

Oil exploitation and human rights violations in Nigeria's oil producing communities¹

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Introduction and description of the context of the doctoral research

Nigeria, with a population of over 140 million, is today the world's sixth largest oil producer and the 8th largest exporter of crude oil. Nigeria's oil sector provides 40% of the Gross Domestic Product (GDP), 95% of the country's total exports and about 80% of budgetary revenues that all tiers of government heavily depend on. Notwithstanding the billions of dollars generated from oil exploration, the Niger Delta, which is the oil and gas rich wetland in the southern part of Nigeria and which firmly established Nigeria 'as a major world producer of oil,' has mainly encountered the negative effects of this oil exploitation. With over 50 years of oil exploitation, vast stretches of the region have poor water quality; there is pollution, disruption and degradation of farmlands and fishing ports, destruction of wildlife and biodiversity, loss of fertile soil. Moreover, there has been no provision of adequate compensation or a planned mitigation policy for the areas affected. (See generally, Michael Watts, "Sweet and Sour," in Michael Watts (ed) (2008), *Curse of the Black Gold: 50 Years of Oil in the Niger Delta*, power House Books, Brooklyn, NY, pp.36-61; Niger Delta Human Development Report (2006), United Nations Development Programme (UNDP), Abuja, Nigeria). The response of the people in this region, in the form of protest and campaigns against the activities of the multinational oil companies (MNCs), has led, and continues to lead, to violations of their civil, political, economic, social and cultural rights (See Oputa Report, Vol. 3, pp. 28-66 at <http://www.nigerianmuseum.com/nigeriawatch/oputa/OputaVolumeThree.pdf> [accessed 22 April 2010] in the form of extra-judicial executions, arbitrary detentions, and unlawful restrictions on their rights to freedom of expression, association and assembly. These restrictions are imposed by security agents mostly with the complicit support of oil MNCs. The return of Nigeria to democratic rule in 1999 raised the expectations of the oil-producing communities that an

¹ This is the report of PhD research carried out at Ghent University, under the supervision of Luc Lavrysen.

end would be put to the militarization of the region with a human rights regime ushered in. However, human rights abuses in the region continue and the situation remains unchanged up to the present, despite the transition from a military to civilian regime. While these violations remain, the region's inhabitants are yet to receive appropriate means and a procedure of seeking redress against the oil MNCs whose activities are the root cause of these abuses.

In the context of the strategic importance of oil in the economies of several nations, among them Nigeria, and the social, cultural and environmental cost of oil pollution, this PhD project critically examines human rights violations and environmental damage resulting from oil exploitation in the oil-producing communities of Nigeria, and the role and responsibilities of the major oil MNCs. The work also encompasses existing human rights instruments, the legal framework for oil operations in Nigeria and the international codes of conduct and norms regulating the activities of the oil MNCs in developing countries. The work contends that the strengthening of national and regional institutions is an essential measure in order to effectively address the human rights concerns in the oil-producing communities in Nigeria and in order to hold MNCs accountable.

The research work provided addresses the following questions: (a) How adequate is the legal framework in place in Nigeria to the sustainable regulation of oil exploration? (b) How effective or accessible are the extant laws and regulations, and how can they be improved? (c) Why is the deplorable environmental situation, exemplified by the Ogoni campaign for economic and social rights, an ongoing problem in the Niger Delta? (d) How best can a number of relevant agencies and existing institutions be strengthened? (e) How can the oil MNCs operating in these communities meet their responsibilities in terms of international standards and principles?

Theoretical framework

The study adopts the rights-based approach. In addition to the fact that it is based on a legal foundation of universal entitlement, a rights-based approach provides a basis for holding relevant actors accountable and it can generate law and policy reform.² The importance of a rights-based approach in relation to the oil-producing communities of Nigeria is the appreciation of the fundamental basis of procedural rights, so as to give the people a starting point for obtaining information concerning environmental matters that affect them. It is also to facilitate their participation in the decision making process as a matter of right, rather than confining them to the role of passive onlooker to environmental matters that affect them. If, still within this framework, the government fails, it can legally be held accountable by the people. As noted by UNICEF, 'a rights-based approach seeks to raise levels of accountability in the development process by identifying 'rights holders' and corresponding 'duty bearers', and to enhance the capacities of these

2 See Centre on Housing Rights and Eviction (COHRE) (2008), *A rights-based review of the legal and policy framework of the Ghanaian water and sanitation sector*, Geneva, Switzerland p.1, at http://www.cohre.org/sites/default/files/rights-based_review_of_ghanaian_watsan_sector_dec_2008.pdf [accessed 3 March 2010].

duty bearers to meet their obligations.³ A rights-based approach requires the development of laws, administrative procedures, and practices and mechanisms to ensure the fulfillment of entitlements, as well as opportunities to address denials and violations. Reversing the violations of human rights of the people in this region demands determined efforts from all stakeholders, particularly with respect to the adoption of approaches that can help to combat these great challenges.

Methodology

The study relied on primary and secondary sources of information. Primary sources were the Constitution, national legislations, judicial decisions and regional and international instruments. Secondary sources of information included textbooks, journal articles, periodicals, newspapers, magazines, dissertations/theses, conference working papers, internet documents, previous research findings, government records, records of non-governmental organizations and oil companies. Also fieldwork was conducted in Nigeria, in order to obtain sufficient data and relevant information. The researcher during the fieldwork visited some of the host communities, including Ubeji and Iwherekhan in the Niger Delta region, the Nigerian National Human Rights Commission (NHRC), the ECOWAS Court, some non-governmental organizations (NGOs) offices, some Environmental and human rights activists, and other stakeholders. This provides the opportunity for the researcher to come in direct contact with these people and able to engage them on the subject of the research. In order to be able to capture the issues and the geographical areas that are relevant to the research, the researcher in selecting the people to be interviewed, adopted purposeful,⁴ rather than the random sampling. This enable the researcher focus on actors and communities considered relevant to the research questions and situation been investigated which random sampling might not be able to achieve. The responses received from the interviewees and information from other relevant sources formed the basis of the recommendations and conclusion of this work.

Findings

Chapter one of the thesis defines the Niger Delta region: the oil producing communities, the inhabitants, their occupations, the area's ecology, a brief history of Nigerian oil and gas, and the oil MNCs operating in Nigeria. It argues that notwithstanding the state ownership of oil and its greater share in oil profits, the managerial and technical skills are completely in the hands of the oil MNCs. As a result, the latter usually take important decisions relating to how the business should be run, which can have a direct or indirect impact on the human rights of the people. In view of the relevance of indigenious

3 United Nations Educational, Scientific and Cultural Organization (UNESCO) (2007), *A Human Rights-Based Approach to EDUCATION FOR ALL A framework for the realization of children's right to education and rights within education* (UNICEF New York 2007), p.11, at <http://unesdoc.unesco.org/images/0015/001548/154861e.pdf> [accessed 3 March 2010].

4 According to Patton: 'The logic and power of purposeful sampling lies in selecting information-rich cases for study in depth. Information-rich cases are those from which one can learn a great deal about issues of central importance to the purpose of the research ...' See M. Patton (1990), *Qualitative evaluation and research methods*, Sage Publications, Newbury Park, CA, p.169.

technologies in the oil sector, this work argues that, the Nigerian government should place more emphasis on the development of its own manpower and technical resources, as is happening in Norway, Brazil and other countries, instead of primarily maximizing returns from oil. In addition to this, the thesis contends that since the state's alliance with the oil MNCs under joint venture and production-sharing contracts, it finds it difficult to regulate oil MNCs against the human and environmental consequences of their reckless activities. Consequently, a lot of practices employed by operators in the oil industry which result in the violation of the rights of the local inhabitants are not monitored or regulated by the Department of Petroleum Resources and other agencies under the Nigerian National Petroleum Corporation because of their status as government agencies. To overcome these challenges, the regulatory agencies should be granted more autonomy.

Chapter two of this work examines the status of the Niger Delta people, and the ownership of land and oil in Nigeria to determine the extent to which they align with international standards of law regarding the rights of indigenous peoples. The chapter shows that native populations of the Niger Delta region qualify both as Indigenous Peoples and minorities under international law, and ought to benefit from international laws that promote the recognition of these groups to own, control and benefit from their ancestral lands and the natural resources exploited on their land. National laws that regulate the ownership of land and oil in Nigeria, however, grant the federal government exclusive rights of ownership and control while recognizing the native populations as mere occupiers of land that may be appropriated (without due notice and/or compensation) subject to the will of the government. The work finds that the ownership of land and oil in Nigeria takes little or no cognizance of the locals' rights.

Chapter three examines the existing legal frameworks governing oil exploitation in Nigeria and points out some of the inadequacies in these laws and regulations. It contends, among other things, that most of the environmental laws in Nigeria are inadequate in terms of protecting the human rights of the oil-producing communities of Nigeria. For example, the Land Use Act (LUA) of 1978 changed the structure of land ownership that had hitherto been vested in family/community network in the southern parts of the country, including the Niger Delta region. Oil-communities consider the impacts of the LUA which divested them of their interest in the land as a primary reason for the restiveness in the region. The Gas Flaring Act on the other hand allowed the continued flaring of gas, even to the detriment of the local inhabitants of the oil-producing communities. Hence, several of these laws appear to run counter to the indigenous peoples' rights under international law and so do not ameliorate the continuous degradation of the environment and human rights abuse of the people. This work thus calls upon the immediate repeal/amendment of all laws which have failed to protect the rights of the local inhabitants of the Niger Delta region as a result of the oil exploration activities.

In addition, the work found that there is poor enforcement on the part of government agencies and bodies responsible of extant laws that are meant to protect the environment and the local inhabitants of the region. The unenforceability of these laws

coupled with some of inadequacies tends to perpetuate the deprivation, alienation, exclusion and insecurity of the local inhabitants which in turn fosters an attitude of contempt towards, even hatred of the oil MNCs and the government. The work urges the Nigerian government to ensure enforcement of and compliance with these laws and regulations, in particular halting illegal gas flaring so as to guarantee the protection of the rights of the region's inhabitants. Furthermore, the work found that the current laws that deal with the determination of the value and process of compensation are deficient and must be reviewed to make it easier for adequate and meaningful compensation to be given to victims of environmental damage.

The work also found that the present legal regime primarily focuses on addressing (inadequate generally) the cases of individual victims affected by environmental harm without considering the need for the degraded environment to be cleaned up and restored to its original state. Several communities in the region, including the Bodo and the Ejama Egbu, that have been affected by oil-related activities, have yet to see their areas cleaned up and remediated. The work calls upon the Nigerian government to take urgent steps to begin the full implementation of the findings of the UNEP Report on Environmental Assessment of Ogoniland.⁵ In the two-year study, UNEP revealed the severe environmental damage caused by the MNCs to Ogoniland (Niger Delta), and called for the setting up of a Environmental Restoration Fund, among others, to address the widespread and extensive damage that has been done to Ogoniland, which it believed may take 25-30 years to remediate after the ongoing pollution has been brought to an end.

In fulfillment of one of its primary objectives, chapter four examines the general trend in environmental and human rights abuses against the environment and the local inhabitants of the oil-producing communities in Nigeria arising from the exploitation of oil and gas. It argues that environmental degradation is one of the underlying causes of human rights violations in the Niger Delta. It discusses how the impact of the activities of MNCs affect the local populations in terms of, among others, health, property, food, water, private life, housing and culture. It examines the extent of the State's responsibilities for acts conducted by non-State actors such as corporations, and the responsibilities of non-State actors themselves. It also examines the place of voluntary codes of conducts and initiatives in regulating the activities of MNCs. The chapter contends that, although self-regulation and other voluntary initiatives play vital roles in encouraging MNCs to behave responsibly, events in the Niger Delta have clearly shown that it may not be sufficient to prevent environment-related human rights violations by MNCs. While hoping for the adoption of an international, legally binding instrument for corporate accountability, it calls for the continued use of the Alien Tort Claims Act by foreign victims of corporate harm such as the Niger Delta people, to hold MNCs accountable for environmental human rights abuses.

Chapter five discusses the need to address the cost of corruption to human rights, particularly, to the rights of local inhabitants of Niger Delta. The social, economic and

5 United Nations Environment Programme Report (2011), Environmental Assessment of Ogoniland, UNEP, Kenya, pp.202-231.

cultural rights of the people of the Niger Delta will be secured if the government musters the needed political will to aggressively fight corruption, enact the proper laws and ensure they are faithfully implemented, guaranteeing independence of judiciary and other anti-graft agencies. Fighting corruption in Nigeria, particularly in the oil industry, implies a fight against one of the greatest barriers standing in the way of the Niger Delta people's enjoyment of their human rights, and it is a strategy for the promotion of the rule of law and human rights.

Chapter six argues that strengthening the scope of procedural rights, i.e. the right of the public to access environmental information, public participation in decision making in environmental matters and the public's access to courts for environmental matters, is vital to the protection of the rights of the Niger Delta people against the consequences of activities of both the government and oil MNCs. In order to ensure durable peace in the Niger Delta, there is a need to embrace a rights-based approach to economic growth, which emphasizes development and that is consistent with and helpful to the realisation of human rights and the right to development through adequate and prior consultation.⁶ Furthermore, the work finds that non-governmental organizations (NGOs) have a great role to play in ensuring that regulatory agencies live up to what is expected of them in terms of regulating the functioning of MNCs'. Where civil society groups are strengthened, they will be well-equipped to educate the citizens on how to use the human rights legal framework to protect themselves against the conduct of the State and of the MNCs that infringe the realization of their fundamental human rights and freedoms. The work further suggests that the courts can draw inspiration and guidance from the landmark decisions of the African commission on socio-economic rights regarding the indivisibility and interdependence of rights in the African Charter. This will help to breathe life into these rights through the civil and political rights protected under the Constitution, thereby making them justiciable.

Conclusion

This work found that the continuous violations of human rights of the people together with the poor regulation of oil MNCs in Nigeria are caused by a combination of several factors including: an inadequate legal framework which denies local inhabitants of their rights to land and natural resources; scant regard for environmental considerations; poor enforcement of the relevant environmental laws meant to protect the people and the environment; the Nigerian state's over-reliance on oil; prolonged military rule; a high level of corruption in the oil industry and the entire body polity of Nigeria; non-justiciability of the right to a clean environment; and weak institutions such as the judiciary and the National Human Rights Commission. All of these deficiencies continue to date. Coming at a time when governments worldwide are striving to ensure corporate accountability for their activities in host nations, this work is unique in that it incisively analyses how the national and regional institutions could be strengthened to provide ef-

6 Centre for Minority Rights Development (Kenya) and Another v. Kenya, Afr. Comm'n HPR, Case 276/2003 (Feb. 4, 2010), para. 135..

fective protection against human rights abuses and ensure corporate accountability. The strengthening of these institutions and the promotion of a rights-based approach to environmental justice in the Niger Delta region therefore deserves concentrated attention and efforts by all actors in the industry.