

Oils of Injustice

NIGERIA, UPR AND THE NIGER DELTA

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Introduction

During the 4th cycle of the Universal Periodic Review (UPR), Nigeria will be amongst the countries, whose human rights records will face scrutiny by fellow member states of the United Nations in February 2009.

As part of its commitment to the new human rights protection regime in the United Nations, Nigeria has made several pledges and voluntary commitments against which her activities and conducts will be examined.

Some of these commitments pledged by Nigeria in the Note to the President of the General Assembly of the United Nations amongst others include to give full cooperation to the Human Rights Council, submit to the Universal Periodic Review Mechanism and to cooperate with treaty monitoring bodies of the council including through submission of timely periodic reports and the implementation of concluding observations and recommendations and reaffirmed its preparedness to welcome human rights inspectors , special rapporteurs and representatives to visit Nigeria in order to carry out their respective mandates without interference¹.

Internationally, Nigeria has in recent months made some progress in its human rights posture. In June 2008, the country was elected chair of the United Nations Human Rights Council, it chaired the African Regional Preparatory Meeting on the Durban Review Process in August 2008 and hosted the last session of the 44th session of the African Commission on Human and Peoples Rights.

Notwithstanding this posture of the government, the realities of human rights protection in the country remain very dismal especially in the Niger Delta.

The Niger Delta and Human Rights Challenges

At the centre of Nigeria's human rights crisis has been the treatment meted to the mosaic of distinct minority and indigenous nationalities that straddle the length and breadth of the Niger Delta River where the nation's exploration and exploitation of crude oil takes place.

The Niger Delta Region, the epicenter of oil exploitation and exploration has over twenty million in population such as the Ijaws, Ogonis, Itsekiris, Urhobos etc and has suffered

¹ See Note No.125/06 from the Permanent Mission of the Federal Republic of Nigeria to the UN to the President of General Assembly-<http://un.org/ga/60/elect/hrc/nigeria>

monumental maltreatment through political and economic marginalization, violence and environmental degradation.

The denial of basic rights and violence visited on Niger Delta communities worsened as oil became the dominant income earner for the country accounting presently for almost 85% of public revenue.

With this ascendance of oil, the political elites of the majority tribes who control power at the federal level in complicity with the oil companies began the process of enacting dubious laws aimed at transferring the wealth of the Niger Delta to their territories whilst providing weak regulatory frameworks for the companies to operate.

I. Non- recognition of Minorities and Indigenous Peoples

The Nigeria constitutional framework does not recognise minority and indigenous rights and this had thus affected the identity of and protection of Nigeria's minorities

The constitution purport to confer equality on all citizens of the country irrespective of ethnic origin, sex, religion, and political opinion and Chapter 2 of the constitution claims to create equal opportunities for all irrespective of ethnic origin.

The fundamental freedoms and human rights stated in Chapter II of the Constitution are non-justiceable thus rendering its noble objective on equality nugatory. Besides, this non-discriminatory claim of the constitution is inadequate as the constitution fails to offer a legal definition of racial discrimination in Nigeria's domestic law as required by Article 1 of ICERD. This was also poignantly observed by CERD.

The Nigerian Constitution only deals with general question of non-discrimination but does not deal with the problem of vulnerable group like the nation's minorities. There is no mention of minority and indigenous peoples' rights in the constitution.

Flowing from the above, one issue had been that of the non-recognition of minority languages. This can be observed in our naira, the national currency note stating the three majority tribes of denomination in the currency. Whilst the constitution offers preferential treatment and protection to majority languages, this is not the case with minority languages. Section 55 of the 1999 Nigeria Constitution stated that:

The business of the National Assembly shall be conducted in English, and in Hausa, Ibo and Yoruba when adequate arrangements have been made therefor.

Recommendations

- 1. Urges the Nigeria government to establish a National Minorities Commission***
- 2. Requests the government to set up a national policy for the development and promotion of all languages irrespective of the size of the ethnic or language group***

3. *Urges the government to establish a framework for the promotion of inter-cultural Education and programme*
4. *Urges the Federal Government to develop a coherent policy on the collection and disaggregation of all data to show the ethnic composition of the country which is useful for programme and policy planning and crucial for identity recognition.*

II. Militarization of the Niger Delta and Rights to Life

Right from its onset, the oil industry in Nigeria had operated under the protection of certain security arrangements requiring the Nigeria Police to send officers to the oil companies as supernumerary police or spy police. These security officers had been implicated in abuses against local community members where they operate involving crimes like torture, arbitrary arrests and detention and rape.

However, the response of the government took a new dimension in the wake of the decade long upsurge in agitations by the Niger Delta peoples. The standard response of the government had been the militarization of the area in order to crush community protests² so as to ensure the protection of oil facilities and the continued flow of crude oil. This militarization has resulted in indiscriminate arrests, torture³, rape and the extrajudicial execution of peoples in the Niger Delta⁴. This is contrary to the principles of increasing the wellbeing of the people of Niger Delta and avoidance of adverse impacts.

Recommendations

1. *Demilitarization and end the climate of impunity of military operations in the Niger Delta*
2. *Set up an independent task force to conduct Investigation into the cases of rape, torture and extra-judicial killings in the Niger Delta by military and security forces*

III. Rights to Land, Territory and Resources and the Injustices Of The 1978 Land Use Act And Petroleum Decree Of 1969

The United Nations Declaration on the Rights of Indigenous Peoples states in Article 26 that *“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. As such, they have the right to own, use, and develop and control such lands, territories and resources that they possess*

The Land Use Act and the Petroleum Decree is believed in the Niger Delta to have been enacted for the purpose of divesting the control and self-management of land and its resources

² Amnesty International Report: *Claiming rights and Resources :Injustice, Oil and Violence in Nigeria*
Amnesty International Report: *Ten years on: Injustice and violence haunt the oil Delta*

³ Paragraph 60 and 61 of OHCHR Compilation on NGO reports A/HRC/WG.6/4/NGA/3

⁴ *List of victims of Torture and Extra-Judicial Executions-A MOSOP Compilation. December 2008*

from Niger Delta peoples. The Land Use Act enables the transfer of ownership and control over land to the Federal government controlled by the political elites of the majority groups

With this arrangement, lands and backyards of Niger Delta peoples are being divided, partitioned and allocated from Lagos and Abuja in the name of oil blocks and wells without the knowledge and participation of Niger Delta peoples.

The CERD had in its concluding observations and recommendations in 2005 called on the Nigeria government TO REPEAL these two legislations and to engage communities in meaningful consultation⁵.

Recommendations

- 1. Urge the Nigeria government to repeal the 1978 Land Use Act and the 1969 Petroleum Decree in line with the 2005 concluding observations of CERD on Nigeria*
- 2. Urge the Nigeria government to ensure the effective participation of communities in the exploitation of natural resources on their lands*

IV. REFUGEE SITUATION

Following the implementation of the ruling of the International Court of Justice in the Hague in 2002, in the matter between the Federal Republic of Nigeria and the Republic of Cameroun, thousands of Indigenous Bakassi residents have been forced and displaced from their historical land into refugees.

The Green Tree Agreement⁶ in Article 3 had stated that both the Nigeria government and that of Cameroun agreed that Cameroun after the transfer of authority to it by Nigeria guarantees Nigerian Nationals living in the Bakassi Peninsula the exercise of their fundamental rights and freedom enshrined in international human rights law and in other relevant provision of international law, in particular Cameroun shall not force Nigerian Nationals living in the Bakassi Peninsula to leave the zone or to change their identity.

However, due to the hostilities and killing of some Nigerians by the Cameroon Gendarmes, no fewer than 30,000 Bakassi residents have been displaced from the disputed Bakassi Peninsula and are taking refuge in Ibaka in Akwa Ibom state and other parts of the Niger Delta in makeshift camps, very poor sanitary conditions, no proper resettlement centre, poor health care and no basic needs for these displaced persons.

Unfortunately, Nigeria has failed to properly resettle these displaced citizens of Bakassi extraction. These men and women now live like fugitives and destitute without homes.

Recommendations

⁵ paragraph 19 of the Concluding observations on Nigeria. August 2005 CERD/C/NGA/CO/18

⁶ See Agreement Between The Republic Of Cameroon And The Federal Republic Of Nigeria Concerning The Modalities Of Withdrawal And Transfer Of Authority In The Bakassi Peninsula: www.un.org/unowa/cnmc/preleas/cn_agreement

Urge the Nigeria government to take appropriate steps to resettle and provide Bakassi returnees with quality and adequate housing and to provide them with gainful employment.

V. Economic, Social and Cultural Rights

The gross underdevelopment of the Niger Delta and its criminal neglect over decades by successive Nigeria governments and chauvinistic oil exploitation has made the zone a graveyard for ESC Rights especially the rights to health, water, food, and sustainable livelihood

Apart from the incidences of torture and extrajudicial executions which have direct impact on the enjoyment of the right to life, the right to life is also related to and dependent upon a healthy and safe natural environment.

The activities of the oil companies operating in the Niger Delta such as gas flaring are affecting the integrity and wellbeing of most individuals in the Niger Delta. The gas flaring has caused life threatening diseases and unimaginable environmental hazards affecting basic rights to life, health, food, water and sustainable livelihoods.

The triple legacy of gas flaring, oil spills and effluent discharges by oil companies has been responsible for the diminishing of environmental rights.

The African Commission in Decision 155/96, had stressed amongst others that the government's treatment of the Ogoni has violated all three minimum duties of the right to food *by allowing private oil companies to destroy food sources*⁷ thereby falling short of what is expected, under the provisions of the African Charter and international human rights standards.

Recommendations

- 1. Urge the Nigeria government to stop the flaring of gases in the Niger Delta*
- 2. Requests the Nigeria government that as part of its review of the 1999 constitution, chapter 2 of the constitution should be made justiceable*
- 3. Establish an independent mechanism to conduct an environmental audit of the Niger Delta*⁸
- 4. Embark on the accelerated development of the region and create and/or expand employment opportunities for youths in the region.*
- 5. Carryout the implementation of the Report of the Technical Committee on the Niger Delta(TCND)*

VI. RIGHT TO INFORMATION AND THE FREEDOM OF INFORMATION BILL

⁷ Decision 155/96, para 66 involving *The Social and Economic Rights Action Center and the Center for Economic and Social Rights versus the Federal Republic of Nigeria*

⁸ Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, pursuant to Commission resolution 1997/53 E/CN.4/1998/62

One fundamental pillar of a free society and democracy is the ability of the citizens of the state to freely express themselves without restrictions and to be able to request for and pass on information to others in the society who may need them.

Article 19 of the ICCPR recognizes the right of citizens of a state to freedom of expression and the right to receive and impart information.

Freedom of expression and the right to information is sine-quantum for effective participation and interaction of the citizens and government in the development process. It promotes transparency and instills a sense of accountability.

The entire business of oil exploration is shrouded in secrecy and inaccessible to the public including the details of MoU between government and oil companies, detailed breakdowns⁹ of expenditures on community development, quota of oil production, oil reserves and environmental impact assessments etc.

Recommendations

Urge Nigeria government through its national assembly to pass the Freedom of Information Bill

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PROCESSES AND INSTITUTIONS

1. Lack of Adequate Civil Society Participation in Nigeria's Report

Whilst Nigeria promised to ensure consultation and cooperation with civil society groups in the draft of its report, it was observed that Nigeria did not live up its commitment. The so called national consultation process was particularly selective and only about five human rights NGOs were invited. This is grossly inadequate when considered against the background that Nigeria has more than one thousand active NGOs present.

II. Lack of Participation in the Governance Process

Whilst the issue of lack of participation in the electoral process which would have translated into the peoples' participation in the governance process is common all over the Federation, the situation in the Niger Delta is patently different.

It is in the Niger Delta that massive abuse of the electoral process and rigging of votes takes place thus effectively shunting out the people from governance by denying the people the opportunity to exercise their rights to vote and be voted for.

Recommendations

⁹ Michael J. Watts : Human Rights, Violence And The Oil Complex: Working Paper No.2

- 1. Urge the Nigeria government to embark on reform of electoral laws and the criminalisation of electoral offenders.*

III. National Human Rights Commission

The National Human Rights Commission established in September 1995 by the NHRC Act Cap.N46 with the mandate to promote and protect human rights and to ensure discharge of Nigeria's human rights obligations.

The lack of Independence of the commission and the absence of financial autonomy has greatly eroded the functions of the Commission. It is still largely under the control of the Minister of Justice and the Attorney-General of the Federation whose office had frequently interfered in the activities of the Commission as exemplified by the 2006 sacking of the Commission's Chairman following critical comments by the latter over the tenure elongation agenda of the government.

In its definition of vulnerable groups, the NHRC has also taken the same partisan position with the government by failing to recognize minority and indigenous groups as vulnerable groups. This has eroded the confidence and trust these groups would have had in the commission for the protection of their rights.

RECOMMENDATIONS

- 1. Urge the Nigeria government to embark on a review of the NHRC Act to make it independent and financially autonomous*
- 2. Urge the NHRC to establish a rapporteur on minorities and indigenous groups as it has done for other vulnerable groups such as women and children*

IV. Anti-Corruption War

One of the greatest assaults on the enjoyment of economic, social and cultural rights in Nigeria and the Niger Delta in particular has been the incidence of excessive corruption in the polity which had affected all sectors of national life.

The previous government had made some remarkable efforts in combating this malaise by launching an all-out crusade against corruption.

However, with the present regime, the war against corruption has receded. Serious interference by the executive arm of government especially the shoddy removal of the Chairman of the leading anti-corruption agency, Economic and Financial Crimes Commission (EFCC) has undermined the credibility of the agency and made the anti-corruption war a laughing stock.

RECOMMENDATIONS

Urge the Nigeria government to strengthen the EFCC by amending its Act to give the agency autonomy and transparency in the appointment of its officers¹⁰

Non implementation of International Instruments

Whilst Nigeria as part of its commitment to the international human rights community agreed to accelerate the process of full domestication of relevant international human rights conventions, this is not the case. The constitutional barrier of Section 12 of the Constitution which restricts implementation of international treaties signed by Nigeria except the treaty has been “enacted into law by the National Assembly” makes obligation under the instrument or treaty ineffective. It is more of rhetoric. The implication of this is that though Nigeria has signed and ratified several international covenants stated in the State Report, most of them which has not been passed as domestic laws are not capable of enforcement.

Recommendations

Review of Section 12 of the 1999 Constitution so that once Nigeria has signed and ratified a treaty, it can be enforced in the country

General Recommendations

1. Call on the UPR to urge Nigeria government to make human rights education part of the educational and training curriculum for schools and military training
2. Urge Nigeria government to extend a standing invitation to all special procedures mandate holders to enable them carry out their functions

Suggestions for Questions

1. *Address the continuing refusal of the government to make human rights education part of school curricula and compulsory*
2. *Nigeria is not meeting up its treaty obligations. The CERD in 2005 urged the government to complete the next census with the inclusion of indicators disaggregated by ethnicity, religion and gender on the basis of voluntary self-identification, which will make it possible to determine the situation of groups falling within the definition of article 1 of the Convention. Nigeria failed*
3. *The CERD also urged Nigeria to repeal the Land Use Act and Petroleum Decree, as they are in contravention with the convention. This is not yet done*

¹⁰ See Articles 6 & 7 of the *United Nations Convention Against Corruption*

4. *The National Human Rights Commission lacked the needed independence according to the Paris Principles. What is the government doing to guarantee the independence of the Commission?*
5. *What is the government doing about the issue of gas flaring in the Niger Delta? The deadline requested by the oil companies has expired*

Conclusion

It is our belief that the UPR provides Nigeria with the opportunity to reprieve itself of its terrible human rights records and revitalize its commitment to human rights promotion and protection whilst providing the guiding lights for others to follow. How Nigeria guarantees the human rights of its Niger Delta population of over 20 million persons is a test-case of its seriousness with the business of human rights

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