Climate Change Impacts on Human Rights in Niger Delta, Nigeria: A Jurisprudential Discourse

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Abstract

The Intergovernmental Panel on Climate Change (IPCC) recently observed that the trend in global warming will increase the number of people suffering from various disease, hunger, malnutrition and several other ills. True to that, the violent changes in climate have started interfering with the enjoyment of certain human rights in Nigeria. In Niger Delta area of Nigeria, gas flaring and oil spillage have indeed affected the weather thereby shortened the growing season and reduced if not totally exterminated crop production and corporation that are triggered by climate change. Human Rights Law places a far larger duties on the state the duties defined and limited by the law itself, notwithstanding, they do not require state to respond to every threat of climate change to human rights wherever it arises. However, climate change gives rise to legal duties under international human rights law, thus perceiving climate changes as a threat to human rights. This paper seeks to examine the nexus between human existence and the changes in the climate, the associated problems in the Niger Delta, Nigeria and the legal remedies available in such circumstances. An analytical research method was used; issues were raised on the rights of every being to live under a conducive atmosphere and the remedy thereto if same is breached. In conclusion, the paper recommends the passage of a model law to punish any human act which may aggravate the negative changes the world is experiencing or which may catalyzed the natural climate wrongly.

Introduction

The discourse on climate change and its adverse effect on both human being and the environment are of universal concern. The progress made globally in diagnostics and therapeutics exercise on human activities affecting the environment through academic conferences, seminars and works have resulted in the awareness on the sources, the effects inherent in the climate-change, and the effect on the survival of human race on earth. In response to climate change, governments have traditionally approached it as an ecological problem or more recently, as an economic one. To date the social and human rights implications of climate change have received little attention. Notwithstanding, the costs of climate change directly threatened the fundamental human rights to life, food,

shelter, conducive environment, which governments have an obligation to protect as rightly observed by Kyung-wha kang[1]

Global warming and extreme weather condition may have calamitous consequences for human rights of millions of people...ultimately climate change may affect the very right to life of various individuals...[countries] have an obligation to prevent and address some of the direst consequences that climate change may reap on human rights.

Various[2] normative frameworks have been employed to think about climate change. Analysts adopted the perspective of cost-benefit to examine climate change and the perspective of climate change within the purview of its impact on human security[3].

Since the discovery of crude oil on a commercial scale in Niger Delta by Shell D'arcy which later became shell BP, the region has had no respite from the oil prospecting and exploration activities of several multinational oil companies on land and in water. The region, as the treasures belt of the country accounts for about 90% of the national wealth yet, it is subjected to despicable criminal and human rights violation neglect resulting in massive environmental degradation, impoverishment of the people and the environment culminating in the collapse of their traditional economy. The result of this climatic change has been the massive hunger, threat to lives (health) and property and unemployment of otherwise able-bodied youth who, due to frustration tend to restiveness and human rights violence[4]. Similarly oil spillage resulting from the excavation by the Multinational Corporation is having serious devastating effects on ecosystem of

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[1] Kyung-wha kang is the Deputy High Commissioner for Human Right in the Office of the Nation High Commissioner for Human Right (OHCHR) quoted in; Sara Aminzadeh; A Moral Imperatives: the Human Rights Implications of Climate Change(2007) Hasting International and Comparative Law Journal Vol. 30, P 231

[2] Nicholas S. The Economics of Climate Change: the Stern Review, (Cambridge University Press, Cambridge, 2007). For instance; Nicholas review provides a good example of this approach. The review proceeds by comparing the costs and the benefits associated with climate change with the costs and any benefits of a programme for combating climate change. On this basis it argues that an aggressive policy of mitigation and adaptation is justified. Whereas the costs of combating climate change, according to Stern, are quite low, the costs of 'business of usual' would be considerable.

[3] The characterization of human security is contained in the United Nation Development Programme Human Development Report 1994: New Dimensions of Human Security (Oxford University Press, Oxford, 1994) PP 24-25. It is argued that human security comprises economic security, food security, health security, environmental security, personal security, community security and political security.

[4] Amos A. U, The Politics of Resource Control Case in Nigeria, Nigerian Journal of Legislation (2006) 2, pp27-28

the people of Niger Delta, the farm land destroyed. This is a substantial violation of the peoples' rights resulting from climate change[5].

Going by the economic and security based approach; climate change may trigger some level of insecurity economically. There may be tensions over scarce resources; lost land; border disputes; conflicts over energy sources; conflict prompted by migration; and tensions between those whose emissions caused climate change and those who will suffer the consequences of climate change. In addition to the economic approach and security based approach, some adopt a third different perspective, according to which the natural world has intrinsic value. This ecological approach condemns human-induced climate change because it is an instance of humanity's domination and destruction of the natural world[6].

Unfortunately however, most of the hues and hays on climate change have failed to address the link between climate change, fundamental human rights and the existence of human being especially, those that are directly affected in Nigeria, the Niger Deltans. Therefore, this paper examined the impact of climate change on human rights in Nigeria. The nexus between climate change and human rights were examined and the legal solutions thereto if same is breached were also discussed.

Climate Change as a Universal Problem

International awareness of the nexus between human rights and climate change has expanded considerably since conservation of the environment became a matter of national and international concern some two decades after human rights emerged on the international agenda. The international community has adopted a considerable array of international legal instruments, and created specialized organs and agencies at the global and regional levels to respond to identified problems in human rights and environmental protection, although often addressing the two topics in isolation from one another[7].

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[5] See the cases of *Shell v. Tiebo VII, 1996] 4 NWLR (Pt 445) 657 and Shell v. Isaiah, [1997] 6 NWLR (Pt 508) 236*, The defendants in the cases claimed compensation for the operation of oil companies in their local communities, resulting from oil spillage which affected the indigenous communities in loss of income from fishing and farming, pollution of drinking water, damage to farmlands and crops, and damage to health as a result of water-borne diseases.

[6] Karen O'Brien; Are we Missing the Point? Global Environmental Change as an Issue of Human Security', (2006) Journal of Global Environmental Change; l (16) No.1 PP. 1-3.

[7] See, e.g., Universal Declaration of Human Rights, Pmbl, art. 29; International Covenants on Economic, Social and Cultural Rights, (16 Dec. 1966), 993 U.N.T.S.3, pmbl (the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant☺, art. 5

The various analyses have helped to demonstrate the possibility of a rights-based approach to climate change and the environmental protection also offer some benefits to law and may serve as a foundation for public policies that conserve and protect the resource base and ecological processes on which all life depends[8]. There are historical precedents for applying human rights to evaluate climate change. As was held in the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment declares:

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

It important to note also that on 14 November, 2007 at a conference of AOSIS members, the Male' Declaration on Human Dimension of Global Climate Change was adopted [9]. The declaration invoked the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights and it expressed concern that:

> Climate change has clear and immediate implications for the full enjoyment of human rights including *inter alia* the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.

The Human Rights Council of the United Nations has since passed a resolution which found that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights[10]. The European Court of Human Rights recently clarified these obligations when it had to address the question as to whether and when deaths caused by a man-made or natural disaster can amount to a human rights violation by the state, thus obliging it to compensate the survivors. The Court's case law allows us to conclude that failing to take feasible measures that would have prevented or mitigated the consequences of foreseeable disasters

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[8] Michael L. A., on Dutsclike M, Climate Policy and Development: Flexible Instruments and Developing Countries. (Edward Elgar, 2000) p8

[9] Male' Declaration on the Human Dimension of Global Climate Change, adopted (November 14, 2007, available at www.ciel.org/Publication/Male_Declaration_Nov7 accessed on 4/9/11

[10] United Nations Human Rights Council Resolution 7/23, *in* U.N. Human Rights Council, *Report of the Human Rights Council on Its Seventh Session* 65-66 1, U.N. Doc. A/HRC/7/78 (July 14, 2008). This was agreed at the seventh session of the Human Rights Council on 26 March 2008 (A/HRC/7/L.21/Rev.1).

amounts to a violation of the right to life and therefore incurs the responsibility of the state under international law[11].

It has been conceived from the point of view of the climate change impacts on indigenous people that human security is highly threatened. Human security which is a people-centered notion of security, seeks to integrate the various determinants of well-being that climate change interfere with. These include economic, food, health, environmental, personal, community and political security. Risks to human security resulting from climate change can be classified in terms of acute risks from sudden disruptions such as natural disasters and chronic threats, such as disease, hunger and conflict. Thus, human security is complementary to the more conventional formulation of security of life, health and property and which one can neither be achieved without the other. In fact, human security is a unifying concept that bridges notions of security at all levels, and climate change will leave its imprint on these conditions[12]. In fragile communities, such changes will aggravate the living condition of the people and their livelihood[13].

Therefore, human security offers a valuable lens through which to examine the impacts of climate change as it affect human rights, and to integrate the climate change and development agendas for the protection of the rights. Both the sudden-onset disasters and gradual systemic changes that are anticipated in a warmer climate will impact on the world, developing countries, the children, and the elderly of these areas[14]. UN Secretary- General Ban Ki-moon recently cited four key risks to human security from climate change: political instability, economic weakness, food insecurity and large-scale migration. Risks in these areas will result in a wide range of adverse outcomes for children, including increased child mortality, under nutrition and loss of education. Thus, human security is a goal common to the international climate and development communities.[15] The interference with the goal directly affects the human rights to life, security, health and property.

Many of the world's poorest countries and communities will be increasingly challenged by a double-edged threat; that of climate change and

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[11] Two judgments of the European Court of Human Rights, the Öneryildiz case; European Court of Human Rights, Öneryildiz v. Turkey, Application 48939/99, judgment of 30 November 2004 and the Budayeva case European Court of Human Rights, Budayeva and others v. Russia, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008, are particularly relevant.

[12] Climate Change and Children: A human Security Challenge; Policy Review Paper UNICEF Innocent Research Centre in cooperation with UNICEF Programme Division. The United Nations Children's Fund (UNICEF) November 2008. P 3; www.unicef-irc.org accessed on 18/08/2010

[13] Halweil B. the *Irony of Climate Change, World Watch Magazine April 2005 18-23*

[14] ibid

[15] Climate Change and Children: A human Security Challenge;

violent conflict. Current trends indicate a heightened risk that climate change will exacerbate violent conflict in volatile regions. Conversely, conflict is known to render communities poorer, less resilient and less able to cope with the consequences of climate change[16].

An examination of a wide range of communities around the world reveals that human exploitation of the climate for economic gains has caused significant damages to the environment and thus violates the certain rights of the people, notwithstanding the economic benefits.[17] Any group of people that have their environment manipulated negatively according to Rener Francis O[18]have both their

> ...resistance capacity and defensive interest extremely weak. These groups not only depend on marginal lands for subsistence, but they are also socially, economically and politically disenfranchised. They are often too powerless to struggle for the preservation of natural systems upon which their livelihood and survival rest.

An Analytical Concept of Human Rights and Change in Climate

A strong starting point for conceptualizing the connection between climate change and human rights is to focus on the plethora of rights that will be impacted adversely by climate change. The U.N. Human Rights Council resolution and the Office of the High Commissioner on Human Right, (OHCHR) study emphasize how climate change will negatively impact (and already is negatively impacting) the enjoyment of specific human rights in many countries around the world, with the starkest examples emerging in small island and low-

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[16] Ibid. It is estimated that there are 46 countries – home to 2.7 billion people – in which the effects of climate change interacting with economic, social and political problems will compound an already high risk of violent conflict.

[17] Adeola Francis O., Environmental Contamination: Public Hygiene and Human Health Concern in Third World the Case of Nigerian Environmentalism, (1996) Journal of Environment and Behaviour, 28(5), 214-246 at P

[18] Rener Francis O., Fishing for Survival: Environmental Decline, Social Conflict and New Age Insecurity (New York, W.W. Norton Company, 1996) P 55. Note that currently a significant number of indigenous groups in North America (Native Americans), Australia, Brazil, Malaysia and Niger Delta in Nigeria are facing a serious threat to of massive climate change (environmental degradation) by resource excavation of Multinational Corporations supported by national government. Recently social scientists have discussed how authoritarian governments, dictatorships, human rights violation and other variants of despotism endemic in the Third World have obstructed the growth and proliferation of grassroots environmental justice movement in the world. See Adeola; Environmental Contamination: Public Hygiene and Human Health Concern in Third World the Case of Nigerian Environmentalism ibid P. 616

lying states and areas at risk for increased desertification and drought[19]. These include the right to life, food, water, health, housing, and self determination; they may also include rights under threat because of climate change-related conflict or displacement. The impacts will also affect the rights of certain vulnerable groups disproportionately, with factors such as poverty, gender, age, indigenous or minority status, and disability reinforcing the disparate impacts.

Framework Convention on Climate Change articulates how states parties must work for the "benefit" of future generations Adeola Francis O., Environmental Contamination: Public Hygiene and Human Health Concern in Third World the Case of Nigerian Environmentalism, (1996) Journal of Environment and Behaviour, 28(5), 214-246 at P: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities[20]."

This preposition derives legality from the fact that human rights impacted by climate change have been recognized in many international instruments including: Universal Declaration on Human rights, 1948, (UDHR), the International Covenant on Civil and Political Rights, 1976, (ICCPR) the International Convention on Economic, Social and Cultural Rights, 1976, (ICESCR), the Convention on the Right of the Child, 1987, (CRC), the Convention on the Elimination of All Forms of Discrimination Against Woman (ICEDAW), the Convention in the Elimination of Racial Discrimination, (CERD) the African Charter on Human and Peoples' Rights, 1981, (ACHPR)[21]. The Nigerian Constitution, 1999, provides that; *the state shall protect and improve the environment and safeguard water, air and land, forest and wild life of Nigeria*[22].

These declarations and conventions exemplify how international law has embraced the principle of protecting future generations. Domestic law from a variety of countries also enshrines this respect for the needs of future generations. Some nations have already included protections in their constitutions. The Norwegian Constitution states:

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[19] See generally, Brown O, and Crawford A., Natural Disaster and Resource Rights-Building Resilience, Rebuilding Lives, (International Institute for Sustainable Development Agency Survey, 2006)

[20] UN Framework Convention on Climate Change Article 3(1), *opened for signature* May 9, 1992, U.N. Doc. A/AC.237/18 (Part II) (Add. 1), 31 I.L.M. 848

[21] Centre For International Environmental Law (CIEL), Human Rights and Climate Change, (Friedrich-Elbet Stiftung, Geneva, 2009) available at http://www.unicef.org/publication/file/climate_and_child accessed on January 11, 2011, pp 444-445

[22] See Section 20 of the Nigerian Constitution 1999, section 17(3) thereof directs the state to ensure security of means of livelihood, health safety and medical care.

> Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well[23].

In June 2007, the Prime Minister of Tuvalu noted that, because Tuvalu's very existence is at great risk because of rising oceans, climate change presents an unprecedented threat to Tuvalu's "fundamental rights to nationality and statehood, as constituted under the Universal Declaration of Human Rights and other international conventions[24]." In November, 2007, the representatives of the Small Island Developing States met in Malé and issued a Declaration on the Human Dimension of Global Climate Change, expressing concern "that climate change has clear and immediate implications for the full enjoyment of human rights[25].

When one considers the well-established fundamental human rights to which there is now almost universal agreement, one must wonder why the consideration of climate change in a human rights context has taken so long, particularly since the application of human rights principles will aid significantly in combating climate change[26].

International law enshrines certain fundamental human rights, beginning with those set forth in the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948. An elaboration of other human rights has been set forth in later human rights treaties. Those having most relevance to climate change are the International Covenant on Civil and Political

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[23] Constitution (1967, as amended 2002), Article 7. http://pdba.geogetown.edu/Constitution/Bolivia

[24] Apisai Ielemia, "A Threat to Our Human Rights: Tuvalu's Perspective on Climate Change," June 2007 (http://findarticles.com/p/articles/mi_m1309/is_2_44/ai_n27399052/pring?tag=artBody;col1)

[25] Ross C. "Rocky" Anderson; Combating Climate Change: A Human Rights Imperative; (2008) High Road for Human Rights Advocacy Project International Human Rights Funders Group New York City, P. 7 see Malé Declaration on the Human Dimension of Global Climate Change, Adopted November 14, 2007

[26] The paucity of rights-specific information is not, of course, merely a *cause* of the negligible analysis of the human rights dimensions of climate change, it is also a *consequence*. Given their salience to the main themes discussed in the IPCC's fourth assessment report, for example it is remarkable that human rights are scarcely signaled in almost 3,000 pages of analysis. Since the IPCC reports are essentially literature reviews, the shortage of rights references no doubt indicates a mere vacuum in the literature rather than any conclusion, bias or failing on the part of the IPCC authors. That vacuum says as much about an absence of interest in climate change among human rights professionals to date as vice versa." See Climate Change and Human Rights: A Rough Guide ibid, P. 3.

Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child.

Climate change is having, and will continuously have a very serious adverse effect on human life, both directly and indirectly. Indeed, this may have a significant impact on the right to life than any other guaranteed right in history. The effects may also appear more gradually, as with adverse impacts on agriculture and water resources, and the spread of vector-borne diseases.

These effects of climate change implicate other expressly guaranteed human rights, such as the right to adequate food under several international treaties, including the International Covenant on Economic, Social and Cultural Rights, where the state parties recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing," and that additional steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition[27].

There is little doubt that climate change will detrimentally affect the right to food in a significant way. Regional food production is likely to decline because of increased temperatures accelerating grain sterility; shift in rainfall patterns rendering previously productive land infertile; accelerating erosion; desertification and reducing crop and livestock yields; rising sea levels making coastal land unusable and causing fish species to migrate; and an increase in the frequency of extreme weather events disrupting agriculture.[28]

Climate change equally impacts the public health, which is guaranteed as a basic human right. The Universal Declaration of Human Rights provides that "everyone has the right to a standard adequate for the health and well-being of himself and his family.[29] Similarly, the Convention on the Rights of the Child provides that state parties must ensure that every child enjoys the "highest attainable standard of health.[30]

Rights Affected by Climate Change

Everyone has a right to live comfortably in his/her environment. Moreso, an average human being uses what he finds in his immediate environment as a means of survival and where he finds nothing or inadequate resources, he attempts to create one by exploring and exploiting the environment. Examples of such activities include digging the soil to get a well of water, cutting of trees in the forest to make firewood's, furniture's, or charcoal for cooking. The

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[27] Article 11(1) & (2), International Covenant on Economic, Social and Cultural Rights

[28] Alan D. and Graeme P., Heating Up the Planet: Climate Change and Security (Lowy Institute Paper 12, 2006), at pp. 30-31 http://www.lowyinstitute.org/Publication.asp?pid=391

[29] Article 25, Universal Declaration of Human Rights; See also Article 12(a) of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right of everyone to "the enjoyment of the highest standard of physical and mental health.

[30] Article 24, Convention on the Rights of the Child

dominions that human beings exercise on their environment are also environmental rights.

However, when human beings explore and exploit the environment, they create problem for the environment and leave themselves and fellow humans living in the same environment vulnerable to danger and the side effects of their actions. The industrial activities of multinational companies in Oil prospecting area of the Niger Delta has tampered with the rights of the indigenous community's comfortable living. The land and sea are serious affected by gas flaring, oil spillage and flood thereby constituting great threat to their sustenance through farming and fishing. Hence, there is a need to protect the lives of everyone living in the environment from dangers that can be averted. It is now pertinent at this juncture to examine some of the rights that peoples in the Niger Delta of Nigeria are entitled to.

a) Right to life

Virtually all treaties provide that everyone has the right to life.[31] It is clear that this right involves at least a prohibition on the state not to take life intentionally or negligently. Thus, in extreme cases, the right might be invoked by individuals to obtain compensation where death resulted from some environmental disaster, like Bhopal or Chernobyl,[32] in so far as the state is responsible. A more difficult question is whether the right goes beyond a mere prohibition not to take life and may also involve some positive obligation on the state to take steps which would prevent a reduction in, or promote, life expectancy, for example by the provision of better drinking water or less polluted air.[33]

The Human Rights Committee has taken the view that the right to life in the covenant does involve states taking positive measures and that it would in particular be desirable for states to take all possible measures to reduce infant mortality and to raise life expectancy. In spite of the apparent potential for invoking the right to life to improve the environment, only two cases are known to have been brought under the complaints of the machinery of the treaties[34].

First, under the Covenant, a group of Canadian citizens alleged that the storage of radioactive waste near their homes threatened the right to life of present and future generations in the area. The Human Rights Committee, while acknowledging that the case raised serious issues with regards to the obligation of States parties to protect human life, declared the application inadmissible for non-exhaustion of domestic remedies.[35]

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[31] See for example, article 2 of the European Convention; Article 4 of the American Convention and Article 6 of the International Covenant on Civil and Political Rights.
[32] See Mc Goldrick, The Human Rights Committee (Oxford, 1991), 329-330.
[33] Ibid, p 327
[34] ibid
[35] Communication No. 67/1980, EHP v. Canada,2 Selected Decisions of the Human Rights Committee (1990), 20

Secondly, under the European Convention on Human Rights it was claimed that nuclear tests and the disposal of radioactive waste in the sea were contrary to the right to life contained in Article 2. The Commission rejected the case as manifestly ill-founded, there being no appearance of a violation of the Convention on the facts of the case. Although brought against the Federal Republic of Germany, it seems that the complaint was really aimed at the United States (which was not a party to the Convention) and the United Kingdom (which at that time had not accepted the right of individual petition).[36]

In *Shriram case*[37] the Supreme Court of India found a violation of the right to life where an escape of Oleum gas led to immediate injury, thus having a direct effect upon the lives of those exposed. To sum up, therefore, while the right to life appears to have some potential application to the environmental field, it has not yet been successfully invoked under the machinery for individual complaints provided for by the treaties but remain the sole responsibility of the national law and court.

The right to life in the Niger Delta and other indigenous people is clearly not respected. The impact of climate change on the people of Niger Delta is evidenced in the oil related cases of *Shell v Tiebo and Shell v Isaiah*[38] filed in the Nigerian court alleging pollution from oil exploration, loss of income, loss of property, contamination of drinking water leading to water borne diseases. However the courts in their various judgments abstained from giving orders for the remediation of damages done to the physical environment, i.e. the water and the land[39].

The Niger Delta is characterized by porous sandy soil, dense mangrove swamps and a network of creeks. The traditional economic activities of the people of the region centre on fishing and fish farming, farming, palm oil production and canoe construction and this is base on their inherent riparian human proprietary rights to life, health and property in the sea and rivers adjoining their land. Indeed, it has been held that coastal dwellers are entitled to the accretions made to land fronting the sea in the case of *A-G. v John Holt*.[40]

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[36] See Fawcett, The Application of the European Convention on Human Rights (2nd ed., Oxford 1987), 37. It has not proved possible to locate the original report of this case as the reference in Fawcett appears to be incorrect.

[37] M.C. Mehta v. Union of India AIR (1986) 2 SCC 176

[38] See the cases of Shell v. Tiebo VII, (1996) 4 NWLR (Pt 445) 657, Shell v. Isaiah (1997) 6 NWLR (Pt 508) 236, the cases are premised on claims for compensation from the operators of oil companies in their local communities, for loss of income from fishing and farming, pollution of drinking water, damage to farmlands and crops, and damage to health as a result of water-borne diseases.

[39] Ebeku, K., Judicial Attitudes to Redress for Oil Related Environmental Damage in Nigeria, (2003) RECIEL 12(2) 199-208 at p. 201

[40] (1915) 2 NLR57

It is not an overstatement that virtually all the rights provided under the Nigerian Constitution suffers disregard in the heat of the imbroglio. The right to life in the Niger Delta is threatened by the activities of the Multinational companies in the areas. If truly, adage that health is wealth is to be given positive response, then right to life cannot sustain in an environment where environmental degradation has become the order of the day.

b) The right to information

If democracy is to flourish, citizens must be well-informed. The right to freedom of expression and its corollary, the freedom to receive information, are fundamental rights recognized in most international human rights documents. Citizens need information about their government in order to hold it accountable but also need government to facilitate dissemination of information about the private sector. Such information is essential if individuals are to be able to participate in decision-making and to have any role in monitoring government and private sector activities.[41]

What is the scope of such a right? A right to information is perhaps best seen as a cluster of rights. In this context it must include the right to be informed about environmental compatibility of products, manufacturing processes, industrial installations and their effect on the environment. What sort of corresponding duties would it impose on the state? As suggested a duty of non-interference will not be sufficient. A broader, more positive obligation on government to release information about projects and to compile information about private sector activities will also be vital. These requirements could take the form of licensing or environmental impact assessments.[42]

The most important source of the right to information is the Directive on Freedom of Access to Environmental Information, enacted in June 1990. For some time, there had been a desire among some officials of the European Parliament and Commission, to increase information on community environmental policy and to involve community citizens and public interest groups more directly in the protection of the environment. It has been suggested that this Directive guarantees freedom of access to information in the sense of a human right. Article 10 of the European Convention gives everyone the right to freedom of expression. This includes the freedom to receive information.[43]

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[41] Towards Sustainability- A European Community Programme of Policy and action in relation to the environment and sustainable development, (OJ C 138/5 17 May 1993).

[42] See Kramer, Focus on European Environmental Law (London, 1992), 291.

[43] Kramer writes that this Directive owes its existence to ideas of basic freedom but is uncertain whether it will really constitute a step towards a more open society in the community. A key component of an effective right of access is that persons seeking information do not have to display any particular interest. According to article 3(1) of the Directive, it require member states to ensure that public authorities make information about the environment available to any person on request, without the requirement of proving a legal interest, or explanation.

The various development Commissions established by various Acts[44] of the Nigerian National Assembly to "Conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development of the Niger delta areas in the field of transportation, including roads, jetties and waterways, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunication, have been more of playing politics with the hopes and aspirations of the people of the Niger delta. Over the years, there has been lack of adequate information on the capacity to match political will with the desired level of funding of such commissions such that will usher in development to the region[45].

The question is whether this provision above cited gives an individual the right to require the state to provide him/her with particular information (including information relevant to environmental decision-making). The Niger Delta affected with this climatic change from oil spillage and gas flaring, deserves to know of any government policy to ameliorate their suffering and it is the absence of this adequate information that resulted in militancy (MOSOP, MEND etc). Not surprisingly perhaps, neither the Nigerian Courts nor the European Court nor the European Commission[46] has been prepared to adequately deal with the claims of human right violation committed against them.

However, the possible suggestion is to realize that the development of the environment is not only in the hands of the government alone but require the collective effort of both the government and the citizens. Therefore since decision as to the operation of the Multinational companies in the oil prospection and expropriation of natural resources pose an adverse effect on the entire environment, justice therefore demand that the society (Niger Delta Communities) which is likely to be affected be informed of the risk and how to control same.

c) Right of Participation and Consultation

Rights to information are vital but not sufficient. It is only through playing a role in the shaping of measures that individual interest may be fully addressed. The amnesty programme and training of Militant by government appears to be a direction towards protecting the rights of Niger Delta indigenes against the denial of participation and consultation on the impact of climate change in the area. Environmental interest groups do have some part to play in

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[44] Examples are, the oil Mineral producing Areas development commission Act 1998 No 41 (the OMPADEC Act) and the Niger Delta Development Commission Act 200 No 6 (the NDDC Act)

[45] Amos A. U, The Politics of Resource Control Case in Nigeria, Nigerian Journal of Legislation (2006) 2, p. 29

[46] Article 10 goes so far as to require the state to provide the individual with any particular information which he/she may request. Probably with the passage of freedom of information Bill into law thing might change. One cannot but also comment the Federal Government initiative in granting amnesty to the Niger Delta Militants, but more effort is still required to ameliorate the effect of climate change on the people

the formulation of environmental policy by way, for example, of lobbying, proposals for legislation, and questions for the European Parliament.[47]

The pervading misery of the region lends support to the fact that there is need to ensure the indigenous rights to participation and consultation in the affair of the nation. Thus, the demand by the Niger Delta people for resource control as it is quite clear that the collectivization of the natural resources[48] of the minority coastal communities into a national commonwealth has not been able to address satisfactorily the issue of environment development of the Niger Delta from the effect of climate change. In view of the fact that in a democracy, the majority often controls the bureaucracy of state, the interest of the majority.

Given the problems involved in defining a substantive environmental right, it might seem preferable to abandon this notion altogether and concentrate on procedural or participatory rights as earlier noted. The procedural dimensions of an environmental right by ensuring participation in the democratic process can provide access to justice in a way that standard domestic regulation or tort law cannot. Such an approach also seeks to ensure that those who have to live with the consequences of environmental degradation will be able to have a say in how, if and when it should occur, by guaranteeing them certain rights to information, participation and review of environmental regulation.

To avoid certain problems in an attempt to set standards in the subjective legal value judgment, it is imperative to be liberal especially on issue of environmental. Even if the introduction of such rights cannot dictate the desired result, it may have other legal effects, such as a liberalization of the standing rules or a shifting of the burden of proof onto those whose action may damage the environment. Such approach may also have ripple like effects, such as stimulating political action and debate on environmental issues.[49]

Many writers have seen participation as vital to the flourishing of democracy.[50] Kelsen's view is typical: 'political freedom, that is, freedom under social order, is self-determination of the individual by participation in the creation of social order.[51] It is certainly the case that an uninformed and

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[47] See Cameron, Group Action on a European level, In Fuhr and Roller (eds.), participation and litigation rights of environmental association in Europe (Frankfurt am Main: Peter Lang, 1991), 141.

[48] Attorney general Abia State and 35 other v Attorney General of the Federation (2002) 6 NWLR (pt 764) 542

[49] See for example, Pateman, Participation and Democratic Theory (Cambridge, 1970), who, at 43, writes that for a democratic polity to exist it is necessary for a participatory society to exist. See also Birch, The Concepts and Theories of Modern Democracy (Rutledge, 1993), 80-94 and Harlow, in Law, Legitimacy and Constitution, McAuslan and McEldowney (eds.) (Sweet and Maxwell, 1985), 77-81, for views on participatory democracy.

[50] See Kelsen, General Theory of Law and State (New York: Russell, 1961), 285.

[51] Ibid

uninvolved community cannot adequately protect its environment and natural resources. Principle 10 of the Rio Declaration[52] articulates the view that procedural rights are an essential part of the environmental regulation:

> Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities..... and the opportunity to participate in the decision making processes..... Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.[53]

In short, a procedural approach may be justified as attempting to provide environmental protection by way of democracy. At this juncture, one must view the government policy on Niger Delta Development Commission (NNDC) and the 13% derivation revenue allocated to Niger Delta as a means of providing cushioning programme to address the issues of climate change and human rights violation in the area. If properly implemented the right of the Niger Deltans to participate in the protection of their environment which from the Militant perspective seem neglected for long

d) The right to health

It is apposite to note that the unchecked oil spills and seepages in the Niger Delta area have resulted in incredible levels of soil water pollution in the region; the effect of which is devastating to the health and survival of the people. The cumulative effect of these activities is that ancient family craft and skill as well protective health have are lost, able-bodied youths and adults have become separated from their traditional industries and are not being engaged in the emerging or new oil industry in sufficient numbers or some are dead. This demonstrates the extent in which the right of the indigenous to health is affected and deserves protection.

Article 25 of the Universal Declaration of Human Rights states that, '*everyone has the right to a standard adequate for the health and well-being of himself and his family*"[54]. *Article* 12(a) of the International Covenants on Economic, Social and Cultural Rights recognizes the right of everyone '*to the enjoyment of the highest standard of physical and mental health*[55]'. The right to health is also referred to in a number of Articles in the Convention on the Rights of a Child[56] Article 24 thereto stipulates that state parties must ensure that every

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[52] See the Rio Declaration of 1992.
[53] Ibid
[54] See the Universal Declaration of Human Rights 1948
[55] The International Covenants on Economic, Social and Cultural Rights 1966.
[56] See the Convention on the Rights of a Child

child enjoys the '*highest attainable standard of health*'. It further stipulates that every child has the right to facilities for the treatment of illness and rehabilitation of health.[57]

Section 17 (3) (c) of the 1999 Constitution provides further that '*the health, safety and welfare of all persons are safeguarded and not endangered or abused*'.[58] It should be stressed further that similar provisions are also contained in African Charter on Human and People's Right which has been ratified by the Federal Republic of Nigeria.

Climate Change poses significant risks to the right to health. It will have many impacts on human health. It will affect the intensity of a wide range of diseases-vector-borne, water-borne, and respiratory. A study by Dan Smith and Janani Vivekananda, for example, highlights four key elements of risks- political instability, economic weakness, food insecurity and large-scale migration. The study identifies a group of 46 countries in which the effects of climate change interacting with economic, social and political problems will create a high risk of violent conflict. Second, a group of 56 countries was identified, in which the interaction of climate change and other factors create a high risk of political instability, with a potential for violent conflict in the longer term.

The Relevance of Human Rights' Responses to Climate Change

At another level, human rights may be relevant to the design and implementation of responses to climate change, whether in relation to adaptation and mitigation. From a more positive and forward-looking perspective, one may argue that human rights can usefully inform approaches to climate change in policy and legal terms. This dimension may include arguments based on human rights obligations of states under a variety of international law instruments. These range from the integration of human rights into country strategies in terms of priority entitlements to be protected from the impacts of climate change (e.g., right to health, housing, water, or food), or more procedural human rights that are relevant to the design and implementation of policies related to climate change (e.g., right to information, participation, or access to decision making)[59].

Human-right centered climate change scenario in the areas of mitigation and adaptation would have highly practical application in three instances:

- Human right language can add considerably normative traction arguments in favour of strong mitigation and adaptation policies. Human rights provide legitimate set of guiding principles for global public

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[57] ibid

[58] See the Constitution of the Federal Republic of Nigeria 1999.

[59] *Siobh´an McInerney-Lankford** Climate Change and Human Rights: An Introduction to Legal Issues, www.law.harvard-edu/student/org 15/08/2010

policy, because they are widely accepted by society and government everywhere.

- Human rights principles can strengthen the case for amending and improving relevant areas of international law. Whereas, progress on international human rights law has been incremental at best for decades. The scale of challenge climate change poses public policy will create increasing pleasure to review and reorganise international rights and duties.
- Regardless of whether relevant laws refers explicitly to human rights, the danger will remain that mitigation and adaptation policies may themselves undermine human rights, it will therefore be important to ensure that mitigation and adaptation policies take account of human rights consequences from the outset.[60]

How do we evaluate these developments and proposals? What are the advantages of using a human rights approach rather than an approach based in regulation, criminal law, or the law of tort? Looking to the advantages, several are apparent. First, a human rights approach is strong claim, a claim to an absolute entitlement theoretically immune to the lobbying and trade-offs which characterize bureaucratic decision-making. Its power lies in its ability to trump individual greed and short-term thinking.[61] A second advantage is that the procedural dimensions of an environmental rights can provide access to justice in a way that bureaucratic regulation, or tort law, simply cannot. A robust environmental right can mobilize redress where other remedies have failed.[62] This is particularly important in cases like the Asian Rare Earth litigation in Malaysia,[63] where proof of causation and other technical barriers make tort law ineffective.[64] It was also important in India context, where procedural simplicity has made environmental rights highly attractive to aggrieved parties. An environmental right may serve as the ultimate safety net to catch legitimate claims which have fallen through the procedural cracks of public and private

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[60] Climate Change and Human Rights: A Rough Guide; (2008), International Council on Human Rights Policy, Switzerland available at www.ichrp.org accessed 10/04/2010 P 21

[61] Michael Anderson, Human Rights Approaches to Environmental Protection: An Overview In Human Rights Approached to Environmental Protection. Clarendon Press Oxford, (1996) p. 21.

[62] Ibid

[63] Woon Tan Kan and 7 others v. Asian Rare Earth, Civil Suit No 02-313-92; 4 CIJ (1992) 2207, It was finally decided by the Supreme Court of Malaysia on 23 December 1993. For further discussion of this case, see Ichihara and Harding, Human Rights, the Environment and Radioactive Waste: A Study of the Asian Rare Earth Case in Malaysia, RECIEL (1995)1.

[64] Ibid

law.[65] Thirdly, a human rights approach may stimulate concomitant political activism on environmental issues. Concerned citizens and NGOs are more likely to rally around a general statement of right than a highly technical, bureaucratic regulation expressed in legalese.

Conclusions

Nearly, all global and regional human rights bodies have considered the link between environmental degradation and internationally guaranteed human rights, including the right to health. In nearly every instance, the complaints brought have been based upon a specific right to a safe and environmentally sound environment, but rather upon right to life, property, health, information, family and home life. These cases demonstrate several benefits of using one or more of the rights based approaches to environmental and health problems. First, the emphasis on rights of information, participation, and access to justice encourages an integration of democratic values and promotion of the rule of law in broad based structure of governance. Experience shows better environmental decision-making and implementation when those affected are informed and given opportunity to participate in the process. Another benefit of a rights based approach is the existence of international petition procedures that allow those harmed to bring international pressure to bear when government lack the will to prevent or halt severe pollution that threaten human health and well-being. In many instances, petitioners have been afforded redress and governments have taken measures to remedy the violation[66]. In other instances however, the problem appears to be the result of a combination of government's lack of capacity and lack of political will[67].

It is shown from the discourse that while understanding of the relationship between climate change and human rights has evolved over past the few years less focus is placed on institutional approaches in monitoring and advancing its workability.

Recommendations

Though climate change is more of science based problem, but from the foregoing discussion, it seems the solution in the light of the resultant effect is beyond science. Not only that, since it has been established in this paper that nexus exists between human existence and changes in their environment, the following recommendations are made for effective control of human

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[65] Ibid.

[66] Though most of the time after court judgment as it occurred in Shell v. Tiebo VII, (1996) 4 NWLR (Pt 445) 657

[67] As was raised in the case of Shell v. Isaiah (1997) 6 NWLR (Pt 508) 236

manipulation of the climate and its resultant negative effect on human as well as nature

- Enactment of a bill by both the National and State Assemblies against the human manipulation of nature that can result in health hazard on man or nature. Therefore, any human effort that may result in the continuing changing of climate and its resultant adverse effect should attract stiff penalties.
- Not only that, the regulation on controlling the hazardous effect of the climatic/atmospheric changes should clearly be spelt out on various headings such as mean and extreme causes focusing on man, atmosphere, biological, ecological, geographical and general scientific causes and the level of the resulting damage and both the effect and sanctions including the guiding laws should be based on this headings.
- Furthermore, Lawyers should be more vocal in leading the crusade against the exploitation of the environment. This is necessary, considering the fact that, lawyer are the acclaimed rights advocates all over the world, lending their voice to this crusade may attract global sympathy and the destruction of climate may reduce if not totally eliminated.
- It is also recommended that both local and international legislations that will provide for adequate compensation for any victim of humanly induced climatic change should be adequately pursued and implemented.
- Finally, lectures, symposia, seminars conferences and workshops on tropical issues relating to climate change and its effect on both human and nature should be encouraged.