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HUMAN RIGHTS ABUSE AND VIOLATIONS IN NIGERIA: A CASE STUDY OF THE OIL- PRODUCING COMMUNITIES IN THE NIGER DELTA REGION

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INTRODUCTION

Human rights are “rights which all human beings have by virtue of their humanity, such as the right to life, dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion. They provide a common standard of behavior among the international community.”¹ They are natural, rational, inviolable, and unalterable, the deprivation of which would constitute a grave affront to one’s sense of justice.² Rights, as defined, are generally understood as, “moral-political claims which by contemporary consensus, every human being has or is

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1. Both the UDHR and the U.N. Charter, for instance, “reaffirms faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), pmb. (Dec. 10, 1948). *See also* Muhammadu Haleem, *The Domestic Application of International Human Rights Norms*, in *DEVELOPING HUMAN RIGHTS JURISPRUDENCE: THE DOMESTIC APPLICATION OF INTERNATIONAL HUMAN RIGHTS NORMS* 91, 91-92 (1988); Jacob Abiodun Dada, *Impediments to Human Rights Protection in Nigeria*, 18 ANN. SURV. INT’L & COMP. L. 67, 68 (2012).

2. *See* MAURICE CRANSTON, *WHAT ARE HUMAN RIGHTS?* ch. 1 (Taplinger Pub. Co. 1973); OSITA C. EZE, *HUMAN RIGHTS IN AFRICA: SOME SELECTED PROBLEMS* ch. 1 (Nigerian Inst. of Int’l Aff. & MacMillan Nigeria Pub. Ltd. 1984); *see also* Adetokunbo Borokini, *The Impact of Military Rule on Fundamental Human Rights in Nigeria*, 1 ASS’N RES. LIB. 16 (1998).

deemed to have upon his society or government,” claims which are recognized “as of right” and “not by love or grace or charity.”³ Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, provides for fundamental rights of citizens, including the right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of movement, right to freedom from discrimination, and the right to acquire and own property anywhere in Nigeria. Also, in chapter II, provisions are made for several other rights under the fundamental objectives and directive principles of state policy. Human rights, as noted by an astute author, “are more than a collection of formal norms, they are dynamic political, social, economic, juridical, as well as moral, cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity.”⁴ Dating back to the colonial era, the human rights records of the Nigerian state has been consistently poor and unimpressive. At present, the situation has not significantly improved.

Prior to the discovery of oil in commercial quantities at Oloibiri in 1956,⁵ agriculture was the main stay of the Nigerian economy. The discovery of oil transformed the nation’s economy and has, for the past five decades or more, provided approximately 90% of foreign exchange earnings and 80% of the federal revenue.⁶ As of this date, the nation’s economy depends and runs solely on foreign exchange earnings from the sale of crude oil and natural gas. It is therefore no surprise that the Nigerian economy was thrown into a deep recession by the 2015/2016 slump in the oil prices in the international spot market.

Under the monoculture national economy, the oil rich communities in the Niger Delta region became the hob of the Nigerian economy and this situation has been sustained by the ever-rising demand for oil in the West. In order to ensure steady earnings into the government coffers, the Federal Government of Nigeria provides all the necessary support and security to the oil corporations. The government position has always

3. LORI F. DAMROSCH ET AL., *INTERNATIONAL LAW CASES AND MATERIALS* 956-59 (5th ed. 2007); see also Louis Henkin, *Rights: America and Human Rights*, 79 COLUM. L. REV. 405, 405 (1997); LOUIS HENKIN, *THE RIGHT OF MAN TODAY* 1-3 (Westview Press 1978).

4. MOSES MOSKOWITZ, *INTERNATIONAL CONCERN WITH HUMAN RIGHTS* 3 (Sijthoff 1974).

5. IKE OKONTA & ORONTO DOUGLAS, *WHERE THE VULTURES FEAST: SHELL, HUMAN RIGHTS AND OIL* 6 (Verso 2003).

6. HUMAN RIGHTS WATCH, *THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA’S OIL PRODUCING COMMUNITIES* 6 (1999), <https://www.hrw.org/reports/1999/nigeria/nigeria0199.pdf>.

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been backed by legislation as reflected in the provisions of the laws⁷ and regulations⁸ guiding the nation's oil industry.

The oil corporations are usually put under pressure by the federal government to maximize oil production; therefore, they are left to operate almost unregulated. Consequently, they adopt substandard environmental, health and safety practices in their field operations which cause environmental pollution. Also, negligence, system or equipment failure, and unethical practices result in frequent oil spills, continuous gas-flaring and unprofessional toxic waste disposal. Since the inception of oil exploration in 1958, it is estimated that between nine million and thirteen million barrels of oil have been spilled due to poorly maintained pipelines and drilling equipment,⁹ corrosion of pipelines, and pipeline vandalization. Spills in course of production¹⁰ contaminate surface and ground water and destroy aquatic animals with hydrocarbons and carcinogens, which have grave health implications for humans.¹¹ The cumulative effects of the above listed are massive environmental pollution, destruction and degradation which directly or indirectly infringe on and violate the rights of people living in the impacted areas. Similarly, flaring of gaseous by-products from crude oil exploration cause the emission of poisonous gases like nitrogen dioxide, sulfur dioxide, and other carcinogens with adverse health implications. According to Owugah, "the oil which

7. The Petroleum Act of 1969, Land Use Act of 1978, Minerals Act of 1916 and the 1999 Constitution jointly granted unrestricted access to land by the federal government and the oil corporations for prospecting and exploitation. See also sections 2 and 8 of the Petroleum Production and Distribution (Anti-Sabotage) Act and Special Miscellaneous Offences Act No. 7 of 1975. Section 2 provides for death sentence or 21-year jail term while section 8 ousts the jurisdiction of the courts in matters or issues of human rights violations.

8. Section 8(g) of the National Environmental Standards Regulations Enforcement Agency (Establishment) Act (NESREA) 2007, removed NESREAS' power to conduct public investigations on oil pollution and degradation of natural resources (except) investigation of oil spillage. Section 24 of NESREA barred NESREA from making regulations on effluent limitation on new and existing point source in the oil and gas sector, etc.

9. Jide Ojo, *Despoliation of Nigerian Environment*, PUNCH, Feb. 23, 2010, <http://www.punchng.com/opinion/despoilation-of-nigerian-environment/> (describing how Chevron explosion at Funiwa field affected an estimated 500,000 inhabitants); see also Violet Aigbokhaevbo & Nkoli Aniekwu, *Environmental Abuses in Nigeria: Implications for Reproductive Health* 19 ANN. SURV. INT'L & COMP. L. 233, 236 (2013).

10. Julia Baird, *Oil's Shame in Africa*, NEWSWEEK, July 26, 2010, at 27.

11. Sandra Steingraber, *Testimony before New York State Assembly Standing Committee on Environmental Conservation and Health Impact of Hydraulic Fracturing*, SIERRA CLUB (May 26, 2011), <http://newyork.sierraclub.org/documents/SteingraberAssemblyMay262011.pdf> (stating that some of the chemicals used in hydraulic fracturing are carcinogens, some are neurologically poisonous with suspected links to learning deficits in children, and some are asthma triggers. Radioactive chemicals used in hydraulic fracturing have been known to bioaccumulate in milk while others are reproductive toxicants that can contribute to pregnancy loss.); see also Aigbokhaevbo & Aniekwu, *supra* note 9, at 237.

brought so much wealth to the nation and to those in power, brought disease, death, and loss of livelihood to the people of the oil-bearing areas.”¹²

On the other hand, promises of basic amenities the Nigerian government and the oil corporations made to the oil-producing communities as contained in several memorandum of understanding (MOUs) concluded between the oil corporation/the Nigerian government and the oil-producing areas are never fulfilled, and the communities' complaints and entreaties are always ignored. Protests by the inhabitants of the area against the oil corporations/government for pollution and destruction of their environment are usually crushed with disproportionate force resulting in high fatalities. This creates deep rooted discontent and resentment against the oil corporation and the government thus leading to proliferation of militant groups, youth restiveness, frequent violence, vandalization of oil facilities and installations, kidnapping and hostage taking of oil workers in the Niger Delta. The above situation creates serious disruption of oil exploration and exploitation, with the attendant loss of revenue by the government. In response to the growing violence that has become the order of the day in the region, the federal government has over militarized the oil-producing area to suppress or subdue the people. Consequently, the activities of the security agents cause a steady, and pronounced downwards spiral of the human rights situation in the region. The rights of the inhabitants of the region are regularly abused, infringed upon and violated with impunity by the oil corporations and the state security agents.

Human rights abuses and violations in Nigeria in general and in the oil-producing communities in particular cut across the entire spectrum of rights. The abuses come in different forms and could be direct or indirect. The inhabitants of the Niger Delta region are subjected to regular rights abuses and violations by the state security agents and the oil corporations. The perpetrators of rights violations are hardly or never held accountable or brought to justice due to the myriad of problems besetting the judicial institutions. Besides, there is an apparent lack of trust and confidence in the courts and general apathy towards the judicial processes amongst Nigerians as the civil remedies in law are rarely enforced. Furthermore, the criminal justice system and the judiciary, generally perceived as dysfunctional, are ineffective in bringing security personnel and corporations involved in crimes and violation of rights to

12. Leroy Owugah, *Political Economy of Resistance in the Niger Delta*, in THE EMPEROR HAS NO CLOTHES (Envtl. Right Action/Friends of the Earth 2000); see also Aigbokhaevbo & Aniekwu, *supra* note 9.

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justice due to systemic and institutional corruption, lack of independence of the judiciary, political interference, and so on.

Some of the rights typically violated in the oil-producing communities include the right to life, the right to health, the right to freedom from discrimination, the right to freedom of association and peaceful assembly, the right to equal protection of the law, right to the dignity of human person, right to work, means of livelihood or employment and the right to development.

I. HUMAN RIGHTS VIOLATIONS

A. THE RIGHT TO LIFE

The right to life is a substantive right and is among the most important of all the rights guaranteed and protected by contemporary international law.¹³ It is universal and obligatory; without it, no other right would make sense.¹⁴ Hunter David noted that:

Initially, the right to life was aimed at preventing arbitrary killing by the government. In recent years, the right to life has evolved to extend to address certain environmental harms that directly or indirectly infringe on the right to life. This extension of the ambit of the right to life is as a result of the efforts and works of environmental and human rights advocates.¹⁵

All international and municipal human rights instruments are united in their proclamations of the right to life. Article 3 of the Universal Declaration of Human Rights (UDHR), article 6 of the International Covenant on Civil and Political Rights (ICCPR), and article 4 of the American Convention on Human Rights respectively provide that, “everyone has the right to life, liberty and security of person,”¹⁶ “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life,”¹⁷ and the right to life shall be

13. HUNTER DAVID ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 1365–1406 (3d ed. 2007).

14. *Id.* at 1373.

15. *Id.* at 1374.

16. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 3 (Dec. 10, 1948) [hereinafter UDHR].

17. International Covenant on Civil and Political Rights, art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

protected from conception.¹⁸ States have an obligation to safeguard life.¹⁹ This will, for instance, entail taking appropriate steps to promote security, and to prevent murder and other crimes threatening life.²⁰

In respect of this foundational right, the United Nations Human Rights Committee has observed that:

The expression “inherent right to life” cannot properly be understood in a restrictive manner and the protection of this right requires that measures be taken to reduce infant mortality, to increase life expectancy and to eliminate malnutrition and epidemic. The Committee also considers that the right to life includes a duty to prevent war, acts of genocide and other acts of mass violence causing arbitrary loss of life.²¹

Similarly, the African Charter on Human and Peoples' Rights (ACHPR) in article 4²² and the United Nations Convention on the Rights of the Child (UNCRC) in articles 6(1)²³ and (2)²⁴ affirmatively provide for the right to life. The Nigerian Constitution provides that, “every person 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/she has been found guilty in Nigeria.”²⁵ Pursuant to Section 34

18. American Convention on Human Rights, art. 4, July 18, 1978, 1144 U.N.T.S. 143; *see also* The European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, Nov. 4, 1950, 312 U.N.T.S. 222, 246; African Charter on Human and Peoples' Rights, art. 4, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 [hereinafter ACHPR] (“[E]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”).

19. *See* A.H. ROBERTSON ET AL., HUMAN RIGHTS IN EUROPE: A STUDY OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 25 (Manchester Univ. Press 1993); *see also* OSITA NNAMANI OGBU, HUMAN RIGHTS LAW AND PRACTICE IN NIGERIA: AN INTRODUCTION 84, 86 (Cidjap Press 1st ed. 1999) (discussing that the European Commission on Human Rights has indicated that a similar provision of the European Convention on Human Rights imposes obligations on states to take appropriate steps to safeguard life).

20. *X v. Ireland*, App. No. 6040/73, 44 CD 121 (Eur. Comm'n of H.R.) (1974).

21. *See* U.N. Office of the High Commissioner for Human Rights [OHCHR], Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, HR/P/PT/9/Add.1 (2008), <http://www.ohchr.org/Documents/Publications/training9add1.pdf>; *see also* OGBU, *supra* note 19, at 87.

22. ACHPR, *supra* note 18, art. 4 (“[H]uman beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his right.”).

23. Convention on the Rights of the Child, G.A. Res. 44/25, art. 6(1) (Nov. 20, 1989) (mandating states parties to “recognize that every child has the inherent right to life.”).

24. *Id.* art. 6(2) (“States Parties shall ensure to the maximum extent possible for the survival and development of the child.”).

25. CONSTITUTION OF NIGERIA (1999), § 33(1).

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(1) of the 1999 Nigerian Constitution, the right to life is nevertheless subject to the execution of a death sentence of a court of law in respect of a criminal offence of which one has been found guilty.²⁶ Therefore, this very section clearly authorizes the death penalty.

Crude oil contains several harmful toxins and oil spills of any magnitude constitute a grave threat to human life and existence. For instance, 180 people were reported to have died in one community in the Niger Delta region due to pollution,²⁷ and toxins discharged into the environment after a major Texaco oil spill in 1980. In view of the above, the Federal Government of Nigeria, by permitting or condoning acts or commissions of the multinational companies (MNCs) in the Niger Delta that increase or has the potential of increasing infant mortality or causing malnutrition, gastroenteritis or dysentery epidemic, and reducing life expectancy in the region, has failed in fulfilling one of its primary obligations and responsibility to protect her citizen's right to life. The government through its inaction and complicity encourages, and aid violation of the right to life of the inhabitants of the oil-producing communities.

B. EXTRAJUDICIAL KILLINGS/MURDER

Extrajudicial killing/murder is the act of arbitrarily taking someone's life, denying or violating a person's right to life without recourse to the due process of the law. Generally, in Nigeria today, the sanctity and sacredness of human life have almost lost its real meaning. In the oil-producing communities, several thousands of the inhabitants have been deprived of their fundamental, and inalienable right to life outside the prescription of the supreme law of the land and other applicable international instruments.

In 2009, Amnesty International (AI) published an article entitled, *Killings at Will: Extra-judicial Executions and other Unlawful Killings by the Police in Nigeria*, which documented 39 cases of security force killings and enforced disappearances based on interviews and research conducted between July 2007 and July 2009. According to this report, "the national police conducted hundreds of extrajudicial executions, other unlawful killings and enforced disappearances each year. The police usually claim that the victims were armed robbers killed in an exchange of

26. See *Kalu v. State*, [1998] 13 NWLR (Pt. 509-659) 531 (Nigeria); see also *Okoro v. State*, [1998] 12 SCNJ 84 (Nigeria) (holding that the death penalty is not inconsistent with Section 33(1) of the Constitution).

27. Greenpeace U. K., *Greenpeace Oil Briefing No. 7: Human Health Impacts of Oil*, (Jan. 1993); see also Manby, *supra* note 6, at 67.

gun fire or that the suspects were trying to escape.”²⁸ Hundreds of thousands of people have been extrajudicially murdered in the Niger Delta under similar circumstances by the security agents stationed in the area.

One of such incidents of police extrajudicial murder is the case of Mr. Victor Emmanuel. On October 16, 2011, in Bayelsa State (Niger Delta region), “following his criticism of the police for extorting money from motorists on the road to his church, Mr. Victor Emmanuel was shot dead in the presence of his mother who pleaded for his son’s life to be spared to no avail.”²⁹ After he was killed in cold blood, the police removed the Bible he was holding in his hand and planted a pair of scissors in his hand to incriminate the deceased. The above incident is not an outlier, but a typically recurring event in the Niger Delta communities.

In response to this ugly trend of extrajudicial killing, and the growing concern of the international community, “the UN Special Rapporteur on extrajudicial, summary or arbitrary executions on March 27, 2008 stated at the Human Rights Council that Nigeria must end extrajudicial executions by the police.”³⁰ In its Universal Periodic Review (UPR) reports submitted to the United Nations Human Rights Council in January 2009, the Federal Government of Nigeria acknowledged:

allegations³¹ of extrajudicial killings against members of the Nigerian security agencies, especially the police, but denied that it ‘neither sanctions, nor will it allow extrajudicial killings to be carried out with impunity in Nigeria.’ However, analysts believe that the extrajudicial killings are systematic in the force and would hardly be curbed considering the depth of corruption in the force and the government unwillingness to reform the force.³²

28. Amnesty Int’l, *Killings at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria*, AI Index AFR 44/038/2009 (Dec. 9, 2009), <https://www.amnesty.org/en/documents/AFR44/038/2009/en/>.

29. U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, NIGERIA 2012 HUMAN RIGHTS REPORT, available at <http://www.state.gov/i/drl/hrrpt/humanrightsreport/index.htm#wrapper>; see also Mike Odiegwu, *Ex-Cop Admits Policemen Killed Victor Emmanuel at Bayelsa Checkpoint*, PUNCH, June 13, 2013.

30. Amnesty Int’l, *Amnesty International Report 2008 - Nigeria*, (May 28, 2008), available at <http://www.refworld.org/docid/483e27a54e.html>.

31. Nigeria Police Watch, *Three Nigeria Police Officers on Trial for Murder of Bayelsa’s Victor Emmanuel*, NIGERIA POLICE WATCH (Oct. 28, 2011), <http://www.nigeriapolicewatch.com/2011/10/three-nigeria-police-force-on-trial-for->

32. U.N. Office of the High Commissioner on H.R. [OHCHR], Universal Periodic Review – Nigeria, ¶¶ 73–74 (Jan. 5, 2008), cited in Open Society Institute in Criminal Force, *Torture, Abuse*,

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It is worthy to note that, cases of police and other security agencies' brutality and abuse of powers are rarely investigated and perpetrators are hardly brought to justice. Where investigations occur, they fail to comply with international standards and officers suspected of extrajudicial executions are usually sent out on training or transferred to other states instead of undergoing prosecution.³³ Also, "reports of highly publicized state or federal panels of inquiry investigating suspicious deaths remain unpublished."³⁴ In most cases "charges brought against the perpetrators of human rights abuses and violations filed by private citizens, groups and even the government suffer interminable delays in the court of law and end up being unresolved."³⁵ Generally, "law enforcement agents operate with impunity in the apprehension, detention or even extrajudicial murder of criminal suspects. The authorities generally do not hold police accountable for the use of excessive or deadly force or for the deaths of persons in custody."³⁶

In all the circumstances, the frequent cases of extrajudicial murder of civilians in the Niger Delta and other parts of the country by the law enforcement agents are the most disturbing. Almost every community, village, hamlet, and family in the Niger Delta, in the past five decades have experienced or suffered from unresolved cases of extrajudicial murder of loved ones by the state security agents stationed in the region to secure oil installation and facilities. The climax was the judicial murder of four Ogoni chiefs and the murder of an environmental activist, Ken Saro-Wiwa and his eight compatriots after a kangaroo court trial in 1995, which outraged and caught the attention of the international community as well as led to the temporary expulsion of Nigeria from the Commonwealth. However, many of such or worse incidents like the Ogoniland "wasting operation" in very remote and inaccessible part of the delta area are unreported. Instances of extrajudicial killings committed by state security agents are in abundance in the Niger Delta.

In 1987, at Iko village, policemen were invited by Shell to disperse a local protest against the obnoxious practice of environmental destruction and degradation; they were ferried to the site in three boats belonging to Shell and were reported to have murdered eight people occupying

and *Extrajudicial Killings by the Nigeria Police Force*, OPEN SOC'Y FOUND. (May 19, 2010), <http://www.opensocietyfoundation.org/sites/default/files/criminal-force-20100519.pdf>.

33. *Id.*

34. *Id.*

35. U.S. BUREAU OF DEMOCRACY, *supra* note 29.

36. *Id.*; CONSTITUTION OF NIGERIA (1999), § 33(1).

Utapete flow station, wounded many and raped women on the spot.³⁷ Also, on October 30, 1990, Shell's Divisional Manager (East) specifically requested for the type of mobile police used at Iko to forestall an anticipated violent demonstration at Etche village of Umuechem; sequel to the above request, heavily armed mobile policemen descended on Umuechem and shot at everyone on site. It was reported that:

By mid-afternoon several villagers laid dead or bleeding from bullet wounds. They returned on November 1, and murdered about eighty more civilians some of them in their sleep. Over five hundred houses were set ablaze and for several hours the policemen chased after domestic livestock when there were no other villagers left to kill or molest, killing goats and chicken for the fun of it.³⁸

The judicial commission of inquiry set up by the government to investigate the causes of the Umuechem massacre, "found not a single thread of evidence of violence or threat of violence on the part of the villagers and censured the police for displaying a reckless disregard for lives and property."³⁹ No one was held accountable or prosecuted for the murder of innocent civilians and destruction of property till date.

In 1992, the mobile police called in by Shell were reported to have "cordoned off the Bonny town and shot at everyone on sight, elderly people were wounded while many others were rounded up at the town square, beaten up and subjected to all other forms of indignities."⁴⁰ Also, "[o]ne hundred and thirty two Ogoni men, women and children returning from a trip to the Cameroons in July 1993, were massacred on the Andoni River by uniformed men wielding automatic weapons."⁴¹ One soldier involved in the incident narrated to Human Rights Watch "how they were ordered to attack the Ogoni who were causing all the trouble."⁴² Another soldier who was part of a Nigerian contingent serv-

37. OKONTA & DOUGLAS, *supra* note 5, at 138.

38. *Id.* at 139.

39. *Id.* (citing HON. JUSTICE O. INKO-TARIAH ET AL., COMMISSION OF INQUIRY INTO THE CAUSES AND CIRCUMSTANCES OF THE DISTURBANCE THAT OCCURRED AT UMUECHEM IN THE ETCHE LOCAL GOVERNMENT AREA OF RIVERS STATE IN THE FEDERAL REPUBLIC OF NIGERIA (1990)).

40. Constitutional Rights Project, *Time to Talk*, 3 CONST. RTS. J. (Oct.-Dec. 8, 1993); *see also* OKONTA & DOUGLAS, *supra* note 5, at 139.

41. T. O. Owolabi, *Genocide in Ogoni*, SUNDAY TRIBUNE, Oct. 21, 1996; *see also* K. Saro-Wiwa, Report to Ogoni Leaders Meeting at Bori, Gumberg Library 2 (Oct. 3, 1993) OKONTA & DOUGLAS, *supra* note 5, at 123-24.

42. OKONTA & DOUGLAS, *supra* note 5, at 125 (citing HUMAN RIGHTS WATCH/AFRICA, THE Ogoni CRISIS: A CASE-STUDY OF MILITARY REPRESSION IN SOUTHEASTERN NIGERIA 12 (Human Rights Watch 1995)).

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ing in the Economic Community Cease-Fire Monitoring Group (ECOMOG)⁴³ peacekeeping force in Liberia also narrated “how his unit was ordered to come home ostensibly to repel a Cameroonian attack. He claimed that they were told to shoot on sight only to later realize they were actually shooting at fellow Nigerians- in this case unarmed Ogoni villagers.”⁴⁴

Also, in August 1993, it was reported that:

A troop of men using grenades, mortar shells and automatic weapons attacked the Ogoni village of Kaa, and slaughtered two hundred and forty-seven unarmed civilians. It is instructive that, three weeks prior to this incident all Ogoni policemen serving in the area were reassigned before the death squad descended upon Kaa and other villages.⁴⁵

This was clearly a premeditated murder of defenseless civilians by the state security agents. The federal and state governments feigned ignorance of this modern-day pacification mission by law enforcement officers all in the name of oil, as usual, no one was held accountable for the incident and the case has been swept under the carpet.

Furthermore, the Abacha military junta conducted a scorched-earth military operation in Ogoni following the May 21, 1994 murders of four Ogoni chiefs at Giokoo, an offensive that led to the deaths of over 2,000 Ogonis and destruction of Ogoni villages.⁴⁶ Shell was later revealed to be the sponsor of the Ogoni pacification project – in some cases funding the operations and providing logistics for the invading security forces. In a leaked Government House secret memo, dated May 12, 1994, “the ruling military regime had detailed wasting operations to eliminate vocal Ogoni leaders. The wasting operations were deemed necessary to ensure resumption of oil drilling operations in Ogoni.”⁴⁷ Curiously, on the heels of that secret memo, four Ogoni leaders were murdered at Giokoo on May 21, 1994. “The scars of five years of military occupation of Ogoni thereafter still remain visible till today and the murder of the four chiefs

43. HUMAN RIGHTS WATCH, *WAGING WAR TO KEEP PEACE: THE ECOMOG INTERVENTION AND HUMAN RIGHTS*, 5 (1993), available at <http://www.hrw.org/reports/1993/Liberia>. ECOMOG was established by the Economic Community of West Africa States as a monitoring group of multi-lateral armed forces.

44. OKONTA & DOUGLAS, *supra* note 5.

45. OKONTA & DOUGLAS, *supra* note 5, at 124.

46. Leburah Ganago, *Banish Shell*, NIGERIA WORLD (Jan. 4, 2011), <http://nigeriaworld.com/feature/publication/ganago/010411.html>.

47. *Id.*

at Giokoo on May 21, 1994, was noted to be an alibi to the judicial murder of the Ogoni nine (Ken Saro-Wiwa and his eight compatriots) on November 10, 1995.”⁴⁸

A mere expression of the desires and resolve of the people of Kiama for self-determination spelled doom for many people in the community. The seriousness of the Kiama Declaration document rattled the Federal Government of Nigeria and it “quietly deployed several thousands of soldiers into the Ijo area of Niger Delta in the dead of the night on December 28 and 29 1998.”⁴⁹ Reuters reported that, “two warships and fifteen thousand soldiers were sent to the area.”⁵⁰ Soldiers of the Joint Military Task Force (JTF), led by one Major Oputa opened fire on defenseless villagers, killing six youths.⁵¹ Subsequently, soldiers stormed the Yenagoa General Hospital, dragged out the wounded youths, waiving aside the protests of doctors and nurses and murdered them in cold blood.⁵²

Human Rights Watch estimated that possibly over 200 people were killed in Yenagoa, Kaiama and nearby communities during the military siege in the area.⁵³ Similar massacres were reported in Ogele Community between December 30, 1998 and January 1, 1999. And other incidents occurred in Ilaje Ondo state, Opia and Ikenyan in Delta state respectively,⁵⁴ as well as in Bonny. Opia and Ikenyan communities suffered a gruesome and scary fate. There, a “Chevron helicopter fitted with machine guns flew soldiers to these communities where they fired into several homes from roof top, the next day the soldiers were brought to the community by Chevron boats.”⁵⁵ They shot at everyone on sight including the traditional ruler of Ikenyan. About fifteen people from Opia and forty-seven from Ikenyan were reported missing and believed to have been killed and their bodies thrown into the river.⁵⁶ In a more atrocious siege bordering on genocide, in 1999, security agents massacred over 2,000 people at Odi, and razed the community down.

48. *Id.*

49. OKONTA & DOUGLAS, *supra* note 5, at 146–47.

50. *Id.* at 147.

51. *Id.* at 148 (citing HUMAN RIGHTS WATCH, NIGERIA: CRACKDOWN IN THE NIGER DELTA 7 (1999), available at <https://www.hrw.org/sites/default/files/reports/Nigeria0599.pdf>.)

52. *Id.* at 149.

53. *Id.* at 152.

54. OKONTA & DOUGLAS, *supra* note 5, at 138, 128–41.

55. Interview by Patterson Ogon, Ijaw Council for Human Rights, with Ike Okonta (June 6, 1999), at 153.

56. OKONTA & DOUGLAS, *supra* note 5, at 153.

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On October 14, 2000, “[n]ine out of a group of fifty-one unarmed youths in three speed boats who approached the Tebidaba flow station operated by Nigerian Agip Oil Company Ltd. (NACOC) near Olugbogiri, Bayelsa State with the intent to protest the failure of NACOC to complete certain agreed project to the satisfaction of the community,”⁵⁷ were killed without warning. No one was reported to have been arrested, tried or prosecuted for the incident. Similarly, at Odiana, “seventeen people were reported killed and two women were allegedly raped on February 19, 2005 when the Joint Military Task Force (JTF) soldiers raided the Ijaw community in an attempt to arrest members of an armed vigilante group.”⁵⁸ After they failed to capture the suspects, they destroyed 80% of the homes in the community.

C. ODI MASSACRE

Violation of the right to life by military and the police officers is a continuous event in the Niger Delta region in more reprehensible forms. In November 1999, during President Obasanjo’s regime, “soldiers and mobile policemen invaded Odi community, killed as many as 2000 innocent civilians and razed the community to the ground in retaliation for the death of twelve policemen deployed to protect oil facilities.”⁵⁹ The Odi invasion, according to credible investigation reports, “was premeditated and carefully planned to annihilate the people in order to make things smooth and easy for the oil companies.”⁶⁰ The invasion was code-named “Operation Hakuri II.” The then Minister of Defense, General T. Y. Danjuma explained that Operation Hakuri II on Odi and other communities of the Niger Delta “was initiated with the mandate of protecting lives and property—particularly oil platforms, flow stations, operating rig terminals and pipelines, refineries and power stations in the Niger Delta.”⁶¹ The presidential spokesman cynically described the Odi massacre as “a carefully planned and cautiously executed exercise to rid the society of these criminals.”⁶² Up till date, no one among the security forces that carried out the massacre at Odi has been prosecuted in connection with these atrocities committed largely against unarmed civilians.⁶³ Instead, military officers who carried out such massacres are promoted quite eas-

57. *Update on Human Rights Violations in the Niger Delta*, HUMAN RTS. WATCH (Dec. 14, 2000), <https://www.hrw.org/legacy/background/africa/nigeria/kg1214.htm>.

58. Amnesty Int’l, *Amnesty International Report 2008 - Nigeria*, *supra* note 30.

59. *Nigeria: Genocide in Odi*, AFR. FOCUS BULLETIN (Dec. 8, 1999), <http://africafocus.org>.

60. *Id.*

61. *Id.*

62. *Update on Human Rights Violations in the Niger Delta*, *supra* note 57.

63. *Nigeria: No Human Rights Progress in Niger Delta*, HUMAN RTS. WATCH (Dec. 14, 2000), <https://www.hrw.org/news/2000/12/14/nigeria-no-human-rights-progress-niger-delta>.

ily by the armed forces establishment. According to the reports filed by Torulagha:

Major Paul Okuntimoh was promoted after destroying and killing Ogoni people. Colonel Akabiagba was promoted to the rank of Brigadier General after burning down Odi and the officers who carried out the Odiama operations were not court martialed even though the military establishment acknowledged that the Odiama operation was not approved by the federal authorities.⁶⁴

The Federal High Court at Port Harcourt awarded the Odi community in their case against the Federal Government of Nigeria ₦37.6 billion Naira as exemplary damages⁶⁵ despite the spirited denials of the self-evident by the government counsel. On October 22, 2013, “the court upheld its earlier decision ordering the Federal Government to pay as general damages over its invasion of Odi during Obasanjo administration.”⁶⁶ So far, the Federal Government of Nigeria has failed to comply with the court order.

The military action in Odi not only violated sections of the 1999 Constitution, it is inconsistent with the UDHR. The actions of the soldiers amounted to genocide and were clearly inconsistent with article 5 of the United Nations Code of Conduct for Law Enforcement Officers.⁶⁷ The habitual failure of the state to bring the perpetrators of Odi massacre and the likes to justice has encouraged the recurrence of such incidents across the country. For example, “[r]eminiscent of the Odi massacre, on October 12, 2001, soldiers seeking to avenge the killing of 19 of their peacekeeping colleagues by a local armed group invaded Zaki-Biam in Benue State (middle belt) in a similar manner resulting in the death of over 100 unarmed civilians and razed the entire town.”⁶⁸

64. Priye S. Torulagha, *Is Military Option Viable in the Niger Delta?*, NIGERIA WORLD (July 20, 2009), <http://nigeriaworld.com/articles/2009/jul/204.html>.

65. Nicholas Ibekwe, *Odi Massacre: Court Orders Nigerian Government to Pay N37.6 Billion to Residents*, Premium Times Nigeria, Feb. 20, 2013, <http://premiumtimesng.com/news/121196-odimassacre-court-order-nigerian-gov>; *Odi Invasion: Court Orders to Pay N37.6 Billion Compensation*, VANGUARD, Feb. 19, 2013, <http://www.vanguardngr.com>; Chukwudi Akasike, *Federal Government to Pay N37 Billion Compensation for Odi Invasion*, PUNCH, Feb. 20, 2013.

66. Tony John, *Odi Massacre: Court Upheld Decision on N37.6 Billion Compensation*, THE SUN, Oct. 23, 2013, available at <http://odili.net/news/source/2013/oct/23/524.html>.

67. Press Conference, Leaders of Human Rights and Civil Society Groups Who Visited Odi Bayelsa State, Nigeria: Genocide in Odi (Dec. 8, 1999), available at https://www.africa.upenn.edu/Urgent_Action/apic_122399.html.

68. *Nigeria: Soldiers Massacre Civilians in Revenge Attack in Benue State*, HUMAN RTS. WATCH (Oct. 25, 2001), <http://www.hrw.org/news/2001/10/25/nigeria-soldiers-masacre-civilians-revenge-attack>.

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The rampage of the joint military task force (JTF) in the region intensified with the use of lethal weapons of war and excessive force during invasion and razing of more communities which resulted in the deaths and injury of countless unarmed civilians. This led to the escalation of violence in the region.⁶⁹ In May 2007, Legal Defense and Assistance Project (LEPAD), a non-governmental organization (NGO) estimated that in 2007 at least 241 people were extrajudicially executed by the state security agents in Nigeria.⁷⁰ Amnesty International also claimed that, “the security forces, including the military, have continued to commit human rights violations in the Niger Delta region and other parts of the country including extrajudicial execution, torture, and other ill-treatment and destruction of homes.”⁷¹ The list of extrajudicial killings in Nigeria and particularly in the oil-producing communities is almost endless as it is a recurring event. It is a well-established fact that the spate of extrajudicial murder is quite high in Nigeria. A former Minister of Justice and Attorney General of the Federation, Mohammed Adoke, highlighted the scale of extrajudicial murder in the nation when in mid-December 2012; he disclosed that, “seven thousand, one hundred and ninety-eight extrajudicial killings occurred in the past four years which translates to five persons being killed daily by policemen across Nigeria.”⁷² The above may be a conservative official figure as many incidents of extrajudicial murder in remote villages are not reported.

II. RIGHT TO THE DIGNITY AND WORTH OF THE HUMAN PERSON

In Nigeria, torture is not criminalized; Section 34(1) of the 1999 Constitution prohibits practices such as torture, inhumane and degrading punishments.⁷³ Also, constitutional provisions for social objectives provides that, “the State social order is founded on ideals of Freedom, Equality and Justice”;⁷⁴ in furtherance of the social order – “the sanctity of the

69. Amnesty Int’l, *Ten Years On: Injustice and Violence Haunt the Oil Delta*, AI Index AFR 44/022/2005 (Nov. 5, 2005), <http://web.amnesty.org/library/index/engaf440222005>; see also AFRICA FOCUS BULLETIN (Nov. 13, 2005), <http://www.africafocus.org>.

70. Amnesty Int’l, *Amnesty International Report 2009 - Nigeria*, (2009), <http://www.amnesty.org/en/region/nigeria/report-2009>.

71. Amnesty Int’l, *Amnesty International Report 2011 - Nigeria*, (2011), <http://www.amnesty.org/en/region/nigeria/report-2011>.

72. *Id.*

73. CONSTITUTION OF NIGERIA (1999), § 34(1)(a) (“[E]very individual is entitled to respect for the dignity of his person and accordingly – (a) no person shall be subjected to torture or inhuman or degrading treatment.”).

74. *Id.* § 17(1). See chapter II, under the Fundamental Objectives and Directive Principles of State Policies.

human person shall be recognized and human dignity shall be maintained and enhanced”⁷⁵ Security service personnel in the country brutalize people at will, mistreat civilians to extort money, and regularly beat, abuse, and torture demonstrators, criminal suspects, detainees and convicted prisoners. The military, police, and joint task forces have unleashed terror and mayhem in the oil-producing communities. They turned the region into a theatre of the absurd and a killing field in the nation. Unlawful and arbitrary arrests, detention, false imprisonment, harassment and torture of the inhabitants and their leaders for campaigning against environmental pollution, or for demanding compensation for damaged property are very common in the area.

The United Nations General Assembly noted that, “torture constitutes an aggravated and deliberate form of cruel, inhuman and degrading treatment or punishment.”⁷⁶ According to Niki Tobi (JCA as he then was):

The word ‘torture’ originally means to put a person to some form of anguish or excessive pain It conveys the same meaning as in section 34 (1)(a). The torture under the subsection could be a physical brutalization of the human person. It could also be a mental worry. It covers a situation where the person’s mental orientation is very much disturbed that he cannot think and do things rationally, as the rational human being he is. An inhuman treatment is a barbarous, uncouth and cruel treatment; a treatment which has no human feeling on the part of the person inflicting the barbarity or cruelty.⁷⁷

Article 5 of the ACHPR provides for the “right to the dignity of human person.”⁷⁸ It has been argued by one writer that, “the provisions of ACHPR did not restrict the right to the dignity of the human person to the specifically mentioned instances thereby allowing greater latitude to

75. *Id.* § 17(2).

76. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G. A. Res. 3452 (XXX), 30 U.N. GAOR Supp. No. 34, U.N. Doc. A/1034, art. 1 (Dec. 9, 1975), *quoted in* A.H. ROBERTSON ET AL., HUMAN RIGHTS IN EUROPE: A STUDY OF THE CONVENTION ON HUMAN RIGHTS 36 (R. Macdonald et al. eds., 4th ed. 1993); *see also* OGBU, *supra* note 19, at 92.

77. *Uzoukwu v. Ezeonu II*, [1991] 6 NWLR (Pt. 200) para. 33 (Niki Tobi, JCA) (Nigeria). It is curious that in this case the Court of Appeal held that to call a person a slave is not a violation of the right to the dignity of the human person. *See* OGBU, *supra* note 19, at 93.

78. ACHPR, *supra* note 18, art. 5 (“[E]very individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel and inhuman or degrading punishment and treatment shall be prohibited.”).

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the courts in the interpretation of what violates the right to human dignity.”⁷⁹

Women and girls are known to have been subjected to degrading punishment, torture and their right to the dignity of the human person violated. Usually, they are the prime target of abuse by members of the security agencies who use the force of arms to intimidate, defile, and rape many of them. A Greek case broadly defined degrading treatment as “a treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience.”⁸⁰ The indiscriminate raping of women and young girls and even the underaged is used to intimidate, dehumanize or humiliate the communities or ethnic groups that have mounted resistance against the government and the oil corporations. At Odiana, Etche, Ilaje, Yenagoa, Kaima and other communities., women and young underaged girls were reported to have been gang raped by security personnel. Also, cases of mass rape of women and young girls at Choba community against members of the police and military task force were reported. However, the public relations offices of the police and military have publicly denied the allegations. Similar allegations were made “by a group of Ogoni women and rape victims from the Niger Delta region who testified against the military and police were made against the security agents before the Oputa Commission on Human Rights Violations by the Nigerian military during the 1990s in Nigeria, known as the “Oputa Panel.”⁸¹ Despite the clear provisions of both municipal and international laws against torture, inhumane and degrading punishment, suspected militants, detainees, environmental activists, community leaders in the region are frequently tortured and or subjected to degrading punishment.

III. VIOLATION OF RIGHTS BY OIL CORPORATIONS

In the words of Williams and Conley, “we expect companies to create wealth while respecting the environment and exercising responsibility towards the society and the local communities in which they operate”⁸² On the contrary, the oil corporations in the Niger Delta do the reverse of this positive expectation of companies as responsible members

79. OGBU, *supra* note 19, at 92.

80. The Greek Case, App. No. 3321/67, 1969 Y.B. Eur. Conv. on H.R. 186 (Eur. Comm’n of H.R.).

81. ED KASHI, *CURSE OF THE BLACK GOLD: 50 YEARS OF OIL IN THE NIGER DELTA* (1st ed. 2006); *see also* Human Rights Violations Investigations Comm’n, *The Oputa Panel*, (Nigeria), in *ENCYCLOPEDIA OF TRANSITIONAL JUSTICE* 160–65 (Cambridge Univ. Press 2013).

82. C.A. Williams & J.M. Conley, *An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct*, 38 *CORNELL INT’L L. J.* 439 (2005); *see also* Olufemi O Amao,

of their host communities by creating mass poverty, hardship, misery, unemployment, underdevelopment and violation of rights. All the oil corporations operating in the Niger Delta oil-producing communities for over five decades have directly and indirectly violated the rights of the inhabitants of the region with impunity.

Oil spill/environmental pollution is a frequent occurrence and gas flaring is continuous. According to Okorodudu-Fubara, "energy production processes in the energy industries like petroleum, coal, gas, electricity etc., generate diverse sorts of land, air and water pollution as well as hazardous waste disposal problems which degrade the quality of the environment resulting in adverse health implications for man and threatens the immediate and future potential of the ecosystem."⁸³ Oil and toxic effluent water is freely discharged into the environment in the region.

Oil spills of any magnitude pollute the environment upon which human existence and survival is dependent on and is equally harmful to human health. It has been reported that:

Scientific findings have linked pollutants from the energy industries to several diseases such as chronic respiratory diseases, nervous alimentary and urological disorders; heart disease; infant deformity; cancer and permanent genetic impairment. Moreover, gaseous emissions have been associated with the global problems of acid rain, climate change, trans-boundary pollution, soil, and water contamination.⁸⁴

Similarly, gas-flaring creates health problems that have led to the death of many people in the oil-producing communities. It has been associated with reduced crop yields and plant growth as well as the disruption of wild life in the immediate vicinity.⁸⁵ Also, it pollutes the air, injects particulates and other substances that are known to cause cancer and other terminal diseases into the air and has been affirmed by judicial pronouncements to violate peoples' right to life as illustrated in the following case.

Reconstructing the Role of the Corporation: Multinational Corporations as Public Actors in Nigeria, 29 DUBLIN UNIV. L. J. 335 (2007).

83. Okorodudu-Fubara, *Statutory Scheme for Environmental Protection in the Nigerian Context: Reflections of Legal Significance for Energy Sector*, NIGERIAN CURRENT L. REV. 1-39 (1996).

84. *Id.*

85. *The Scramble for Africa: Gas Flaring and Oil Conflict in Nigeria*, FRIENDS OF THE EARTH INTERNATIONAL (2007); Ellen Cantarow, *Big Oil Makes War on the Earth*, MOTHER JONES (July 19, 2010), <http://www.motherjones.com/environment/2010/07/big-oil-makes-war-earth/>.

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In *Gbemre v. Shell Petroleum Development Corp. of Nigeria Ltd*⁸⁶ – a suit brought by Jonah Gbemre on behalf of himself and the Iwhereken Community in Delta State, in the Niger Delta region against Shell Petroleum Development Company Nigeria Ltd., the Nigerian National Petroleum Corporation (NNPC) and the Attorney General of the Federation under the Fundamental Rights Enforcement Rules in the 1999 Nigerian Constitution alleging violations of the provisions of both the Constitution and the African Charter that has been domesticated as part of the nation’s municipal law – the plaintiffs claimed that:

1. Oil exploration and production activities of Shell which led to incessant flaring of gas had violated their rights to life and dignity of the human person under Sections 33(1) and 34(1) of the Constitution and articles 4, 16 and 24 of the African Charter.
2. The continuous gas-flaring by the company had led to poisoning and pollution of the environment which had exposed the community to the risk of premature deaths, respiratory illnesses, asthma and cancer. The pollution had affected their crop production thereby adversely affecting food security and further claimed that many of the natives had died and many more were suffering from various illnesses. The community was therefore left in a state of gross under-development.
3. Further the plaintiffs’ counsel had argued that the provisions of the Associated Gas Re-Injection Act (Continued Flaring of Gas Regulations 1984 and the Associated Gas Re-Injection (Amendment) Decree no 7 of 1985 which allow the continuation of gas flaring are inconsistent with the right to life (which includes the right to a healthy environment) guaranteed under the Constitution.⁸⁷

The defendants opposed the case on several grounds, including that those articles of the ACHPR do not create enforceable rights under the Nigerian Fundamental Rights Enforcement Procedure. However, they failed to follow up their arguments during the proceedings due to procedural is-

86. *Gbemre v. Shell Petroleum Dev. Corp. of Nigeria Ltd & Ors*, Suit No. FHC/B/CS/53/05 (Fed. High Ct. Nigeria, Benin Jud. Div. Nov. 14, 2005) (Nigeria); *see also* Olufemi O. Amao, *Corporate Social Responsibility, Multinational Corporation and the Law in Nigeria: Controlling Multinationals in Host States*, 52 J. AFR. L. 89–113 (2008).

87. *Gbemre*, Suit No. FHC/B/CS/53/05.

sues.⁸⁸ The judge, therefore, proceeded to judgment bereft of any in-depth legal analysis.

The court agreed with the plaintiff's counsel's argument on continuation of gas flaring and held as follows:

1. That the legislation permitting flaring of gas in Nigeria, with or without permission is inconsistent with the Nigerian Constitution and therefore unconstitutional. Therefore, the court directed the Attorney General of the Federation and Minister for Justice to take steps to amend relevant legislation governing gas flaring to bring them in line with the provision of the fundamental human rights under the Constitution.

2. That the constitutionally protected rights include rights to a clean, poison-free, pollution-free environment and that the actions of Shell in continuing to flare gas in the course of its oil exploration and production activities in the plaintiffs' community violated their right to life and/or the dignity of the human person under the Nigerian Constitution and the African Charter. Even though there is no apparent justifiable right to a 'clean, poison-free, pollution-free and healthy environment' under the Nigerian Constitution, the court relied on a cumulative use of constitutional provisions with the provisions of the African Charter (especially article 24) to recognize and apply a fundamental right to a "clean, poison-free, pollution-free and healthy environment."⁸⁹

The significance of this decision is that fundamental rights protection is held as an objective which other regulations must meet to be valid under the law. This clearly invalidates the discretion given by extant legislation to the government to permit gas flaring as it deems fit. The court consequently restrained Shell from further gas flaring in the plaintiffs' community. Regrettably, since after the ruling in *Gbemre*, Shell and other multinational oil corporations have contemptuously continued to flare gas indiscriminately in the Niger Delta. However, *Gbemre* introduced a significant shift in the control of multinational oil corporations under Nigerian law as human rights provisions were relied on for the first time.

88. Several times during the proceeding, counsel for Shell and the NNPC unsuccessfully sought to delay the action following which the court was constrained to foreclose further defense.

89. G. Fortman, *Adventurous Judgments: A Comparative Exploration into Human Rights as a Moral-Political Force in Judicial Law Development*, 2 *UTRECHT L. REV.* (2006).

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It is also significant to note that the provisions employed were not only constitutional provisions, but also provisions of the African Charter, which is wider. Unlike the procedural limitations that have for example attended to tort based claims,⁹⁰ the human rights approach enabled the court to grant an injunction to protect the rights considered to be fundamental and which should not be ignored on the balance of convenience test as in the case of injunction under tort law. The speedy conclusion of this case in less than a year demonstrated that cases brought using fundamental rights enforcement procedure rules are faster.⁹¹ Furthermore, the decision also explicitly recognized the duty of non-state actors, i.e. corporations *vis-à-vis* human rights which signals the possibility of the horizontal application of human rights provisions to corporations in Nigeria.

IV. THE RIGHT TO HEALTH

Our lives and survival are rooted in, and dependent on the environment. In the oil-producing communities, toxic waste, water and effluents from the storage facilities of the oil corporations and oil wells are frequently discharged into the environment leading to contamination of farmlands, rivers, creeks and fish ponds in the delta area. Frequent oil spills also pollute even the underground water table whereas continuous open-air flaring of gas discharges toxic particulates and soot into the atmosphere some of which eventually come down as acid rain to contaminate the sources of water supply. Like every other Niger Delta inhabitant, “[h]uman beings by their very nature are highly susceptible and the health of many has been tragically affected by hydrocarbon pollution, for instance, every Ogoni person is a potential cancer patient.”⁹²

The Constitution of the Federal Republic of Nigeria, 1999 (Revised) provides in Chapter II, under the Fundamental Objectives and Directive Principles of State Policy, for health and well-being also that in furtherance of the social order, “the sanctity of human person shall be recognized and human dignity shall be maintained and enhanced”;⁹³ therefore, exploitation of human or natural resources in any form whatsoever for

90. See J.G. Frynas, *Legal Change in Africa: Evidence from Oil-Related Litigation in Nigeria*, 43/2 J. AFR. L. 121–50 (1993) (discussing some of these limitations); see also Amao, *supra* note 86, at 110.

91. J.G. Frynas, *Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners*, 10 SOC. LEGAL STUD. 397, 410 (2001); see also Amao, *supra* note 86, at 110.

92. Emeka Anuforo, *Ogoni Leaders Meet with Jonathan, Seek Action on UNEP Report*, GUARDIAN NIGERIA, Sept. 4, 2012, available at <http://odili.net/news/source/2012/sep/4/22.html>; see also Chukwudi Akasike, *Movement for the Survival of Ogoni People (MOSOP) Accuses Federal Government of Genocide*, PUNCH, Nov. 11, 2013.

93. CONSTITUTION OF NIGERIA (1979), Ch. II, § 17(2)(b).

reasons, other than good of the community, shall be prevented.⁹⁴ The social objective provides that, “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.”⁹⁵ Although these rights under Chapter II⁹⁶ of the Constitution are deemed not justiciable, their violation directly or indirectly leads to the violation of the guaranteed substantive and procedural rights enumerated in Chapter IV of the same Constitution. Nevertheless, in view of the state’s complicit roles in the massive environmental pollution, the provisions of Section 20 of the Constitution are merely decorative, hardly implemented, and therefore, grossly ineffective.

The inhabitants of these oil-producing communities suffer from diseases like leukemia, cancer, chronic bronchitis and cardiovascular diseases which have resulted in their deaths. The pervasive water-related diseases (malaria, dysentery, tuberculosis, typhoid, and cholera) in the oil-producing communities are linked to environmental pollution/degradation caused by the activities of the oil companies. In 2011, the Council of Ogoni Traditional Rulers lamented the apparent neglect of the federal government and disclosed that, “thousands of children in the community are found to be suffering from cancer and other deadly diseases from exposure to contaminated air, water and food from oil spill and gas flaring in the area.”⁹⁷

According to a Vanguard news report, medical experts have claimed that, “hydrocarbon pollution can cause body mutations, deformities, cancer and fetal mutations. In particular, because of the high levels of exposure to benzene, the Ogoni people for instance, are at the risk of hematological problems, which can affect the tissue responsible for producing blood cells.”⁹⁸ Some other problems in the report include excessive bleeding, immune system deficiencies and aplastic anemia while two new studies published in February 2014 have shown that, “products of petroleum/oil spills, polycyclic aromatic hydrocarbon, or PAHs- a class of compound prevalent in crude oil- can disrupt cardiac function by blocking ion channels in the heart muscle cells; and how changes in the environmental

94. *Id.* § 17(2)(c).

95. *Id.* § 20.

96. *Id.* Ch. IV, §§ 33–46.

97. Oscarline Onwuemenyi, *Oil Spill: Cancer Is Ravaging Our Land*, VANGUARD, Sept. 5, 2011, <https://www.vanguardngr.com/2011/09/oil-spill-%E2%80%98cancer-is-ravaging-our-land%E2%80%99/>.

98. *Ogoni on the Brink of Extinction*, VANGUARD, Sept. 5, 2011, <https://www.vanguardngr.com/2011/09/ogoni-on-the-brink-of-extinction/>.

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temperature and dew point can cause a rise in stroke hospitalization and death rates.”⁹⁹

Further, the medical experts noted that:

Benzene is also linked with an increased risk of many types of leukemia (blood cancer). Larger doses of this chemical can result in vomiting, dizziness and convulsion and ultimately lead to death. Dermal exposure to this chemical can result in reddening and blistering of skin, and exposure to vapor and liquid form can cause irritation to the eyes, skin, and results in respiratory problems.¹⁰⁰

Besides, they observed that, “females that are exposed to benzene can suffer a decrease in the size of their ovaries, and menstrual problems.”¹⁰¹ Some studies – although not yet conclusive – have suggested that the high level of exposure to the chemical could also affect fertility in women.¹⁰² Also, life expectancy in the Niger Delta rural communities, half of which have no access to clean water, has been reported to have fallen to a little more than 40 over the past two generations.¹⁰³

The right to health encompasses the right to a healthy and pollution free-environment, adequate food/nutrition, shelter, clothing and adequate standard of living. It is guaranteed by municipal laws and many international instruments. However, in Nigeria, the right to health is under the Fundamental Objectives and Directive Principles of State Policy as a non-justiciable right. Article 25 of the UDHR¹⁰⁴ and articles 11¹⁰⁵ and 12

99. *Id.*; see also *Nigerians Living in Oil Areas More Prone to Stroke, Others*, GUARDIAN NIGERIA, Feb. 24, 2014, available at <http://odili.net/news/source/2014/feb/24/12.html>.

100. *Id.*

101. *Id.*

102. *Id.*

103. Paul Ohia, *UN to Exonerate Shell from Pollution in Niger Delta*, THISDAY (Aug. 23, 2010), available at <http://odili.net/news/source/2010/aug/23/253.html>.

104. UDHR, *supra* note 16, art. 25(2) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control; Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”).

105. International Covenant on Economic, Social and Cultural Rights, art. 11(2), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (“The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international operation based on consent; The States Parties to the present

of the International Covenant on Economic Social and Cultural Rights (ICESCR) provides for health. Also, the ACHPR provides for the right to health,¹⁰⁶ and mandates the States Parties to protect the health of their citizens,¹⁰⁷ as well as provide an environment conducive for their development.¹⁰⁸ The Constitution of the World Health Organization (WHO) equally provides for health¹⁰⁹ and other rights that relate to conditions necessary for health. Such conditions range from ensuring availability of health services, healthy and safe working conditions, adequate housing and nutritious food. Similarly, the UN Committee on Economic, Social and Cultural Rights, which monitors compliance with the ICESCR, adopted a General Comment on the Right to Health in 2000.¹¹⁰

According to the General Comment, the right to health also has a “core content” referring to the minimum essential level of the right, this include essential primary health care, “minimum essential and nutritious food; sanitation; safe and portable water and essential drugs form part of the core content.”¹¹¹

The inhabitants of the Niger Delta region lack access to clean portable drinking water. It has been asserted that less than 22% of rural Nigeria has access to safe water and most of the communities in the oil-producing area are in this category.¹¹² By extension, lack of access to safe and portable drinking water impacts the health of the people adversely.

Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs which are needed . . .”).

106. ACHPR, *supra* note 18, art. 16(1) (“[E]very individual shall have the right to enjoy the best attainable state of physical and mental health.”)

107. *Id.*, art. 16(2) (“States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”).

108. *Id.*, art. 24 (“[A]ll peoples shall have the right to a generally satisfactory environment favorable to their development.”).

109. World Health Organization [WHO], *The Right to Health*, Fact Sheet No. 323, (Aug. 2007), <http://www.who.int/mediacentre/factsheets/fs323/en/> (“[T]he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without the distinction of race, religion, political belief, economic or social condition.”).

110. The World Health Organization set out that the right to health extends to timely and appropriate health care and the underlying determinants of health, such as access to safe and portable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions and access to health-related education and information, including sexual and reproductive health. WHO, *supra* note 109.

111. *Id.*

112. A. O. O. Ekpu, *Environmental Impact of Oil on Water: A Comparative Overview of Law and Policy in the United States and Nigeria*, 24 DENVER J. INT'L L. & POL'Y 62 (1995); see also Alfred Okukpon, *Criminal Liability for Oil Pollution Damage in Nigeria*, 58 UNIV. BENIN L. J. (1996/99).

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Also, speaking on the health of the communities as a result of polluted water, Ekpu noted that:

The intake by human beings of some of these contaminants poses grave health hazards, since they have been proven to be toxic . . . Refinery effluents . . . cause metabolic malfunction in humans. Many of the chemicals derived from crude oil, like benzene, toluene, butylene and others are proven carcinogenic, mutagenic and tetra genic . . . The high incidence of respiratory disorders, cancer, and asthma and birth deformity in most of the oil-producing communities has been attributed to oil pollution.¹¹³

In the celebrated decision of the African Commission on Human and Peoples' Rights in *Social and Economic Rights Action Centre (SERAC) v. Nigeria*,¹¹⁴ the Nigerian Government was indicted for its complicity as well as implicated the oil corporations and state security forces in the violation of the rights of Ogoni people.¹¹⁵ The Commission's verdict in *SERAC v. Nigeria*¹¹⁶ shows that the judiciary in some instances stand firm and uphold justice against the oil MNCs for gross human rights violations. The communication was taken against the Nigerian government and stated that the government of Nigeria was involved in oil production through NNPC and alleged that:

1. The operations of SPDC caused environmental degradation and despoliation of their land with serious health problems resulting from contamination of (water, soil and air) the environment and living environment of the Ogoni people (para 1-9).
2. The oil consortium exploited oil reserves with no regard for the health or the environment of the local communities, disposing toxic wastes into the environment and local water-ways in

113. Okukpon, *supra* note 112; *see also* A. O. O. Ekpu, *supra* note 112.

114. Soc. & Econ. Rights Action Ctr. (SERAC) v. Nigeria, Case No. ACHPR/COMM/A044/1, Afr. Comm'n Hum. & Peoples' Rts. (May 27, 2002).; *see also* Olufemi O. Amao, *The African Human Rights System and Multinational Corporations: Strengthening Host State Responsibility for the Control of Multinational Corporations*, 12 INT'L J. HUM. RTS. 761-88 (2008); Solomon Dersso, *The African Human Rights System and the Issue of Minorities in Africa*, 20 AFR. J. INT'L & COMP. L. 42-69 (2012).

115. *Nigeria: Oil, Poverty and Rights*, AFR. FOCUS BULLETIN, <http://www.africafocus.org/docs0207a.php>.

116. SERAC v. Nigeria, Afr. Comm'n Hum. & People's Rts., Comm. No. 155/96 (Oct. 27, 2001), *available at* http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30_155_96_eng.pdf.

violation of both national and international standards. This practice contaminates food resources, water, ruin living environment, and destroy houses thereby had serious short-and long-term impacts on the people. The activities of SPDC, according to the communication, led to the contamination of water, soil, and air. The complainants accordingly submitted that this situation constituted a violation of their rights to health and clean environment.

3. The Nigerian government condoned and facilitated the violations by placing legal and military powers at the disposal of the oil companies. The government further participated in the violations by executing some Ogoni leaders and by the use of security forces, killed many innocent civilians and destroyed their villages, homes, crops and farm animals.

4. Also, the communication accused the government of failing to monitor the activities of the oil companies, failing to conduct environmental impact studies, preventing independent scientists from doing environmental impact studies and keeping information from the local communities in respect of oil production in the area. The complainants accordingly submitted that this situation constituted a violation of their rights to health and to a clean environment.¹¹⁷

In a relatively well-articulated landmark decision, the African Commission held that:

1. These conditions violated rights to health and environment. The African Commission on Human and Peoples' Rights underscored the first line of responsibility of states in the protection of human rights by holding that African governments have a duty to monitor and control the activities of MNCs.¹¹⁸

2. The right to health at the minimum required the government 'to desist from carrying out or sponsoring or tolerating any practice, policy or legal measures violating the integrity of individuals' (para. 52). Further it held that the right of the people to a healthy environment, which it said was linked to economic

117. *Id.*

118. D. Shelton, *Decision Regarding Communications 155/96 (Social and Economic Rights Action/Center for Economic and Social Rights v. Nigeria) Case No. ACHPR/Comm. A044/1*, 96 AM. J. INT'L L. 941 (2002).

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and social rights, required the State ‘to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources (para. 52).

3. African states should also ensure respect for economic, social and cultural rights. Relying on its earlier decision in *Union des Jeunes Avocats/Chad*¹¹⁹ and the decision of the Inter-American Court of Human Rights in *Velasquez Rodriguez v. Honduras*,¹²⁰ as well as that of European Court of Human rights in *X and Y v. Netherlands*,¹²¹

4. The governments have the duty to protect their citizens through appropriate legislation and effective enforcement, and to protect them from damaging acts that may be perpetrated by private parties.¹²²

The Commission criticized the way in which the Nigerian government related to the MNC, finding that the government failed to exercise the necessary degree of care required in the circumstances.¹²³ According to the Commission:

Contrary to its obligations and despite such internationally established principles, the Nigerian Government has given green light to private actors and the oil companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore, is in violation of the African Charter.¹²⁴

The Commission thus laid the responsibility for all the violations that had been committed by the non-state actor on the Nigerian state.¹²⁵ The state was found liable for violations of rights protected under the African Charter by Shell.

119. *Union des Jeunes Avocats v. Chad*, AHG/207, Afr. Comm’n on Hum. & Peoples’ Rts., Comm. 74/92 (1995/96).

120. *Rodriguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 19, 1988).

121. *X and Y v. Netherlands*, 91 Eur. Ct. H.R. (ser. B) at 32 (1985).

122. *SERAC*, Case No. ACHPR/COMM/A044/1 para. 111.

123. *Id.* para. 59.

124. *Id.* para. 58.

125. *Contra J. Oloka-Onyango, Reinforcing Marginalized Rights in an Age of Globalization: International Mechanism, Non-State Actors, and the Struggle for Peoples’ Rights in Africa*, 18 AM. UNIV. L. REV. 851 (2002–03).

In the final analysis, violations of the right to health and well-being in the oil-producing communities have equally been attributed to the failure of the Federal and State governments in the Niger Delta region over the years to articulate an effective healthcare policy for the area or provide accessible healthcare facilities, clean portable drinking water, adequate shelter and food in the region despoiled by the extractive industry's operations. The pathetic health care delivery and gross violation of the right to health and adequate standard of living in the Niger Delta cannot be ascribed to lack of resources but is mainly due to massive corruption among the political leaders in oil-producing area.

Although the Constitution under its social objectives provides that, "the State shall direct its policy towards ensuring that, there are adequate medical and health care facilities for all persons,"¹²⁶ there has never been any serious healthcare program or project designed and implemented by the government to cater for the peculiar healthcare needs of people in the Niger Delta region. The Federal Government of Nigeria, by its lukewarm attitude, has literally sacrificed the health, safety, well-being of citizens and protection of their environment on the altar of petrodollars. There is an overwhelming consensus that *the pollution of land, air and water in the Niger Delta violates the right to safe water and free from substances harmful to human health* and therefore, the right to a healthy environment is virtually non-existent in the region.

V. RIGHT TO FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

Breach of Memorandum of Understanding (MOU) by the government and oil corporations, oil spills and continuous gas-flaring are some of the major causes of protests in the Niger Delta region. Such incidents are regular and have been reported in almost all the communities in the area. Often times, these protests by the local people are meant to draw the attention of the government, and or the oil corporations after unheeded entreaties for employment, provision of electricity, roads, portable drinking water, healthcare center promised them by the oil corporations and the government.

Protests by unarmed men, women and youths are frequently suppressed or crushed by detachments of combat-ready police or military deployed to different parts of the region. Claude Ake disclosed that the local oil-

126. CONSTITUTION OF NIGERIA (1999), § 17(3)(d). See chapter II, under the Fundamental Objectives and Directive Principles of State Policy.

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producing communities have “accused the police attached to Shell of brutally suppressing peaceful protests, and using financial inducements to divide the community whenever there is an oil spill, so that they cannot present a common front and successfully press for compensation.”¹²⁷

The standard response of the government to crush community protest¹²⁸ in the Niger Delta region has been more militarization of the area in order to ensure the protection of oil facilities and continued flow of crude oil. This ever-increasing surge of militarization has resulted in “indiscriminate arrests, rights abuses, violations, and torture,”¹²⁹ rape and extrajudicial execution contrary to the principles of increasing the well-being of the people in the region and to avoid violence.¹³⁰

In the region, people that overtly expressed concerns over the destruction of the environment by oil exploration and exploitation are usually targeted and silenced, especially where such individuals or group refused to compromise their position or reject bribe. They either disappear mysteriously or they will be framed up and accused of treason or subversion or out-rightly assassinated. This was the fate that befell Ken Saro-Wiwa a renowned playwright and international environmental activists and his nine Ogoni compatriots that challenged Shell for decades of ecological genocide.

In Communications 137/94, 156/96 and 161/97, the African Commission on Human Rights held that, “the trial, conviction and sentencing of members of MOSOP, including the writer and MOSOP leader, Ken Saro-Wiwa, for their opinions on the rights of the Ogoni people, was a violation of the right to freedom of association.”¹³¹ The Commission further stated that:

127. OKONTA & DOUGLAS, *supra* note 5, at 59 (citing Press Release, Claude Ake, *Shelling Nigeria*, (Jan. 15, 1996)).

128. Amnesty Int’l, *Nigeria: Claiming Rights and Resources – Injustice, Oil and Violence in Nigeria*, AI Index AFR 44/020/2005 (Nov. 3, 2005), <https://www.amnesty.org/en/documents/AFR44/020/2005/en/>.

129. OHCHR, *Compilation on NGO Reports, A/HRC/WG.6/4/NGA/3* paras. 60, 61 (2009). U.N. Office of the High Commissioner for Human Rights [OHCHR], *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, HR/P/PT/9/Add.1* (2008), <http://www.ohchr.org/Documents/Publications/training9add1.pdf>

130. See Amnesty Int’l, *Nigeria: Human Rights in Perspective: Amnesty Int’l Submission to the UN Universal Periodic Review*, AI Index AFR44/003/2013 (Mar. 2013), <http://www.amnesty.org/en/library/asset/AFR44/003/2013/en/476424b7-d772-44ec-aba3-35697fe00731/afr440032013en.pdf>.

131. Int’l Pen, Constitutional Rights Project, *Interights (on behalf of Saro-Wiwa) v. Nigeria, Afr. Comm’n Hum. & People’s Rights, Comm. 137/94, 156/96, 16/97, (1998)*, http://www.achpr.org/files/sessions/24th/communications/137.94-139.94-154.96-161.97/achpr24_137.94_139.94_154.96_161.97_eng.pdf; see also Dersso, *supra* note 114, at 42–69.

There is a close relationship between the rights expressed in Articles 9 (2), 10 (1) and 11. Communication 156 alleges that the actual reason for the trial and ultimate death sentences was the peaceful expression of views by the accused persons. The victims were disseminating information and opinions on the rights of the people who live in the oil-producing area of Ogoniland, through MOSOP and specifically rally. These allegations have not been contradicted by the government which has already been shown to be highly prejudiced against MOSOP, without giving concrete justification The Government's actions are inconsistent with Article 9 (2) implicit when it violated Articles 10 (1) and (11).¹³²

Also, the Movement for the Survival of Ogoni People (MOSOP) he founded together with other Ogoni intellectuals in 1990 “bore the full brunt of brutal repression under different military regimes for spearheading a campaign that drew attention to decades of environmental devastation by oil companies and the neglect of the Niger Delta by successive governments.”¹³³ They were put under surveillance by the security and intelligence agencies, regularly harassed, arrested, detained and falsely imprisoned on trumped up charges that failed to break their resolve to fight for their rights, economic self-determination and protection of their natural environment.

Oil companies in the region “have been criticized for arming the Joint Task Forces in a bid to secure their asset.”¹³⁴ Companies have openly admitted that some of their activities have contributed to the violence in the region. Instances of incidents of ruthless suppression with lethal force of unarmed civilians who assemble peacefully to express their opinion abound in the region. Kaima, Yenagoa, Opia, Oloibiri, Ikenyan, Iko Etche village of Umuechem, Odiama, Ogoni, Nembe, and Bonny are some of the communities where peaceful protests by groups, villagers or community members have been ruthlessly suppressed in violation of their rights to freedom of association and peaceful assembly.¹³⁵

At Iko, when the villagers organized a peaceful protest in 1987 to demanded that “Shell put to an end the obnoxious practice of flaring gas in

132. *Id.* para. 110.

133. Jim Lobe, *People versus Big Oil: Rights of Nigerian Indigenous People Recognized*, FOREIGN POLICY IN FOCUS (July 5, 2002), available at <http://www.irc-online.org/selfdetermine/sd/427>.

134. *Private Security in Nigeria, Rent-a-Cop*, THE ECONOMIST, Oct. 17, 2015, at 54.

135. OKONTA & DOUGLAS, *supra* note 5, at 137–55. See the Human Rights Watch Reports from 1987–2012 and the Amnesty International Reports from 1987–2012.

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their community, Shell invited the mobile police that attacked the protesters, wounding many and shot some to death.”¹³⁶ The legitimate demands of Iko villagers founded on their inalienable right to life and the right to health were met with further violation of the right to freedom of expression and peaceful assembly by the state’s security agents in collaboration or connivance with Shell.

Niger Delta Women for Justice, an organization of Niger Delta women, assembled peacefully in late December 1998 to:

Protest the brutalization and rape of their fellow women by soldiers and policemen at Yenagoa General Hospital were attacked by anti-riot policemen and soldiers, were beaten back with gun butts, cowhide whips, water cannon, and tear gas. The pregnant women among them who could not run fast enough were set upon by trained dogs. Over fifty women were stripped naked on the street by soldiers, beaten up and frog-marched into police cells.¹³⁷

These women were merely protesting as a group to express their grievances over the abuse, humiliation and violation of the rights of their fellow women, but in so doing their rights were further violated with impunity.

In *SERAC v. Nigeria*, the plaintiffs argued that Shell had not paid due regard to the health and environment of local communities when exploiting oil in Ogoniland.¹³⁸ They also complained that:

The government condoned and facilitated violations of international environmental standards by “placing the legal and military powers of all the State at the disposal of the oil companies”; with-holding information from the communities about the dangers of oil activities; ignoring the concerns of the communities; and responding to protests “with massive violence and execution of Ogoni leaders.”¹³⁹

The Nigerian government has paid little attention to the court’s decision in *SERAC v. Nigeria* above. However, “the decision has influenced the

136. OKONTA & DOUGLAS, *supra* note 5, at 139.

137. Interview by Anemeyeseigha Brisibe, Coordinator of Niger Delta Women for Justice, with Ike Okonta, in Port Harcourt, Nigeria (Jan. 12, 1999).

138. *SERAC*, Case No. ACHPR/COMM/A044/1.

139. *Id.*

work of human rights activists who have used it in their capacity-building and raising awareness on similar issues although the government places little emphasis on it since the decision is from outside Nigeria.”¹⁴⁰ Under article 20(1) of the Universal Declaration of Human Rights, article 22(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 10 (1) of the ACHPR, provisions were made for the rights for peaceful assembly and freedom of association respectively. But, subsection (2) of the ICCPR¹⁴¹ states that this right can only be restricted in exceptional circumstances.

The Nigerian Constitution 1999, in Section 39(1), provides for the freedom of expression and other associated rights¹⁴² while Section 40 provides for freedom of association.¹⁴³ Any attack, crackdown or suppression of unarmed protestors by the state security agents, using lethal force clearly violate Sections 39 and 40 of the Constitution.

VI. RIGHT TO MEANS OF LIVELIHOOD, SUBSISTENCE OR EMPLOYMENT

The right to clean environment and subsistence as guaranteed by several instruments are non-negotiable. Land and water resources in the delta provide employment to the local population, serve as major sources of income and have both cultural and spiritual significance in the life of the inhabitants. The traditional occupation of most of the inhabitants in the Niger Delta area is subsistence farming and fishing. Subsistence farming, directly or indirectly can provide food, clothing and shelter.¹⁴⁴ According to Amnesty International, “more than 60 per cent of the population in the

140. Felix Morka’s position on the African Commission’s decision in *SERAC* expressed his views about the importance and usefulness of the ground-breaking ruling of the African Commission to human rights activists and contemptuous attitude of the Nigerian government towards the decision. See Amnesty Int’l, *Ten Years On*, *supra* note 69.

141. ICCPR, *supra* note 17, art. 22(2) (“No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and the police in the exercise of this right.”).

142. CONSTITUTION OF NIGERIA (1999), § 39(1) (“[E]very person shall be entitled to freedom of expression, including freedom to hold opinions, receive and impart ideas and information without interference.”).

143. *Id.* § 40 (“[E]very person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest.”).

144. F.O Ayodele-Akaakar, *Appraising the Oil and Gas Laws: A Search for Enduring Legislation for the Niger Delta Region*, 3 J. SUSTAINABLE DEV. AFR. 1, 7–8 (2001), <http://www.jsd-africa.com/Jsda/Fallwinter2001/articlespdf/ARC%20-%20APPRAISING%20THE%20OIL%20and%20Gas.pdf>.

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delta area depend upon natural environment for their livelihood: they require healthy soil for farming and clean rivers for fishing.”¹⁴⁵

Cultivable land area is limited and highly valued as family or communal property in the region. Life of the agrarian and fishing communities in the Niger Delta is inextricably tied to land and their rivers; therefore, to pollute these natural resources is “murder.” However, negligence, unethical field practices, obsolete technology and disregard for national and international laws, safety and environmental standards in the field activities of the oil corporations in the region cause pollution of the air, land and water. Widespread environmental pollution has contaminated the farm lands, rivers/creeks; this makes the land uncultivable, or where cultivated, the yield is very poor because of the high level of acidity of the soil caused by oil pollution. Besides, the contamination of rivers, creeks and sea has made fishing difficult and unprofitable. The fertility and conditions of the limited arable land is adversely affected by pollution. It has been observed that:

As a result of oil loses, vast tracts of agricultural lands have been laid waste, thus becoming unproductive. Surface water and river courses are invariably contaminated and polluted rendering the water undrinkable and the aquatic life is destroyed. The result is great hardship for the inhabitants who become impoverished and deprived. These unfortunate citizens are therefore compelled to emigrate to other towns and villages in search of a decent life.¹⁴⁶

Furthermore, Amnesty International in its 2010 report noted that:

Pollution and environmental damage caused by oil industry continued to have a serious impact on people living in the Niger Delta region. More than 60 per cent of the residents depend on the natural environment for their livelihood. Communities in the region frequently had no access to basic information about the impact of the oil industry on their lives.¹⁴⁷

145. Amnesty Int’l, *Petroleum, Pollution and Poverty in the Niger Delta*, at 14, AI Index AFR 44/017/2009 (June 2009), <http://www.amnesty.eu/static/documents/2009/Nigeria0609Report.pdf>.

146. Alfred O. Okukpon, *supra* note 112; *see also* A.F. Ali, Ceremonial Opening Address at the Petroleum Industry and the Nigerian Environment International Seminar at Port Harcourt 20 (1981).

147. Amnesty Int’l, *Amnesty International Report 2010 - Nigeria*, (2010), <http://www.amnesty.org/en/region/nigeria/report-2010>.

Thus, with the advent of oil, the economic configuration of the Niger Delta region was altered, local economy destroyed, and the inhabitants are displaced from their farmlands and creeks/rivers that serve as their primary sources of income and livelihood. Massive exploration and exploitation of crude oil led to the dislocation of the traditional economic activities of the people of the area.¹⁴⁸ Indeed, the lifestyle of the people and their traditional means of livelihood have been grossly affected and their right to means of livelihood violated.

People in the Niger Delta area are among the poorest in the country. A greater majority have minimal or no education, lack employable skills, and when displaced from their farm land and rivers or creeks by pollution, they are left unemployed without any safety net or other means of survival. This perpetuates a cycle of poverty in the area. Poverty, according to Henry Boyo, “deepens in the communities that host oil corporation’s exploration and exploitation for crude oil because the local and international majors defile the agricultural landscape and sources of freshwater and jeopardize the traditional mainstay of subsistence fishing.”¹⁴⁹ A 2011 Niger Delta Youth Assessment Study, sponsored by Partnership Initiative in Niger Delta (PIND), revealed that, “over 60 per cent of sampled Niger Delta youths were without any form of employment or self-employment and that the rate of poverty in the region is about 65 per cent with about 45-70 per cent living on less than a dollar every day.”¹⁵⁰ This was the standard economic measure of absolute poverty, despite the windfall gains from doubled global oil prices during the first Gulf war.¹⁵¹ Thus, the inhabitants of the Niger Delta region remain among the most deprived oil communities in the world. The irony of the situation in the Niger Delta is that the inhabitants of the region sit on stupendous wealth beneath their feet and yet wallow in abject poverty and penury, hungry in the mist of plenty and live in squalor and sub-human condition that depicts their level of impoverishment while the wealth from their area is being flaunted around the country and beyond by people that are detached from the region.

148. Peter Agba Kalu, *New Dawn for Niger Delta Development Commission (NDDC)*, SUN, Sept. 4, 2012, available at <http://odili.net/news/source/2012/sp/4/501.html>.

149. Henry Boyo, *The Blessing of Oil: A Peculiar Mess*, PUNCH, Nov. 11, 2013.

150. Emmanuel Addeh, *Over 60 per Cent of Niger-Deltans-Jobless – Chevron*, PUNCH, May 10, 2012, available at <http://odili.net/news/source/2012/may/10/807.html>.

151. Amnesty Int’l, *Ten Years On*, *supra* note 69.

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VII. RIGHT TO DEVELOPMENT

The people that inhabit the oil rich Niger Delta region are neglected, marginalized, and have been subjected to social and economic deprivations for too long by the state. Oil found beneath their feet is one of the greatest blessings God has showered on Nigeria, but has invariably turned out to be a curse. Instead of bringing development to the region, as it is the case in places like Norway, Botswana, Angola, United States, Kuwait, and United Arab Emirate, it has brought untold hardship and misery, and has failed to provide the basis for national economic, political, scientific/technological and social, growth and development that would have cushioned its citizens from the scourge of abject poverty, and want. Rather than bring immeasurable blessings to the people, oil brought in its wake nightmares, hopelessness and anxiety; rather than bring development, it enthroned poverty to the extent that the entire landscape is dotted with evidence of poverty and gross neglect. Also, oil became in the hands of the ruling elite and the political class an instrument sounding the death-nail of such key principles of good governance as democracy, federalism, transparency, accountability and national growth.¹⁵²

Nigeria has not been able to achieve the level of economic progress that is commensurate with its abundant natural resources and huge revenue from oil especially in the oil-rich region. A huge chunk of oil and gas revenue is stashed away in offshore bank accounts by the political and military elites or invested in prime real estate outside the country. The nation's parlous economic predicament is generally regarded as a "resource curse,"¹⁵³ Ironically, the Niger Delta, the region in Nigeria that is responsible for a greater chunk of the nation's wealth, is left so impoverished and abandoned; ignorance, diseases and gross underdevelopment have become evident everywhere in the region to the point of intolerance. Ashton-Jones and Douglas captured the all-pervasive gloom and

152. HUMAN RIGHTS VIOLATIONS INVESTIGATION COMM'N [HRVIC], SYNOPSIS OVERVIEW OF THE HRVIC REPORT: CONCLUSIONS AND RECOMMENDATIONS (INCLUDING CHAIRMAN'S FOREWORD), (May 2002) (Nigeria), available at <http://www.nigerianmuse.com/nigeriawatch/oputa/OputaSummaryRecommendations.pdf>; see also Boyo, *supra* note 149, at A4.

153. *Resource Curse*, INVESTOPEDIA, <http://www.investopedia.com/terms/t/resource-curse.asp> (last visited Sept. 9, 2017) (defining 'resource curse' as "[A] paradox of plenty, in which countries with abundant revenue from mineral resources show less economic growth with beleaguered manufacturing sector when compared with other countries with less resource endowments. The causes of such a paradox are said to include an exposure to global commodity market swing; weak and corrupt institutions which condones fraudulent diversion of the revenue streams from such mineral exploitations; government mismanagement of resources and the expected adverse impact of a nation's real exchange rate."); see also Boyo, *supra* note 149, at A4.

anomie in the oil-producing communities vividly when they noted as follows:

All the members of the society appear to suffer from frustration for themselves and for their children due to poor agricultural yields, the lack of health, water and education services, their abandonment by the government but above all by the manifestation of the oil industry in their midst that seem to represent huge wealth and yet has given nothing to them except for the impoverishment of their land.¹⁵⁴

The level of corruption amongst the governors and political leaders from the states that comprise the Niger Delta region has immeasurably contributed to the backwardness and underdevelopment apparent in the area. A British petroleum engineer, in 1990, after visiting oil-well No. 1 at Oloibiri in Bayelsa State, where oil was first discovered in 1956, was astonished by the level of backwardness, neglect, incredible underdevelopment and massive youth unemployment. A town that has generated so much wealth for the nation but has nothing to show for it and the wealth generated has not reflected on the life of the people. In disbelief, he stated that, "there is nothing romantic or beautiful about the real Oloibiri, I have explored for oil in Venezuela, and Kuwait, and have never seen an oil-rich town as completely impoverished as Oloibiri."¹⁵⁵

The above observations painted a picture typically true of the deplorable state of affairs in the oil-producing communities despite the over \$600 billion the nation had so far earned from oil revenue. The revenue from oil that comes from the region, is used more in developing other parts of the country. The level of underdevelopment in the Niger Delta region is a sharp contrast to the enormous contribution of the region to the national wealth and foreign earnings. While the oil workers and their families live in affluence with state-of-the-art facilities fetched by oil wealth, the local inhabitants live a life of grinding poverty, and experience the disparities of life in their immediate environment with disbelief.¹⁵⁶ A good percentage of the oil revenue that should have been invested towards the provision of basic infrastructures like good roads, hospitals, schools,

154. NICK ASHTON-JONES & ORONTO DOUGLAS, *THE HUMAN ECOSYSTEM OF THE NIGER DELTA: A PRELIMINARY BASELINE ECOLOGICAL PARTICIPATORY SURVEY OF THE NIGER DELTA* (1994); see also OKONTA & DOUGLAS, *supra* note 5, at 194.

155. OKONTA & DOUGLAS, *supra* note 5, at 96 (citing A. Rowell, *Shell-Shocked, The Environmental and Social Costs of Living with Shell in Nigeria*, GREENPEACE INT'L, 16 (1994)).

156. HUMAN RIGHTS WATCH, *NIGERIA: CRACKDOWN IN THE NIGER DELTA* 7 (1999), available at <https://www.hrw.org/sites/default/files/reports/Nigeria0599.pdf>).

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electricity, transport or cottage industries is wasted in white elephant projects that have little or no relevance to the basic needs of the population. Several billions of Naira allocated to the states in the region have been mismanaged or criminally diverted to personal accounts by the political leaders and their associates.

Nigeria is a multi-ethnic nation, the Ibos (Igbos) are dominant in the East, Yorubas in the West, and the Hausa-Fulanis predominate the Northern Region. The former Eastern Region of Nigeria, under General Chukwuemeka Odumegwu Ojukwu seceded from Nigeria in May 1967 following the massacre of Ibos in Northern and Western regions in 1966 following a failed coup led by mainly Ibo army officers. The Federal Government of Nigeria led by General Yakubu Gowon (comprising the former Northern, Western and some parts of Mid-Western Regions) declared a civil war against Biafra. The Biafra-Nigeria civil war lasted for thirty months (1967-1970) and ended in favor of the federal troops, though on a note of no victor, no vanquished. Ever since the end of the civil war, some of “Nigeria’s leaders treat the Niger Delta, part of former Biafra, as a captured or conquered territory and the oil wealth as war booty/ spoils of war to be shared among the members of the military, the conquering force of occupation,”¹⁵⁷ following Nigeria’s perceived victory in the civil war. Also, there is a prevailing impression amongst highly placed people from outside the former Eastern Region who often proclaim publicly that as the victor in the civil war, Nigeria is entitled to the resources located in the conquered territory; no doubt this contributed to the decision by some youths to resort to armed opposition . . .”¹⁵⁸ to lay greater claim and control over natural resources in their region.

In line with the war booty attitude, there is a glaring imbalance in the allocation of oil blocks mostly to the military elites and northerners, who own companies that transport oil and work as oil contractors. In view of the above observation, Senator Ita Enang from Akwa Ibom State (Niger Delta region) advocated for equity and federal character in the allocation of oil blocks/contracts during a contentious Petroleum Industry Bill (PIB) debate on the floor of the Senate, “eighty per cent of which is currently held by northerners in order to address the imbalance and inequity in the distribution of such key national resource base.”¹⁵⁹ He called for the for the allocation of federal institutions, industries, hospitals, and

157. HRVIC, *supra* note 152.

158. Priye S. Torulagha, *The Causes of Anger and Rebellion in the Niger Delta*, NIGERIA WORLD (June 28, 2007), <http://nigeriaworld.com/articles/2007/jun/280.html>.

159. Sen. Ita Enang, *Northerners Hold Eighty Per Cent of Oil Blocks*, PUNCH, Dec. 8, 2013, available at <http://odili.net/news/source/2013/dec/8/818.html>.

other infrastructures to be cited in the region.¹⁶⁰ This situation was aptly captured by Torulagha who noted that:

Nigeria has consistently refused to locate any major institutional or infrastructural facility in the oil region. Every major project which is capable of generating massive employment and capital is always located in the non-oil producing regions. By so doing, Nigerian leaders create the impression that the oil-producing region is merely an economic plantation to generate national revenue.¹⁶¹

Petrochemical industries, power stations, and petroleum institutions that will bring development to the regions are sited in other areas far away from the Delta region where the raw material inputs are readily available in abundance. Leaders hijack big developmental projects and site the same in their immediate constituencies even if such locations lack the basic facilities that will make such projects viable. For instance, a gas farm has been constructed between Ondo and Ogun States axis far away from the oil rich Niger Delta; the largest gas powered electric generating plant was cited in Omotosho and Olorunsogo between Ondo State and Ogun state the home state of former president Obasanjo. A network of feeder gas pipelines were constructed covering hundreds of miles from the oil fields in Rivers, Cross Rivers, Abia, Delta, Akwa Ibom and Bayelsa to the site. If such a project is sited in the Niger Delta region closer to the sources of gas (raw material input in logical consideration of one of the core economic criteria for establishing industries), it will save cost, create jobs, and bring about the much-needed development to the Niger Delta region.

Furthermore, the systematic draw-down on the nation's revenue allocation and derivation to the Niger Delta region after the military takeover of the government in 1966 resulted in a cut from 100% regional control to 50% in 1970 and later further down to 45% retarded development of the Niger Delta region. In 1977, the military dictatorship further reduced regional control of resources to 25%. Under subsequent military government it dropped eventually to one percent. Following agitations of the minorities in the south-south and south-east, it was raised back to 1.3% and 3% later before it was finally raised up to the current 13%.¹⁶² The

160. *Id.*

161. Torulagha, *Is Military Option Viable*, *supra* note 64.

162. *Nigeria: Focus on Dispute Over Offshore Oil Resources*, AFR. FOCUS BULLETIN (July 9, 2002), <http://www.africafocus.org/chr.php>.

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successive military dictatorship created economic and social injustices in the nation that adversely affected the development of the already neglected and marginalized minorities in the Niger Delta.

By all standards, the distribution of national resources and revenue based on land mass and number of local government areas adopted since the inception of military rule in the country is not just and equitable. The Federal Government of Nigeria, through its legislation, regulations, and some state policies that cause inadequate allocation of national resources to the Niger Delta, in total disregard to the region's enormous contribution to the national wealth thereby abuse, deny and violate the people's right to development. It is hereby posited that for there to be a reversal of the current and unacceptable level of poverty, marginalization, unemployment and under-development in the region, the nation should revert to an equitable revenue allocation and derivation formulae similar to the 1960's formulae. Also, the provision of basic infrastructures like roads, electricity, portable drinking water, and site industries and institutions that can create employment for the locals will bring development to the region.

VIII. THE RIGHT TO EQUAL PROTECTION OF THE LAW

The social objectives of Nigeria under the fundamental objectives and directive principles of state policy state that, "the State social order is founded on ideals of Freedom, Equality and Justice,"¹⁶³ and "in furtherance of the social order – every citizen shall have equality of rights, obligations and opportunity before the law;"¹⁶⁴ "the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced."¹⁶⁵ However, the tripod fundamentals of national social objectives have rarely been put into practice or actualized in the country. As bona fide citizens and equal stakeholders in the affairs of the nation but most importantly as human beings, the inhabitants of the oil-producing communities are entitled to all the rights, benefits and privileges due to all other Nigerians.

Other instruments such as covenants, declarations, charters and treaties applicable in Nigeria have similar provisions. Some of those instruments

163. CONSTITUTION OF NIGERIA (1999), § 17(1).

164. *Id.* § 17(2)(a).

165. *Id.* § 17(2).

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and their articles are: article 7 of the UDHR,¹⁶⁶ article 26 of the ICCPR,¹⁶⁷ and article 3 (1) and (2) of the ACHPR.¹⁶⁸ Interestingly, Nigeria is a signatory to, and has ratified, the above mentioned instruments and is formally obligated under the law to give effect to their provisions within its jurisdiction but has so far frequently failed to do so till date.¹⁶⁹ Unfortunately, the discriminatory and arbitrary use of selective laws, state policies as well as administrative measures by the military elites, past and present political leaders, and state security and law enforcement agent have clearly been to the detriment of the inhabitants of the Niger Delta region.

The judicial institutions are beset with myriads of problems. Civil remedies and rights under the law are rarely enforced. Also, the criminal justice system and the judiciary are generally perceived as dysfunctional and ineffective in bringing political leaders, security agents, and corporations involved in crimes and violation of rights to justice. Besides, the machinery for the administration of justice has not been at its best in enforcing the provisions of international laws, human rights instruments and treaties applicable in the country. This has been attributed to systemic and institutional corruption, lack of independence of the judiciary, lack of political will, tribalism and other vices.

Furthermore, the environmental laws in Nigeria are generally weak; they are couched in loose language with many loopholes, contradictions, limitations and unnecessary exceptions as exemplified by the provisions of the Nigerian Environmental Standards and Regulations Enforcement Act (NESREA) (2007 and 2011) and the Petroleum (Drilling and Production) Regulations of 1969, which have rendered them almost impotent and practically ineffective. This is well illustrated by the letters of section 25 of the Petroleum (Drilling and Production) 1969 which provides for measures to be taken to prevent and control oil pollution.¹⁷⁰ The loose lan-

166. UDHR, *supra* note 16, art. 7 (“[A]ll are equal before the law and are entitled without any discrimination to equal protection of the law. All of them are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

167. ICCPR, *supra* note 17, art. 26.

168. ACHPR, *supra* note 18, art. 3(1) (“[E]very individual shall be equal before the law.”); *Id.* art. 3(2) (“[E]very individual shall be entitled to equal protection of the law.”).

169. See also Amnesty Int’l, *Ten Years On*, *supra* note 69.

170. Petroleum (Drilling and Production) Regulations (L.N. 69 of 1969), § 25 (Nigeria) (“The licensee or lease shall adopt all applicable precautions, including the provision of up-to-date equipment approved by the Head of the Petroleum Inspectorate Department, to prevent the pollution of inland waters, rivers, water courses, the territorial waters of Nigeria or High Seas by oil, mud or other fluid or substances which cause harm to freshwater or marine life, and where any such pollution occurs or has occurred, shall take prompt steps to control and if possible stop it.”); see also Okorodudu-Fubara, *supra* note 83, at 14.

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guage of this instrument is typical of the Nigerian environmental laws thus giving the oil corporations a leeway to exploit and avoid liability in the event of oil pollution.

Therefore, under the nation's existing legal and institutional frameworks, the right to equal protection of the law is virtually non-existent in the oil-producing communities, and the provisions of the Constitution and other enactments to that effect are very ineffectual and are not worth more than the paper on which they are written. In Amnesty International's view, "the government has failed to protect communities in oil-producing areas, while providing security to the oil industry. Domestic regulations of companies to ensure protection of human rights are clearly inadequate."¹⁷¹

IX. REMEDIES AVAILABLE TO VICTIMS OF HUMAN RIGHTS VIOLATION

The Nigerian Constitution, common law, Criminal Code and the Penal Code have elaborate provisions for rights, remedies, sanctions, fines and other punishments for different crimes. Chapter IV of the 1999 Constitution made elaborate provisions for fundamental human rights and in Chapter II, the fundamental objectives and the directive principles of state policies covered mainly the socio-economic and cultural rights. The Fundamental Rights Enforcement Procedure Rules 2008 forms part of the Nigerian Constitution and provides guidelines for the enforcement of rights under the Constitution and remedies for human rights violation.

Nigerian law provides for punishment and remedies for crimes, it prohibits the fouling or corruption of water at any source be it spring, well, tank, stream or reservoir,¹⁷² and all forms of air pollution likely to injure the health of persons within the neighborhood is prohibited as well, violators are liable to six-month jail term.¹⁷³ Generally, remedies for violation of human rights are in form of common law and civil remedies of compensation, damages (nominal and exemplary damages) and apology. The Fundamental Rights (Enforcement Procedure) Rules 2008 provides for remedies for human rights violations.¹⁷⁴ Several other laws in Nigeria

171. Amnesty Int'l, *Ten Years On*, *supra* note 69.

172. *See, e.g.*, Criminal Code Act (1916) Cap. (27), § 245, Laws of the Federation of Nigeria 1990.

173. *Id.* § 247.

174. Fundamental Rights (Enforcement Procedure) Rules (2008), Order 3(3)(a), 3(3)(d) (Nigeria) ("(a)The offer of compensation may be in general terms or may specify the amount of compensation offered and the payment schedule, and tender of apology may be in general terms or may specify the language of the apology, the medium in which it is to be published; . . . (d) Where the

have provisions for remedies for human rights abuse and violations, and environmental pollution, such as the NESREA, the Police Act, Cap 359 LFN 1990, the Public Health Act 1917, and the Petroleum (Drilling and Production) Act of 1969. Victims of rights violation in Nigeria can invoke the relevant provisions of the Nigerian Constitution and other relevant instruments in seeking redress in the municipal or sub-regional courts as the case may be. Nigeria is a signatory to all the major international human rights instruments and as such is obligated to guarantee rights covered in the said instruments to individuals and groups and give effect to their provisions within its jurisdiction. The nation's foreign policy objectives in Section 19 of the Constitution¹⁷⁵ is very elaborate. Consequently, the Nigerian state has several obligations, both positive and negative, under customary international law, international human rights instruments, the national constitution, statutes and other laws of the land. However, in practice, the provisions of international law, treaties, and municipal laws meant to protect the rights of citizens are freely violated across the country and in particular the oil-producing communities in the Niger Delta region. Nevertheless, in the face of the nation's high rate of crime, poor human rights record, and corrupt enforcement mechanism, the elaborate Nigerian laws and regulations seem more or less to be decorative codifications with minimal force of law and the enforcement mechanism is deeply corrupt and utterly dysfunctional.

X. RECOMMENDATIONS

The following recommendations are proposed:

1. Review of the Nigerian Constitution, the National Environmental Standards Enforcement Act of 2007/2011 and all the pre-existing laws, Acts, statutes and state policies that have colonial flavors;
2. Review of the Petroleum Act of 1967, and the Petroleum (Drilling and Production) Regulations of 1969; Passing the Pe-

offer of compensation or tender of apology is in specific terms, it will be subject to approval by the Court or Judge who may vary the offered compensation or tendered apology after taking into account any contributions, submissions or proposals by the applicant or his legal representatives.”). These rules, on how to defend human rights actions, form part of the Nigerian Constitution 1999.

175. CONSTITUTION OF NIGERIA (1999), § 19(c) (“[T]he foreign policy objectives shall be – (c) respect for international law and treaty obligations as well as seeking settlement of international disputes by negotiation, mediation, conciliation, and adjudication.”). This section is under the Fundamental Objectives and Directive Principles of State Policy and is non-justiciable and cannot be enforced or adjudicated in court for enforcement when violated and or threatened to be violated.

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roleum Industry Bill (PIB) and International Criminal Court Bill into law;

3. Review of the Revenue Allocation and Derivation Formulae or reverting to the 1960s arrangement;

4. Demilitarization of the Niger Delta region and education of the state security personnel on laws of engagement and human rights; and Investigation and prosecution of the security agents that have committed felonious crimes, extrajudicial killing/murder, and right violations;

5. Enactment of a law that will make environmental pollution a strict liability offense as it is the case in developed countries; and enforcing compliance of the multi-national oil corporations (MNCs) to national and international environmental laws and standards; and

6. Restructuring of the nation's legal and institutional frameworks.

XI. CONCLUSION

Different minority ethnic groups living in the oil-rich Niger Delta are neglected, and marginalized. Also, they are discriminated against in employment and are virtually excluded from the oil industry that is predominant in the region. Generally, they suffer untold hardship caused by commercial oil exploration and exploitation ever since oil was discovered in the area. Their environment is massively polluted by frequent oil spills, unprofessional discharge of toxic effluent waste, and continuous gas flaring. Through several Nigerian laws and state policies, the Niger Delta inhabitants are denied both economic and social rights thereby making their civil and political rights almost meaningless.

The State security agents, in collaboration with the oil corporations, abuse and violate the rights of the people in that region regularly with impunity. They are widely implicated in cases of rape, torture and degrading and inhuman punishment, suppression of peaceful protests with excessive or lethal force in many oil-producing communities in violation of the right to the dignity of the human person. According to Ibeanu, "there remains a strong presence of the military and police detachment, heavily armed, and systematic state repression sometimes taking the form of extrajudicial killings have remained a fact of life in these com-

munities.”¹⁷⁶ In the present-day Nigeria, as in the inglorious days of military rule, frequent cases of extrajudicial killings,¹⁷⁷ unjustifiable torture of suspects/detainees by security agents, unbridled curtailment of press,¹⁷⁸ and objectionable discrimination against women,¹⁷⁹ are still witnessed. State security agents are the worst culprits in violation of rights. The military and police are constitutionally vested with the authority to protect lives and property but have mostly discharged this responsibility in the breach of the primary purpose of their establishment. These institutions have been extensively complicit or implicated in violation of rights, extrajudicial killings and wanton destruction of property in the Niger Delta than protecting and safeguarding them.

Multinational oil corporations operating in the Niger Delta have been severally indicted in human rights violations in course of their exploration and exploitation of crude oil. Weak and ineffective environmental laws and regulations encourage massive oil pollution, reckless despoliation as well as the on-going environmental destruction and degradation in the region. Oil corporations have negligently caused frequent oil spills, and engage in continuous gas flaring causing pollution in the area. The human rights situation in the Niger Delta region is a living testimony that “the major oil corporations in African countries and a number of them have been implicated in or associated with human rights violations,”¹⁸⁰ environmental pollution and degradation,¹⁸¹ escalation of poverty conditions,¹⁸² and increase in social vices in their host communities. In all the

176. Okechukwu Ibeanu, Inaugural Lecture at the University of Nigeria Nsukka: Affluence and Affliction: The Niger Delta as a Critique of Political Science in Nigeria (Feb. 20, 2008).

177. On December, 28, 2006, the Inspector General of Police, Tafa Balogun, announced that police killed 1,694 suspected armed robbers during the year. See Jacob Abiodun Dada, *supra* note 1, at 69.

178. As exemplified in the repeated raid of newspaper houses like the Insider Magazine, and confiscation of issues of the magazine and newspapers, in 2009, the office of *Leadership Newspaper* was sealed and its operatives arrested allegedly for publishing a false story about the health of President Umaru Yar. See Jacob Abiodun Dada, *supra* note 1, at 69.

179. Examples of such objectionable practices include, widowhood rites and female genital mutilation. See Jacob Abiodun Dada, *supra* note 1, at 69.

180. See HUMAN RIGHTS AN OIL INDUSTRY (Osborn Eide et al. eds., 2000) (describing the role and policies of transnational corporations with respect to human rights); see also Terry Collingsworth, *The Key Human Rights Challenge: Developing Enforcement Mechanism*, 15 HARV. HUM. RTS. J. 183 (2002) (describing mechanisms to enforce the laws of the nations).

181. See SERAC, Case No. ACHPR/COMM/A044/1; African Commission on Human and Peoples' Rights, Annual Activity Report, Annex V (2001) (detailing how the operations of oil corporations have caused environmental degradation and health problems). For an example outside the African continent, see JUDITH KIMBERLING ET AL., AMAZON CRUDE (Susan S. Hendrickson ed., 1991).

182. See EMEKA DURUIGBO, OIL DEVELOPMENT IN NIGERIA: A CRITICAL INVESTIGATION OF CHEVRON CORPORATION'S PERFORMANCE IN THE NIGER RIVER DELTA (2001), available at <http://>

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violations by the oil corporations, the Federal Government of Nigeria is complicit as it provides oil companies with statutory backing and lends them the state security apparatus.

Despite the laudable and inspiring constitutional provisions for their protection,¹⁸³ there are varying degrees of human rights violations in the nation, and governance is characterized by acute disregard for, and sadistic undermining of these basic rights and fundamental freedoms.¹⁸⁴ Even with the laws in place for the promotion and protection of human rights human rights violations have been on the increase. The security agents that perpetrate crimes like extrajudicial murder, rape, torture or degrading punishment, and human rights violation are not held accountable as they are neither investigated nor brought to justice by the state. Abiodun Dada observed that, “even though Nigeria as a nation has subscribed to major international human rights instruments in addition to her local rights instruments abuse and violations of rights continues to occur with disturbing frequency and regularity.”¹⁸⁵

Lack of equity, freedom, and equality is apparent in the nation’s landscape as it is reflected in the distribution of oil wealth and basic amenities. This imbalance has subjected the minority groups to hardship, domination, neglect, economic and political marginalization and denial of rights. Ultimately, the defective legal and institutional frameworks in the country aids, encourage, and help to sustain gross human rights violation in the country and particularly in the oil-producing communities for decades.

The international community, allies, and key benefactors of the Nigerian crude oil have deliberately shied away from calling the nation out on the deplorable environmental and human rights violations associated with the oil industry in the delta region. Human Rights Watch, in its 2012 report, rightly noted that:

www.n-h-i.org/Publications/Pubs_pdf/Nigeria_CorpAccount.pdf (discussing Chevron’s records of accountability within Nigeria’s oil development).

183. Chapters 2 & 4 of the 1999 Nigerian Constitution are exclusively dedicated to human rights. Also, Nigeria has ostensibly strong institutional infrastructure for human rights promotion and protection. Apart from the judicial organ, Nigeria has extrajudicial bodies for human rights promotion and protection. These include the National Human Rights Commission and the Public Complaints Commission. See Jacob Abiodun Dada, *supra* note 1, at 69.

184. For instances of recent human rights violations in Nigeria, see the latest Human Rights Report submitted to by the U.S. Congress, U.S. BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEP’T OF STATE, REPORT ON HUMAN RIGHTS PRACTICES: NIGERIA (Apr. 8, 2011), available at <http://www.state.gov/documents/organization/160138.pdf>. See also Adejuwon Soyinka, *On Death Row*, THE TELL MAG., Apr. 20, 2009, at 22, cited in Jacob Abiodun Dada, *supra* note 1, at 69.

185. Jacob Abiodun Dada, *supra* note 1, at 67.

Due to Nigeria's role as a regional power, Africa's leading oil exporter and a major contributor of troops to the UN peacekeeping mission, foreign governments—including the United States and the United Kingdom have generally been reluctant to publicly criticize Nigeria over its poor human rights record. It further observed that although the US government officials did speak out forcefully against the country's endemic government corruption, but were less willing to condemn the serious abuses committed by the Nigeria's security forces.¹⁸⁶

In the face of the unacceptable level of devastation and destruction of human life and environment in the Niger Delta that equates to crimes against humanity, Julia Baird, environment editor of the Newsweek Magazine, rightly queried “why the US is not angry or worried about the Niger Delta situation or at least demanding global accountability from companies she supports especially having experienced first-hand the destructive effects of oil spills and environmental pollution on the natural resources of those who depend on the sea, creeks and rivers or land for their livelihood”¹⁸⁷ Likewise, her counterpart, John Vidal, environment editor of the Guardian, “questioned why the West, the benefactors, have chosen to turn a blind eye to the man-made catastrophes in the Niger Delta for over five decades while the oil companies acted with such impunity and recklessness that much of the region is devastated by leaks.”¹⁸⁸

The lives of over 30 million people in the oil-producing communities are endangered, their health at stake or threatened by the fallout of reckless exploration and unethical exploitation of oil by the multinational corporations in collaboration with the Federal Government of Nigeria. While their rights are trampled upon, and violated their future and hope of survival is slowly but progressively facing systematic extinction. The environmental and human rights situation in the Nigerian Niger Delta deserves a humane and responsive attention of the national government and the international community. The on-going abuse and violation of rights with impunity in the region has made their promotion and protection through the rule of law impossible and there could be more grave and generational consequences to the people in the area if the trend is left unchecked.

186. HUMAN RIGHTS WATCH, *WORLD REPORT 2012* (2012), <http://www.hrw.org/world-report-2012>.

187. Julia Baird, *supra* note 10.

188. John Vidal, *Nigeria's Agony Dwarfs the Gulf Oil Spill*, *GUARDIAN*, May 30, 2010, <https://www.theguardian.com/world/2010/may/30/oil-spills-nigeria-niger-delta-shell>.