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THE HUMAN RIGHTS IMPLICATION OF THE DESPOILED OGONI LANDS BY THE OIL FIRMS IN NIGERIA

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ABSTRACT

In 1957 Shell Petroleum Development Company (Nigeria) Ltd. (SPDC) discovered oil in Ogoniland and subsequently began actual exploitation of crude oil in the area. The company dug massive oil wells all around the area and laid pipelines that intersect and crisscrossed indigenous communities. Environmental contamination and degradation as a result of oil exploration and extraction became quickly apparent as huge oil spills occurred. Deep layers of oil from leaking wells and pipelines covered fertile farmlands and water leaving indigenous people of various communities in the area without any means of livelihood since their main occupation is farming and fishing. Multinational Oil Companies that operates in the area take little or no responsibility for oil spills and air pollution from their activities. In 2009 owing to several protest by the indigenous people of Ogoni, the Federal Government of Nigeria Commissioned the United Nations Environmental programme (UNEP) to conduct an independent study to determine the environmental and public health impacts of oil contamination in Ogoniland, and options for remediation. UNEP submitted its report to the Federal Government of Nigeria in 2011. Seven years after the report was submitted to the Federal Government of Nigeria with far reaching recommendations including a comprehensive remediation of the despoiled land, no meaningful action has been taken by the Government to remediate the land. This paper examines the activities of Multinational Oil Companies in Ogoniland, its impact on the environment and the non-remediation of the despoiled land. The paper also examines the human rights implication of the

activities of this multinational oil companies and argues that their activities violate the rights of the indigenous people of Ogoni in several dimensions. The paper recommends a comprehensive remediation of the despoiled land and a declaration making wetlands in Ogoniland a Ramsar Site.

Keywords: Environment, Contamination, Remediation, Ogoni.

INTRODUCTION

Crude oil was discovered in commercial quantity in Oloibiri, Ogbia Local Government Area in Bayelsa State of the Niger Delta On 3 August 1956.³ This discovery placed Nigeria among the group of oil-producing nations, which today remains Africa's largest producer. It is estimated that Nigeria has a daily production of 2.4 million barrels, making it the 13th largest producer of oil worldwide.⁴ Also Nigeria is the second largest proven oil suppliers in Africa and the 10th largest in the world. Interestingly, amidst the complexity of ethnic, environmental, political, and social problems besetting this highly valuable resource, it remains the principal export, and largest source of foreign earnings.⁵ Petroleum has accounted for

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³ Tamuno S. and Felix J. M., Crude Oil Resource: A Blessing or Curse to Nigeria- The case of the Niger Delta. J. Res. Natl. Dev. 2006, vol. 4. p. 53.

⁴ African Vault, Top 20 Oil Producing Countries in Africa. Available online: <http://www.africanvault.com/oilproducing.countriesin-africa/> (accessed on 22 October, 2016).

80% of Nigerian Federal Government's revenue and 95% of the country's export earnings. Apparently, oil discovery signified the dawn of Nigerian's transformation both in economic and political terms.⁶ The Niger Delta is the centre of oil production in Nigeria. It is a vast sedimentary and oil-rich basin of some 70,000 sq.kms and composed officially of nine states (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Rivers and Ondo), 185 Local Government Areas (LGAs) and a population of roughly 28 million.⁷ The major stakeholders in the Nigerian oil industry are the oil multinationals (who exploit for oil), the Nigerian State (which depends on oil for 80 percent of its revenue, and over 95 percent for its foreign exchange earnings) and the communities (and social movements) of the oil producing communities in the Niger Delta.⁸ The number of international oil companies in Nigeria has increased from one (shell BP) in 1958 to more than 24 in 2007 with the top four- Shell, Exxon Mobil, Chevron, Elf Petroleum Nigeria Limited) accounting for about 83 percent of total oil production in Nigeria in 2008.⁹ The

production of oil in Nigeria is through the joint venture partnership between the state and the oil MNCs, and this has led to the State's promotion of uninterrupted oil exploration (including degradation) by the MNCs with dire consequences on the local inhabitants and the environment.¹⁰

Notwithstanding the several billions of dollars generated from oil exploration, the Niger Delta, which is the oil and gas wetland in the southern part of Nigeria and which firmly established Nigeria as a major world producer of oil, are amazing metaphors of wealth and opportunities, as they have nothing to show for the huge revenue derivable from their land.¹¹ For five decades, environmental damage, such as oil spills and gas flaring caused by the careless and reckless operating practices of the oil MNCs remains a permanent feature in the Niger Delta region. This paper examines the activities of this oil MNCs in Ogoniland, Nigeria and its impact on the environment.

THE STATE OF THE ENVIRONMENT IN Ogoniland

Ogoni lies at the south eastern fringe of the Niger Delta in Rivers State of the Federal Republic of Nigeria.¹² Ogoniland is a region covering some 1,000 km¹¹. It has a population of close to 832,000 according to the 2006 National Census. The region is divided administratively into four local government areas namely, Khana, Gokana, Tai and Eleme. Traditionally the area is formed

⁵ Pitkin, J., *Oil, Oil, Everywhere: Environmental and Human Impacts of Oil Extraction in the Niger Delta*. Bachelor Thesis, Pomona College, Claremont, CA, USA, 2013.

⁶ Balouga J., *The Niger Delta: Defusing the Time Bomb*. International Association for Energy Economics 2009: Available online: <https://www.laee.org/documents/newsletterarticles/109balouga.pdf> (accessed on 22 October, 2016).

⁷ Michael Watts, *Petro-Insurgency or Criminal Syndicate? Conflict, Violence and Political Disorder in the Niger Delta*, Niger Delta Economics of Violence Working Paper No. 16, 2008, Available online: <http://www.geographyberkerly.edu/projectsresource/s/no%20website/NigerDelta/wp/16-watts.pdf> (Accessed 21 October 2016).

⁸ Cyril I. Obi, *Globalization and Environmental Conflict in Africa*; *African Journal of Political Science*, (1999), Vol. 4. No. 1. 40-62 at 42.

⁹ Wumi Iledara and Rotimi Suberu, *Oil and Gas Resources in the Federal Republic of Nigeria*, being excerpts of a paper presented at the conference organized by the World Bank and the forum of federations, on 'the management of oil and gas in a federal systems, held at Black Auditorium, World Bank, Washington D. C., March 3-4, 2010, Available online <http://www.siteresources.worldbank.org/EXTOGM/C/Resources/3369291266445624608/Nigerian>

Conference final draft Feb. 10 pdf. (Accessed 21 October 2016).

¹⁰ Olubisi Friday Oluduro and Olubayo Oluduro, *Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria*, *Journal of Law, Policy and Globalization*, vol. 37, 2015.

¹¹ Ibid.

¹² Frank Horn (ed), *Economic, Social and Cultural Rights of the Ogoni*, (Rovaniemi-Finland: Northern Institute for Environmental and minority law, 1999), P.1.

¹¹ Francis O. Adeola, "Environmental Injustice and Human Rights Abuse; the states, MNCS, and Repression of minority groups in the world system" *Human Ecology Review*, vol 8, No 139, (2000) P. 50.

by six kingdoms namely; Nyokhana, Babbe, Ken-Khana, Gokana, Tai and Eleme.

Oil exploration in Ogoniland commenced in 1950⁵ with extensive production facilities established in the area. Ogoniland is the fifth largest oil-producing region in the Niger- Delta. The two multinational oil companies operating in the area in partnership with the Nigerian National Petroleum Company (NNPC) are Shell Petroleum Development Company (Nigeria) Ltd. (SPDC) and Chevron. Despite its considerable oil resources, Ogoniland is one of the least developed areas in Nigeria.¹⁴

Actual oil exploitation in Ogoni began in 1957 when shell first found oil in K-Dere Community popularly and misnomerly called the Bomu oil fields.¹⁵ Subsequently, shell made more discoveries in Ebubu, Yorla, Bodo West, and Korokoro.¹⁶ As at the last count, Ogoni has five major oil fields in the area with 96 oil wells, hooked up to five flow stations at Bomu, Korokoro, Yorla, Bodo West and Ebubu.¹⁷ The discovery of oil in commercial quantities in Ogoniland set the stage for the desecration of the Ogoni cultural heritage, leading to social upheavals among the people as large parcel of cultivable land and forest reserves were compulsorily acquired for oil production activities without allowing the Ogonis any say in the ensuing changes or the new social cultural and economic order. Neither social nor environmental impact assessments studies (EIAS) were conducted. Rather unjust laws that deprive the minorities of ownership, control and even the use of the appropriate benefit accruing from the despoliation of their mainstay which is the land were quickly crafted and enacted into laws and decrees by Nigerian Government

usually dominated by the major tribes.¹⁸ Long stretches of valuable lands not used for direct drilling activities were equally appropriated for pipelines with attendant right of way. With antiquated facilities and impervious mode of production and transportation of gas and oil to flow-stations and terminals, oil spillages with serious ecological effects resulting basically from equipment failures became noticeable in 1968, barely ten years after the start of oil production in Ogoniland. Thereafter major oil spills and blowouts some with devastating impacts capable of impairing the livelihood of large rural settlements became a regular occurrence.

Environmental incidents, such as oil spills and uncontrolled flares, continued to occur in the area and responses were slow and inadequate.¹⁷ While no oil production has taken place in Ogoniland since 1993, the facilities themselves have never been decommissioned.²⁰ Some oil pipeline carrying oil produced in other parts of Nigeria still pass through Ogoniland but these are not being maintained adequately.²¹ Consequently, the infrastructure has gradually deteriorated, through exposure to natural processes, but also as a result of criminal damage, causing further pollution and exacerbating the environmental footprint.²²

LEGAL FRAMEWORKS

Oil and gas pollution affects the air, soil and water in very adverse ways. It negatively destroys the biodiversity of the environment. The Niger Delta region of Nigeria where most of the oil activities take place, has been predicted to become uninhabitable in the next few years, if nothing is done to effectively protect the environment in the course of oil exploitation. The negative effects of oil and gas activities on the Nigerian environment are easily noticeable in

¹⁴ Franc Horn (ed) opcit P.8.

¹⁵ Pyagbara Legborsi Saro, *The Impact of Oil Spills on Biological Diversity: The Ogoni Experience*, A Case Study presented at the International Indigenous Forum on Biodiversity at the 7th Session of the Conference of Parties to the Convention of Biological Diversity, Kuala Lumpur, Malaysia, February, 2004. pg.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ See UNEP, *Environmental Assessment of Ogoniland*, 2011, P.25.

¹⁷ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

the health, environment and socio-economic life of the host communities where these activities take place. The overall purpose of the laws on environmental protection in the oil and gas sector is to prevent oil and gas pollution as much as possible. When it inevitably takes place, the law moves to control it and reduce its negative effect on the environment.

(a) The Department of Petroleum Resources

The DPR was formerly established as part of the NNPC pursuant to the NNPC Act 1977.²¹ It is charged with the function of regulating and enforcing all legal frameworks concerning the oil and gas sector. Other functions of the DPR include overseeing the activities of companies engaged in any petroleum activity in Nigeria; ensuring that these companies carry out their operations in accordance with the domestic regulations, guidelines and best international oil industry practices. It is also expected to keep records of the oil industry's operations, issuing necessary permits, licenses, and enforcing the provisions of the petroleum laws in Nigeria. Consequently DPR developed the Environmental Guidelines and standards for petroleum industries in Nigeria (EGASPIN) 1981.²⁴ EGASPIN provides a one stop shop for environmental standards and guidelines for petroleum operations in Nigeria; including its abatement, monitoring and containment of all forms of petroleum waste.²⁵

The guideline provides for the reporting of spillage, of crude oil/chemical product to the Director of petroleum resources in accordance with formats A, B, and C provided under the

guidelines.²⁶ A Joint Spillage Investigation Team (JSIT) comprising of the license/operator/spiller, the host community and the Department of Petroleum Resources (DPR) shall be constituted within 24 hours to investigate the spillage. The guideline also provide for clean-up operation by the operators in the event of a pollution incident.²⁷ Operators shall bear all necessary expenses for clean-up in line with the polluter pay principle. The guidelines provide that the spiller is to restore any impacted environment to its original state.²⁸

The guidelines also contain a requirement for emergency planning for the prevention/control and combating of oil and hazardous substances spill.²⁹ The guideline also made provision for the spiller to compensate impact victims of the spill.³⁰ The major tools adopted in the achievement of environmental protection and balance in the oil and gas as provided for under the Act are: Environmental Impact Assessment (EIA) and Environmental Evaluation (Post Impend) Report (EER) in addition to enforcement of regulatory requirements in the form of:

- compliance monitoring
- revocation of licenses/leases;
- sanctions (fines/imprisonment);
- issuance of interim guidelines on waste discharge.²⁹

The major hindrance to the effective enforcement of the DPR standards is that NNPC is a joint venture partner with most of the operators and it becomes difficult to enforce the relevant regulations against the NNPC, being a government Agency. NNPC is infact the major partner holding 60% of all those joint ventures.

Though the DPR is supposed to be a regulatory agency in the industry, it is a mere underdog since it is not independent of the corporation and

²¹ NNPC Act 1977, Section 10.

²⁴ G. Uagha, D.O Ikechukwu and M. Zagi, *The Development of Environmental Guideline and standards for petroleum industry in Nigeria: A systematic Approach and future challenges* (International Conference on Health, Safety and Environment of the Oil and Gas industry Calgary 2004) 5, 6, for details of what EGASPIN Contains.

²⁵ NAPIM, Napim organizes a Retreat <<http://napims.nnpcgroup.com>.

²⁶ Part 11 of the Guidelines.

²⁷ Paragraph 5.1.2 Ibid.

²⁸ Item 2.11 of Paragraph 5. 1.2 Ibid.

²⁹ Paragraph B of part viii of EGASPIN.

³⁰ Paragraph B of part Vii.

²⁹ Paragraph 1.3, Part viii of the guidelines.

the Minister of Petroleum Resources. When the Deep Offshore and Inland Basin Petroleum Production Sharing Contracts Act of 1999,³² was enacted and it conferred independence on the DPR, the Act was quickly amended and the law on the subject changed. The supervisory or regulatory roles, vested in the NNPC with respect to pollution amount to asking it to enforce rules against itself.³³ Also, the guidelines do not have the status of a law since it is neither an Act of the National Assembly nor subsidiary legislation flowing from those Acts. It is merely an exercise at law making by the Executive.

(b) National Oil Spill Detection and Response Agency Act 2006

The Government response to the continuing environmental pollution in Nigeria and the inefficient regulatory frameworks thereto, was the promulgation of the National Oil Spill Detection and Response Agency Act 2006 (NOSDRA).³⁴ Consequently, the National Oil Spill Contingency Plan (NOSCP) was established in accordance with the international convention on Oil pollution Preparedness, Response and Co-operation (OPRC) 1990,³⁵ which Nigeria has ratified.³⁴ The main objective was to address the environmental degradation in the oil producing areas, to co-ordinate oil spill management and to ensure the implementation of the National Oil Spill Contingency Plan (NOSCP) in Nigeria.³⁷

The Agency created under section 1 of the Act, shall be responsible for surveillance and ensuring

compliance with all existing environmental legislation in the industry.³⁸ The Agency will ensure that polluters report oil spill incidents within 24 hours and that impacted sites are cleaned up to all practicable extent.³⁹ Failure to report any oil spill incident attracts a fine of ₦500,000 (£2000) for each day.⁴⁰ The Agency depends largely on the government for its funding but can obtain loans and aids from other organisations.⁴¹

The first major defect of the NOSDRA Act is that it enjoins the Agency to ensure that oil spill cleanup is done 'to all practical extents' without defining what 'practical extents' meant.⁴² This ambiguity has not helped in clearly stating the level of remediation required from the international oil companies (IOCs) thereby creating enforcement difficulties which contribute to frequent oil spill incidents.⁴³ This has led to the Agency issuing certificate of cleanup to IOCs without any proper remediation. A case in point is the alarm raised sometimes in 2016 by Amnesty international on the cleanup of some communities in Eleme area of Ogoniland. Secondly, the Agency is primarily established to address oil pollution leaving gas pollution, which equally poses serious environmental damage.⁴² There is also the issue of Jurisdictional conflict between the Agency and DPR over the legal responsibility to address oil pollution matters; this equally erodes its capability to deal with an unsustainable petroleum industry. The Agency is also not adequately funded and has no sufficient capacity.⁴⁵ The Agency depends on support and funding from IOCs which they are supposed to

³² Formerly Decree No 9. of 1999.

³³ Andrew I. Chukwuemerie; "The law on Petroleum Pollution in Nigeria: Agenda for Reform" MPJFIL vol 9. 9 Nos 1-2 Jan/April 2005, P. 200.

³⁴ Act N0 15 of 2006.

³⁵ Adopted 30 November 1990; entry into force: 13 May 1995 30 ILM 747 final.

³⁴ Nigeria become a member of the international maritime organization of Imo in 1962, hence ratified the convention.

³⁷ Federal ministry of Environment, NOSDRA <<http://environment.gov.ng/about/moe/departments/agencies/agencies.paralstatal/national-oil-spill-detection-and-response-agnecy-nosdra/>>accessed 14th December 2015.

³⁸ Ibid section 5 (a) –(d) and 6 of the Act.

³⁹ Ibid section 6 (2) (ii).

⁴⁰ Ibid, first and second schedule.

⁴¹ Ibid, section 11.

⁴² Section 6 (3).

⁴³ See recent oil spill by Shell Nigeria Explorations and Production Company (SNEPCO), Nigeria: Bonga field oil Disasters' <http://allafrica.com/stories/201201170885.html>(Accessed 15 December 2015).

⁴² Total Gas Explosion, Senate Vows to Curb Abuse, Thisday live (Nigeria 17 April 2012). Harcourt, 2015, P. 62.

⁴⁵ Dr. Dike S.C; Energy security, the case of Nigeria and lessons from Brazil, Norway and the UK; Pearl Publishers Port Harcourt, 2015, P. 62.

regulate. How can the Agency be bold to enforce regulations against the 10Cs? Therefore, while the establishment of NOSDRA was a welcome development, it has not significantly helped to stem the tide of oil spill incidents in Nigeria.⁴⁶ This is because between 2006-2010 there were 2,400 oil spill incidents with an estimated volume of 260,000 barrels of oil per year.⁴⁷ It was discovered that the majority of these incidents were due to pipeline failures within the control of the 10Cs,⁴⁸

(c) *National Environmental Standard and Regulations Enforcement Agency Establishment Act (NESREA) 2007*

The NESREA ACT was enacted in 2007 to replace the FEPA Act. The Act created the National Environmental Standards Regulations and Enforcement Agency and conferred on it the responsibility for the protection and development of the environment in Nigeria and other related matters. Section 2 and 35 of NESREA Act preserve the various guidelines and standards made by FEPA, which apply generally to all sectors including pollution from oil and gas.⁴⁷ However, sections 7 (h), 8 (k) and 29 of NESREA Act effectively restricts the Agency from regulating the oil and gas sector. This is done by providing that the duty to conduct environmental audits and to establish data bank on regulatory and enforcement mechanisms, do not extend to the oil and gas sector. This is very sad because the Agency could not attack the very petroleum industry that mostly degrades the environment due to lack of Jurisdiction over hydrocarbon industries.

(d) *The Nigerian National Petroleum Corporation (NNPC)*

⁴⁶ Ibid P.63.

⁴⁷ United States Energy Information Administration, Countries Analysis Briefs: Nigeria (last updated 30 December 2013 <http://www.eia.gov/countires/cab?fips=niacced> 14th December 2015.

⁴⁸ Ibid.

⁴⁷ See National Guidelines on Environmental Management system in Nigeria made Pursuant to section 37 of the defunct FEPA Act. NESREA Act 2007 equally saved it.

By equity participation in oil operations with her joint venture partners the NNPC absorbs a good proportion of the expenditure incurred by her operating partners including compensations and claims arising from damage caused by an oil disaster. In this regard the NNPC shall co-operate with the spiller in determining appropriate measures to prevent excessive damage, promptly refer the proposal made to her for the response effort to the National Oil Spill Detection and Response Agency (NOSDRA) and mobilize its internal resources and also assist in obtaining any outside resources that may be required to combat the spill.⁵⁰

(e) *Nigerian Institute for Oceanography and Marine Research (NIOMR)*

The NIOMR shall aid in the environmental remediation process by assisting with data for oil spill trajectory models for spillage in brackish and ocean waters, monitoring the extent of impact in the coastal and marine environment, monitoring the effectiveness of clean-up exercises and advise on least-damaging techniques for quick recovery of impacted areas, upon commission, monitor the recovery rates of impacted areas and document for future use, the most acceptable methods for clean-up in each ecotype, recommend rehabilitation and restoration methods for the recovery of impacted areas and provide Technical/Scientific Support Services to NOSDRA.⁵¹

The Niger Delta Development Commission (NDDC)

To reduce the rate of oil incidents along the Nigerian Coast particularly as a result of vandalization, the Federal Government through an act of the National Assembly in 2000 passed

⁵⁰ See General Assembly Resolution 2997, dated December 15, 1972 (for the text of the Resolution see IJIL vol. 14 (1973) P.1.

⁵¹ Ibid.

into law the Niger Delta Development Commission (NDDC) Act.

The Act established a Commission to carry out among other things the following tasks: (a) cause the Niger-Delta area to be surveyed in order to ascertain measures, which are necessary to promote its physical and socio-economic development; (b) prepare plans and schemes designed to promote the physical development of the Niger-Delta area; (c) identify factors inhibiting the development of the Niger-Delta and assist the member states in the formation and implementation of policies to ensure sound and efficient management of the resources of the Niger-Delta.⁵²

Additionally, the NDDC is to (d) assess and report on any project funded or carried out in the Niger-Delta area by oil and gas producing companies and any other company including non-governmental organizations and ensure that funds released for such projects are properly utilized; (e) tackle ecological and environmental problems that arise from the exploration of oil in the Niger-Delta area and (f) liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control. Essentially, items (e) and (f) deals with issues pertaining to oil exploration and production and the NDDC Act is a strategic way of dealing with all forms of pollution from these activities in the Niger Delta.⁵³

REMEDICATION OF THE DESPOILED LAND AND ITS CONSEQUENCES

The exploration and exploitation of petroleum hydro-carbons have been with Nigerians for decades now and their concomitant effects on the oil producing communities have been quite problematic.⁵⁴ Decades of oil exploitation,

exploration, and production activities in the Niger Delta have led to severe environmental degradation that has created complex problems in the region.⁵⁵

In Ogoni, hardly had oil exploitation begun when it became fraught with incidences of oil spillages. Between 1958 and 1970, Ogoni recorded incidences of spills including a devastating one that happened at Ejamaa-Ebubu. Apart from unnoticed oil leaks, Ogoni witnessed about twenty (20) oil spills between 1993 and 2004. Some of these includes: Botem Oil Spill in July, 1993, Korokoro Oil Spill in October, 1993, Zaakpon Oil Spill in May, 1994, Yorla Oil Spill in August, 1994, K-Dere Oil Spill in August, 1994, Korokoro Oil Spill in November, 1995, Ueken, Tai Oil Spill in January, 1996, K-Dere Oil Spill in 1997, Bodo West Oil Spill in December, 1999, K-Dere Oil Spill in September, 2000, Yorla Oil Spill in April 2001, Barayira Oil Spill in August, 2001, Bara-ale Oil Spill in October, 2001, Yorla Oil Spill in March, 2003, Goi Oil Spill in September, 2003, Korokoro Oil Spill in November/December, 2003, Biara Oil Spill in January, 2004 and Oil Spill into Ogoni River System from Mobil Oil Spill at Qua Iboe in 1998.⁵⁶ As a farming community, one of the major casualties of oil spillage is the destruction of farmlands thereby affecting agricultural diversity. These several oil spills spread onto farmlands and water bodies. The toxic crude seeps into the ground and is taken up by the plants roots.⁵⁷ Studies on the effects of oil spillage on soil types have shown that the spills lower soil fertility⁵⁸ and cause poor growth of

⁵² Ibid.

⁵³ Peter C. Nwilo and Olusegun T. Badejo, *Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas*, p. 8 http://www.fig.net/chapters>chapter_8 (Accessed 30 July 2016).

⁵⁴ Leo C. Osuji and Iruka Nwoye, *An Appraisal of the Impact of Petroleum Hydrocarbons on Soil*

Fertility: The Owaza experience, *African Journal of Agricultural Research*, vol. 2 (7), July 2007, p. 318.

⁵⁵ Okhumode H. Yakubu, *Addressing Environmental Health Problems in Ogoniland through Implementation of United Nations Environment Programme Recommendations: Environmental Management Strategies*, *Environments*, 2017, 4, 28; doi: 103390/environments 4020028, Available online at <https://www.mdpi.com/journal/environments>.

⁵⁶ Pyagbara Legborsi Saro, *op. cit.* p. 12.

⁵⁷ Akpotme E. A, etal, *Integrated Grassroot Post-impact Assessment of Acute Damaging effects of Continuous Oil Spill in the Niger Delta, 1998-2000*.

⁵⁸ Ibid.

crops and plants. High mortality of plants such as cassava (*Manihot esculenta*) *Panicum Maximum* and *imperata cylindrica* were observed. Coring of the soil at selected points showed that oil devastated to depths ranging 10-20cm. sampling of the impacted area using live counts of plants species showed that several species most especially herbs died.⁵⁹

Owing to the oil spill, the productivity of plants is affected since the process of photosynthesis is reduced due to light absorbing properties of the soil. Oil on the surface of the leaves absorbs the light, the plants find it difficult to photosynthesize and thus die off. Other microbial organisms such as bacteria responsible for the breaking down process of organic materials area also affected. This has an effect on the food chain.⁶⁰ Oil pollution in many intertidal creeks has left mangroves denuded of leaves and stems, leaving roots coated in a bitumen-like substance sometimes 1 cm or more thick.⁶¹

The UNEP investigation found that the surface water throughout the creeks contains hydrocarbons. Floating layers of oil vary from thick black oil to thin sheens.⁶² The Ogoni community is exposed to petroleum hydrocarbons in outdoor air and drinking water, sometimes at elevated concentrations. They are also exposed through dermal contact from contaminated soil, sediments and surface water.⁶³

The Oil MNCs in the Niger Delta do not deny the fact that their operation result in damage to the environment. What they continue to dispute is the extent of damage to the environment and amount of the damage that are attributable to them.⁶⁴ For example, Shell reports incidence of

Oil Spills every year – 262 in 2002, 221 in 2003, 236 in 2004, 224 in 2005 and 241 in 2006,⁶⁵ even though it continue to attribute more than half to sabotage. According to Shell, of the 241 incidents that occurred in 2006, sabotage accounted for 165 (69 percent), while 50 (20 percent) were controllable incidents (resulting from equipment failure, corrosion or human error).⁶⁶

Debunking the long-standing claim of Shell that sabotage is the single most important cause of oil pollution in the Niger Delta, Terisa E. Turner, a Canadian Professor and UN-based International Working Group expert, in her post-visit interview after the fact finding visit to the Niger Delta Communities in 2001 stated thus: “The claim of sabotage is patently false...There has been almost no arrest for sabotage of petroleum pipelines. Much less prosecution of any accused. The oil companies have been claiming that the oil spills, the pipeline explosions were all caused by sabotage. But there is no evidence so far. These are just lies, distraction, shirking of responsibility on the part of the oil companies and Shell here is the most serious culprit. Shell has not replaced it pipelines, has not carried out proper maintenance. It is well known... that should the pipelines not be replaced within 20 years or even sooner, then inevitably they will leak, they may explode any day... it so happened in the case of Yorla (in Ogoni) that Shell jumped to the false accusation and the cowardly denial of responsibility by citing villagers guilty of sabotage. This false allegation was then proved false by the very contractor- Boots and Coots- that Shell brought in from Texas to install a new x-mass tree which regulates that flow of crude oil in the pipelines.”⁶⁷

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ See UNEP, Environmental Assessment of Ogoniland, 2011, P.11.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Olubusi Friday Oluduro and Olubayo Oluduro, Oil Exploitation and compliance with International Environmental Standards: The case of Double Standard in the Niger Delta of Nigeria, op. cit.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Terisa E. Turner, being her Assessment of the Aftermath of Shell’s Oil Spill Disaster at Ogbudu, Niger Delta: ‘Oil Companies lie, deceive, play ethnic card to divide host communities’ published by National Interest (Lagos), vol. 221, 31 July 2001, pp. 29-30.

This position has also been confirmed by courts in Nigeria. In *Shell v. Isaiah*,⁶⁸ Shell's defence of sabotage in an action for negligently failing to contain the oil spills caused by an old tree which fell on the pipeline causing extensive pollution on the Plaintiff's land failed as the Court of Appeal considered the defence as an afterthought. Similar decision was reached also by the Court of Appeal in *SPDC V. Adamkue*⁶⁹ wherein the court ruled against SPDC for their inability to prove the offence of sabotage alleged by them beyond reasonable doubt.

Tuodolo⁷⁰ notes that between 1995 and 2006, Shell alone recorded 3, 213 Oil Spill incidents (annual average of 300 incidents) resulting in the spillage of over four hundred and fifty thousand barrels of oil (450,000 bbls) on the Niger Delta environment and a daily flaring of huge volumes of gas (about 604 million scf per day). Nigeria has the stigma of being the world's top gas flarer. Despite government regulations and several promises by oil companies to put an end to gas flaring, the practice continues unabated. Angered by the situation, Saro-Wiwa lamented in 1992 that:

As a final remark of their genocidal intent and insensitivity to human suffering, Shell and Chevron refuse to obey a Nigerian law, which requires all oil companies to re-inject gas into the earth rather than flare it. Shell and Chevron think it cheaper to poison the atmosphere and the Ogoni and pay the paltry penalty imposed by the government of Nigeria than re-inject the gas as stipulated by the regulations... Shell has won prizes for environmental protection in Europe where it also prospects for oil. So it

cannot be that it does not know what to do. Now why has it visited the Ogoni people with such horror as I have outlined here. The answer must lie in racism.⁷¹

Oil spills from leaking underground pipelines and storage tanks are a regular occurrence, rendering vast stretch of land and water bodies unproductive in the region.⁷² Pollution from oil exploration and exploitation activities in Ogoni impacts heavily on the health of humans and resources such as agricultural land, fresh water, mangroves etc.

THE NEGLIGENCE OF THE MULTINATIONAL OIL COMPANIES

In cases of oil spills including spills that are attributed to vandalism or sabotage, the company is obliged to contain (limit the spread of), clean-up and remediate (return the area to its prior state) the affected area. Under Nigerian law, the operating oil company is responsible for the clean-up of oil spills, and clean-up is supposed to be both swift and meet good practice standard. According to the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, issued by the Department of Petroleum Resources (DPR), clean-up should commence within hours of the occurrence of the spill. This government guideline also stipulates that for all waters "there shall be no visible sheen after the first 30 days of the occurrence of the spill no matter the extent of the spill."⁷³

⁶⁸ (1997) 6 NWLR (pt. 508) 236.

⁶⁹ (2003) 11 NWLR (Pt. 832) 533

⁷⁰ Felix Tuodolo, Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World, *ACME: An International E-Journal for Critical Geographies* 2009, 8 (3), 530-541 at 537.

⁷¹ Ken Saro-Wiwa, *Genocide in Nigeria: The Ogoni Tragedy*, Saros International, 1992, p. 82.

⁷² Nigeria Vision 2020 Programme, Report of the Vision 2020 National Technical Working Group on Environment and Sustainable Development, July 2009, p. 41. Available online at <http://www.npc.gov.ng/downloads/environments%20&%20%20Sustainable%20NTWG%20Report.pdf>. (Accessed 20 November 2016).

⁷³ Nigeria: Petroleum Pollution and Poverty in the Niger Delta. Amnesty International June 2009 Report, p. 65, www.Grupos.Es.Amnesty.Org>Media Accessed 1 November 2018.

This is not the case in Ogoni and by extension the Niger Delta. When there is oil spill in the Niger Delta, they are left for weeks, months and sometimes years like the present situation in Ogoni. Describing the clean-up purportedly done following the 24 June 2001 explosion of Shell's pipeline in Ogbudu Community in Rivers State, Turner noted that apart from the fact that it took shell days to respond, 'we could not accurately or honestly describe it as a clean-up operation. It was a token initiative. There were very small amount of crude oil on top of the water being removed by a petroleum lorry tanker packed in the water.⁷⁴ This makes a nonsense of Shell's claim of integrity and respect for the people and its commitment to support human rights and to contribute to sustainable development.⁷⁵

The swift and immediate response of BP to the 20 April 2010 explosion of its Deep Water Horizon oil rig that resulted in the death of eleven workers and which caused horrendous ecological disaster around the Gulf of Mexico is a clear departure from the situation in Ogoni and by extension the Niger Delta. The Environmental disaster that occurred in the Gulf of Mexico have been on in Ogoni and the Niger Delta as a whole for decades resulting in deaths, diseases, displacements and destruction of the means of livelihood of the people and their culture; without any apology, regrets, compensation and necessary remedial activities by the multinational oil companies responsible for them. But as soon as the spill occurred in the Gulf of Mexico, BP, Halliburton and Transocean Limited linked to the spills voluntarily took up the remediation and clean-up, offered compensation to individuals and companies as well as offering \$170 Million dollars within one month to the US Gulf Coast States of Alabama, Florida, Louisiana and Mississippi even well before the effects and

consequences of pollution became apparent.⁷⁶ BP voluntarily expended six million dollars per day to clean-up the Gulf of Mexico and even increased the amount later. In June 2010, also BP agreed to place about \$20 billion dollars in an escrow account to pay for damage claims resulting from the Gulf of Mexico Oil Spill.⁷⁷

The response in the Gulf of Mexico case is similar to that of Exxon Corporation when there was an oil spillage in Alaska in 1989. Exxon immediately brought in sixty experts and five plane load of modern equipment to the site to contain the oil spill.⁷⁸ Also, in the 1988 oil spill in Martinez, California, Shell paid nearly \$20 million dollars to the various Governments of the United States for environmental damage, in addition to payment of monthly allowances to those whose businesses were affected by the oil spill during the months until final settlement.⁷⁹

In relation to gas flaring, there are more than 100 gas flare sites in the Niger Delta.⁸⁰ It is sad to note that while 99 percent of associated gas is used or re-injected into the ground in the United States and Western Europe, more than half the associated gas is flared in Nigeria.⁸¹

Clearly, when it has to do with the Niger Delta, multinational oil companies apply different standard and they get away with it, maximally assisted by the Nigerian State. It is sad enough

⁷⁴ Terisa Turner, op. cit. n. 64.

⁷⁵ Christian Aid (2004) Report, Behind the Mask: The Real Face of Corporate Social Responsibility, p. 23. (www.standrews.ac.uk/~csearweb/aptopractice/behind-the-mask.pdf). (Accessed 20 November 2016).

⁷⁶ Paul I. Adujie, American Oil Spills in the Gulf of Mexico: Lessons for Nigerians, Ecuadorians and others, 'New Liberian', www.newliberian.com/p=1228.

⁷⁷ Ibid.

⁷⁸ Class action. org. Environmental Hazards: Lawsuit being filed over Gulf of Mexico Oil Spill, (classification.org/gulf-of-mexico-oil-spill-lawsuits.html). (Accessed 20 November 2016).

⁷⁹ Aghalino S. O. & Eyinla B., Oil Exploitation and Marine Pollution: Evidence from the Niger Delta, Nigeria' J. Hum. Eco. 28 (3); 177-182 at 181 (2009).

⁸⁰ Patrick D. Okonmah, Right to a Clean Environment: The case for the People of oil producing communities in the Niger Delta, 1997, Journal of African Law, 41: 43-67 at 38.

⁸¹ Betty Abah, When Blessing Becomes a Curse in the Niger Delta, Women in Action, No. 2 2009. P. 27. (www.isiswomen.org/index.php?option). Accessed 2 December 2016.

that even after international recognition of the Ogoni situation in 2011 via the UNEP report, no attention has been given in terms of remediating the despoiled land.

HUMAN RIGHTS IMPLICATION OF ENVIRONMENTAL DEGRADATION Ogoni

The activities of these oil MNCs seriously destroy self-sustaining ecosystem and also undermine the people's ability to meet their basic needs, which include food, clothing, shelter, safe drinking water, health and clean environment and above all, the quality of life in which they live. Little or no regard is paid by the oil MNCs to the laws regulating the oil industry in Nigeria and the various international environmental standards.⁸² The Nigerian Government that is supposed to ensure the observance of these laws does not help matters as they continually maintain a lukewarm attitude to the detriment of the local populations.⁸³ Nigerian Government has a duty under international law to protect its citizen's rights against violation by non-state actors (corporation alike) and to ensure that they do not violate the laws of the land that may negatively impact the human rights of the people.⁸⁴ This was confirmed by the African Commission in the case of Social and Economic Rights Action Center and the *Center for Economic and Social Rights v. Nigeria*,⁸⁵ which is the communication filed before the African Commission on Human and Peoples' Rights by the Social and Economic Rights Action Center

(SERAC) in collaboration with the New York based Center for Economic and Social Rights (CESR) against the Federal Military Government. The communication alleges that the Military Government of Nigeria was directly involved in oil production through the State Oil Company, the NNPC, which is the majority shareholder in a consortium with Shell Petroleum Development Company (SPDC).

It further alleged that "the widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals; and the climate of terror that has been visited upon the Ogoni communities" constituted a violation of their rights to health, a healthy environment, housing and food. They also complained that the Government condoned and facilitated violation of international standards by placing the legal and military powers of the State at the disposal of the oil companies; withholding information from the communities about the dangers of oil activities; ignoring the concern of the communities; and responding to non-violent protests of MOSOP "with massive violence and executions of the Ogoni leader".

In October 2001, the Commission found that the Federal Republic of Nigeria violated Articles 2 (non-discriminatory enjoyment of rights), 4 (right to life), 14 (right to property), 16 (right to health), 18 (family right), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples to live in a satisfactory environment).

The African Commission briefly considered the right to a satisfactory environment as a right that requires a Government to: take reasonable measures to prevent pollution and ecological degradation;⁸⁶ promote conservation and ensure ecological sustainable development and the use of natural resources;⁸⁷ permit independent scientific monitoring of threatened environments;⁸⁸ undertake environmental and

⁸² Shell's Big Dirty Secret: Insight into the world's most carbon intensive oil company and the legacy of CEO Jereon Van Derveer' published by Shell Guilty Campaign: Oil Change International, Friends of the Earth (International, Europe, US and the Netherlands) Platform and Greenpeace UK, June 2009, (www.foeeurope.org/vorponues/extraytings/shellbigdirtysecretJuneog.pdf. (Accessed 2 December 2016).

⁸³ Olubisi Friday Oluduro and Olubayo Oluduro, Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria, op. cit. p. 2.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Communication 155/96.

⁸⁷ Para. 52 of the Communication.

⁸⁸ Para. 52 of the Communication.

social impact assessments prior to industrial development;⁸⁹ provide access to information to communities involved;⁹⁰ and grant those affected an opportunity to be heard and participate in the development process.⁹¹

It concluded that Nigerian Government which has a duty to ensure that all human rights in the African Charter are guaranteed did not live up to the expectation. It appealed to the Government to ensure the protection of the environment, health and livelihood of the Ogoni people and the entire Niger Delta, ensure adequate compensation to victims of human rights violations etc.⁹² However, since the communication was made in 2001, Nigerian Government has not taken any step towards implementing the decisions of the Commission. Ogoniland and indeed the entire Niger Delta region remain polluted and human rights abuses continue.

(a) THE RIGHT TO LIFE

The fulfillment of the most fundamental human needs is dependent on many elements of the environment, air to breathe, water to drink, food to eat and shelter for protection and the quality of the environment.⁹³ The duty to protect life rests squarely on the state, and this duty encompasses the obligation to prevent situation that might imperil human life.⁹⁴ It follows therefore, that this right is violated when environmental hazards are created by the activities of the states or entities under its jurisdiction. The state is not only obliged to refrain from taking life intentionally, but also to take adequate steps to safeguard it. One of the rights frequently infringed by incidents of oil pollution is the right to life.⁹⁵ All other rights are meaningless if the right to life is interfered with. This right is recognized by the Universal Declaration of

Human Rights, 1948,⁹⁶ the International Covenant on Civil and Political Rights, 1966,⁹⁷ the African Charter on Human and Peoples' Rights 1981.⁹⁸

The Constitution of the Federal Republic of Nigeria provides for right to life. Section 33 provides as follows:

Every persons has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Human life is sacred and most nations of the world recognize the duty to preserve human life hence its recognition in various Constitutions. Environmental degradation poses great threat to human existence. Pollution of the different levels of environment is the worst life-threatening hazard, as it may have far reaching effects on the lives of the people either directly or indirectly.⁹⁹ This is an actionable head since the constitution provides that no one shall be deprived of life save in execution of the sentence of a court in Nigeria.¹⁰⁰

The Affirmative duty of states to protect the right to life should logically apply to circumstances in which a state's activity poses life threatening environmental risks. Threats to the environment or serious environmental hazards may have far reaching effects on the lives of large groups of people directly or indirectly, and the connection between the right to life and the environment is an obvious one.¹⁰¹

⁸⁹ Para. 53 of the Communication.

⁹⁰ Para. 53 of the Communication.

⁹¹ Para. 53 of the Communication.

⁹² Para. 53 of the Communication.

⁹³ Para. 53 of the Communication.

⁹⁴ Lawrence Atsegbua, Vincent Akpotaire & Folarin Dimowo, *Environmental Law in Nigeria; Theory and Practice*, Ambik Press Benin City, (2nd Edn.) 2010, p. 173.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Article 3.

⁹⁸ Article 6.

⁹⁹ Article 4.

¹⁰⁰ Lawrence Atsegbua, Vincent Akpotaire & Folarin Dimowo, *Environmental Law in Nigeria, Theory and Practice*, op. cit. p. 174.

¹⁰¹ See the case of *Nasiru Bello V. Oyo State Government* (1986) 5 N.W.L.R. (pt. 45) 828.

RIGHT TO HEALTH AND A CLEAN ENVIRONMENT

Section 20 of the 1999 Constitution (as amended) provides as follows:

The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.¹⁰²

Equally, Section 17 (3) (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) states that:

The State shall direct its policy towards ensuring that the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused.¹⁰³

This sections falls within the Chapter II provisions on Fundamental Objectives and Directive Principles of State Policy, which by virtue of Section 6 (6) (c) are not justiciable. However, the right to health provided for by international and regional instruments to which Nigeria is a party, including the African Charter,¹⁰⁴ essentially implies a feasible protection of the citizen from natural hazards and pollution.¹⁰⁵

It is evident that the emission of toxic pollutants into the atmosphere, which endanger life, will necessarily be injurious to health. Therefore, it is immaterial that the Nigerian Constitution does not expressly provide for an enforceable right to health, so long as it provides for the right to life, which will be imperiled if a person's health is put in jeopardy by activities sanctioned by the

state.¹⁰⁶ The World Health Organization in a report released in 1994 stated:

Human health is essential for sustainable development since without health, human beings would not be able to engage in development, combat poverty and care for their environment.¹⁰⁷

The ultimate purpose of protecting the environment is to ensure the health of the people. This was aptly stated in Principle I of Rio Declaration on Environment and Development when it declared that:

Human Beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.¹⁰⁸

In some Jurisdiction across the globe there has been Judicial decisions to the effect that the right to life includes the right to live in a clean environment. In the *Pakistan case of Shela Zia V. Water and Power Development Authority*,¹⁰⁹ a group of citizens sued and obtained a supreme court judgement stating that "The right to life included a right to live in a clean environment". The Supreme Court of the Philippines in the case of *Minors Oposa v Secretary of the Department of Environment and Natural Resources*,¹¹⁰ equally adopted the instrumentality of judicial activism to enforce the right to a balanced and healthful ecology eventhough enshrined under the fundamental objectives and directive principles but not in the bill of rights. The said case of *Minors Oposa* deals with deforestation,

¹⁰² Ksentini, "Human Rights and the Environment" cited in Okonmah, "Right to a Clean Environment". The Case of the People of Oil Producing Communities in the Niger Delta (1997), J. A. L. p. 61.

¹⁰³ Section 20.

¹⁰⁴ Section 17 (3) C.

¹⁰⁵ Article 16.

¹⁰⁶ Lawrence Atsegbua, Vincent Akpotaire & Folarin Dimowo, *Environmental Law in Nigeria, Theory and Practice*, op. cit. p. 175.

¹⁰⁷ Ibid.

¹⁰⁸ Background paper prepared for the Commission on State Sustainable Development, WHO, March 1994.

¹⁰⁹ PLD (1994) SC.A 16.

¹¹⁰ 33 LL. M 173 (1994).

environmental damage and intergenerational equity. In that case, some adults represented some minors and their unborn posterity as plaintiffs urging the court to make an order against the Government to discontinue existing and further timber license agreements alleging that deforestation is causing environmental damage. The Government on its own part argued that the case of plaintiffs was devoid of cause of action and that the issues raised are not Justiciable being political ones and that the existing license cannot be canceled without violating due process of law. Whilst the case was dismissed by the trial court, the Supreme Court reversed the Judgement and held as follows:

While the right to a balanced and healthy ecology is to be found under the declaration of principles and State policies and not under the Bill of Rights. It does not follow that it is less important than any of the civil and political rights enumerated in the later...

In the case of *Peter K. Waweru v. Republic*.¹⁰⁹ The High Court of Kenya, Nairobi further enunciated that the denial of a wholesome environment as a deprivation of life when it stated per Nyamu as follows:

Whereas the literal meaning of life under section 71 means absence of physical elimination, the dictionary covers the activity of living. That activity takes place in some environment and therefore the denial of wholesome environment is a deprivation of life ... In environmental law, life must have this expanded meaning as a matter of necessity”.

Nigeria has ratified the African charter on Human and peoples’ rights and it is now part of our law by virtue of section 12 (1) of the 1999 constitution. Article 24 of the charter provides:

¹⁰⁹ (2008) CHR 187.

“All peoples shall have the right to a general satisfactory environment favourable to their development”

It is crystal clear therefore that the Ogoni people have the right to live in a satisfactory environment favourable to their development. Their activities of these multinational oil companies have completely denied the people the enjoyment of their right to clean environment thereby impacting seriously on their health.

THE RIGHT TO FOOD

In 2015, the 68th UN General Assembly declared 2015 as the international year of the soil. Its theme was “Healthy Soil for a Healthy Life”. Ogoni is a farming and fishing community. One adverse effect of oil spillage in Ogoniland is the destruction of cultivable lands. Many Ogoni women, men and children today are affected by chronic undernourishment aptly referred to by the UN Food and Agriculture Organization as “extreme hunger”. This means that their daily ratio of calories is well below the minimum necessary for survival. People are dying in Ogoniland on daily basis from starvation and malnutrition. The constitution of the Federal Republic of Nigeria guarantees right to life. But what is right to life for a person who has no food to eat? Can such a person rightly say that his country guarantees him right to life? The right to food is a human right. It protects the right of all human beings to live in dignity free from hunger, food insecurity and malnutrition. The right to food is not about charity, but about ensuring that all people have the capacity to feed themselves in dignity.¹¹⁰

The right to food is defined by the Committee on Economic, Social and Cultural Rights in its General Comment 12 of 1999 as follows:

The right to adequate food is realized when every man, woman

¹¹⁰ Jean Ziegler, What is the Right to Food? Available online at <http://www.righttofood/work-of-JeanZiegler-at-the-un/what-is-the-right-to-food>. (Accessed 2 November 2016).

and child, alone and in community with others, has physical and economic access at all times to adequate food or means for its procurement.¹¹¹

Inspired by the above definition, the Special Rapporteur on the Right to food in 2002 defined it as follows:

The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.¹¹⁴

Flowing from these definitions, all human beings have the right to food that is available in sufficient quantity, nutritionally and culturally adequate and physically and economically accessible. The three main elements of the right to food are: availability, adequacy, and accessibility of food.¹¹⁵

In Nigeria, the right to food is recognized in the Constitution under Chapter 2. Section 16(d) provides as follows: “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.”

The provision in effect means that it is non-justiciable and as such cannot be given effect by our courts. But, the right to food is recognized under international law. The right to food is

recognized in the 1948 Universal Declaration of Human Rights (Article 25) as part of the right to an adequate standard of living.

It is also enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights (Article 11). In 2012, the Food Assistance Convention was adopted, making it the first legally binding international treaty on food aid. The African Charter on Human and Peoples Rights and the 1990 African Charter on the Rights and Welfare of the child also provides for the right to food. Nigeria is signatory to most of these international instruments and is bound by their provision.

CONCLUSIONS

This paper has shown the harmful effect of the activities of Multinational Oil Companies on the Ogoni environment. The paper also highlights the fact that the activity of these multinational oil companies violates the Human rights of the Ogoni people in several dimensions.

RECOMMENDATIONS

The wetlands around Ogoni area are highly degraded and facing disintegration. However it is still technically feasible to restore effective ecosystem functioning. It is our suggestion that in bid to restore the degraded ecosystem the following should be done:

A comprehensive remediation of all oil spill sites in Ogoniland by the Federal Government of Nigeria strictly in compliance with the UNEP report 2011.

A declaration making wetlands in Ogoni a Ramsar Site. Nigeria became a contracting party to the Ramsar convention on 2 February 2001. The Ramsar Convention is an intergovernmental treaty that embodies it 160 member countries to maintain the ecological character of their Wetlands of International importance and to plan for the wise and sustainable use of all of the wetlands in their territories.

As regards the right to food, Nigerian legislators need to be active and take a cue from countries like Bolivia, Brazil, Ecuador, Guyana, Haiti,

¹¹¹ Committee on Economic, Social and Cultural Rights 1999, para. 6. (c)

¹¹⁴ Special Rapporteur on the Right to Food 2012 (a).

¹¹⁵ Jean Ziegler, what is the Right to food? Available on line at <http://www.righttofood/work-of-Jeanzeigler-at-the-un/what-is-the-right-to-food>. (Accessed 2 November 2016).

