

**INTERNATIONAL BENCHMARKED ENVIRONMENTAL DEMOCRACY AND  
IMPACT-BENEFIT AGREEMENTS TOWARDS SUSTAINABLE COMMUNITY  
AND PETROLEUM DEVELOPMENT IN NIGERIA'S OIL PRODUCING  
COMMUNITIES AND SUSTAINABLE DEVELOPMENT IN NIGERIA AT LARGE**

**Edward T. Bristol-Alagbariya\* and Uzuazo Etemire\***

---

**ABSTRACT :** *Over and again the result of studies, confirmed by verifiable evidences of development projects around the world, especially in resource-rich developing countries, continue to demonstrate that extractive industrial operations (EIOs), such as petroleum (oil and gas) and other mineral resources development operations, have colossal negative effects on the environment, human wellbeing and society at large. EIOs essentially inhibit sustainable development (SD). Accordingly, such result of studies, corroborated by pragmatic evidences, are revealing that if EIOs are governed by international benchmarked standards and practices, these operations would contribute to good environmental governance (GEG), improved human wellbeing and overall SD, especially in resource-rich developing countries. Thus, this socio-legal study examines how international benchmarked environmental democracy may boost GEG and improvement of impact-benefits, through Impact-Benefit Agreements, towards sustainable community development (SCD) vis-à-vis improved wellbeing of the oil-rich Delta region and other oil producing areas of Nigeria, as well as sustainable petroleum development operations in Nigeria's oil producing communities. On this note, the study makes a case for classic environmental democracy (espoused in Principle 10 of the Rio Declaration on Environment and Development, 1992, and elaborated in the Aarhus Convention, 1998) and SD-oriented impact-benefit schemes in the course of petroleum development operations in Nigeria's oil producing communities, so as to balance the adverse effects and benefits of these operations in the communities, towards overall GEG, good governance and all-encompassing SD in Nigeria.*

**KEYWORDS:** International Benchmarked Environmental Democracy; Impact-Benefit Agreements (IBAs); Extractive Industrial Operations (EIOs); Petroleum (Oil and Gas)

---

---

\* Associate Dean & Senior Multidisciplinary Lecturer, Faculty of Law, University of Port Harcourt (UNIPORT), NIGERIA; Visiting Research Fellow, Centre for Energy, Petroleum & Mineral Law and Policy (CEPMLP), Graduate School of Natural Resources Law, Policy & Management, University of Dundee, Scotland, UNITED KINGDOM; Email: [edward.bristol-alagbariya@uniport.edu.ng](mailto:edward.bristol-alagbariya@uniport.edu.ng) and [ebristolalagbariya@gmail.com](mailto:ebristolalagbariya@gmail.com)

\* LLB (Benin); BL (Enugu); LLM (Nottigham, UK); PhD (Strathclyde, Glasgow, UK); Senior Lecturer & Ag. Head, Department of Jurisprudence and International Law, Faculty of Law, UNIPORT; Email: [uzuazo.etemire@uniport.edu.ng](mailto:uzuazo.etemire@uniport.edu.ng) and [uzuazoe@yahoo.com](mailto:uzuazoe@yahoo.com)

## INTRODUCTION

In the progressive and dynamic course of world history, the term or word ‘environment’ has been viewed, analyzed and contextualized within the framework of changing circumstances associated with humans (humanity) and society as a whole.<sup>1</sup> Precisely, the environment may be considered as ‘all that which is external to the individual human host’.<sup>2</sup> Also, the environment may be described as the surroundings, conditions and/or circumstances, in which individuals (i.e., humans), animals, or plants exist, live, operate as well as struggle to survive or thrive.<sup>3</sup> Thus, the UN Economic Commission for Europe (UNECE) simply describes the environment as ‘about what we do to where we live’.<sup>4</sup> In the same manner, the Report of the World Commission on Environment and Development (WCED – otherwise referred to as the Report of the Brundtland Commission (because the Commission was chaired by the former Norwegian Prime Minister and former Director-General of the World Health Organisation [WHO], Dr Gro Harlem Brundtland), entitled *Our Common Future*, describes the environment and development as intertwined and thus inseparable.<sup>5</sup> *Our Common Future* considers the environment as ‘where we all live’; and development as ‘what we all do in attempting to improve our lot within that abode’ (i.e., where we all live).<sup>6</sup> Consequently, Mother Earth (the world), in which we live, constitutes a common environment for all living and non-living things inhabiting it.<sup>7</sup> Based on the intertwined nature of the environment and development, *Our Common Future* enumerates the associated idea of ‘One Earth’, ‘One World’, and ‘One Global Environment’ vis-à-vis ‘One Common Environment’, which determines our ‘Common Future’ (the future of humankind and the entire global community). The Brundtland Commission vis-à-vis *Our Common Future* refers

<sup>1</sup> UN Department of Economic and Social Affairs, *The Future is Now Science for Achieving Sustainable Development: Global Sustainable Development Report 2019* (UN, 2019); E. T. Bristol-Alagbariya, *Petroleum Development & the Environment in Rivers State Nigeria: Fallouts of the UNEP Report on Ogoniland, Environmental Regulatory Standards & Sustainable Development Laws & Practices* (LAP Lambert Academic Publishing, 2018), 10–14; E. T. Bristol-Alagbariya, ‘Sustainable Development Law and Multidisciplinary Sustainable Development-oriented Efforts towards the Wellbeing of Humans and Overall Resources of Nature’ [2020], 81 *International Affairs and Global Strategy*, 69–71.

<sup>2</sup> E. T. Bristol-Alagbariya (2018 [n1]), 8; C. Dargie (ed), *The Physical Environment: A Review of Trends in the Natural and Built Environment, Policy Futures for UK Health Project* (Nuffield Trust, 1999), 3.

<sup>3</sup> A. Gilpin, *Dictionary of Environmental Law* (Edward Elgar, 2000), 92; M. McCabe and B. Sadler, *Environmental Impact Assessment Training Resource Manual* (The Economic and Trade Branch, Division of Technology, Industry and Economics (DTIE), United Nations Environment Programme (UNEP), 2002), 557.

<sup>4</sup> UN Economic Commission for Europe (UNECE), *Protecting Our Environment: How Environmental Impact Assessment Can Help* (UNECE, 1998), 1.

<sup>5</sup> A. C. Osondu, *Our Common Environments: Understanding the Environment, Law and Policy* (University of Lagos Press, 2012), 1–2.

<sup>6</sup> The World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987), xi.

<sup>7</sup> *Ibid.*

to humankind, other living things and non-living things on Earth, as co-habitants of Mother Earth and the entire global community.<sup>8</sup>

The environment may simply be classified into two, namely the natural (i.e., physical) environment and the built environment.<sup>9</sup> The natural environment is one that has not been influenced or altered by humans; it comprises all living and non-living things within the Planet Earth. As distinct from the natural environment, the built environment refers to any human-made, designed or altered place, setting, space or surrounding, wherein people live, work and play, on a day-to-day basis. In effect, the built environment is the product of continuing efforts of humans designed to support and enhance life, especially their wellbeing. It encompasses buildings, roads, parks, transportation systems and other developmental facilities such as constructed cities and their supporting infrastructure, including objects and/or materials of aesthetic value and significance in cities, communities, towns and society at large around the globe.<sup>10</sup>

In the ongoing era of sustainable development (SD), it is better to conceptualize, define, examine and discuss the term ‘environment’ in the context of SD, namely ‘beneficial environment’, which relates and/or contributes to the quality of life (qualitative livelihoods) of humanity, as well as the security and very survival of humans.<sup>11</sup> This is particularly so, in relation to the deplorable state of the environment resulting from the adverse effects of developmental plans, policies and programmes/projects (PPPs) on the environment and in effect humans and other forms of life (overall nature) on our Planet (Mother Earth).<sup>12</sup>

<sup>8</sup> *Ibid*, 1–23 and 308–343.

<sup>9</sup> C. Dargie (ed), *The Physical Environment: A Review of Trends in the Natural and Built Environment, Policy Futures for UK Health Project* (Nuffield Trust, 1999); E. L. Bird *et al.*, ‘Built and Natural Environment Planning Principles for Promoting Health: An Umbrella Review’ [2018] 18, *BMC Public Health*, 1–13.

<sup>10</sup> M. Santamouris (ed), *Energy and Climate in the Urban Built Environment* (Routledge, 2011); F. Seta *et al.* (eds), *Understanding Built Environment: Proceedings of the National Conference on Sustainable Built Environment 2015* (Springer, 2017).

<sup>11</sup> W. Scott and P. Vare, Learning, *Environment and Sustainable Development: A History of Ideas* (Routledge, 2021); E. T. Bristol-Alagbariya (2018 [n1]), 10–16; R. T. Watson and A. H. Zakri (Millennium Ecosystem Assessment Board), *Millennium Ecosystem Assessment Ecosystems and Human Well-being: A Framework for Assessment* (A Report of the Conceptual Framework Working Group of the Millennium Ecosystem Assessment) (Island Press/World Resources Institute, 2003); Md S. Islam (ed), *Sustainability through the Lens of Environmental Sociology* (Multidisciplinary Digital Publishing Institute [MDPI], 2018); S. Baker, *Sustainable Development* (Routledge, 2016).

<sup>12</sup> S. Myers and H. Frumkin (eds), *Planetary Health: Protecting Nature to Protect Ourselves* (Island Press, 2020); T. Belton, *Happier People Healthier Planet: How Putting Wellbeing First Would Help Sustain Life on Earth* (Silverwood Books, 2014); UN, ‘Harmony with Nature: United Nations’ <<http://www.harmonywithnatureun.org/>>; homepage of the Earth Charter Initiative <<http://earthcharter.org/>>; G. K. Meffe (Savannah River Ecology Laboratory, University of Georgia), ‘Sustainability, Natural Law and the ‘Real World’ *The Georgia Right FORUM*, 48–52 <<http://www.georgewright.org/104meffe.pdf>> Accessed 22

The report of the World Commission on Environment and Development (WCED), captioned *Our Common Future* gives a classic definition of SD as the development which meets the needs of the present generation without compromising the ability of future generations to meet their own needs.<sup>13</sup> So, in the context and framework of SD, beneficial environment, namely a healthy (clean and safe) and eco-balanced environment that contributes to human wellbeing and the quality of other forms of life on Mother Earth<sup>14</sup> may be considered in relation to the adverse consequences of developmental PPPs on the environment and the wellbeing of humanity and overall nature (all forms of life) on our Planet. Hence, in the context and concept of beneficial environment associated with SD, Principles 1, 3 and 4 of the UN Stockholm Declaration on the Human Environment, 1972,<sup>15</sup> as well as Principle 1 of the Rio Declaration on Environment and Development, 1992, may be considered apt and instructive to this study.

Although, the scope of this study encompasses the entire oil bearing areas of Nigeria, which are made up of the nine oil producing states of the country indicated in the Niger Delta

---

May, 2021; Principle 1, Rio Declaration on Environment and Development, 1992, which provides *that human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*; The International Union for Conservation of Nature (The World Conservation Union [IUCN]) *et al.*, *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (IUCN, 1980); J. V. Walther, *Earth's Natural Resources* (Jones & Bartlett Learning, 2014).

<sup>13</sup> WCED (n6), 8, 40 and 43; C/f homepage of the Earth Charter Initiative (n 12); The Earth Charter, 'Earth Charter Education' <<https://earthcharter.org>>; C. Nair, *The Sustainable State: The Future of Government, Economy, and Society* <<https://www.audiobooks.com/book/stream/350571>> both Accessed 23 November, 2021; P. B. Corcoran (ed), *The Earth Charter in Action: Toward a Sustainable Development* (KIT Publishers 2006); UN Association of Australia (UNAA), *The Earth Charter* (UNAA 2017); J. F. Sachs, *The Age of Sustainable Development* (University of Columbia Press, 2015); N. Roorda, *Fundamentals of Sustainable Development* (Routledge, 2017).

<sup>14</sup> United Nations Environment Programme (UNEP), *Healthy Environment, Healthy People* (UNEP, 2016); E. T. Bristol-Alagbariya (2018 [n1]), 10–16.

<sup>15</sup> Principles 1, UN Stockholm Declaration on the Human Environment, 1972, provides that *man is both a creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. ... man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights, the right to life itself*; Principles 2, UN Stockholm Declaration, 1972, provides that *the protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments*; Principles 3, UN Stockholm Declaration, 1972, provides that *man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. ...*; Principles 4, UN Stockholm Declaration on the Human Environment, 1972, provides that *in the developing countries most of the environmental problems are caused by under-development. ...*

Development Commission (NDDC) Act,<sup>16</sup> the emphasis of the study and its case-study pertain to the oil-rich minority ethnic Niger Delta region only, namely the historic, geographic and cartographic ethnic minority Delta region of Nigeria.<sup>17</sup> By and large, this study adds value to the ongoing age-old discourse on the problems and challenges of petroleum resources development operations in Nigeria, with particular emphasis on the adverse consequences of these operations on the oil producing communities of the country, exemplified by the oil-rich communities of primordial minority ethnic Niger Delta region.<sup>18</sup>

The study employs a double-fold approach of examining the prevailing form of environmental democracy and impact-benefit<sup>19</sup> arrangements often documented in Memoranda of Understanding (MoUs) being entered into between petroleum developing companies, especially multinational oil and gas companies (MNOCs), and the oil producing communities in Nigeria. It considers that the existence of classic environmental democracy and outstanding regime of impact-benefit agreements (IBAs) in the course of petroleum development operations in the oil-rich minority ethnic Niger Delta region and other oil producing areas of Nigeria would boost sustainable community development (SCD) and in

<sup>16</sup> Sections 1 (2) (b), 4 and 30, Niger-Delta Development Commission (Establishment Etc.) (NDDC) Act, No. 6 Laws of the Federation of Nigeria (LFN) 2000, Cap N86 LFN 2004; these states are listed as Abia State, Akwa Ibom State, Bayelsa State, Cross River State, Delta State, Edo State, Imo State, Ondo State and Rivers State; Section 1, NDDC Act, Cap N86 LFN 2004, is captioned 'Establishment of the Niger-Delta Development Commission, etc.'; Section 4, NDDC Act, Cap N86 LFN 2004, is headed 'Rotation of Office of Chairman of the Commission', while Section 30, NDDC Act, Cap N86 LFN 2004, is captioned 'Interpretation'.

<sup>17</sup> E. T. Bristol-Alagbariya, 'Primordial Niger Delta, Petroleum Development in Nigeria and the Niger Delta Development Commission Act: A Food For Thought!' [2020] 10 (3), *Developing Country Studies*, 106–128.

<sup>18</sup> A. A. Ikein, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Praeger Publishers, 1990); B. Manby, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (Human Rights Watch 1999); J. A. Ajenka and I. Ibeji (eds), *Petroleum and the Quality of Life* (Institute of Petroleum Studies, University of Port Harcourt, 2004); K. Augustine and C. C. Wigwe, 'The Impact of International Oil and Gas Politics on the Petroleum Industry in Nigeria' [2018] 8 (1), *The Journal of Property Law and Contemporary Issues*, 142–148; Department of Political Science, Niger Delta University, *International Conference on The Nigerian State, Oil Industry and the Niger Delta, Conference Proceedings* (Harey Publications Company, 2008); L. Barrera-Hernandez *et al.* (eds), *Sharing the Costs and Benefits of Energy and Resources Activity: Legal Change and Impact on Communities* (Oxford University Press, 2016).

<sup>19</sup> L. Barrera-Hernandez *et al.* (eds) (n18); D. Peel and N. Bailey, *Celebrating Community Involvement* (Development Trusts Association 2003); S. A. Kennett, *A Guide to Impact and Benefits Agreements* (University of Calgary, 1999); C. Fidler, *Aboriginal-Corporate Contracts and Mining: Perspectives on Impact Benefit Agreements, Environmental Assessment and Consultation* (VDM Verlag Dr Müller, 2010); S. Gogal *et al.*, 'Aboriginal Impact and Benefit Agreements: Practical Considerations' [2005] 4 (1) *Alberta Law Review*, 129–157; R. Rowthorn, *The Costs and Benefits of Large-Scale Immigration: Exploring the Economic and Demographic Consequences for the UK* (Civitas, 2015); Natural Resources Canada, 'Whitehorse Mining Initiative' (WMI) <<http://www.nrcan.gc.ca/mining-materials/policy/government-canada/8698>> Accessed 23 November, 2021.



---

turn sustainable petroleum development (SPD) operations in the oil producing communities, as well as GEG and overall SD in the country.

The environment in primordial minority ethnic Niger Delta region has from time immemorial been fragile, such that means of communication throughout the region continues to be difficult, while embarking on developmental programmes and projects is also very expensive within the region.<sup>20</sup> Worse still, the region has historically been marginalized and neglected by successive majority ethnic regional and central (federal) governments in the context and course of nation-building in Nigeria, beginning from the period of British colonialism to the contemporary era.<sup>21</sup> This lamentable and reprehensible state of affairs of the Niger Delta region and the plight of its people, due to lack of participation of the people in their own affairs, generated community crises during the British colonial era<sup>22</sup> and thereafter, particularly from the 1990s, based on the region's resource control movement. Remarkably, from the 1990s, community crises, anchored on the oil-rich Delta region's age-old resource control movement, arose due to the adverse effects of petroleum development operations in the communities of the region. So, the struggle for participation of the people and communities of the Niger Delta region in their own affairs, which has blossomed into the region's contemporary resource control movement, is historic.

From the 1990s, the resource control movement of the oil-rich minority ethnic Niger Delta region gave rise to certain declarations, demands and other forms of pronouncements by some citizens and citizen-groups of the region, concerning the adverse consequences of petroleum resources development operations in their communities as well as their positions on the way forward. These pronouncements include the Ogoni Bill of Rights of 1990, the Endangered Environment of the Niger Delta of 1992, the Kaiama Declaration of 1998, the Resolution of the First Urhobo Economic Summit, the Warri Accord, the Aklaka Declaration of the Egi People, the Oron Bill of Rights, the Demand of the First Niger Delta Indigenous Women's Conference for Women of Bayelsa State, the Ikwerre Rescue Charter, the Declaration of the Niger Delta Bill of Rights, and other related declarations and demands of other citizen-groups of the region. Also, some of these civil society groups made up of militant youngsters formed various militant movements, which include the Niger Delta People's Volunteer Force, Niger Delta Liberation Front, Movement for the Emancipation of the Niger Delta, Niger Delta Vigilante, the Bakassi Movement for Self-Determination and the

---

<sup>20</sup> Her Majesty's Stationery Office (HMSO)/(Southern Minorities Movement (SMM), *The Nigeria Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them or The Willink Commission Report* (HMSO, 1958/ SMM (Reprint), 1996), 51.

<sup>21</sup> E. T. Bristol-Alagbariya, *Participation in Petroleum Development: Towards Sustainable Community Development in the Niger Delta* (Centre for Energy, Petroleum & Mineral Law & Policy (Centre for Energy, Petroleum & Mineral Law & Policy [CEPMLP]/Dundee University Press [DUP], 2010), 49 and 51–69.

<sup>22</sup> *Ibid*, 131 and 318.

2021 Niger Delta Charter on Resource Control and Self Determination.<sup>23</sup> A uniform agenda underlining these declarations, proclamations, pronouncements and demands of the communities and other civil society groups of the oil-rich Niger Delta region is the region's historic issue of 'resource control',<sup>24</sup> which advocates true federalism based on fiscal federalism in Nigeria.<sup>25</sup>

Environmental democracy is an aspect of public involvement (PI) in decision making.<sup>26</sup> So, from the foregoing historic background and approach of this study, benchmarked environmental democracy, namely classic citizens' or PI (public participation [PP]<sup>27</sup> *vis-à-vis* public engagement) in environmental decision making,<sup>28</sup> as a key component of

<sup>23</sup> W. Odunsi (Daily Post), '88-year-old Prof Alagoa signs Niger Delta Charter on resource control, self-determination' <<https://dailypost.ng/2021/11/05/88-year-old-prof-alagoa-signs-niger-delta-charter-on-resource-control-self-determination/>>; Head Topics Nigeria, 'BREAKING: Signing of Niger Delta charter on resource control, self-determination begins' <<https://headtopics.com/ng/breaking-signing-of-niger-delta-charter-on-resource-control-self-determination-begins-22279110>>; National Network Newspaper, 'Niger Delta Congress Begins Process To Sign Resource Control, Self-Determination Charter' <<https://www.nationalnetworkonline.com/news/8491-niger-delta-congress-begins-process-to-sign-resource-control-self-determination-charter>> all Accessed 23 November, 2021.

<sup>24</sup> O. V. C. Okene (ed), *Readings in Law and Policy (Current Issues and Trends): (In Commemoration of the Golden Jubilee of Rivers State (1967–2017))* (Faculty of Law, Rivers State University, 2017) 129–144; E. T. Bristol-Alagbariya (n21), 40–43; A. Ogbuigwe, *Legal Issues in the Niger Delta Resource Dilemma: A Collection of Essay* (Anpez Centre for Environment and Development 2018) 7–10; E. T. Bristol-Alagbariya (n17), 122–123.

<sup>25</sup> A. A. Ikein and C. Briggs-Anigboh, *Oil and Fiscal Federalism in Nigeria: The Political Economy of Resource Allocation in a Developing Country* (Ashgate Publishing, 1998); E. T. Bristol-Alagbariya (n17), 121; c/f J. Shapiro and J. McNeish (eds), *Our Extractive Age: Expressions of Violence and Resistance (Routledge Studies of the Extractive Industries and Sustainable Development)* (Routledge, 2021).

<sup>26</sup> E. T. Bristol-Alagbariya, 'The Concept, Principle, Law and Developmental Practice of Environmental Democracy towards Sustainable Development in Resource-rich Communities of Developing Countries: Focus on Nigeria's Oil Producing Delta Region' [2020] 94, *Journal of Law, Policy and Globalization*, 53–74, particularly 53 and 68–70; Center for International Environmental Law (CIEL), 'Environmental Democracy' <<https://www.ciel.org/issue/environmental-democracy-access-rights/>> Accessed 23 November, 2021.

<sup>27</sup> M. Mulgan, *People and Participation: How to Put Citizens at the Heart of Decision-making* (Involve, 2005); homepage of Involve (The Involve Foundation) <<https://www.involve.org.uk>> Accessed 23 November, 2021.

<sup>28</sup> D. N. Zillman *et al.* (eds), *Human Rights in Natural Resources Development: Public Participation in Sustainable Development of Mining and Energy Resources* (Oxford University Press, 2002). 11–12, 15 and 549–694, especially 549–587; T. C. Beierle and J. Cayford, *Democracy in Practice: Public Participation in Environmental Decisions* (Resources for the Future, 2002); E. Bastida *et al.* (eds), *International and Comparative Mineral Law and Policy: Trends and Prospects* (Kluwer Law International 2005), 265–267 and 278–279; The International Bank for Reconstruction and Development (The World Bank), *The World Bank Participation Sourcebook* (The World Bank, 1996); B. Cook and U. Kothari (eds), *Participation: The New Tyranny?* (Zed Books, 2004); J. L. Creighton, *The Public Participation Handbook: Making Better Decisions*

environmental human rights, that is, human rights approach to environmental protection, in the course of petroleum resources development operations in Nigeria's oil producing communities, has potential to boost GEG, as well as fair-play, equity, social justice in the form of outstanding impact-benefits in the communities. The study therefore makes a case for masterpiece environmental democracy in the oil-rich Delta region and other oil producing areas of Nigeria, so as to boost GEG and SCD *vis-à-vis* improved wellbeing of the people and communities of the oil-rich Delta region and other oil producing areas of Nigeria. In other words, the study emphasizes improved citizens' involvement in decision-making and decision-implementation processes in Nigeria, in compliance with the provisions of Principle 10 of the Rio Declaration on Environment and Development, 1992, as elaborately expressed in the Aarhus Convention, 1998,<sup>29</sup> as international benchmarked degree, form or manner of environmental democracy, towards GEG, an outstanding impact-benefit regime and SCD in Nigeria's oil producing communities, as well as SPD operations in the communities, beside overall GEG, good governance (GG) and all-embracing SD in the country.

Akin to the provisions of Principle 10 of the Rio Declaration on Environment and Development, 1992, and the Aarhus Convention, 1998, are certain stipulations of global and other international legal and regulatory instruments on environmental democracy. These include Article 6 (a) of the UN Framework Convention on climate change (UN FCCC), 1992;<sup>30</sup> Article 10 (2) (f) of the UN Convention to combat desertification in those countries

---

*through Citizen Involvement* (Jossy-Bass, 2005); U. Etemire, *Law and Practice of Public Participation in Environmental Matters: The Nigerian Example in Transnational Corporative Perspective* (Routledge, 2016).

<sup>29</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June, 1998 <<https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>; Area of the homepage of the European Commission captioned 'The Aarhus Convention' <https://ec.europa.eu/environment/aarhus/index.htm>; UNECE, 'AARHUS CONVENTION: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - Quotable' <<https://www.unece.org/fileadmin/DAM/env/pp/contentofaarhus.htm>>; all accessed 23 November, 2021; S. Stec et al., *The Aarhus Convention: An Implementation Guide* (UN, 2000), v.

<sup>30</sup> UN FCCC, <[https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf)> Accessed 23 November, 2021; Article 6, UN FCCC, is captioned 'Education, Training and Public Awareness'.



experiencing serious drought and/or desertification, particularly in Africa, 1994;<sup>31</sup> the 2005 UN Brisbane Declaration on community engagement;<sup>32</sup> and the 2010 UNEP (Bali) Guidelines for the development of national legislation on access to information, PP and access to justice in environmental matters.<sup>33</sup> Environmental democracy is also being profoundly canvassed by the International Association for Impact Assessment (IAIA: the leading global network on environmental democracy in the realm of Impact Assessment [IA]),<sup>34</sup> while all-embracing citizens or PP in decision making is accordingly being propagated by the International Association for PP (IAP2), which features as the foremost worldwide civil society profoundly advancing and extending the practice of PP around the globe.<sup>35</sup>

Consequently, the study makes a case for community engagement in the course of petroleum development operations in the oil-rich Delta region and other oil producing communities of Nigeria in compliance with international benchmarked environmental democracy standards and practices, so as to achieve GEG and improved impact-benefits in these oil producing

<sup>31</sup> UN Treaty Collections, '10. United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa Paris, 14 October 1994' <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-10&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-10&chapter=27&clang=_en)> and <[https://treaties.un.org/doc/Treaties/1996/12/19961226%2001-46%20PM/Ch\\_XXVII\\_10p.pdf](https://treaties.un.org/doc/Treaties/1996/12/19961226%2001-46%20PM/Ch_XXVII_10p.pdf)> both Accessed 23 November, 2021, which provides thus: *National action programmes shall specify the respective roles of government, local communities and land users and the resources available and needed. They shall, inter alia: ... (f) provide for effective participation at the local, national and regional levels of non-governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programmes*; Article 10 of this UN Convention is captioned 'National Action Programmes'.

<sup>32</sup> The UN Brisbane Declaration on Community Engagement, 2005 <<https://www.lcsansw.org.au/documents/item/330>> Accessed 23 November, 2021; UN and the Queensland Government, Australia, *Handbook (International Conference on Engaging Communities, 14 –17 August, 2005: An Initiative of the UN and the Queensland Government, Brisbane Convention & Exhibition Centre, Queensland, Australia)* (UN and the Queensland Government, Australia, 2005).

<sup>33</sup> UNEP, UNEP Guidelines for the Development of National Legislation on Access to Information, PP and Access to Justice in Environmental Matters, Adopted by the Governing Council of the United Nations Environment Programme in decision SS.XI/5, Part A of 26 February, 2010 <<https://www.unep.org/resources/publication/guidelines-development-national-legislation-access-information-public>> Accessed 23 November, 2021.

<sup>34</sup> Homepage of the IAIA <<https://www.iaia.org>> Accessed 23 November, 2021.

<sup>35</sup> Homepage of the International Association of Public Participation (IAP2), <<https://www.iap2.org>>; IAP2 'IAP2 Spectrum of Public Participation' <[https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum\\_8.5x11\\_Print.pdf](https://cdn.ymaws.com/www.iap2.org/resource/resmgr/pillars/Spectrum_8.5x11_Print.pdf)> both Accessed 23 November, 2021, which places final decisions in the hands of members of the public involved in the decision-making and decision-implementation processes.

communities, towards SCD and SPD operations in these communities, and overall GEG, improvement of the wellbeing of Nigerian citizens, GG and all-embracing SD in the country.

### **International Benchmarked Environmental Democracy**

Environmental democracy is a worldwide phenomenon; a concept, principle, law and development projects' regulatory practice, which as its name indicates, is rooted in various background contexts and/or frameworks of the 'environment' and 'democracy'.<sup>36</sup> So, citizens and citizen-groups of sovereign states, local communities, indigenous peoples and societies around the globe, are, in the ongoing era of SD, increasingly becoming aware of the need for and essence of citizens or PI as well as the prevailing nature and required degree of PI, namely public engagement or PP (otherwise simply called 'participation', particularly environmental democracy, in the course of executing developmental project proposals, which have potential to adversely affect the environment, the wellbeing of humans<sup>37</sup> and other life forms (overall nature) on our Planet.<sup>38</sup>

Citizens' involvement or PI in decision making, which environmental democracy constitutes an integral part and parcel of, may be defined or described as a popular democratic notion of lay citizens' involvement in local issues affecting the citizens.<sup>39</sup> It connotes, denotes, implies and emphasizes any of several mechanisms, techniques, processes and/or procedures, which is intentionally instituted to involve the lay public or their representatives in public/government administrative decision-making. PP, which may simply and precisely be called 'participation' is an all-encompassing label used to describe the various forms by which individuals or groups may use to communicate their views on public issues in the context of the worldwide emerging participation opportunities. These include 'citizens'

<sup>36</sup> E. T. Bristol-Alagbariya (n26), 53–74; c/f E. T. Bristol-Alagbariya, 'The COVID-19 Pandemic Era: Flashlight on the Challenges and Opportunities of Environmental Democracy in Nigeria's EIA Process' [2021], 9 (1), *Global Journal of Politics and Law Research*, 23–38, particularly 27–32.

<sup>37</sup> M. Mulgan (n27); homepage of Involve <<https://www.involve.org.uk>> Accessed 23 November, 2021; Principle 1, Rio Declaration on Environment and Development, 1992, which provides that human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature; UNEP (n14); J. F. Sachs (n13); O. Konare (UN University), 'Humanity's Attachment to Mother Earth' <<https://ourworld.unu.edu/en/humanitys-attachment-to-mother-earth>> Accessed 23 November, 2021.

<sup>38</sup> S. Myers and H. Frumkin (eds) (n12); T. Belton (n12); UN, 'Harmony with Nature: United Nations' (n12); G. K. Meffe (Savannah River Ecology Laboratory, University of Georgia) (n12); UN Department of Economic and Social Affairs, Office for ECOSOC Support and Coordination, *Achieving Sustainable Development and Promoting Development Cooperation: Dialogues at the Economic and Social Council* (UN, 2008); Principle 1, Rio Declaration on Environment and Development, 1992; The International Union for Conservation of Nature (The World Conservation Union [IUCN]) *et al.* (n12); P. H. Kahn (Jr.), *The Human Relationship with Nature: Development and Culture* (MIT Press, 2001); I. G. Simmons, *The Ecology of Natural Resources* (Hodder Arnold, 1981); S. R. Kellert, *Birthright: People and Nature in the Modern World* (Paperbackshop UK Import, 2014); J. V. Walther (n12).

<sup>39</sup> T. C. Beierle and J. Cayford (n28), 6.

participation', 'citizens' involvement', 'stakeholders' engagement', 'indigenous peoples' rights', 'local community or town meetings', 'focus group meetings', 'local community rights', 'public hearings', 'public comments', 'stakeholders' advisory councils', 'stakeholders advisory committees', citizens' juries, citizens' mediation', 'NGO intervention', 'right to information', 'right to participation', 'right to decision-making', 'giving voices to the voiceless in environmental decision-making', 'right to justice', 'right to environmental justice', 'right to environmental democracy', 'right to voting', 'decisional transfers', 'benefits sharing', and 'participation of affected groups and organizations'. PP entails voting, demonstrating, petitioning, protesting, criticising, lobbying, and writing and speaking to the media, political leaders and governments, publishing newsletters, pamphlets, brochures and other documents, debating, campaigning, including social media campaigns, as well as appearing and partaking in public hearings. Participation also involves community empowerment and community development (CD) in the course of balancing the costs (adverse effects) and benefits of energy and major natural resources EIOs and SD opportunities, as well as various other variants of citizens' involvement within the threshold of PP<sup>40</sup> that cater for the concerns and interests of potentially affected citizens, citizen groups and their representatives. Participation implies situations where citizens maybe requesting access to government-held information, serving on citizens' advisory panels, requesting or even agitating or demanding for administrative justice, instituting law suits on grounds of public interest, and all other variants of the concept that the governed could, should or must be engaged in their governance.<sup>41</sup>

PP informs, consults with, involves, collaborates with affected, concerned and interested citizens and citizen-groups and empowers them in decision-making and decision-implementation processes. Participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process, so as to have their aspirations, concerns, interests and values considered and/or addressed in the process. So substantially, environmental democracy helps to guarantee access to information on environmental matters, PP in environmental decision-making and access to justice in environmental matters,<sup>42</sup> which are associated with environmental human rights, namely human rights approach to environmental protection,<sup>43</sup> and equity, fair play and social

<sup>40</sup> D. N. Zillman *et al.* (eds) (n28), preview, 1–120, especially 11–12 and 15; E. Bastida *et al.* (eds) (n28), 265–267 and 278–279, especially 265; T. C. Beierle and J. Cayford (n28); E. T. Bristol-Alagbariya (2010 [n21]), 40–41.

<sup>41</sup> D. N. Zillman *et al.* (eds) (n28), preview, 1–120, 11–12, 15 and 549–587; E. Bastida *et al.* (eds) (n28), 265–267 and 278–279, especially 265.

<sup>42</sup> UN Economic Commission for Europe [UNECE], 'AARHUS CONVENTION: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - Quotable' (n29); Area of the homepage of the European Commission captioned 'The Aarhus Convention' (n29); S. Stec *et al.* (n29), v.

<sup>43</sup> M. Mason, *Environmental Democracy: A Contextual Approach* (Earthscan, 1999); J. Hancock, *Environmental Human Rights: Power, Ethics and Law* (Routledge Revivals) (Routledge, 2019); S. Atapattu and A. Schapper, *Human Rights and the Environment: Key Issues* (*Key Issues in Environment and Sustainability*) (Routledge,

justice,<sup>44</sup> which are ingrained in the ongoing progressive and increasingly advancing global effort, championed by the UN, to promote SD, particularly to achieve environmentally-sound, ecologically-centred and socio-economically just and equitable SD around the world.<sup>45</sup>

Environmental democracy is therefore rooted in legal and regulatory instruments, which include public sector governance statutory and government institutional regulatory mechanisms, as well as policies, plans, programmes (PPPs) and developmental practice of sovereign states, which are associated with developmental projects having potential to impact negatively on the environment.<sup>46</sup> This is particularly so, concerning energy and major natural resources developmental project operations, namely extractive industrial operations (EIOs), around the globe, especially in resource-rich developing countries like Nigeria.<sup>47</sup> Nevertheless, the principal international benchmarked form, standard and practice of environmental democracy, may be described as that expressed in Principle 10 of the Rio Declaration on Environment and Development, 1992, as elaborated in the Aarhus Convention, 1998, on access to information, public participation in decision-making and access to justice in environmental matters.<sup>48</sup>

---

2019); M. Oksanen *et al.* (eds), *Environmental Human Rights: A Political Theory Perspective* (Routledge Explorations in Environmental Studies) (Routledge, 2019); D. J. Plevak (ed), *Human Rights Theory Develop: Theory, Developments & Ethical Issues (Social Justice, Equality and Empowerment)* (Nova Science Publishers, 2013); D. K. Anton and D. L. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, 2011); A. E. Boyle and M. R. Anderson (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press, 1998); R. Pereira, 'Public Participation, Indigenous Peoples' Land Rights and Major Infrastructure Projects in the Amazon: The Case for a Human Rights Assessment Framework' [2021] 30, *Review of European, Comparative & International Environmental Law* (RECIEL), 184–196.

<sup>44</sup> K. Stronks *et al.*, *Social Justice and Human Rights as a Framework for Addressing Social Determinants of Health: Final Report of the Task Group on Equity, Equality and Human Rights* (World Health Organization [WHO], 2016).

<sup>45</sup> IGI Global – Disseminator of Knowledge, 'What is Environmental Democracy' <<https://www.igi-global.com/dictionary/potential-participation-urban-planning/10061>> Accessed 23 November, 2021; E. T. Bristol-Alagbariya, *Permanent Sovereignty Over Natural Resources: Duties of Resource-Rich Developing Countries & Petroleum Development in Nigeria* (LAP Lambert Academic Publishing, 2020), xlii, xlvii, 36, 88, 116, 132 and 183; E. T. Bristol-Alagbariya, *Law & Ethical Conducts on Energy Resources Operations in Nigeria: Spotlight on Petroleum Development Operations* (LAP Lambert Academic Publishing, 2021), xxxv, 74, 88, 89, 95 and 167.

<sup>46</sup> L. Barrera-Hernandez *et al.* (eds) (n18), preview, v and 1.

<sup>47</sup> E. T. Bristol-Alagbariya (2020 [n45]), xlii, xlvii, 36, 88, 116, 132 and 183; E. T. Bristol-Alagbariya (2021 [n45]), xxxiii–xxxvi, 8–14, 19–26, 77–89 and 93–106.

<sup>48</sup> UN Economic Commission for Europe [UNECE]), 'AARHUS CONVENTION: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - Quotable' (n29), Area of the homepage of the European Commission captioned 'The Aarhus Convention' (n29); S. Stec *et al.* (n29), v.

### **Environmental Democracy Embedded in Principle 10 of the Rio Declaration on Environment and Development, 1992**

The Rio Declaration on Environment and Development, often shortened to Rio Declaration (namely a series of principles defining the rights and responsibilities of global states on issues of the environment and development), is a precise declaratory document produced at the 1992 UN ‘Conference on Environment and Development’ (UNCED), also known as the ‘Earth Summit’, held at Rio de Janeiro, from 3 – 14 June, 1992. This declaration is one of the three major agreements designed to guide future approaches of the global community towards SD and one of the five outcome documents of the UN Rio de Janeiro Earth Summit, which was convened to reconcile worldwide problems and challenges associated with economic development and environmental protection. The rest of the three major agreements are the UN *Agenda 21* and the *Statement of Forest Principles*. Other outcome documents and legally binding instruments of the UN Rio de Janeiro Earth Summit are the *UN Framework Convention on Climate Change* and the *Convention on Biological Diversity*.<sup>49</sup>

Principle 10 of Rio Declaration on Environment and Development, 1992, provides thus:

*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*<sup>50</sup>

The above-stated Principle constitutes the foremost stipulation and a fundamental soft law instrument on environmental democracy worldwide, based on which environmental democracy is increasingly advancing in sovereign states and all nooks and crannies around the world.<sup>51</sup> So, Principle 10 of Rio Declaration on Environment and Development, 1992, provides the background for systematic advancement of environmental democracy around the globe, ranging from socio-economically advanced countries to developing and least developed countries, which relatively never had well-established land-use planning procedures as their advanced counterparts, particularly on issues pertaining to the

---

<sup>49</sup> UN SD Goals Knowledge Platform’, ‘United Nations Conference on Environment and Development (UNCED), Earth Summit’ <<https://sustainabledevelopment.un.org/milestones/unced>> Accessed 23 November, 2021.

<sup>50</sup> UN Audiovisual Library of International Law, ‘Rio Declaration on Environment and Development’ <[https://legal.un.org/avl/pdf/ha/dunche/rio\\_ph\\_e.pdf](https://legal.un.org/avl/pdf/ha/dunche/rio_ph_e.pdf)> Accessed 23 November, 2021; UNEP, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters* (UNEP, 2011).

<sup>51</sup> E. T. Bristol-Alagbariya (n26), 57–58.



environment and development, such as formal Environmental Impact Assessment (EIA), wherein environmental democracy is embedded, inherent, ingrained as well as expressed.<sup>52</sup>

### **Environmental Democracy in the Context of the Aarhus Convention of 1998**

Environmental democracy expressed in Principle 10 of the Rio Declaration on Environment and Development, 1992, is elaborately espoused in the Aarhus Convention on access to information, PP in decision-making and access to justice in environmental matters, which was adopted on June 25, 1998, in the Danish City of Aarhus, at the Fourth Ministerial Conference in the 'Environment for Europe' process, under the auspices of the UN Economic Commission for Europe [UNECE]).<sup>53</sup>

The Aarhus Convention adopts a rights-based approach that links environmental rights and human rights.<sup>54</sup> It goes to the heart of the relationship between people (the public/the governed) and governments (public authorities) in a democratic context and thereby links environmental protection to government's accountability, transparency and responsiveness to the people.<sup>55</sup>

The three components or pillars of environmental democracy stated in Principle 10 of Rio Declaration on Environment and Development, 1992, namely, (a) access to information on the environment, namely on issues regarding or associated with the environment; (b), PP in environmental decision-making; and (c), access to justice in environmental matters, are enshrined and elaborated in the Aarhus Convention of 1998.<sup>56</sup> Hence, the Convention is widely and authoritatively considered as the most elaborate expression, milestone and landmark demonstration of Principle 10 of Rio Declaration on Environment and Development, 1992. For instance, Kofi Annan, the Seventh UN Secretary-General (1 January, 1997 – 31 December, 2006), described the Aarhus Convention as the most ambitious venture on environmental democracy undertaken under the auspices of the UN.<sup>57</sup>

<sup>52</sup> A. Gilpin, *Environmental Impact Assessment (EIA): Cutting Edge for the Twenty-First Century* (Cambridge University Press, 1995), 2; E. T. Bristol-Alagbariya (n21), 146–151 and 156–170.

<sup>53</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark, on 25 June, 1998 (n29).

<sup>54</sup> United Nations Economic Commission for Europe (UNECE), 'Environmental Policy', with the sub-titles 'Conventions and Protocols', 'Aarhus Convention', 'About the Convention' and 'Introduction' <<https://unece.org/environment-policy/public-participation/aarhus-convention/introduction>> Accessed 23 November, 2021.

<sup>55</sup> *Ibid*; UNECE, 'Promoting Environmental Democracy: UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)' <<https://unece.org/fileadmin/DAM/env/pp/PromotingEnvironmentalDemocracy.pdf>> Accessed 23 November, 2021.

<sup>56</sup> Area of the homepage of the European Commission captioned 'The Aarhus Convention' (n29).

<sup>57</sup> UNECE, 'AARHUS CONVENTION: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters - Quotable' (n29); S. Stec *et al*, *The Aarhus Convention: An Implementation Guide* (2000), v.

The universal feature of the Aarhus Convention is evidenced by its rights-based and non-discriminatory<sup>58</sup> form of boosting environmental democracy, concerning citizens' participation *vis-à-vis* participation of the general public (including future generations).<sup>59</sup> So, although the Convention applies to countries of the UNECE, based on its universal feature, non-ECE countries may accede to it to become parties thereof, subject to the provisions of Article 19,<sup>60</sup> especially 19 (3) and 19 (4), as well as by meeting other criteria expressed in its other relevant Articles of the Convention.<sup>61</sup> Such an all-encompassing right of accession makes the Aarhus Convention to be considered as a worldwide governance instrument on environmental democracy.<sup>62</sup>

### **Certain Other Provisions of Worldwide and Other International Legal and Regulatory Instruments Pertaining to Environmental Democracy**

Apart from the fact that environmental democracy is expressed in Principle 10 of the Rio Declaration on Environment and Development, 1992, as elaborately espoused in the Aarhus Convention, 1998, there are other provisions of worldwide and other international legal and regulatory instruments indicating or manifesting it. As indicated above, such legal and regulatory instruments pertaining to environmental democracy include (i) Article 10 (2) (f), UN Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, 1994; (ii), Article 6 (a), UN Framework Convention on climate change, 1999; (iii), the 2005 UN Brisbane Declaration on community engagement; and (iv) the 2010 UNEP (Bali) Guidelines for the development of national legislation on information, PP and access to justice in environmental matters.

Due to the community-based nature of this study, specifically put, the UN Brisbane Conference on Community Engagement, 2005 and the Declaration made therein may be described as consolidating citizens' engagement concerning community participation. This

<sup>58</sup> Article 3 (9) and Article 2, Aarhus Convention, 1998; Article 3 (9) of the Convention provides that *within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities*. Article 2 (4) of the Convention defines 'The Public' as *one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups*. Article 2 (5) of the Convention defines the 'Public Concerned' as *the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest*. Article 3 of the Convention is captioned 'General Provisions', while Article 2 of the Convention is entitled 'Definitions'.

<sup>59</sup> Article 1, Aarhus Convention, 1998, captioned 'Objective'.

<sup>60</sup> Article 19, Aarhus Convention, 1998, entitled 'Ratification, Acceptance, Approval and Accession'.

<sup>61</sup> Article 19, Aarhus Convention, 1998, captioned 'Ratification, Acceptance, Approval and Accession'.

<sup>62</sup> U. Etemire (n28), 12–19 and 231–234, especially 232; UNECE, 'Promoting Environmental Democracy: UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)' (n55); M. Peeters, 'Analysis of Case Law on Access to Environmental Information in the European Union' [2020] 4, *Chinese Journal of Environmental Law*, 13–43.

Conference and Declaration thus consider community engagement as an aspect of citizens' engagement or PP, towards good, responsible, transparent and accountable governance in global states and thus GEG as well as improved and/or efficient environmental democracy, environmental justice and social equity associated with developmental PPPs, particularly EIOs, taking place in local communities and societies around the globe, especially resources-rich developing countries.<sup>63</sup>

### **The International Association for Impact Assessment (IAIA) on Environmental Democracy and the International Association for PP (IAP2) on Public Participation in Generic Decision Making**

The IAIA is the foremost global network on environmental democracy in IA, while the IAP2 is a preeminent worldwide association on generic PP in decision-making and decision-implementation processes.

### **IAIA on Environmental Democracy towards Qualitative Environmental Protection and Social Equity in the Execution of PPPs, including Development Projects**

The IAIA, organized in 1980 to bring together researchers, practitioners, and users of various types of Impact Assessment (IA) from all parts of the world, is the leading global interdisciplinary and/or multidisciplinary network on best practice in the use of IA for informed decision-making regarding PPPs.<sup>64</sup> IAIA's voluntary members, numbering nearly 1,100 from 110 nations, are professionals of various academic disciplines, diverse array of interest groups and organizations, who make up the association's chapters around the globe, all of whom are concerned about environmental stewardship and sustainability, so as to protect and not harm the environment, variety of peoples and other life forms on Planet Earth.<sup>65</sup> So, IAIA operates from its international headquarters at 1,330 23<sup>rd</sup> Street South, Suite C, Fargo, North Dakota, USA, utilizes IA as a tool for preserving and achieving high quality environment and social equity, so as to advance the art and science of IA to promote and/or achieve SD around the world.<sup>66</sup>

From the foregoing, the IAIA may be described as an organization that advocates and advances PP<sup>67</sup> with particular regard to environmental democracy, in the context and course of environmental assessment (EA) and generic IA of developmental PPPs, including

---

<sup>63</sup> E. T. Bristol-Alagbariya (n26), 59.

<sup>64</sup> Homepage of the IAIA (n34).

<sup>65</sup> IAIA, 'About IAIA' <<https://www.iaia.org/about.php>> Accessed 24 November, 2021.

<sup>66</sup> L. Fortuny (IAIA) (ed), IAIA, 'Overview & History' <<https://www.iaia.org/wiki-details.php?ID=4>>; T. Townsend and A. Steedly, 'Social Impact Assessment' [2014], *Encyclopedia of Quality of Life and Well-Being Research* <[https://link.springer.com/referenceworkentry/10.1007%2F978-94-007-0753-5\\_2761](https://link.springer.com/referenceworkentry/10.1007%2F978-94-007-0753-5_2761)> both Accessed 24 November, 2021.

<sup>67</sup> IAIA, 'Public Participation International Best Practice Principles' [2006] Special Publication Series No. 4 <<https://www.iaia.org/uploads/pdf/SP4.pdf>> Accessed 24 November, 2021.

developmental projects, towards promoting and achieving SD, particularly environmentally and ecologically sound and socially equitable SD in local communities, towns and cities, as well as countries and regions around the globe.

### **IAP2 on Public Participation in Generic Decision Making towards Progressive Advancement and Extension of the Practice of PP Worldwide**

The IAP2 (originally named International Association of PP Practitioners [IAP3]), whose mailing address is situated at 1,3396 Kearney St Thornton, Colorado, USA, was established in 1990, as a non-profit corporation, due to the rising worldwide need for and interest in PP.<sup>68</sup> This worldwide association and leader of PP is comprised of PP professionals and organizations that are influenced by the philosophy and practice of PP, towards making and implementing decisions that affect the general public, so as to achieve and implement good decisions as a way to promote and safeguard public interest, promote GG, based on transparent and accountable decisions, in the course of advancing the profession and practice of PP.<sup>69</sup>

The IAP2, organized around its executive director, a high-calibre board of directors, a strong international headquarters, special committees, several professional sectors, regions and country-wide chapters and the rest of its members from non-chapter countries, conduct its activities to achieve the following objectives: (a) Boost professional development of people working on PP; (b) Educate decision-makers about the value of PP; (c) Help the public play effective roles in PP processes; and (d) Continue to define, review and enhance benchmarked international standards and practices on PP.<sup>70</sup>

Through its members, the IAP2 develops practical tools for good/best practices on PP, to help businesses, communities, governments, and other sectors of society, such as institutional or organizational entities around the world, so as to enable them to involve those affected by their decisions and thereby assisting them to improve their decision-making and decision-implementation processes. In this and many other ways, IAP2 advocates and actualizes the fact that citizens' involvement (PI) in decision-making is not merely an attribute of democracy but also an essential ingredient of GG, based on transparency and accountability

---

<sup>68</sup> IAP2 PP Training captioned 'The Standard for Effective Public Involvement ...! Good Decisions Don't Just Happen!', held at 801 North Quincy, 3<sup>rd</sup> Floor, Arlington, Virginia 22203, 11 – 16 May, 2014

<[https://cdn.ymaws.com/www.iap2.org/resource/resmgr/Training/IAP2\\_ARLINGTON\\_VA\\_MAY\\_12\\_16\\_.pdf](https://cdn.ymaws.com/www.iap2.org/resource/resmgr/Training/IAP2_ARLINGTON_VA_MAY_12_16_.pdf)>; IAP2, 'IAP2 Around the World' <<https://www.iap2.org/page/membership>>; the area of the IAP2 homepage, captioned 'Contact Information' with the sub-caption 'Mailing Address' <<https://iap2usa.org/contact>> all Accessed 24 November, 2021.

<sup>69</sup> Homepage of the IAP2 (n35); IAP2, 'History' <<https://www.iap2.org/page/history>> Accessed 24 November, 2021.

<sup>70</sup> IAP2 PP Training (n68); IAP2 2021 New Zealand Symposium, which brings together engagement practitioners, community development practitioners, communications and marketing professionals and academics to explore the diverse and challenging topic of community and stakeholder engagement <<https://www.iap2.org.au/events/2021-new-zealand-symposium/>> Accessed 24 November, 2021; E. T. Bristol-Alagbariya (n21), 91.

of governments to the governed.<sup>71</sup> For instance, IAP2 advances and extends the practice of PP through professional development, certification, standards of practice and strategic indicators of effectiveness such as its code of ethics, core values and spectrum of participation,<sup>72</sup> as well as by virtue of its dynamic and goal-oriented form of advocacy, key initiatives as examination and analysis of case-studies, including embarking on various other forms of activities that are being held in collaboration with strategic PP-oriented organizations and partners worldwide.<sup>73</sup>

The existence of the IAP2 is thus directly or indirectly influencing the course of citizens' participation in decision-making and decision-making implementation processes, including implementation of PPPs affecting the wellbeing of citizens and society at large, to promote good decisions and transparency and accountability in governance, towards GG, in the ongoing global march towards SD.<sup>74</sup>

Therefore, the IAP2 may be described as a worldwide leader of PP, whose widespread spectrum of members and associates deal with generic PP that is broader than environmental democracy (which is limited to PP in environmental matters), so as to promote the making and implementation of good decisions, namely public interest-oriented decisions and GG, in the ongoing global effort to achieve SD.

On the whole, based on the fundamental importance and significant roles of the IAIA and IAP2, and in the context, perspective and framework of this study, it is obvious that effective PI, namely PP or public engagement, particularly efficient environmental democracy, constitute a platform for creating understating, confidence, trust and harmonious relationships, such as collaboration and development partnerships, confidence among stakeholders, especially direct and/or major stakeholders, so as to improve the outcomes of developmental PPPs, including developmental projects, towards socio-economic empowerment, in the form of impact-benefits for local communities, SCD and overall SD in society. So, effective PI, especially well-organized and thus efficient environmental democracy, constitute the means for or key to avoiding, averting, forestalling or preventing misunderstanding, mistrust, crisis and conflict among stakeholders of developmental PPPs, towards socio-economic empowerment for local communities and other affected, interested and/or concerned members of the public, sustainability of developmental PPPs, including development projects, such as oil and gas EI development projects, and all-inclusive SD in society. This is more so because misunderstanding, crisis or conflict among stakeholders impede SD. Conversely, PPPs, including projects, such as petroleum EI development

<sup>71</sup> IAP2 PP Training (n68).

<sup>72</sup> The IAP2, 'Three Pillars of Effective Participation'

<[https://cdn.ymaws.com/www.iap2.org/resource/resmgr/Communications/A3\\_P2\\_Pillars\\_brochure.pdf](https://cdn.ymaws.com/www.iap2.org/resource/resmgr/Communications/A3_P2_Pillars_brochure.pdf)>

Accessed 24 November, 2021.

<sup>73</sup> IAP2, 'About Us'<<https://www.iap2.org/page/about>> Accessed 24 November, 2021.

<sup>74</sup> T. C. Beierle and J. Cayford (n28), 1–33, especially, 1 and 3; E. T. Bristol-Alagbariya (n21), 90–91.



projects, could be very successful when stakeholders work together. As such, harmony between petroleum development project proponents, relevant government agencies, such as government regulatory agencies, and local communities, such as poor and marginalized oil producing communities of Nigeria, through effective PI, such as well-organized and thus efficient environmental democracy, helps to build collaboration in the form of developmental partnership and trust, towards environmentally-sound and socio-economically equitable SD in society. As such, effective PI in the form of environmental democracy is capable of generating a win-win situation in the form of impact-benefits-based collaborative partnership, towards GEG and human and overall community wellbeing, so as to achieve environmentally-sound, ecologically-centred and socio-economically just and equitable SCD, in addition to successful implementation of petroleum development projects and overall SPD operations in the oil producing communities, and by extension all-embracing GEG and SD in Nigeria.

### **Petroleum EIOs, Environmental Democracy, Impact-Benefits and SD in Nigeria**

It is at this juncture, significant to consider the form, nature or degree of environmental democracy, which takes place in the course of petroleum EIOs in the communities of the oil-rich minority ethnic Niger Delta region and other oil producing communities of Nigeria and the nature of impact-benefits that the communities derive in the form of balancing benefits against the backdrop of the enormous adverse costs and consequences of these operations in the communities.

### **From the Era of Community Assessment (CA) Projects to the Period of Community Development (CD) Projects based on Memoranda of Understanding (MoUs) in the Oil Producing Communities**

Commercial quantities of petroleum development operations commenced in the oil-rich communities of the minority ethnic Delta region of Nigeria in the second half of the 1950s, mainly by Shell-BP Petroleum Development Company of Nigeria Limited (now known as the Shell Petroleum Development Company of Nigeria Limited [SPDC/Shell Nigeria]) and later-on by other multinational oil and gas companies (MNOCs).<sup>75</sup> For almost four decades from then, even with tremendous adverse environmental, ecological, ecosystem, socio-economic, health, human rights and other related negative consequences of petroleum resources development operations in the oil-rich communities of the Delta region, community involvement in the form of environmental democracy was barely non-existent, more also as there was no formal or institutionalized EIA to govern resources development projects. In fact, at the time, in the parlance of EA, the MNOCs unduly determined how their petroleum development projects in the oil-rich Delta region were assessed. So, these companies may be described as advocates that canvassed their own matters or judges that decided cases of their own petroleum development proposals. This state of affairs led to the exclusion and marginalization of the people of the oil-rich Niger Delta region in the course of

<sup>75</sup> E. T. Bristol-Alagbariya (n17), 119–120; E. J. Alagoa *et al.* (eds), *History Concourse 2011: The Niger Delta Environment as Resource and Reserve* (Onyoma Research, 2012), 223–224.

environmental democracy in petroleum development projects in the communities of the region.<sup>76</sup> In turn, the absence of environmental democracy in the form of community involvement undermined the protection of the environment and derivation of impact benefits in the form of community empowerment, including absence of employment opportunities and lack of social investments embarked upon by the MNOCs operating in the communities. In the process, there has been tremendous degradation, devastation and despoliation of the environment, ecology, ecosystem and ecosystem services in the oil-rich Niger Delta region by the MNOCs.<sup>77</sup>

Eventually, from the late 1990s, the MNOCs, led by Shell Nigeria, operating in the oil producing communities of the minority ethnic Niger Delta region began to embark on community assistance (CA) projects, such as the building of town halls, primary schools and other forms of social investments in the communities. These CA were however more or less dictated by the MNOCs for the communities, as the companies embarked on these projects without conducting needs assessment of the communities, through community engagement, in the form of environmental democracy in the communities.<sup>78</sup>

Thereafter, due to the alarming nature of the degradation, devastation and despoliation of the environment and the extreme and unacceptable nature of neglect and deprivation that amounted to poverty in the midst of plenty<sup>79</sup> in the oil-rich Niger Delta region, in the course of petroleum development operations embarked upon by the MNOCs in the region, these companies changed their CA strategy in the region. In the process, the MNOCs, led by SPDC, tactically began to convene community forums, like town hall meetings, in the

<sup>76</sup> E. J. Alagoa *et al.*, (eds) (n75), 241–251.

<sup>77</sup> *Ibid*; E. T. Bristol-Alagbariya (2021 [n45]), 59–68.

<sup>78</sup> E. T. Bristol-Alagbariya (2021 [n45]), 78–82.

<sup>79</sup> Population and Human Resources Division, Western Africa Department Africa Region, World Bank, 'Nigeria Poverty in the Midst of Plenty: The Challenge of Growth with Inclusion: A World Bank Poverty Assessment' [1996] Report No. 14733-UNI, World Bank

<<http://documents.worldbank.org/curated/en/582991468759320261/pdf/multi0page.pdf>> Accessed 25

November, 2021; South-South Governors' Forum Nigeria, *Braced for Global Competitiveness: Proceedings of First South-South Nigeria Economic Summit, 2009* (South-South Nigeria Economic Summit Committee 2009), particularly 267–269; J. C. Ebegbulem *et al.*, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' [2013] 4 (3), *International Journal of Business and Social Science*, 279–287; I. Bannon and P. Collier (eds), *Natural Resources and Violent Conflict: Options and Actions* (The World Bank 2003); F. Allen, *Implementation of Oil Related Environmental Policies in Nigeria: Government Inertia and Conflict in the Niger Delta* (Cambridge Scholars Publishing, 2014); M. Bavinck *et al.* (eds), *Conflicts Over Natural Resources in the Global South: Conceptual Approaches* (CRC Press 2014); Hemmati M., *Multi-Stakeholder Processes for Governance and Sustainable Development: Beyond Deadlock and Conflict* (Earthscan, 2002); E. C. Onwuka, 'Oil Extraction, Environmental Degradation and Poverty in the Niger Delta Region of Nigeria' [2005] 62 (6), *International Journal of Environmental Studies*, 655–662; I. Gary and T. L. Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor* (Catholic Relief Services, 2003).

Environmental Impact Assessment (EIA) process of their oil and gas development projects, whereby the companies changed their CA strategy to Community Development (CD) in the oil-rich Niger Delta region. For example, SPDC/Shell Nigeria sequentially changed its CA intervention approach in the oil-rich Delta region to CD in the communities of the Delta region and other oil producing areas of Nigeria, before further making a paradigm shift to SCD in the communities, in April 2003.<sup>80</sup>

The transition of SPDC and other MNOCs operating in the oil-rich Niger Delta region from CA to CD in the communities of the region and eventually to SCD in the region and other oil producing communities of Nigeria, was due to globally publicized inherent features of petroleum and other EIOs, which revealed that these operations have colossal negative effects on the environment and human wellbeing, such that the operations inhibit SD.<sup>81</sup> Over and over again, result of landmark studies around the globe, such as the Mining, Minerals and Sustainable Development (MMSD) Project, embarked on by the International Institute for Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD)<sup>82</sup> as well as the Extractive Industries' Review (EIR) undertaken by the World Bank Group<sup>83</sup> widely revealed the adverse consequences of EIOs that were for decades experienced in the oil-rich Niger Delta region, in the course of petroleum EIOs in the communities of the region.<sup>84</sup> Accordingly, the result of such studies, corroborated by practical evidences of EIOs projects around the globe, provide that if EIOs are properly

<sup>80</sup> E. T. Bristol-Alagbariya (n21), 234; Shell Nigeria '2003 People and the Environment Annual Report', 15–16 and 25; Area of the homepage of Shell Nigeria (SPDC) captioned 'Sustainability', with sub-caption 'Communities' <<https://www.shell.com.ng/sustainability/communities.html>>; E. Ugwuanyi (Vanguard newspaper), 'Nigeria: Shell Re-Positions Community Development Strategy, Earmarks \$24.5m' <<https://allafrica.com/stories/200401201019.html>> both Accessed 25 November, 2021.

<sup>81</sup> International Institute for Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD), *Breaking New Ground: Mining, Minerals and Sustainable Development: The Report of the MMSD Project* (Earthscan, 2002); World Bank Group, 'Striking a Better Balance – The World Bank Group and Extractive Industries: The Final Report of the Extractive Industries Review, World Bank Group Management Response' <<http://documents.worldbank.org/curated/en/961241468781797388/pdf/300010GLB.pdf>>; The World Bank, 'Extractive Industries' <<https://www.worldbank.org/en/topic/extractiveindustries>> both Accessed 25 November, 2021; E. T. Bristol-Alagbariya (n21), 83–101, especially 100; E. T. Bristol-Alagbariya (2021 [n45]), xxxi, xxxiv, 2, 36, 63, 67, 79, 99, 103 and 108.

<sup>82</sup> International Institute for Environment and Development (IIED) and World Business Council for Sustainable Development (WBCSD) (n81).

<sup>83</sup> The World Bank, 'Extractive Industries' (n81).

<sup>84</sup> I. Gary and T. L. Karl (n79); D. A. Omoweh, *Shell Petroleum Development Company, The State and Underdevelopment of Nigeria's Niger Delta: A Study in Environmental Degradation* (Africa World Press, 2006); J. G. Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities* (Lit Verlag, 2000); J. G. Frynas, *Oil in Nigeria: Community Rights and Corporate Dominance in Conflict* (Lit Verlag, 2000); D. C. Korten, *When Corporations Rule the World* (Kumarian Press, 2001).

regulated, based on international classic standards and practices, these operations would contribute to GEG, improved welfare of citizens, especially the wellbeing the poor and marginalized citizens and communities of resource-rich developing countries, as well as the advancement of these countries.<sup>85</sup> By and large, the outcomes of these landmark studies and practical evidences supporting and authenticating such outcomes around the world provide that if EIOs are properly regulated, based on international classic standards and practices, EI projects contribute to GEG, improved welfare of citizens and SD.<sup>86</sup>

To explain further, it may be noted that on one hand, the foregoing worldwide revelation of the deleterious effects of EIOs, as being experienced in the oil-rich communities of the Niger Delta region, generated and continues to occasion community crises, unrests and violent conflicts, aggravated by youth restiveness and militancy in the region.<sup>87</sup> On the other hand, this worldwide revelation and the crises-riven state of affairs in the oil-rich Niger Delta region armtwisted Shell Nigeria and other MNOCs to embark on the transition from CA to CD in the oil producing communities of the region. Forthwith, from CD, the MNOCs introduced SCD initiatives associated with their respective social responsibility (Corporate Social Responsibility [CSR]) plans, policies and programmes, including projects (PPPs) in the oil producing communities of the Delta region and other oil producing areas of Nigeria, which became integrated into the region from 2000, in the event of the enactment of the Niger-Delta Development Commission (Establishment, Etc.) (NDDC) Act, 2000.<sup>88</sup> Put otherwise, by virtue of the enactment of the NDDC Act, oil-rich minority ethnic Niger Delta region, namely the ethnographic, historic and geographic Delta region, otherwise known as the primordial Delta region, became transformed into a politically diluted and misleading Niger Delta region, comprised of the entire oil producing communities, areas and states of Nigeria.<sup>89</sup>

<sup>85</sup> E. T. Bristol-Alagbariya (2021 [n45]), xxviii, xxix–xxxvi, 2, 7–14, 23–24, 48–49, 61, 64–74, 78–97 and 99–110; UN, *Transforming Extractive Industries for Sustainable Development: Policy Brief: Transforming Extractive Industries for Sustainable Development* (UN, 2021); S. K. Lodhia (ed), *Mining and Sustainable Development: Current Issues* (Routledge, 2018); S. K. Lodhia (ed), *Mining and Sustainable Development: Current Issues* (Routledge Studies of the Extractive Industries and Sustainable Development) (Routledge, 2018); S. Bice, *Responsible Mining: Key Principles for Industry Integrity* (Routledge, 2016).

<sup>86</sup> *Ibid.*

<sup>87</sup> E. T. Bristol-Alagbariya (n21), especially 3–4 and 317–337; E. T. Bristol-Alagbariya (n17), 106–128, especially 119–125.

<sup>88</sup> E. T. Bristol-Alagbariya (n17), 119–125.

<sup>89</sup> Section 1 (2) (b), Niger-Delta Development Commission (Establishment Etc.) (NDDC) Act, No. 6 LFN 2000, Cap N86 LFN 2004; Section 1, NDDC Act is captioned ‘Establishment of the Niger-Delta Development Commission’; Section 4 of the Act, entitled ‘Rotation of Office of Chairman of the Commission’; Section 30 of the Act, headed ‘Interpretation’, regarding the interpretation of the meaning of ‘member states’ and the interpretation of the meaning of ‘oil’; Niger Delta Development Commission (Establishment, Etc.) (NDDC) Amendment Act, 2017; E. T. Bristol-Alagbariya (n17), 106–128.

Essentially, the CD and SCD PPPs of the MNOCs and other oil and gas companies operating in the oil-rich minority ethnic Delta region and other oil producing communities of Nigeria, are being embarked upon by these companies entering into various forms of MoUs with the communities.<sup>90</sup> By virtue of these MoUs, the MNOCs and other oil and gas companies operating in the oil producing communities embark on CD and SCD programmes and projects, as impact-benefits, in the oil producing communities.

It is on this note that in 2006, SPDC introduced the Global Memorandum of Understanding (GMoU), as a new way of working with communities.<sup>91</sup> SPDC states that its GMoUs bring communities together with representatives of their local and state governments, SPDC and non-profit organisations, such as development NGOs, in a decision-making committee called the Cluster Development Board. Under the terms of the SPDC GMoUs, the communities decide the development they want, while SPDC, on behalf of its Joint Venture Partners, provides secure funding for five years, to ensure that the communities have stable and reliable finance to implement their development plans, namely community development plans, in a transparent and accountable manner. SPDC highlights that its GMoUs help to foster regular communication, conflict prevention and sustainable relationship between it and its host communities.<sup>92</sup>

Specific examples of MoUs between MNOCs and the oil producing communities of Nigeria are those between the Joint Industry Companies (JIC) operating in Bonny Kingdom (led by Nigeria LNG Limited [NLNG]) and the apex Traditional Ruling Council of the Kingdom

<sup>90</sup> E. T. Bristol-Alagbariya (2021[n45]), 62; MoU between SPDC and Kula Kingdom, dated December 30, 2005; MoU between Obedum, Emirikpoko, Anyu, Ogboloma, Adada, Akani and Emelego Communities of Abua-Odual LGA, Rivers State and SPDC, dated July 25, 2006; MoU between the Host Communities of Eleme Petrochemicals Company Limited (EPCL) and EPCL, dated April 1, 2007; MoU between All Grace Energy Limited and Wester Ord Oil & Gas Nigeria Limited (Joint Venture), and Ubima Town Community, Ikwerre LGA, Rivers State, dated June 9, 2016; MoU between Akwa-Ibom State Government, and Frontier Oil Limited and Savannah Uquo Gas Limited, and Esit Eket and Eket LGAs, Akwa-Ibom State, dated September 9, 2021.

<sup>91</sup> Area of the homepage of Shell Nigeria (SPDC), captioned 'Sustainability', with the sub-title 'Communities' and then 'Global Memorandum of Understanding (GMoU)'

<<https://www.shell.com.ng/sustainability/communities/gmou.html>> Accessed 25 November, 2021.

<sup>92</sup> *Ibid*; C/f GMoU between Rumuobiakani, Rumuezeolu, Oginigba and Rumuomasi Communities of Obio-Akpor LGA, Rivers State, and SPDC, dated April 10, 2007; GMoU between Oyigbo Cluster Communities and their Satellite Communities, Oyigbo, Obio-Akpor LGA, Rivers State, and SPDC, dated August 20, 2010; GMoU between Abua-Odual Cluster Communities and their Satellite Communities, Abua-Odual LGA, Rivers State, and SPDC, dated February 9, 2012; GMoU between the entire Emohua Cluster and its Satellite Communities, Emohua LGA, Rivers State, and SPDC, dated February 21, 2013; GMoU between the entire Ikwerre Cluster and its Satellite Communities, Ikwerre LGA, Rivers State, and SPDC, dated February 28, 2013; GMoU between the entire Akukutoru Cluster and its Satellite Communities, Akukutoru LGA, Rivers State, and SPDC, dated November 19, 2013; GMoU between the entire Abua-Odual Cluster and its Satellite Communities, Abua-Odual LGA, Rivers State, and SPDC, dated November 20, 2017.



(comprised of the Amanyanabo-in-Council/Bonny Chiefs' Council). The prevailing MoU between the Bonny JICs and the apex Traditional Ruling Council of Bonny Kingdom is that entered into between the parties on October 3, 2017, which is designed to usher into existence a Special Purpose Vehicle (SPV), namely the Bonny Kingdom Development Foundation (BKDF),<sup>93</sup> which was eventually registered by the Corporate Affairs Commission (CAC), Nigeria, as the Bonny Kingdom Sustainable Development Foundation (BKSDf).<sup>94</sup>

### **BKSDf as an Example of MoU Impact-Benefit Arrangement Emanating from Petroleum Development Operations in Bonny Kingdom**

The BKSDf is an outstanding example of MoU impact-benefit arrangement, which emanated from petroleum development operations in oil-rich Bonny Kingdom of the Niger Delta region. As indicated above, this MoU was entered into on October 3, 2017, between Bonny Kingdom (represented by the Amanyanabo [Monarch] of Bonny Kingdom, Edward Asimini William Dappa Pepple III, JP, CON, Perekule XI) and the Bonny JICs (comprised of NLNG and SPDC), for the SD of the Kingdom.

The 2017 BKSDf (case-study) MoU is the next in line to a previous MoU between Bonny Community and the Bonny JICs on community stakeholding, which was entered into between the parties in 1998, to undertake certain Community Development (CD) projects in Bonny Kingdom. These CD projects are namely (i) Bonny By-Pass Road, Bonny; (ii) Abalamabie Road, Bonny Island; and (iii) Bonny Town Water and Electricity Projects, which include Bonny Power Supply and Distribution, Bonny Town Water Scheme, Abalamabie Water Extension and a Management Consultancy. Besides, the 1998 Bonny Kingdom and Bonny JICs MoU was earmarked to generate a CD Master Plan, which would be the springboard for future economic and infrastructural development of Bonny Kingdom. While making reference to this MoU, NLNG states as follows:

*In 1998, the Joint Industry Companies (JICs), made up of NLNG, Shell Petroleum Development Company Limited (SPDC) and Exxon Mobil, signed an MoU with Bonny Kingdom. This MoU provided a framework which enabled the JICs to pool resources and provide the Kingdom with the Bonny Master Plan, the 1.5km by-pass road, the 1.2km access road, uninterrupted electricity and potable water supply managed through a special purpose vehicle called Bonny Utility Company (BUC).*

<sup>93</sup> Memorandum of Understanding (MoU) between Bonny Kingdom (Represented by the Amanyanabo of Bonny Kingdom, Edward Asimini William Dappa Pepple III, JP, CON, Perekule XI) and the Joint Industry Companies (Comprising of Nigeria LNG Limited (NLNG) and SPDC, for the sustainable development of Bonny Kingdom, dated October 3, 2017 (hereinafter called MoU between Bonny Kingdom and the Bonny JICs, for the SD of Bonny Kingdom, dated October 3, 2017); homepage of the BKDF, captioned 'Bonny Kingdom Development Foundation' <<http://www.bonnykingdomfoundation.org/>> Accessed 25 November, 2021.

<sup>94</sup> The BKDF, registered by the Corporate Affairs Commission (CAC), Nigeria, as the BKSDf, on December 24, 2020, with the CAC registration number CAC/IT/NO155191.

---

*Over the years, more than \$182m has been spent by the JIC in delivering development projects on the Island.*<sup>95</sup>

After the execution of this MoU, agitation of Bonny people and the corresponding need for the Bonny JICs to continue to provide economic empowerment, employment and infrastructural development in Bonny Kingdom continued, which gave birth to the BKSDf MoU between the Bonny JICs and Bonny Kingdom. In the process, a Pan Bonny SD Conference, was convened on May 25, 2013, by the apex Traditional Ruling Council of the Kingdom, with the active support of the Bonny JICs, led by NLNG, to determine how to develop Bonny Island in future. This Conference gave birth to the BKSDf MoU, which provided for the registration of the BKDF, as a SPV, to midwife community-based development in Bonny Island.<sup>96</sup>

The BKSDf is to be funded annually by about Three Billion, Six Hundred Thousand Naira, from NLNG and SPDC.<sup>97</sup> Besides these two corporate sources of funding, the BKSDf is expected to attract national and international development partners, agencies and investors for assistance, such as donations/funds, towards SD of Bonny Kingdom.<sup>98</sup> So, the summary of

---

<sup>95</sup> Area of the homepage of NLNG, captioned 'CSR', with the sub-title 'Our Approach' <<https://www.nigerianlg.com/csr/Pages/Our-Approach.aspx>>; Area of the homepage of NLNG, captioned 'Company', with the sub-title, 'Who We Are', both Accessed 25 November, 2021; NLNG, a major player in the global LNG business, was incorporated as a limited liability company on May 17, 1989, to harness Nigeria's vast natural gas resources and produce Liquefied Natural Gas (LNG) and Natural Gas Liquids (NGLs) for export, and thus a global company helping to make Nigeria better, as reputable world-class LNG Company; E. T. Bristol-Alagbariya, 'The UN Global Compact as a Soft Law Business Regulatory Mechanism Advancing Corporate Responsibility towards Business Sustainability and Sustainable Development Worldwide' [2020], 94 *Journal of Law, Policy and Globalization*, 27–39, especially 27 and 34–38.

<sup>96</sup> MoU between Bonny Kingdom and the Bonny JICs, for the SD of Bonny Kingdom, dated October 3, 2017, 8.

<sup>97</sup> MoU between Bonny Kingdom and the Bonny JICs, for the SD of Bonny Kingdom, dated October 3, 2017, 5–6, captioned 'Funding'; to fund the MoU, NLNG undertook to provide Two Billion Naira annually, along with an annual peace incentive pledge of One Billion Naira, while the SPDC undertook to provide Six Hundred Million Naira annually.

<sup>98</sup> Goal 17, UN Sustainable Development Goals (SDGs), captioned 'Partnerships for the Goals', which is designed to strengthen the means of implementation and to revitalize global partnerships towards SD; E. T. Bristol-Alagbariya, 'Sustainable Development: A Soft Law Concept Transforming SD-Oriented Initiatives of the UN System into Hard Law Instruments in UN Member-states and Promoting Partnerships around the Globe' [2020] 94, *Journal of Law, Policy and Globalization*, 41, 48 and 50; A. C. Kallhauge *et al.* (eds), *Global Challenges: Furthering the Multilateral Process for Sustainable Development* (Greenleaf Publishing, 2005); E. T. Bristol-Alagbariya (n21), 49–51, 70–71, 75 and 317; J. M. E. Knowles, *Partnerships for Sustainable Development Africa: North-South Cooperation within the Framework of Local Agenda 21* (Local Agenda 21 Charters Programme, 1999); P. Glasbergen *et al.* (eds), *Partnerships, Governance and Sustainable Development: Reflections on Theory and Practice* (Edward Elgar Publishing, 2007); E. T. Bristol-Alagbariya, 'Environmental Assessment Law towards Sustainable Development in Nigeria and the New Partnership for Africa's Development Action Plan for the Environment Initiative' [2016] *Environmental & Planning Law*

the aims and objectives of the BKSDf, jointly agreed upon by the Bonny JICs and Bonny Kingdom, is to promote and coordinate developmental efforts of all key stakeholders of Bonny Kingdom, so as to align with government regulatory and relevant organizational frameworks, towards the wellbeing of Bonny people and communities, by enhancing socio-economic transformation, environmental sustainability, all-inclusive advancement and equitable SD of the Kingdom.<sup>99</sup> Parties to the BKSDf MoU, signed on October 3, 2017, unanimously agreed that the MoU would subsist for a period of 25 years, subject to review every two years, subject upon the written consent of the parties.<sup>100</sup>

However, disagreement ensued among certain interest groups of Bonny Kingdom concerning fair, equitable and socially justifiable representation of their members in the proposed Board of trustees (BoTs) of the BKDF. In the course of this disagreement, representatives of the *Duawaris* (Founding & Aboriginal Royal Houses) of Bonny Kingdom contended that the criteria<sup>101</sup> for selecting members of the BoTs of the proposed BKDF, which were designed towards having efficient proposed trustees, was improperly being implemented; consequently they were short-changed from having (i) any representative of the leading Founding Families (Houses) of the Kingdom, and (ii) equitable representatives of Finima Community (represented by the Buoye-Omuso Brown Major House of the Community: the Kongo Lineage of the *Duawaris*).

The above-stated disagreement gave rise to a legal suit No: FHC/PH/CS/04/2017 (Coram: Honourable Justice Adamu T. Mohammed), at the Federal High Court (FHC), Port Harcourt, between the *Duawaris* (as Plaintiffs) and the Registrar General, CAC, Nigeria, and 5 Ors. (as Defendants). While this suit was pending, the Jumbo Major House of Bonny Kingdom applied to join as the second set of Plaintiffs thereof. As a way forward, the Monarch of the Kingdom, King E. A. W. D. Pepple III, JP, CON, convened an amicable out-of-court settlement meeting, in August 2017, during which he (the Monarch) and Elder Lawrence F. Jumbo had a fruitful dialogue with representatives of the *Duawaris*. Furthermore, with the intervention of the leadership of the Titled Citizens' Assembly of the Kingdom (represented by the President of the Assembly, *Ama-Opu-Orubo* Ndi Okereke-Onyiuke), the Bonny Local

---

*Review* (ELPR), 13 (1–2), 2016, 1294; J. K. Gamman, *Overcoming Obstacles in Environmental Policymaking: Creating Partnership through Mediation* (State University of New York Press, 1994); .

<sup>99</sup> CAC, Nigeria, FORM CAC/IT/1, Incorporated Trustees Application Form, Bonny Kingdom Sustainable Development Foundation, Registered Office, Bonny Utility Company (BUC) Complex, Opposite Bonny LGA Secretariat, Hospital Road, Grand Bonny Island, Rivers State, captioned 'Aims and Objectives of the Association.

<sup>100</sup> MoU between Bonny Kingdom and the Bonny JICs, for the SD of Bonny Kingdom, dated October 3, 2017, 18, captioned 'Duration'.

<sup>101</sup> Accenture (The Third-Party Manager, BKDF), 'Role Profile of BKDF Board of Trustees', which indicates required qualifications and responsibilities of members of the proposed BKDF BoTs.

Government Council (through Honourable [*Warisenibo*] Cyril Godwin Hart) and clergymen in the Kingdom (led by the Retired Rt Rev. Gabriel Hubert Pepple, JP), issues were ultimately resolved with the *Duawaris*, following which the FHC adopted the amicable out-of-court settlement of the parties to the suit. The FHC did so, on January 24, 2020, by granting an order that ratified the amicable out-of-court settlement.<sup>102</sup> On this note, by virtue of an undertaking made by Pepple & Pepple (St Lawrence Chambers), Counsel to the Amanyanabo-in-Council and the Bonny Chiefs' Council (the 5<sup>th</sup> and 6<sup>th</sup> Defendants, respectively), the FHC ordered that the 2<sup>nd</sup> set of Plaintiffs (Jumbo Major House) be incorporated into the amicable out-of-court settlement reached by the parties. Thereafter, the BKSDf was duly registered by the CAC, Nigeria, on December 24, 2020, with Registration Number CAC/IT/NO 155191.<sup>103</sup>

Afterwards, the BKSDf was fraught with a another challenge concerning the refusal or inability of its BoTs to commence work, amidst clamour by some Bonny people that the BoTs should be inaugurated by the Monarch of Bonny Kingdom. Considering that by July 2021, it had taken the BoTs of the BKSDf well over six months of inactivity, the Registered Trustees *vis-à-vis* BoTs of the *Duawaris* of the Kingdom instituted another legal suit, namely Suit No: FHC/PH/CS/58/2021, seeking for a declaration that the BKSDf should commence work forthwith, in the overall interest of the Kingdom and its JICs.<sup>104</sup>

<sup>102</sup> Letter of the Registered (Incorporated) Trustees of the *Duawaris* (Founding & Aboriginal Royal [Aseme] Houses) of Grand Bonny Kingdom, representing the Founding Ancestors of the Kingdom [Corporate Affairs Commission of Nigeria Registration Certificate No: CAC/IT/No. 100619]) to His Majesty, King E. A. W. D. Pepple, Amanyanabo of Ancient Grand Bonny Kingdom, captioned *inter alia*, 'Our Resolve to Discontinue Our Court Cases and Our Appeal to Your Majesty to Avoid further delay of the institutionalization of the BKDF at the Corporate Affairs Commission (CAC), dated December 23, 2019; Notice of Withdrawal of Action, by Solicitors to the 1<sup>st</sup> Set of Plaintiffs (*Duawaris* [Founding & Aboriginal Royal Houses] of Grand Bonny Kingdom, in Suit No: FHC/PH/CS/04/2017, dated January 20, 2021; Consent Judgement Order of Suit No: FHC/PH/CS/04/2017 (Coram: Honourable Justice Adamu T. Mohammed), dated January 24, 2020, signed by M. S. Hassan (Registrar).

<sup>103</sup> CAC, Nigeria, Certificate of Incorporation of the BKSDf, with Registration Number CAC/IT/NO 155191, signed by the Registrar General, A. G. Abubakar, dated December 24, 2020, having the following eleven persons as incorporated (registered) trustees: Okereke-Onyiuke, Ndi; Bristol-Alagbariya, Edward Tamunosiminikarama; Pepple, Amal Inyingiala; Benstowe, Stephen Japudoari; Philip-Brown, Tamunobere; Jumbo, Jasper Fortune; Brown-Okardi, Kendry; Hart, Howells Idaerefagha; Hart, Cyril Godwin; Jumbo, Wilson Emmanuel Sotonye; and Blu-Attoni Peter Kiribo; Section 836, Companies and Allied Matters Act (CAMA), 2020, captioned 'Effect of Registration and Certificate'; Part F, Sections 823 – 850 CAMA, 2020, captioned 'Incorporated Trustees'.

<sup>104</sup> Suit No: FHC/PH/CS/58/2021, between the Registered (Incorporated) Trustees of the *Duawaris* and Nigeria LNG Limited & 15 Ors.

The long and tortuous journey towards the registration of the BKSDf, by the CAC, Nigeria, and the ongoing delay associated with commencement of work of its BoTs, due to surreptitious manipulations, underscore the need and essence of consummating enforceable agreements between the oil producing communities of Nigeria and oil and gas companies operating in the communities.<sup>105</sup>

Consequently, it may be reiterated that MoUs between oil and gas companies, such as MNOCs, and the oil producing communities of Nigeria do not promptly deliver just and equitable impact-benefits, as these MoUs are not impact-benefit agreements (IBAs) or other forms of SD-oriented good neighbour agreements between the oil and gas companies and the oil producing communities. This is particularly so because these MoUs, which are albeit impact-benefit instruments of petroleum development operations in the oil producing communities, have been generating misunderstandings, confusion and crises in the communities.<sup>106</sup>

Notably, although an agreement is distinct from an MoU, there may be no legal or practical difference if an MoU is referred to as an 'agreement' rather than an 'MoU'. This is particularly so, if the parties intend to be bound by an MoU, as a legally enforceable contractual instrument between them. However, oil and gas companies, led by MNOCs, operating in the oil producing communities of Nigeria, are known to rely and insist on their MoUs and social responsibility PPPs with oil producing communities, while promoting their

<sup>105</sup> Letter of the Registered (Incorporated) Trustees of the *Duawaris* (Founding & Aboriginal Royal [*Aseme*] Houses) of Grand Bonny Kingdom, representing the Founding Ancestors of the Kingdom [Corporate Affairs Commission of Nigeria Registration Certificate No: CAC/IT/No. 100619] to His Majesty, King E. A. W. D. Pepple, Amanyabo of Ancient Grand Bonny Kingdom, captioned *inter alia*, 'NOW that the Foundation has been registered, Bonny Kingdom Monies Accruing to the Kingdom from the Bonny Joint Industries (led by Nigeria LNG Limited) Can be Employed to Solve the Serious Insecurity (especially insecurity of life), Social Works, Poverty and Many Other Developmental Problems of our Ancient Kingdom and NOT LATER THAN NOW', dated March 6, 2021; Letter of the Registered (Incorporated) Trustees of the *Duawaris* (Founding & Aboriginal Royal [*Aseme*] Houses) of Grand Bonny Kingdom, representing the Founding Ancestors of the Kingdom [Corporate Affairs Commission of Nigeria Registration Certificate No: CAC/IT/No. 100619] to the Managing Director and Chief Executive Officer (CEO) Nigeria LNG Limited, Dr Philip Mshelbila, entitled *inter alia* 'Re: The Bonny Kingdom Sustainable Development Foundation (BKSDf) Having Been Duly Registered by the CORPORATE AFFAIRS COMMISSION (CAC), NIGERIA, with the CAC Registration Certificate No: CAC/IT/No. 155191, there is NO NEED to CONTINUE TO SUPPRESS TRUTH, by ENGAGING in FALSEHOOD. Rather, WE SHOULD, as MERE MORTALS under the ABSOLUTE and IMPARTIAL REGIME OF GOD ALMIGHTY, ALL HONOURABLY and AMICABLY ENCOURAGE the BKSDf to SUCCEED', dated September 22, 2021.

<sup>106</sup> E. T. Bristol-Alagbariya (2021[n45]), 62.



CD and CSD profiles in the communities.<sup>107</sup> Ironically, when legal suits are instituted by the communities to enforce such MoUs and social responsibility projects against the oil and gas companies, the companies often make roundabout turn to argue that MoUs and social responsibility projects in the communities are not legally enforceable.<sup>108</sup> Such inconsistent and derogatory arguments of the oil and gas companies undermine the enforceability of MoUs and social responsibility projects in the oil producing communities. In effect, these MoUs and social responsibility projects only become enforceable at the discretion of the companies.<sup>109</sup> Thus, predominantly, in their approbative and reprobative divide and rule<sup>110</sup> game in the oil producing communities, oil and gas companies insist and rely on their MoUs and social responsibility projects, when it is in their advantage or interest to do so. Hence, what obtains in resource-rich but poor and vulnerable developing countries like Nigeria, is the manipulation of MoUs and social responsibility project-arrangements by oil and gas companies (being the powerful parties), against the interest of the oil producing communities (which constitute the weak party) of the arrangements.

Consequently, considering the ambiguity, uncertainly and other practical realities associated with the non-binding-ness and unenforceability of MoUs and social responsibility projects in Nigeria's oil producing communities, it is wiser, safer, better and more pragmatically reasonable for IBAs or other forms of SD-oriented good neighbour agreements to govern relations between these communities and the oil companies operating in the communities.

The foregoing notwithstanding, there is humongous social responsibility on NLNG, as an esteemed world-class LNG Company and a major player in the global LNG business, and thus a world-class reputable company helping to make Nigeria better, to, on the basis of its avowed international benchmarked environmental and social responsibility performances, ensure that the BoTs of the BKSDf begins to function (commence work). It behoves on NLNG and SPDC as members of the Bonny JICs to do so, in compliance with their collective

<sup>107</sup> Area of the homepage of Shell Nigeria (SPDC), captioned 'Sustainability', with the sub-title 'Communities' and then 'Global Memorandum of Understanding (GMOU)'

<<https://www.shell.com.ng/sustainability/communities/gmou.html>>; Area of the homepage of NLNG, captioned 'CSR', with the sub-title 'Our Approach' <<https://www.nigerianlg.com/csr/Pages/Our-Approach.aspx>> both Accessed 25 November, 2021.

<sup>108</sup> Suit No: NCH/212/2014, between the Bristol-Alagbarigha Royal House (Founder of Grand Bonny: *Okoloamakoromabo*), Kuruama/Kuruama-Iwoama Communities of Grand Bonny Kingdom, Bonny Local Government Area of Rivers State (Claimants), AND The Shell Petroleum Development Company of Nigeria Limited (SPDC) and Anor (Defendants), where SPDC argued that its MoU and social responsibility obligations with the Claimants are not enforceable in law.

<sup>109</sup> D. C. Korten (n84).

<sup>110</sup> E. Amaize (Vanguard Newspaper), 'Nigeria: 300 Shoreline Communities Accuse Shell of 'Divide and Rule Tactics'' <<https://allafrica.com/stories/201607110369.html>>; Human Rights Watch, 'NIGERIA THE OGONI CRISIS: A Case-Study of Military Repression in Southeastern Nigeria' [1995] 7 (5), Summary, *Human Rights Watch* <<https://www.hrw.org/reports/1995/Nigeria.htm>> both Accessed 25 November, 2021.

and respective commitments to their offshore investors and alliance groups and organizations around the globe, such as (i) the UN Global Compact,<sup>111</sup> (ii) the International Finance Corporation (IFC),<sup>112</sup> (iii) the Multilateral Investment Guarantee Agency (MIGA)<sup>113</sup> and (iv) other Equator Principles (EP) environmental and social governance systems, organized by the EP Association.<sup>114</sup> Clearly, if the BKSDf is able to function properly by efficiently achieving its aims and objectives, the success story of NLNG, SPDC and the rest of the Bonny JICs as esteemed socially responsible MNOs would be strengthened.<sup>115</sup>

Besides, stemming from their customary obligations and/or responsibilities that are embedded in the social contract of governance, the apex traditional rulers of Bonny Kingdom, namely the Country Chiefs (*Se-Alapu*), led by the Monarch (King E. A. W. D. Pepple), should be the flag bearers of community concord, cohesion and social responsibility (community social responsibility [SRC]), as well as vanguards and trendsetters of industrial peace and harmony in Bonny Kingdom.<sup>116</sup> Collectively, the apex traditional rulers of the Kingdom should transparently and accountably support and strengthen the initial effort of the Bonny Monarch, who personally midwived the amicable out-of-court settlement, towards the registration of the BKSDf and thus the commencement of work its BoTs. Also, it is on this premise that government social responsibility (GSR), led by the Rivers State Government

<sup>111</sup> Homepage of the UN Global Compact <<https://www.unglobalcompact.org/>>; Area of the homepage of the UN Global Compact, with the caption 'Who are We' and the sub-caption 'One Global Compact: Uniting Business for A Better World' <<https://www.unglobalcompact.org/what-is-gc>> and <<https://www.unglobalcompact.org/what-is-gc/strategy>> both Accessed 25 November, 2021.

<sup>112</sup> IFC, 'IFC Insights: IFC Sustainability Framework' <[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/sustainability+framework](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework)>; IFC, 'IFC Insights: Environmental and Social Sustainability Policy' <[https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/policies-standards/sustainability-policy/sustainability-policy](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability-policy/sustainability-policy)> both Accessed 25 November, 2021; IFC, *IFC Sustainability Framework: Policy and Performance Standards on Environmental and Social Sustainability Access to Information Policy Effective January 1, 2012* (IFC, 2012).

<sup>113</sup> Homepage of MIGA <<https://www.miga.org/>>; MIGA, 'What We Do: Learn About Our Process' <<https://www.miga.org/what-we-do>> both Accessed 25 November, 2021.

<sup>114</sup> Homepage of the Equator Principles Association captioned 'Equator Principles' <<https://equator-principles.com/>> Accessed 25 November, 2021.

<sup>115</sup> Area of the homepage of NLNG captioned 'The Company', with the sub-title 'Who We Are' <<https://www.nigerianlmg.com/the-company/Pages/Who-We-Are.aspx>> Accessed 25 November, 2021.

<sup>116</sup> H. T. Terry, 'Legal Duties and Rights' [1903] 12 (4), *The Yale Law Journal*, 185–212; D. Lyons, 'The Correlativity of Rights and Duties' [1970] 4 (1), *Noûs*, 45–55; E. T. Bristol-Alagbariya (2020 [n45]), 8–9 and 118, 124 and 127; M. Lessonoff (ed), *Social Contract Theory* (Basil Blackwell, 1990); E. T. Bristol-Alagbariya, *Governance Towards Sustainable Development in Nigeria: The Role of Strategic Assessment of Decisions & Actions* (CEPMLP/DUP, 2013), 44–45, 55, 59–60, 64–65, 111–112, 155, 249–250, 258, 289 and 292; Section 14 (2) (b), 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended); N. Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (Cambridge University Press, 1997); R. Sidaway, *Resolving Environmental Disputes from Conflicts to Consensus* (Earthscan, 2013).

(RSG) and other relevant government institutions and agencies, such as the office of the Honourable Minister of Petroleum Resources and the Nigerian Content Development and Monitoring Board (NCDMB), should drive, manage and superintend over CSR and SRC towards GEG and SCD in Bonny Kingdom. On the whole, the BKSDf, initiated by the Bonny JICs and eventually registered by the CAC, Nigeria, features as pioneering effort and landmark precursor to the host communities' development trusts provided for in the Petroleum Industry Act, 2021,<sup>117</sup> for petroleum host communities of Nigeria.<sup>118</sup>

## CONCLUSION AND RECOMMENDATIONS

So far, this study is concerned with the chief international benchmarked standard and practice on environmental democracy, which is espoused in Principle 10 of the Rio Declaration on Environment and Development, 1992, elaborated in the Aarhus Convention, 1998, and expressed in other related global and international legal and regulatory instruments. These other global and international legal and regulatory instruments on or associated with environmental democracy include Article 6 (a), UN Framework Convention on climate change (UN FCCC), 1992; Article 10 (2) (f), UN Convention to combat desertification in those countries experiencing serious drought and/or desertification, particularly in Africa, 1994; the 2005 UN Brisbane Declaration on community engagement; and the 2010 UNEP (Bali) Guidelines for the development of national legislation on access to information, PP and access to justice in environmental matters.

The study also discussed environmental democracy, as promoted by the International Association for Impact Assessment (IAIA) in the realm of IA, as well as public participation (PP), as propagated by the International Association for PP (IAP2) in the context of generic PI in decision making. Consequently, the study emphasized the need for Nigeria to practice classic environmental democracy, namely PP *vis-à-vis* public engagement in environmental decision making, as well as introduce and/or institutionalize model IBAs or impact-benefit schemes, such as the Canadian Whitehorse Mining Initiative (WMI), as mechanisms for balancing benefits with the attendant adverse consequences of petroleum (oil and gas) development operations in the oil producing communities of the country. This is because the

<sup>117</sup> Section 235, Petroleum Industry Act, Act No. 6, 2021, particularly sub-sections (4) and (5) of this Section of the Act; Section 235, Petroleum Industry Act, 2021, is captioned 'incorporation of host communities' development trusts.; Section 239, Petroleum Industry Act, captioned 'Objectives of Host Communities' Development Trust'; Chapter 3, Sections 234 – 257, Petroleum Industry Act, 2021, captioned 'Host Communities Development'; M. J. D. Akpan, 'Petroleum Industry Act in Nigeria: An Analysis of the Impact of the Novel Host Communities Development Trusts Provision' [2021] 9 (7), *Global Journal of Politics and Law Research*, 30–46.

<sup>118</sup> Section 318, Petroleum Industry Act, Act No. 6, 2021, defines host communities as communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor may determine under Chapter 3 of this Act; Chapter Three (3), Petroleum Industry Act, 2021, is captioned 'Host Communities Development'; Section 318, Petroleum Industry Act, 2021, is captioned 'Interpretation'.

---

practice of classic environmental democracy and introduction of model IBAs or SD-oriented impact-benefit schemes would alleviate the adverse effects of petroleum development operations in the oil producing communities of Nigeria, towards GEG, SCD and sustainable petroleum development (SPD) operations in the communities, as well as overall GEG, GG and all-embracing SD in the country. However, the study has established that for well over six decades of petroleum resources development operations in the resource-rich communities of the Niger Delta region, the costs, otherwise put, negative effects, of the resources development operations, have continued to outweigh the benefits accruing from the resources development operations, such that these negative effects are fundamentally devastating the environment, degrading the ecology and despoiling ecosystem and ecosystem services, as well as SCD and SPD in the oil-rich Delta region and other oil producing areas of Nigeria.

So far also, studies, backed by empirical evidences of development projects around the world, especially in resource-rich developing countries like Nigeria, continue to demonstrate that EIOs, such as petroleum and mining or other mineral resources development operations, have tremendous negative consequences on the environment and human wellbeing. EIOs fundamentally inhibit SD. However, if EIOs are governed by international benchmarked standards and practices, these operations would contribute to good environmental governance (GEG), improvement of human wellbeing, especially the wellbeing of marginalized citizens and communities of resource-rich developing countries, as well as the advancement and overall SD of these countries.

The study reveals that the principal international benchmarked standard and practice on environmental democracy, espoused in Principle 10 of the Rio Declaration on Environment and Development, 1992, and elaborated in the Aarhus Convention, 1998, among other related global and international legal and regulatory instruments on environmental democracy and community engagement in decision-making, has potential to generate impact-benefits, through IBAs, towards GEG, SCD in the oil-rich minority ethnic Delta region and other oil producing areas of Nigeria. The practice of Citizens' or PP as propagated by the IAP2 and the practice of environmental democracy in the course of IA as canvassed by the IAIA are able to enhance the realization of IBAs, as well as GEG, SCD and sustainable petroleum development in the oil producing communities and thereby promote all-embracing GEG, GG and overall SD in Nigeria.

Hence, we contend, assert and maintain that classic (first-rate, first-class or masterpiece) environmental democracy should be able to engage the affected, interest and concerned members of the public, by putting them at the heart of decision-making from the earliest point of deliberation, namely public involvement (PI), and thereby place final decisions in their hands *vis-à-vis* ensure the implementation of their decisions. Accordingly, we recommend the introduction of model impact-benefit schemes, to balance the adverse consequences of petroleum resources development operations with commensurate benefits of these resources development operations in the oil producing communities of Nigeria, so as to achieve SCD,

---

namely environmentally-sound, ecologically-centred and socio-economically just and equitable SD in the communities.

The MoU that generated the case-study (BKSDf) reference point, examination and analysis fundamentally demonstrates that MoUs between oil and gas companies and oil producing communities of Nigeria are causing misunderstanding, crises or conflicts. Easily enforceable IBAs are therefore preferable to MoUs. In other words, it would be better for if IBAs or other forms of SD-oriented good neighbour agreements, could be entered into in the course of masterpiece environmental democracy, between oil producing communities of Nigeria and oil and gas companies operating in these communities, given that SD-oriented good neighbour agreements have potential to promote GEG, just and equitable impact-benefits, towards SCD in the communities. Accordingly, SCD *vis-à-vis* improved wellbeing of the people and communities of the oil producing areas in the course of petroleum development operations in the oil producing communities would promote SPD in these communities, towards overall GEG, GG and all-inclusive SD in Nigeria.

We therefore, recommend that international benchmarked standards and practices on environmental democracy and the regime of SD-oriented IBAs, like the Canadian WMI, should be promoted in the course of petroleum development operations in the oil producing communities of Nigeria, towards GEG, just and equitable impact-benefits, and hence SCD in these communities, as well as SPD, overall GEG, GG and all-encompassing just and equitable SD in the country.

Furthermore, concerning the case-study of the BKSDf as an example of MoU impact-benefit arrangement arising from petroleum development operations in Bonny Kingdom, Rivers State, Nigeria, we note that NLNG, as a reputable world-class LNG Company and a major player in the global LNG business, and thus a world-class reputable company helping to make Nigeria better, should, on the basis of its avowed international benchmarked environmental and social responsibility performances, ensure that the BKSDf begins to commence work, in the overall interest of the ordinary masses of Bonny Kingdom, so as to strengthen the success story of NLNG, SPDC and the rest of the Bonny JICs. Thus, we recommend that NLNG, SPDC and other members of the Bonny JICs should do so, in compliance with their collective and respective commitments and obligations to their offshore investors and alliance groups and organizations, around the world, such as the UN Global Compact, IFC, MIGA and other Equator Principles (EP) environmental and social governance systems, organized by the EP Association. Certainly, the BKSDf, initiated by the Bonny JICs and eventually registered by the CAC, Nigeria, features as pioneering effort and landmark precursor to the host communities' development trusts provided for in the Petroleum Industry Act, 2021, for petroleum host communities of Nigeria. Consequently, we recommend that the Bonny JICs should strengthen their individual and collective success stories by ensuring that the BoTs of the BKSDf (whose membership should be strictly limited to knowledgeable and credible Bonny indigenes and competent professionals of the



Bonny JICs and other development partners) is able to function efficiently, in the overall interest of Bonny Kingdom.

Accordingly, based on their customary obligations and/or responsibilities premised on the social contract of governance, we recommend that the apex traditional rulers of Bonny Kingdom, namely the Monarch and Country Chiefs (*Se-Alapu*) of the Kingdom, should champion community cohesion, concord, as well as SRC, industrial peace and harmony in the Kingdom, by practically and viably intervening to ensure that the BoTs of the BKSDF begins to work, so as to help address the myriads of developmental problems of the Kingdom.

We also recommend that there is a need for pragmatism and efficacy of GSR, led by the Rivers State Government (RSG), and other relevant government institutions and agencies, such as the office of the Honourable Minister of Petroleum Resources and the Nigerian Content Development and Monitoring Board (NCDMB), to drive, manage and superintend over CSR and SRC towards GEG and SCD in Bonny Kingdom, other areas of oil-rich minority ethnic Niger Delta region and other oil producing areas of Nigeria.

Finally, given that IBAs are more easily implementable and legally enforceable between petroleum developing companies, especially MNOCs, and oil producing communities in Nigeria, we recommend that these companies should begin to consummate SD-oriented IBAs between them and their hosts (the oil producing communities). We also recommend that government and oil and gas companies, especially MNOCs, should promote classic environmental democracy in the course of petroleum development in the oil producing communities, so as to boost the realization of GEG, improved impact-benefit schemes, such as SCD PPPs in the oil producing communities, towards sound, socially just and equitable SCD in the communities, and sustainable petroleum development, all-embracing GEG, GG and overall SD in Nigeria. Accordingly, rather than MoUs, SD-oriented good neighbour agreements, such as IBAs, should govern relations between poor and marginalized resource-bearing communities of resource-rich developing countries and EI companies operating in these countries, towards sound, socially just and equitable SD in these countries.