

CHALLENGES AGAINST MULTINATIONAL CORPORATIONS' RESPONSIBILITY AND ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS IN NIGERIA: THE WAY FORWARD *

Abstract

The Nigerian economy is highly dependent on crude oil and other natural resources and the major players in this sphere are multinational corporations. While it is never denied that the operations of multinational corporations in Nigeria have created job opportunities and brought development even to some rural communities in Nigeria, the violations of human rights by multinational corporations have become so alarming that several scholars have started questioning whether natural resources are curses or blessings. Despite the involvements of multinational corporations in violations of human rights in Nigeria, none has been held liable for human rights violations. This study aimed at identifying factors militating against holding multinational corporations accountable for their human rights violations. In order to achieve this objective, the doctrinal research methodology and the critical and analytical approaches were adopted in collection and analysis of data from primary and secondary sources. The primary sources comprised the constitution, statutes and case law while the secondary sources included text books, journal articles, dictionaries, law reports and online materials. It was found that lack of jurisdiction by Nigerian courts, the provisions of the Nigerian constitution and bribery and corruption were some of the challenges making it difficult to hold multinational corporations accountable for their involvements in human rights violations in Nigeria. This work recommended the amendment of the Nigerian Constitution and the enactment of a new statute recognizing environmental rights as human rights and vesting jurisdiction in the Nigerian Courts.

Keywords: Multinational Corporation, Responsibility and Accountability, Human Rights, Poverty Mentality, Jurisdiction

1. Introduction

The activities of multinational corporations and its resultant negative effects on the enjoyment of human rights by those living close to the natural resources in Nigeria cannot be dismissed. It has been postulated that the determination of the existence of a legal right is not dependent on the success of an action at the trial but whether the action denotes such a right by reference to the enabling law in respect of the commencement of the action.¹ There are several challenges militating against holding multinational corporations liable for their human rights abuses in Nigeria thereby depleting the value of human rights in Nigeria. These challenges include but not limited to lack of jurisdiction by human rights enforcement mechanism, collusion of government in cases of violations, bribery and corruption, poverty mentality and lack or inadequate statutory provisions. This article will examine these challenges as well as the prospect of holding multinational corporations accountable in Nigeria for their human rights violations and will make recommendations that will assist in addressing the challenges.

2. Challenges to Multinational Corporations' Accountability and Responsibility for Human Rights Violations

Lack of Jurisdiction by Enforcement Mechanism

The term 'jurisdiction' denotes an authority to entertain, hear and determine a case or matter. Jurisdiction could also be defined as the capacity to decide the matter in issue, capacity to hear the controversy, command, and decision-making power over the case.² Jurisprudentially, the term 'jurisdiction' is universally understood to mean the court or enforcement mechanism's power to entertain, hear and decide a case or issue an order.³ Courts are creations of statute and it is trite that it is the statute creating the Court that specifies its jurisdiction. The court's jurisdiction may also be limited or expanded by statute. For a suit to be competent, the plaintiff's claims must fall within the jurisdiction vested on the court by the relevant statute.⁴ Jurisdiction is very important in every legal proceeding that no matter how brilliant, excellent and good the decision of the court is, once it is given without jurisdiction it is a nullity. In the case of *APC & Ors v. Enugu State Independent Electoral Commission & Ors*⁵ the Supreme Court in buttressing the importance of jurisdiction held:

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¹*Per* Nikki Tobi, JSC in *AG of Lagos State v AG Federation* (2004) LPELR - SC 70/2004

²*President FRN & Anor v National Assembly & Ors* (2022) LPELR-58516(SC)

³*Ibid*

⁴*SPDC v Anaro & Ors* (2015) LPELR-24750(SC); *Dangote Group Plc & Ors v Quest Two Enterprises Ltd & Ors* (2021) LPELR-56399(CA)

⁵(2021) LPELR-55337(SC)

Jurisdiction has been characterized as a threshold, live-wire, blood *et al* of an action. In the case of *UTIH v Onoyivwe* (1991) LPELR-SC.160/1988, this Court had aptly postulated: Jurisdiction is blood that gives life to the survival of an action in a Court of law and without jurisdiction the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.

The courts in Nigeria vested with jurisdiction to hear and determine actions for violation of human rights are the Federal High Court; High Court of the Federal Capital Territory; High Court of the State and the National Industrial Court of Nigeria.⁶ A meticulous perusal of the constitutional provisions creating and establishing these courts shows that the courts do not have extraterritorial jurisdiction. This conclusion has been established by several judicial authorities as the state of the law in Nigeria.⁷ With the statutory provisions and judicial pronouncements that Nigeria courts have no extraterritorial jurisdiction, the multinational corporations are beyond reach and whatever human rights violations perpetrated by multinational corporations in Nigeria cannot be effectively redressed. The common law doctrine of limited liability is another impediment to holding multinational corporations accountable for the violations of human rights in Nigeria. In law, once a company has been incorporation or vested with juristic personality it becomes separate from the shareholders who gave birth to it.⁸This doctrine of separate personality works to the advantage of multinational corporations and place them beyond the reach of the enforcement mechanisms.

The doctrine of piercing the corporate veil will not also subject multinational corporations to the jurisdiction of the Nigerian courts. To pierce the veil of incorporation, it must be established that the corporation was used as an instrument of fraud or that the incorporation was a sham or puppet of the controlling shareholders.⁹ It will be an insurmountable task to prove that a subsidiary of a multinational corporation that has existed in Nigeria for many years and in most cases, Nigeria Government has some of its shareholding was a sham or incorporated to perpetuate fraud just because the subsidiary was involved in human rights violations. It might be argued that multinational corporation equally cannot be reached even if it was proved that its subsidiary in Nigeria was used as an instrument of fraud or incorporated as a sham. This may be predicated on the fact that to sue and be sued in Nigeria, the plaintiff and defendant must be either a natural person or juristic person. A collection of persons does not possess legal personality by virtue of association. This was established in the case of *Fawehinmi v NBA & Ors (No 2)*¹⁰ wherein the Supreme Court held:

The well settled judicial view in this country appears to me consistent in holding that an association of persons without incorporation cannot be regarded as a legal person for the purposes of actions in court. Forty-eight years ago, in *Amodu Rufai Shitta and Ors v Momodu Ligali & Ors* (1941) 16 N.L.R. 23, twelve persons regarding themselves in the writ as the 'Executive of the Central Mosque', purported to sue in that capacity. It was held that the Committee was nothing more than a collection of individuals and had no capacity to sue. Thus the 'Executive of the Central Mosque' was held not to be a juristic person.

The above reasoning although plausible does not represent the state of the law in Nigeria. A multinational corporation not registered in Nigeria and not carrying on business in Nigeria has the status of a foreign company. A foreign company can sue and be sued in its registered name abroad. This was the decision reached in the case of *Emespo J Continental Ltd & Anor v Automotor France S A*¹¹ wherein a foreign company instituted an action in its name for debt recovery and the court held that a foreign company can sue and be sued in its name although not being registered in Nigeria. This decision does not apply to fundamental rights action as the multinational corporation that is a shareholder of some of the shares of its subsidiary in Nigeria cannot be held legal accountable for the violations of human rights committed by its subsidiary which is a separate legal entity from the multinational corporation.¹² Further, even where the court assumes jurisdiction against multinational corporation it will be very difficult to redress the involvement of multinational corporation in human rights violations of its subsidiary following the doctrine of the piercing the veil of incorporation. This is because the issue of fraud or sham that will necessitate the piercing of the veil of incorporation borders on crime and the standard of prove required is proof beyond reasonable doubt and this burden rest squarely on the victims of the alleged violations who will find it difficult to prove the criminal motive behind the formation of the subsidiary as it relates to the alleged violations of human rights.¹³

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 46, 234 (2) and 254C (1), *SCC (Nig) Ltd v Elijah & Ors* (2020) LPELR-52907(CA)

⁷*Veepee Industries Ltd v Ocean Fisheries (Nig) Ltd & Anor* (2023) LPELR-59878(SC)

⁸S 42 Company and Allied Matters Act 2020; *Olalekan v Wema Bank Plc* (2006) LPELR-2562 (SC)

⁹*Marina Nominees Ltd v FBIR* (1998) LPELR-1839 (SC)

¹⁰(1989) LPELR-1259(SC)

¹¹(2016) LPELR-42232 (CA)

¹²*Olalekan v Wema Bank Plc* (2006) LPELR-2562 (SC)

¹³*Ajaegbo v State* (2018) LPELR-4453 (SC)

It is apt to conclude that the extant human rights regime in Nigeria robs the court the jurisdiction to redress the involvements of multinational corporations in human rights violations committed by its subsidiaries in Nigeria. Further, to hold multinational corporations liable for human rights violation the statutes vesting the courts with jurisdiction need to be amended.

Collusion with the Government

The Nigerian government has been in collusion with multinational corporations in violations of human rights in Nigeria. For instant, In the case of Shell, the parent company of Shell, *Royal Dutch Petroleum Co.* was sued in United States for environmental ruins in the Ogoni land in Nigeria. It was alleged that Shell which is Royal Dutch Petroleum Co. financed, armed and conspired with Nigerian military government to suppress peaceful protests. The complainant also alleged that the military targeted Ogoni villages in terror campaigns of looting, murder, and property destruction leading to the killing of the Ogoni nine as a result of the interference and sponsor of the military government by Royal Dutch Petroleum Co.¹⁴ Another instructive case in this regard evidencing collusion of the Nigerian government with multinational corporations in violations of the human rights of those living close to the natural resources is the case of Chevron. In that case the Nigerian government used its military to quell peaceful protest in the offshore drilling operations site of Chevron's Parabe Offshore Platform.¹⁵

The reason for the collusion which has been detrimental to victims of human rights in Nigeria by multinational corporations is not farfetched. The Nigerian government is a major shareholder in majority of the multinational corporations operating in Nigeria. The Nigerian government owns the 60% shares capital of the Nigerian Agip Oil Company Ltd, a subsidiary company to multinational corporation, Eni and holds 55% interest in Shell Production Development Company JV.¹⁶ It is crystal that the involvement of Nigerian government that is tantamount to collusion with the multinational corporations in violations of human rights is ill motivated as the government is protecting its investments. The government has been often used as smoke screen by the multinational corporations and their subsidiaries in evading liability for their human rights violations. While soldiers and other armed forces in Nigeria are used to suppressed peaceful protests of environmental ruins by multinational corporations, multinational corporations have always put up the defense that soldiers or other armed forces members are not their employees and that they are the employees of the government as such, they cannot be held liable for the violations of human rights committed by them.¹⁷

Bribery and Corruption

The term corruption has been agreed by scholars to be an umbrella body of all vices including bribery. Corruption is dishonesty or fraudulent conduct by those in power, typically involving bribery.¹⁸ Corruption is an abuse of power for private purposes and it covers many practices that range from bribery to extortion, fraud, nepotism, embezzlement and theft or insider trading.¹⁹ Further, it is wide spread as it is not limited to public sector or extractive industry.²⁰ According to Transparency International corruptions erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.²¹ The issue of corruption and bribery in Nigeria is older than Nigeria as an independent nation as it started before independence in 1960. This is because before the discovering of oil in 1956 Nigeria has been experiencing corruption which was linked to the misuse of company's assets for private gain.²² During the oil boom in 1970 which evidenced the inflows of multinational corporations in Nigeria, corruption took extraordinary dimension. For instance, the transportation and finance ministers Kingsley Ozmomba and Festus Okotie Eboh were nicknamed the 'Ten Percenter' because of the percentage they extorted as bribe before approving any contracts.²³ According to Tam David-West, the Minister of Petroleum and Energy between 1979 to 1983, Nigeria lost the sum of \$ 16 billion US dollars equal to 20% of its oil revenue because of fraud, theft of crude oil and over billing of contracts with the complicity of the agents of the

¹⁴*Kiobel v Royal Dutch Shell Petroleum* 10-1491 (US 2012)

¹⁵Center For Constitutional Rights, 'Chevron Found not Liable for Killings, Shootings and Torture of Nigerian Peaceful Protesters' <<https://ccrjustice.org/home/press-center/press-releases/>> accessed 8 September 2023

¹⁶'The NAOC Joint Venture' <<https://www.eni.naoc-jv>> accessed on 22nd December, 2023

¹⁷Human Rights Watch, 'Oil Companies Complicit in Nigeria Abuses' <www.hrw.org> accessed on 22nd December, 2023

¹⁸OxfordLanguages, 'Corruption' <<https://languages.oup.com/google-dictionary-en/>> accessed on 23rd December 2023

¹⁹M Pérouse De Montclos, 'Oil Rent and Corruption: The Case of Nigeria' <https://www.ifri.org/sites/default/files/atoms/files/oil_rent_and_corruption_the_case_of_nigeria.pdf > accessed on 22nd December 2023

²⁰*Ibid*

²¹'What is Corruption' <<https://www.transparency.org/en/what-is-corruption>> accessed on 23rd December 2023

²²M Pérouse de Montclos, 'Oil Rent and Corruption: The Case of Nigeria' <https://www.ifri.org/sites/default/files/atoms/files/oil_rent_and_corruption_the_case_of_nigeria.pdf > accessed on 22nd December 2023

²³*Ibid*

NNPC.²⁴ The Nigeria Extractive Industries Transparency Initiative (NEITI) has attested to corruption in the extractive industries. According to its audit report covering 1999 to 2004 it was discovered that there is a discrepancy between the actual value of barrels of crude oil produced to the payment made to the Central Bank and the discrepancies was as a result of systematic deficiency in revenue accounting.²⁵ In August 2023 Mrs. Diezani Alison-Madueke, former Minister for Petroleum Resources was charged in UK for bribery relating to multi-million pound oil and gas contract she approved.²⁶ It has been asserted that corruption can affect human rights in a variety of ways. For instance, the rights to food, healthy environment, education, health, and the ability to seek justice can be violated if a bribe is needed to gain access to them.²⁷ In the same vein, corruption by high-level government officials will siphon millions of dollars of a country's wealth and this in turn will cripple the government from fulfilling its obligation to protect, promote, and respect the human rights of its citizens.²⁸

One clear case of multinational corporation involvement in bribery and corruption in Nigeria is the case of Halliburton Energy Services wherein the bribe sum was pegged at \$180 million US dollars and the participants in the bribe were two Nigerian presidents, ministers and government officials.²⁹ Recently, The Transparency International, US and Netherlands have called on the government of the two countries to reopened investigation in the corruption case involving two multinational corporations, Eni and Shell. The two multinational corporations were alleged to have bribed members of President Goodluck Jonathan's administration over \$1 billion US dollars for the rights to the OPL245 offshore oilfield.³⁰ This call was necessitated by the call by the Attorney General of the Federation under President Muhammad Buhari's administration to discontinue the investigation. It was the contention of the Transparency International that since Nigeria that primarily has the jurisdiction to investigate and punish the offenders appears to sweep it under the carpet, the US and Netherlands are under obligation in International Law to investigate their multinational corporations' involvement in corruptions in Nigeria.³¹

The fact that the government officials and political leaders as well as community leaders in Nigeria have been involved in bribery and corruption induced by the multinational corporations especially in the extractive industries cannot be denied.³² The resultant effect of the cankerworm is the undermining of the human rights of those living close to the natural resources and until this trend is checkmated, the Nigerian government will continue to fail in its obligation to respect, promote and protect human rights of its citizens against the multinational corporations' wanton violations of human rights.

Poverty Mentality

Poverty has been defined as a state or condition in which a person or community lacks the financial resources and essentials for a minimum standard of living.³³ Poverty-stricken people and families might go without proper housing, clean water, healthy food, and medical attention.³⁴ It has been estimated by the World Bank that over 95 million Nigerians are living in poverty on about \$1.90 US dollars a day.³⁵ Poverty mentality is synonymous to poverty mindset. Poverty mindset is seen as living in scarcity and particularly in fear that there would never be enough and that things will never work out and that what you have now is momentary as wealth is beyond reach.³⁶ This mindset manifest itself in lack of contentment leading to greed and involvement in all forms of corrupt practices in order to amass wealth with the believe of saving for the future generations. This poverty mentality was referred to in the Bible

²⁴S Ellis, *This Present Darkness: A History of Nigerian Organized Crime* (Hurst, 2006) 117

²⁵M Abutudu and D Garuba, *Natural Resources Governance and EITI Implementation in Nigeria* (Nordiska Afrikainstitutet, 2011)

²⁶'UK Lays Bribery Charges On Ex-Nigerian Oil Minister Diezani Alison-Madueke' <<https://www.occrp.org>> accessed on 23rd December 2023

²⁷JT Gathii, 'Defining the Relationship Between Human Rights and Corruption' <<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1116&context=jil>> accessed on 23rd December 2023

²⁸*Ibid*

²⁹HS Gowhor, 'Bribery Practices of Three MNCs in the Host Countries: An Examination of the Issues from HRM Perspective' <<https://www.intechopen.com/chapters/82095>> accessed on 23rd December 2023

³⁰Transparency International, 'Nigeria Oil Bribery Case: Netherlands and US Must Reopen Investigations into Eni and Shell's Roles' <<https://www.transparency.org/en/press/nigeria-oil-bribery-netherlands-us-reopen-investigations-eni-shells-opl245>> accessed on 23rd December 2023

³¹*Ibid*

³²M Pérouse de Montclos, 'Oil Rent and Corruption: The Case of Nigeria' <https://www.ifri.org/sites/default/files/atoms/files/oil_rent_and_corruption_the_case_of_nigeria.pdf > accessed on 22nd December 2023

³³'What is Poverty' <<https://www.investopedia.com/terms/p/poverty.asp#>> accessed on 24th December 2023

³⁴*Ibid*

³⁵Human Rights Watch, 'World Report 2023: Nigeria' <<https://www.hrw.org/world-report/2023/country-chapters/nigeria>> accessed on 24th December 2023

³⁶'How to Switch from a Poverty Mindset to a Wealth Mindset' <<https://cowrywise.com/blog/switch-from-poverty-mindset-to-wealth-mindset/>> accessed on 24th December 2023

as the love of money which leads to covetousness devoid of contentment.³⁷ Poverty mentality is one of the herculean challenges that have made it difficult for the Nigerian government to protect the human rights of its citizens from wanton violations by multinational corporations. Inferring from the estimation of the World Bank as seen above, not all Nigerians are poor and as x-rayed under the topic 'bribery and corruption' as one of the challenges of holding multinational corporations liable for human rights violations in Nigeria, it was established that those who get involved in corruption saga with multinational corporations are the affluent members of the society such as presidents, ministers, government officials and community leaders.³⁸ These persons have enough of wealth to take care of themselves throughout their lifetime. However, the fear that the money they have acquired may not be enough for their future generations and that they never wanted poverty in their lineage has coerced them to accept bribes in place of public utility of the protection of the human rights of the entire nation.

The challenge to enforcement of human rights in Nigeria although to some extent can be attributed to poverty but the major factor is not the poverty itself but the poverty sticking mentality of the few privileged individuals who are ready to selfishly enrich themselves in the detriment of the others. Poverty mentality that manifests itself in bribery and corruption is not limited to the legislative and executive organs of government in Nigeria alone; the judiciary has equally had its cake. In asserting the impact of poverty mentality in the judicial organ of government in Nigeria, it was stated that corruption in the justice system undermines its core values of fairness, equity, and impartiality.³⁹ When judges and court officials receive bribes, it results in the abuse of power, and a compromised system of justice delivery. As attested to, corruption in the justice system in Nigeria has resulted in the perversion of justice, wrongful convictions, and acquittals of guilty parties including multinational corporations and its subsidiaries.⁴⁰

Inadequate Constitutional Provision

The human rights provision in the 1999 Constitution is divided into two broad areas which are the civil and political rights and the economic, social and cultural rights. The civil and political rights are contained in the Chapter four of the Constitution and they are called the fundamental rights while the economic, social and cultural rights are contained in Chapter two of the Constitution under the heading 'Fundamental Objectives and Directives Principles of State Policies'. The Chapter two of the 1999 Constitution covers sections 13 to 26. In buttressing the importance of this Chapter, the section 13 of the Constitution provides 'It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this Constitution'⁴¹. This provision shows that the Chapter two of the Constitution shall serve as the duty of government and the guiding principles for the discharge of the democratic functions of the organs of government for the benefit of the nation.⁴² Considering the use of the word 'shall' in the section 13 of the Constitution⁴³ it could be concluded that the duties and obligations provided in Chapter two of the 1999 Constitution are mandatory duties of the state. This is premise on several interpretations by the Supreme Court with regards to the use of the word 'shall' in legislations. The apex court has been consistent in its findings that the word shall when used in statute, rules or enactment generally is interpreted in its mandatory sense depending on the context it appears.⁴⁴ The section 20 of the Constitution has a wonderful provision as it relates to environmental right which is the right to enjoy healthy environment devoid of pollution most especially, coming from the activities of multinational corporations. The said section provides that 'The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria'⁴⁵. The right to healthy environment in Nigeria received a legislative approval in article 24 of the African Charter on Human and Peoples (Ratification and Enforcement) Act that provides thus 'All peoples shall have the right to a general satisfactory environment favourable to their development'.

Despite the above provisions, the section 6(6)(c) of the 1999 Constitution⁴⁶ that ousted the jurisdiction of courts in Nigeria from entertaining any action in respect of the provisions of the Chapter two of the 1999 Constitution has brought the enforcement of environmental rights as human rights into question. There is conflicting decisions as to whether the provisions of the Chapter two of the 1999 Constitution are justiciable or not. While some judicial authorities are point blank that the provisions of the Chapter two of the 1999 Constitution are non-justiciable based

³⁷1 Timothy 6:10 and Heb 13: 5, King James Version of the Holy Bible

³⁸M Pérouse de Montclos, 'Oil Rent and Corruption: The Case of Nigeria' <https://www.ifri.org/sites/default/files/atoms/files/oil_rent_and_corruption_the_case_of_nigeria.pdf> accessed on 22nd December 2023

³⁹International Bar Association, 'The Impact of Corruption on the Rule of Law and the Effective Administration of Justice Using Nigeria as a Case Study' <<https://www.ibanet.org/impact-of-corruption-on-rule-of-law-Nigeria>> accessed on 24th December 2023

⁴⁰*Ibid*

⁴¹Constitution of the Federal Republic of Nigeria 1999 (As Amended)

⁴²'An Examination of the Chapter 2 of the CFRN 1999' <<https://omaplex.com.ng/an-examination-of-chapter-2-of-the-cfrn-1999/>> accessed on 24th December 2023

⁴³Constitution of the Federal Republic of Nigeria 1999 (As Amended)

⁴⁴*Ibrahim & Ors v Akinrinsola* (2022) LPELR-59633(SC); *Tabik Investment Ltd & Anor v GTB* (2011) LPELR-3131(SC)

⁴⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 20

⁴⁶*Ibid*

on the provision of section 6(6)(c) of the same Constitution,⁴⁷ the Supreme Court in the case of the *Attorney General of Ondo State v Attorney General of the Federation*,⁴⁸ has held that the provisions of the Chapter two of the 1999 Constitution are enforceable once the National Assembly makes law to enforce any of the said provision. While this pronouncement of the Supreme Court appears to have assuaged the yearning of the advocates of the enforcement of environmental rights as human right in Nigeria, it does not agree with the spirit of the existing laws particularly the Constitution. This is predicated on the fact that the decision of the Supreme Court connotes that the legislation made by the National Assembly is superior to the Constitution. By section 1 of the 1999 Constitution, the Constitution is supreme and any other laws in Nigeria inconsistent with the provision of the Constitution is null and void to the extent of its inconsistency. This remains the law and the same Supreme Court has upheld this position in several judicial authorities.⁴⁹ The implication then remains that the provision of the Chapter 6(6)(c) of the 1999 Constitution that ousted the jurisdiction of court from entertaining action in respect of all the provisions in the Chapter two of the 1999 Constitution overrides any other law enacted or to be enacted by the National Assembly including the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 2004 to the extent of its inconsistency.

Inferring from the above, it is apt to conclude that the conflicting provisions in the Constitution is a serious challenge to the protection of the human rights of the citizens against the wanton violations of human rights by multinational corporations in Nigeria. This obstacle cannot be cured by the enactment of law by the National Assembly. To address this challenge, constitutional amendment is highly required.

Threats and Intimidation

The Merriam-Webster Dictionary defines threat as an expression of intention to inflict evil, injury, or damage.⁵⁰ Threat could also be define as a menace; a declaration of one's purpose or intention to work injury to the person, property, or rights of another and the menace is to be in such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from the person the acts that is free, voluntary action which alone constitutes consent.⁵¹ Intimidation in its part is the wrongful use of violence to or intimidates any other person with a view to compel him to abstain from doing, or to do, any act which the person has a legal right to do, or abstain from doing.⁵² It is pertinent to state that intimidation does not require physical assault or bodily harm. It suffices if the accused makes a threat by which the victim is thrown into fear of any harm to himself or any other person of an instant harm.⁵³ In criminal procedure what is paramount is that the prosecutor is able to establish that the accused person made a threat by which the victim is thrown into fear of harm to himself or any other person of an instant harm not that there was execution of the threat leading to physical injury.⁵⁴ In *Lawan v Zenon Petroleum & Gas Ltd & Ors*⁵⁵ the court in stating the element of intimidation clearly shows that there is a symbiotic relationship between intimidation and threat as intimidation is a resultant effect of threat.

The combined effect of threat and intimidation is that it deprives the victim the free will to abstain from pursuing or seeking for the protection of his rights. Threats and intimidations are one instrument used by the multinational corporations against the government of the host state and/or the people of the host state living close to the natural resources. In most of the cases where threats and intimidations are directed towards the citizens by the multinational corporations it is always in collusion with the government of the host state who may not be working on its freewill.⁵⁶ Multinational corporations may directly engage in political activities such as lobbying and campaign contributions to affect policy making or to press political leaders to address their demands.⁵⁷ MNCs leverage their bargaining power by offering inducements or promises of new investment and deprivations or threats of withdrawal of investment.⁵⁸ The political leaders because of the campaign funding will prefer to turn blind eyes to the activities of multinational corporations infringing the human rights of the citizens. The fact that the multinational corporations may support their opponents causing them to lose their most precious political position and relevancies in the state induce the political leaders to accede to the request of the multinational corporations which sometimes include lowering standards and policies to the detriment of the human rights of the individuals living within the sphere of the jurisdiction of the host state. The instants were the multinational corporations used the instrumental of the government to threatened and intimidated people living close to the natural resources are numerous and in most of

⁴⁷*Human Rights & Empowerment Project Ltd/GTE v President of FRN & Ors* (2022) LPELR 5830(CA)

⁴⁸(2000) 9 NWLR (pt 722) 222

⁴⁹*Fasakin Foods Nigeria Ltd v Shosanya* (2006) All FWLR (pt. 320), 1059; *Ekulo Farms Ltd v Union Bank of Nigeria Plc* (2006) All FWLR (pt. 319) 895

⁵⁰Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/threat>> accessed on 25th December 2023

⁵¹The Law Dictionary, 'Threat Definition & Legal Meaning' <<https://thelawdictionary.org/threat/>> accessed on 26th December 2023.

⁵²Ibid 'Intimidation Definition & Legal Meaning'

⁵³*Chidozie v COP & Ors* (2012) LPELR-14835(CA)

⁵⁴*Chidozie v COP* (2018) LPELR-43602(SC)

⁵⁵ (2014) LPELR-23206(CA)

⁵⁶E Duruigbo, 'Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Reoccurring Challenges' *Northwestern Journal of International Human Rights* (6) (2) (2008) 221

⁵⁷IS Kim & HV Milner, 'Multinational Corporations and their Influence Through Lobbying on Foreign Policy' <https://www.brookings.edu/wp-content/uploads/2019/12/Kim_Milner_manuscript.pdf> accessed on 25th December 2023

⁵⁸Ibid

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these cases resort have been had to foreign jurisdictions to seek for redress. A case at hand was the incident of threat, intimidation and brutality by Chevron in Ondo State in Nigeria. The community living close to the Chevron's Parabe Offshore Platform engaged in a peaceful protest to the company's platform against the company's flagrant infringement of their Human rights via their operation. Chevron instead of bargaining with the people peacefully hired the services of the Nigerian soldiers, carried them to their platform and supervised the killing of two persons of the protesters and captured, detained and tortured several of them. This resulted in commencement of action for redress in the United States.⁵⁹

Threats and intimidation by the multinational corporations is a herculean challenge to the adequate protection of human rights of third parties against the infractions of these rights by multinational corporations. This is because threat and intimidation permeate the entire operations of multinational corporations. In the host communities it has been the attitudes of the multinational corporations to use thugs and divide and rule policies in intimidating the original land owners into submitting to their infringement of human rights and this has led to several crisis within the host communities leading scholars and well thinking person questioning whether crude oil is a blessing or a curse.⁶⁰ However, this challenge is not insurmountable as there is solution to every problem.

Lack of Relevant Statutes

Rights and liabilities are creation of law and courts are creation of law. In highlighting the fact that courts of law cannot assume jurisdiction where there is no statute assigning it jurisdiction, the Supreme Court in the case of *Ogboru & Anor v Uduaghan & Ors*⁶¹ held 'this Court is a creation of statute, with specific jurisdiction, it is not hungry for jurisdiction, neither can it be stampeded into succinctly assuming the duties of the legislature by indirectly expanding the law'. Currently in Nigeria there is no statute assigning jurisdiction to any court in Nigeria to address the violation of human rights by multinational corporations. This has made it impossible for the involvement of home corporations of multinational corporations in human rights infractions committed by their subsidiaries to be attended to thereby creating multinational corporate immunity for human rights violations. International relations are dependent on reciprocity between the nations and once a State found that a particular state refused or neglected to hold her multinational corporations accountable for violations of human rights committed outside her territorial jurisdiction, the State will refrain from holding her multinational corporations accountable for human rights violation committed in the negligent State. Nigeria is the giant of Africa and has many multinational corporations that have extended their operations outside its shore and the lack of statute vesting Nigerian courts with jurisdiction to entertain action against the involvements of her multinational corporations in human rights infractions is detrimental.

3. The Way Forward

The fact that the courts in Nigeria are becoming proactive in the issues of multinational corporate accountability and responsibility for human rights violations shows that there is light at the end of the tunnel. In the same vein, the fact that NGOs and scholars have been expending their time, ink and energy in exposing the involvements of Nigerian corrupt leaders and government in the infringements of human rights by multinational corporations, no doubt will deter most of them from engaging in the vices. Nigeria is not an island, the glamour globally to holding multinational corporations accountable for human rights violations will persuade the Nigerian legislatures to make laws or amend the existing laws particularly the constitution in order to hold multinational corporations accountable for their involvements in the human rights violations perpetuated by their subsidiaries in Nigeria. The challenges to holding multinational corporations responsible and accountable for their involvements in human rights violations in Nigeria appears to be overwhelming however they are not insurmountable as the Nigerian government particularly the legislative and the judicial arms of the government possess the power to make law and interpret law. The decision in *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Ors*⁶² wherein the court went against the odds of the Constitutional provisions to hold that the gas flaring that ruins the environment is tantamount to infringement of the right to life of the people living close to the multinational corporation operation's site shows that there is a bright prospect in Nigeria to holding multinational corporations responsible and accountable for their involvements in human rights infractions in Nigeria. To address the issue of multinational corporations' corporate responsibility and accountability for violations of human rights, it is recommended that the Nigerian Constitution be amended by removing the ouster clause in the Constitution and recognize the environmental right as human rights and further NGOs should intensify their fight against public officials living above their income or salary by exposing them to public shame and demanding that they be prosecuted for corruption if found wanting. The court need to be more proactive by adopting the common law principle of duty of care when it comes to violations of human rights by multinational corporations. Finally, the National Assembly should enact a law vesting Nigerian Court with jurisdiction to entertain actions against multinational corporations for violations of human rights. It is believed that the implementation of these recommendations will address the challenges militating against Multinational Corporations' accountability for human rights violations in Nigeria.

⁵⁹Center For Constitutional Rights, 'Chevron Found not Liable for Killings, Shootings and Torture of Nigerian Peaceful Protesters' <<https://ccrjustice.org/home/press-center/press-releases/>> accessed 8 September 2023

⁶⁰AS Saidu, SB Aliyu, & UA Zubair, 'Is The Discovery of Oil a Curse or a Blessing to Nigeria?' <<https://dc.cbn.gov.ng/bullion/vol40/iss1/3/>> accessed on 26th December 2023

⁶¹(2011) LPELR-8236(SC)

⁶²(FHC/B/CS/53/05 Federal High Court of Nigeria Benin Judicial Division 14 November 2005)