



HUMAN RIGHTS APPROACH TO ENVIRONMENTAL
PROTECTION WITH SPECIAL REFERENCE TO THE
NIGER DELTA OF NIGERIA

BY

ABDULKADIR BOLAJI ABDULKADIR

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Ahmad Ibrahim Kulliyyah of Laws
International Islamic University Malaysia

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ABSTRACT

The protections of environment and human rights are among the foremost concerns of international community. Towards the end of twentieth century, the linkages between the protection of human rights and environment began to manifest. Since then, there has been increasing awareness and acknowledgement of the correlation between the two subjects. The degradation of the Niger Delta environment from petroleum activities has led to the incidences of human rights violations notwithstanding the adoption of human rights treaties and fundamental human rights in the Nigerian Constitution. This has led to the violation of the right to life, right to the enjoyment of property, access to clean water, and the right to a clean and healthful environment. Therefore, this thesis examines the relationship between human rights and the environment as an attempt to show the indivisibility of the two fields. It seeks to discover how environmental degradation affects the enjoyment of basic human rights to the people of Niger Delta Region. The research-work also assesses the effectiveness or otherwise of the legal framework on environmental protection in Nigeria. This is done through the examination of the constitutional status on environment and arrays of legislations dealing with environment. Also, the thesis assesses the effectiveness of tort law remedies to environmental dispute and justice system in Nigeria. It also explores how human rights provisions can be used to protect the environment. This was done through the examination of substantive and procedural rights such as the right to life, equality right, right to property, right of access to information and right to participation that have been found to be of immense use in the pursuit of environmental justice. The thesis primarily adopts qualitative method of research, which involves both doctrinal and non-doctrinal legal research. On this note, the research work finds the existing laws on environment in Nigeria to be weak and insufficient and this underscores the unsatisfactory performance of the regulatory bodies. This thesis also finds that judicial creativity and wisdom have shown that there are a number of benefits of using human rights provisions than other available remedies in the quest for environmental protection and justice. As a result of these findings, the research work suggests some recommendations in order to reinforce the legal frameworks and improve environmental justice. Also, important recommendations are made to both the government and the public so as to enhance access to environmental justice and promote human rights.

ملخص البحث

فإنّ من أهم شواغل المجتمع الدولي حماية البيئة وحقوق الإنسان، وقد خضع كل واحد من هذين الموضوعين للتوسع المتزايد في مجال القانون الدولي بشكل مستقل، تاريخياً. وبدأت الروابط بين حماية حقوق الإنسان والبيئة تتجهر في أواخر نهاية القرن العشرين. ومنذئذ، فقد كانت هناك زيادة من الوعي والإقرار بوجود العلاقة بين الموضوعين. وبناء على ذلك، فإنّ هذه الأطروحة تهدف إلى تحليل منهج حقوق الإنسان لحماية البيئة. فتبحث الأطروحة عن العلاقة بين حقوق الإنسان والبيئة على سبيل محاولة إظهار عدم إمكان تجزئة بين الموضوعين. ويسعى الباحث لاكتشاف مدى تأثير التدهور البيئي السلبي على حق التمتع بحقوق الإنسان الأساسية لساكني منطقة "نيجر دلتا" في نيجيريا، ولتحقيق هذا الهدف، فقد فحصت الأطروحة عن المشاكل البيئية المختلفة التي تواجه ساكني "نيجر دلتا" بسبب أنشطة المصانع النفطية العاملة في هذه المنطقة وكيف استمرت هذه المشاكل في مخاطرة حقوق ساكني هذه المنطقة. ويقوم البحث كذلك على مدى فعالية الإطار القانوني لحماية البيئة في نيجيريا. وقد تم ذلك من خلال دراسة الوضع الدستوري المعني للبيئة، بما في ذلك دراسة التشريعات التي وضعت للبيئة. وكذلك، فإنّ الأطروحة تقيم فعالية قانون المسؤولية التقصيرية في حلّ المنازعات البيئية وكذا نظام العدالة النيجيرية. ولتحقيق هذا الهدف، فإنّ الأطروحة قامت بفحص حي عن سيادة قانون الإهمال، والإزعاج والمسؤوليات ذاتي عواقب الصارمة، وذلك لادراك موقف المحاكم القضائية نحو العدالة البيئية وفي حلّ المنازعات البيئية في نيجيريا. وبحث كذلك عن مدى إمكانية استخدام مبادئ أحكام حقوق الإنسان لحماية البيئة. وقد تم ذلك من خلال فحص الحقوق الموضوعية والإجرائية مثل حقية الحياة وحقية المساواة، وحقية الملكية، وحقية الحصول على المعلومات والبيانات وحقية المشاركة والاجتماع التي تم العثور على إمكانية دورها هائلة، متأخراً، لتحقيق العدالة البيئية. وبالتالي، فقد اكتشف الباحث بأنّ القوانين الموضوعية للبيئة في نيجيريا كانت قوانين ضعيفة وغير كافية، وهذا يمثل العائق الكبير أمام الأداء المرجو من قبل الهيئات التنظيمية. وفي الأخير، تواصل الباحث إلى الاقرار أنّه قد تبين من خلال الدراس بأنّ الإبداع القضائية والحكمة تظهرياً هناك عدداً من الفوائد أو مزايا في استخدام الأحكام المتعلقة بحقوق الإنسان بمزيد من العلاجات الأخرى المتاحة في السعي حول حماية البيئة والعدالة. ومن خلال توضيح نتيجة البحث، اقترح الباحث بعض التوصيات لتعزيز الأطر القانونية وتحسين العدالة البيئية. وكذلك، قدّم توصيات مهمة إلى كل من الحكومة والجمهور العمومي لتعزيز العدالة البيئية وتعزيز حقوق الإنسان.

APPROVAL PAGE

The thesis of Abdulkadir Bolaji Abdulkadir has been approved by the following:

Maizatun Mustafa
Supervisor

Mohammad Naqib Ishan Jan
Co-supervisor

Abdul Haseeb Ansari
Internal Examiner

Mohd Bakri Ishak
External Examiner

El-Fatih Abdullahi Abdelsalam
Chairman

DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

Abdulkadir Bolaji Abdulkadir

Signature.....

Date.....

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Affirmed by Abdulkadir Bolaji Abdulkadir

.....
Signature

.....
Date

This thesis is dedicated to my wife and my children: Mrs. Aishat Bolaji-Abdulkadir,

Abdulkadir Fatima Segilola, and Abdulkadir Zulfah Ayinke

AND TO

My parents, Hajji Abdulkadir Oloruntele Saadudeen and Hajjia Ramatallahi

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UN Declaration on Environment and Development (1992)

Universal Declaration of Human Rights (1948)
Water Resources Act (2004)
World Charter for Nature (1982)

LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AG	Attorney General
AGF	Attorney General of Federation
ANLR	All Nigerian Law Report
Anor	Another
ACHR	African Commission on Human Rights
AMCHR	American Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
AIR	India Reporter
AUNLR	Awolowo University Nigerian Law Report
CJN	Chief Justice of Nigeria
DPR	Department of Petroleum Resources
ECOSOC	Economic and Social Council
ECHR	European Court of Human Rights
ed. /eds.	Editor/editors
EHRR	European Human Rights Report
ESR	Economic and Social Rights
etc.	et cetera and so forth
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JCA	Justice of Court of Appeal
JSC	Justice of Supreme Court
LFN	Laws of Federation of Nigeria
MOSOP	Movement for the Survival of Ogoni People
M oF	Ministry of Environment
NWLR	Nigerian Weekly Law Report
NLR	Nigeria Law Report
NDDC	Niger Delta Development Commission
NESREA	National Environmental Standard Regulation Establishment Agency
NOSDREA	National Oil Spillage Detection and Response Establishment Agency
OAU	Organisation of African Unity
OAS	Organisation of American States
RSLR	Rivers State Law Report
SC	Supreme Court
SCJ	Supreme Court Judgment
SCNJ	Supreme Court of Nigeria Judgment
SCMLR	Supreme Court Monthly Report
SCJ	Supreme Court Justices
UDHR	Universal Declaration of Human Rights
UILR	University of Ife Law Report
UN	United Nations
Vol.	Volume

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND

In any nation, developmental process has always had a close interface with its surroundings called the environment.¹ History has shown that the process of development has done enormous damage to the natural environment because it has led to pollution of the essential elements of the environment (air, water, and land).² This is due to the over-use of the available resources that do not only belong to the current generations but also the future generations.³ This suggests that the process of development has not been compatible with the natural environment.⁴

Consequently, humankind, all over the world, is encountering the consequences of the decline in the ecosystem.⁵ In countries like Nigeria, sufferers of these consequences are mainly the less privileged and the tribal minorities who usually shouldered high level of environmental abuse.⁶ By this, a number of basic

¹ See the preamble to the “Declaration of the United Nations Conference on the Human Environment”, Stockholm 1972. This Declaration requires members’ states to safeguard the natural environment that are necessary for human survival in the course of development.

² See the 5th IPCC Report Retrieved from <http://www.ipcc.ch/report/ar5/wg1/> [accessed on 27/11/2013]. See also United Nations Environmental Programme, “Global Environment Outlook” UNEP, 2007, 1-3; United Nations, “Resilient People, Resilient Planet: A Future Worth Choosing” United Nations, 2012, 1-5; World Commission on Environment and Development, *Our Common Future, From One Earth to One World*, WCED, 1987, 4-8.

³ Ibid.

⁴ See for instance principle 2 of the “Stockholm Declaration” which requires state to safeguard the natural environment for the benefit of current generations and of generations to come.

⁵ See the Report of the World Commission on Environment, UN Doc A/RES/42/187; United Nations Environmental Programme, *Global Environment Outlook*, UNEP, 2007, 1-3.

⁶ UNDP, *Niger Delta Human Development Report*, UNDP, 2006, 1; for more discussion on this, see Francis O. Adeola, “Environmental Injustice and Human Rights Abuse: The States, MNCs and Repression of Minority Groups in the World” (2001) *Vol. 8 No. 1, Human Ecology Review*, 39; Gurr, Ted. R. “Why Minorities Rebel: A global Analysis of Communal Mobilization and Conflict Since 1945” (1993) *IPSR* 14, 161-201.

human rights are increasingly being put at risk.⁷ This is because the right to life can be affected by spoilage of resources while property and cultural rights can be endangered by interference with the land of the community.⁸

Thus, the early 1970s witnessed ecological consciousness which resulted in the United Nations Conference on the Human Environment, held in Stockholm in 1972.⁹ The Conference drove the states' attention to the need to protect the environment which serves as the resource base for human survival and realisation of basic human rights.¹⁰ As a result of this realisation, states began to make efforts towards putting in place the legal framework to protect the environment. This was done through negotiation and conclusion of treaties at international level¹¹ and making of laws and regulations at national level.¹²

Consequently, states began to appreciate that a clean and healthful environment is fundamental in order to realise basic the human rights, such as the

⁷ See Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Analytical study on the relationship between human rights and the environment*, Human Rights Council, 2011, 6-14. For more discussion on this see: Vibhute K.I., "Environment, Present and Future Generations: Inter-Generational Equity, Justice and Responsibility" (1998) vol. 38, *Indian J.Int'l L.*, 65-73; Midgley, "The End of Anthropocentrism" in Atfield and Belsey (eds.), *Philosophy and the Natural Environment Royal*, Institute of Philosophy Supplement No. 36, 1994, 111; Symonides J., "The Human Right to a Clean Balanced and Protected Environment" (1992) 20/1 *Int'l J. Of Legal Information*, 24-40 at 29; Contra Downs J.A., "A Healthy and Ecologically Balanced Environment: An Argument for a Third Generation Right" (1993) 3 *Duke J. Comp. & Int'l L* 351-385.

⁸ UNEP, "Human Rights and the Environment: the Joint Report OHCHR and UNEP" United Nations Environmental Programme, 2004, 8-17. For more discussion, see: Anderson, M.R. and Ahmed A., "Assessing Environmental Damage under Indian Law" (1996) 5(4) *RECIEL*, 335-341; Anderson, M.R., "International Environmental Law in Indian Courts" (1998) 7(1) *RECIEL*, 22-31; Jariwala, C.M., "A Judicial Approach in the Fire Works Noise Pollution: A Critical Overview" (1999) *All Indian Reporter Journal Section 72-74* ; La Vina A.G.M., "The Right to a Sound Environment in the Philippines: The Significance of the *Minors Oposa Case*" (1994) 3(4) *RECIEL*, 246-252; Sachs Aron, "Upholding Human Rights and Environmental Justice" In L. Starke (ed.), *State of the World* W.W. Norton and Company, New York, 1996, 131.

⁹ See "Stockholm Declaration of the United Nations Conference on the Human Environment", 16 June 1972, U.N. Doc. A/CONF.48/14 Rev. 1 at 3 (1973).

¹⁰ See Principle 1 of the "Stockholm Declaration" 1972.

¹¹ See for example, "International Convention for the Protection of Birds" (Paris) 638 UNTS 185; "International Convention for the Regulation of Whaling" (Washington) 161 UNTS 72; "International Convention for the Prevention of Pollution of the Sea by Oil" (London) 327 UNTS 3.

¹² For instance, the adoption of the National Policy on Environment for Nigeria was in part as a result of the participation of Nigeria in the Stockholm Conference.

right to life, health, family life, personal integrity, and development.¹³ This is because every state depends on the protection of the environment as necessities of life.¹⁴ The push to human rights approach began with linking of human rights to instances of environmental destruction, such as the Bhopal disaster.¹⁵ It has turned out to be more accepted over time that human rights and environment are so intrinsically intertwined that a clean and healthy environment is seen as a human right.¹⁶ It is on this premise that Kofi Anan, in his Millennium Report, drew our attentions to the interrelationship between human rights and the environment. The report stresses environmental accountability for bequeathing to future generations a healthful and clean environment.¹⁷ It further added that to realise and understand human rights, there is the need to explore the “environmental dimension of eco-system services” vital to the security of lives and other basic rights.¹⁸

To show the extent of relationship between human rights and the environment, researchers have examined the extent to which one depends on the other. Some argue that protection of the environment is a good means of realising basic human rights.¹⁹ By this, it means that the end is achieving human rights but the road is through

¹³ See Principle 1 of the “Stockholm Declaration”, 1972. For more discussion on this, see: Pathak R.S., “The Human Rights System as a Conceptual Framework for Environmental Law” in Brown Weiss (ed.), *Environmental Change and International Law: New Challenges and Dimensions*, UN University Press, Tokyo, (1992), 205-243; Shutkin W.A., “International Human Rights Law and the Earth: The Protection of Indigenous Peoples and the Environment” (1991) 31/3 *Virginia j. of Int’l L.*, 479-511 at 504.

¹⁴ See the preamble to the Stockholm Declaration, 1972.

¹⁵ The Bhopal disaster is also referred to as the Bhopal gas tragedy that happened sometimes in December, 1984 in India. It occurred as a result of a gas leak from a pesticide plant company (Union Carbide India Limited) where lives and properties are claimed. Information on this is available at <http://indiatoday.intoday.in/story/bhopal-set-to-mourn-28-years-of-infamy-when-india-couldnt-bring-anderson-union-carbide-to-book/1/235289.html> [accessed on the 25th January, 2013].

¹⁶ Pallemaerts M., “International Environmental Law From Stockholm to Rio: Back to the Future” in Sands P. (ed.), *Greening International Law*, Erath scan, London, 1993, 9-10; Roots E.F., “Population, Carrying Capacity and Environmental Processes” in Mahoney K.E., & Mahoney P., (ed.), *Human Rights in the Twenty-first Century- A Global Challenge*, Nijhoff, Dordrecht, 1993, 529-561.

¹⁷ United Nations Millennium Project, Task Force on Hunger, 2003, 43.

¹⁸ Ibid.

¹⁹ See detail discussions of this in chapter 2 of this thesis.

environmental law.²⁰ Another perspective places the two concepts in reversed position. It states that protection of human rights is a practical way of protecting the environment. Here, the end is achieving environmental protection but the road is through human rights laws.²¹ The modern approach sees the two concepts as inseparable as each depends on the other.²² The better perspective seems to be that human rights and the environment are inseparable. The reason is that protection of one necessitates the protection of the other. The thesis adopts this latter view of interconnectedness of human rights and the protection of the environment. In fact, security of lives and properties is the subject that connects environmental protection and human rights in places or communities that experience environmental degradation like the Niger Delta of Nigeria which is the main focus of this thesis.²³

Niger Delta of Nigeria consists of nine out of the 36 states making up the Federal Republic of Nigeria.²⁴ They are: Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers States.²⁵ The three major states 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.²⁶ This was

²⁰ See Dinal Shelton, "Human Rights, Health and Environmental Protection: Linkages in Law and Practice" being a background paper presented at the World Health Organisation, 2002, 6-7 & 23.

²¹ See Pathak, R.S "The Human Rights System as a Conceptual Framework for Environmental Law" In E. Brown Weiss (Ed). *Environmental Change and International Law- New Challenges and Dimensions*. Tokyo: UN University Press. 1992, 205-243; Symonides .J. "The Human Right to a Clean, Balanced and Protected Environment." (1992) 20 *International Journal of Legal Information*, 24-40; Karie Wolfe. "Greening the International Human Rights Sphere: Environmental Rights and the Draft Declaration of Principles on Human Rights and the Environment." (2003) 9 *Appeal: Review of Current Law and Law Reform*, 2003, 45-58.

²² Malgosia Fitzmaurice. "Linking Environment and Human Rights" (2004) 16(3) *Journal of Environmental Law*, 411-413.

²³ See principle 1 of the "Stockholm Declaration." See also interview with Dr Sam Agalihno in Ilorin, Kwara State, Nigeria on the 5th of May, 2012.

²⁴ Wahab Egbewole, "Millennium Development Goal and the Niger-Delta in The Jurist (2006) A Publication of the Law Students' Society, University of Ilorin, 36.

²⁵ Ibid.

²⁶ Paul M. Lubeck, Michal J. Watts & Ronnie Lipschutz, "Convergent Interest US Energy and Securing Nigerian Democracy", International Policy Report Retrieved from http://www.ciponline.org/NIGERIA_FINAL.pdf [accessed 21st September, 2011].

discovered in 1956 and the nation rejoiced as this discovery was seen as a great opportunity to develop and boost the nation's economy.²⁷ Oil discovery was also seen by the people of the region as an opportunity to improve their well being. However, 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 and worsening of the nation's environment.²⁸ The issue of environmental problem and degradation in the Niger Delta and how it has hindered the enjoyment of basic human rights to the Delta's people has been acknowledged at national and international sphere,²⁹ including scholars,³⁰ governmental and non-governmental organisations.³¹

Therefore, the need for human rights approach to environmental protection in the Niger Delta arises for obvious reasons. Firstly, poverty continues to escalate in the region due to the activities of oil companies. This is because the right of the people to the source of income and livelihood has been jeopardised by environmental hazards. Secondly, the health conditions of the people in the region are increasingly being affected. Thirdly, the rights of future generations to a clean and healthy environment are also being threatened. This thesis is therefore sought to be written at a time when the protection and conservation of the environment have become among the foremost concerns of the local and international community. Environmental deterioration,

²⁷ Ibid.

²⁸ World Bank: "Defining an Environmental Strategy for the Niger Delta" World Bank, 1995, 40-46. For discussion on this, see Aluko M.A.O., "Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria" (2004) 15(1) *Kamla-Raj J. Hum. Ecol.*, 63-68.

²⁹ World Bank: "Defining an Environmental Strategy for the Niger Delta" World Bank, 1995, 40-46.

³⁰ Akobo Mofia, "Nightmare In Oil and the Nigerian Environment" (1998) cited in Aluko M.A.O., "Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria" (2004) 15(1) *Kamla-Raj J. Hum. Ecol.*, 69; Aluyor Victoria, "Mark of the Beast, the Multilateral Agreement on Investment and the Nigerian Women in Oil and the Nigerian Environmental Benin-City, Nigeria" (1998) cited in Aluko M.A.O., "Sustainable Development, Environmental Degradation and the Entrenchment of Poverty in the Niger Delta of Nigeria" (2004) 15(1) *Kamla-Raj J. Hum. Ecol.*, 70.

³¹ See Amnesty International *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta*, Amnesty International Publications, United Kingdom, 2009; UNDP, *Niger Delta Human Development Report* UNDP, 2006, 2.