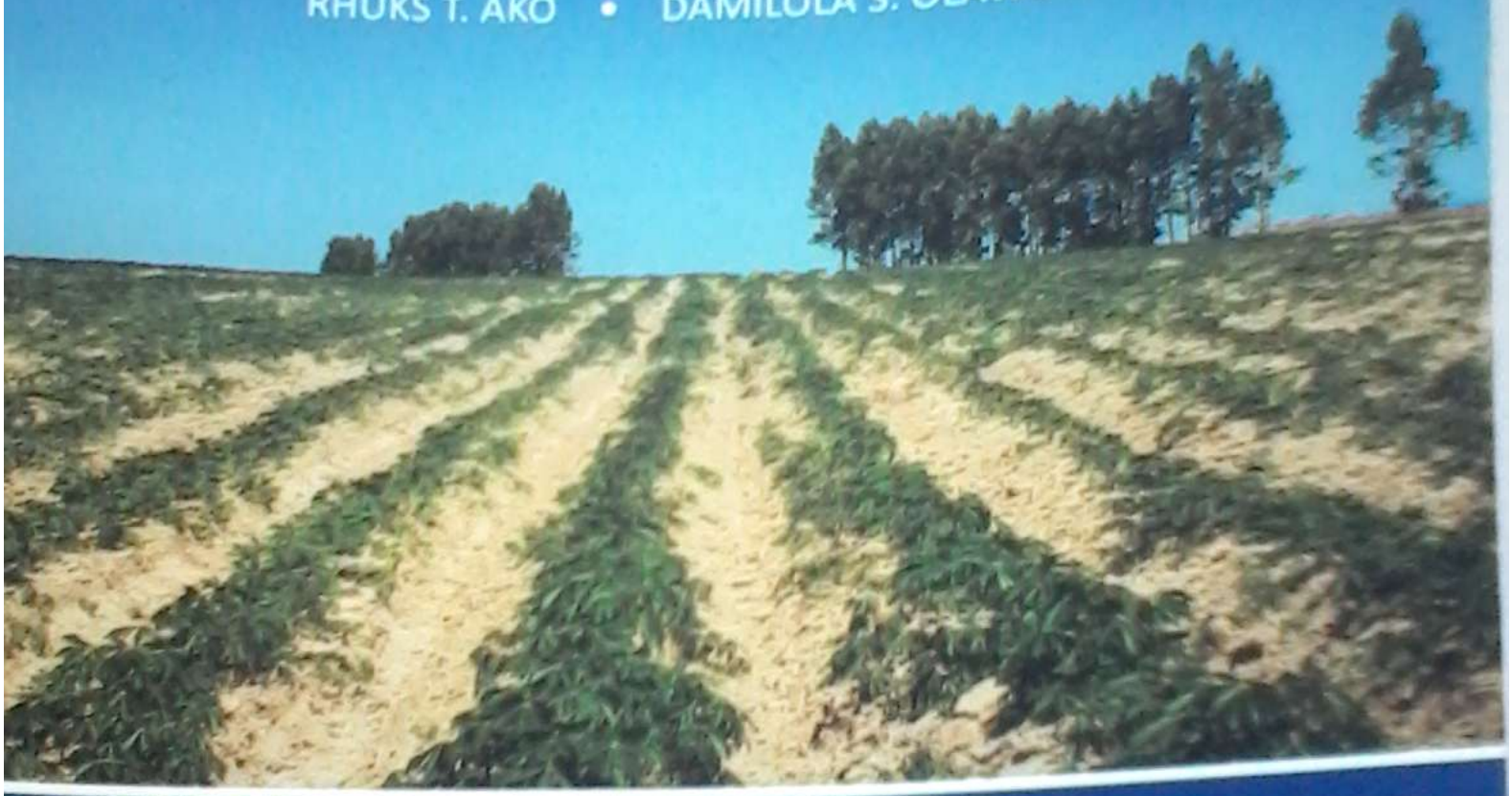
FOOD AND AGRICULTURAL LAW

Readings on Sustainable Agriculture and the Law in Nigeria

RHUKS T. AKO • DAMILOLA S. OLAWUYI



AFE BABALOLA UNIVERSITY
ADO EKITI, NIGERIA

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Readings on Sustainable Agriculture and the Law in Nigeria

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AGRICULTURE AND THE ENVIRONMENT: A LEGAL AND HUMAN RIGHTS ASSESSMENT OF THE IMPACTS OF POLLUTION ON AGRICULTURE IN THE NIGER DELTA OF NIGERIA

ABDULKADIR BOLAJI ABDULKADIR

OVERVIEW

At the centre of Nigeria's human rights debate has been the treatment meted to the diversity of minority and indigenous race that stand astride the length and breadth of the Niger Delta Region where the nation's exploration and exploitation of crude oil takes place. The denial of basic rights of Niger Delta communities worsened, as oil became the dominant income earner for the country accounting for more than 70 percent of government revenue. It is on this premise that this chapter examines how environmental pollution has affected agriculture, which is the primary occupation of the people in Niger Delta communities. Consequently, basic human rights are being affected. However, the focus of this chapter will be limited to the impacts of pollution

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on the rights of the people to food. On this note, materials are obtained from both primary and secondary sources to analyse the issues in contention. The secondary data are extracted from the Amnesty International Report, United Nations Environmental Programme Report, and United Nations Development Programme Report. The primary sources place heavy reliance on legal instruments and judicial decisions. The findings of the study reveal that environmental pollution in the Niger Delta have momentous adverse effects on social-economic rights of the people such as right to water, food and adequate standard of living. It is on this premise that the chapter recommends absolute liability as a panacea to deter polluters from this insidious practice.

1. INTRODUCTION

The Niger Delta is one of the 10 most important wetland and coastal marine ecosystems in the world and is home to some thirty-one (31) million people.[1] It is also the location of massive oil deposits, which have been extracted for decades by the government of Nigeria and by multinational oil companies. The oil industry in the Niger Delta started commercial production in 1958 following the discovery of crude oil at Oloibiri by Shell British Petroleum (now Royal Dutch Shell), in 1956.[2] Today, the oil industry is highly visible in the Niger Delta and is controlling over a large amount of land. Shell Petroleum Development Company (SPDC) alone operates over 31,000 square kilometres.[3] The area is crisscrossed by thousands of kilometres of pipeline, punctuated by wells and flow stations. Much of the oil infrastructure is located close to the homes, farms and water sources of communities, which endanger the livelihood of the people. Widespread environmental damage associated with oil extraction has destroyed livelihoods, polluted water and undermined health.[4] Thus, the same oil extraction that is generating wealth for the few is deepening the poverty of many. This is putting a number of basic rights at risk. These include: right

1 Kelvin Ebiri, 'Behind the Rumbles in the Delta', The Guardian Newspaper (Nigeria), 8 July 2014, 20.

2 J S Peterside, 'Ethnic Associations and Crisis of Human Rights Enforcement in the Niger Delta', Unpublished PhD Thesis submitted to the University of Port Harcourt, 2001, 66.

3 T Abam, 'The 1998 Floods in The Niger Delta, the case of Kaiama' *Proceedings of the International Workshop on Natural and Man-made Hazards in Africa*, (NMGS publication 1995) 119-130.

4 Ajiboye Olanrewaju Emmanuel, Jawando Jubril Olayiwola and Adisa Waziri Babatunde, 'Poverty, Oil Exploration and Niger Delta Crisis: The Response of the Youth', (2009) 3 *African Journal of Political Science and International Relations* 5, 224-232.

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to life, right of access to clean water, the right to food, right to adequate standard of living and many others.[5]

The links between human rights and pollution of the environment have long been recognized. The 1972 United Nations (UN) Conference on the Human Environment declared that 'man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.'[6] Human rights monitoring bodies, and international, regional and national courts, are increasingly recognizing poor environmental quality as a causal factor in violations of human rights. The most common examples include pollution of water, soil and air, resulting in violations of protected rights in the international human rights documents and those rights protected in the Constitution of a state.[7] It is on this premise that this paper examines the impact of pollution on agriculture in the Niger Delta and the resultant effect on human rights. However, the discussion in this chapter is limited to the right to food.

This chapter is divided into four sections. This introduction is the first. The second section examines some major environmental problems in the Niger Delta such as oil spillage, gas flaring, dredging and how they affect agriculture in coastal communities in the Niger Delta. The third section examines how the discussed environmental problems in the Niger Delta affect the right of access to clean water and the right to food. The fourth section is the concluding section where recommendations are provided to improve the system.

2. ENVIRONMENTAL PROBLEMS IN THE NIGER DELTA AND IMPACTS ON AGRICULTURE

The Niger Delta of Nigeria consists of nine out of the 36 states making up the Federal Republic of Nigeria.[8] They are: Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers States.[9] The three major states

5 Deeka Menegbon, 'Movement for the Survival of the Ogoni People (MOSOP) and the Struggle for Democracy in Nigeria' in Tunde Babawale (ed.) *Urban Violence, Ethnic Militias and the Challenge of Democratic Consolidation* (Lagos: Malthouse Press Limited, Lagos, 2003) 20-32.

6 See the Stockholm Declaration, 1972.

7 Nils Gleditsch, 'Beyond Scarcity vs. Abundance: A Policy Research Agenda for Natural Resources and Conflict' in United Nations Environment Programme, (UNEP) *Understanding Environment, Conflicts and Cooperation* (UNEP, 2004) 16-19. Also, Eva Ludi and Tobias Hagmann, 'Pastoral Conflict Resolution in the Horn of Africa' in United Nations Environment Programme, (UNEP) *Understanding Environment, Conflicts and Cooperation* (UNEP, 2004) 19-21.

8 Wahab Egbewole, 'Millennium Development Goal and the Niger-Delta', (2006) 1 *University of Ilorin Law Journal* 214-227.

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producing oil in high quantities are Delta, Bayelsa and Rivers States. Crude oil was originally discovered in large quantities at Oloibiri, a community in Bayelsa State.[10] This was discovered in 1956 and the nation rejoiced as this was seen as great opportunity to develop and boost the nation's economy.[11] To the people of the region, it was an opportunity for the goose that lays the golden egg to be treated as a golden goose. As each year passes, the story appears to have taken a new look as the resultant effect of the growth and development of the nation's economy was and is still a destruction of the nation's environment.[12] This spring surprises whether the detection of crude oil is truly a blessing or a curse. Environmental problems and degradation in the Niger Delta have hindered the enjoyment of basic human rights and led to the impoverishment of the people. The Niger Delta is currently faced with environmental problems such as: oil spills, gas flaring, dredging, noise pollution from seismic survey and construction projects to mention but few. However, the discussion in this chapter will be limited to oil spills and dredging and their impacts on agriculture in the Niger Delta.

A. OIL SPILLS

The advent of oil exploration and production in the Niger Delta it brought about severe environmental pollution and deprivation of the region.[13] The activities associated with the different stages of oil exploration and production negatively affected the environment and led to pollution.[14] Oil spills is one of the major and noticeable environmental problems in the Niger Delta Region of Nigeria. It simply denotes leakages of petroleum unto the earth surface. It is a common occurrence in the Niger's oil industry with spills occurring both on and offshore.[15] Oil in water destroys fisheries and

9 *Ibid.*

10 Paul Lubeck, Michal Watts and Ronnie Lipschutz, 'Convergent Interest US Energy and Securing Nigerian Democracy', online: <http://www.ciponline.org/NIGERIA_FINAL.pdf> accessed 21 September 2011.

11 *Ibid.*

12 Mabayoje Aluko, 'Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria', (2004) 15 *Journal of Human Ecology* 1, 63-68.

13 Francis Anyim, Cyril Ikemefuna and Joy Ekwoaba, 'Conflict and Environmental Challenges Facing the Oil Companies in Nigeria Niger-Delta Region', (2012) 2 *International Journal of Business and Management Tomorrow* 3, 1-9.

14 *Ibid.*

15 Bright Eregha and IR Irughe, 'Oil Induced Environmental Degradation in the Nigeria's Niger Delta: The Multiplier Effects' (2009) 11 *Journal of Sustainable Development in Africa* 4, 160-175; George Frynas, 'Legal Change in Africa, Evidence from Oil-Related Litigation in Nigeria', (1999) 43 *Journal of African Law* 2, 128.

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lowers the quality of water that people use for drinking and other domestic activities.[16] Common casues of oil spills include corrosion of oil pipes, poor infrastructural facilities, and leaks during processing at refineries, human errors and deliberate vandalism.[17]

Since oil operations began in the Niger Delta, data on oil spills have remained inconclusive.[18] For instance, in 2006, the United Nations Development Programme (UNDP) reported that a total of 6, 817 oil spills occurred between 1976 and 2001 with loss of approximately three million barrels of oil in the region.[19] In contrast, SPDC reported that between 1989 and 1994, it recorded an average of 221 spills per year with loss of 7, 350 barrels of oil annually. In 2006, a group of independent and oil experts visited the Niger Delta and recorded the total amount of oil spills both on shore and off shore to be 9 to 13 million barrels over the past 50 years.[20] Irrespective of the uncertainty in the exact quantity of oil spilled, it is apparent that the Niger Delta region has experienced a high rate of oil spills with consequences inhabitants' basic human rights.[21] Notable cases of oil spills are: the Ikarama oil spills 2007,[22] the Bata spills 2002, Kira Tai oil spill 2007,[23] Rukpokwu oil spill 2003,[24] Ebubu oil spill 1970, the Ogbodo oil spill 2001, Abudu Pipeline 1982,[25] the Idoho oil spill 1998,[26] Funiwa oil spills 1980 to mention but few.[27]

16 *Ibid.*
17 *Ibid.*
18 Ken Saro-Wiwa, 'They are Killing my People' in Rasheed Na'Allah (ed.) *Ogoni's Agonies* (Trenton, NJ: Africa Press) 329-359.
19 UNDP, *Niger Delta Human Development Report*, UNDP, (2006), online: <http://hdr.undp.org/en/reports/ nationalreports/africa/nigeria/nigeria_hdr_report.pdf> accessed 27 October 2011; Otive Igbuzor 'A Review of Niger Delta Human Development Report' Presented at a Conference on Human Development in the Niger Delta: From Agenda to Action' Held at Hotel Presidential, Port Harcourt, River State from 24-25 August, 2006. Also available online: <http://www.dawodu.com/igbuzor16.htm> accessed 26 October 2011.
20 Niger Delta Natural Resources damage Assessment and Restoration Project, Phase 1 Scoping report, May 2006 conducted by Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy with the Federal Ministry of Environment.
21 See Patrick Oviasuyi and Jim Uwasiae 'The Dilemma of Niger-Delta as Oil Producing States of Nigeria', (2006) 16 *Journal of Peace, Conflict and Development* 1, 111-126.
22 A video clip of the spillage is available online: <http://www.youtube.com/watch?v=TJx-NhMXwoqY> accessed 27 October 2011.
23 Amnesty International 'Amnesty International Response to Shell', online: <http://www.amnesty.org.nz/files/AI-response-to-shell.pdf> accessed 27 October 2011.
24 See Niger Delta Watch 'Report on Environmental Abuse', online: <http://www.nigerdeltawatch.org/ reports?c=14&page=4> accessed 27 October 2011.
25 Amnesty International, *Nigeria: Petroleum, Pollution, and Poverty in the Niger Delta* (London: Amnesty International Publication 2009) 3-19.
26 *Ibid.*
27 *Ibid.*

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The majority of the region's inhabitants are fishermen and/or farmers with major crops in the region including yam, cassava, cocoa, pumpkin and numerous fruits. Oil spills lower the productive quality farmlands and crops; watercourses, fish as well as other aquatic animals and plants thereby negatively affecting the primary occupation and source of livelihood of the region's inhabitants.[28] The African Commission on Human Rights noted this when it held that the Nigerian Government has destroyed the right of the oil producing communities to food by allowing private companies to destroy food sources.[29]

B. DREDGING

Oil companies also dredge rivers to aid navigation and get sand for construction. Dredging triggers serious environment repercussions that have direct impacts on human rights.[30] It harms fisheries and considerably lowers the quality of water that people use for drinking and other domestic purposes.[31] In the process of dredging, sediments are removed along the way and dumped as dredge left over. Experts have argued that the left overs are acidic in form and amount to an added cause to soil contamination.[32] The left overs can destroy growing crops and in most cases leading to long time germination of crops. Commenting on this, the United Nations Environmental Programme with specific reference to the Niger Delta noted:[33]

> Dredging alone affects all parts of the environment, but the impacts are often compounded by the abandonment of the dredged materials on the banks of canals and rivers.

28 *Ibid* 14-17.

29 African Commission on Human and Peoples' Rights, Decision on Communication of the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights/ Nigeria (155/96), decision made at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001.

30 Elijah Ohimain, Wim Andriesse and Martinus van Mensvoort, 'Environmental Impacts of Abandoned Dredged Soils and Sediments', (2004) 4 *Journal of Soils and Sediments* 1, 22. Also, Elijah Ohimain, Tunde Imoobe and Dorcas Bawo, 'Changes in Water Physico-Chemical Properties Following the Dredging of an Oil Well Access Canal in the Niger Delta', (2008) 4 *World Journal of Agricultural Sciences* 6, 752-758.

31 Amnesty International (n 25) 19.

32 David Moffat and Olof Linden, 'Perception and Reality: Assessing Sustainable Development in the Niger River Delta' (1995) 24 *Ambio*, 527-538; Christopher Neil and Eugene Turner, 'Backfilling Canals to Mitigate Wetland Dredging in Louisiana Coastal Mashes', (1987) 11 *Environmental Management* 6, 823 –836.

33 UNDP (n 19).

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> This alters the topography and hydrology and causes acidification. The results include water contamination, damage to vegetation, fish kills and changes in land use. Altered topography prevents the natural re-succession of mangroves.

Dredging is frequently carried out to construct accesses for oil exploration, marine/coastal transportation and other water borne commerce and in a susceptible environment, it is regularly resulted into ecological impacts including damage to flora and fauna, modification of coastal topography and hydrology, and destruction of land and water quality.[34]

3. IMPACTS OF OIL POLLUTION ON THE RIGHT TO FOOD

The right to food is a human right. It guarantees the right of all individuals to live in dignity, free from hunger, food uncertainty and starvation.[35] The right to food is not about charity, but about making sure that all people have the competence and aptitude to feed themselves in pride.[36] The Committee on Economic, Social and Cultural Rights (Committee on ESCR) in its General Comment 12, posits:

> The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, States have a core obligation to take the necessary action to

34 African Network for Environment and Economic Justice (ANEEJ), *Oil of poverty in Niger Delta* (Benin City: ANEEJ, 2004), 2; Irene Wamala, 'Nigeria Protests: Nigerian Women take on the Oil Companies', (2002) *Women & Environments International Magazine*, 38; Carl Mortished, 'No Longer in Glorious Isolation: Shell Petroleum Development', (1996) The Times, London, July 8, 1-4; Toye Olori, 'Environment-Nigeria: Cleaning up Oilfields', (2002) *Global Information Network*, New York, August 22, 1-3.

35 Christian Courtis 'The Right to Food as a Justiciable Right: Challenges and Strategies', (2007) 11 *Maxplanck Yearbook of United Nations Law*, 317-337.

36 *Ibid.*

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> mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.[37]

Inspired by the above definition, the Special Rapporteur has concluded that the right to food entails:

> The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.[38]

The Human Rights Council at its 40th meeting while stressing on the importance of the right to food observed that 'the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, so as to be fully develop and maintain his or her physical and mental capacities.'[39] The Food and Agriculture Organization of the United Nations in its Guidelines said in a more comprehensive form:

> Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilization.[40]

37 United Nations Economic and Social Council, General Comment 12 on Article 11 of the International Covenant on Economic, Social and Cultural Rights. E/C/12/1999/5 (General Comments). Para 6.

38 See the Background note presented by the Special Rapporteur on the Right to Food, 2 May 2008, online: <http://www.2.ohchr.org/english/issues/food/index.htm> accessed 18 November 2011.

39 Human Right Council 'The Right to Food', online: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_14.pdf accessed 18 November 2011. See also, para 34 of the Vienna Declaration and Programme of Action adopted at the Vienna World Conference on Human Rights of 14-25 June 1993 (UN. Doc. A/CONF. 157/23, 12 July 1993).

40 See FAO 'Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security' adopted by the 127th Session of the FAO Council, November 2004, para 15.

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From the above exposition of what right to food entails, it is very obvious that the realization of the right to food involves: access or availability, right to means of its procurement and stability of its supply. However, the fulfilment of these requirements in the realization of the right to food involves multiple of actors - the right-holder, those who can jeopardize the procurement of food and the role of the state in this respect. The identification of the right holder poses no problem since every human being can be regarded as a right holder in the circumstance because everyone relies on food for survival. The major problem is ensuring their fulfillment and the role of the state in such respect.[41]

This suggests that a state is under obligation to ensure that the activities within its territories do not unnecessarily deny the people of the right of access to food.[42] The state has three types of obligations, that is, to respect, protect and to fulfil.[43] These obligations were defined in General Comment 12 by the Committee on ESCR[44] The right to food suggests that governments must not take measures that result in escalating levels of hunger, food insecurity and malnutrition. It also means that governments must protect people from the actions of powerful others that might infringe the right to food. "Powerful others" may refer to transnational corporation, for example, whose operations pose a threat to people in the realization of the right to food. The state is morally, or, even may be legally bound, to control and regulate these corporate entities to ensure that their activities do not unduly restrict the right of the people to food. This is more so where the

41 See David Kesmodel, Laurent Etter and Aaron O. Patrick, 'Grain Companies Profits Soar As Global Food Crisis Mounts', (2008) The Wall Street Journal, 1-14.

42 This is in line with paragraph 10 of the General Comments 12 which defied *Free from adverse substances to means* 'sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins'.

43 Para 15 it states that: '[T]he right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to *respect*, to *protect* and to *fulfil*. In turn, the obligation to *fulfil* incorporates both an obligation to *facilitate* and an obligation to *provide*. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that results in preventing such access. The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters.'

44 See generally the provision of para 14 of the General Comments 12 n. 3.

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(potentially) affected group are indigenous people who rely heavily on their environment and environmental resources for food and livelihood.

States must also, to the maximum of available resources, invest in the eradication of hunger. The question for determination now is, considering the activities of the oil industries in the Niger Delta, is the right of the people to have access to food adequately secured? The indigenous people of the Niger Delta[45] depend heavily on fishing, farming and other local profitable activities for food and source of income.[46] Oil spills from the activities of oil companies operating in the region have hindered the inhabitants' access to food as land fertility is negatively affected.[47] The African Commission on Human Rights in response to a case filed by the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights on behalf of Ogoni people noted:[48]

> Despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of the Ogoniland. Contrary to its Charter obligation and despite such internationally established principles, the Nigerian Government has given the green light to private actors and the oil companies in particular, to devastatingly affect the wellbeing of the Ogonis.

The above view of the African Commission is a testimony to the fact

45 For a discussion on the Niger Delta people as indigenous people, see Rhuks Ako and Olubayo Oluduro, 'Identifying Beneficiaries of the UN Indigenous Peoples Partnership (UNIPP): The Case for the Indigenes of Nigeria's Delta Region', (2014) 22 *African Journal of Comparative and International Law* 3, 369–398

46 Dan Agbese, 'The Curse of Oil' Newswatch Magazine (Nigeria), vol. 17,1993, 8; Chinedu C. 'What NDDC is doing in Nigeria Delta is window dressing', vol 2, no 363, Daily Sun Newspapers (Nigeria), November 4 2004, 21.

47 Julius Ihonvbere, 'The State and Environmental Degradation in Nigeria: A study of the 1988 toxic waste dump in Koko', (1994) 23 *Journal of Environmental Systems* 3, 207-227; Barbara Johnston, 'Environmental Degradation and Human Rights Abuse,' in Barbara Johnston (ed.), *Who Pays the Price? The Sociocultural Context of Environmental Crisis* (Covelo, CA: Island Press, 1994), 7-15. Also, Geoffrey Anoliefo, Omoanghe Isikhuemhen, and NR Ochije, 'Environmental Implications of the Erosion of Cultural Taboo Practices in Akwa-South Local Government Area of Anambra State, Nigeria: Forest, Trees, and Water Resources Preservation' (2003) 16 *Journal of Agricultural and Environmental Ethics* 281, 289-293.

48 African Commission on Human and Peoples' Rights, Decision on Communication of the Social and Economic Rights Action Centre and the Centre for Economic and Social Rights/ Nigeria (155/96), decision made at the 30th ordinary session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001.

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that environmental problems in the Niger Delta has affected the rights of the people and that the Nigerian Government has failed in its responsibility to ensure a sustainable oil exploitation. For instance, when spill occurs, spreading immediately follows and the resultant impact of such spreading is destruction of vegetation area and contamination of land, which is a major source of food and means of food.

4. CONCLUSION

This chapter examined the impact of oil pollution on agriculture and the right of access to food in the Niger Delta, where multinational oil companies have operated for decades. The people of the Niger Delta have seen their human rights undermined by oil companies. They have been systematically denied access to food through deprivation to their major source of livelihood, which is agriculture. For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall wellbeing and development. According to UNDP, more than 60 per cent of the people in the region depend on the natural environment for their livelihood. For many, the environmental resource base, which they use for agriculture, fishing and the collection of forest products, is their principal or sole source of food. It is true that the right to food is a social-economic right and as such it is not enforceable. However, in the context of this paper, the right to food does not imply the government must provide free food to its people. It only imposes obligation on the government to ensure food security through the protection against activities likely to hinder the realization of the right to food such as environmental pollution.

Therefore, there is a positive obligation imposed on the Government of Nigeria to ensure food security. This obligation requires the government to control and punish activities likely to affect food source. It is on this premise that the author recommends absolute liability as a panacea to deter polluters from desecrating the environment and violating human rights.

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