

PREFACE

Oil is the wheel on which the engine of the world's economy turns. No other commodity attracts as much attention or impacts as directly on the lives of people all over the world, as oil. Among the largest companies in the world, in terms of work force, assets, turn-over and profits, are oil conglomerates. Such is the place and dominance of oil that a slight shift in production or price, triggers political and economic tremors around the world. Whether in prosperity or recession, the demand for oil is elastic, and the oil market is perhaps, the only one in which conventional economic forces pull in reverse. Rather than demand and supply determining price, it is price which determines the quantity supplied although neither supply nor price affects in any material way, the demand for oil.

Ironically, in spite of its wealth, power, technology and sophistication, the oil industry is unable to manipulate the impact of exploration and production activities on the natural environment as they do with the market. Both in developed countries (where technology is more advanced and environmental protection measures stricter) or in developing countries (where technology is less advanced and environmental protection measures less strict), the consequences of petroleum activities are often devastating. The difference is that incidents of pollution and therefore, environmental damage appears less in developed than in developing countries, even though the former produce and consume more oil than the latter. Barring accidents which are inevitable in every industry, recorded levels of pollution in developing countries are much higher than would

normally be acceptable in oil producing developed countries. This inexplicable disparity fuels suspicion that the International Oil Companies (IOCs) deploy obsolete technology in their operations in developing countries as against the more advanced technology and standards in their home countries or else are exploiting the less stringent environmental protection measures in developing countries to maximize profit.

Given the pervasive influence of oil and the failure of multilateral bodies over the years, to develop an effective regulatory framework for monitoring the activities of IOCs around the world, oil industry operators, (especially in developing countries have remained at large), tearing down forests, polluting rivers and displacing local communities with unrestrained fatalities. Existing regulatory regimes (both domestic and international) are either too feeble to deter errant operators or contain little anti-discrimination clauses which would persuade IOCs to adopt uniform standards in their operations around the world. Allied to this is the fact that those who bear the brunt of oil industry pollution are not the technocrats who occupy the high echelons of these companies or the government officials who are supposed to regulate them, but the ordinary people in whose backyard oil platforms and flow-stations are erected. The ordinary people (usually the indigenous and rural communities) are the ones whose farmlands are scorched by gas-flares and fish-ponds polluted by fall-out from oil industry operations. Indeed they are the ones, whose economic and cultural well-being are blighted daily by oil industry pollution, and whose health is constantly put at risk by exposure to toxic chemicals emitted from oil industry operations, but are in too weak a position either to complain or take remedial actions. These groups lack not only the political clout to influence governmental decisions (which may improve

environmental protection measures), but also the ability to attract development to their areas. So that development activities brought by oil wealth which people in distant regions enjoy, remain a distant dream to those from under whose land the wealth is produced. Nor could they afford to seek redress in the law courts in the event of damage.

The problems of this group are not confined to political and material disability as they are also debilitated by illiteracy which masks the ability to recognize their legal as well as political rights. Left destitute by inept and corrupt governments, abused whenever they have the courage to complain, this group is denied their right to life, property, family life and home, their dignity, social and cultural wellbeing. They are left to their own devices, either to bringing private actions against the IOCs or engage in self-help efforts, with brutal consequences. If they go to court, the costs of litigation are prohibitive (both in terms of sustaining the trial itself or in retaining the services of counsel knowledgeable in this area of law), especially in a jurisdiction with no adequate, if any credible legal aid system, or limited by the timidity of judges to award punitive damages. To this must be added the inadequate environmental protection laws, which constrain judicial activism.

This thesis attempts to proffer a human rights option to the conventional common law methods of seeking redress for oil pollution injuries in the Nigerian Delta. Human rights actions would obviate the formidable burden of proof required and the limited remedies offered by common law actions, which in over 50 years of active oil industry operations, have failed to reduce or

ameliorate the menace of oil pollution in the area. With a new Fundamental Human Rights Procedure and Enforcement Rules in force in Nigeria, it appears that human rights courts would play an active role in future litigation for redressing oil pollution injuries in the Niger Delta. The parameters for such actions and the amplitude of the remedies, which human rights actions may offer under Nigerian law is explored in this study.

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Responsibility for all the views expressed or omissions in this work is entirely mine.

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LIST OF ABBREVIATIONS

AIR (SC)	All India Reporter (Supreme Court)
All ER	All England Report
All NLR	All Nigeria Law Report
ANPED	The Northern Alliance for Sustainability
ATCA	Alien Torts Claims Act
BBC	British Broadcasting Corporation
CCR	Centre for Constitutional Rights
CFRN	Constitution of the Federal Republic of Nigeria
CIEL	Centre for International Environmental Law
DPR	Department of Petroleum Resources
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	United Nations Economic and Social Council
ECtHRt.	European Court of Human Rights
EHHR	European Human Rights Reports
FEPA	Federal Environmental Protection Agency

GSP	Generalised System of Preference
HRLRA	Human Rights Law Report in Africa
IACHR	Inter-American Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural 1996
ICJ	The International Court of Justice
IIED	International Institute for Environment and Development
ILM	International Legal Material
IOC	International Oil Companies
IPCC	Intergovernmental Panel on Climate Change
JHRLP	Journal of Human Rights Law and Practice
LFN	Laws of the Federation of Nigeria
LRC' Wealth	Law Report of the Commonwealth
NCLR	Nigerian Constitutional Law Report
NEMA	National Environment Management Act 1998
NGO	Non-Governmental Organization
NNOC	Nigerian National Oil Corporation

NIALS	Nigerian Institute of Advanced Legal Studies
NILR	Nigerian Internet Law Report
NNPC	Nigerian National Petroleum Corporation
NOSDRA	National Oil Spill Detection and Response Agency
NWLR	Nigerian Weekly Law Report
OAU	Organization for African Unity
OHCHR	Office of the High Commissioner for Human Rights
OML	Oil Mining Leases
OPEC	The Organization of the Petroleum Exporting Countries (OPEC)
OPL	Oil Prospecting Licenses
QB	Queens Bench
RECEIL	Review of European Community & International Environmental Law
RSLR	Rivers State Law Report
SC	Supreme Court Report
SCNJ	Supreme Court of Nigeria Judgment
SERAC	Social & Economic Rights Action Centre
Supp SCC	Supreme Court of India Reports

TVPA	Torture Victims Protections Act
UDHR	Universal Declaration of Human Rights
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on Human Environment
UNCSD	United Nations Commission for Sustainable Development
UN GAOR	United Nations General Assembly Official Records
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational Scientific Cultural Organisation
UNIL	University of Ibadan Law Report
WLR	Weekly Law Report