to accessing justice, it is possible that as argued by Ugochukwu (2020: p. 116) “several other substantive and structural factors impede access even before victims can get to the front door of the courts.” Arguably, this is the case in the Niger Delta, where women already face state-sanctioned discriminatory practices, such as lack of access to land and the patriarchal nature of the Nigerian society that limits opportunities for seeking redress in the courts. Some challenges associated with litigation in Nigeria include limited resources of litigants, delays in the judicial process and a strict requirement of *locus standi proof* (Ekhaton, 2014: p. 68; CEHRD Report, 2015). Many women who are victims of environmental injustice are poor and unable to afford litigation without support. This makes it important to also ensure the monetary compensation of women for environmental injustices and rights violations. Furthermore, notwithstanding the hundreds of cases filed against oil MNCs operating in Nigeria, environmental degradation and environmental injustices associated with the operations of MNCs remain rife (CEHRD, 2015; Frynas, 2001). This further erodes confidence in litigation for environmental justice.

Remarkably, CSOs are playing an important role in supporting local communities in the Niger Delta in accessing environmental justice in foreign jurisdiction. In the case of *Akpan v Shell*, a civil lawsuit against Shell in the Netherlands based on years of oil pollution allegedly perpetuated by Shell in three villages in the Niger Delta, the collaboration between both local

and foreign CSOs and Niger Delta fishermen was essential in successfully holding Shell liable (Greyl *et al.*, 2013).

However, the *locus standi* principle affects the ability of CSOs (and non-governmental organisations - NGOs) to institute action in Nigerian courts (Anozie and Wingate, 2020). Fortunately, there has been recent judicial pronouncement on *locus standi* for environmental NGOs in instituting legal action on behalf of victims of environmental injustice in Nigeria. In 2019, the Nigerian Supreme Court in the *Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation* held that environmental NGOs have the *locus standi* to institute environmental cases in Nigeria, thereby improving access to environmental justice and promoting sustainable development for litigants, victims, and communities in Nigeria (Babalola, 2020). Notwithstanding criticism that it will lead to a floodgate of cases in courts (Olatunbosun and Onu, 2020), this judgment will enable environmental NGOs and CSOs to institute cases, including on behalf of women victims of environmental injustices in Nigeria.

Other recent developments of note regarding prospects for access to justice for women include legislative enactment of some women-friendly laws in Nigeria (Onyemelukwe, 2015; Ekhaton, 2019). Enactment of the Violence against Persons (Prohibition) Act (VAPP) in 2015 appears to give a fillip to the view that the Nigerian government is attempting to promote women's rights in the country.

Akin to the position in Uganda, wherein the Ugandan Constitution and some domestic laws such as the National Environment Act (NEA) of 2019, provides that women should play an active role in environmental management, the Nigerian government could take a cue from these laws (Kabaseke, 2020). For example, women could be given specific roles in the public participation regime in the oil and gas industry in Nigeria, as well as the compensation process. The reasons for the success of the women-led protests in Nigeria considered in this chapter was partly because the women were involved in negotiating the MOUs between the oil communities and oil MNCs.

Furthermore, there has been little or no case law by subregional and regional judiciaries in Africa explicitly focused on gender aspects of environmental justice. As highlighted earlier in this chapter, one of the few cases at the African Commission that has dealt with environmental protection was the *SERAC* case, which focused on the culpability of the Nigerian government for the environmental degradation in Ogoniland. However, in *SERAC*, there was no discussion of gender impacts of the environmental injustice (Brown and Oder, 2016). The first major

decision of the African Court of Human and Peoples' Rights considering alleged violations of the African Charter provisions on environmental protection, is the *Ogiek* case.⁴ The *Ogiek* case is also said to be the African Court's first major judgment on indigenous peoples' rights (Chenwi, 2018). The African Court of Human and Peoples' Rights held that the Kenyan government had violated several articles of the African Charter.(Chenwi, 2018; Maluwa, 2020). The decision did not explicitly discuss gender aspects of environmental justice though. Notwithstanding, the ECCJ however offers additional prospects for advancing access to environmental justice for women because there is no requirement of exhaustion of local remedies before filing cases at the ECCJ (Ojigho, 2020: p. 19). Also, individuals and NGOs can file cases at the EECJ (Ekhaton 2014). On the other hand, under the African Court of Human and Peoples' Rights, there is a requirement of exhaustion of local remedies before litigants or claimants can institute cases (Ojigho, 2020). Furthermore, under the African Court on Human and Peoples' Rights individuals do not have direct access to the court (Ojigho, 2020; Ekhaton, 2014).

Member States need to make declarations recognizing the jurisdiction of the African Court of Human and Peoples' Rights, thereby allowing direct access to individuals in such countries. Nigeria is yet make such a declaration (Ekhaton 2014). NGOs with observer status before the African Commission and individuals from countries which have made declarations recognizing the jurisdiction of the African Court of Human and Peoples' Rights can also file or institute cases directly (Ekhaton 2014).

Emerging jurisprudence from other jurisdictions also highlight the prospects for advancing access to environmental justice for women through litigation. For example, the Waoroni indigenous community in Ecuador won a ground-breaking judgment stopping the government from selling off their land for oil-related activities. This lawsuit was instituted by Nemonte Nenquimo, a woman from the Waoroni indigenous community (Global Witness, 2021). Laine Munir (2020) argues that many Niger Delta women are reluctant to institute cases in court; they prefer traditional strategies such as protest or demonstration. This is due in part to the patriarchal nature of environmental justice litigation in Nigeria. However, Niger Delta women can draw from the experiences of women in other parts of the world that have relied on litigation as a direct and additional strategy to improve access to environmental justice.

Conclusion

It is imperative to highlight that a definition of access to justice – especially from a Nigerian context – must be all-encompassing to include both formal and informal justice mechanisms

as well as any other strategies that enhance the ability of marginalized and disadvantaged groups to seek redress or justice for the violation of their rights (Durojaye *et al*, 2020: p. 226). Addressing the barriers militating against women's access to environmental justice in Nigeria would not only enhance environmental governance in the Niger Delta but also promote the realization of wider sustainable development goals linked to gender equality and environmental sustainability.

Some strategies that are yet to be explored for this purpose include the use of government agencies, such as a legal-aid council and human rights commission, to provide free legal advisory services and representation for female litigants as a way of reducing the barriers to justice resulting from the high cost of litigation. Access to the courts is just one aspect of improving women's access to environmental justice. Environmental justice also requires that women victims be adequately compensated for the harms (including related social and economic injustices) they have suffered and requires that strategies be established to prevent recurrence. Moreover, women need to be recognized as critical stakeholders in environmental decision making and supported to participate meaningfully in open and inclusive public participation processes for environmental governance.

NOTES

¹ *Aminata Diantou Diane v. Mali* (2018) ECW/CCJ/JUD/14/18. The claimant in this case was a woman that was a victim of discriminatory practices by the family of her husband after he (the husband) had suffered a stroke. The ECCJ held in her favour and the government of Mali was held culpable for its inability to protect the claimant.

² *Mary Sunday v. Federal Republic of Nigeria* ECW/CCJ/JUD/11/18. This case is said to be the “first ECCJ decision on domestic violence.” Generally, see Addadzi-Koom (2020: p. 157). In this case, the claimant (Mary Sunday) was a victim of domestic abuse perpetrated by her boyfriend. The ECCJ held in her favour.

³ *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013). This case further restricted the remit of the ATCA towards MNCs. In the *Kiobel* case, the US Supreme court dismissed the suit against Shell which was brought by victims of alleged Shell’s complicity the state crimes committed against the Ogoni people and held that the Shell’s connection to the US was unconvincing. This decision was reached notwithstanding that Shell has business offices in the US and hence, the ATCA was held to be inapplicable.

⁴ *African Commission on Human and Peoples’ Rights v. Kenya*, Application 006/2012, Judgment (African Court of Human and Peoples’ Rights, 2017) (Ogiek case or ACHPR v. Kenya (Judgment)).

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