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Content

4 Editorial
- Oliver Mtapuri and Collins Ngwakwe

5 Legal remedies for oil pollution in Nigeria: Local challenges and extra-territorial options
- Deji Olanrewaju and Jerome Okoro

21 Customers’ perceptions of electronic banking in Nigeria
- Akinyomi, Oladele John and Olagunju, Adebayo

33 Civil society and human rights in Nigeria’s Fourth Republic
- Nathaniel Umukoro

50 Of stakeholder intentions and actions in poverty relief projects: Lessons from South Africa
- Seshoene Molimisi Evans

63 Editorial Policy and Manuscript Specifications
EDITORIAL

This issue of the Journal of Business and Public Dynamics for Development examines a variety of issues on the African continent informed by the challenges the continent is facing. These debates and discourses are important in order to reflect on the status quo and map the way forward. For Africa, these challenges seem insurmountable, and as such the contributions from the authors featured in this issue reflect on matters that inform both policy and practice for a better Africa and the world.

In their article, Deji Olanrewaju and Jerome Okoro present the problem of oil pollution in Nigeria. They argue that this problem cannot merely be addressed by utilizing the state’s judicial and administrative mechanisms. Using a largely doctrinal methodology involving a systematic survey of available material and literature and drawing opposite conclusions, they argue, inter alia, that it is important to amend sections of the 1999 Constitution in order to grant equal jurisdiction to High Courts of States and the Federal High Courts in respect of environmental pollution matters as the statutory and tort defense of acts of third parties were an obstacle to claims for oil spillage. They also lend their support to the judicial activism of some Nigerian judges as one of the remedies.

Oladele John Akinyomi and Adebayo Olagunju examine customers’ perceptions of e-banking in Nigeria. Using a survey research design, a structured Likert-scale questionnaire was administered to bank customers in Lagos. They conclude that customers extensively utilized the electronic delivery channels introduced by banks and that ATMs were the most favoured and highly ranked channel. However, these new banking channels have been associated with increased bank charges which they liken to exploitation of customers. They recommend that more moderate fees be charged in order to retain customers and at the same time ensure the banks’ profitability and sustainability.

In his article, Nathaniel Umukoro presents an exposition of human rights violations in Nigeria. He argues that human rights violations have continued after the end of military rule and that civil society organizations have not been successful in ensuring the protection of those rights. As such, he recommends that these organizations reposition themselves to play a proactive role in protecting human rights by inter alia promoting and advocating the integration of human rights education in the curricula of the military, the police and other security sectors in Nigeria.

Seshoene Molimisi Evans, expounds on lessons learnt from a bread making project in South Africa which aimed to reduce unemployment and alleviate poverty, but failed on both accounts. He argues that to avoid collapse, there should be space for communities to participate within the context of a framework cemented by a service level agreement between stakeholders, undergirded by comprehensive plans covering project management, financial management and monitoring and evaluation. Seshoene identifies some of the challenges leading to collapse as the low level of education of project members in finance which contributed to the absence of project records as well as lack of support by community members due to blurred roles in the project.

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LEGAL REMEDIES FOR OIL POLLUTION IN NIGERIA: LOCAL CHALLENGES AND EXTRA-TERITORIAL OPTIONS

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ABSTRACT

The problem of oil pollution has been with Nigeria since the commencement of oil exploration in the Delta Region of the country in 1956. It has now reached alarming proportions, which if not reversed, or slowed down, may lead inevitably to unmitigated decline in the country’s ecosystems that sustain human life. It is against this background that this article examines the local challenges and extra-territorial options to remedy oil pollution in Nigeria. The article argues that the problems associated with oil pollution are too fundamental to be tackled by merely deploying judicial and administrative mechanisms of state control for redress. It is therefore concluded that solutions to oil pollution should move beyond the limits of statutory and judicial regulations to a much higher judicial level.

Keywords: Oil Pollution, Environment, Legal Remedies, Sustainability

INTRODUCTION

The environment is an essential part of humankind’s existence on earth. The study of the environment in its many ramifications has continued to attract the attention of scholars from various disciplines (Aina and Adedipe)1. However, while previous studies have provided a cogent overview of environmental policies in Nigeria, there is a paucity of research on an important dimension of policy implementation in the country (Imerbore and Okorodudu)2. This article examines legal remedies to ameliorate oil pollution in Nigeria. It highlights the dangers of oil pollution to the eco-system; evaluates the oil and gas laws that seek to control this pollution; and proposes reforms and recommendations for synergy between local and foreign remedies for oil pollution in Nigeria.
MATERIALS AND METHODS

The methodology of this study is largely doctrinal, involving a systematic survey and exposition of available materials and literature, and drawing logical conclusions. A normative content analytical approach is adapted. The content analysis method may be used in virtually any form of communication (Babbie and Mouton 2000). Content analysis is appropriate for this study, as it aims to appraise the effectiveness of legal instruments relating to environmental law and policy.

CONCEPTUAL CLARIFICATIONS

Black’s Law Dictionary defines the ‘environment’ as “The totality of the physical, economic, cultural aesthetic and social circumstance and factors which surround and affect the desirability and value of property and which also affect the quality of people’s lives”. Pollution was defined at the United Nation Conference, 1972 as, “the discharge of toxic substances and release of heat in such quantities or concentrations as to exceed the capacity of the environment to render them harmless”.

Pollution refers to the indirect or direct introduction by human beings of substances or energy into the environment, resulting in deleterious effects such as harm to living resources, hazards to human health, hindrances to marine activities including fishing, impairment of the quality of sea water and the reduction of amenities.

The Nigeria National Environment Standards, Regulations and Enforcement Agency Act states that, the environment includes water, air, land and all plants and human beings or animals living therein and the inter-relationships which exist among these or any of them. The Canadian Environmental Protection Act, 1988 defines the environment as a component of the earth that includes:

(a) Air, land and water;
(b) All layers of the atmosphere;
(c) All organic and inorganic matter and living organisms,
(d) The interacting natural systems that include components referred to in paragraphs (a) to (c).

The by-products and waste that are produced during the course of exploration, exploitation, refining, transportation and consumption of oil products result in environmental pollution.

Pollution is defined by the Stockholm Declaration of 1972 as:

The introduction by man, directly or indirectly, of substances or energy into the environment resulting in such deleterious effects as a hindrance to marine activities including fishing, impairment or quality and use of sea water and reduction of amenities.
Under the repealed Nigerian Federal Environmental Protection Act, environmental pollution was defined as the man-made or, man-aided alteration of the chemical, physical or biological quality of the environment to the extent that is detrimental to that environment or beyond acceptable limits.

It is clear that there is no universally accepted definition of pollution. However, there is general agreement that pollution is detrimental to the sustainable development of the environment.

The problems associated with the pollutants resulting from activities in the oil industry include flooding and coastal erosion, sedimentation, degradation and depletion of water and coastal resources, land degradation, air pollution, land subsidence, biodiversity depletion, noise and light pollution, low agricultural production, health problems and socio-economic problems.

LITERATURE REVIEW

There is a rich literature on oil pollution in Nigeria. Adegoroye observes that, the Nigerian government, like most Africa governments, believed that environmental protection was synonymous with the conservation of natural resources, while “concerns for industrial pollution control and hazardous waste management were treated as both esoteric and attempt to slow down the pace of industrialization”. Imvebore and Okorodudu- Fabara assert that Nigeria has no articulate comprehensive policy on the environment; hence the menace of oil pollution in the country. Lawal is of the view that the government’s efforts to respond to global concerns regarding environmental degradation are hampered by ineffective action on the part of the officials that are responsible for policy implementation. Ikhariale also argues that the issue of oil pollution of the environment is too important to be left to the conventional level. All these scholars agree that oil pollution is detrimental to sustainable growth and development.

Environmental protection in the oil industry

Commercial oil discovery and extraction in Nigeria resulted in oil pollution, and as it increased, the stark environmental implications of petroleum activities stared Nigerians and their government in the face. Environmental safety consciousness led to the creation of a statutory and institutional framework to combat the environmental perils of oil activities. Various laws were passed to provide preventive and remedial measures against oil pollution. An example is the Oil in Navigable Water Act. The aim of this Act is to implement the terms of the international Convention for the Prevention of Pollution of the Sea by Oil and to make provision for such prevention in the country’s navigable waters. With respect to enforcement, section 12 of the Act states that proceedings shall be brought in respect of any offence only by or with the consent of the Attorney-General of the federation.
The following questions arise: To what extent have these local measures shielded the environment from continuous degradation and its inhabitants from slow death in the midst of petroleum activities? Have these laws provided remedies for the ills suffered by people as a result of oil pollution? To what extent do these local measures deter the multinational agents of oil pollution?

A ready response to these questions is that while some of the laws are simply impotent, others function at a miserably low pace, and so, with near impunity, the oil giants turn the environment into a perilous cave for its inhabitants. The impact of this peril transcends national boundaries, mainly for the reasons stated below:

There is only one world environment. National boundaries which have demarcated the world into distinct nations are anthropogenic. Of the three media which constitute world environment resources, vis-à-vis land, air and water, the “air” and “water” are the least respecters of these man-made national boundaries. Despite man’s ingenious environmental modification techniques, the wind blows and rivers flow in accordance with the forces of nature, not political dictates. Because of the impracticability of actual and clearly defined national boundaries across the world’s oceans and atmosphere, they have come to be regarded more as common resource i.e. (Global Commons) for the entire planet 16.

This apt description of the environment, coupled with the very nature of the pollutants, calls for extra-territorial attention to oil pollution. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Each individual should have appropriate access to information on the environment held by public authorities, including information on hazardous materials and the opportunity to participate in decision-making processes. To illustrate this point, gas flaring from one location in a country directly attacks the ozone layer which provides the protective shield for the entire world against the deadly rays of the sun. The effects of oil in navigable waters also know no geographical boundaries; oil pollution in Nigeria spreads to neighboring countries, with devastating effects on eco-systems.

Moreover the petroleum stage of the developing world is dominated by foreign players from the developed word. It is therefore only fair and just that there should be foreign remedies for the environmental wrongs arising from the activities of these companies. All the oil exploration companies in Nigeria are foreign owned. The pollution caused by these companies in Nigeria would not be tolerated in their own countries. This sad and ugly situation calls for collective, global efforts to combat the environmental pollution caused by oil both in terms of preventive and remedial measures.

This article examines oil pollution and its various forms, the strengths and weaknesses of local measures to combat oil pollution in Nigeria and international measures against oil pollution. The United States Foreign Tort Claims Act and similar foreign laws are of particular interest in terms of their extra-territorial applicability. However, such foreign remedies have their own limitations, leading to the article’s call for synergy between local and foreign remedies for oil pollution in Nigeria.
Appraisal of Nigerian laws on oil pollution

The core Nigerian laws with preventive and compensatory provisions relating to oil pollution are:
(a) Petroleum Act CAP P10, Law of the Federation, 2004;  
(b) Oil in Navigable Waters Act CAP 06, Law of the Federation, 2004;  
(c) Oil Pipeline Act CAP 07, Law of the Federation, 2004;  
(d) Associated Gas Re-injection Act CAP. A25, Law of the Federation, 2004;  
(e) Environmental Impact Assessment Act CAP. E12, Law of the Federation, 2004; and  
(f) National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA) 2007.

Other laws that are peripherally linked to oil pollution and fall within the criminal regime include; The Criminal Code, and The Harmful Waste (Special Criminal Provisions etc) Acts. A brief review of each of the core Acts is required in order to understand their limitations in combating oil pollution.


Some weaknesses of this legislation in respect of environmental rights are easily identifiable. Section 9(b) (iii) of the Act empowers the Minister of Petroleum Resources to make regulations relating to Petroleum licenses in order to prevent the pollution of water courses and the atmosphere. Pursuant to this, the Petroleum (Drilling and Productions) Regulations provide that if a licensee or lessee exercises the rights conferred by his license or lease in such a manner as unreasonably to interfere with the exercise of any fishing rights, he shall pay adequate compensation therefore to any person injured by the exercise of those first mentioned rights17. The weakness of this provision is the undue qualification of the licensee's or lessee's liability by the words, "in such a manner as unreasonably". The implication is that a violation of one's fishing rights by the exercise of a license or lease right does not automatically entitle one to compensation; rather, the manner in which the latter right was exercised to result in the damage is the sole determinant of liability. Thus if the licensee or lessee has not acted "unreasonably", but his acts resulted in damage, he would not be liable. This is an undue circumscription of the compensatory right created by this section, especially with the usual subjective test of unreasonableness.

Taking these loopholes into account, it is fair to state that, in terms of environmental rights, what the Petroleum Act gives with the right hand; it takes back with the left.
The Oil in Navigable Waters Act Cap 06, L.F.N. 2004 was first enacted in 1968 in pursuance of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954 which Nigeria adopted after independence. The Act aims to protect water courses from oil discharges. However, it totally ignores the civil liability aspect of discharging oil into water ways and thus makes no provision for compensation to the victims of such oil discharges, leaving them at the mercy of the tort regime which is fraught with vagueness. The gravity of this loophole can be observed in the previous statement that oil on water knowing no bounds. From navigable water, such oil may reach inland water bodies and interfere with local fishing rights, among other rights. However, there is no remedy for the violation of these civil rights.

Section 17(4) of the Oil Pipelines Act Cap. 07 L.F.N. 2004 provides for the prevention of pollution from oil pipelines by subjecting oil pipeline licensees to the provisions of the Act and Regulations concerning the prevention of pollution of land and waters included in licences. Section 6(3) of the Act also prohibits damage to land, crops and valuable trees and compensation to owners of such land, crops and trees where such damage occurs. Section 11(5) provides for wide ranging compensation to victims of damages arising from the exercise of rights conferred by oil pipeline licences. The most significant provision concerns compensation to any person suffering damage as the consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good. These provisions protect the interests of victims of oil pollution arising from pipeline spillages. However, the Act provides licensees with the ready defence of sabotage by absolving them of liability for damages occurring “on account of the malicious act of a third person”. Two issues of keen interest arise from this limitation. Firstly, in relieving pipeline licensees of liability for malicious acts by third parties, notably pipeline vandalization, the Act ignores the fact that negligence on the part of the licensee, for example, failure to replace ageing pipe equipment or promptly cover pipes exposed by erosion or landslides, can facilitate vandalism. What stops the Act from making the licensee liable to the extent of that omission? Secondly, pipeline vandalization is a highly prevalent crime in recent times and it is right and proper that the vandal bears civil liability for the resultant damage when the licensee is totally blameless. Unfortunately, beyond liability under the criminal regime, there is no statutory provision for the civil liability of the vandal.

The Associated Gas Re-injection Act Cap. A 25 L.F.N. 2004, originally enacted in 1979, has the twin objectives of prohibiting gas flaring and ensuring the utilization or preservation of the gas incidentally extracted in the course of petroleum operations. Sadly however, the Act has failed in both objectives. Section 3(12) of the Act empowers the Minister to permit gas flaring when the re-injection or utilization of same is not feasible. The company so permitted may pay a prescribed fee. This is an easy escape route for companies, as the cost of gas re-injection or utilization is far more than the cost of gas flaring and the payment of a paltry fine. Consequently, despite this Act, gas flaring continues ad libitum.
The Environmental Impact Assessment Act requires any person intending to carry out an activity that may affect the environment to conduct a preliminary study of its environmental impact, and where there would be a significant adverse effect, an Environmental Impact Assessment (EIA) shall be carried out in accordance with the provisions of the Act. An EIA is mandatory in the case of petroleum operations. This Act provides for penal sanctions for contravention namely, a N100,000 fine or five years imprisonment for individual offenders, and a minimum of N50,000 and maximum of N1,000,000.00 fine for corporate offenders. The upper limit of the fine for corporate offenders is strong grounds for criticism of the Act as this does not take cognizance of inflation and the diminishing value of the fine in recent years, vis-à-vis the grave, enduring damage that might result from the failure to conduct an EIA or otherwise comply with the Act. Moreover, in the case of petroleum operations, all the offenders are corporate bodies to which this upper limit of the fine applies. One would have expected that the fine for such entities would have no limit considering the magnitude of their activities and the enormity of damage arising there from. Worse still, the Act makes no provision for civil liability for environmental wrongs resulting from failure to conduct an EIA.

The National Environmental Standards and Regulation Enforcement Agency (Establishment) Act 2007 (NESREA) repealed the Federal Environmental Protection Agency Act (FEPA) and established the National Environmental Standards and Regulations Enforcement Agency. The objectives of this agency are the protection and development of the environment, biodiversity, conservation and the sustainable development of Nigeria’s natural resources in general and environmental technology, including co-ordination and liaison with relevant stakeholders within and outside the country on the enforcement of environmental standards, regulations, rules, laws, policies and guidelines.

A point of confusion is that this significant legislation on environmental protection virtually exempts the oil and gas sector from its provisions. For instance, section 7(1) mandates the Agency to “enforce compliance with regulations on the importation, production, distribution, storage, sale, use, handling and disposal of hazardous chemicals and waste other than in the oil and gas sector” and further to “enforce through compliance monitoring, the environmental regulations and standards on noise, air, land, seas, oceans and other water bodies other than in the oil and gas sector”.

Given these exemptions, it is extremely ironic that the Act provides for a representative of oil exploration and production companies in Nigeria to sit on the Governing Council of the Agency; and mandates the Agency to enforce compliance with the provisions of international agreements, protocols, conventions and treaties on the environment, including climate change, oil and gas among other things. These provisions contradict the exemptions. This has led to the observation that the NESREA Act, rather than providing a more coherent framework for monitoring compliance with environmental laws and regulations in the sector, may indeed create more confusion.
Obstacles to judicial remedies

As noted earlier, the lacunae in some of the laws reviewed compel aggrieved victims of oil pollution to turn to tort remedies. Numerous challenges confront these victims in their bid to judicially enforce either these tort options or statutory remedies.

Resort to the courts confronts the challenges of jurisdiction, locus standi and limitation of action, while each of the remedial means under the tort regime, namely, negligence, nuisance trespass and the Rule in Rylands v. Fletcher has its own peculiar hindrances. These judicial challenges are examined individually.

Jurisdiction

Jurisdiction is fundamental to the judicial process. Hence, any proceedings conducted, or decisions taken by a court without the jurisdiction to do so would amount to a nullity.

Section 251(n) of the Constitution of the Federal Republic of Nigeria 1999 provides that the Federal High Court has exclusive jurisdiction in terms of “mines and minerals (including oil fields, oil mining, geological surveys and natural gas)”. It is a well known fact that the divisions of the Federal High Court do not adequately cover the Federation. Indeed, in states where they exist they are mainly located in the capital cities. The exclusive jurisdiction vested in this court for petroleum matters therefore represents undue circumscription of individuals and communities’ access to justice. The activities of the oil firms and the resultant pollution are concentrated in remote rural areas where farmlands, commercial streams, fish ponds, and fishing rivers are polluted by oil. Vulnerable local victims are confronted by the challenges of cost and distance in pursuing justice in the Federal High Court.

Such claims could well be pursued via Fundamental Rights Enforcement Procedure Rules wherein the Federal High Court shares jurisdiction with the High Courts of States. Application of the Rules is for the enforcement of the rights in Chapter 4 of the 1999 Constitution, and farmlands and waters that harbour fish are clearly property, the right to which is recognized in Chapter 4 of the 1999 Constitution. However, since the farmlands and waters are mainly communally owned, this would only create group, rather than individual, rights. It is, however, submitted that a liberal interpretation of the constitutional provision for the right to life implies that the health perils of oil pollution and its ultimate threat to life constitutes violation of the right to life, enabling an individual to resort to the Fundamental Rights Enforcement Procedure Rules. Furthermore, Section 46(1) of the Constitution does not restrict action for rights enforcement to actual violation of the rights. It also envisages the likelihood of such violation. The section is reproduced hereunder:

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“Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him, may apply to a High Court in that State for redress”.

Considering the above provision, it is submitted that a breakdown of an individual’s health as a result of continuous oil pollution would create a likelihood of the contravention of the individual’s right to life if such pollution is unabated, and ipso facto entitles the individual to redress.

Jurisdiction was the contentious issue in Shell Petroleum Development Company (Nigeria) Limited v. Abel Isaiah32. In this case, the Respondent had successfully claimed N22 million damages from the Appellant at the Rivers State High Court for damage caused by oil spillage from the Appellant’s pipeline. The Court of Appeal upheld the decision. However, the Supreme Court considered the Federal High Court (Amendment) Act and Section 230(1)(0) of the Constitution (Suspension and Modification) Decree No. 107, 1993 which is equivalent to Section 251(1) (n) of the 1999 Constitution and held that the High Court of Rivers State lacked jurisdiction in the matter, and therefore reversed the decision.

Locus Standi

This means the right or “standing” of an individual or a group to maintain an action.

The attitude of Nigerian Courts to the issue of locus standi in oil pollution is that in order to maintain an action for damages arising from oil pollution, the Plaintiff must show that he/she has sufficient interest in the course of action. Since oil spillage pollutes mainly communal and family lands and fishing rivers, the course of action usually taken by the victims of such pollution is to commence representative action. In Shell Petroleum Development Company Nig. Ltd v. Otoko & Ors33, the Respondents sued by representative action for pollution of their rivers and creeks by crude oil. The Court of Appeal held inter alia that the persons represented and their representatives must share common interest and common grievance in the course of action and must have a common grievance in the suit, while the reliefs sought must be beneficial to all. The representative action in that suit was therefore held to be a nullity.

In Amos v. SPDC Ltd34 the Defendant had built an earth dam across the Plaintiffs’ creek, thereby flooding and damaging farms and hindering canoe movement. The claim was dismissed on the grounds inter alia that the losses suffered by the plaintiffs were separate in character and not communal; thus they could not maintain action in a representative capacity.

It can be deduced from the above that while individual victims of oil pollution would face the obstacle of locus standi owing to the communal nature of most losses arising from pollution, the community in turn may also be frustrated in a representative action due to lack of uniformity of the requirements required for representative action.
Challenges of the Tort Regime

A major challenge of the tort regime is that it is replete with too many elements requiring proof by the Plaintiff. This makes it a very unfriendly and discouraging route in oil pollution claims. As rightly noted;

“the remedies offered by the common law under the law of tort are ill-suited for the purpose of contending with oil pollution” 35.

Even when the Plaintiff succeeds in actions in tort, the court may be inclined to award absurdly low damages. For instance, in R. Mon & Anor v. Shell B. P. 36, the court awarded N200 damages to the Plaintiffs. In respect of the elements to be proved by the Plaintiff in this regime, the plight of the Plaintiff in the negligence category of tort is that he/she must establish a duty of care owed him/her by the Defendant; breach of that duty by the Defendant; and resultant damages on him/her, the Plaintiff. This is a huge burden on the poor, local victims of oil pollution, whereas the multinational oil giants are easily able to afford expert evidence to prove their maintenance of duty of care. It is suggested that resort to res ipsa loguito would be a leeway in this circumstance.

While oil pollution is a mainly public nuisance affecting individual interests, an individual Plaintiff seeking remedy for public nuisance must establish that he/she has suffered losses over and above other members of the public. This was the judicial barrier created in 1977 in Amos v. S.P.D.C. Nig Ltd37. Well over a decade later, in 1991, the Supreme Court in Adeniran v. Inter-land Transport Ltd38 reversed that obnoxious old rule, by establishing the right of a private individual to sue in public nuisance without the Attorney-General’s fiat. This decision is commendable for its conformity with the wide ambit of an individual’s right to approach the Court under Section 6(6) (b) of the 1999 Constitution.

In the case of trespass, the proprietary interest of the Plaintiff either in the form of ownership or lawful possession is an essential requirement to ground an action. Unfortunately, while the polluted lands and waters are usually communal property, they embody an individual’s means of livelihood like fishing and farming which are ruined by the pollution, and aggrieved individuals would lack the proprietary requirement for an action in trespass.

The Rule in Rylands v. Fletcher holds a Defendant strictly liable in tort upon proof that he brought something upon his land which escaped to somewhere outside his occupation or control and thereby caused damage. The ideal feature of this Rule is its strict liability against the Defendant. It was thus successfully invoked in Machine Umudje v. Shell B.P. Nig. Ltd39. However, the Plaintiff must prove non-natural use of the land by the Defendant. This, coupled with the numerous defences, constitutes a limitation. Those defences are; act of God, act of the Plaintiff, consent of the Plaintiff, act of Third Party, and statutory authority. In Ikpede v. S.P.D.C. Nig. Ltd40, the Defendants evaded liability under the rule because their pipeline was laid pursuant to a license obtained under the Oil Pipeline Act – statutory authority.
Foreign remedies

The foregoing discussion has exposed the inadequacies of local instruments in preventing or compensating for oil pollution. Fortunately, there are pertinent foreign remedies to complement or even substitute for local ones. These comprise international treaties, conventions and declarations which bind nations upon ratification and domestication, or which at least herald the enactment of similar local laws to serve their purpose in a country41. The provisions of the national laws of some foreign jurisdictions also traverse national boundaries such that victims of oil pollution in other countries can resort to such enactments and enforce their rights at the enacting nation if such pollution is caused by nationals of the enacting nations. These laws are termed ‘extra-territorial’ because of their transnational availability. The United States of America is renowned for such laws. These extra-territorial laws and international laws in the form of treaties are separately appraised below.

International Environmental Laws and their Impact on Nigerian Environmental Law

Nigeria has adopted several treaties and conventions for the protection and preservation of the environment from oil pollution. These include the United Nations Convention on the Continental Shelf, 1958. Article 5(1) of this convention provides that the exploratory and exploitative right over the Continental Shelf shall not cause unjustifiable interference with navigation, fishing or the conservation of the living resources of the seas. This convention is reflected in Nigerian legislation, for example, the Petroleum Act which vests ownership and control of petroleum on the Nigerian Continental Shelf in the Federal Government of Nigeria42. There is also a separate Continental Shelf Act. The International Convention for the Prevention of Pollution of Sea by Oil, 1954 (as amended in 1962) is the forerunner to the Nigerian Oil in Navigable Waters Act. More recently, the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol (Ratification and Enforcement) Act, 2007 came into force in April 2007 as a Nigerian domestication of this international protocol.

The United States Extra-territorial Environmental Laws

As noted earlier, the US is renowned for its body of environmental protection laws, most of which have extra-territorial impact. Examples include the comprehensive Environmental Response and Liability Act43 and the Oil Pollution Act of 1990. The best-known is the US Alien Tort Claims Act which grants Federal Courts in the US original jurisdiction in any civil action by an Alien for a tort committed in violation of the law of the nation or a treaty of the US. This Act has been in place since 1789, but the US Supreme Court has continued to expand its scope and applicability by way of interpretation. For instance, the case of Filartiga v. Pena-Irala44 decided in 1980 opened a floodgate for human rights claims under the Act after nearly two centuries of dormancy. Likewise, bringing claims under the Act against transnational companies for environmental pollution or destruction is a recent development45.
With the current scope of this Act, an Alien can sue American multinational oil companies in US Courts for environmental wrongs committed by those companies in the Alien’s country. A positive effect of this Act is that, with its popularity in third world oil producing nations like Nigeria, US investors in petroleum operations in such countries are wary of the potential liability created by the Act for any environmental wrongs they might commit in the host country. They would therefore take the utmost care to evade such liability by carrying out their activities in environmentally-friendly ways. Moreover, when such environmental wrongs occur, the individual or group victims can by-pass local statutory and judicial mechanisms with their numerous obstacles highlighted above to seek damages from the US Courts.

Limitations of the US extra-territorial laws

Attractive as they may seem in redressing environmental wrongs in Nigeria, the US extra-territorial laws also pose challenges to Aliens claiming under them.

Firstly, extra-territorial laws may interfere with a state’s sovereignty to exploit its natural resources pursuant to its own domestic laws. Secondly, without financial or legal aid for the victims of pollution in a country like Nigeria, such victims, who can seldom afford the cost of litigation in Nigerian courts, would be unlikely to be able to afford to sue in the US Courts, notwithstanding the prospect of a higher value of damages from these Courts. Thirdly, the lack of uniform environmental standards between the Nigerian and US legal regimes may put the US Courts in a quandary in awarding damages. While the US standards are indisputably higher, the course of action must have arisen under Nigerian laws in the first place. Another thorny issue of law which may constitute a readily available leeway for the defendant to escape liability under the Alien Tort Claims Act is the issue of legal personality. In order to obtain a licence or lease for petroleum operations in Nigeria, a foreign investor must incorporate a company in that country. Such a company, having been registered in Nigeria, is a legal personality in Nigeria but not in the US. Can it then be sued in the US? This would depend on the body of US laws and the judicial attitude to legal personality.

Another challenge to Aliens under this Act is that the US Courts themselves have shown disinclination to entertain claims from foreign countries for environmental wrongs, which as stated earlier, is a recent class of claims under the Act. In the two instances of Wiwa v. Royal Dutch Shell Petroleum Co. and Aguinda v. Texaco Inc., claims brought by Nigerian Plaintiffs under the Act were dismissed by the US Courts for lack of jurisdiction.

These challenges suggest that extra-terrestrial remedies are not clear-cut alternatives to local remedies; they can at best be described as supplementary remedies of last resort.

CONCLUDING REMARKS

It is clear that the Nigerian legislature and judiciary have a long way to go in preventing and compensating for oil pollution. There are reasons for the laxity in enacting and enforcing
anti-pollution laws in the country. Since its discovery in large commercial quantities, oil has occupied a dominant place in Nigeria's economy. It is the government's chief source of income. It is searched for and produced by foreign investors, who have the wherewithal. The Nigerian Government does not want to scare away these foreigners with strict environmental laws or strict application of such; hence the handling of the grave peril of oil pollution with kid gloves.

Extra-territorial laws, particularly the US Aliens Tort Claims Act, which did not originally include environmental claims, but later assumed that scope, are also illiberal. US Courts seem wary of the burden of damages from claims from all over the globe against US multinational companies.

In the light of the above, the following recommendations are made:

**RECOMMENDATIONS**

A Petroleum Industry Bill has been proposed for an Act that would constitute the chief legislation for the petroleum industry in Nigeria. On coming into force, it would replace the Petroleum Act and other related legislation. However, its environmental prospects are dim. In terms of the protection of the environment in respect of petroleum activities, the Bill states, “In the course of exploration or production activities in respect of Petroleum, no person shall injure or destroy any tree or object which is (a) of commercial value (b) the object of veneration to the people resident within the petroleum prospecting licence or petroleum mining lease area, as the case may be”. The Bill makes no reference to waters, farmlands and fishing sources. Whilst it is still open to public comment, this has to be revisited to ensure that the Bill, when it becomes an Act, would not be limited by the limitations of its predecessors.

It is also recommended that Section 251 (1) (n) of the 1999 Constitution be amended to grant equal jurisdiction to High Courts of States and the Federal High Courts in respect of environmental pollution matters.

This article has shown that, the statutory and tort defense of acts of third parties is an obstacle to claims for oil spillage. Such defence should not be absolute. Thus when the act of a third party is facilitated by the licensee's negligence, for instance, pipeline vandalism facilitated by rust or exposure of the pipe which the licensee fails to repair, the licensee should be made to bear some liability, although the quantum of damages should be lower in this case. Where all such repairs or replacement are carried out and vandals still cause damage, the civil liability of the vandals for damages should be included in the Oil Pipelines Act.

Urgent attention is required to establish a practical means to eradicate gas flaring and the utilization of the gas extracted in the course of petroleum operations rather than impotent legislation for the re-injection of the gas.

The judicial activism exercised by some Nigerian judges in some instances during the ouster clause era of military decrees is needed when the statutory provision on environmental
wrongs seems lax.

In its concessional agreements with multinational oil companies, Nigeria should bind such companies to oil pollution remedies in their home countries.

Finally, a Legal Aid Scheme should be established for oil pollution victims seeking relief under the US Alien Tort Claims Act; this should be overseen by the Nigerian Embassy in the United States.

End notes


3) Babbie E. and Mouton J. (200); The Practice of Social Research, Oxford University Press.

4) 6th Edition pp 331

5) This Conference heralded the United Nations Environmental Programme (UNEP).

6) Blocker P.C. and Maranowski, M.H. (1971); Survey on Quality of Refinery Effluents in Western Europe Petroleum Review P. 30. See also the case of Chief Otuku & Others V Shell B.P. Suit No. BHC/83 (unreported) Bori High Court decided on 15th January, 1985 where the trial judge held that oil pollution constitutes a hazard to organisms because it has a deleterious effect on human beings and marine life thereby rendering land infertile.


8) The Canadian Environmental Protection Act 1988 S. 3(1).


15) The First Commercial oil discovery in Nigeria was made in 1956 in Oloibiri at the Onshore Niger-Delta.


17) See Regulation 23

18) S. 11 (5)(c)

19) This is the bracketed exemption in S. 11 (5) (c).


21) Paragraph 12 of the Schedule to the Act.

22) See S. 60 of this Act.

23) Section 7(2)

24) Section 7(1)

25) Section 8(g)

26) Section 3

27) Section 7(c)


29) 7up Bottling Co. Ltd v Abiola (2001)5 MJSC 93 @ 97

30) This is the body of rules made by the Chief Justice of Nigeria with powers derived from Section 46(3) of the 1999 Constitution to regulate practice and procedure in the enforcement of the rights contained in Chapter 4 of the constitution. The Current one is the fundamental Rights Enforcement Procedure Rules, 2009.
31) 2001 SSC (Pt 11) 1.
32) (1990) 6 NWLR (Pt 159) 693.
33) (1974) 4 ECSLR 48
36) (1977) S.C. 109
39) (1973) AUNLR 61
42) 630 – 2d 867 (2d Cir. 1980).
44) Section 2(2) Petroleum Act CAP P.
46) 226F 3d 88 (2d Cir. 2000).
47) 2d 533 (S.DNY 2001)
CUSTOMERS’ PERCEPTIONS OF ELECTRONIC BANKING IN NIGERIA

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ABSTRACT
This study examines customers’ perception of e-banking in Nigeria. A survey research design was employed in the study. Data were collected using a structured Likert-scale questionnaire administered to 300 purposively selected bank customers in Lagos. Descriptive statistics were used to analyze the data. The analysis revealed that customers patronize the various e-banking channels introduced by banks in Nigeria. Among the electronic delivery channels, ATMs were ranked first, followed by telephone banking. The introduction of electronic banking has reduced the time spent on bank transactions and also enhanced a timely response to customer enquiries. However, the introduction of e-banking channels is associated with increased bank charges. The major recommendation is for banks to charge moderate fees on services rendered to their customers. This will enhance customer loyalty which is fundamental in ensuring profitability and corporate sustainability.

Key Words: Customer loyalty, E-Banking, Nigeria, Sustainability
INTRODUCTION

Hasan, Baten, Kamil and Parveen (2010) observe that since the beginning of the past century, the world of business has witnessed dramatic developments in information technology and communication. These developments have contributed to the transformation of the performance of various economic sectors, including banking. Modern concepts such as e-finance, e-money and e-banking have emerged in the financial services sector (Mohammad, 2010). The recent plan by the Central Bank of Nigeria (CBN) to introduce a nationwide cashless policy has brought to the fore the significance of electronic banking to the Nigerian economy.

STATEMENT OF PROBLEM

The last decade of the 20th century saw the widespread adoption of information technology in business and finance as traditional paper-based transactions were replaced by electronic network transactions, including a primarily internet-based electronic stock exchange, electronic banking (e-banking), e-cash services and smart cards (Azouzi, 2009). Automated teller machines (ATMs) replaced cashier tellers, the internet substituted for mail, electronic cash and smart cards replaced traditional banking operations, and bank branches were displaced by call centres (Herbst, 2001). Bughin (2004) confirms the significant impact of information technology in the banking and financial services sectors (2004). While advances in information technology are drastically changing the way in which people live and banks, in particular, offer their products and services (Ravi, Schrick and Parzinger, 2001) there is a paucity of research on customers’ perception of electronic banking in Nigeria. This study therefore aimed to determine the degree of awareness of electronic banking in Nigeria; establish the various types of electronic delivery channels available to bank customers in Nigeria and investigate how electronic banking affects service delivery in Nigerian banks.

LITERATURE REVIEW

Globalization and information technology (IT) have taken the world by storm and have posed significant challenges to the banking industry (Garuba, 2008). Information technology has changed not only the business world but the world we live in. Garuba and Aigbe (2010) observe that the wonders of modern technology have made it possible for bank customers to interact with an electronic banking facility such as an ATM rather than with a human being for cash transactions. Electronic banking is one of the newest services offered by Nigerian banks to their customers (Komolafe, 2010). It involves amongst others things, ATMs, point of sales (POS), and telephone banking.

Ahasanul, Ahmad and Abu (2009) compared several electronic distribution channels available to banks in Malaysia and concluded that customer orientation towards convenience, service, technological change, and knowledge of computing and the internet affect the usage of different channels. Azouzi (2009) found that the most important factors encouraging consumers to use electronic banking are lower fees, followed by reduced paper work and human error, which minimize disputes between the customer and the bank.
Bora’s (2009) study on internet banking in Turkey found that changing consumer attitudes rather than bank cost structures determined changes in distribution channels; he added that virtual banks can only be profitable when the segment that prefers electronic media is approximately twice the size of the segment that opts for street banks. The convenience of banking outside branch opening hours has also been found to be a significant motivation for the take-up of electronic banking. Electronic banking offers convenient, inexpensive access to the bank, 24 hours a day seven days a week. Salim (2008) and Uppal (2010) pointed out that each ATM could carry out the same, essentially routine, transactions as human tellers in branch offices, but at half the cost and with a four-to-one advantage in productivity.

The reduction in the percentage of customers visiting banks as a result of the increase in alternative channels of distribution will minimize queues at the branches (Thornton and White, 2001). Jahangir and Begum (2008) observe that the increased availability and accessibility of self-service distribution channels reduces the expensive branch network and its associated staff overheads. Bank employees and office space released in this way may be used for other profitable ventures (Sana, Mohammad, Hassan & Momin, 2011). This ultimately leads to improved customer satisfaction and an improvement in the institution’s bottom line (Al-Smadi, 2011).

MATERIALS AND METHODS

The study employed the survey research design method to evaluate customers’ perceptions of e-banking in Nigeria. Primary data were collected with the aid of a structured questionnaire administered to purposively selected bank customers in the country. The questionnaires were designed to ascertain customers’ perceptions of the effect of electronic delivery channels on banking services in Nigeria. The responses were measured with a five-point Likert-type rating scale, where: Strongly Agree (SA) = 5; Agree (A) = 4; Neutral (N) = 3; Disagree (D) = 2; and Strongly Disagree (SD) = 1.
### Table 1: Banking medium use

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>97.52</td>
</tr>
<tr>
<td>No</td>
<td>2.48</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 1 reveals that, 97.52%, representing 275 of a total of 282 respondents use one form of electronic banking medium or another. This indicates that bank customers to a large extent patronize the technological innovations introduced by banks in Nigeria.

### Table 2: Electronic delivery channels

<table>
<thead>
<tr>
<th>Electronic delivery channels</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automated teller machines (ATMs)</td>
<td>95.04</td>
</tr>
<tr>
<td>Electronic fund transfer at point of sales (POS)</td>
<td>34.40</td>
</tr>
<tr>
<td>Telephone banking</td>
<td>37.23</td>
</tr>
<tr>
<td>Internet banking</td>
<td>23.40</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 2 above shows the types of electronic delivery channels enjoyed by the respondents from their banks. It is clear that ATMs ranked as the most widely accepted and highly used electronic delivery tool (95.04% of the respondents). This is followed by telephone banking with a frequency of 105 representing 37.23% of the respondents. Electronic funds transfer at Point of Sales and internet banking were ranked the least used electronic delivery channels by bank customers. Since ATMs are a widely accepted and highly utilized delivery channel, it is important to ascertain the frequency of their usage among bank customers.
This is shown in table 3 below.

Table 3: How often do you use the ATM facility per month?

<table>
<thead>
<tr>
<th>Usage per month</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 times</td>
<td>6.03</td>
</tr>
<tr>
<td>6-10 times</td>
<td>28.37</td>
</tr>
<tr>
<td>11-15 times</td>
<td>52.13</td>
</tr>
<tr>
<td>16-20 times</td>
<td>8.87</td>
</tr>
<tr>
<td>Above 20 times</td>
<td>4.61</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 3 shows the results of the frequency of ATM usage among bank customers in Nigeria. The results show that customers frequently used ATMs for bank transactions such as cash transfers, checking their account balance, cash withdrawals and printing mini statements. A total of 80 and 147, representing 52.13% and 28.37% of respondents, respectively visit ATM points about six to 10 times and 11 to 15 times, respectively in a month. However, 6.03%, 8.87% and 4.61% of respondents stated that, they visit ATM points one to five times, 16 to 20 times and more than 20 times, respectively every month.
Table 4: How often do you visit your bank per month?

<table>
<thead>
<tr>
<th>Usage per month</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-5 times</td>
<td>81.21</td>
</tr>
<tr>
<td>6-10 times</td>
<td>18.79</td>
</tr>
<tr>
<td>11-15 times</td>
<td>-</td>
</tr>
<tr>
<td>16-20 times</td>
<td>-</td>
</tr>
<tr>
<td>Above 20 times</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

The frequency of customers' bank visits is shown in table 4. Of the total of 282 respondents, 229, representing 81.21% stated that, they visit their bank one to five times every month. The results indicate that bank customers in Nigeria still find it useful to visit their bank branches every month to transact some banking business such as detailed bank statement requests, loan applications, foreign funds transfers, deposits and other transactions for which the ATMs cannot be used.

Table 5: Electronic banking makes enquiry about your bank accounts' status faster

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>74.82</td>
</tr>
<tr>
<td>Agree</td>
<td>23.76</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>0.71</td>
</tr>
<tr>
<td>Disagree</td>
<td>0.71</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.73</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 5 shows the responses of customers to the statement “Electronic banking makes enquiry about your bank accounts' status faster”. Of a total of 282 responses, 98.58% agreed that electronic banking makes enquiry about their bank accounts' status faster. Only 0.71%, representing two respondents, disagreed. A mean of 4.73 also confirms that electronic banking makes enquiry about bank accounts’ status faster.
Table 6: Electronic banking reduces the time involved in bank transactions

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>69.86</td>
</tr>
<tr>
<td>Agree</td>
<td>23.40</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>1.77</td>
</tr>
<tr>
<td>Disagree</td>
<td>4.26</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>0.71</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.57</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 6 shows that the respondents overwhelmingly agreed that “electronic banking reduces the time involved in bank transactions”. Of the 282 respondents, 263, representing 93.26%, agreed that the time involved in transacting business with their banks has been reduced significantly by e-banking. However, a total of 14 respondents, representing 4.97%, disagreed with this view. A mean score of 4.57 further confirms customers’ perceptions that e-banking reduces the time spent at the bank in order to transact business.

Table 7: E-banking ensures efficient service delivery

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>31.21</td>
</tr>
<tr>
<td>Agree</td>
<td>60.99</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>3.55</td>
</tr>
<tr>
<td>Disagree</td>
<td>1.42</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>2.84</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.16</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 7 above provides customers’ responses to the statement, “E-banking ensures efficient service delivery”. A total of 260, representing 92.2% of the customers who responded, agreed that e-banking ensures efficient service delivery. Only 12 respondents, representing 4.26%, disagreed and 3.55% remained neutral. A mean score of 4.16 shows that e-banking in Nigeria enables banks to deliver efficient services to their customers.
Table 8: Quality of services have improved since the introduction of e-banking

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>25.18</td>
</tr>
<tr>
<td>Agree</td>
<td>67.02</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>4.61</td>
</tr>
<tr>
<td>Disagree</td>
<td>3.19</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.14</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 8 above illustrates responses to the statement, the “quality of services has improved since the introduction of e-banking”. The majority of the customers agreed with this statement. A total of 260, representing 92.2% of the respondents, agreed that e-banking improves the quality of bank products and services whiles 9 (3.19%) disagreed. The mean score of 4.14 confirms that e-banking improves the quality of products and services offered by banks.

Table 9: E-banking provides adequate responses to inquiries on products/services information

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>35.11</td>
</tr>
<tr>
<td>Agree</td>
<td>55.32</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>5.32</td>
</tr>
<tr>
<td>Disagree</td>
<td>3.19</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>1.06</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.20</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012
Table 9 shows that, of 282 respondents, 255, representing 90.43%, agreed that e-banking provides adequate responses to their inquiries about products/services information. Twelve respondents, representing 4.25%, disagreed with this statement. The mean score of 4.20 confirms that e-banking provides adequate responses to customer’s inquiries.

Table 10: The introduction of e-banking has resulted in increasing bank charges

<table>
<thead>
<tr>
<th>Responses</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>75.18</td>
</tr>
<tr>
<td>Agree</td>
<td>22.34</td>
</tr>
<tr>
<td>Undecided/Neutral</td>
<td>1.77</td>
</tr>
<tr>
<td>Disagree</td>
<td>0.71</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
<tr>
<td>Mean Score</td>
<td>4.72</td>
</tr>
</tbody>
</table>

Source: Field Survey, 2012

Table 10 above illustrates responses to the statement that, “the introduction of e-banking has resulted in increasing bank charges”. Even though seven respondents, representing 2.48% of the sample, disagreed with this assertion, 275, representing 97.52% of the respondents agreed that e-banking has resulted in increased bank charges. This is further confirmed by the mean score of 4.72 which shows that bank charges have increased as a result of increased investment in IT innovations.

**CONCLUSION**

This study examined customers’ perceptions of e-banking in Nigeria. Data were collected using a structured questionnaire administered to bank customers in Lagos. The analysis of the data revealed that customers patronize electronic delivery channels introduced by Nigerian banks, with ATMs ranked highest. However, the introduction of the e-banking channels is associated with increased bank charges.
RECOMMENDATIONS
While banks need to charge their customers fees for the various services provided, such charges should not be so high as to be considered exploitative by customers. Moderate charges would enable banks to retain customers, positively affecting the banks’ profitability and long term sustainability.

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CIVIL SOCIETY AND HUMAN RIGHTS IN NIGERIA’S FOURTH REPUBLIC

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ABSTRACT

Human rights violations have been a major problem in Nigeria. When the military handed over political power to civilians in 1999, it was expected that civilian government will lead to improved respect for human rights. Unfortunately, human rights violations persisted. The persistence of the abuse of human rights raises the following questions which this article seeks to address: Has civilian government improved respect for human rights in Nigeria? If not, what are civil society organizations doing? These questions were answered using secondary data generated from the Political Terror Scale, journal articles, books and magazines. The article shows that despite the persistence of human rights violations, civil society organizations have not been very successful in ensuring the protection of human rights. The author recommends that civil society organizations reposition themselves in order to play a relevant role in safeguarding human rights in Nigeria.
INTRODUCTION

Like most African states, Nigeria has a bad record of respect for human rights. There is often a contrast between declarations in the constitution and actual practice. This explains Alemika’s (2000:5) view that African rulers feel that citizens can be manipulated to achieve selfish interests. The failure of some African leaders to recognize the seriousness of the abuse of human rights can be inferred from the following statement by Mobutu Sese Seko:

We are often accused of violating human rights. Today it is Amnesty International and tomorrow it is a human rights league and so forth. During the entire colonial period, the universal conscience never thought it necessary to have a human rights organization when indignities, humiliations and inhuman treatment inflicted in those days against the people of the colonies should have been condemned. It is rather odd. Everybody waited until we became independent suddenly to wake up and start moralizing all day long to our young States (cited in Alemika, 2000:7).

In Nigeria the violation of human rights has been a major feature of military rule. This elicited a radical response from many civil society organizations, resulting in the introduction of civilian government on May 29, 1999. It was expected that civilian government would improve respect for human rights in the country. On the contrary, human rights violations remain a major problem. This raises the following questions which this study seeks to answer: Has democratic governance improved respect for human rights in Nigeria? If not, what are civil society organizations doing? These questions will be answered using secondary data generated from the Political Terror Scale, journal articles, books and magazines.
CLARIFICATION OF MAJOR CONCEPTS

This section clarifies the concepts of civil society and human rights. According to Fatton, Jr. (1992), “civil society is the private sphere of material, cultural, and political activities resisting the incursions of the state”. Civil society is also defined as the realm of organized social life that is open, voluntary, self-generating, at least partially self-supporting, autonomous of the state, and bound by a legal order or set of shared rules. Civil society is distinct from society in that it involves citizens acting collectively in a public realm (Diamond, 1999). For Bratton (1992), “civil society refers to the emergence of new patterns of political participation outside of the formal state structures and one party system”. In the same vein, Dwayne (1992) espoused the view that civil society is an all-encompassing term that refers to a social phenomenon putatively beyond the formal state structure, but necessarily free of all contact with the state. Civil society embraces a vast array of organizations, both formal and informal. These include economic; cultural; informational and educational; interest-based; and developmental organizations that seek to improve the political system in a non-partisan fashion and make it more democratic through …anti-corruption efforts by promoting transparency and accountability (Ojo, 1997). The primary functions and significance of civil society are that it provides a platform for citizens “to express their interests, passions, preferences and ideas, to exchange information, to achieve collective goals, to make demands on the state, and to hold the state officials accountable” (Roninger, 1994). However, it is important to recognize that the different groups that constitute civil society do not have equal political and economic leverage that may be deployed to influencing the behavior, policies, and actions of government. An organization’s power is related to the materials resources it controls, and the size, class, and location of its membership (Alemika, 2000). Generally, civil society includes non-governmental organizations (NGOs), private voluntary organizations (PVOs), people’s organizations, community-based organizations, civic clubs, trade unions, gender, cultural, and religious groups, charities, social and sports clubs, cooperatives, environmental groups, professional associations, academia, policy institutions, consumers/consumer organizations, the media, citizens’ militia and human rights organizations.

The concept, “human rights” has been defined in various ways by different scholars and writers. In Ake’s (1987) view, the idea of human rights is quite simple: human beings have certain rights simply by virtue of being human, and these rights are a necessary condition for a good life. He adds that because of their singular importance, individuals are entitled to, and
indeed are required to claim them, and society is enjoined to allow them — otherwise the quality of life is seriously compromised. Human rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being” (Sepúlveda et al., 2004:4). The modern sense of human rights can be traced to Renaissance Europe and the Protestant Reformation, alongside the disappearance of the feudal authoritarianism and religious conservatism that dominated the Middle Ages (Wikipedia Encyclopedia, 2012). There is now near-universal consensus that all individuals are entitled to certain basic rights under any circumstances. These include certain civil liberties and political rights, the most fundamental of which is the right to life and physical safety. Human rights are the articulation of the need for justice, tolerance, mutual respect, and human dignity in all our activities (Maiese, 2003). Human rights can be classified and organized in a number of different ways. At an international level the most common categorization of human rights has been to split them into civil and political rights, and economic, social and cultural rights. Human rights violations occur when actions by state (or non-state) actors, abuse, ignore, or deny basic human rights (including civil, political, cultural, social, and economic rights).

MATERIALS AND METHODS

This article is based entirely on a review of the literature on civil society and human rights and captures current trends and patterns in these discourses.

LITERATURE REVIEW

Perspectives on Human Rights Violations in Military and Democratic Regimes

When the Nigerian military handed over power to a civilian government in 1999, it was expected that respect for human rights would improve. According to Cingranelli and Richards (1999:513), “most findings in previous empirical human rights research is that the governments of democratic countries tend to have more respect for physical integrity rights than the governments of authoritarian countries” (Poe and Tate, 1994; Poe et al., 1997). Proponents of this argument contend that democracy reduces government oppression, because democracy empowers the masses. Thus empowered, the masses use their power to prevent those in authority from abusing their human rights (Cingranelli and Richards, 1999). Some scholars do not accept this argument. For example, Fein (1995) suggests that countries in which there is no democracy will experience fewer violations of physical integrity rights than states in the intermediate stages of democracy. This argument is referred to as the ‘more murder in the middle thesis’. The more murder in the middle theory is a causal model of human rights abuse that explains the threat-repression linkage, by relying heavily on the rational actor decision-making theoretical formulation developed by Most and Starr (1989) and expanded upon by Starr (1994).
The key to this model is the ratio between regime strength and threats posed to the rule of the regime. When leaders perceive the strength of the regime to be less than adequate to meet the threat or if they perceive the threat to be increasing relative to regime strength, they will be motivated to increase the strength-threat ratio. Repression or human rights violations are one means to reduce the internal threat to the regime’s rule. Previous research (Gurr, 1986; Poe & Tate, 1994) has demonstrated that governments confronted by intense domestic opposition tend to opt for greater repression of their citizens’ human rights. Fein (1995:173) further states that “… the expansion of democracy actually increases the motives for repression among elites and parties fearing a populist victory”. Factors such as divisions among the elites, inequality, and violent challengers threatening the current social order impel the governing elite to resort to repression or state terror. Yet another counter-argument is that the end of the Cold War has encouraged the creation of many ‘illiberal democracies’. As Zakaria (1997) has argued, regular elections are held in these apparently democratic systems, but the people are not really empowered because there are too few constitutional limits on the power of leaders and insufficient guarantees of basic rights and freedoms. Even during the Cold War, Herman and Brodhead (1984) argued that many ‘demonstration democracies’ had been created in the Third World to please the USA and international lending institutions such as the World Bank. Other studies (Gurr, 1986; Poe and Tate, 1994; Poe, 1997) have also demonstrated that governments faced with intense domestic opposition tend to choose greater repression of citizen’s human rights. Warding off domestic opposition saps regime strength and the domestic conflict itself provides a direct threat to the continued rule of the regime. Repression is one way to increase the strength-threat ratio.

As has been aptly observed, human rights abuses are “products of particular processes in the economic, social, cultural, and political systems of the country” (Abdullahi Smith Centre of Historical Research, ASCHR, 2001:2); and a clearer and deeper understanding of these systems goes a long way in facilitating informed analyses and recommendations on how best to address such violations. Similarly, understanding these contexts and dynamics is crucial to understanding the state of human rights in Nigeria today, and the range of violations that have occurred over time. Several explanations for human rights violations have been identified in Nigeria. The Abdullahi Smith Centre of Historical Research (ASCHR, 2010), a private non-governmental research centre based in Zaria, has identified four prevailing perspectives on human rights and their violation in Nigeria. The first is the “Head of State-Centred perspective.” This attributes human rights violations to the character of the individual civilian or military ruler in power, and assumes that, for example, when rulers are God-fearing, human rights are upheld, and when they are bad or evil, human rights are violated. This perspective also assumes that good rulers can be surrounded by bad lieutenants and advisers who will repress and assault citizens’ liberties and trample on their rights to serve their regime’s interests.
The second perspective is the “Military Ruler perspective,” which holds that military rule is by its very nature dictatorial and hence authoritarian, repressive and intimidating. In terms of this perspective, human rights violations commence with the very act of the military’s illegitimate overthrow of an elected government, and ruling without the consent of the ruled, using military decrees to subordinate the fundamental human rights of citizens enshrined in the constitution. The third perspective ascribes human rights violations in Nigeria to “Northern Domination.” It holds that rights violations are associated with, or are a result of, attempts by successive civilian and military regimes, which were led by Northerners, to impose and maintain Northern dominance on other parts of the country, and that in the process, human rights are violated, using the military, the police and state policies. The fourth perspective attributes human rights violations in Nigeria to low levels of education and training, lack of equipment, corruption, the poor orientation of law-enforcement agencies and the gross shortcomings of the Nigerian judiciary. From this perspective, human rights are violated due to the inadequacies of law enforcement agencies which define the parameters within which a given regime operates.

Human Rights Violations in Nigeria since 1999

Scholars have often argued that one major obstacle to the enforcement and implementation of fundamental human rights provisions in Nigeria during the period after Nigeria gained political independence was the draconian, dictatorial and tyrannical military regimes that violently seized power from the civil and democratic regime that was installed soon after Nigeria gained independence in 1960 (Onwubiko, 2009). This explains why the transition to democratic rule in 1999 was heralded as the end of human rights abuses. Surprisingly, democratic rule did not bring about improved respect for human rights as most people expected. Since 1999, several cases of gross human rights violations have been recorded.

It is important to note that before the democratic rule of President Obasanjo embarked on gross human rights violations, he established the Human Rights Violation Investigation Commission (popularly known as the Oputa Panel) to investigate cases of human rights violations in Nigeria since the first military coup in 1966 and make appropriate recommendations to the government. The Commission received about 10,000 memoranda of human rights violations. Unfortunately its recommendations were not made public. As an antithesis to the inauguration of the Oputa Panel, on November 20, 1999, President Obasanjo took a decision which became one of the worst cases of human rights violations in Nigeria. On this date, the Federal government of Nigeria, in a swift move to track down irate youths who were alleged to have kidnapped and killed 12 policemen earlier that month, declared a state of emergency in the Odi community after a 14-day ultimatum that was yet to expire. On November 20, thousands of combined military personnel invaded the community and unleashed a heavy bombardment of the area using aircraft, grenade launchers, mortar bombs and other sophisticated weapons that replicated a typical invasion of an enemy territory in real warfare. The military invasion of the Odi community resulted in the loss of many lives, including animals and aquatic creatures. Properties were looted and virtually all the infrastructure in the community was either destroyed or torched.
Many Odi citizens who were lucky to be alive were bundled aboard trucks and taken to the military barracks at Elele in Port Harcourt and Warri as prisoners of war. The Odi community was occupied like a conquered territory. By the time the soldiers were eventually evacuated and replaced with the Nigerian police, Odi was in ruins. All that was left of a place with over 60,000 inhabitants was a handful of old men and women, the lame and the sick (Onyegbula, 2001:16; Human Rights Watch, 2002).

The Tiv genocide took place in 2001. From October 22 to 24 of that year, the Nigerian army which was then under the ministerial supervision of General Theophilus Danjuma (rtd.), invaded Gbeji, Zaki-Biam and its surrounding villages in a blood-thirsty onslaught which left more than 200 innocent civilian victims dead and hundreds badly wounded or mutilated. Entire communities were devastated in scorched earth attacks which systematically destroyed homes and businesses as well as disrupted major economic activities, leveled public buildings, and generally sought to both decimate and demoralize the Tiv nation. Those acts of barbaric criminality on the part of the Obasanjo regime shocked the world even as they were unequivocally condemned by Nigerians and the international community (Tondu, 2001).

Numerous subsequent cases of human rights violations were recorded (Onyegbula, 2001). For example in its 2009 report: “Killing At Will: Extrajudicial Executions and Other Unlawful Killings By The Police in Nigeria”, Amnesty International documented 29 cases and chronicled numerous victims of extrajudicial executions who never appeared before a judge, as well as enforced disappearances since 1999. Civil society organizations such as the Civil Liberties Organizations documented and publicized these cases to raise awareness and advocacy.

Democratic Governance and Human Rights Violation in Nigeria: The Perspective of the Political Terror Scale

The Political Terror Scale (PTS) is an annual report that measures physical integrity rights violations worldwide. The PTS measures levels of political violence and terror that a country experiences in a particular year based on a 5-level “terror scale.” The data used in compiling this index comes from two different sources: Amnesty International’s annual country reports and the US State Department Country Reports on Human Rights Practices. The political terror levels are calibrated as follows:

5: Terror has expanded to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals.

4: Civil and political rights violations have expanded to large numbers of the population. Murders, disappearances and torture are a common part of life. Despite its generality, at this level terror affects those who interest themselves in politics or ideas.

3: There is extensive political imprisonment, or a recent history of such imprisonment. Executions or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.
2: There is a limited amount of imprisonment for nonviolent political activity. However, few persons are affected, and torture and beatings are exceptional. Political murder is rare.

1: These are countries under a secure rule of law, where people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare.

Table 1: Political Terror Scale Levels for Nigeria (1999-2010)

<table>
<thead>
<tr>
<th>Years</th>
<th>PTS Scores (Amnesty International)</th>
<th>PTS Scores (US State Department)</th>
<th>Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>4</td>
<td>5</td>
<td>High/Very High</td>
</tr>
<tr>
<td>2009</td>
<td>4</td>
<td>4</td>
<td>High</td>
</tr>
<tr>
<td>2008</td>
<td>4</td>
<td>4</td>
<td>High</td>
</tr>
<tr>
<td>2007</td>
<td>4</td>
<td>3</td>
<td>High/Medium</td>
</tr>
<tr>
<td>2006</td>
<td>4</td>
<td>4</td>
<td>High</td>
</tr>
<tr>
<td>2005</td>
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<td>2003</td>
<td>3</td>
<td>4</td>
<td>Medium/High</td>
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<td>2002</td>
<td>4</td>
<td>4</td>
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<td>4</td>
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<td>2000</td>
<td>3</td>
<td>3</td>
<td>Medium</td>
</tr>
<tr>
<td>1999</td>
<td>4</td>
<td>4</td>
<td>High</td>
</tr>
</tbody>
</table>

Source: www.politicalterrorscale.org (accessed April 8, 2012)

Table 1 shows that, the political terror level for Nigeria has been high since 1999. There seems to have been no improvement over time. This indicates that civil and political rights violations have expanded to large numbers of the population. Murders, disappearances and torture are a common part of life. Political opponents are executed and other political murders and brutality are common. The cases of Odi and Tiv cited in earlier sections corroborate this point.
Civil Society Organizations and the Protection of Human Rights in Nigeria

To a large extent, the activities of civil society organizations help to ensure the protection of human rights. The major role played by civil society organizations in this regard were identified by Augie (2004) as follows:

1. Monitoring - This implies the systematic tracking of activities of and actions by institutions, organizations or government bodies. Human rights organizations would most naturally focus on the human rights situation and government activities in this regard.

2. Advocacy - Civil society has a duty to disseminate information and lobby for pro-people policies. Lobbying or public campaigns depend on the particular conditions in a country and its human rights and civil society groups. There is a need for strategic planning to enhance productive information sharing and to make people aware of what is happening around them.

3. Use of International Mechanisms - Civil society organizations have the responsibility of putting to good use international mechanisms like the NEPAD peer review mechanism, communication with the African Commission and other mechanisms. As watchdogs, they are in a good position to bring the activities of their governments to the attention of international forums. They can also measure their government’s performance against international standards, for example, the NEPAD peer review mechanism. There is constant need for civil society organizations to focus the searchlight of the international community on their country. This will ensure a parallel view of whatever their government is selling to the world.

4. Mobilization - Effective civil society involves the people for whom it advocates. Irrespective of the area of focus, mobilization is a key component of any progressive activity of civil society. Mobilization is the process of motivating and coordinating people for a purpose. Human rights mobilization involves working with affected populations to articulate their needs and concerns.

Civil society groups in Nigeria have been at the forefront of the struggle to seek justice for the victims of human rights violations in the country. Military rule, especially in the 1990s, served as a watershed period for the emergence of civil society groups in the country (CSEA, 2006).
Many civil society organizations were formed to oppose arbitrary rule by the military. While the origins of human rights organizations in Nigeria can be traced to the late 1980s, the real struggle for democracy and good governance is linked to the students’ struggle against the Structural Adjustment Programme (SAP) in 1989 when eminent Nigerians led by Dr Beko Ransome-Kuti, Femi Ojodu, lawyers Olisa Agbakoba, Femi Falana, Clement Nwankwo, Osagie Obayuwanna and others, started the idea. The first human rights organization was the Civil Liberties Organization (CLO), which was established in 1987, with a mandate to defend and expand human rights and civil liberties. The pioneer president was Olisa Agbakoba. The CLO investigates human rights abuses and campaigns through litigation, publications and communication on behalf of people whose rights have been abused. It reports on prison conditions and police brutality and publishes annual reports on the human rights situation in Nigeria. For many years it was very active in human rights education and seminars on rights issues. It produces a monthly journal called ‘LIBERTY’.

The Committee for the Defence of Human Rights (CDHR) was formed in April 1989, in response to the detention of the indefatigable and committed trade unionist, Femi Aborisade, who was held under the notorious State Security Detention of Person, under Decree No. 2 of 1984, set up by General Mohammadu Buhari, the then Head of State of Nigeria. The late Dr Beko Ransome-Kuti was the first president and its activities include rendering legal aid and assistance to indigent victims of human rights violations, human rights campaigns and education encompassing workshops, seminars and publications. It produces a monthly newsletter called ‘VICTIMS’ and annual reports on human rights violations in Nigeria.

The years 1990 and 1991 saw the emergence of more human rights organizations such as the Gani Fawehinmi Solidarity Funds (GFSF), the Movement for the Survival of the Ogoni People (MOSOP), and the Campaign for Democracy (CD), on November 11, 1991, under the leadership of the late Beko Ransome-Kuti, and late Chima Ubani, as the General Secretary. Its 13 founding affiliate organizations included the CDHR, Civil Liberties Organization (CLO), National Association of Nigerian students (NANS), National Association of Democratic Lawyers (NADL), Women in Nigeria, (WIN), and the Nigerian Union of Journalists (NUJ).
The aims of the CD were many. Primarily it called for the restoration of the sovereignty of the Nigerian people to self-determination: the right to choose a system of governance, who should govern them and the process through which they would be governed. Secondly, the organization demanded that citizens have the right to form their own parties without interference, while the third goal was as the termination of military rule. The fourth goal was the replacement of imposed transitional agencies including the immediate establishment of impartial electoral bodies. The last two aims were respect for fundamental human rights, the rule of law and the abrogation of decrees, and the termination of economic policies that have caused hardship, poverty, disease, hunger, unemployment, retrenchment and illiteracy (http://nigeriaworld.com/articles/2010/aug/021.html, accessed April 20, 2012).

By the early 1990s, the human rights NGOs had established a role in society as the defenders of popular liberties. In a sense, it was almost inevitable that as the Nigerian people grew weary of military dictatorship and longed for democracy, human rights NGOs had to assume the additional role of democracy advocacy and lead the resistance to military rule (Aderonmu, 2007). Some civil society organizations received a considerable amount of foreign assistance during the military era, and a number have emerged as capable champions of reform.

Following the inauguration of democratic rule in Nigeria in 1999, civil society organizations renewed their strategies to ensure respect for human rights. Between March 26 and 28, 1999 representatives of human rights and civil society organizations from all parts of the country met at a retreat at the Peninsula Resort in Ajah, Lagos, to consider the role of human rights and other non-governmental organizations in Nigeria in the post-military era. The participants at the retreat examined the following issues extensively:

• Monitoring and investigating human rights violations in post transition Nigeria
• Establishing a Truth Commission/Public Hearings to investigate and document human rights violations and abuse of power under previous military regimes
• NGO participation in constitution making and promoting constitutionalism
• Broadening the human rights constituency
• Re-assessing the mission, vision and values of the human rights community
• Reforming anti-democratic laws
At the end of the retreat, the participants expressed concern over the emerging democratic dispensation, observing that much work remained to be done to dismantle the culture of militarization that had been foisted on the Nigerian people following the long years of military rule, and to entrench democratic principles and values. The meeting condemned the decision of the military government of General Abdulsalami Abubakar to impose a Constitution on Nigerians for the next civilian republic and suggested that a Constitution be issued only as a transitional one, with a process outlined for dialogue and achieving a truly legitimate and popular Constitution for Nigeria. However, it resolved that the human rights community had a duty to participate effectively in re-shaping the Constitution. Participants noted that the constitutional rights to free speech and expression were being gravely impeded by the existence of undemocratic laws. They therefore committed themselves to work for the promulgation of a Freedom of Information Act which would grant citizens the right of access to information in the custody of public institutions and officials (Social and Economic Rights Action Center, 2013).

Despite the efforts of civil society organizations in the Fourth Republic, it has been observed that Nigerians still face various forms of human rights violations. The state is still largely authoritarian as security forces trample on the rights of the citizens with a surprising impunity not expected under democratic rule (Centre for Constitutionalism and Demilitarization, 2011). It has also been noted that the vibrancy of civil society organizations has decreased since the introduction of democratic rule in 1999 (USAID, 2006). Buttressing this assertion, CENCOD (2011) stated that civil society organizations such as the CLO and CDHR which hitherto tried to track human rights violations for a number of years and produced dependable reports have become quieter in the past couple of years. The monitoring and publicity
created by these organizations complemented the efforts of international human rights organizations such as Amnesty International. The cessation of their activities has created a vacuum with regards to indigenous sources of information on the state of human rights in Nigeria (CENCOD, 2011).

Challenges confronting Civil Society Organizations

The major challenges confronting civil society organizations in the Fourth Republic have been identified by Osafo-Kwako and Apampa (2009) as follows:

• In many cases, civil society organizations were not properly rooted in local communities, rarely mobilized popular grassroots support for their causes and were largely driven by the issues they tackled. Lacking any strong grassroots linkages, the transition to democratic rule weakened the raison d’etre for many of these organizations. Some commentators have argued that the human rights advocacy organizations that emerged in the military era have become less effective under civilian rule despite many challenges of supporting good governance in the country.

• The geographical distribution of active civil society groups in the country is also noteworthy. In recent decades, civil society organizations (particularly, formal, registered NGOs) in Nigeria have tended to be concentrated in Lagos, and more broadly in state capitals in the southern parts of Nigeria. There are far fewer civil society groups in the North, particularly those concerned with human rights or advocacy causes.

• Recent research prepared for DFID’s Coalition for Change Programme as well as from the UNDP/Civicus Report observes that faith-based organizations are emerging as an important center to mobilize civil society, particularly in the northern parts of Nigeria. Faith-based organizations in both the southern and northern parts of the country could potentially become a major force to mobilize communities and drive social change. However, such groups tend to exhibit limitations in their ability or desire to drive change. Critics argue that, both Islam and Christianity (at least as practised in Nigeria) tend to urge their followers to adapt to existing social and political conditions in the country, rather than call for radical engagement with social injustice.

• The emergence of issues related to the control of local natural resources, especially
oil and land, has resulted in the rise of CSOs with strong ethnically motivated agendas, often advocating for greater control of their local resources. CSOs in the oil-rich Niger Delta region are a useful example. Such NGOs may use fiery rhetoric and more violent means to agitate for their causes, but also attempt to improve delivery of basic services to their constituents.

Furthermore, some major civil society organizations have shown growing susceptibility to the corruption culture of the political elite, moving some of their elements further from watchdog or interest group roles to client positions. Since 1999, civil society groups have generally been divided into three general categories: groups that have moved closer to government patronage, groups that have returned to the barricades, and groups in between who are generally trying to engage the government towards reform without playing the patronage game (USAID, 2006).

**CONCLUSION**

Civil society organizations have played a major role in the campaign for the restoration of democratic governance in Nigeria. They also advocate respect for human rights. The human rights protection strategies of civil society organizations in Nigeria can be classified into education and advocacy. Okafor (2007:269) attributed Nigeria's relatively successful interaction with the implementation of African instruments to the country’s strong civil society and numerous local civil society organizations. However, despite civil society organizations’ achievements during the military era, it has been observed that the vibrancy of these organizations has decreased in the Fourth Republic. This might likely be the reason why Nigeria’s human rights protection record has not improved since the introduction of democratic governance in 1999. It is therefore recommended that civil society organizations reposition themselves to face up to the challenge of ensuring respect for human rights in Nigeria. They should also encourage human rights education and ensure that it is integrated into the curricula of the military, police and other security workers in the country.

**References**


ABSTRACT

This article sheds insights into Government funded community poverty relief project in Madumeleng village of South Africa which then collapsed after operating for few years. This article interrogates factors that ensure the sustainability of poverty relief projects in general and the Madumeleng community bread making project in particular. The bread making project was earmarked to respond to issues of both poverty alleviation and unemployment reduction. This article is based on a study which used purposive sampling to select participants who were the key informants and a questionnaire with the respondents being project employees, ward councilors; civic associations, tribal authority, local businesses, members of the community, the funders and the Department of Agriculture.

This article reveals that some of the factors leading to the fall of this project include lack of technical support by the funding department; low level of education of project members resulting in mismatch of training provided. In turn, the low level of education contributed to the absence of projects records. There was also the lack of support by community members due to blurred roles in the project and poor revenue management as factors which also contributed to the collapse of the project. The lessons learnt include the fact that poverty relief projects should be encouraged in communities with service level agreement entered into between beneficiaries and the funder as a pre-condition; the role of agencies should be explicit and audited; and an elaborate framework for community participation and partnership should be in place.

Key words: Poverty alleviation, participation, community, partnership
South African society is regularly depicted by President Mbeki and others as being the state of two nations: one black and poor; and the other white and rich (Venter, 2001:5). Given such a backdrop, Government is encouraging citizens to establish their own community projects as a way of fighting unemployment; poverty and thereby improving their own wellbeing. Government departments are major role players in the process of establishing these projects. Processes are spelt out by the departments on behalf of government on how projects are acquired and most importantly on how these projects are managed.

When citizens are organized, their role and their voice in decision making processes are increased, especially by building strong public relationships between local community-based organizations and the public and private sector (Bryan & Joseph, 2005:103). Community projects are expected to be run and managed at the community level and the funding departments will give continuous support for the sustainability of those projects. Communities are allowed a wide range of projects to choose from, and make their own commitment to manage the project given all what it takes to run the selected project. Training programmes are arranged by the funding department for the project managers to be trained on how to sustain projects.

The community of Madumeleng applied to government for financial assistance on bread making project and the project got funding. The community project was to respond to both matters of poverty alleviation and unemployment reduction. This article examines the efficacy and effectiveness of execution of Madumeleng community bread making project on poverty alleviation. As such the examination was done through engaging the project members as key informants as well as the funding department, community members and other government institutions.
The people of Madumeleng organized themselves and established community development structures like civic and ward committee. They identified a number of developmental areas that the committees should work on. Among the identified areas were community projects was bread making project. The committees then approached government for financial assistance to finance the identified project. The municipality assisted in facilitating for the intervention of the Department of Health and Social Development who in turn funded the bread making project.

After all the processes were followed, the project was started in essence in 1994 by thirty women volunteers. It is alleged that these women started with different expectations because the number gradually reduced as those who expected instant remuneration withdrew from participating when the instant returns were not forthcoming. It is said that in 2004, ten years after kick off, the remaining number of women in the project was reduced to eight as the project was collapsing. The community members who were trained to manage the project are now scattered and the intentions and objectives of the Department of Health and Social Development were equally shattered.
LITERATURE REVIEW

South Africa as a member of the United Nations has pledged to ensure delivery of the United Nations Millennium Goals. The Millennium Goals have specific targets to be attained by 2015. These are: eradicate hunger and poverty; achieve universal primary education; promote gender equity and empower women; and reduce child mortality (Department of Provincial and Local Government, 2008:10). Capacity is interpreted in many different ways. In its simplest form, capacity can be regarded as the potential for something to happen (National Capacity Building Framework for Local Government, 2008 – 2011:26). Training programmes are arranged by the funding department for the project managers to be trained on how to sustain projects. Poverty can be dealt with once there is an understanding on what needs to be done to make the project sustainable and thereby make a long lasting impact.

The South African population is divided economically, those disadvantaged are living in abject poverty and their situation is not likely to improve anytime soon. South Africa also struggles with the problem of high unemployment. Formal employment ranges between at least 33% and 40%. Of the formally unemployed, approximately 50% are engaged in the informal sector. These are quite often marginal economic activities, like hawking fruit, which do not necessarily eliminate material poverty. Some commentators claim that South Africa’s unemployment ratio is the highest recorded for an industrially based economy (Venter, 2001:5). Unemployment is affecting all the categories within the society and in particular the vulnerable groups as follows:

women; youth and the disabled. Half the South African population is under 24, with the largest group being children under 4 years (Venter, 2001:5). High unemployment, together with large youth dependency ratio, leads to a low revenue base for government. Consequently the government has fewer material resources at its disposal to create or encourage the creation of employment and to provide a social security net for the poor (Venter, 2001:5). This then calls for deliberate programmes to respond to the situation. Government’s approach was to situate black economic empowerment within the context of a broader national empowerment strategy that focuses on historically disadvantaged people, and particularly black people, women, youth, and the disabled and rural communities (Broad Based Black Economic Empowerment Act, 2003:10).
Bryan & Joseph, (2005:64) argue that an inclusive government guarantees the rights of every citizen and at the same time guarantee the provision of services to better the lives of its entire nation. Inclusion means building public policy on the principle of non-discrimination, creating equality of opportunity and equity of outcome. It means ensuring that the benefits of economic growth reach down to the poorest, strengthening social protection systems, tackling social exclusion and protecting people from violence and abuse particularly women and children. The citizens have got a responsibility as well to ensure that they know and put to the test what is legislated so that government should come to their rescue in case there is a need for such. For example, people should initiate and participate in the programmes of ensuring economic growth where the assistance of government might be minimal depending on the commitment of the initiators.

As such, in order to address the challenge of sustainable livelihoods, government has embarked on a number of programmes that focus on a number of income, human capital and asset strategies with the aim to close the divide between the “first” and “second economies”. Government seeks to address this problem by focusing on a number of mechanisms which include, among others, state grants in the form of pensions, disabilities, child care, an Expanded Public Works Programme, the Land Reform Programme, Developmental Micro-finance, and Micro-credit for micro enterprises (Department of Social Development, 2007:17).
MATERIALS AND METHODS

The researcher developed a questionnaire as a tool for data gathering. Purposive sampling was used as the method for selecting the participants from the business community, project members, civic organization, the Department of Social Development, and the Department of Agriculture. This selection method was relevant for the study because it targeted key informants, those who had relevant knowledge related to this project. Thirty (30) respondents were targeted and the number was achieved. One focus group interview was conducted with the project members, officials from both the Departments of Social Development and Agriculture. Eight people took part in the focus group discussion. These people were the key informants, in other words, they had a lot of information to share regarding the project. Therefore, their selection was informed by their closeness to the project. For purposes of data analysis, coding was used as a precursor to analysis and in particular the thematic pattern method because it was found to be very relevant to the qualitative research conducted.

RESULTS

The responses were analysed regarding perceptions of respondents on the aims of the project; perceptions on the appropriateness of the project; existence of a business plan; level of community support for the project; impact of the project on livelihoods; perceptions on project sustainability; community appreciation of the project; government support for the project; perceptions of respondents on bank account; views of community members on the project; views of Integrated Development Planning Manager from the Greater Letaba Municipality; responses from ward committee; keeping of records for meetings; perceptions on project sustainability; as well as the impact of the project on their livelihoods.

According to the respondents, the project was aimed at achieving the status of being a very big community project where government institutions would invest their expertise in order to ensure that poverty is alleviated and eventually eradicated. The respondents claim that the project did unfortunately not exist long enough to achieve the set objectives because of challenges experienced during implementation. According to the respondents, the understanding however, was that the business plan might have been clear on the objectives, unfortunately implementation, monitoring and evaluation could not respond to those set objectives. The project implementation was no longer coordinated by people who initiated the project. Project coordination was also tempered with by the ward councilor. Project members started to lose direction and there was no intervention from outside.
In the focus group discussions, the respondents agreed that in future similar projects should be brought to the villages. The respondents further indicated that they will ensure that such projects do not suffer similar consequences such as abrupt stoppage when so much is still expected developmentally. There is a strong believe that community involvement in development contributes positively to ensuring that there is clarity on project ownership and role clarification eventually. Most importantly, planning has shifted focus away from communities waiting patiently for government to deliver, towards a set of actions that communities themselves can participate in, in partnership with the Municipality and other stakeholders. As such, it creates a cooperative governance framework where citizens, councilors and officials take collective responsibility for development at the local level (Goldman, 2002:7). However, rarely if at all were formal project meetings held. Meetings are very important because that is where members are supposed to share ideas, views, experiences and thereby charting the way forward regarding the matters at hand. Project records were not properly kept. Corporate governance requires that there must be record keeping of every activity and correspondence for future reference. There must also be accounting officials to shoulder responsibility on corporate performance even on a project scale.

According to the Department of Social Development regarding the challenges experienced by the project, there were no clearly defined coordinating roles between the former councilor and officials from the department. The department claims that their officials were not always on site and this made project members to start doing things their own way. This situation calls for the department to sort out their internal processes and systems to respond to issues of community development with extra diligence, caution and care. The department is now seen by the community as having contributed to the project’s failure.

The view of the department is that people working for the project should be committed before the department or government could commit funds for the projects to get started. The department also suggests that community leaders should be brought on board to register their commitment upfront. The department indicated that similar projects will be funded in future and they will always refer to challenges experienced on other projects to improve and thereby ensure that poverty alleviation projects are sustainable. On rating the project, the view of the department is that the project was good despite the challenges experienced and it was satisfied that there were signs that the project would improve the lives of local people. Regarding community involvement in project identification, the ward councilors said that it is democratic to involve community members in the identification of projects. They further claimed that this is according to council procedures because these processes should be community driven and the final product, community owned. The same approach was used in the identification of the project under study.
The ward committee indicated that it was not easy for them to give advice to the project members because there was not a clearly spelt-out chain of command. They said that they were ready to give advice to the project members but this was not possible because there was no platform to do this. They further claim that the reason for the lack of a platform was because there has never been a forum to discuss the roles that stakeholders can play in the project.

**DISCUSSION**

It can be observed from this study that this was a project initiated by the community from where it derived overwhelming support. However, a number of issues were observed which might have led to the project failure. This in future might call for any funding institution on community projects to take serious consideration of.

The department did well to respond to the community’s call by funding poverty alleviation projects, which is one big challenge that other countries of the world are still battling with.

However, the funding department should have ensured that the business plan covers issues of project management, financial management and monitoring and evaluation. It means therefore, that, funding for similar projects should in future guard against the insufficient planning which is done to comply with the funding conditions only.

The fact that there is no project records both financially and administratively tells of an approach that needs to be closely looked at in future. It is again clear from the responses given that the project members were not trained on financial management and book keeping. Some members are not aware if there were project meetings that took place on site. There are also no records of meetings, which were held to discuss project status and progress. It is odd in terms of administrative protocol to run projects without keeping any record of proceedings.

Government and the non-governmental sector have a role to play in alleviating and eventually eradicating poverty in the communities and in particular rural areas. This is in line with the newly established Ministry of Rural Development and Land Reform in the South African cabinet. Rural areas are most hard hit with poverty, unemployment, and crime. Projects respond to issues of economic growth and development which attempt to address the economic disparities and poverty.
RECOMMENDATIONS

The local municipality should allow enough space for interested and relevant stakeholders to participate in these projects so that the resources available locally are exhausted at all given times. This will also allow community members to have a say in the project and to also provide the necessary support. There should also be controlled means of engaging community members with the project. Their engagement should only be through their community leaders. Project members should be allowed space to learn from others. It does not necessarily mean they will learn from similar projects, however, they will learn how to run and manage projects largely.

The traditional leadership, civic, ward committee and ward councilors should lead the selection process of project members to ensure that there is consistency and no empire building takes place. The leaders should also allow public interest to prevail over theirs so that the objectives of government are realised.

The funding department on community poverty alleviation projects should make known their intention so that other government institutions are able to bring their expertise and it becomes a government initiative to fight poverty in a given locality. This also calls for the coordinating department, for example, Office of the Premier, whose role is to coordinate government departments in a given province, to integrate their plans so that government is seen to be responding to the needs of the people. The district municipality will assume a similar role in a given district municipal space and coordinate both sector departments and municipalities.

Municipalities should also make provisions for money outside of what the funding department has allocated so that they build local capacity to produce goods and services out of community members. This will go a long way in lightening the load of having to provide grants to all the municipal residents because they are indigents. In turn, the residents will be able to pay for municipal services and the municipality will be able to focus on providing other services. There should be a clearly defined chain of command in terms of accountability in the identified projects that are implemented by government. This is done to ensure that there is accountability both administratively and politically. The government sector should deploy their skilled personnel to assist in providing service delivery. This will assist project members in future to be able to monitor progress themselves without close supervision by government. The officials should also display some levels of commitments in order to ensure sustainable supply of poverty alleviation projects.
Government should also develop frameworks for the support and aftercare given to community projects. The frameworks should spell out the period it will take for government to support similar projects before they move over to support others. The projects should also be able to support and learn from one another and share best practices.

Marketing of community projects should be prioritized by government. There should be regular engagements sessions between government and project members to familiarise them with the processes so that they know how important the customer is and what it means to disappoint customers.

It is clear from the project under study that the project members were all alone in the project. There should be partnerships developed between funders and beneficiaries from the beginning of a project. This partnership should develop some terms of reference so that it is known as to what are the objectives of such arrangements.

Community members should also be provided space to participate in the projects process. There should also be frameworks to guide such engagements. The community representatives in the project should give feedback back to their constituencies so that the information flow is not broken and also that the misconceptions are managed in case they show up. Government should enter into some service level agreements with agencies that bring development on its behalf specifically in rural areas. This will ensure accountability on the work done. Government should also be able to audit the roles of these agencies in the process. The business community should be given enough space to render free support services to the project members.
CONCLUSION

The study has examined the challenges in the sustainability of community projects in poverty relief. The study established that the project could not succeed in alleviating poverty due to the following findings: lack of technical support by the funding department; low level of education of project members resulting in mismatch of training provided, the low level of education contributed to the absence of projects records; and lack of support by community members due to a gap in identifying their role in the project. All these have led to the collapse of the project.

References

Broad Based Black Economic Act, 53 of 2003


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1) The Journal of Business and Public Dynamics for Development is a quarterly, double-blind peer-reviewed multi-, inter-, trans-disciplinary journal published by the Turfloop Graduate School of Leadership of the University of Limpopo for business leaders, managers, development practitioners, policy makers, academics and professionals concerned with the advancement of business, public administration and management for development in Africa and in a changing global world. The purpose of the journal is to promote and advance research and innovation in the practice of administration and management of business, public institutions and organizations and communities in the context of dynamic change.

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Single authored
Jones (2010:10) describes local conceptions of poverty, wealth and well-being…
Or
Accordingly, the local conceptions of poverty, wealth and well being are described in a manner that…(Jones, 2012:10).

Multiple authored (three or more)
Phago, Jones, and Ngwakwe (2017:18) view the matter of public dynamics, development and accounting as relevant for the African situation.

Thereafter
Phago et al. (2017:26) further assert that the manner in which these issues are addressed will determine institutional success or failure in this regard.

For internet sources
Evans (2012:Online) argues how approaches on local economic development have implications on the role of local government in development initiatives.

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Journal of Business and Public Dynamics for Development
Volume 2 Issue 1 January 2014

Contents

Editorial 4
Oliver Mtapuri and Collins Ngwakwe

Legal remedies for oil pollution in Nigeria: Local challenges and extra-territorial options 5
Deji Olanrewaju and Jerome Okoro

Customers’ perceptions of electronic banking in Nigeria 21
Akinyomi, Oladele John and Olagunju, Adebayo

Civil society and human rights in Nigeria’s Fourth Republic 33
Nathaniel Umukoro

Of stakeholder intentions and actions in poverty relief projects: Lessons from South Africa 50
Seshoene Molimisi Evans

Editorial Policy and Manuscript Specifications 63