

Issues and Challenges on Environmental Rights: The Nigerian Experience

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Abstract

This research is designed to understand the relationship between environment and human rights. The study argues that environmental degradation is another form of human rights violations, which could be caused by individuals, state and non-state actors. Discussion on this resulted in identifying the gaps that exist as relates to the Nigerian oil and gas legislative framework and how it can be reviewed to redress human rights violations. The study adopted qualitative analysis method i.e. content analysis of documents using methods that are narratives, descriptive and holistic which are derived mainly from secondary sources collected from relevant text books, journals, internet, new papers, and periodic reports. The paper recommend that aside the state exclusive obligation to protect human rights, the corporate actors have equally utmost responsibility to respect human rights and be made to account for any environmental rights violation that arise from their overt or covert operations or properties damaged or destroyed.

Introduction

The Environment has been defined as “*the physical and cultural spaces in which the human species live, reproduce and die. It consists of the water, the atmosphere, land and all living and non-living things that inhabit these spaces. It goes without saying, therefore, that humankind cannot survive without the environment (Ukiwo cited in Fayemi, et al, 2005)*”. Some scholars like Galtung (1994:3, 72) defines the word “Right” as “a privilege,” when used in the context of “Human Rights,” it means “something more basic that one is allowed to be, to do or to have”. Scholars like Laski (2008:89-91) sees “Rights”, in fact, as “those conditions of social life without which no man can seek, in general, to be himself at his best. The rights of human beings in the conservation of resources and in the protection of the environment are a vital part of contemporary ‘human rights’ doctrine such as the right to health and the right to life itself. A damage to the environment can impair all the ‘human rights’ spoken of in the UN Universal Declaration of human rights and other human rights instruments. Therefore, ‘Environmental Rights’ are basic rights without which life on earth will be hazardous and indeed, meaningless. It includes right to clean air, clean water, good soil, right to a balanced and healthy ecology, etc. This is at times subsumed under the term “sustainable development”. Many countries have incorporated environmental rights into their laws but yet its gross violations continue to ensue.

From the review of the secondary data made, there emerged sharp differences in commitment to human rights implementation and laws enforcement to realizing it. Of course, differences emerged as to the need to strengthen the human rights standards, as to how to make agreement on principles into human rights reality, above all as to the means for implementing and enforcing human rights.

Environmental Rights and the Issues

The nexus between human rights and environment degradation have long been established. The nature of the environment is a primary determinant of livelihood patterns, while livelihood patterns, in turn, often shape and reshapes the environment. The natural environment is not only a delicate ecosystem requiring protection, but also a repository of natural resources.

Because the extraction of resources brings states wealth, these resources regularly fuel international conflict. Because they are mostly located within individual states, states bargain over these vital resources.

Three aspects of natural resources shape their role in international conflict. First, they are required for the operation of an industrial economy (sometimes even an agrarian one). Second, their sources, mineral deposits, rivers, and so forth, are associated with particular territories over which states may fight for their control. Third, natural resources tend to be unevenly distributed, with plentiful supplies in some states and an absence or minimal in others. These imply that nation states can trade in natural resources to benefit from one another and by doing much additional wealth is created by such trade or refuse to do to punish another country.

Of the various natural resources required by states, energy resources (fuels) are central:

The commercial fuels that power the world's industrial economies are oil (about 40% of the world energy consumption), coal (30%), natural gas (25%), and hydroelectric and nuclear power (5%). The fossils fuels (coal, oil, gas) thus account for 95% of world energy consumption. Some energy consumed as electricity comes from hydroelectric dams or nuclear power plants, but most of it comes from burning fossils fuels in electric generating plants.” (International Relations, 2010:402).

In international politics, oil has in different forms always been related to competition among nations to gain security, power, prestige and wealth. Oil production in Nigeria has had severe environmental and human consequences for the indigenous peoples who inhabit the areas surrounding oil extraction. The exploration of petroleum resources on all aspects of Nigeria's national development by the TNCs has caused numerous oil spills and significant harm to the environment, destroying local livelihoods and placing human health at serious risk. These widespread and unchecked human rights violations related to the oil industry have pushed many people deeper into poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration. These spills are caused by corrosion, poor maintenance of oil infrastructure, equipment failure, sabotage and theft of oil as exemplified by the following assertion:

Oil spill for instance is a result of discharge, emission, and escape of oil from drilling sites into the mangrove swamps, rural farmlands, or settlements. This is one of the negative bi-products of oil production and its effect on environmental safety has always been a source of concern (Izah, 1994:22).

Industrial accidents equally have serious consequences on human lives. For example, following the explosion of nuclear reactor in Chernobyl in 1986, the danger of cancers increased in the entire Europe. Until now most companies' engagement with human rights responsibilities has been through voluntary codes and initiatives. While some voluntary initiatives have a role to play, such voluntarism can never be a substitute for global standards on businesses' mandatory compliance with human rights.

The 1972 United Nations (UN) Conference on the Human Environment declared that "*man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself* (Amnesty International, 2009:11)". The Stockholm Conference held in 1972 was the first major international effort designed to deal with the environment. This conference reiterated the *tuo utere* rule in principle 21, which states inter alia:

States have, in accordance with the Charter of the United Nations and the principles of International law, the sovereign right to explore their own resources pursuant of their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or area beyond the limits of national jurisdiction.” **Principle 1 also states that:** “*Man has the fundamental right to freedom, equal and adequate condition of life, in an environment of a quality that permits a life dignity and well-being*” (Toyin, 2003:8).

As explicitly stated in principles 1 and 21 respectively, it is the obvious fact that the Stockholm conference attempts a comprehensive assignment, which recognizes that the protection and preservation of the international environment is a collective responsibility of the states, the individuals and the international community. The state is therefore charged with the responsibility to preserve and promote the improvement of the international environment, conserve the ecosystems and prevent environment pollution; the state is equally required to keep the public adequately informed about harmful pollutants. Nigeria has also made an attempt to do so in section 20 of the 1999 constitution.

This is under Chapter 2 of constitution of the FGN which deals with Fundamental Objectives & Directive Principles of State Policy. It provides that *“The state shall protect and improve the environment and safeguard the water, air, land, forest and wild life of Nigeria” (Constitution of the FRN, 1999).*

Human rights monitoring bodies, and international, regional and national courts, are increasingly recognizing ‘poor environmental quality’ as a causal factor in violations of human rights. The most common examples include pollution of water, soil and air, resulting in violations variously of rights to an adequate standard of living, to adequate food, to water, to adequate housing, to health and to life.

The UN Committee on Economic, Social and Cultural Rights has also clarified that the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including *“a healthy environment”*. Nigeria is a party to the Covenant. The Committee has also clarified that a state’s obligation under Article 12.2(b) extends to *“the prevention and reduction of the population’s exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”*(AI, 2009:12).

The African Charter on Human and Peoples’ Rights (African Charter), to which Nigeria is a party, also recognizes, in Article 24, the right of all peoples to a *“general satisfactory environment favourable to their development”*. This right is more widely known as the right to a healthy environment. The African Commission on Human and Peoples’ Rights (African Commission) stated that Article 24 of the African Charter imposes clear obligations upon a government: *“It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources (Amnesty Internal, 2009:12)”*.

The case of environmental cum human rights violation is nowhere better seen in the Nigeria other than in its Niger Delta region, where the transnational national companies (TNCs) and some indigenous oil companies, the militia arm of oil bearing communities (OBCs), the Nigerian state are all involved in one way or other in violating or aiding the violation of environmental rights, which by extension adversely affect other human rights components. This competition or survival struggle over the environmental resources has led to the review of the relationship between the TNCs and the OBCs on the basis of the human rights violations in the Niger-Delta region and what roles are the oil companies expected to play in the development process of their host communities?

Business and human rights should be balanced in such a manner that imposes obligations on key stakeholders that in the course of their operations, the rights of the people are not impaired.

In 1974, the UN General Assembly passed a resolution calling for efforts *“to formulate, adopt and implement an international code of conduct for transnational corporations”* as part of a drive by developing nations to put in place a *“New International Economic Order.”* Also during this period, the Commission on Transnational Corporations and the UN Centre for Transnational Corporation (UNCTC) were established. The UNCTC’s mandate included monitoring transnational companies’ social and environmental impacts, advising developing countries in their dealings, with large corporations, and drafting proposals for normative frameworks that govern the activities of multinational companies.

In 1976, the Organization OECD adopted non-binding Guidelines for Multinational Enterprises. Mainly focused on issues of corporate governance, the OEDC Guidelines also addressed employment, industrial relations, environmental, and consumer issues. Voluntary standards, such as the OECD Guidelines and the International Labor Organization’s Tripartite Declarations of Principles concerning Multinational Enterprises and Social Policy (adopted in 1977 and amended in 2000), were viewed as a means to accommodate growing demand for more stringent international regulation of business (Jerbi, Scott,301-2).

In 1977, a report by the UN Centre for Transnational Corporation (UNCTC), which the UN General Assembly had requested, presented an annotated outline for a code that included *“respect by transnational corporations for human rights and fundamental freedoms”* among the major principles relating to corporate activities. At the UN level, the proposed Code of Conduct was finally abandoned in 1994 as part of a restructuring in which the UNCTC was dismantled and aspects of the work of the Center and of the Commission on Transnational Corporations were integrated into a new division of the UN Conference on Trade and Development (UNCTAD).

The UN Sub-Commission on the Promotion and Protection of Human Rights, an expert body mandated to carry out studies and make recommendations to the UN Commission on Human Rights (replaced the UN Human Rights Council in 2006), developed its own “**Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights.**”:

This document was the first attempt by a UN human rights mechanism to specify the responsibilities of the private sector concerning issues such as the right to equal opportunity and non-discrimination, the right to security of persons, the rights of workers, and the rights of particular groups that corporate activities may impact such as indigenous people. The Sub-Commission approved the Norms in August 2003 (Jerbi, Scott,305).

The recent development on this is Professor John Ruggie, the Secretary General of the UN Special Representative’s report submitted to the UN, entitled “Protect, Respect and Remedy: A Framework for Business and Human Rights Submitted to the UN Human Rights Council in April 2008”, that sets out a **three part policy framework** involving the state obligation to protect against human rights abuses committed by corporate actors, the corporate responsibility to respect all human rights, and the need for accessible and effective grievance mechanisms to address alleged breaches of human rights standards. The Corporate Responsibility to Respect and *Access to Remedies* are stated as follows:

- Companies should consider three sets of factors. The first is the country contexts in which their business activities take place, to highlight any specific human rights challenges they may pose. The second is what human rights impacts their own activities may have within that context—for example, in their capacity as producers, service providers, employers, and neighbors. The third is whether they might contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, State agencies, and other non-State actors. (Paragraph 57).
- For the substantive content of the due diligence process, companies should look, at a minimum, to the international bill of human rights and the core conventions of the ILO, because the principles they embody comprise the benchmarks against which other social actors judge the human rights impacts of companies. (Paragraph 58).

Access to Remedies

- States should strengthen judicial capacity to hear complaints and enforce remedies against all corporations operating or based in their territory, while also protecting against frivolous claims. States should address obstacles to access to justice, including for foreign plaintiffs—especially where alleged abuses reach the level of widespread and systematic human rights violations. (Paragraph 91).
- Non-judicial mechanisms to address alleged breaches of human rights standards should meet certain principles to be credible and effective. (Paragraph 92). (Jerbi, Scott, 2009:310-11).

The June 2008 UN Council resolution renewing the mandate stresses the need to provide “more effective protection to individuals and communities against human rights abuses by, or involving, transnational corporations and other business enterprises,” calls for the integration of a gender perspective with “special attention to persons belonging to vulnerable groups, in particular children,” and requests the Special Representative to continue to consult with “civil society, including academics, employers’ organizations, workers’ organizations, indigenous and other affected communities and non-governmental organizations.” However, it does not request the Special Representative to undertake work on specific cases.

The United Nations Draft Norms on the Responsibility of TNCs and other Business Enterprises with regard to human rights set out, in a single document, a comprehensive list of human rights obligations of companies and their reach is extensive. They deal with a variety of corporate responsibilities, including some that are traditionally dealt with outside the human rights framework such as environmental issues and consumer protection. The Draft Norms fill an important gap in the protection of human rights, applies to all companies and can help provide a level playing field for companies that want to do the right thing for human rights. They are the most comprehensive effort as regards standards on corporate responsibility so far but not as unique or unforeseen as some businesses think. The Draft Norms simply attempt to restate relevant human rights law in regard to the obligations of businesses within their particular spheres of influence and activity. As reiterated in the Draft Norms, primary responsibility to protect and promote human rights in international law as well as national law remains with states/governments. Business cannot and should not replace government. The two should have complementary roles in protecting human rights.

Even though the Norms were drafted with the intent of becoming legally binding, the Commission on Human Rights, in its decision 2004/116 of 20th April 2004, expressed the view that while the Draft Norms contained “useful elements and ideas” for its consideration, as a draft the proposal had no legal standing. The Draft Norms cannot be enforced and therefore have similar problems to other existing voluntary initiatives given the absence of any defined implementation or monitoring mechanism. Given the divergent ongoing efforts of the international community to bring business in line with human rights, it must be foreseen that some kind of international regulation over the years will need to be established. Whether the Draft Norms are the answer to the corporate accountability vacuum is debatable.

However, the Draft Norms are designed to incorporate and encourage further evolution and are by no means the last step in relation to corporate responsibility and human rights. It must be stressed that the Norms made an invaluable contribution to addressing the shortcomings of current approaches to corporate social responsibility and have set an important benchmark for any future normative efforts. The Draft Norms have put businesses responsibilities at the top of the agenda and a positive outcome to the issue of accountability of corporations must be ensured. No doubt there is still a very big gap in understanding what the international community and the local inhabitants of these companies expect from these business entities. Common benchmarks that provide clarity in regards to responsibility and accountability are therefore needed.

For the last decade oil companies in Nigeria – in particular Shell – have defended the scale of pollution by claiming that the vast majority of oil spills are caused by sabotage and theft of oil. There is no legitimate basis for this claim. It relies on the outcome of an oil spill investigation process - commonly known as the Joint Investigation Visit or JIV process - in which the companies themselves are the primary investigators. The human rights impacts are serious – both the cause of a spill and the volume spilt affect the compensation a community receives. If the spill is recorded as caused by sabotage or theft, the affected community gets no compensation, regardless of the damage done to their farms and fisheries” (Amnesty International Annual Report 2012).

Amnesty International and the Centre for Environment, Human Rights and Development (CEHRD) believe that Nigeria’s oil legislation needs to be amended to incorporate the fact that oil companies should be held responsible for a spill that is due to sabotage or theft if they have failed to take sufficient measures to prevent tampering with their infrastructure. The change towards corporate responsibility will not be a swift one but will take time to gain support. If the debate on corporate responsibility ends without an outcome, all stakeholders will be losers. However, the biggest losers will be companies that will be seen as putting profit before principle. The challenge for companies will grow as corporate influence continues to increase. Under international law “every organ of society” should be held accountable for not meeting up with UN human rights requirements.

Supporters viewed the universal applicability of the Norms as an important step in holding all companies, the vast majority of which had not committed themselves to voluntary initiatives in this area, accountable for their impacts on human rights. The recommendations concerning monitoring of corporate compliance at national and international levels were highlighted as important sign posts for future government action. **Critics** argued that the Norms did not adequately take into account the positive contributions of business towards the enjoyment of human rights. Business representatives argued that, in some cases, their responsibilities under the Sub-Commission Norms went beyond standards currently applicable to States. Moreover, imposing legal responsibilities on business could result in shifting the obligations to protect human rights from governments to the private sector, allowing States to avoid their own responsibility.

There are also a number of regional conventions and IGOs that supplement the principles and efforts of the UN. The well-developed of these are in Western Europe. These are adjudicated by the European Court of Human Rights and by the Commission on Human Rights. Additionally, there are a substantial number of NGOs, such as Amnesty International and Human Rights Watch that are concerned with a broad range of human rights. These groups work independently and in cooperation with the UN and regional organizations to further human rights. They add to the swell of information about and criticisms of abuses. They help promote the adoption of international norms that support human rights (Clark, 1996).

However, despite the greatest progress made in adopting a number of UN declarations, such as the UDHR, and some multilateral treaties that define basic rights, and the rising level of awareness and of disapproval of violations on a global scale, which is having a positive impact, the enforcement of human rights is much less applied and developed by TNCs, State, Human Rights Organizations and IGOs.

However, since it is the exclusive reserve of the states to monitor and enforce compliance of its domestic laws and other multilateral agencies charters agreed upon (i.e. that of UN, AU, ECOWAS, etc.), it is on record and unfortunate that the states are the major violators of this mandate. Hence, the need for the search for a neutral party (i.e. International Human Rights Organizations) to echoed human rights violations into any possible platform where the requisite human rights laws can be discussed, developed, applied and enforced. These platforms are no better than intergovernmental organizations such as the UN, AU, ECOWAS, ECOWAS Community Court of Justice, ICC and other sister agencies and regional bodies. These regional organizations are levels of governance within the multi-levels of governance in the globalizing world and provides platform for making up the inadequacies of the state as a sovereign island in addressing a problem without exposing the problem to the difficult and precarious (and sometimes treacherous) multilateral level of governance. Take for instance the following:

...the ECOWAS Community Court of Justice, which was established by 1993 Treaty, came into being in 2001 with the mandate to arbitrate on interpretation of the text of the ECOWAS Treaty and to provide advisory opinion on questions of the Treaty. These competence and functions of the Court were however noted to be inadequate. Consequently, by 2005, the Court received a boost when a supplementary protocol A/SP.1/01/05 expanded its authority to include arbitration in human rights cases and access of the Court by individuals or corporate bodies in matters related to human rights violations. The decision of the Court became binding on the member states. The decision of the ECOWAS Authority to expand the jurisdiction of the Court came with the realization that the Community project would not succeed if the Court did not check the problem of lack of commitment to regional rules and policies by member states or the institutions of the Community. It must be noted here, however, that a problem still remains with the application of the Court's decision, in that it is hinged on the voluntary action of member state institutions. Nevertheless, a regional structure for tending to human rights violations is a significant milestone in the effort of ECOWAS to protect human rights (Bappah, 2013:15).

Similarly, the establishment of the ICC means that crimes committed after July 1, 2002 that fell under the Rome Statute of the International Criminal Court's ("Rome Statute") definitions of war crimes, crimes against humanity, and genocide could become the subject of ICC investigations. The ICC Office of the Prosecutor (OTP) is responsible for "*receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court (Fiona McKay and revised by John Stompor, 2004:5)*". In this regard, human rights NGOs potentially have a vital role to play in relation to ICC investigations. They often have direct knowledge of violations and contacts with victim and witness communities. Indeed, NGOs may be the main sources of information drawing the attention of the ICC Prosecutor to situations where crimes have been committed. Human rights NGOs are likely to broadly share the goals of the ICC to combat impunity for gross violations of human rights and international humanitarian law. The human rights movement that has grown up in recent decades in almost every country of the world has developed methodologies and practices for monitoring and documenting human rights violations. Often they work in difficult and dangerous circumstances in order to collect and disseminate information with the aim of putting an end to abuses by focusing the world's attention on them. Commonly they call for accountability of perpetrators as one way of addressing the violations. In any given situation that comes before the ICC, there may be NGOs that have set out to document the situation either as a normal part of their fact-finding activities, or specifically with the objective of submitting information to the ICC.

Furthermore, many developing countries regional organizations are cocoons within which state shield their independence and vulnerability from the harsh conditions of the international system. In Africa, Latin America and Asia, regional organizations are formed to protect member states political and economic interests through common solidarity and joint action. With this development, this study is hoping to generate and assemble the needed perspectives on the relationship between the role of international human rights organizations and intergovernmental organizations in tackling the human rights violations in Niger Delta.

Governments have the primary obligation to secure universal enjoyment of human rights and this includes an obligation to protect all individuals from the harmful actions of others, including companies. Thus, in Nigeria, the state has set up some agencies and promulgated laws to deal with the problems faced by oil producing communities. In 1979, the Nigerian government passed a law banning gas flaring but allowed the Ministry of Petroleum to grant exceptions to some Oil Corporations, and today most operators are still relying on the exceptions and thereby causing environmental havoc.

The previous deadlines in 2003 and 2004 up to December 2013 by the Nigerian Government on when to end gas flaring have always met with failure because these deadlines were not backed up by any legislation and as such, it is easy to violate at will, thereby providing too much of an escape avenue that potentially allows the TNCs and by extension the state, to violate rights. Gas flaring has continued with impunity despite government policies to stop it with no definite solution in sight.

Some of the domestic legislations that are applicable to oil pollution cases are the Criminal Code (i.e. S.245 & 247 CC), the Harmful Waste (Special Criminal Provisions) Act (formerly no 42 of 1988), Oil Pipeline Act, Mineral's Act (1990), Land Use Act (1997). Other laws passed to deal with the problems faced by oil producing communities include: the Petroleum Decree of 1967 and the Petroleum Decree No. 51 of 1969. These decrees are now replaced with the Petroleum Act Chapter 10 Laws of the Federation of Nigeria 2004. The Associated Gas Re-injection Act Chapter 20 of 1980, now Chapter A25 Laws of the Federation of Nigeria 2004; The Oil in Navigable Waters Decree (Decree NO 34) of 1968, now the Oil in Navigable Waters Act Chapter 06 Laws of the Federation of Nigeria 2004 which prohibits the spillage of crude oil and other petroleum products into Nigeria's territorial waters. In 1992, the Oil Mineral Producing Areas Development Commission (OMPADEC) was established and charged with the responsibility of tackling ecological and environmental problems of oil producing areas as well as rehabilitating and developing such areas. Environmental Impact Assessment Act Chapter E12 Laws of the Federation of Nigeria 2004 provides the principles, procedures and methods to enable the prior consideration of environmental Impact assessment of certain public or private projects.

In 1988, government established the Federal Environmental Protection Agency (FEPA). It is now known as the Federal Environmental Protection Act, Chapter F 10 Laws of the Federation of Nigeria 2004 (formerly Decree no.58 of 1988). In 2007 the Federal Government of Nigeria further weakened any independent oversight of the oil and gas industry by significantly curtailing the authority of the Ministry of Environment in regulating the environmental impacts of the industry. The National Assembly passed a law repealing the Federal Environmental Protection Agency Act (FEPA) and establishing the National Environmental Standards and Regulations Enforcement Agency (NESREA). The agency is supposed to ensure enforcement of all policies, laws, standards and regulations relating to the environment, including international agreements. However, the Act establishing NESREA repeatedly bars the Agency from enforcing compliance in the oil and gas sector, including:

- Compliance with regulations on hazardous waste.
- Regulation on noise, air, seas, oceans and other water bodies.
- Control measures such as registration, licensing and permitting systems.
- Conducting environmental audits.

Although the Agency is barred by law from carrying out almost all its major functions in relation to the oil and gas sector, the governing council of the Agency is obliged by law to include a representative of the Oil Exploratory and Production Companies of Nigeria. FEPA did not exclude the oil and gas industry. The National Oil Spill Detection and Response Agency (NOSDRA), established in 2006, claims to have some responsibility for enforcing environmental regulations in the oil and gas sector. However, the provision on enforcement within the NOSDRA Act is weak, and Agency staff does not appear to have the capacity to undertake environmental monitoring beyond oil spill related activities. The repeal of FEPA, and its replacement with a law that specifically excludes the Ministry of Environment from enforcing compliance in the oil and gas industry, is a deeply questionable move and further entrenches government failures to ensure effective oversight of the oil industry and to protect the environment and human rights. All the enactments made over time must be entirely consistent with the provisions of the 1999 Constitutions of the Federal Republic of Nigeria.

The 1999 Constitution of the Federal Republic of Nigeria recognizes a number of fundamental rights, **but these do not include economic, social and cultural rights**. However, the Constitution does recognize, within its fundamental objectives, that the State "shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria"²² and that "the State shall direct its policy towards ensuring ... that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens."²³ The Constitution also provides that "exploitation of ... natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented" (Amnesty International, 2009:11).

Sections 4(2), 315(1), 20, 16(2) of the 1999 Constitutions are relevant here. These laws were never effectively implemented as the oil producing communities continued to suffer and bear the brunt of oil production and gained very little for their pains and degradation of their environment without adequate compensation and any share in what is generated from the oil. However, frequently governments fail to regulate the human rights impact of business or ensure access to justice for victims of human rights abuses involving business. In Nigeria, this could be conspicuously noticed in the oil bearing communities of Niger Delta region. An international human rights organization, the Amnesty International confirmed this when reported that:

People living in Niger Delta have to drink, cook with and wash in polluted water. They eat fish contaminated with oil and other toxins – if they are lucky enough to be able to still find the fish. The land they farm is being destroyed. The air the people breathed smelled of oil, gas and other pollutants and that the people complained of breathing problems and skin lesions – and yet neither the government nor the oil companies monitored the human impact of oil pollution....Despite the widespread pollution of the Niger Delta's land, rivers and creeks – and the many complaints from people living in the region – we could find almost no government data on the impact on humans of any aspect of oil pollution in the Niger Delta (Leadership, July 1,2009:1-4).

As government and companies engage in blame game and avoidance of responsibility for certain acts affecting the wellbeing of host communities, it is the communities that are left to suffer. The Nigerian Government failure to take necessary measures to prevent third parties from polluting or contaminating food, water supplies and air, by way enforcing its existing laws, has constitute violations of the rights to health (Article 12), to water and to adequate food (Article 11) of the Covenant. This is clearly illustrated as given by the below assertion:

Regulations are often put in place to ensure that inhabitants do not suffer unnecessary. In fact the pipeline act provides for compensation once there is a leakage. Also Petroleum drilling and production act of 1969 makes provision for fishing rights. However, according to Okere (1988), the processes of claiming these are so complex that in the end the poor peasants who live in the oil producing areas suffer in silence. Corrupt officials also connive with the oil companies to disregard the regulations. In the long run the nation suffers more than it gains from the activities of the MNOCs. Another aspect in which the MNOCs pollute and waste Nigeria's resources is in the flaring of gas. Natural gas, which is found along with oil in Nigeria, is simply burned rather than processed to increase the earnings of government because the companies are only interested in crude oil for export. Although since the 1980s government has required the companies to re-inject, the gas into the ground, there has been low compliance such that more than 90% of the gas associated with crude oil production is still flared (Izah, 1994).

Gas flaring causes an extensive damage to surface vegetation, agriculture, human health and equatic life. It has a devastating effect on the people causing cancer, stroke and acid rain as a result of the depletion of the ozone layer. It causes loss of fertility in soil and the strange growth of fauna in plants (NHRVM; 2008:200)

Inspite of Nigerian government failure, some appreciable progress are being made by the militants, IGOs and human rights NGOs on the state, coupled with enlightened self-interest which dictates that government cannot sit idly to see it the main source of its revenue to be jeopardized indefinitely led to, in August 2009, for the Nigerian Government to soft pedal its drive to contained the Niger Delta militants attacks and grant them 'amnesty', which saw the militants surrendering their weapons in exchange for a presidential pardon, rehabilitation programme and education. It is understandable that at the time amnesty was granted to militants, Nigeria was in a dire need of a miraculous solution to the obstacle of her economic wellbeing.

These developments have led to the review of the legal framework for the oil and gas sector in order to address any identifiable gaps and problems associated with the regulations and enforcement. Thus, a document called the **Petroleum Industry Bill (PIB)**, which is now being debated at the floor of National Assembly, has been packaged to address some contentious issues bothering all stakeholders in the Industry. Once the Bill is pass and assented by the President, it is widely believed that much of the current oil industry legislation, including the Oil Pipelines Act, the Petroleum Act and the Associated Gas Reinjection Act, would be repealed. However, from the perspective of the protection of human rights and the environment, the Petroleum Bill still suffer some serious flaws, which if not addressed by the National Assembly would not address the issues faced by OBCs of Niger Delta. In fact, the Bill offers lesser protection in respect of some aspects of environmental damage and human rights than the legislation it would repeal.

Clauses on the prevention of harm to the property and livelihood resources of affected communities and individuals appear to be more limited than in the existing legislation. Other references to the environment contained in the Bill are essentially repetitions of existing requirements to comply with the law and regulations.

Under the **Bill**, licensees or lessees engaged in petroleum operations would have to “comply with all environmental health and safety laws, regulations, guidelines, and directives as may be issued by the Ministry of Environment, the Minister, or the Inspectorate...” The efficacy of this provision is hard to judge, given the existing exclusion provided for under the National Environmental Standards and Regulations Enforcement Agency Act (NESREAA).

Companies would be required to submit an environmental management plan. The **Bill** contains no provision for checking that the information in the plan is accurate or any mechanism for affected communities to request an inspection of sites or areas they deem to be polluted or at risk from pollution.

The **Bill**, in line with the petroleum act 1969 which stipulates that, “*the holder of an oil exploration license or mining lease shall ensure that he pays fare and adequate compensations for the disturbance of surface rights or other rights to any person who is in lawful occupation of the licensed or leased area* Aghalino, S. O. (2004)”; appears to provide for some sanctions for failure to pay compensation. Specifically the license or lease could be suspended until the amount awarded is paid. Compensation provisions are similar to those contained in the current legislation. A licensee or lease holder is liable to pay: “fair and adequate compensation for the disturbance of surface or any other rights to any person who owns or is in lawful occupation of the licensed or leased lands” and for: “damage or injury to a tree or object of commercial value or which is the object of veneration...” The term “fair and adequate” is not defined. Moreover, the Bill effectively repeats all the limitations of the current legislation in that it focuses on surface goods, while “any other rights” are not defined.

The **Bill** also requires some form of financial bond to be paid to the Inspectorate against remediation of environmental damage.

The **Bill** does not contain any measures for disclosure of information by companies or governmental agencies to communities on the impacts of oil operations. However, a provision on consultation with affected communities is welcome.

Part VII of the Bill refers to health, safety and the environment. This section requires companies “as far as it is reasonably practicable” to rehabilitate the environment affected by exploration and production operations. The same section also states that: “the licensee or lessee shall not be liable for, or under an obligation, to rehabilitate where the act adversely affecting the environment has occurred as a result of sabotage of petroleum facilities, which also includes tampering with the integrity of any petroleum pipeline and storage systems”.

The **Bill** states that, where pollution is a result of sabotage, the costs of restoration and remediation shall be borne by the local government and the state governments in whose jurisdiction the sabotage occurs, using a Remediation Fund established from oil revenues. This can only be achieved if the assessment of the cause of oil pollution as sabotage has been done by the state as against what is obtainable now, which is heavily dependent on the oil companies’ own assessment.

The **Bill** states that the Petroleum Inspectorate will adjudicate in any case of a dispute over whether or not sabotage is the cause of the oil pollution. While these moves are welcome in so far as they provide for finding of fact, adjunction of dispute, and clean-up by government agencies, the concern here is that there is little in the Bill to suggest the Petroleum Inspectorate will operate fundamentally differently to the DPR. Presently, the DPR lacks independence and capacity and resources to function efficiently in terms of effective regulation and oversight of the oil industry in the Niger Delta.

Conclusion and Recommendations

From the foregoing scenario of human rights violation in Nigeria, it is glaring that the ‘state and corporate actors’ duties to protect and give access to remedies are yet to be fully implemented to reflect global standards that is capable of addressing human rights responsibilities.

At the dawn of the 21st century, one of the most significant changes in the human rights debate is the increased recognition of the link between business and human rights. States are to a greater extent being held responsible for breaches of obligations under international human rights law.

However, in an era of privatization of public services, private entities are taking on roles previously held by the state. This has made the corporate actors to wield immense power and have a direct impact on governmental policies and the enjoyment of human rights and consequently led to the recognition that business has an obligation to contribute to the promotion and protection of human rights. This study is therefore urging the Nigerian government to establish and enforce effective regulations that will hold the oil industry to account when spills occur.

Building upon the traditional notion whereby international law generally places duties on states to secure the environment and in the recent times places human rights obligations directly on corporations, gives room to question on how the international legal system and processes might provide for how the 'pressure groups such as non-governmental organization (NGOs)' can monitor and press hard on the corporate actors, to not only comply with global environmental safety standards, but to also prosecute defaulters before the International Criminal Court (ICC) or other regional and localize courts with competent jurisdiction. This, if develop, will no doubt compel the corporate actors to religiously safeguard their activities, and where necessary urgently step up their corporate social responsibility, in mitigating any environmental havoc that might arise from their daily operations.

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