

HUMAN RIGHTS, JUSTICE AND THE NIGER DELTA: ISSUES AND CHALLENGES

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1. Introduction

(i) The Niger Delta, the main oil (and gas) producing area of Nigeria has been described as one of the world's largest wetlands. It covers an area of about 70,000 square kilometers and consists of four distinct ecological zones which are characteristic of a large delta in a tropical region; namely, coastal ridge barriers, mangroves, fresh water swamp forests, and low land rain forests¹.

The area is therefore generally inhospitable, and difficult to develop². The Communities which inhabit this area are made up mainly of fishermen and women in the purely riverine areas and farmers, in the drier areas. They also had some local industries based on the mangrove and the surrounding swamp waters, e.g. local salt industry, mat making etc.

The presence and operations of the petroleum companies is pervasive, invasive and almost suffocating, in the Niger Delta. It controls and curtails the lives and survival options of the peoples of that region.

Luckily, in its vigorous defense against accusations of being an insensitive destroyer of the Niger Delta environment, the SPDC has been compelled to publish statistics of its operations and they are an intimidating confirmation of these very accusations. SPDC (i.e., NNPC, Agip, and Elf joint venture with Shell, the latter being the overwhelmingly dominating partner and sole operator) operates oil mining leases (OMLS) covering an area over 31,000 square kilometers (about half the area of the Niger Delta). It has an extensive network of about 900 producing wells, 6,300 kilometres of oil and gas pipelines (i.e., more

¹ See Niger Delta Environmental Survey: Briefing Note 2, p.4.

² See Generally The Price of Oil, a publication of Human Rights Watch, New York, (1999), pp. 53 – et seq.

than the distance from Lagos to London) about 100 flow station/gas plants, and two main terminals at Forcados and Bonny.

Since the SPDC or Shell produces about 50% of the 2 million barrels of oil daily produced in Nigeria, it can be reasonably assumed that the other 5 international oil conglomerates are jointly using up territory and space, equivalent to that used by Shell. Thus the entire Niger Delta attests unreservedly to a pervasive and ceaseless presence of petroleum operations.

This is an audience that is familiar with the consequences of petroleum operations. I think the summary of the travails of the peoples of the Niger Delta, as presented to the President by the South South Peoples Conference will suffice.³

“With the increase of the downstream and upstream activities of the Oil/Gas companies, the pollution of the Niger Delta has reached a dangerous dimension. It is immaterial whether the pollution arises from off-shore activities. The negative impact on the Niger Delta is the same. Cases in point are the Funiwa blow out in 1981 and the Mobile Oil producing Spill in the year 2000 both of which occurred off-shore but had devastating consequences on the lands, waters, forests and peoples of the coastal States. Years of Petroleum production in the Coastal States have rendered lands, unproductive, poisoned the waters and forests, while gas flaring has rendered the environment generally inhabitable. The health hazards to which the peoples of the Coastal States are subjected to as a result of Oil/Gas activities cannot be fully documented in this paper.”

Indeed, the Niger-Delta territory and environment provides the highest number, concentration and intensity of gas flaring in the world.

³ Meeting the President on 8th January 2003.

2. The Case for Resource Control

Many commentators who write about resource control and indeed the public at large labour under the mistaken belief that the concept is all about receiving increased revenue from the proceeds of our natural resources. Although resource control ought to result in much increased revenue for the owners of the resources from their proceeds, that is the less significant aspect of the concept.

The really vital aspect of the concept, is involvement in the actual control and management of the resource. Central to the struggle for resource control is the right of the States and Communities most directly concerned (that is the producing States and Communities) to have a direct and decisive role in the exploration for, the exploitation and disposal of, including sales of the 'harvested' resources. It is those who live with the devastating consequences of greedy, cheap, crude, reckless and irresponsible exploitation practices and procedures, who must control the mode and management of commercial production in order to ensure an environmentally friendly production, process, elimination of pollution, and the protection of the lands, forests, rivers and atmosphere. It is they who will insist on planned and controlled production to ensure the progressive replacement of the non-renewable resource, by a renewable product that is free of pollution and other environmental hazards.

The unfolding tragedy of the Niger-Delta, is that those who control, manage and exploit its petroleum resources, i.e., the oil companies and those in control of the Federal Government, live far away from the Niger-Delta.

Therefore, when in another 28 years, as has been confirmed by experts, the Niger-Delta oil reserves are finally exhausted, the Oil Companies and the Federal Government, will pull out, lock, stock and barrel, to look for new hunting grounds, leaving the people of the Niger-Delta to sink in the toxic 'sewage' they have created and left behind.

The struggle for resource control therefore, is not merely one for increased revenue, from the proceeds of one's resources, but more importantly it is a move by the people of the Niger-Delta to take their destinies into their own hands in order to ensure the environmental protection and restoration of the Niger-Delta territory to a productive and living one, and to insist on environmentally friendly and best oil fields practice in the oil and gas extraction process. It is a programme to work for the re-investment of proceeds of petroleum sales in infrastructural development, environmentally sensitive industries, and in agriculture and, aquaculture. It is a campaign for the re-forestation, renewal, detoxification and restoration of the land and water of the Niger-Delta and the introduction and development of renewable resources.

Thus resource control has as part of its primary objective, how to ensure life and a good livelihood for the people of the Niger-Delta, long after the exhaustion of its petroleum reserves, which have become its nemesis.

Therefore to achieve sustainable development, and build infrastructure such as roads and bridges in our hostile environment, we need as much of our resources as possible. It costs ten times more to build one kilometer of road in the riverine areas of the Niger Delta, than in the upland areas of this country. God know this, and put the resources there as compensation. Man knows this, but carts away all the proceeds to build a paradise called Abuja and to private accounts in the developed world.

That Nigerian economic culture has turned the Niger Delta into a waste of land is well illustrated by Lawson Omokhodion in this thoughtful passage from his article in the Vanguard of Thursday 2 January 2003.

“At the end of every month, the 36 honourable commissioners of finance of all the states of the federation gather in a classroom session in Abuja presided over by the Federal Minister of Finance to share money that have accrued to the federation account based on a

formula no one really understands. This money comes from three main sources - the oil money from the Niger Delta, the customs duty collections from the coastal/ports states and the VAT money mainly from Lagos State. After the sharing, the commissioners now head back to their respective governors to report what they have received and how to allocate to the areas of defined priority. The way the funds is used is not the subject of this article but as you know easy come, easy go and because over two-thirds of the states do not suffer any pain in the generation of this federation account, they fritter the money away and wait for the next monthly allocation. And at the end of the next month, they all troop back to Abuja for the monthly routine. It is inconceivable for any state to grow with this type of economic structure that puts state governments on welfare benefits or what the Americans call the “dole”.

If states are not challenged to reap where they sow, the economy of this country will go no where. As a result of the cheap money from the Niger Delta, all the Northern states and other Southern states have just allowed their natural and mineral resources to go untapped and where they are tapped, the proceeds go to enrich individual foreign bank accounts. The great agricultural potentials of the entire Mambilla Plateau have continued to lie fallow and seriously under-utilized because the North Eastern states that would benefit directly from its exploitation do not want to be bothered with the initial difficulties of establishing a framework for its cultivation.

As in a growth of human form, any child who depends perpetually on the parents to spoon-feed him for the rest of his life can never grow. Depending on Abuja to dish out handouts called revenue allocation to state governments cannot grow this economy. Power and wealth are being unduly concentrated at an unwieldy center.”

3. The On-shore Off-Shore Crisis

Perhaps, no event has exposed or revealed the great contempt in which the peoples of the Niger Delta are held by the Rulers of Nigeria, than the conduct and statements of the President in the course of the controversy over his refusal to sign the Bill abrogating the dichotomy on the application of the principle of derivation from resources derived on-shore and those derived off-shore.

Whilst the National Assembly was considering a bill, which extended the Niger Delta's rights of derivation throughout the CONTINENTAL SHELF, the President hurriedly forwarded them his version, which limited the Niger Delta's derivation rights to the continental shelf. The difference between the two is contained in my release published in the Vanguard in September 2002, as follows:

“Let me raise an alarm immediately, that as presently worded, this bill is a Trojan horse, a Greek gift, and a real pandora's box; in short, useless and a potential source of great trouble. Only an incorrigibly and abysmally ignorant person or an equally mischievous one will substitute the word Contiguous zone for Continental shelf. The Contiguous Zone is a twelve mile belt of Sea (Water) after the twelve mile belt of territorial Sea. In other words the contiguous zone at its farthest limit from land is only 24 miles. The Contiguous Zone is established in international law for only four purposes, customs, fiscal, immigration and sanitary regulations and operations. Thus article 33 of the 1982 Law of the Sea Convention provides for the Contiguous Zone as follows:

1. In a zone contiguous to its territorial sea, described as the Contiguous Zone, the coastal State may exercise the control necessary to:
 - (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The Contiguous Zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial seas is measured.

Some fundamental facts must be emphasized:

1. The Contiguous Zone, is made up of only sea water. There are no natural resources in it apart from fishes. What this bill is proposing is that the Niger- Delta States will be paid 13% of any revenue received by the Federal Government from fishing and use of Sea Water!
2. The Contiguous Zone ends only twenty-four miles from land.
3. The Continental Shelf, which is the real subject matter of derivation and natural resources is 200 miles from the shore (land). It is land i.e the seabed and subsoil under the Sea. A natural and legal prolongation of the Land of the Coastal State.
4. It is the Continental Shelf that contains minerals i.e oil, gas and other solid minerals like copper, zinc, magnesium etc.
5. It is the Continental Shelf that was the subject matter of the Resource Control case between the Federal Government and the Coastal or Litoral States. There was NEVER any dispute about the Contiguous Zone.
6. It is the unjust outcome of the judgment that was supposed to be corrected first by presidential action under section 315 of the Constitution and by Legislation, which is what this bill represents.

7. Indeed the provision which was intended to be restored was the one in Section 140(6) of the 1963 Constitution which stated that “for the purpose of derivation, the Continental Shelf of a region shall be deemed to be part of that Region”.

It is therefore unimaginable that some persons can conspire in 2002 to clandestinely substitute the useless contiguous zone for the vital and indispensable Continental Shelf. Are the people of the Niger Delta so ignorant and despised that they can be deprived of 200 miles of their minerals, particularly oil and gas and given 24 miles of Sea Water? Has the contempt for these oppressed peoples gone so deep?”

When this fraud was exposed, the Presidency then descended into regrettable statements of deceit and falsehood, intended to hoodwink the apparently grossly ignorant people of the Niger Delta. These included the false claim that we could create conflict with imaginary neighbours if we declared continental shelf of 200 nautical miles,

In the first place, it is not necessary to declare and establish a continental shelf of 200 miles. This is automatically conferred on all coastal states by the 1982 International Convention on the Law of the sea.

To buttress the above statement, I refer to article 76 of the United Nations Conference on the Law of the Sea of 1982, which provides that every Coastal State is automatically entitled to a continental shelf of 200 nautical miles. I refer specifically to paragraph 2 of article 77, which provides as follows:

“The rights referred to in paragraph 1 are exclusive in the sense that if the Coastal State does not explore the continental shelf or exploit its natural resources no one may undertake these activities without the express consent of the Coastal State”.

I state further that by Article 77 paragraph 3 of the Convention the rights of the Coastal States over the Continental Shelf do not depend on occupation, effective or notional or on any express proclamation.

It is obvious therefore, that even if the Federal Government had not proclaimed and established Nigeria's Continental Shelf it enures to Nigeria all the same.

Let me state that however that the Federal Government did in fact enact a law in 1978 (Cap. 116, 1990 Laws of Nigeria) under Obasanjo's tenure as Head of State, claiming 200 Nautical miles of the superadjacent sea, sea bed and subsoil. This is none other than the Continental Shelf.

In deed so comprehensive is the scope of this Act that the Federal Government extended Nigerian Criminal Jurisdiction to cover all installations and designated areas within the 200 nautical miles zones, deeming any offence committed within that zone as an offence committed on Nigerian Soil.

The Act also contains adequate provisions for resolving any disputes that might arise between Nigeria and her neighbouring States in relation to claims over the continental shelf.

The latest ploy is to now introduce something called "200 Metres Isobath". In spite of all the confusing cacophony of marine geology and other technical terms, used with the intention of confusing and bamboozling the peoples of the Niger Delta, the obscure and deliberately profuse language and terms, can be demystified and decoded. The peoples of the Niger Delta are being told that all they deserve from derivation, are 13% of proceeds exploited under archaic technology that was in existence in 1958 when the General Convention on the continental shelf, 1958 was concluded. For 200 metres was thought to be the limit to technological capacity then, and this was put into the Convention. What the President means therefore in spite of all the verbosity of his new Bill, is that

the Niger Delta is to be denied all the fruits from the development of technology in the last 45 years. We have been consigned the dark ages of human existence.

4. Reasons for our Travails in Nigeria

We are currently treated with disdain and contempt because we are politically insignificant in Nigeria. We are not a power block like the Yorubas (Afenifere) or the Hausa/Falani (Arewa). Therefore our wealth can be plundered without restraint and without regard for our interests. The rulers of Nigeria see us as disunited, fractious, weak, individualistic, greedy and anxious to sell our region for crumbs from the Master's table. There is a lot of truth in this perception. Our political elite and middle class are unprincipled easily purchasable, and anxious to be privileged servants in organizations lead by the power blocks. We excel in tagging on to others, but will not stand on our feet. That is why our God given wealth can be seized without any consequence; without any attempt to challenge this terrible oppression. With our own votes we have put our oppressors in power again and again so that they can oppress us more. Is it not a revelation of how low we are in the eyes of the power blocks that even though all the wealth of Nigeria is provided by us, we have not been deemed fit by any of the main parties to be considered even for the position of Vice – President! Why nominate a Niger Deltan for any important position when his vote can be obtained at no cost?

5. The Challenge

What must we do in order to establish ourselves in our rightful position in this country? How can we acquire the power and authority which is proportional to the wealth with which we have endowed Nigeria; the wealth on which Nigeria survive?

6. The Way Forward

The only way forward is for the Niger Delta to work towards becoming a power block in order to negotiate appropriate terms for continuing to associate with other Regions in Nigeria. In the first place the people of the Niger Delta must unite and stand together in pursuing the minimum interests of that Region. They must stand united, firm and committed to the struggle for the liberation of the Niger Delta from oppression, exploitation and marginalisation, inspite of its status as the economic base of Nigeria.

United as one body and as a people with one destiny, we must identify those who are against the interest of the Niger Delta, and ensure by the power of our block vote that he or they are no longer in a position to inflict injuries on us. We must identify persons and organizations which are prepared to accommodate and promote our interests. We must place our minimum interests on the table and once this is accepted we must work together with such a group to achieve power in order to realize our maximum interests.

The Yorubas through Afenifere are respected as a power block because they remained consistent and committed to the pursuit of their cause for nearly 40 years before power finally came their way. When that power came, they were offered it on a platter of gold. In 1999, the only 2 Presidential candidates were both Yorubas. We must therefore pursue our common interests with unwavering commitment and be prepared not to achieve power immediately. It is the end result that counts. Let us be steadfast and sacrifice today for a greater tomorrow for our oppressed peoples. No one will give us our rights without a struggle. We must strive to restore the Niger Delta to its deserved status and position in Nigeria.