

THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS IN THE ENVIRONMENTAL JUSTICE PARADIGM *

Abstract

There are various issues that are of global significance in the environmental justice paradigm. These issues include environmental pollution, non-governmental organizations (NGOs) participation in environmental governance, environmental racism and climate change amongst others. However, this paper analyses the role of NGOs in the environmental justice paradigm. The study undertakes a synoptic review of the influence of NGOs in the environmental justice paradigm. In analysing NGOs, the paper focuses on three spheres and these will include the global or international sphere (using the example of the United Nations), Europe (via the prism of the Aarhus Convention) and Nigeria (the Niger Delta is in focus).

Key words: *Environmental Justice, NGOs, Nigeria, Aarhus Convention, Niger Delta*

1. Introduction

The paper will be divided into seven sections. Section one will be the introductory section. Here, terms such as Environmental justice and NGOs, will be defined and analysed. The second part of the paper focuses on the roles of NGOs in the global sphere. The third part will be an overview of NGOs impact on the Environmental Justice paradigm in Europe using the Aarhus convention as a case study. The fourth part will undertake an overview of the impacts of NGOs in Nigeria (focusing on the Niger Delta region). Shortcomings in NGO participation in the Environmental Justice Paradigm is in focus in the fifth section of the paper. Recommendations are made to remedy the inherent conundrum evident in NGOs vis-a-vis the environmental justice paradigm in the sixth section of the paper. The final section will be the conclusion. This paper advocates for the strengthening of the roles NGOs play in the environmental justice paradigm especially in Nigeria.

2. Overview of Environmental Justice Paradigm

Environmental justice is a new paradigm for achieving healthy and sustainable environment or communities and it is a culmination of more than 500 years of struggle by people of colour in the USA to achieve this.¹ Historically, environmental justice emerged as a counter measure to the discontent and inherent racism entrenched in government policies in the Deep South of the USA in the 1960s and 1970s.² Poor environmental practices were said to be discriminatory on the poor and black communities and this led to a number of studies³ which indicated that there was link between the ‘minority and environmental harms.’⁴ Thus, environmental justice ‘...is the first paradigm to link environment and race, class, gender and social justice in an explicit framework.’⁵ The environmental justice doctrine is broad and all-encompassing. However, the import of the doctrine varies depending on the context or

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¹ Charles Lee, ‘Developing the vision of Environmental Justice: A Paradigm for achieving healthy and sustainable communities’ *Virginia Environmental Law Journal* 14 (1994): 571-578. Also see Eghosa O. Ekhaton, ‘Improving Access to Environmental Justice under the African Charter on Human and People’s Rights: The Roles of NGOs in Nigeria.’ *Afr. J. Int’l & Comp. L.* 22 (2014): 63-79.

² Ole Pedersen, ‘Environmental Justice in the UK: uncertainty, ambiguity and the law’ *Legal Studies* 31 (2) (2010): 1-26

³ These studies include General Accounting Office *Siting of Hazardous Waste Landfills and their Correlation with Racial and Economic Status of Surrounding Communities* (GAO/RCED-83-168, 1983) and Commission for Racial Justice, United Church of Christ, Public Data Access, Inc *Toxic Waste and Race in United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (New York: Public Data Access, 1987). United Church of Christ Justice and Witness Ministries *Toxic Wastes and Race at Twenty 1987–2007* (Cleveland: Justice and Witness Ministries United Church of Christ, 2007).

⁴ Richard D. Bullard & Glenn S. Johnson, ‘Environmentalism and Public Policy: Environmental Justice: Grassroots Activism and Its Impact on Public Policy Decision Making’ *Journal of Social Sciences* 56 (3) (2000): 555-578.

⁵ Dorcete Taylor, ‘The rise of the environmental justice paradigm’ *American Behavioural Scientist* 43(4) (2000) 508-80. Cited in Julian Agyeman & Bob Evans, ‘Just Sustainability’: The Emerging Discourse of Environmental Justice in Britain,’ *The Geographical Journal* 170 (2) (2004):155-164 at 156.

the country in focus. Thus, 'environmental justice in Africa emphasizes access to natural resources, while in the USA and UK the focus is on maintaining the planet's well-being via active public participation.'⁶ Thus in the African (Nigerian context), a different definition of environmental justice will suffice. In the African context, which considers access to resources as fundamental,⁷ Obiora defines environmental justice as 'The equitable distribution of environmental amenities, the rectification and retribution of environmental abuses, the restoration of nature, and the fair exchange of resources. Its main insight challenges the uneven allocation of environmental risks as well as the benefits of environmental protection, industrial production, and economic growth. Given its structural focus, the environmental justice struggle could be seen, not simply as an attack against environmental discrimination, but as a movement to rein in and subject corporate and bureaucratic decision making, as well as relevant market processes, to democratic scrutiny and accountability.'⁸

There have been some academic criticisms of the environmental justice paradigm. A major criticism of environmental justice is that it is a highly contestable concept with many diverse definitions, thus having an appropriate or an all-encompassing definition is said to be difficult.⁹ Notwithstanding, the postulations to the contrary, the environmental justice paradigm has redefined the whole gamut of environmental governance, with the discarding of the old order with the new.

Environmental justice is both a concept and social movement. The concept, which was borne out of the movement against environmental racism, emerged from the civil rights movement in the United States and an attempt to address the injustice of toxic industries being predominantly concentrated in areas of African American indigenous residents.¹⁰ The concept or doctrine has however grown in scope from its early beginnings and is now applied to a wider range of 'serious social concerns' particularly related to communities that suffer from social inequity as a result of 'environmental inequalities.'¹¹ NGOs have played major roles in the spread and evolution of the Environmental Justice paradigm.

Furthermore, notwithstanding the plethora of definitions of Environmental Justice (EJ), EJ is expansive and the 'fluidity of the concept to cover a wide range of issues that is peculiar to societal challenges.'¹² Also, EJ has moved beyond the simple (initial or original) framework of:

- (a) The absence of political and economic power: This model suggests that communities suffer from environmental inequities because they lack political and economic power.¹³
- (b) The Eco-racism: This model contends that minority groups or countries are deliberately targeted for environmental injustices.¹⁴

⁶ Rhuks T. Ako, 'Nigeria's Land Use Act: An Anti-thesis to Environmental Justice,' *Journal of African Law* 53 (2) (2009): 289-304 at 292. Also, Professor Gonzalez adopts a four-part definition of 'environmental justice consisting of distributive justice, procedural justice, corrective and social justice. Distributive justice calls for the fair allocation of the benefits and burdens of natural resource exploitation among and within nations. Procedural justice requires open, informed, and inclusive decision-making processes. Corrective justice imposes an obligation to provide compensation for historic inequities and to refrain from repeating the conduct that caused harm. Social justice, the fourth and most nebulous aspect of environmental justice, recognises that environmental struggles are inextricably intertwined with struggles for social and economic justice.' See Gonzelez, Carmen G. 'Environmental Justice and International Environmental Law' in Alam, Shawkat, Jahid Hossain Bhuiyan, Tareq MR Chowdhury, and Erika J. Techera. *Routledge handbook of international environmental law*. Routledge, 2012, 78-79.

⁷ William Beinart and McGregor J. (eds.), *Social History and African Environments* (Oxford: Ohio University Press, 2003) 2.

⁸ Amede Obiora, 'Symbolic Episodes in the quest for Environmental Justice,' *Human Rights Quarterly* (1991) 21(2): 466-512 at 477.

⁹ Agyeman and Evans (n 5).

¹⁰ J. Agyeman *et al.* 'Joined-up Thinking: Bringing Together Sustainability, Environmental Justice and Equity' in Julian Agyeman J, et al (eds.), *Just Sustainabilities: Development in an Unequal World* (UK: Earth scan 2003).

¹¹ Ako (n 6).

¹² R. T. Ako, *Environmental Justice in Developing Countries: Perspectives from Africa and Asia-Pacific* (Abingdon: Routledge, 2013) 4.

¹³ G. Mbamalu *et al.* 'Environmental Justice issues in Developing Countries and in the Niger Delta' (Paper delivered at the international Conference on Infrastructure Development and the Environment, Abuja Nigeria 10-15 September 2006)5.

¹⁴ Robert Bullard, 'Solid waste Sites and Black Houston Community,' *Sociological Inquiry* (1983) 53(2-3) 273-88.

- (c) Neighbourhood Transition Model: This is predicated or anchored on the basis of peculiar dynamics of communities in the USA, that economics is the primary determinant for environmental injustices.¹⁵

The EJ discourse or remit has expanded exponentially in recent years. Thus, EJ has been ‘expanding topically and geographically over the years. While the movement originally focused on the United States, the concept very quickly spread—horizontally to a range of new topics and countries and vertically to a number of global issues.’ Here, it has spread to different countries and issues including climate change in South Africa, gold mining in Bulgaria and NGO politics in Ecuador amongst others.¹⁶

2.1 Evolution of NGOs in the International Sphere

Globalisation has been a major catalyst for the spread of NGOs in the international environmental governance. NGOs are participants in the international governance and this is especially evident in environmental issues where they participate in conferences and observe the implementation of treaties or conventions.¹⁷ NGOs influence or participation or influence in international law or governance is not a recent development. NGO’s influence in international law has been in existence for more than 200 years and became more pronounced in the era of the League of Nations and the early part of the 20th century.¹⁸ However, since the 1990s, there has been massive proliferation of NGOs and their involvement in global governance became more pronounced.¹⁹ The spread and rise of NGOs in the international sphere has been helped by factors such as internet or the growth of information technology, spread of democratic values and globalisation amongst other factors.²⁰

An acceptable definition of NGOs is elusive. It is been argued that NGOs as a concept is highly contestable especially the meaning or definition.²¹ However, it has been posited that it easier to describe what is not an NGO, rather than what NGOs are.²² Professor Spiro contends that there are three (3) theoretical approaches to NGO participation in International (Environmental) Law making.²³ These approaches are liberal, stakeholder, and post-national. In the liberal model, the State remains the fulcrum of decision making, whilst allowing some modicum of influence of NGOs in respect of international decisions or compromises. On the other hand, the stakeholder and post national models, ‘by contrast, recognize independent NGO power, inside public international institutions under the former approach and outside public institutions altogether under the latter.’²⁴ This paper will align itself to the definition of NGOs enunciated by Steve Charnovitz. He defined NGOs as ‘Groups of individuals organized for the myriad of reasons that engage human imagination and aspiration. They can be set

¹⁵ Mbamalu (n 13).

¹⁶ David Schlosberg and Lisette B. Collins, ‘From environmental to climate justice: climate change and the discourse of environmental justice.’ *Wiley Interdisciplinary Reviews: Climate Change* 5(3) (2014): 359-374 at 261.

¹⁷ Steve Charnovitz (a), ‘Two Centuries of Participation: NGOs and International Governance,’ *Michigan Journal of International Law* 18 (2) (1997): 183-286.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Barbara Gemmill and Abimbola Bamidele-Izu, A. ‘The Role of NGOs and Civil Society in Global Environmental Governance’ in Daniel C. Esty and Maria H. Ivanova, (eds), *Global Environmental Governance: Options & Opportunities* (Yale School of Forestry and Environmental Studies, (2002) 1. Also available online at: <http://environment.yale.edu/publication-series/documents/downloads/a-g/gemmill.pdf>

²¹ Steve Charnovitz, (b) ‘Non-governmental organizations and international law’ (2006) *The American Journal of International Law* (2006) 100(2): 348-372.

²² United Nations Environment Programme (UNEP). *Negotiating And Implementing Multilateral Environmental Agreements (MEAs): A Manual For NGOs* (May 2007). Available online at: <https://www.cbd.int/doc/guidelines/MEAs-negotiation-manual-ngo-en.pdf>

Last accessed 20 February 2015. Philip Alston, ‘The ‘Not-a-Cat’ Syndrome: Can the international Human Rights Regime Accommodate Non-State Actors?’ in (Alston (ed.) *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005).

²³ Peter Spiro, ‘NGOs in International Environmental Law-making: Theoretical Models’ (2006) Temple University Legal Studies Research Paper Series 26: 1-34. Available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=937992

²⁴ *Ibid.* 4.

up to advocate a particular cause, such as human rights, or to carry out programs on the ground, such as disaster relief. They can have memberships ranging from local to global.²⁵

However, NGOs involved in international environment governance are highly diverse, they include local, national and international groupings of individuals with different aims or objectives devoted sustainable development and environmental protection amongst others.²⁶ NGOs have been major players in the continued evolution of environmental justice principles. Thus, the environmental justice movement ‘substantially in the last two decades, [been] raising awareness about the need for genuine involvement rather than perfunctory notification of projects that detrimentally impact public health and ecological viability.’²⁷

The next section focuses on the contribution of NGOs to the International Environmental discourse.

2.2 Roles of NGOs in International Environmental Governance

The United Nations (UN) is said to be one of the few international organizations that collaborates effectively with NGOs.²⁸ Here, ‘due to their critical role in service delivery and implementation, civil society organizations [NGOs] have long been recognised as partners of the UN system especially in environmental negotiations.’²⁹ The roles NGOs play in intergovernmental negotiations in the UN are invaluable. NGOs (unlike some States or governments) are said to bring expertise on the issue at hand, technical know-how and the use of compelling arguments to support their cause(s) amongst other roles.³⁰ Thus, it has been posited that ‘in the intergovernmental process, it is often NGOs who possess the energy and perseverance needed to carry (proposals) through negotiation to formal agreement.’³¹ The influence exerted in the UN system during negotiations by NGOs can be divided into the setting of agenda (the use of high profile campaigns and lobbying to raise awareness), conferring legitimacy (NGO participation democratises the process of negotiations and makes it credible), the implementation of solutions and the negotiation of outcomes (NGOs can propose different solutions and initiatives in lieu of the initiatives sponsored by States).³²

The influence of NGOs in the UN system has expanded tremendously. A major catalyst for this was United Nations Conference on Environment and Development (UNCED) held in 1992. Prior to 1992, NGOs did not seek influence official UN negotiations or deliberations.³³ However, during the process leading to the aforementioned conference, environmental NGOs began to engage in capacity building exercises or innovations such as organizing parallel NGOs conferences running in tandem with the UN conference.³⁴ Article 71 of the UN Charter which opened up the UN system to NGOs states that ‘The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.’³⁵ It does this by drawing on NGOs expertise and views especially in the areas of policy and program design, implementation and evaluation. Examples of NGO participation international environmental governance include, the 1996 UN Conference on Human Settlements (Habitat 11) where NGOs were members of the drafting committees that drew up the declaration and programme of action and in the negotiation process that led to the drafting of the 1998 Aarhus Convention³⁶ (this convention will be analysed in later part of

²⁵ Charnovitz (a) (n 17) 186.

²⁶ Gemmill and Bamidele-Izu (n 20) 1.

²⁷ Elizabeth Burleson and Diana Pei Wu, ‘Non State Actor Access and Influence in International Legal and Public Negotiations’ *Fordham Environmental Law Review* 21 (2010): 198-208, 201.

²⁸ Thomas G. Weiss, ‘International NGOs, Global Governance and Social Policy in the UN System’ (1999) *Globalism and Social Policy Programme*.

²⁹ Gemmill and Bamidele-Izu (n 20) 5.

³⁰ *Ibid*

³¹ UNEP (n 22) 31.

³² PJ Simmons ‘Learning to Live with NGOs,’ *Foreign Policy* 112 (Fall) (1998): 82-96. Available online at: <http://carnegieendowment.org/1998/10/01/learning-to-live-with-ngos> (Last Accessed 22 February 2016).

³³ UNEP (n 22)

³⁴ *Ibid*

³⁵ UN Charter

³⁶ Gemmill and Bamidele-Izu

this paper). Another example of NGO participation was Climate Change Convention 1992 which had major contributions or inputs from NGOs.³⁷ NGO participation in international environmental governance has not been problem free. This paper will further elucidate on this premise in a later part of the paper. The role of NGOs in the Aarhus Convention will be in focus in the following section of this paper.

3. NGOs in Environmental Discourse in Europe

This paper focuses on the Convention on Access to Environmental Information, Public Participation in Environmental Decision-making and Access to Justice (otherwise known as the Aarhus Convention) as an exemplar for environmental justice in Europe. The Aarhus Convention was developed in 1998³⁸ and it has been said to be the ‘most elaborate and binding international instrument on public participation in environmental matters’³⁹ as envisioned by the United Nations Economic Commission for Europe (UNECE). The Aarhus Convention has enjoyed widespread acceptance amongst European countries. The Aarhus Convention is regional in nature and ratifying states include European Union (EU) countries and many former Soviet states.⁴⁰ However, the Aarhus Convention is open to any interested state.⁴¹ Kofi Annan, the former Secretary General of the UN posited thus: ‘Although regional in scope, the significance of the Aarhus Convention is global... [I]t is the most ambitious venture in the area of ‘environmental democracy’ so far undertaken under the auspices of the United Nation.’⁴² Also, he avers that the Aarhus Convention has the ‘potential to serve as a global framework for strengthening citizens’ environmental rights’⁴³ Principle 10 of the 1992 Rio Declaration on Environment and Development has been adduced as the inspiration for the Aarhus Convention.⁴⁴

By virtue of Article 4 of the Convention, the public and NGOs can have access to environmental information. Access is not limited by ‘being personally affected or having some right or interest in the matter.’⁴⁵ Also, by virtue of Article 3(9) foreign nationals and NGOs are not excluded from the public participation paradigm enunciated in the Convention. A major limitation in Article 4 is that access to information relates to information held by public authorities.⁴⁶ NGOs played major roles in establishing the agenda and during the negotiations for the Aarhus convention.⁴⁷ During negotiations, NGOs had quasi-official roles,⁴⁸ as they were formally invited to the negotiating tables, had the rights to lobby the

³⁷ Engobo Emeseh, et.al ‘Corporations, CSR and Self-Regulation: What Lessons from the Global Financial Crisis,’ *German Law Journal* 11 (2) (2010): 230-259. NGOs also played major roles in the recent 2015 United Nations Climate Change Conference, COP 21 or CMP 11, held in Paris, France in December 2015. Generally see <http://www.cop21paris.org/about/cop21>

³⁸ Available at the United Nations Economic Commission for Europe (UNECE) Website at: <http://www.unece.org/env/pp/documents/cep43e.pdf> (accessed 20 December 2014)

³⁹ Uzuazo Etemire, ‘Book Review of ‘the Aarhus Convention at Ten: Interactions between Conventional International Law and EU Environmental Law, edited by Marc Pallemaerts, published by Europa Law, 2011’ (2013) 22(3) *RECIEL* 371-373 at 371

⁴⁰ Patricia Birnie et al, *International Law and the Environment – 3rd Edition* (Oxford: Oxford University Press, 2008).

⁴¹ *ibid*

⁴² Annan, K, ‘Foreword’, UNECE, *The Aarhus Convention: An Implementation Guide*, v. Cited in Alan Boyle, ‘Human Rights and the Environment: Where Next?’ *The European Journal of International Law*, (2012) 23 (3) 613-642 at 622

⁴³ *ibid*

⁴⁴ See Birnie et al (n 40). Principle 10 of the Rio Declaration states: ‘Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress, shall be provided.’

⁴⁵ Birnie et al (n 40) 292.

⁴⁶ *ibid*. In the UK, some private companies (water, gas etc.) are subject to Environmental Impact Regulations (EIRs) insofar as they discharge public functions. Also see Uzuazo Etemire, ‘Public Access to Environmental Information Held by Private Companies’, *Environmental Law Review* (2012) 14(1):7-25.

⁴⁷ Gemmill and Bamidele-Izu (n 20).

⁴⁸ *ibid*

state officials involved in the negotiations and were part of the negotiations at each stage.⁴⁹ Kravencheko posited that ‘The Aarhus Convention is the first multinational environmental agreement that focuses exclusively on obligations of nations to their citizens and nongovernmental organizations (NGOs).’⁵⁰ The compliance mechanism of the Convention includes capacity of NGOs to recommend experts for election to the Compliance Committee, the criterion that all Committee members be independent members rather than state officials and the right of any citizen or member of public or any interested NGO to file a complaint or communication with the Compliance Committee alleging a party’s breach or non-compliance.⁵¹

4.1 NGOs and Environmental Justice in Nigeria

NGOs play major roles in the environmental justice movement or cause in Nigeria. In Nigeria, environmental justice is seen as access to justice (especially in the natural resource sector) and NGOs activism or activities bring this premise to the fore. Environmental justice in the African (or Nigerian) context is ‘the equitable distribution of environmental amenities, the rectification and retribution of environmental abuses, the restoration of nature, and fair exchange of resources’⁵² NGOs or civil groups are very prominent in the Niger Delta region of Nigeria. The Niger Delta has been rife with environmental pollution and armed conflicts. Professor Ikelegbe in his study of civil society in the Niger Delta states that civil groups ‘have reconstructed the [Niger Delta] agitation into a broad, participatory, highly mobilised and coordinated struggle and redirected it into a struggle for self-determination, equity and civil and environmental rights.’⁵³ NGOs are an important constituent of the civil society movement in the Nigeria. NGOs in Nigeria adopt different strategies in the environmental justice movement in Nigeria. The strategies may include litigations, negotiations with the Nigerian State and multinational companies (MNCs) and public campaigns amongst others.

NGOs have played major roles in the awakening of the International community to the plight of victims of environmental degradation in Niger Delta area of Nigeria. This was especially evident by in the Ogoni crisis, where an NGO/Community Based Organisation (MOSOP in coalition with both local and international NGOs) brought to the attention of the world, the human rights violations and environmental degradation in that part of Nigeria. This action by MOSOP also had an effect on the major multinational corporation (Shell) operating in Ogoni. Shell revised its code of conduct to include human rights and also Shell (and other MNCs) now regularly organizes training and consultation with stakeholders in the Nigerian oil and gas sector.⁵⁴

Furthermore, NGOs influence can be exerted by the use of litigations, publication, lobbying of the MNCs and the State, public awareness campaigns amongst other strategies.⁵⁵ NGOs have been very proactive in litigations especially in areas dealing oil pollution, environmental degradation and human rights. Two of such NGOs include the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights. These NGOs petitioned the African Commission on Human and People’s Rights in the case of the Ogoni people of the Niger Delta who were alleged to be victimised by the Nigerian government and oil multinational companies operating in the Niger Delta.⁵⁶ The African Commission held that the Nigeria Government (and its agencies) and (not the MNCs) were in violation of the African Charter on Human and Peoples’ Rights.

⁴⁹ Svitlana Kravchenko, ‘The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements,’ *Colo. J. Int’l Envtl. L. & Pol’y*, (2007) 8 (1): 1-50.

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² Obiora, (n 8) 477.

⁵³ Augustine Ikelegbe, ‘Civil Society, oil and conflict in the Niger Delta region of Nigeria: ramifications of civil society for a regional resource struggle,’ *Journal of Modern African Studies* 39 (3) (2001): 437-469.

⁵⁴ Evaristus Oshionebo, ‘Transnational Corporations, Civil Society and social responsibility in Nigeria’s oil and gas industry,’ *African Journal of International and Comparative Law* 15 (1) (2007): 107-129.

⁵⁵ *Ibid*. See Rhuks Ako and Eghosa O. Ekhaton. ‘The civil society and the regulation of the extractive industry in Nigeria.’ 7 (1) (2016) *Journal of Sustainable Development Law and Policy* 183-203.

⁵⁶ *Ibid*.

Also, the ECOWAS Court of Justice (ECCJ) has been utilised by NGOs to seek redress for victims of environmental injustices in Nigeria.⁵⁷ In *SERAP v Federal Government of Nigeria*⁵⁸, the plaintiffs averred that federal government of Nigeria has been culpable for environmental degradation in the Niger Delta. It posited that:

...the government's obligation to protect the right to health requires it to investigate and monitor the possible health impacts of gas flaring and the failure of the government to take the concerns of the communities seriously and take steps to ensure independent investigation into the health impacts of gas flaring and ensure that the community has reliable information, is a breach of international standards.⁵⁹

The core of the reliefs sought by the applicant (SERAP) was a declaration that the Nigeria government had violated the tenets of the African Charter on Human and People's Rights (ACHPR) (and other relevant international measures) and that the Niger Delta communities should have a right to a clean or general satisfactory environment. The ECCJ held that the Nigeria has violated Articles 1 and 24 of the ACHPR and ordered that the Nigerian government to take effective measures within the shortest possible period to restore or remediate the environment of the Niger Delta.⁶⁰ The ECCJ further held that the Nigerian government must take steps to prevent the occurrence of damage to the environment in the Niger Delta and take measures to hold the architects of environmental damage responsible for their actions. The ECCJ posited that the Nigerian government is expected to comply and enforce this decision by virtue of Article 15 of the Revised Treaty and Article 24 of the ECCJ Supplementary Protocol.⁶¹

The above decision of the ECCJ will serve as the basis of a strategy by NGOs to promote and improve environmental justice in the Niger Delta region of Nigeria.⁶² In pursuance of this objective, SERAP in conjunction with Amnesty International has filed a Freedom of Information request to Nigerian government 'seeking information on the measures the government is taking to fully implement the judgement'⁶³ by the ECCJ. However, at the time of writing, the Federal Government of Nigeria is yet to respond to the request. Such litigations have added to a growing jurisprudence on protection of the environment and access to justice in Nigeria. This is also evident in human rights protection in Nigeria. Here, the courts have produced 'pro-human rights alterations and reformations.'⁶⁴ Thus, the Nigerian State has 'become more sensitive to the environmental and social responsibilities of oil companies'⁶⁵ and MNCs are expected to 'negotiate and reach memoranda of understanding with host commonalities, honour agreements, and be more responsive to [their] problems.'⁶⁶ Partly due to the pressure exerted by NGOs on MNCs in Nigeria, some MNCs now regularly consult the local communities in the design and implementation of projects in such communities.⁶⁷ Also, NGO pressure can lead to the cancellation

⁵⁷ Generally, see Ekhaton (n 1).

⁵⁸ *SERAP v Federal Republic of Nigeria*, Judgement No ECW/CCJ/JUD/18/12. Available online at the ECCJ Website at:

http://www.courtecowas.org/site2012/pdf_files/decisions/judgements/2012/SERAP_V_FEDERAL_REPUBLIC_OF_NIGERIA.pdf

⁵⁹ *SERAP v. Federal Government of Nigeria* (n 58) 4. Ekhaton (n 1).

⁶⁰ *ibid* at 29

⁶¹ *ibid* at 30

⁶² Ekhaton (n 1) 74-75.

⁶³ SERAP 'FOI: Amnesty International, SERAP task FG over implementation of ECOWAS oil pollution judgement. Available at the SERAP website at: <http://serap-nigeria.org/foi-amnesty-international-serap-task-fg-over-implementation-of-ecowas-oil-pollution-judgment/> (accessed 20 December 2014). Furthermore, SERAP has posited that on the basis of article 77(1) of the Revised ECOWAS Treaty, the Authority of Heads of State and Government of ECOWAS can impose sanctions on the Nigeria Government for the non-implementation of the aforementioned ECOWAS judgements, see <http://serap-nigeria.org/fg-risks-regional-sanctions-over-continuing-failure-to-implement-ecowas-judgments-serap/> (accessed 20 December 2014)

⁶⁴ Obiora Okafor, 'Modest Harvests: On the Significant (but Limited) Impact of Human Rights NGOs on Legislative and Executive Behaviour in Nigeria,' *Journal of African Law* 48(1) (2004) 23-49, 24. Also see, Ekhaton (n 1).

⁶⁵ *Ibid*

⁶⁶ Ikelegbe (n 57) 460.

⁶⁷ Oshionebo (n 44).

of projects with potential negative consequences on the environment. Furthermore, NGOs have filed cases in foreign jurisdictions including the Netherlands, USA and United Kingdom to promote access to environmental justice for victims and stakeholders arising from the activities of MNCs in Nigeria.⁶⁸

5. Shortcomings in NGO Participation in the Environmental Justice Paradigm

NGOs have become powerful entities in the international environmental governance paradigm. However, NGOs 'rarely have established governance mechanisms whereby their members and supporters can hold them accountable for their activities.'⁶⁹ It is paradoxical that NGOs that are in the vanguard of holding companies and government accountable for their environmental misdeeds do not have good democratic or governance mechanisms. A major flaw of some NGOs is the apparent absence of democratic ethos in their governance mechanism. The major question is: whether an NGO is accountable to any one? In democratic countries or corporate boards, leaders are accountable to voters and corporate leaders are accountable to boards of directors or stake holders as the case may be.⁷⁰ Laurence Jarvik argues that 'NGOs are by definition undemocratic and unrepresentative organizations, since they are neither elected nor paid by the population of the countries where they operate.'⁷¹

Furthermore, it can be argued that NGOs are not truly independent. The thrust of this argument is that when Governments or multinational companies are the major providers of funds for certain NGOs, the independence of such NGOs is diminished and they cannot morally attack such governments or MNCs when they are in the wrong with regards to environmental issues. Thus, if governments through its agencies or foundations provide substantial funds to an NGO, the ordinary member or supporter of that particular NGO will exert little or no influence in comparison to the former (government or foundation as the case might be).⁷² Thus, such an NGO will be accountable to the states or foundations rather its ordinary members.

Other criticisms of NGOs include lack of transparency, inefficiency, abandonment of original goals, lack of legitimacy, scandals in the NGO sector and inadequate state regulatory control of NGOs amongst others.⁷³ In the Aarhus Convention in respect to NGO participation, it is posited that that the promotion of environmental matters in the Convention might not necessarily include social justice issues in respect of what constitutes the 'public.'⁷⁴ Most victims of environmental injustice are ethnic minorities and poor countries. Thus, in many NGOs which are mainly composed of white and middle class officials 'fails to reflect the socio-economic, ethnic and cultural diversity of those suffering injustice.'⁷⁵ How can such NGOs adequately represent the interest of victims of the environmental injustice? Furthermore, a major criticism of the Aarhus Convention is that it cannot guarantee the direct participation of environmental justice proponents.⁷⁶ This is due to the wordings of Article 6(5).

NGO involvement in litigations in Nigeria regarding public interests is seriously hampered by the doctrine of *locus standi*. Here, Nigerian courts are hesitant to rule that NGOs or other Non-State actors have legal standing to institute court cases especially in human rights and environmental issues.⁷⁷ In

⁶⁸ Generally, see Ekhaton (n 1).

⁶⁹ Murray Weidenbaum, 'Who will Guard the Guardians? The Social Responsibility of NGOs,' *Journal of Business Ethics* 87 (1) (2009): 147-155.

⁷⁰ *Ibid*

⁷¹ Laurence Jarvis, 'NGOs: A "New Class" in International Relations,' *Orbis* 51(2) (2007) 217-238, 220.

⁷² Weidenbaum (n 69).

⁷³ Antonio Argandoña, 'Ethical Management Systems for Not-For-Profit Organizations' (2007) Working Paper No. 693 (IESE Business School). Also available online at: <http://www.iese.edu/research/pdfs/DI-0693-E.pdf>

⁷⁴ Carrine Nadal, 'Pursuing Substantive Environmental Justice: The Aarhus Convention as a 'Pillar' of Empowerment' *Environmental Law Review* 10(1):28-45.

⁷⁵ *Ibid*.

⁷⁶ *Ibid*

⁷⁷ Oshionebo (n 54). However, it has been argued by scholars that 'Preamble 3(e) of the FREP rules 2009 abolishes the *locus standi* rule in Nigeria and encourages public interest litigations from a diverse range of people and bodies. The FREP rules have revolutionised environmental justice in Nigeria by opening up frontiers or access to justice, thus aggrieved victims or NGOs and other stakeholders can utilise these rules in environmental issues.' See Ekhaton (n 1) 78.

Oronto v. Shell Petroleum Development Company Ltd,⁷⁸ the court held that the plaintiff (a well-known environmental activist) lacked the standing to sue Shell with regards to Shell's failure to observe the provisions of the Environmental Impact Assessment Act. However, NGOs now make recourse to foreign courts not limited to the United States, United Kingdom and the Netherlands in trying to hold MNCs liable for human rights abuses and environmental degradation/pollution cases. *Wiwa v. Shell*⁷⁹ and *Botowo v. Chevron*⁸⁰ were cases which originated from occurrences in the Niger Delta region that tried to use the American statute, the Alien Torts Claim Act to hold MNCs liable for their deeds.

6. Recommendations

In the international environmental governance realm, there have been many proposals to enhance the NGO paradigm. One of such proposals is the use of self-regulation by NGOs. Self-regulation can be achieved by NGOs via codes of conduct, codes of ethics, guidelines on behaviour, and good practices amongst others.⁸¹ According to Lloyd,⁸² some of the reasons why it is paramount that NGOs self-regulate include the large number of NGOs and their growing influence in society, NGOs success in international governance has led other stakeholders (MNCs and States) to question their legitimacy, the rapid spread and growth of NGOs has made it moot for states to effectively regulate them. Thus, self-regulation is an ideal way of regulating NGOs even in States with well-developed regulatory regimes, NGOs need to sustain the trust of the citizens and aim to achieve higher standards in their organizations, and the need to attract funding from different sources makes self-regulation ideal for NGOs. Other proposals for improving the NGO governance system include election of officers or board members by the ordinary members, a more elaborate public reporting (for example, more openness or transparency) of their activities and finances, and deference to the membership in respect of major issues plaguing NGOs.⁸³ In the UN system, NGO participation can be improved in various ways. The reforms include by providing assistance for the development of NGO networks or links, developing standards of NGO participation (or engagement) in the international environmental governance mechanism and the involvement of the public in design, assessing and monitoring of environmental projects.⁸⁴ Furthermore, NGOs should be more transparent and accountable. Also, NGOs should be more proactive in their dealings with MNCs. NGOs in Nigeria can take a cue from the United Nations or other countries by engaging in partnership agreements. In the area of *locus standi* in Nigeria, the African Commission on Human and People's Rights and the ECOWAS regional court have been very proactive in the areas of human rights protection and promotion. Thus, these bodies have opened access to NGOs in Nigeria. Litigations should be taken to these bodies instead of Nigerian courts by NGOs via the Environmental Justice prism. Also, regulatory empowerment of NGOs via the inclusion of empowerment provisions in public policies and statutes should be promoted.⁸⁵ Here, this may include permitting NGOs and individuals to take part in formulation and implementation of environmental policies and empowerment of NGOs will invariably lead to a more democratised decision making process in Nigeria.⁸⁶ Furthermore, arguably the Fundamental Rights (Enforcement Procedure) (FREP) Rules 2009 'abolishes the *locus standi* rule in Nigeria and encourages public interest litigations from a diverse range of people and bodies. The FREP rules have revolutionised environmental justice in Nigeria by opening up frontiers or access to justice, thus aggrieved victims or NGOs and other stakeholders can utilise these rules in environmental issues'.⁸⁷

⁷⁸ Suit No. FHC/L/CS/573/96 [Unreported].

⁷⁹ *Wiwa v. Shell*, 96 Civ 8386 (KMW) 2002 US Dist.

⁸⁰ *Botowo v. Chevron* F. Supp. 2d 1229 (N.D. Cal. 2004).

⁸¹ Eghosa O. Ekhaton, 'Regulating the activities of oil multinationals in Nigeria: A case for self-regulation?' *Journal of African Law* (2016): 1-28.

⁸² Lloyd (2005) *The Role of NGO Self-Regulation in increasing Stakeholder Accountability*. London, One World Trust. Cited in Argandona (n 73) 3.

⁸³ Weidenbaum (n 69).

⁸⁴ Gemmill and Bamidele-Izu (n 20).

⁸⁵ Oshionebo (n 54)

⁸⁶ *Ibid*

⁸⁷ Ekhaton (n 1) 78. Also, see Rhuks Ako, Ngozi Stewart, and Eghosa O. Ekhaton. 'Overcoming the (Non) justiciable Conundrum: The Doctrine of Harmonious Construction and the Interpretation of the Right to a Healthy Environment in Nigeria.' *Justiciability of Human Rights Law in Domestic Jurisdictions*. Springer International Publishing, 2016, 123-141.

7. Conclusion

NGOs play integral roles in the environmental justice paradigm in the three spheres in focus in this paper. The view of this paper is that the present state of NGO participation in environmental governance in the aforementioned spheres is limited apart from the Aarhus Convention. In the UN system, NGO participation is still limited. Here, 'ad-hoc civil society participation should be replaced by a strengthened, more formalized institutional structure for engagement.'⁸⁸ The Aarhus Convention has revolutionised NGO participation in international environmental governance and it can be used as a tool for environmental justice promotion. In Nigeria, NGOs have utilised the environmental justice paradigm to improve access to victims of environmental injustices in the country. However, there are still many barriers limiting effective NGO participation in the environmental justice paradigm in Nigeria. Scholars have argued thus: 'However, seeking redress in Nigerian courts is not problem free. Some of the problems associated with litigation in Nigeria include limited resources of litigants, delays in the judicial process, the strict requirement of *locus standi* proof, and the over-reliance 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. These factors have hindered access to justice, especially environmental justice in Nigeria'.⁸⁹

⁸⁸ Gemmill and Bamidele-Izu (n 20) 1.

⁸⁹ Ekhaton (n 1) 68.