

**A Rights-Based Approach to Indigenous Minorities: Focus on the Urhobo and
Ogoni Peoples of the Niger Delta in Nigeria**

**Submitted in partial fulfilment of the requirements of the Master of Laws degree
(LLM, Human Rights and Democratization in Africa)**

by

Avwomakpa Tareri

Prepared under the supervision of

Mr. Angelo Matusse,

at the faculty of law, Universidade Eduardo Mondlane, Mozambique

25 October 2008

Declaration

I Avwomakpa Tareri declare that the dissertation, '**A Rights-Based Approach to Indigenous Minorities: Focus on the Urhobo and Ogoni Peoples of the Niger Delta in Nigeria**' is my work. I declare that it has not been submitted for any degree or examination in any other university.

All the sources used or quoted have been duly acknowledged.

Student: Avwomakpa Tareri

Signature: _____

Date: 25 October 2008

Supervisor: Angelo Matusse

Signatures: _____

Date: _____

Dedication

This dissertation is dedicated firstly to God, who has blessed and favoured me; secondly, to my father, Awwomakpa Solomon Japheth, who has continued to show great love, care, and dedication to me and the other members of our family from 1992 when my mother died; thirdly, to the unforgettable memories of my mother, Felicia Awwomakpa, who gave me a most appreciated upbringing amidst love, hard work, and care; fourthly to that lady who will be my lovely wife; and lastly to Kenule Saro Wiwa, Isaac Adaka Boro and all the current activists who have genuinely kept up the struggle for the emancipation of ethnic minorities of the Niger Delta in Nigeria.

Acknowledgment

A number of persons and organizations certainly deserve special acknowledgment for their encouragement in making this programme a success.

Firstly, my thanks go to the organisers of the Centre for Human Rights, University of Pretoria, for giving me the unique opportunity and environment of study. In this respect, mention must be made of Prof. Christof Heyns amidst other co-founders of the Centre. I also appreciate the humane and friendly attitude displayed by Prof. France Viljoen, Martin Nsibirwa, Jeremie Munyabarambe, John Wilson, B Lizzet and the rest members of staff at the Centre for Human Rights. Most importantly, I am grateful to Norman Taku, his wife Monica, and their two kids (Kimberley and Keenan) for all their encouragement. I lack words to express how I miss those two little friends of mine. I am also thankful to my tutor, Hye-young Lim and Ebobrah Solomon who was more of an extra-tutor and encouragement to me. I am also indebted to Prof. Michelo Hansungule who has guided me with his vast knowledge and experience in dealing with indigenous peoples.

Secondly, I appreciate Angelo Matusse who supervised this dissertation. His distinguished style, prudence, and dedication to duty have contributed in making this work a reality. I also acknowledge the attention and dedication shown by the members of staff of the Centre for Human Rights, Universidade Eduardo Mondlane, Moçambique. Adérito Notiço, Isabel Quinhas, and Elvino Tomo deserve special thanks.

Thirdly, I thank my uncle Archbishop God-dowell Avwomakpa, for all his encouragement. He remains an inspiration.

Further, my thanks go to Mabel Okoro, Augustus Avwomakpa, Karo Avwomakpa, Avwarute Avwomakpa, Doris Avwomakpa, and William Avwomakpa for all their support during the course of this programme. These family members deserve thanks.

Lastly, I appreciate Mahaman Hadiza (from Niger), Hillary Ogbonna (from Nigeria), and all other members of the LLM class of 2008. It was indeed a fascinating moment to have been a family.

List of abbreviation

APRM	African Peer Review Mechanism
AU	African Union
CERD	Convention on the Elimination of All Forms of Racial Discrimination
FEPA	Federal Environmental Protection Agency
IACHR	Inter-American Commission of Human Rights
ICJ	International Court of Justice
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IM	Indigenous minorities
IP	Indigenous peoples
MOSOP	Movement for the Survival of the Ogoni Peoples
NDDB	Niger Delta Development Board
NDDC	Niger Delta Development Commission
OMPADEC	Oil Mineral Producing Area Development Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations Organisation
UN DRIP	UN Declaration on the Rights of Indigenous Peoples

Table of contents

Declaration.....	i
Dedication.....	ii
Acknowledgment.....	iii
List of abbreviation.....	iv
Table of contents	v
Chapter 1: Introduction.....	1
1.1 Background to the research.....	1
1.2 Statement of research problem.....	5
1.3 Research questions	5
1.4 Aims and objectives of the research.....	6
1.5 Significance of the research.....	7
1.6 Limitations of the research.....	7
1.7 Research Methodology	7
1.8 Literature survey.....	8
1.9 Overview of chapters.....	9
Chapter two: Conceptual framework, situation of the Urhobo and Ogoni peoples, and the implications on human rights	10
2.1 Introduction.....	10
2.2 Indigenous peoples, indigenous minorities, and indigenous majorities	10
2.3 Minorities	13
2.4 Minorities, indigenous peoples, and indigenous minorities	15
2.5 A rights-based approach.....	16
2.6 Challenges faced by the Urhobo and Ogoni Peoples and their implications on human rights.....	17
2.6.1 Expropriatory laws and impacts on the Urhobo and Ogoni peoples.....	17
2.6.2 Resource disposition and discrimination.....	23
2.6.3 Development and human rights.....	24
2.6.4 Environmental degradation, the ecosystem and human rights	25
2.6.5 Deforestation and human rights.....	26
2.6.6 Culture, religion, and human rights	27
2.7 Conclusion.....	28
Chapter three: Human rights framework on indigenous minorities	29
3.1 Introduction.....	29
3.2 The UN Declaration on the Rights of Indigenous Peoples.....	29
3.3 Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries.....	30
3.4 International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child	31
3.5 The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.....	32
3.6 Universal Declaration of Human Rights.....	33
3.7 Convention on the Elimination of All Forms of Racial Discrimination (CERD).....	34
3.8 African Charter on Human and Peoples' Rights and other AU instruments.....	34
3.9 Conclusion.....	35
Chapter four: The application of human rights to the Urhobo and Ogoni peoples	36

4.1 Introduction.....	36
4.2 Applying human rights laws to the Urhobo and Ogoni peoples.....	36
4.3 Conclusion.....	37
Chapter five: Conclusion and Recommendations	39
5.1 Introduction.....	39
5.2 Conclusion.....	39
5.3 Recommendations	40
5.3.1 Advancing rights under the Nigerian constitution and the African Charter.....	40
5.3.2 Changing the AU position in favour of the UN position.....	40
5.3.3 Uniformity in human rights standards	41
5.3.4 Abrogation of expropriatory laws in Nigeria	41
5.3.5 Enforcement of pollution laws	41
5.3.6 True and targeted affirmative action	42
Bibliography	44

Chapter 1: Introduction

'A country should be judged on the basis of how it treats its minorities'.¹

1.1 Background to the research

The African Union (AU) has refused to recognise indigenous peoples (or IP) in Africa in the sense contemplated by the UN Declaration on the Rights of Indigenous Peoples (UN DRIP)² and other global human rights instruments. This position of the AU has worsened the difficulties faced by IP in Africa. According to their testimonies before the 29th Ordinary Session of the African Commission on Human and Peoples' Rights, they are subjected to dispossession of their lands and the destruction of all their means of livelihood.³ They experience extreme poverty, environmental degradation, discrimination, damage to sacred sites, loss of culture and identity, political marginalisation, and defenceless economic rape in the hands of the states which masquerades the numerically dominant ethnic majority.⁴ Among other treaty monitoring bodies, the Committee on Racial Discrimination has also expressed concerns about the challenges faced by IP.⁵ These challenges are reflected in S Saugestad's concise submission that 'The relationship between a state and an indigenous minority is one of unequal distribution of power'.⁶

The Urhobo⁷ and Ogoni⁸ peoples of the Niger Delta in Nigeria have remained victims of foregoing testimonies. These peoples, taken as case studies for other aboriginal minorities of the Niger Delta, have resorted to hostile resistance to the presence of the federal

¹ Gandhi. Quoted in V Fernand 'Minority Rights and the Prevention of Ethnic Conflicts' being a paper presented at the Sixth session of the Commission on Human Rights' Sub-Commission on Promotion and Protection of Human Rights Working Group on Minorities 22-26 May 2000 E/CN.4/Sub.2/AC.5/2000/CRP.3.

² UN Doc A/C.3/61/1.18/Rev.1. However, the position of the AU is progressively weakening as some member states begin to change positions in favour of the universal stance. States that have shifted position include South Africa, Angola, Botswana, Cameroon, Benin, Zimbabwe, Namibia, and Egypt. See R Hitchcock & D Vinding 'Indigenous Peoples' Rights in Southern Africa: An Introduction' in R Hitchcock & D Vinding (eds) *Indigenous Peoples' Rights in Southern Africa* (2004) 9 & 13. See also <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm> (accessed 21 September 2008).

³ See *Indigenous Peoples in Africa: The Forgotten Peoples?* The African Commission's work on indigenous peoples in Africa. Published by the ACHPR and the International Work Group for Indigenous Affairs (2006) 8; See also Wikipedia http://en.wikipedia.org/wiki/Definitions_and_identity_of_indigenous_peoples. (accessed 9 September 2008).

⁴ See <http://www.unhcr.ch/development/approaches-08.html> (accessed 9 September 2008).

⁵ General Recommendation XXIII 1997 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* HRI/GEN/Rev.8 8 May 2006. 255.

⁶ S Saugestad 'The Indigenous Peoples of Southern Africa: an Overview' in Hitchcock & Vinding (n 2 above) 35.

⁷ This is an ethnic minority group in the western region of Delta State, Nigeria. Traditionally hunters and fisherment, they worshiped the gods and forefathers before advent of Christianity in 20th Century which is now dominant. It has 22 clans all speaking Urhobo. See 'Urhoho Information' <http://www.uiowa.edu/~africart/toc/people/Urhobo.html> (accessed 2 November 2008).

⁸ The Ogoni clan consists of six kingdoms with a population of about 500,000. They currently live within the creeks of Rivers State of Nigeria. See UNPO 'Ogoni' <http://www.unpo.org/content/view/full/7901/134/> (accessed 21 September, 2008).

government and multinational oil companies.⁹ The effects of these reactions and counter reactions have been loss of lives and property, reduction in national earnings and failure of democratic institutionalisation in Nigeria.¹⁰

It is conceived that the easiest solution to the problems of IP in Africa is to consider IP as indigenous minorities (or IM), thereby giving dominant ethnic majorities a place in the 'indigeneity' of the entire country.¹¹ Therefore, a rights-based approach to the Urhobo and Ogoni peoples as IM will enhance their protection as minorities and IP.

No doubt, the violation of IPs' rights is exacerbated by the majoritarian philosophy of the modern state which has little or no regard for national minorities.¹² Like IP, national minorities are not usually given a pride of place in the developmental programmes of governments.

The unavoidable outcome of neglect and marginalisation of national minorities and IP by the majority ruling ethnic groups is violent resistance and ethnic conflicts. This also constitutes a challenge to democratisation in Africa.¹³

Ill-treatment of minorities and IP of the Niger Delta has been the practice in Nigeria before 1960 when the country gained political independence from Great Britain. The neglect and need special for special attention for the Niger Delta was first acknowledged in 1957 by the Henry Willink-led Minority Rights Commission Report. It states thus:

This is a matter which requires special effort, and the co-operation of the Federal, Eastern and Western Government; it does not concern the Region only. Not only because the area involves two Regions; but because it is poor, backward and neglected, the whole of Nigeria is concerned, we suggest that there should be a Federal Board appointed to consider the problems of the Area of the Niger Delta.¹⁴

The Henry Willink Minority Commission was set up during the negotiation for Nigeria's political independence to investigate complaints by minority ethnic groups that the majority ethnic groups would dominate them in an independent Nigeria. As C Obiagwu and CA Odinkalu rightly observes, the recommendations of this commission marked the origin of

⁹ Wikipedia 'Conflict in the Niger Delta' http://en.wikipedia.org/wiki/Conflict_in_the_Niger_Delta (accessed 9 September 2008).

¹⁰ JO Ibori (ed) in M Odje *The Challenges to True Federalism and Resource Control in Nigeria* (2002) xi.

¹¹ This is to assuage the fears of dominant majorities who think that recognising indigenous peoples means denying themselves the dominant share in the ownership of the entire country.

¹² F Viljoen *International Human Rights Law in Africa* (2007) 5.

¹³ See D Geldenhuys & J Rossouw *The International Protection of Minority Rights* (2001) 5.

See also Fernand (n 1 above) 2.

¹⁴ Cited in Odje (n 10 above) 412.

human rights provisions in the 1960 Independence Constitution of Nigeria.¹⁵ Like the 1960 constitution, the Constitution of the Federal Republic of Nigeria 1999¹⁶ (the Constitution) provides for a bill of rights which contains safeguards for the rights of national minorities.¹⁷ Although a substantial part of the bill of rights is deviated from the original purpose it intended to serve, the bill of rights remains a fertile ground for advancing the rights of IM in Nigeria.

The Niger Delta is home to substantial oil and gas deposits¹⁸ with about 2.6 million bpd output. It accounts for over 90% of Nigeria's foreign exchange earnings. Unfortunately, the region is riddled with poverty, disease, environmental degradation, and the lack of infrastructure for habitation.¹⁹ The minority ethnic nationalities of the oil-rich delta have been critical of the major ethnic nationalities (Yoruba, Igbo and Hausa-Fulani) that control political power and resources at the federal level to their disadvantage.²⁰ The oil bearing communities of the delta have articulated and protested in various forms over the years; including the halting of oil production, prevention of construction work, damage to property, hostage taking and the Ogele procession'.²¹

The Ogoni and Urhobo peoples of the troubled Niger Delta are among the most marginalised and economically raped tribal minorities in Nigeria.²² Like other minor tribes in the Niger Delta, these people do not only suffer from the failure of the Government of the Federal Republic of Nigeria (the government) to meet the general standard determined by international human rights law for the protection minorities and IP. The wealth from the natural resources in the lands historically occupied by these people constitutes the mainstay of the Nigerian economy. Moreover, the government has been found guilty of conniving with

¹⁵ 'Combating Legacies of Colonialism and Militarism' in AA An-Naim (ed) *Human Rights Under Africa Constitutions Realising the Promise for Ourselves* (2003) 219-220.

¹⁶ Cap 23 LFN 2004.

¹⁷ Chapter IV of the Constitution contains a bill of rights. Relevant provisions include sections 33, 38, 40, 42, and 43. These provide for the rights to life; freedom of thought, conscience and religion, peaceful assembly and association; freedom from discrimination; and the right to acquire and own immovable property respectively.

¹⁸ First discovered in commercial quantity in Olibiri (in Bayelsa State) in 1956).

¹⁹ Alamieyeseigha DSP, 'Energy, Environment and Disaster: The Niger Delta Experience' being a lecture presented as Governor of Bayelsa State of Nigeria at the International Conference on Energy, Environment and Disaster, Charlotte, North Carolina, USA, July 24 (2005) 6. Copy with this writer.

²⁰ E Courson 'The Burden of Oil' <http://geography.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/15-Courson.pdf> (accessed 22 September 2008). See also http://www.youtube.com/watch?v=YZhy_VaYisU&NR=1 (accessed 22 September 2008).

²¹ See Tebekaemi T (ed) *The Twelve Day Revolution* (1982) 2. The Ogele procession is a peaceful traditional procession by women and the youth across major streets accompanied by drums and cultural satires against perceived injustice by the government.

²² See L Mitee, the MOSOP president and successor of KS Wiwa in

<http://www.youtube.com/watch?v=zalqYjcjA2Y&feature=related> (accessed 21 (September 2008) See also P Ekeh, 'Studies in Urhobo Culture' <http://www.africanbookscollective.com/books/studies-in-urhobo-culture> (accessed 29 September 2008).

See also Wikipedia, 'Human Rights in Nigeria'

http://en.wikipedia.org/wiki/Human_rights_in_Nigeria

third parties to further aggravate human rights violations in the region.²³ This decision remains unimplemented by the government.²⁴

IP and minorities have been faced with similar problems (but in different degrees) in Europe, the Americas²⁵ and Asia²⁶. The problems experienced by minorities and IP are not new to the international community. This is substantiated by the various efforts that have been made under the umbrella of the United Nations Organisation (UN) to recognise and protect minorities and IP.²⁷

The AU defines IP in a perception different from the standards maintained by the UN.²⁸ National minorities in African states have been faced with a lot of problems from national majorities who occupy positions of power.²⁹ Although the AU lags behind in the promotion and protection of the rights of national minorities,³⁰ it does not mount a strong resistance against the UN framework on the protection of national minorities.

In the majority of cases, IP are national minorities.³¹ Indigenous peoples can therefore benefit from their status as IP and as national minorities under national and international human rights law. Assuming, but not conceding, that the AU is justified in its failure to recognise IP in accordance with the United Nation standards, it is submitted that IP in Africa can enjoy legal protection of their status as national minorities. This research is therefore informed by the quest for the realisation of this approach.

²³ See *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 58 (SERAC case)

²⁴ S Ibe 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' *African Human Rights Law Journal* Vol 7 No 1 2007 246. See also F Viljoen & L Loew 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights' *American Journal of International Law* Vol. 101:1 5.

²⁵ Consider *Manuel Coy on behalf of the Maya Village of Conejo and Others v Attorney-General of Belize and Others* (2007) SCB 171 at 25 (*Maya Village of Conejo v Attorney General of Belize*). See also Padila D 'State Obligation to Respect the Rights of Indigenous Peoples and Maroons under Inter-American Human Rights Law' being a lecture handout to LLM Students, 2008, Centre for Human Rights, University of Pretoria.

²⁶ See T Patrick *Indigenous People and Human Rights* (2000) 285-291.

²⁷ Fully discussed in chapter 3 below.

²⁸ See African Union, Assembly, *Decision on the United Nations Declaration on the Rights of Indigenous Peoples* (Assembly/AU/9 (VIII) Add.6 (December 2006), 8, AU Doc. Assembly/AU/Dec.141, (VIII). However, the active support of African states in adopting the UN DRIP shows a growing consensus among African state in contradiction with the AU policy. See n 2 above.

(January 2007) See also Viljoen (n 13 above) 280-281.

²⁹ For instance, the Rwandan Genocide climaxed in 1994 where about one million members of the Tutsi tribe were murdered by their Hutu neighbours. Wikipedia 'Rwandan Genocide' http://en.wikipedia.org/wiki/Rwandan_Genocide (accessed 9 September 2008). See also the BBC News 'Q & A: Sudan's Darfur Conflict' <http://news.bbc.co.uk/1/hi/world/africa/3496731.stm> (accessed 9 September 2008).

³⁰ T Murithi 'The African Union and the Prospect for Minority Protection' in N Ghana & A Xanthaki (eds) *Minorities, Peoples and Self-Determination* (2005) 299.

³¹ See Geldenhuys & Rossouw (n 13 above) 8

1.2 Statement of research problem

The AU's position contradicts the standard raised by the UN on IP in which they are identified by specific criteria³² and are granted special protection. While the problem of defining IP persists, the UN has consistently used certain criteria to grant the status of indigeneity to a people. Peoples who come within the umbrella of the UN are entitled to benefit from the protective shade under the UN instruments on the rights of IP.

The government of Nigeria, like those of many states in Africa, takes advantage of the non-recognition of IP by the AU; thereby depriving these peoples their legal entitlements under norms of general international human rights instruments. The government of Nigeria has been dominated by the three 'major' tribes (Hausas, Yorubas, and the Ibos),³³ It takes advantage of the vulnerable situation of the numerically insignificant ethnic groups of the Niger Delta. The affected ethnic groups are the peoples of Ogoni, Urhobo, Itshekiri, Ijaw, Ibibio, Kalabari, Ilaje, and Isoko.³⁴ Being that these ethnic groups experience similar problems, this study intends to adopt the situation among the Ogoni and Urhobo as case study. Because of the failure of the government to recognise these peoples as 'indigenous peoples', the problem arises as to how to find an alternative international human rights legal framework under which these peoples can be protected. Additionally, there is the challenge of how these peoples can effectively utilise the existing international legal framework to escape the burdens created by the national government.

1.3 Research questions

Indigenous people and minorities have similar problems of political, economic, and social marginalisation. The government (hiding behind the veil of the AU) does not recognise the indigenous status of deserving ethnic groups. This has left IM unprotected. Considering the situation in Africa generally, and in Nigeria specifically, this research work is aimed at answering the following questions:

- (a) Will the protection and promotion of the rights of IP in Africa not be effective if they are considered as IM; thereby giving the dominant majority a place in the 'indigeneity' of the country?
- (b) How can the IP of the minority tribes in the Niger Delta be entitled to legal protection from non-recognition of their status by the government?

³²These include priority in time, the voluntary perpetuation of cultural distinctiveness, subjugation, dispossession and marginalisation, and self-identification. See S Sidsel 'The Indigenous Peoples of Southern Africa: An Overview' in H Robert & v V Diana, *Indigenous Peoples in Southern Africa* (2004) 34.

³³ See S Kolawole 'Niger Delta: The Real Problem' <http://www.bayelsa.org.uk/main/niger-delta-the-real-problems/> (accessed 12 September 2008).

³⁴ 'New Foundation' <http://newfoundationsuk.com/Group/Group.aspx?ID=15379> (accessed 13 September 2008).

- (c) Assuming, but not conceding, that everyone in Nigeria is indigenous to the country and to every region of the country, does this deprive IM in an age-long marginalised region a special attention by means of affirmative action?
- (d) What legal protection is accorded to minorities among IP?
- (e) Are there negative implications for ethnic minorities in the different regions of a country by the blanket recognition of all natives of that country as IP?
- (f) How can the available legal framework under the UN and the AU for the protection of IP and minorities be effectively utilised to the advantage of IP despite the current position of the AU on IP?

This work proceeds from the assumption that the plights of IP in Africa is worse because of the refusal of the AU to grant them the status that they deserve under the UN system. It moves on the hypotheses that these peoples can be better protected if they are given the additional status of 'minorities', thereby giving the dominant and resisting majority a place in the indigeneity of the country. Arguably, their rights will be guaranteed, whether or not the AU maintains its current position.

1.4 Aims and objectives of the research

Based on the refusal of the AU to recognise IP in the conception of the UN, IP (in the UN conception) in African countries have either by commission or omission, been subjected to economic marginalisation and lack of infrastructures.³⁵ They are political outsiders. Studies have shown that these peoples are most often in the minority many countries.³⁶ These peoples seem to have been strip nicked of every legal protection. This is the position of the government *vis a vis* the minority ethnic groups of the Niger Delta. It is in view of the current situation that this research is conceived:

1. To expose the similarities between IP, minorities, and IM. In view of this, it aims at indicating what rights are available to IP and how such rights can be advanced.
2. To expose how governments of African states generally, and the government of Nigeria in particular, take advantage of the AU's refusal to recognise IP; thereby shirking their national and international human rights obligations to IP.

³⁵ See UNDP and Indigenous Peoples Policy: A Policy of Engagement (2001) par 18. Available on http://www.hreoc.gov.au/social_justice/conference/engaging_communities/unpan021101.pdf (accessed on 18 October 2007). Cited in VN Kamu 'Achieving Sustainable Development and Indigenous Rights in Africa: Tensions and Prospects,' being an LLM dissertation submitted to Faculty of Law, University of Pretoria, 2007.

³⁶ J Vereecke 'National Report on Indigenous Peoples and Development' <http://www.sdn.org/undp-docs/nripd/> (accessed 27 September 2008). See also ACHPR and IWGIA *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*.(2005) 17 Adopted at the 29th Ordinary Session of the African Commission. See also K Wessendorf ' 2007 Annual Report of the International Work Group on Indigenous Affairs' <http://www.iwgia.org/graphics/Synkron-Library/Documents/publications/Folders/2007%20Annual%20Report%20and%20Accounts.pdf> (accessed 27(September 28).

3. To expose the failure of the government to afford special protection to the Urhobos and Ogonis like all other minority ethnic groups in the Niger Delta; a situation which has left the entire region volatile and hostile to the presence of the Federal government and multinational oil companies.
4. To refute the argument that all Nigerian citizens are indigenous to Nigeria and to every nook and cranny of Nigeria, thereby denying the obligation to give special consideration deserving group.
5. To assert the existence of available international norms and jurisprudence for the protection of minorities, IP, and IM.
6. To highlight the steps to be taken to achieve the rights of IP in Nigeria.

1.5 Significance of the research

This work unveils the distinction and relationship between IP, minorities, indigenous majority and IM. It bypasses the denial by governments of African states to recognise and afford the universally mandated duties towards IP. Therefore, it is submitted that even if such people are not to be protected as IP, they should be protected as IM.³⁷ This is how it adopts a rights-based approach to the relationship between the government of Nigeria and the peoples of the Niger Delta

1.6 Limitations of the research

This research is based on the somewhat academically and statutorily unexplored idea of applying the concept of 'indigenous minorities' to bypass the refusal of African and non-African states to afford special recognition to IP as conceived under the UN DRIP. By the fact that it is a relatively new conception, it occasions the scarcity of literatures specifically directed in this area of study. Considering the given volume, this work will not exhaustively explore the existing legal framework and how these can be effectively utilised to solve the challenges faced by IP.

1.7 Research Methodology

This research takes the approach of literature survey and other library sources. Besides oral interviews, it also uses the internet and other electronic sources. As will be noted in the course of this work, a sample survey of the problems currently faced by the eight ethnic

³⁷ See Suzman & James *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. (2001) 34. Cited in Saugestad (n 6 above) 38.

groups in the Niger Delta shows that they all face similar challenges. On this basis, this writer has selected the Urhobo and Ogoni peoples as case studies in the issues raised in this work.

1.8 Literature survey

Research during the course of this work reveals that there already exists a substantial number of academic works on the status and rights of IP and minorities. Worth mentioning in the ocean of authorities on IP include the works of P Thornberry,³⁸ Erica-Irene Daes,³⁹ M Scheinin,⁴⁰ Saugestad,⁴¹ R Channels and Aymone de Toit,⁴² J Akpan et al,⁴³ and F Viljoen.⁴⁴ Surveyed authorities on minority rights include Adbjorn Eide,⁴⁵ JJ Preece,⁴⁶ and the works of Goldenbuys and Rossouw.⁴⁷ Mudiaga Odje's book has a comprehensive coverage of the challenges faced by the ethnic minorities of the Niger Delta.⁴⁸

Except for the works of Daes, Saugestad, Thornberry, and Viljoen, all the other works have paid little attention to the issues of minorities and IP in Africa. All these writers have worked extensively on the promotion and protection of the rights of IP and minorities. Only on few instances has there been a deliberate attempt to place IP on the vehicle of minorities,⁴⁹ thereby calling them IM and advocating their entitlement to legal protection under all the existing international human rights norms.

In view of the foregoing, this work cannot boast of pioneering the idea of advancing the rights of IP as minorities. However, this contribution is unique in that, it is specifically directed at IP in Africa, and it aims at bypassing the AU's current position on IP in Africa. It exposes how the government takes advantage of the AU's position at the detriment of the IP of the Niger Delta.⁵⁰ This work is directed at advancing the promotion and protection of the rights of IP of the Nigeria's Niger Delta in their status as minorities.

³⁸ *Indigenous peoples and human rights* (2002). See also, P Thornberry 'The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analyses Observations, and an Update' in P Alan & R Alan (eds) *Universal Minority Rights* (1995)

³⁹ 'Indigenous Peoples' Rights to Land and Natural Resources' in Ghanea & Xanthaki (n 28 above)

⁴⁰ 'Indigenous Peoples' Rights under the International Covenant on Civil and Political Rights' in C Joshua & W Niamh (eds) *International Law and Indigenous Peoples* (2005)

⁴¹ N 6 above.

⁴² 'The Rights of Indigenous Peoples in South Africa' in Hitchcock & Vinding (n 2 above).

⁴³ 'Human Rights and Participation among Southern African Indigenous Peoples' in Hitchcock & Vinding (n 2 above).

⁴⁴ N 13 above

⁴⁵ 'Minority Protection and World Order: Towards a Framework for Law and Policy' in A Phillips & A Rosas (eds) *Universal Minority Rights* (1995)

⁴⁶ *Minority Rights: Between Diversity and Community* (2005)

⁴⁷ N 14 above .

⁴⁸ Odje n 10 above.

⁴⁹ N 41, 42, and 45 above.

⁵⁰ Nigeria ratified the AU Constitutive Act on 29 March 2001. This Act replaces the 1963 Charter of the Organisation of Africa Unity (OAU). See <http://www.africa-union.org> (accessed 11 August, 2008).

1.9 Overview of chapters

This entire work will be divided into five chapters. In these, chapter one covers the introduction to the study. It includes the background to the study, statement of research, objectives and significance, research methodology, literature survey and the overview of chapters.

Chapter two embraces the analyses of concepts such as IP, minorities, IM and rights-based approach in the context of this work. In drawing the differences and similarities between IP and minorities, this chapter highlights the problems faced by the ethnic groups in the Niger Delta which have become the causes of agitations in the area. It also considers their implications on human rights.

Chapter three contains a survey of international norms and jurisprudence directed at the promotion and protection of the rights of minorities and IP.

Chapter four contains an application of the laws discussed in chapter three above to the current state of the Urhobo and Ogoni peoples of the Niger Delta region of Nigeria. It analyses the legal entitlements of these peoples from a rights-based approach.

Finally, chapter five covers this writer's conclusion and recommendations.

Chapter two: Conceptual framework, situation of the Urhobo and Ogoni peoples, and the implications on human rights

2.1 Introduction

An attempt to define IP, minorities, IM, and a rights-based approach will enhance a better understanding of the goal which this work is set to achieve. Besides the analyses of these basic concepts, this writer intends to highlight the current situation of the Urhobo and Ogoni peoples⁵¹ and the implications on rights of the peoples. This forms the core of this chapter.

2.2 Indigenous peoples, indigenous minorities, and indigenous majorities

It is important to start with the observation that there has not been any universally accepted definition of IP as a concept.⁵² However, the dictionary definition of the word shows its origin from two Latin words to wit, *indi*, meaning 'within' and *gen* or *genere* meaning 'root'.⁵³ This is very similar to the French and Portuguese interpretation of the word as 'autochtone'⁵⁴ and 'nativo'⁵⁵ respectively. Summarily, all these definitions tend to assert aboriginality for IP, thereby implying that other ethnic groups within the affected area or state are immigrants. Neither the UN DRIP nor the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No.169) (ILO Convention 169)⁵⁶ has statutorily defined IP. This raises the problem of how to identify the peoples whose rights we advocate. In view of the complications involved in the bid to define IP, the African Commission's Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa (African Commission's Working Group)⁵⁷ resolved that the focus should be on criteria for identifying IP. This constitutes the contemporary internationally recognised approach African Commission and the UN.⁵⁸

⁵¹ Considering the expansive uses to which 'peoples' can be subjected under the African Charter, this writer intends to use the concept as used by the African Commission, referring to individuals in these two communities as well as the communities as a whole. See *SERAC Case 1*, 67, 69. See also F Ouguerouz, *The African Charter on Human and Peoples' Rights: a Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) 211.

⁵² Preece 46 above 9.

⁵³ See Kamu (n 35 above).

⁵⁴ See *Collins French Dictionary* (2000) 334.

⁵⁵ J Whitlam *et al* (eds) *Collins Portuguese Dictionary* (3rd ed) (2006)172. Similar view held by Mr Fred Bluff of the Songa tribe and other nearby petty traders in this writer's oral interviews at the Shkelele open market, Mozambique, on 3 October 2008.

⁵⁶ Adopted 27 June 1989 at the 76th Session of the General Conference of the ILO. See <http://www2.ohchr.org/english/law/indigenous.htm> (accessed 3 October 2008).

⁵⁷ Established at the 28th Ordinary Session of the African Commission held in Cotonu, 2000.

⁵⁸ N 2 above 9.

Several distinct characteristics of IP can be distilled from the UN DRIP and the ILO Convention 169.⁵⁹ From the preambles to the UN DRIP and the African Commission's work on IP in Africa, these characteristics include distinctiveness, marginalisation, discrimination, cultural difference, self identification, dispossession of land and cultural attachment to the land.⁶⁰ In analysing the UN DRIP, M Scheinin⁶¹ writes that distinctiveness relates to the peoples' sense of being different and the group's self-identification as indigenous. On dispossession, this author posits that the declaration refers to dispossession of lands, territories and resources through colonialism or other comparable events which have currently occasioned a denial of these peoples' human rights and other forms of injustice which remain unaddressed. On the issue of land, Scheinin finally writes that the peoples' geographical area of settlement constitutes their identity and culture and that their traditional economic activities are inherently dependent on the natural resources specific to the area in question.⁶²

Besides the above characteristics of IP, Scheinin has added two other conditions which he considers indispensable to the definition of IP namely, first settlement⁶³ in the geographical area and lack of political control⁶⁴ in the area which is internationally recognised as the modern state. These attributes of IP are also reflected in the ILO Convention 169 which provides that the convention applies to:

Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.⁶⁵

All the forgoing attributes of IP have been components of the working definition of IP which has been consistently adopted within the UN framework. The UN working definition was formulated J.R.Martinez Cobo, the Special Rapporteur of the Sub-Commission. According to him,

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-inversion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the society now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and determined to preserve,

⁵⁹ These common criteria are also recounted by KH Robert and V Diana 'Indigenous Peoples Rights in Southern Africa: An Introduction' (citing Saugestad) (n 6 above) 8.

⁶⁰ See n 2 above. See also <http://www.ipacc.org.za>; <http://www.ohchr.org>; The [Indigenous Peoples of Africa Co-ordinating Committee](#) (IPACC) at http://en.wikipedia.org/wiki/Definitions_and_identity_of_indigenous_peoples (accessed 10 September 2008)

⁶¹ 'What are Indigenous Peoples' in Ghana & Xanthaki (n 30 above) 3.

⁶² Similar finding was made by the European Commission on Human Rights (ECHR) in *G. and E. v Norway* Nos.9278/81, DR 35 (1983) 32-33, when the Saami community sued the Norwegian government concerning the construction of dam and hydroelectric plant in the Alta Valley.

⁶³ As contained in art 27 of the Declaration

⁶⁴ As reflected in arts 37 and 39 of the Declaration.

⁶⁵ Art 1(a) thereof.

develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.⁶⁶

While the UN working definition fully covers the people it seeks to protect, it is this writer's observation that the definition contradicts itself as it does not take into account peoples who meet all the criteria of first settlement, distinctiveness, inherent identity to land etc, but now form dominant majorities in the modern state. Colonialist were first in contact with these peoples who yielded early enough to Western civilisation. It is perceived that the refusal to cover these majorities with the umbrella of indigenes is one of the reasons for the continued absence of a generally accepted definition of IP. Further, this minority-perception of IP constitutes the reason why governments of African states via the AU, have perceived the UN conception as foreign and inimical to Africa.⁶⁷

The AU's position stands against accepting the UN DRIP. This is reflected from its January 2007 resolution in which it ordered the deferral of discussion on the UN DRIP and mandated the African Group at the UN to guard Africa's interest and concern about the 'political, economic, social, and constitutional implications' of the Declaration.⁶⁸ Besides the destabilising effect on national territories, the AU's areas of concern over accepting the UN DRIP include the definition of IP, self-determination, ownership of land and resources, and the establishment of distinct political and economic institutions.⁶⁹

In a working definition which embraces all the forgoing arguments and also fits the context of this contribution, this writer will define IP as a group of individuals within a territory who, in relation to that territory, have the characteristics of first settlement, cultural distinctiveness, self-identification, and are in a vulnerable position of marginalisation, subjugation and dispossession from the influence of a numerically dominant ethnic majority which may have migrated to the territory that was historically occupied by the peoples in question or are indigenous to a nearby territory all of which have been forced into what is recognised as the modern state.

Importantly, this definition embraces the concept on IP who are numerically superior (indigenous majorities)⁷⁰ and those who suffer marginalisation, dispossession and all forms

⁶⁶ See UN Doc. E/CN.4/Sub.2/1986/7/Add.4 para 379.

⁶⁷ See for instance Viljoen (n 13 above) 180-181 and footnote 353&354.

⁶⁸ See Viljoen (n 12 above). See also AU Doc Assembly/AU/Dec.141 (VIII), para 3.

⁶⁹ AU Doc Assembly/AU/Dec.141 (VIII), para 6. See also the fears expressed by Akindele, the Nigerian representative, for his refusal to vote in support of the Declaration on Indigenous Peoples

<http://www.un.org/News/Press/docs/2007/ga10612.doc.htm> (accessed 21 September 2008).

⁷⁰ See E Asbjorn 'Minority Protection and World Order: Towards a Framework for Law and Policy' in Phillips & Rosas (n 46 above) 97. This perception of indigenous majority is also asserted by Viljoen where the learned writer observed that

of exploitation as a result of their numerical inferiority (indigenous minorities)⁷¹ to the dominant group(s) with which they jointly constitute a state.⁷² It also acknowledges the idea of indigenusness to a particular territory of original occupation and not necessarily indigenusness to a country and to every region therein. This definition represents the sense in which the idea of indigenous majority⁷³ and IM will be used where appropriate in the context of this work. This definition fits the current circumstances of the Urhobo and Ogoni peoples of the Niger Delta who now suffer at the verge of total extinction from the predatory influences of the numerically dominant Hausa peoples (of the Northern region of Nigeria), Yoruba peoples (of the Western region of Nigeria), Ibo peoples (of the Eastern region of Nigeria) and other dominant ethnic groups in Nigeria.

The Ogonis are a recognised IP to the area called Ogoniland.⁷⁴ They meet the necessary criteria.⁷⁵ They occupy a section of the area which constitutes the present Rivers State of Nigeria. Similarly, the indigeneity of the Urhobo people to the western region of Delta state of Nigeria stands true. Like the Ogonis, these people have accomplished all the universally recognised characteristics of IP.⁷⁶

2.3 Minorities

Neither the UN nor any regional organisation has given an authoritative, generally accepted definition of minorities. This informs the reference to 'objective criteria' for existence by the Human Rights Committee.⁷⁷ The commonly used definition by the UN is that which was formulated by F Capotorti, the former Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1979. In analysing the principles of law underlying article 27 of the ICCPR, he defined minorities as:

*A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.*⁷⁸

“Arguably, in Africa, most nations are to varying degree ‘indigenous’ in the original sense of the term.” See Viljoen (n13 above) 280.

⁷¹ See E Asbjorn supra. See also Geldenhuys & Rossouw (n 14above) 8. See also n 2 above 18.

⁷² Ibid.

⁷³ See the use of this concept by Scheinin (n 40 above) 13.

⁷⁴ See http://en.wikipedia.org/wiki/Ogoni_people. (accessed 9 September 2008).

⁷⁵ See Report of the African Commission’s Working Group on Indigenous Population//Communities in Africa <http://www.iwgia.org/sw12955.asp> (accessed 27 September 2008).

⁷⁶ See http://en.wikipedia.org/wiki/Definitions_and_identity_of_indigenous_peoples (accessed September 2008).

⁷⁷ General Comment No. 23(1994). See also *Ballantyne, Davidson and McIntyre v Canada* Report of the Human Rights Committee, Part II UN Doc. A/48/40 1 November 1993) pp91-109.

⁷⁸ Quoted in (Geldenhuys & Rossouw (n 14above) 8. See a similar definition by J Deschenes, “Proposal Concerning a Definition of the Term ‘Minority’”, UN Doc. E/CN.4/Sub.2/1985/31. See F Capotorti, F *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, (1991) 568.

This definition was also adopted by the European Commission for Democracy through Law and the Parliamentary Assembly of the Council of Europe in 1993 in their definition of minorities (or national minorities). This definition meets the target of this work (ethnic minority groups) as it does not focus on classifications of race, sex, religion etc.⁷⁹

Besides numerical inferiority, the qualification for being minorities has shifted in recent times with the additional attributes of economic and political marginalisation.⁸⁰ But it is argued that this does not preclude a numerically inferior, but dominant group (which is always an exception) from being qualified as minorities. Any such exclusion will lead to greater confusion in the use of the term.

According to Geldenhuys and Rossouw, Caporoti's definition of minorities embraces three distinct groups of people to which minority rights could be applicable.⁸¹ These are national or ethnic minorities,⁸² ethno-cultural minorities,⁸³ and lastly, IP.⁸⁴

Although the foregoing three classifications of minorities look convincing, this writer intends to question the last classification of minorities as IP who were the first inhabitants of their countries. This is because, this classification may not actually fit into a country like Nigeria which has a land mass of 923 768 square kilometres (356 669 square miles) and is inhabited by over 300 ethnic groups with different cultures and traditions.⁸⁵ From where and at what time did the other ethnic groups migrate into the territory which is now called Nigeria? The third classification of Geldenhuy and Rossouw is also questionable because Nigeria like other African states is a creation of colonial powers who found their ways into vast territories occupied by different peoples and forced the entire territories into what they called the Nigeria.⁸⁶ In view of this anomalies foreseen in the last classification, this writer submits that IP (as a category of minorities) were original settlers of only a particular region (and in some cases the entire region) of what now constitutes the modern state.

⁷⁹ Some of the UNs efforts towards minorities include article 27 of ICCPR & the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Adopted by General Assembly resolution 45/135 of 18 December 1992. See http://www.unhchr.ch/html/menu3/b/d_minori.htm. (accessed 13 August 2008).

⁸⁰ See Minority Rights Group International website www.mrg.org. (accessed 28 September 2008). See also Kamu (n 35 above).

⁸¹ N 14 above 7-8. See also Caporoti (N 77 above).

⁸² With distinct culture and language like Africaans in South Africa.

⁸³ Often settled immigrants and refugees eg Turks in Germany. R Colier, 'Germany copes with integrating Turkish minority Immigration reform on agenda after decades of separate, unequal treatment' <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/11/13/MNG1AFNKRGI.DTL>. (accessed 21 September 2008).

⁸⁴ To these writers IPs share all traits of national minorities in addition to being first settlers.

⁸⁵ F Onuora 'Poverty, pipeline vandalization/explosion and human security: Integrating disaster management into poverty reduction in Nigeria' (2007) 16 no 2 *African Security Journal* 98. Also, this kind of interpretation is one of the reasons for the AU's resistance to the application of the concept in Africa.

⁸⁶ 'Nigeria' was named by Ms Flora Show, wife of Lord Lugard. See O Omoruyi 'The Origin of Nigeria: God of Justice not associated with an unjust political order' http://www.nigerdeltacongress.com/tarticles/the%20origin_of_nigeria.htm (accessed 27 September 2008).

Although no universally accepted definition has been adopted, the AU has not mounted a firm resistance to the concept of national minorities as has been the case for IP.⁸⁷

2.4 Minorities, indigenous peoples, and indigenous minorities

From the forgoing definition of minorities and IP, there appear certain similarities and dissimilarities. As Thornberry⁸⁸ has observed, participants of the 2000 Arusha resolution unanimously agreed that IP and minorities are disadvantaged, marginalised, and discriminated against in Africa. There were also perceptions that these groups are generally backward. IP and minorities usually have specific identities and cultures. They are non-dominant and vulnerable. Another similarity between minorities and IP is that the both terms are complex and often misunderstood. The state often perceives these groups as threats to its integrity.⁸⁹

The common problems experienced by IP and minorities give a convincing basis for the overlap in the degree of rights and available measures.⁹⁰ In view of noticeable similarities, I Brownlie⁹¹ concludes that the issues of IP and minorities are the same and that any attempt to segregate them will be an impediment to fruitful work.

As different from minorities, the claims of IP are generally collective in nature and are mostly linked to spiritual ties and dependence on their lands. According to Viljoen, the claims of minorities ‘...are rooted in extreme forms of marginalisation and subjugation that go beyond “mere non-dominance”.’⁹² Claims on the bases of these grounds also ground their usual claims for internal self-determination.

Additionally, G Alfredson has noted that IP are distinct for their quest for equal rights, non-discrimination, possession of land, and special measures to benefit from the natural resources accruing from their land.⁹³

⁸⁷ It is also true that the AU and its member states have not done very well in the protection of minorities. See M Timothy ‘The African Union and the Prospects for Minority Protection’ in Ghana & Xanthaki (n 27 above) 299. Considering also the current crisis in Darfur, Sudan- <http://www.savedarfur.org/pages/background> (accessed 13 September, 2008).

⁸⁸ *Indigenous Peoples and Human Rights* (2000) 262.

⁸⁹ *Ibid* at 263.

⁹⁰ See A Dudmundur ‘Minorities, Indigenous and Tribal Peoples and Peoples: Definition of Terms as a Matter of International Law’ in Ghana & Xanthaki. (n 30 above) 169

⁹¹ ‘The Rights of Peoples in Modern International Law’ in J Crawford (Ed) *The Rights of Peoples* (1995) 16.

⁹² N 12 above 281.

⁹³ G Alfredson ‘Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law’ in Ghana & Xanthaki (n 30 above) 169.

In view of the foregoing, Geldenhuys and Rossouw could not have been wrong in classifying IP as a category of minorities.⁹⁴ Having considered the definitions, similarities, and dissimilarities between minorities and IP, it stands true that the Urhobo and Ogoni peoples are minorities in Nigeria and are indigenous to their area of occupation in the Niger Delta in Nigeria. This informs their classification as IM as against the dominant tribes who now have a chance to qualify as indigenous majorities if their indigeneity is proved.⁹⁵ In this way, this writer conceives IM as numerically inferior and non-dominant indigenous peoples in a state where there are other numerically superior and dominant ethnic groups (who qualify as indigenous majorities). Having established this point, this work now proceeds to drawing a distinction between IM and indigenous majorities.

The AU holds its position that the UN conception of indigenous peoples is alien to Africa.⁹⁶ It argues (though unconvincingly and baselessly) that everyone in Africa is indigenous to the African continent and that every citizen of a country is indigenous to that country.⁹⁷ Some governments argue that there are no indigenous groups in their countries.⁹⁸

Assuming, but not conceding to AU's argument, it is this writer's reasoned submission that ethnic minorities in Africa should be accorded the special protection contemplated by the UN DRIP, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (UN Minority Declaration),⁹⁹ African Charter on Human and Peoples' Rights (Charter), and other relevant instruments. Thus while the AU maintains its addiction to *uti possidetis*, continental and national indigeneity, its commitment to the rights of 'indigenous peoples' should be accessed by its willingness (via the member states) to protect the special interests of 'indigenous minorities'.

2.5 A rights-based approach

In a simplistic understanding, a rights-based approach is an approach which is based on human rights.¹⁰⁰ There is no single, universally agreed rights-based approach, although there may be an emerging consensus on the basic constituent elements.¹⁰¹ A rights-based approach is a conceptual framework for the application of human rights that is normatively

⁹⁴ See n 13 above 8.

⁹⁵ See also this classification in Scheinin (n 40 above)13

⁹⁶ B Kingsbury, "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" (1998) 92 *America Journal of Internal Law* 414.

⁹⁷ See AU, Assembly, *Decision on the United Nations Declaration on the Rights of Indigenous Peoples (Assembly/AU/9 (VIII) Add.6 (December 2006)*, 8, AU Doc. Assembly/AU/Dec.141, (VIII) (January 2007). For a list of the AU's concern, see Viljoen (n 13 above) 280-281.

⁹⁸ Hitchcock & Vinding (n 2 above) 8.

⁹⁹ Adopted by Gen. Ass. resolution 47/135 of 18 December 1992. See <http://www2.ohchr.org/english/law/minorities.htm> (accessed 3 October 2008).

¹⁰⁰ See <http://www.reliefweb.int/library/library/actionaid-rights5-2001.pdf> (accessed 18 September 2008).

¹⁰¹ See UNHCHR <http://www.unhchr.ch/development/approaches.html> (accessed 18 September 2008).

based on international human rights standards and operationally directed to promoting and protecting human rights.¹⁰² The applicable norms and standards are those contained in international human rights laws and declarations. In applying a rights-based approach, it is argued that our laws, principles, programmes, strategies, policies, and action plans have to be mainstreamed on the rights.¹⁰³ The embodiments of a rights-based approach inform its relevance to the challenges facing the Urhobo and Ogoni peoples from the government.

2.6 Challenges faced by the Urhobo and Ogoni Peoples and their implications on human rights

The challenges faced by the Urhobo and Ogoni peoples (like other IM of the Niger Delta) from the acts of the government include loss of lands, loss of recourses, environmental degradation, poverty, loss of culture and identity, marginalization, destruction of means of livelihood, destruction of sacred sites and discrimination. One notable weapon in the hands of the government is the law. Therefore, both regulatory and non-regulatory challenges will be considered. In view of the limited volume of this work, this writer will briefly analyse some of these challenges.

2.6.1 Expropriatory laws and impacts on the Urhobo and Ogoni peoples

As noted above, law constitutes the most outstanding instrument with which the government justify and/or vindicate its inhumanity to the Urhobo and Ogoni peoples as well as other ethnic minorities of the Niger Delta. These laws include section 44(3) of the Constitution, the Petroleum Act,¹⁰⁴ the Oil Pipelines Act,¹⁰⁵ the Minerals and Mines Act,¹⁰⁶ the Territorial Waters Act,¹⁰⁷ the Exclusive Economic Zones Act,¹⁰⁸ the Land Use Act,¹⁰⁹ the Interpretation Act 1964,¹¹⁰ and the National Inland Waterways Authority Act.¹¹¹

2.6.1.1 Section 44(3) of the Nigerian constitution and human rights

Section 44(3) of the constitution unconditionally vests the entire property in, and control of all minerals, mineral oils, and natural gas on the federal government. According to AO Odje (and correctly too), this section is the hallmark of all expropriatory laws that took away the traditional and internationally protected right of the Urhobo and Ogoni peoples of the Niger

¹⁰² Ibid

¹⁰³ See WAREC Pepal http://www.worecnepal.org/rights_based.html#whatare (accessed 19 September 2008).

¹⁰⁴ 1969 as amended by Act No.28 of 1998.

¹⁰⁵ Of 4/10/56 Cap338 LFN 1990.

¹⁰⁶ No 34 of 1999.

¹⁰⁷ Cap 428 LFN 1990 as amended by Act No. 1 of 1998.

¹⁰⁸ Cap 116 LFN 1990 as amended by Act No 42 of 1998.

¹⁰⁹ Cap 202 LFN 1990.

¹¹⁰ Of 24/1/64, Cap 192 LFN 1990.

¹¹¹ No. 13 of 1997.

Delta.¹¹² This section, read together with the supremacy clause of the constitution, has been repeatedly paraded by the Nigerian presidency in response to request for infrastructural development from leaders of the Niger Delta. This law infringes on the rights of the Urhobo and Ogoni peoples to property, the right to productive resources, and their right to freely dispose their resources.¹¹³

2.6.1.2 The Territorial Watters Act and human rights

The Territorial Watters Act¹¹⁴ provides for federal government's sovereignty over all matters and laws related to the territorial waters around the coast of Nigeria. This Act targets the territorial waters of Nigeria. In this way, it vests all resources within the 12 nautical miles in the exclusive possession of the federal government; thereby depriving the Niger Delta coastal state the right to claims derivation benefits from such resources.¹¹⁵ Contrary to strict rules of international law, the federal government now claims full ownership of these territories from its self-imposed sovereignty over same.¹¹⁶ This law dispossesses the peoples of their precious resource.

2.6. 1. 3 The Exclusive Economic Zones Act and human rights

The Exclusive Economic Zones Act provides that:

Without prejudice to the Territorial Waters Act, the Petroleum Act or the Sea Fisheries Act, sovereign and exclusive rights with respect to the exploration and exploitation of the natural resources of the seabed, subsoil and superjacent waters of the Exclusive Zone shall vest in the Federal Republic of Nigeria and such rights shall be exercised by the Federal Government....

This omnibus provision vests exclusive rights of exploitation and exploration of resources of the sub-sea, subsoil and superjacent waters in the Exclusive Economic Zone in the government. This act has fuelled the agitation against the onshore and offshore dichotomy principle which has frustrated the Urhobo and Ogoni peoples by its cut down on the constitutionally provided 13% derivation measure. Like section 44 of the Constitution, this law implicates a violation of the right to property and to free disposal of resources. It is discriminatory in substance¹¹⁷

2.6.1.4 The Land Use Act and human rights

¹¹² Odje (n 10 above) 389.

¹¹³ See chapters 3 & 4 below.

¹¹⁴ Sec 1(1)(2).

¹¹⁵ A case in view is Cross Rivers state which is purely archipelagic.

¹¹⁶ See Odje (n 10 above) 387.

¹¹⁷ See chapter 3 and 4 below.

The Land Use Act vests all lands comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state.¹¹⁸ It declares the governor a trustee who shall also be responsible for the allocation of land. Besides this wholesale expropriation of lands, section 14 of the Act provides another injustice to the Urhobo and Ogoni peoples. It provides that

Subject to the other provisions of this Act, and of any laws relating to way leaves to prospecting for minerals or mineral oil or to mining or to oil pipeline and subject to the terms and conditions of any contract made section 8 of this Act, the occupier shall have exclusive right to the land the subject of the statutory right of occupancy against all persons other than the governor

The negative effects of this expropriatory law on the Urhobo and Ogoni peoples cannot be overemphasised. From the human rights perspective, it denies the Urhobo and Ogoni peoples their traditional right and access to their ancestral lands.¹¹⁹ They are denied not just their radical customary title to the land, but the rights of their ancestors and their unborn children.¹²⁰ The clan heads of these peoples are denied their ancestry rights to allocate communal lands to their subjects.¹²¹ With the Land Use Act in place, the government has unrestrained access into land for oil exploration, the laying of oil and gas pipelines, company premises, or for any purpose it consider incidental to its goals. Coupled with oil spillage from company activities, this law currently occasions land scarcity for farming and residential purposes. According to Odje,¹²² 'This Act subjects the exclusive right of the occupier to the right of the Federal Government...' The people only have a right of occupancy (or leasehold) but not a freehold title. The government awards contracts to multinational oil companies and timber companies without consulting the peoples.¹²³ Attempts by the local peoples to restrain or seek explanations from some of these extraction companies have been met with the mass killing of youth and women protesters.¹²⁴ In 1993 for instance, about 3000 Ogonis were killed, 50 houses destroyed, and 80,000 displaced.¹²⁵ This figures were arrived at from a single incidence in which Shell security guards (actively supported by the Nigerian military), reacted to the Ogoni peoples' insistence that their consent must be gained before pipelines are laid

¹¹⁸ Preamble and sec 1 of the Act.

¹¹⁹ Also with spiritual attachment reminiscent of the San in Botswana. See Hithcock & Vinding (n 2 above) 11

¹²⁰ See generally TO Elias *Nigerian Land Law* (1971); JF Fekumo *Principles of Nigerian Customary Land Law*.(2002). See also *Mayagna (Sumo) Awas Tingni Community v Nicaragua* 79 IACHR (Ser C) (2001).

¹²¹ Viscount Halden *Amodu Tijani v The Secretary of Southern Nigeria* (1921) AC 399. Cited by Abdullahi Conteh CJ in *Village of Conejo v Attorney General of Belize* (n 23 above) at 25. See also P Ekeh 'Studies in Urhobo Culture' <http://www.africanbookcollective.com/books/studies-in-urhobo-culture> (accessed 21 September 2008).

¹²² N 10 above 389.

¹²³ FMA Ukoli 'Urhobo Biography' http://www.waado.org/Biographies/Mowoe/Lectures/Mowoe_ukoli.htm (accessed 20 September 2008).

¹²⁴ Courson (n 20 above). As Courson rightly noted, there are always human casualties anytime the Nigerian Army is drafted to handle protest (whether peaceful or violent) among these indigenous minorities.

¹²⁵ Wikipedia 'Ogoni People' http://en.wikipedia.org/wiki/Ogoni_people (accessed 21 September 2008). See also the video report of Major Okuntimo, the Head of the Rivers State Internal Security Task Force where he confirms this assertion in one his memo with officials of Shell Petroleum Development Company (SPDC) recounting the 'success' of his operation. See *SERAC* case (n17 above) 8.

across their community. Now, they are left with nothing but a right of occupancy. The government can take possession of their occupied lands for anything it considers to be of 'national interest'.¹²⁶

This Act occasions a clear violation of the rights to land and the right of access to land. It violates the peoples' right to have their customary land tenure system recognised and to have that right not subject to any other state law. The right to dignity and the right to life are affected. The rights of the Urhobo and Ogoni peoples to be consulted and to freely give consent to the use of their lands are infringed.¹²⁷

2.6.1.5 The Oil Pipeline Act and human rights

The preamble to the Oil Pipeline Act provides that the Act aims at providing for licence to be granted for establishment and maintenance of pipelines matters incidental and supplementary to oilfields, oil mining and for other purposes ancillary to such pipelines. This Act permits the licence holder and his officers to enter any area of the Urhoboland and Ogoniland with any equipment they consider necessary.¹²⁸ The licence holder is permitted to enter lands to survey and take levels of land;¹²⁹ to dig and sore into the soil and subsoil;¹³⁰ to cut and remove all trees and vegetation as may impede their purposes;¹³¹ and

to do all other acts as may be necessary to ascertain the suitability of the land for establishment of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified.¹³²

The sad effect of this Act is seen in how it legalises what ordinarily ought to qualify as trespass to land. The licensee is only required to give a 14-day notice to the occupier of such land before it takes its measure.¹³³ The 14-day notice is not to obtain the free consent of the affected peoples; it is merely to notify the occupier. With this Act, homes and farmlands have been destroyed amidst resistance and without compensation.¹³⁴ Besides the despicable provisions of the Act, the licensed multinational oil companies have frequently refused to pay

¹²⁶ Onuora (n 85 above) 105.

¹²⁷ See chapters 3 & 4 above.

¹²⁸ Sec 5(1) of Oil Pipelines Act Cap 338 LFN 1990 as amended by Act No. 28 of 1998.

¹²⁹ Ibid at 5(1)(a)

¹³⁰ Ibid at 5(1)(b)

¹³¹ Ibid at 5(1)(c)

¹³² Ibid at 5 (d)

¹³³ Sec 6 thereof.

¹³⁴ ANEEJ 'Poverty of Oil in Niger Delta'

<http://www.boellnigeria.org/documents/Oil%20of%20Poverty%20in%20Niger%20Delta.pdf> (25 Sep 2008).

compensation for injuries caused.¹³⁵ In rare instances where they have paid, the amounts have been far less than the market value of the affected products. This Act with its effects is an infringement on the right to justice and the right to an environment that is favourable for living. The peoples' right to their culture and traditions is affected.¹³⁶

2.6.1.6 The Minerals and Mines Act and human rights

Besides the sad effects of the Oil Pipeline Act, the Urhobo and Ogoni peoples are aggrieved over the entire provisions of the Minerals and Mines Act. Like the other Acts which focus on specific areas of interest of the Niger Delta peoples, this Act provides that the government shall have ownership and control over the entire property in minerals under or upon lands, streams and watercourses etc.¹³⁷ Moreover, it provides that all lands in which minerals have been found in commercial quantity shall be acquired by the government.¹³⁸ It empowers the Minister to designate such lands as 'security lands'. The intentment of this Act is obvious from the provision of section 1(2) thereof. It formally expropriates title to and /or possessory rights of all lands in which mineral have been found. The Act also reinforces the government's claim to ownership and control of all minerals and lands under section 44(3) of the Constitution and section 1(1)(2)(b) of the Petroleum Act. The rights to property and free disposal of property are affected. Traditional right of ownership is denied. The peoples are denied the right to be consulted and to give their consent to concessions over their resources.¹³⁹

2.6.1.7 The National Inland Waterway Authority Act and human rights

Besides the Minerals and Mines Act, the National Inland Waterway Authority Act constitutes unqualified injustice to the Urhobo and Ogoni peoples as well as the other ethnic minorities of the Niger Delta. This Act declares that the main internal waterways are federal navigable waters.¹⁴⁰ It provides further that these water bodies shall be under the management and control of the National Inland Waterway Authority established by the Federal government.¹⁴¹ This Act takes away the powers of the Niger Delta peoples and the states government over the control and freedom to fish in their historically occupied rivers. This police power is to further complement the denial of the peoples' rights to minerals and mineral oils in the internal waterways. One of the obvious effects of this law is that it takes away the peoples' very means of livelihood and puts same in the hands of ethnic trio in Abuja.¹⁴² It compels the local farmers and fishermen to go over to the federal government in Abuja and seek

¹³⁵ Odje (n 10 above) 395. See also sec 36 of the first schedule to the Oil Exploration Licenses (Cap. 350 LFN 1990) which provides for compensation for surface rights.

¹³⁶ See chapter 3 & 4 below.

¹³⁷ Sec 1(1).

¹³⁸ Sec 1(2)

¹³⁹ Substantive rights discussed in chapters 3 & 4 above.

¹⁴⁰ Sec 1

¹⁴¹ *ibid*

¹⁴² Abuja is the seat of the federal government of Nigeria.

permission before fishing activities can be carried out. Coupled with the fact Abuja is thousands of miles away from the Urhobo and Ogoni peoples, this Act has made life extremely difficult by taking away their very means of existence (which is food). There is an infringement on the right to existence. Besides other rights, the customary and internationally protected right to property is implicated.¹⁴³

2.6.1.8 The Petroleum Act and human rights

Inequity in the Nigerian resource legal regime is climaxed in the provisions of the Petroleum Act. The preamble to the Act reads that the Act aims at providing for the exploration of petroleum from the territorial waters and continental shelf of every part of the territory which constitutes Nigeria. It reads further that the Act is to vest 'ownership of, and all onshore and offshore revenue from petroleum resources derived therefrom in the Federal Government and/or all other matter incidental thereto'. Section 1(1) of the Act vests the ownership and control of all petroleum in, under or upon any lands in Nigeria of the federal government.

The foregoing legal instruments confirm this writer's assertion that law has been a very useful instrument in the hands of the government. However, law ought to be fair, just, and human to every group in a society. An unjust law has been considered a derogation of law which must be resisted. This assertion is also the fundamental principle behind what CH Heyns calls the 'struggle approach'.¹⁴⁴ This approach dictates that human rights and legitimate struggle are best understood as two sides of the same coin. Oppressive laws are a true recipe for violent resistance.

The Urhobo and Ogoni peoples are not only aggrieved by the unjust contents of these Acts, they are also concerned that these Acts were decrees enacted by the erstwhile military regime of Gen. S Abacha and others of its kind. These regimes were ruled by dictators from the so-called major tribes (Hausa, Yoruba, and Igbo). These laws are undemocratic;¹⁴⁵ they are only converted as existing laws¹⁴⁶ and legalised by the Constitution¹⁴⁷ which was itself imposed on Nigerians by the Gen. A Abubarkir regime. The foregoing expropriatory and military-imposed laws do not have any of their kinds concerning other regions of Nigeria.

¹⁴³ Discussed in the last two chapters.

¹⁴⁴ CH Heyns 'A "Struggle Approach" to Human Rights' *Concepts and Language of Human Rights and Related Ideas* 15. Being a handout from CH Heyns to the 2008 LLM class in University of Pretoria.

¹⁴⁵ JO Akande *Introduction to the Constitution of the Federal Republic of Nigeria* 1999 (2000) 444.

¹⁴⁶ Defined in sec 315(4)(b) of the Constitution.

¹⁴⁷ Sec 315 *ibid*

2.6.2 Resource disposition and discrimination

The impact of the Nigerian resource legislations on the Urhobo and Ogoni peoples is the dispossession of their resources.¹⁴⁸ The resources in question include lands, minerals, mineral mines, natural gas, and their means of livelihood.

The Urhobo and Ogoni peoples as well as the other ethnic minorities of the Niger Delta are aggrieved that millet, palm nut and cocoa, which were the mainstay of the Nigerian economy before the discovery of oil in commercial quantity, have stopped all forms of contribution to the federal purse. While the constitution is completely silent about these cocoa, palm nut, millets and all other agricultural products of the North, East and the West, it provides for exclusive federal government's ownership and control of all minerals, mineral mines, and natural gas.¹⁴⁹ The people have now resolved to clamour for 50% and not the entire bulk of resources accruing from their areas to the federal government.¹⁵⁰

The clamour against the economic rape on the Niger Delta peoples started in the 1970s with IA Boro.¹⁵¹ Considering the oppression he foresaw from the growing practices among the dominant powers, he declared the Niger Delta Republic.¹⁵² Although Boro acted ahead of his time, Wittgenstein's observation stands unqualified today where said that '...if someone is ahead of his time, it will surely catch him up one day'.¹⁵³ This sounds true with the current momentum at which the crisis in the Niger Delta is growing. The inordinate dedication of the government also came to play when Ken Saro Wiwa, the president of the Movement for the Survival of the Ogoni People (MOSOP) was convicted and hanged after a kangaroo trial by the Abacha-led government of Nigeria. When asked to make his plea before the tribunal, Wiwa simply reflected on the need for justice for the oppressed minorities of the Niger Delta. According to the writer and environmental rights activist:

*I predict that a denouement of the riddle of the Niger Delta will soon come. Whether the peaceful ways favoured will prevail depends on what the oppressor decides, what signals it sends out to the waiting public... I call on the Ogoni people, the peoples of the Niger Delta, and the oppressed minorities of Nigeria to stand up now and fight fearlessly and peacefully for their right.*¹⁵⁴

¹⁴⁸ African Commission's decision on basis of art 21 of the African Charter. See *SERAC* case (n 18 above) 70-71.

¹⁴⁹ Sec 44 of the Constitution.

¹⁵⁰ The 1960 and 1963 constitutions provided for 50% to the region from which a resource comes. At this time, regions were also in full control of their resources. They only pay taxes to the federal government.

¹⁵¹ As F Varennes correctly observes, inequitable management of resources at the detriment of minorities and indigenous peoples has been a potential source of conflicts. See Varennes (n 1 above) 12. this position depreciated under successive military regimes in Nigeria.

¹⁵² This lasted for 12 days before his 59-man squad was overpowered. This became popularly known as 'The 12 Day Revolution' which became the title of a book containing the account of Boro. See Tebekeami (ed) (n 15 above).

¹⁵³ P Winch, (translator) *Culture and Values* (1984) 8.

¹⁵⁴ Quoted from I Okonta & O Douglas, *Where the Vultures Feast: Shell, Human Rights and Oil in the Niger Delta* (2001) 209.

2.6.3 Development and human rights

By challenge of development, this writer means the challenges faced by the Urhobo and Ogoni peoples as well as the other indigenous tribes of the Niger Delta from the absence of economic, political and social attention from the federal government which have negatively affected their well-being.¹⁵⁵ Infrastructural and institutional developments are more in focus. Despite the huge contribution of the Niger Delta to the Nigerian economy, the Urhobo and Ogoni peoples have the least level of infrastructural and institutional development in Nigeria.¹⁵⁶ For instance, there are no good roads, drinkable water and electricity in the majority of the towns surrounding the major cities of Port Harcourt, Warri, and Yenagoa.¹⁵⁷ This extends the blame to the Niger Delta states government that have failed to make judicious use of monthly federal grants to the states.

On education, the situation is not different. Besides the University of Port Harcourt, there is no other federal institution in the states of Delta, Bayelsa, and Rivers.¹⁵⁸ Abuja, Lagos and Ibadan are the headquarters of all federal institutions. The areas of the Urhobo and Ogoni peoples are hosts to any single federal institution.

They are treated as camps where resources are processed and transported to the cities. This is the system which the Shell, Chevron, Texaco, AGIP and the other multinational oil companies have adopted in their dealings with the peoples. For instance, a look at Shell's premises at Warri and Eleme is extremely pleasant. Another look behind the fences of Shell premises reveals an environment that is polluted, lacks infrastructural development, and all basic amenities for a healthy leaving. Abject poverty, stack illiteracy, and man's inhumanity to man pervades the surroundings. There is a wholesale violation of the right to development. The right to life is at stake.¹⁵⁹

From the recommendation of the Willink Minority Commission,¹⁶⁰ the federal government had set up the Niger Delta Development Board (NDDDB).¹⁶¹ The Oil Mineral Producing Area Development Commission (OMPADEC) was subsequently established.¹⁶²

¹⁵⁵ See preamble to the Declaration on the Rights to Development (DRD).

¹⁵⁶ See Wiwa (n 144 above). See also K Kubeyinje & T Nejiaya 'Delta communities protest neglect' <http://www.un.org/ecosocdev/geninfo/afrec/subjindx/131nigr6.htm> (accessed 28 September 2008).

¹⁵⁷ This attack takes into account the discriminatory developmental policies in which our local politicians focus attention on the cities while the villages from where the resources are sapped are neglected. It also takes into account the corrupt practices of local politicians which connive with federal politicians.

¹⁵⁸ This is different from what obtains in the North, West, and East where there are two or more federal institutions on education. In states like Oyo and Lagos there are more than four universities in each

¹⁵⁹ Rights fully discussed in chapters 3 & 4.

¹⁶⁰ N 14 above.

¹⁶¹ By the Niger Delta Development Board Act 1961 and pursuant to section 14 of 1960 Nigerian Independence Constitution

¹⁶² By the OMPADEC Decree 1989. It set 3% of extracted revenue for the development of the Niger Delta.

The OMPADEC was also a failure as it was crippled by lack of funding, corruption, nepotism and maladministration.¹⁶³

During his presidential campaign, Chief OA Obasanjo regretted the injustice that the Niger Delta has suffered from the failures of the government. He promised to take effective steps to redress the injustice if elected to power. On ascension to office amidst a highly fraudulent electoral poll, Obasanjo established the Niger Delta Development Commission (NDDC).¹⁶⁴ Today the NDDC has recorded a higher failure than its predecessors¹⁶⁵ and the rate of agitations in the Niger Delta has skyrocketed. All these institutions have failed for lack of sincerity and true dedication to the problems confronting the ethnic minorities of the Niger Delta. The Obasanjo-led government of Nigeria, like its predecessors, merely established the NDDC so as to deceive the local people and the international community that the problems of the Urhobo and Ogoni peoples are being alleviated. The NDDC is paralysed with lack of funding among other constraints.

With the high rate of the recent attack on oil facilities by angered youth, Nigeria's earnings from oil has drastically dropped. This has also affected oil prices in the world oil market.¹⁶⁶ The government has just decided to set up a ministry for the Niger Delta (Ministry of Niger Delta). Whether this measure will solve the problem of poverty, pollution, infrastructural marginalisation, environmental degradation, loss of life, political marginalization, loss of resources, and the escalated youth resistance to unwholesome laws leaves much to be desired.

2.6.4 Environmental degradation, the ecosystem and human rights

The lack of development, the activities of multinational oil companies have caused serious environmental damage to the lands, the environments and the entire ecosystem of the Urhobo and Ogoni peoples of Nigeria's Niger Delta.¹⁶⁷ These oil majors get full cooperation in form of military suppression, propaganda etc from the government. In view of the prevailing circumstances, they owe allegiance to the government alone and no other person. As WS Olwabukeruyele rightly observes, this situation accounts for the reckless activities and less concern for the environment where they work.¹⁶⁸

¹⁶³ Odje (n 10 above) 402.

¹⁶⁴ Act 2000.

¹⁶⁵ The Editorial 'Amendment of the NDDC Act' *The Vanguard Newspaper*, 12 September 2001, 12. See also Maj. Gen. DA Ejoor (rtd) 'Government is playing with the N.D.D.C' *Punch Newspaper* 23 July 2008 3.

¹⁶⁶ CNN report, 3rd August, 2008.

¹⁶⁷ See J Bisina 'Environmental Degradation in the Niger Delta' <http://www.pambazuka.org/en/category/comment/38728> (accessed 24 September 2008).

¹⁶⁸ WS Owabukeruyele 'Hydrocarbon Exploration, Environmental Degradation and Poverty in the Niger Delta Region of Nigeria' <http://www.waado.org/Environment/PetrolPollution/EnvEconomics.htm> (accessed 25 September 2008).

Lands, vegetations, and rivers are seriously damaged by pollution from pipeline explosion, pipeline vandalization and indiscriminate dumping of oil remains. The air is heavily polluted by gas flaring from oil and gas companies. The government lacks any substantive legislation on gas flaring which has been enforced.¹⁶⁹ The Federal Environmental Protection Agency Act (FEPA Act),¹⁷⁰ and the Harmful Waste Act¹⁷¹ have never been implemented to hold any multinational oil company liable for environmental crimes in the Niger Delta. Its policy to stop gas flaring by 2004 was never implemented.¹⁷² Like the complete silence after the recent concerns expressed by Colonel B Mande, the Nigerian Minister of Environment, the government has been criticized for paying lip services to the environmental challenges of the Niger Delta.¹⁷³ J Bisinia notes that the government has been consistently blamed for the crisis in the Niger Delta for its failure to take appropriate measures to control environmental degradation in the area.¹⁷⁴

The activities of acts of the government and its oil allies have occasioned the absence of wildlife in the region in question. This has denied the Urhobo and Ogoni peoples their cultures of hunting, fishing, and farming for a living. The impacts of oil pollution and gas flaring cannot be over-estimated.¹⁷⁵

Besides the impact on wildlife, the acts of the government and the uncontrolled exploratory activities of the multinational oil companies have negatively impacted on aquatic life.¹⁷⁶ Fishes and other aquatic lives die from contaminated waters in the Niger Delta.¹⁷⁷ Being that the people are poor, they eat the dead fishes and they themselves fall sick resulting to death.¹⁷⁸ Their fishing occupation is hindered. The people are deprived of their right to food¹⁷⁹ and humanity itself.¹⁸⁰

2.6.5 Deforestation and human rights

Another effect of government's expropriatory laws on the Urhobo and Ogoni peoples is an unprecedented and uncontrolled cutting down of forests. The exploratory activities of

¹⁶⁹BN joku 'Towards a better life for the people', Online *Vanguard Newspaper*, http://www.vanguardngr.com/index.php?option=com_content&task=view&id=6414&Itemid=0 (accessed 24 September 2008).

¹⁷⁰ 1988 Cap. 131 LFN 1990.

¹⁷¹ Cap 165 LFN 1990 Vol. IX

¹⁷² See also Ibe (n 24 above) 245-246, 288.

¹⁷³ C Nkwopara 'Environmental Degradation of the Niger Delta Enormous-FG' *Online Vanguard Newspaper* http://www.accessmylibrary.com/coms2/summary_0286-13047080_ITM (accessed 25 September 2008).

¹⁷⁴ Ibid. See also <http://www.nigerdeltaevi.com/About%20us.html> (accessed 24 September 2008).

¹⁷⁵ Onuora (n 85above) 105.

¹⁷⁶ Ibid at 102.

¹⁷⁷ See 'The August 2006 Report of the Commission of Nobel Laureates on Peace, Equity and Development' *Vanguard Newspaper*, Lagos, 2 December 2006. 7

¹⁷⁸ See ANEEJ (n 134 above)

¹⁷⁹ The African Commission called this an 'implied right' in the SERAC case (n 18 above) 64-65. Also upheld in *Peoples Union for Civil Liberties (PUCL) V Union of India and Others* WP (Civil) No 196/2001. Cited in Ibe (n 24 above) 234.

¹⁸⁰ According to M Hansungule in an oral interview at the Centre for Human Rights, University of Pretoria. 14 May 2008.

government's-licensed companies have also driven a substantial percentage of wildlife in the region into extinction.

Historically, the peoples make their houses from their locally made forest products such as timbers and tree leaves.¹⁸¹ Their house-hold furniture is their timber product which they manually process in traditional styles. As the tradition of the Urhobo people demands, cloths are made from forest leaves and animal skin.¹⁸² Hides and skin and forest leaves used to constitute the dignified modes of dressing.¹⁸³ From the 1960s when the majority-led federal government directed its expropriatory laws at the Niger Delta, the peoples have been subjected to loss of valuable sources of life, clothing and shelter.¹⁸⁴ There are complex human rights implications of these acts of the government in collaboration with its licensed companies.¹⁸⁵ In one fell swoop, the people are deprived of their shelter, culture, and existence.

2.6.6 Culture, religion, and human rights

No tree stands the way of Shell, AGIP, and the other multinational oil companies; no matter the designation of that tree. True to the report of Cobo, the Urhobo and Ogoni peoples have spiritual attachment to their lands and the forests thereon.¹⁸⁶ Historic forest areas where the peoples worship their gods have been destroyed.¹⁸⁷ This infringes on the rights of IP to religion and culture.¹⁸⁸ In some cases, these gods have been exposed into extinction. Sacred sites are all cut down and sacrilegiously invaded.¹⁸⁹ Worshipers no more receive replies from *Ajor* (god of war and defence), *Ideki* (god of peace and justice), *Uvwie* (god of fertility) and *Ukpe* (god of abundance).¹⁹⁰ In other cases, some of the gods have launched immediate resistance against the attempts of SPDC explorers to cut down their designated forests. The

¹⁸¹ FMA Ukoli 'Beyond Social and Political Issues in Urhoboland' being a paper presented at the Third Annual Conference and Meeting of the Urhobo Historical Society 1-3 November, 2002, Goldsmith College of London University. See <http://www.urhobo.kinsfolk.com/Conferences/ThirdAnnualConference/ConferenceMatters/AcademicPapers/Ukoli.htm> (accessed 21 September 2008).

¹⁸² Ibid

¹⁸³ With the uncontrolled felling to forests, the extinction of wildlife, and the influence of Western civilization/Christianity, this mode of dressing is now used only during festivals and special traditional ceremonies.

¹⁸⁴ To Brownlie, this violates the basis of the ILO Convention 169. See FM Brookfield (ed) *Treaties and Indigenous Peoples* (1992) 66.

¹⁸⁵ For instance, the Mopan and Ke'chi people sued the government of Belize before the Inter-American Court of Human Rights (IACTHR) for the customary legality of the logging and oil. Concession granted by the government in the Toledo district. Cited from Thornberry (n 38 above) 279.

¹⁸⁶ Cobo, M *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1986 (1986).

¹⁸⁷ See Okonta & Douglas (n. 154 above) 71-73.

¹⁸⁸ Art 4(a) of Convention No. 107 concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries (Convention 107).

¹⁸⁹ With the express permission of the Oil Pipelines Act.

¹⁹⁰ This violates arts XVII (1)&(2) of the Revised African Nature Convention. These gods used to be dignified in Oginibo town in Delta State of Nigeria.

gods have resisted by appearing in the form of pitons to swallow up oil workers. They have also appeared in the form of bees to massively sting workers.¹⁹¹

2.7 Conclusion

In conclusion, this chapter has analysed concepts such as IP, minorities, IM, and a rights-based approach. The simple inference is that the Urhobo and Ogoni peoples are IM. This is reached from their combined statuses as IP and as minorities in Nigeria. Further, the highlight of current situation of these peoples shows a gloomy society. The existence of minerals in the region occupied by the Urhobo and Ogoni peoples has become a huge burden for them. On this note, this work proceeds to the next chapter which is focussed on discussing the existing human rights framework on IP and minorities.

¹⁹¹ This writer personally witnessed these events during entry into the *Ajor* and *Ideki* forests with colleagues as SPDC local employee from Oginibo village in Delta State, Nigeria. November 5 1999. Unreported.

Chapter three: Human rights framework on indigenous minorities

3.1 Introduction

At the level of the international community,¹⁹² legal regimes which specifically safeguard the interest of IM include conventions, agreements, and declarations. These include the UN DRIP, the ILO Convention 169,¹⁹³ the ICCPR, the UN Minority Declaration, the 1966 Covenant on Elimination of All Forms of Racial Discrimination (CERD), the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Rights of the Child, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the Convention on Biological Diversity,¹⁹⁴ the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Charter, and other AU instruments. The remaining paragraphs in this chapter are devoted to brief analyses of the most paramount of these regimes and the available case law. Deliberate effort is made here to limit the instruments in view to global instruments and African- related ones.

3.2 The UN Declaration on the Rights of Indigenous Peoples

The UN DRIP represents a significant step of the UN in its protracted aspiration to safeguard the interest of IP. In line with the general opinion on declarations, Plant contends that the UN DRIP is not legally binding.¹⁹⁵ However, it has been successfully contended that the principles contained in the declaration are general principles of international human rights law.¹⁹⁶ This assertion was adopted by the Inter-American Commission of Human Rights (IACHR) in the case of *Mary and Carrie Dann v United States*.¹⁹⁷ The IACHR stated that the general international law principles in the context of indigenous human rights include their right to ownership, use, and control of their territory; recognition of their property and ownership rights; and fair compensation when such property is irrevocably lost. The principles are universal and have the status of a *jus cogens*.¹⁹⁸ This informs Anaya's submission that they are principles of customary international law.¹⁹⁹ These points influenced AO Conteh CJ in 2007 when he applied the UN DRIP in the case of *Maya Village of Conejo v*

¹⁹² With focus on sub-regional, regional, and global communities.

¹⁹³ Adopted by the ILO in June 1989 as a revised version of ILO Convention 107 of 1957.

¹⁹⁴ Adopted in Rio de Janeiro 1992.

¹⁹⁵ R Pant *Land Rights and Minorities, Minority Rights Group International*, 11 Cited in Kamu, n 35 above.

¹⁹⁶ See Brownlie (n 184 above) 62.

¹⁹⁷ Case 11.40, Report No. 75/02 at 130.

¹⁹⁸ See also preambles to the Declaration. Conversely, it places an obligation in the form of an *erga omnes* on states against violating its provision.

¹⁹⁹ SJ Anaya, *Indigenous peoples in International Law* (1996) 2.

Attorney-General of Belize.²⁰⁰ In this way, states are substantially obliged to abide by the provisions of the UN DRIP, the UDHR and other such declarations whether such state voted in support of the declaration or not.²⁰¹

The UN DRIP provides for the rights of IP to traditionally occupied lands and the resources therein;²⁰² non-discrimination;²⁰³ internal self-determination;²⁰⁴ participation in decision-making;²⁰⁵ respect for spiritual ties to land, water and other resources;²⁰⁶ environmental protection,²⁰⁷ freedom from military suppression,²⁰⁸ and the right to restitution or fair, just, and equitable compensation when they are disposed of their resources.²⁰⁹ Considering the research questions which partly informed this study, these rights are available to IM.

3.3 Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries

On 27th June 1989, the General Conference of the International Labour Organization adopted the ILO Convention 169 to overhaul and replace the ILO Convention 107 which had been the main multilateral convention for the protection of the rights of IP.²¹⁰ However, the ILO Convention is remarkably different from its predecessor because it provides for collective rights of IP and departs from the old philosophy of assimilating IP into dominant societies.²¹¹

This instrument requires state parties (with full participation of IP) to develop programmes to protect the rights of IP and to guarantee respect for their integrity.²¹² Governments must afford equal rights and opportunity to IP and all other peoples without discrimination.²¹³ The state owes a duty to protect the culture, environment, institutions, and persons of the peoples concerned through special measures.²¹⁴ Government's laws which affect them must conform to their culture and tradition.²¹⁵ Indigenous peoples have the right

²⁰⁰ N 23 above at 131-132.

²⁰¹ Nigeria, Kenya, and Burundi are African states among 11 states that abstained from voting during the UN General Assembly resolution to adopt the UN DRIP. 143 states voted in favour against 4 states. See n 64 above.

²⁰² Arts 8, 26 & 27.

²⁰³ Art 2.

²⁰⁴ Art 3.

²⁰⁵ Arts 11, 12, 15, 18 & 19.

²⁰⁶ Art 25.

²⁰⁷ Art 29.

²⁰⁸ Art 7 & 30.

²⁰⁹ Art 28.

²¹⁰ Adopted at its 66th session and entered into force 5 September 1991. See <http://www.unhchr.ch/html/menu3/b/62.htm> (accessed 1 October 2008).

²¹¹ SJ Ayana 'Human rights of Indigenous Peoples' in FG Isa & K Feyter (eds) *International Protection of Human Rights: Achievements and Challenges* (2006)596.

²¹² Art 2 (1)&(2), 6,7.

²¹³ Art 3.

²¹⁴ Arts 4, 5, & 7.

²¹⁵ Art 8

to meaningfully participate in decision-making public institutions which oversees them directly or indirectly.²¹⁶

Further, the Convention provides for the recognition of the rights of ownership and possession of IP over their traditionally occupied lands and the resources in those lands.²¹⁷ Even in cases where the state retains ownership of minerals and subsurface resources, their special interest and benefits must be safeguarded.²¹⁸ Their right to radical title in customary land ownership is protected.²¹⁹ These are safeguards for IM. Considering that this Convention resonates with general principles of international law regarding IP, Conteh CJ applied its principles in the *Maya Village of Conejo v Attorney General of Belize* case.²²⁰

3.4 International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child

Article 27 of the ICCPR represents the most outstanding law of the UN for the protection of national minorities.²²¹ This is a far advancement from the recommendation of the 1954 UN Sub-commission on Prevention of Discrimination and Protection of Minority Rights.²²² Article 27 of the ICCPR provides that ethnic, religious, and linguistic national minorities shall not be 'denied rights in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. While this law protects the group as a people, its primary focus is on the individual belonging to the group which share a common culture, religious and/or language. In this vein, Phillips and Rosas submit that states are prohibited from complete individualization of the right in the article.²²³ Like article 27 of the ICCPR, article 30 of the CRC provides that the children of IM shall not be denied the right to culture, religion, and language with members of the group. Article 27 of the ICCPR serves to protect IP and minorities separately and jointly too.²²⁴ It protects the rights of these peoples to internal self-determination.²²⁵

²¹⁶ Art 6.

²¹⁷ Art 13 & 15. See also Chaskason CJ in *Alexkor Ltd. v Richtersveld Community* (2003) 12 BCLR 130.

²¹⁸ Ibid

²¹⁹ Art 14

²²⁰ N 25 above at 130

²²¹ The ICCPR was adopted in 1966 and entered into force in 1976. Nigeria acceded to it on 29 July 1993. See <http://www2.ohchr.org/english/bodies/ratification/4.htm> (accessed 3 October 2008).

²²² Basically, it provides for right of national minorities to establish schools with an education which impart and promote their values.

²²³ N 45 above 23.

²²⁴ Ghana & Xanthaki (n 31 above) 6.

²²⁵ Ibid. See also principles in the Vienna Declaration and Programme of Action [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument.\(Accessed](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument.(Accessed) 1 October 2008).

This right of peoples is also protected under common article 1 of the ICCPR and the ICESCR.²²⁶ Tacit mention must be made also about articles 1 and 15 of the ICESCR which provide for peoples' right collectively and individually to self-determination, free disposal of resources and the right to culture.

According to the Human Rights Committee, which gives authoritative interpretation to the ICCPR, the individuals protected under the article have a,

...right to enjoy a particular culture which may consist in a way of life which is closely associated with territories and use of its resources. This may particularly be true of members of indigenous communities constituting minorities.²²⁷

This interpretation of the Committee is an express reference to the article's protection of the rights of IM to culture and resources. Thus, the state owes a duty to promote and protect the culture when it is associated with the use of lands and resources in the form of hunting and fishing.²²⁸

In the negative construction of this law, it requires the state to ensure that the existence and exercise of these rights are jealously protected against any form of violation or denial by third parties or the state itself.²²⁹ According to the Human Rights Committee, this requires positive measures of protection from the state to fulfil its obligation.²³⁰ In reading article 2(1) of the ICCPR together with article 26 thereof, the Committee observes that article 27 guarantees the right to affirmative actions by way of legitimate differentiation; provided that such differentiation is based on reasonable and objective criteria. Affirmative actions must be active and sustained.²³¹ It must go beyond mere constitutional or legislative enactment.²³²

3.5 The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The UN Minority Declaration²³³ represents a prominent step by the UN in the internationalization of minority rights. It was inspired by the provisions of article 27 of the

²²⁶ Nigeria acceded to the ICESCR on 29 July 1993. See <http://www2.ohchr.org/english/bodies/ratification/3.htm> (accessed 3 October 2008).

²²⁷ General Comment No. 23: Rights of Minorities 1994 (n 5 above) 198.

²²⁸ See *Kitok v Sweden Communication No.197/1985* View adopted on 27 July 1988.

²²⁹ See the *SERAC* case (n 21 above). A positive right for minorities was first provided for by the 1975 Helsinki Final Act of the Organization for Security and Cooperation in Europe.

²³⁰ N 227 above 199

²³¹ See F Capotorti, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (1991) cited in Phillips & Rosas (n 45) 24.

²³² Human Rights Committee, General Comment 3 1981 (n 5 above) 164.

²³³ Adopted by Gen. Ass. Resolution 47/135 of 18 December 2008.

ICCPR.²³⁴ It requires the state to protect the existence and identity (cultural and religious) of national minorities and the rights of persons belonging to the group.²³⁵ States' legislations and programmes must be appropriate with due regards to the rights of national minorities.²³⁶ They have equal rights without discrimination and to equality before the law.²³⁷ The Declaration also grants minorities the rights to effective participation in national decisions.²³⁸

One justification for the special protection on national minorities in multi-ethnic democratic states is that elections are perceived as contest for ownership of the state.²³⁹ As Goldenbuys and J Rossouw have rightly observed, minorities tend to equate democracy with the structured dominance of the adversarial majorities; rather than with freedom of participation.²⁴⁰ Further, A Akermark submits that peace, human dignity, and culture are three other justificatory grounds for the protection of minorities under international human rights law.²⁴¹ These writers seem to be correct in their submissions.

3.6 Universal Declaration of Human Rights

Like the UN DRIP, the UDHR is a declaration. Adopted in 1948, the UDHR represents the universal declaration of the rights of all every person and peoples. This brings its application to IM. Drawing inspiration from the this writer's argument on the UN DRIP above, the principles of law in the UDHR have gained universal and common standards from which no state should deviate.²⁴² The bindingness of this declaration was upheld by the International Court of Justice (ICJ) in the *United States Diplomatic and Consular Staff in Tehran* case.²⁴³ The UDHR prohibits discrimination on the bases of territory, language, property or any other status.²⁴⁴ It protects the rights of IM to own property and prohibits all forms of arbitrary deprivation of their property.²⁴⁵ On principles of common law and African customary land law, Viscount Halden has established in *Amodu Tijani v The Secretary of Southern Nigeria*²⁴⁶ that customary right to land ownership exists in Southern Nigeria.

²³⁴ Preamble to the Declaration.

²³⁵ Art 1

²³⁶ Art 5

²³⁷ Art 4

²³⁸ Art 2

²³⁹ The plight of national minorities is worse in a limited democracy and partly free state like Nigeria. See FG Wolmarans 'Democracy as a form of government' being a lecture handout given to the 2008 LLM class, Centre for Human Rights, UP, 3. See also Freedom House 'Freedom in the World, 2008', <http://www.infoplease.com/world/statistics/freedom.html> (accessed 1 October 2008).

²⁴⁰ N 13 above 9.

²⁴¹ Ibid at 10.

²⁴² See preamble to the UDHR. See also Lord Denning on compensation for acquired land in *Adeyinka Oyekan and others v Musendiku Adele* (1957) 1 WLR 876 at 880.

²⁴³ (*USA V Iran*) (1980) ICJ Rep. 3, 42.

²⁴⁴ Art 2.

²⁴⁵ Art 17.

²⁴⁶ N 120 above at 402-404.

3.7 Convention on the Elimination of All Forms of Racial Discrimination (CERD)

True to article 1 of the CERD,²⁴⁷ the Committee on the Elimination of Racial Discrimination (CERD Committee) has unequivocally acknowledged that the protection afforded by the CERD is available to IP.²⁴⁸ Pursuant to article 2 of this Convention, the state owes a non-derogable duty to eliminate all legal or institutional mechanisms which reflect racial discrimination. This prevents the state from applying laws which expropriate the property of IP.²⁴⁹ It requires states to ensure the return of such property to the peoples where they have been deprived of them or to ensure that a fair, just, and prompt compensation is paid.²⁵⁰ It also asserts that the CERD prohibits state's expropriation of IPs' resources on discriminatory grounds.²⁵¹

3.8 African Charter on Human and Peoples' Rights and other AU instruments

The Charter is the major human rights instrument of the AU. In the French conception of the Charter, it uniquely and undeniably affirms the rights of individuals as well as groups.²⁵² At the surface level, IM are protected under the Charter as 'peoples'.²⁵³ It guarantees the right to property²⁵⁴ and prevents the domination of a people by another.²⁵⁵ It guarantees a people's right to free disposal of their wealth and natural resources.²⁵⁶ In case of spoliation, the Charter guarantees the right to adequate compensation.²⁵⁷ Article 22 of the Charter provides that:

All peoples shall have the right to their economic, social and cultural development with regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

The words of this article clearly show their relevance to the problems of the Urhobo and Ogoni peoples.

²⁴⁷ Adopted by UN Gen. Ass resolution 2106 (XX) 2 of 21 December 1965 and entered for in 1969. Nigeria acceded to the CERD on 16 October 1967. See <http://www2.ohchr.org/english/bodies/ratification/2.htm> (accessed 3 October 2008).

²⁴⁸ General Recommendation XXIII 1997. See n 3 above 255 para 2

²⁴⁹ See GS Ram JCA of the Malaysian Court of Appeal in *Kerajaan Negeri Selangor and others v Sagong Bin Tasi and others* (2005) MLJ 289.

²⁵⁰ CERD Committee, *ibid* para 5.

²⁵¹ *Ibid* para 3.

²⁵² VE Yemet *La Charte Africaine des Droits de L'home et des Peuples* (1996) 182.

²⁵³ Impliedly adopted by the African Commission in *Katangese Peoples' Congress v Zaire* (2000) AHRLR 72 (ACHPR 1995) 8th Annual Activity Report.

²⁵⁴ Art 14.

²⁵⁵ Art 19.

²⁵⁶ Art 21(1).

²⁵⁷ Art 21(2). To Hansungule paras 1-4 of art 21 apply between the state and its citizens. Only para 5 thereof applies to the state's relationship with foreigners (n 181 above)

Article 60 of the Charter also empowers the African Commission to be ‘inspired’ by principles of international human rights law.²⁵⁸ Arguably, this is a fertile ground for the advancement of the rights of IM in Africa. It empowers the Commission to apply the principles in the ILO Convention 169, the ICCPR, the Declarations, the case laws, and all other instruments related to IM whether the state ratifies the instrument or not.²⁵⁹

Besides the Charter, other AU instruments which can be useful for advancing the rights of IM include the 1999 Cultural Charter, the 2003 African Convention on the Conservation of Natural Resources,²⁶⁰ the 2004 Pretoria Declaration on Economic, Social and Cultural Rights in Africa,²⁶¹ article 3 of the African Charter on the Rights and Welfare of the Child, and the 9th objective of the African Peer Review Mechanism (APRM). For instance, the Cultural Charter obliges states to develop national languages as well as cultural diversity. It prevents states from subjecting the cultures of national minorities to dominant cultures under the guise of national identity.²⁶² According to Viljoen the provisions of this Charter are fully available for the protection of IM.²⁶³

3.9 Conclusion

This chapter has considered the available legal framework which can be used to advance the rights of the Urhobo and Ogoni peoples as minorities and as IP. The next chapter covers a brief assessment of the relevance of the foregoing laws to the peoples in question.

²⁵⁸ Under art 45 of the African Charter, the Commission is mandated to protect and promote human and peoples’ rights in line with the Charter.

²⁵⁹ See the African Commission’s Work on Indigenous Peoples in Africa (n 3 above) 21.

²⁶⁰ For instance art 3.

²⁶¹ Adopted by the African Commission at its 36th session. See C Heyns & M Killander *Compendium of Key Human Rights Instruments of the African Union* (2007)315.

²⁶² Arts 3, 5,6(1)(a) & 9.

²⁶³ Viljoen (n.12 above 285).

Chapter four: The application of human rights to the Urhobo and Ogoni peoples

4.1 Introduction

Considering the human rights legal framework discussed in the preceding chapter, this chapter will focus on assessing the situation of the Urhobo and Ogoni peoples in relation to the law. A conclusion is reached based on the assessments made.

4.2 Applying human rights laws to the Urhobo and Ogoni peoples

The legal instruments discussed above comprehensively show the extent at which rights are available to IM. In applying these laws against the Nigerian resource legislations, it is important to note that the government cannot defend the violation of its international human rights obligation on the bases of its internal laws.²⁶⁴

The Nigerian resource laws vest the ownership and control of lands, minerals, mines, mineral oil, and natural gas on the government. Most prominent among these laws is the Constitution.²⁶⁵ As discussed in chapter two above, these laws deprive the Urhobo and Ogoni peoples all their radical customary titles and rights of ownership over the affected property.

The international human rights laws discussed above unequivocally provide for the rights of IM to retain the full ownership and control of the resources within the territories where they have historically lived. The laws expressly prohibit the state from expropriating the lands and resources of IM. In cases where property had been expropriated or where there is spoliation, the state owes an obligation to restore property or to ensure that fair compensation is paid.

When international human rights laws are contrasted with the Nigerian resource regime, it stands from the foregoing that the government is in violation of its international obligations. The government exploits the vulnerable situation of the Urhobo and Ogoni peoples and continues to violate their rights. In the face of the protected rights and freedoms, the government continues to implement its expropriatory laws.

²⁶⁴ Arts 26 & 27 of Vienna Convention on the Law of Treaties 1969.

²⁶⁵ See chapter two above.

Besides the failure of the Nigerian resource regime in the face of international human rights law, the peoples' rights to development and a safe environment are guaranteed. They have a right to an environment that is conducive for living. They are protected from deforestation. Indigenous minorities have a right to non-discrimination. The government is required to promote and protect their rights to culture and religion.²⁶⁶ The laws require the government to protect the guaranteed rights of IP from being violated by third parties. Moreover, the laws require government to adopt a rights-based approach to the Urhobo and Ogoni peoples. They have a right to affirmative action with the sincerity it deserves.

Again, the practice of the government in relation to the Urhobo and Ogoni peoples clearly contradicts the principles of international human rights law. By the activities of the government and its multinational oil allies, the peoples are subjected to environmental degradation, prohibitive deforestation, discrimination, and underdevelopment. There lacks adequate national safeguards for their rights to culture and religion.

The deplorable situation of the ethnic minorities of the oil-rich Niger Delta has continued for decades. An end to it is currently not feasible. As a last resort, the oppressed minorities have resorted to violent resistance to government-backed operations of oil companies. The government has responded by excessive militarization and brutality. In the violent clashes between community youth and government forces, people are killed and communities destroyed.²⁶⁷ Government forces rape villagers.²⁶⁸ This contradicts the right to be free from rape and excessive militarization. The government must take responsibility for this.

4.3 Conclusion

The clear conclusion reached from the foregoing assessment is that the government violates the rights of the ethnic minorities of the Niger Delta by its laws and activities in the oil-rich region. A similar conclusion was earlier reached by Wiwa during the 1993 Ogoni Day he said, 'The UN recognises the rights of the world's indigenous people. Indigenous people have been cheated by laws such as we have in Nigeria today. We shall demand our rights peacefully, non-violently and we shall win'.²⁶⁹ Additionally, the assessment shows that the

²⁶⁶ See generally EM Lassen 'Religion and Human Rights: a vibrant and challenging marriage' in Isa & Feyter (n 211 above).

²⁶⁷ See Nigeria-Human Rights Watch World report 2000 'The Destruction of Odi and the Rape in Choba, 22 December 1999' <http://www.hrw.org/press/1999/dec/nibg1299.htm> (accessed 6 October 2008). See also E Courson 'Odi revisited? Oil and state violence in Odioma, Brass LGA, Bayelsa state' <http://geography.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/7-Courson.pdf> (accessed 6 October 2008).

²⁶⁸ Ibid. See also Priye Torulagha 'The Destruction of Odi: Political and Psychological Implications' <http://www.ijawcenter.com/odi.html> (accessed 6 October 2008).

²⁶⁹ See videotaped speech of Wiwa during the 1993 Ogoni Day. See http://www.youtube.com/watch?v=YZhy_VaYisU&NR=1 (accessed 21 September 2008).

government violates its international human rights obligations with impunity. It reveals an environment in which ethnic minorities are violated in every ramification.

According to Human Rights Watch reports, the situation grows worse for the peoples of the Niger Delta.²⁷⁰ The destabilization of the oil-rich region has also affected the economic interest of the government. Finding solutions to these problems informs the next chapter of this work.

²⁷⁰ N 267 above.

Chapter five: Conclusion and Recommendations

5.1 Introduction

The foregoing chapter has shown that the resource legislation in Nigeria and other policies of the government in relation to the Urhobo and Ogoni peoples contravene the government's human rights obligations under international law. This part of the work comes to the conclusion that the Urhobo and Ogoni peoples can claim their rights (and should be protected) as IM under the available legal framework. Most workable solutions to the noted challenges are suggested.

5.2 Conclusion

The ethnic minorities of the oil-rich Niger Delta in Nigeria have long suffered hardship from the ethnic dominance of the Hausa, Yoruba and the Ibos. Previous chapters of this work have reflected how the government takes advantage of the fast weakening AU position which advocates the non-recognition of IP. The outcome in Nigeria is political, social, and economic marginalization of the Urhobo and Ogoni peoples. While the UN (with the active support of some member states of the AU) has taken a decisive step in 2007 by adopting the UN DRIP, Nigeria continues to advocate a firm grip to increasingly unpopular position on the AU. As this paper reflects, the activities of the government in the territories of the Urhobo and Ogoni peoples and its resource legal framework explain the reasons behind its position.

The international human rights framework discussed in this work and their assessment in the Nigerian situation show a failure on the part of the government to comply with its obligations under international law. Besides failing to meet its international legal and moral obligations, the activities of the government violate the rights of the Urhobo and Ogoni peoples.

Further, this contribution has shown that the acts of the government fuels crisis and ethnic conflict in the Niger Delta. While Nigeria secures its interest under the AU's policy, this work submits that the Urhobo and Ogoni peoples should be protected as IM in Nigeria. Protecting them as IM entitles them to benefit from their statuses as IP and as minorities. These benefits arise from their entitlement to the rights provided under the human rights instruments discussed in chapter three of this work. These instruments place corresponding obligations on the government.

Finally, this work has advocated the recognition of the Urhobo and Ogoni peoples (as well as the other ethnic minorities) of the Niger Delta as IM. This status entitles them to rights as minorities and/or IP. This measure remains relevant in a multicultural society like Nigeria even after the AU adjusts its position in favour of the UN standard. In these ways, this work achieves its originally set targets.

The Challenges faced by the Urhobo and Ogoni peoples as well as the government are common among Africa states. Finding solutions to these challenges forms the remaining part of this work.

5.3 Recommendations

5.3.1 Advancing rights under the Nigerian constitution and the African Charter

The Urhobo and Ogoni peoples as well as other ethnic minorities of Nigeria's Niger Delta have the fruitful possibility of advancing their rights as IM under chapter IV of the constitution and under the Charter. Chapter IV of the constitution provides for the rights to life;²⁷¹ freedom of thought, conscience and religion;²⁷² peaceful assembly and association;²⁷³ freedom from discrimination;²⁷⁴ and the right to acquire and own immovable property²⁷⁵ respectively.

Additionally, the Charter has been incorporated as part and parcel of Nigerian law.²⁷⁶ The provisions of the Charter²⁷⁷ as well as mandate to draw inspiration from relevant international human rights instruments under articles 60 and 61 of the Charter are efficient bases to advance the rights of IM within and outside Nigeria. Beneficiaries of human rights standards themselves must advance the responsibility which primarily falls on them to protect their own rights from violators.²⁷⁸ The Urhobo and Ogoni peoples have the potential of success if the available human rights framework is explored.

5.3.2 Changing the AU position in favour of the UN position

Besides human rights activism under the Constitution and the Charter, the AU should change its policy on IP in favour of the UN standard. African states' progressive acceptance of the UN position on IP shows a growing consensus among member states of the AU to recognize

²⁷¹ Sec 33

²⁷² Sec 38

²⁷³ Sec 40

²⁷⁴ Sec 42

²⁷⁵ Sec 43

²⁷⁶ See African Charter (Ratification and Enforcement) Act LFN Cap 10. See also, *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 600) 228.

²⁷⁷ Arts 1, 19, 21 22, & 24.

²⁷⁸ See A n- Naim 'Expanding Legal Protection of Human Rights in African Contexts' (n 15 above) 6.

IP in the universal conception.²⁷⁹ The AU should change its policy to conform to the contemporary position of member states. This will prevent a state like Nigeria from capitalizing on non-definition of IP.

It is contended that colonialism is no more in question and that the principle of respect for existing borders at the time of independence is secured by the UN DRIP. Being that the UN DRIP and other UN instruments have secured the same interest which the AU tries to secure by holding its position on IP, there are now good reasons for the AU to change that position in favour of the UN position.

5.3.3 Uniformity in human rights standards

Further, adopting the UN standard will enhance uniformity in human rights standards between the AU and the UN. This will eventually lead to a future in which the AU as well as the UN will adopt binding instruments on the rights of IP. As An-Naim²⁸⁰ correctly observes, interdependence, interrelatedness, universal validity, and legal bindingness are the added values of international human rights standards.²⁸¹

5.3.4 Abrogation of expropriatory laws in Nigeria

Beside uniformity in human rights standards, the government should abrogate its expropriatory resource laws which contradict international human rights standards. The African Commission has found the government in violation of its international obligation by the use of the laws in question. These laws are defective in substance and in form. Since they have attracted both domestic and international criticism, it is submitted that the laws should be abrogated. The Restitution of Land Rights Act²⁸² and the prevalence of aboriginal title in South Africa should be emulated as best practice. Abrogating these laws will create room for enduring peace in the Niger Delta. This will encourage economic stability in Nigeria.

5.3.5 Enforcement of pollution laws

While the expropriatory laws are being abrogated, the government should enforce Nigeria's environmental pollution laws. These include the Mineral Oil (Safety) Regulations,²⁸³ the FEPA Act,²⁸⁴ the Associated Gas Re-injection Act,²⁸⁵ Oil in Navigable Waters Act,²⁸⁶ and the

²⁷⁹ Besides some African states' acceptance of the UN DRIP, the growing consensus is also a reality by the fact that ambassadors from sixteen states participated at the October 9-11 Addis Ababa conference on IP, organised by the African Commission.

²⁸⁰ Ibid at 1

²⁸¹ Vienna Declaration on Human Rights para 5.

²⁸² No. 2 of 1994.

²⁸³ 1969. It provides for safe discharge of noxious or inflammable gases and penalties for non-compliance.

²⁸⁴ N.170 above. It creates a Federal Environmental Protection Agency to ensure the safety of Nigerian air, land, and water. It provides penalty for any contravention.

Petroleum Drilling and Production Regulation.²⁸⁷ While these laws regulate pollution activities of oil companies, it is sad that these laws have never been enforced by the appropriate authorities. According to Odje, 'The usual nonchalance of the Government of the Federation has made these laws to be obeyed more in the breach than observation'.²⁸⁸ The peoples of the Niger Delta have been very critical of the federal government inaction. On this basis, the government has been criticised for encouraging environmental degradation in the Niger Delta while they enjoy the oil wealth in the North, East, and West. Enforcing these laws will keep the ecosystem safe and the government will be seen as complying with its human rights obligations.

5.3.6 True and targeted affirmative action

Besides the enforcement of pollution laws, the government should embark on true and targeted affirmative actions. As noted above, affirmative action is a right to maltreated IP as well as it is an obligation on the state.²⁸⁹ The establishment of the NDDC and the Ministry of Niger Delta are positive developments forwards alleviating the plights of the age-long neglected and marginalised peoples. Like the Committee on Economic, Social and Cultural Rights rightly observes, states have the 'obligation of conduct and obligation of result'.²⁹⁰

However, history has shown that developmental bodies such as the NDDC have never achieved their goals. The government should overhaul the body to enhance its efficacy. This NDDC and the newly established Ministry of Niger Delta should be adequately funded. They should be rid of tribalism, nepotism, favouritism, corruption and other such vices which have occasioned failures of previous efforts.

Further, the government should embark of direct development projects in the territories of the Urhobo and Ogoni peoples. This should be done through the Ministry to compliment the efforts of the NDDC.

Summarily, the ways out of the legal and regulatory challenges faced by the Urhobo and Ogoni peoples (as well as other IM) of the Niger Delta include a change of the AU's position in favour of the UN standard; the abrogation of Nigerian expropriatory laws; the

²⁸⁵ LFN 1990 Cap 26 Vol 1. This discourages gas flaring. It provides for re-injection of associated and non-utilised gas in industrial projects. It also provides penalties for contravention.

²⁸⁶ LFN 1990 Cap 337 Vol 19. It prohibits discharge of oil or mixtures which contain oil into the territorial or navigable waters.

²⁸⁷ 1969. It requires licence holders to take precaution, including the use of approved up-to-date equipment to prevent pollution of the territorial waters, river water courses, and the inland waters by oil or other substances.

²⁸⁸ Odje N10 above 413

²⁸⁹ S Damman 'Nutritional vulnerability in indigenous children of the Americas- a human rights issue' in R Eversole et al *Indigenous Peoples & Poverty an International Perspective* (2005) 87.

²⁹⁰ General Comment No. 3 UN Doc. E/1991/23 para 1.

enforcement of Nigerian pollution laws; affirmative action; and advancement of rights under the Constitution and the Charter. No doubt, peace and justice will be attained for the IM of the Niger Delta if the foregoing recommendations are taken into consideration.

Word count: 17,981 (including footnotes, but excluding table of contents and bibliography).

Bibliography

Books

- Akande, JO (2000) *Introduction to the Constitution of the Federal Republic of Nigeria* 1999 Lagos: MIJ Professional Publishers Limited.
- Anaya, SJ (1996) *Indigenous peoples in International Law* New York: Oxford University Press.
- Brownlie, I (1992) *Treaties and Indigenous Peoples* New York: Oxford University Press.
- Capotorti, F (1991) *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, (New York: United Nations.
- Collins, H (2000) *Collins French Dictionary* New York: HarperCollins Publishers.
- Eversole, R et al (2005) *Indigenous Peoples & Poverty An International Perspective* New York: Zed Books.
- Fekumo, JF (2002) *Principles of Nigerian Customary Land Law* Port Harcourt: J & F Publishers.
- Geldenhuys , D and Rossouw, J (2001) *The International Protection of Minority Rights* Cape Town: FW de Klerk Foundation.
- Heyns & Killander (eds) (2007) *Compendium of Key Human Rights Instruments of the AU* South Africa: Pretoria University Law Press.
- Odje, AM (2002) *The Challenges of True Federalism and Resource Control in Nigeria* Nigeria: Quadro Impression Limited.
- Okonta, I & Douglas,O (2001) *Where the Vultures Feast: Shell, Human Rights and Oil in the Niger Delta* San Francisco: Sierra Club.
- Ouguergouz, F (2003) *The African Charter on Human and Peoples' Rights: a Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* The Hague: Martinus Nijhoff.
- Preece, JJ (2005) *Minority Rights: Between Diversity and Community* Cambridge: Polity Press.
- Suzman, J (2001) *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Namibia: Legal Assistance Centre.
- Tebekaemi T (ed) (1982) *The Twelve Day Revolution* Benin City: Udodo Umeh Publishers.
- Thornberry, P (2002) *Indigenous peoples and human rights* Manchester: Juris Publishing.
- Whitlam J et al (eds) (2006) *Collins Portuguese Dictionary* Glasgow: Harper Collins Publishers.
- Viljoen, F (2007) *International Human Rights Law in Africa* New York: Oxford University Ppress.

Wittgstein, L (1984) *Culture and Values* Chicago: University of Chicago Press.
Yemet, VE (1996) *La Charte Africaine des Droits de L'home et des Peuples* Paris: L'Harmattan.

Chapters from books

Akpan, J et al 'Human Rights and Participation among Southern African Indigenous Peoples' in Hitchcock, RK & Vinding, D (2004) *Indigenous Peoples' Rights in Southern Africa* Denmark: Eks/ Skolens Trykkeri.

Alfredson, G 'Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law' in Ghanea, N & Xanthaki, A *Minorities, Peoples and Self-Determination* Boston: Martin Nijhoff Publishers.

Asbjorn, E 'Minority Protection and World Order: Towards a Framework for Law and Policy' in Phillips, A & Rosas, A *Universal Minority Rights* Finland: Institute for Human Rights Abo Akademi University.

Ayana, SJ 'Human rights of Indigenous Peoples' in Isa FG & Feyter K (eds) (2006) *International Protection of Human Rights: Achievements and Challenges* Bilbao: University of Deusto.

Brawnlie, I 'The Rights of Peoples in Modern International Law' in Crawford, J (ed) (1995) *The Rights of Peoples* New York: Oxford University Press.

Daes, EA 'Indigenous Peoples' Rights to Land and Natural Resources' in Ghanea, N & Xanthaki, A *Minorities, Peoples and Self-Determination* Boston: Martin Nijhoff Publishers.

Damman, S 'Nutritional vulnerability in indigenous children of the Americas- a human rights issue' in Eversole R et al (2005) *Indigenous Peoples & Poverty an International Perspective* (New York: Zed Books).

Dudmundur, A 'Minorities, Indigenous and Tribal Peoples and Peoples: Definition of Terms as a Matter of International Law' in Ghanea, N and Xanthaki, A (2005) *Minorities, Peoples and Self-Determination Boston: Martin Nijhoff Publishers.*

Eide, A 'Minority Protection and World Order: Towards a Framework for Law and Policy' in Phillips, A and Rosas, A (eds) (1995) *Universal Minority Rights* Finland: Institute for Human Rights Abo Akademi University.

Hitchcock, RK and Vindin, D 'Indigenous Peoples in Southern Africa: an Introduction' in Hitchcock, RK & Vinding, D (2004) *Indigenous Peoples' Rights in Southern Africa* Denmark: Eks/ Skolens Trykkeri.

Lassen, EM 'Religion and Human Rights: a vibrant and challenging marriage' in Isa, FG & Feyter, K (eds) (2006) *International Protection of Human Rights: Achievements and Challenges* Bilbao: University of Deusto.

Murithi, T 'The African Union and the Prospect for Minority Protection' in Ghanea, N & Xanthaki, N (eds) (2005) *Minorities, Peoples and Self-Determination* Boston: Martin Nijhoff Publishers.

P Thornberry 'The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analyses Observations, and an Update' in Phillips, A and Rosas, A (eds) (1995) *Universal Minority Rights* Finland: Institute for Human Rights Abo Akademi University.

S Saugestad 'The Indigenous Peoples of Southern Africa: an Overview' in Hitchcock, RK & Vinding, D (2004) *Indigenous Peoples' Rights in Southern Africa* Denmark: Eks/Skolens Trykkeri.

Scheinin, M 'What are Indigenous Peoples' in Ghanea, N and Xanthaki, A (2005) *Minorities, Peoples and Self-Determination* Boston: Martin Nijhoff Publishers.

Scheinin, 'M Indigenous Peoples' Rights under the International Covenant on Civil and Political Rights' in Castellino, J and Walsh, N (eds) (2005) *International Law and Indigenous Peoples* Boston: Martin Nijhoff Publishers.

Articles

Ibe, S 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' (2007) 7 *African Human Rights Law Journal* 1.

Kingsbury, B "Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy" (1998) 92 *American Journal of Internal Law*

Onuora F 'Poverty, pipeline vandalism/explosion and human security: Integrating disaster management into poverty reduction in Nigeria' (2007) 16 *African Security Journal* 2.

Viljoen F & Loew L 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights' (2007) 101 *American Journal of International Law* 1.

Legislation, Declaration, and Resolution

African Peer Review Mechanism.

African Convention on the Conservation of Natural Resources 2003.

Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries.

Convention on Biological Diversity.

Convention on the Rights of the Child

Covenant on Elimination of All Forms of Racial Discrimination 1966.

Convention on the Prevention and Punishment of the Crime of Genocide 1948.

Cultural Charter 1999.

Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
Declaration on the Right to Development.
Declaration on the Rights of Indigenous Peoples.
International Covenant on Civil and Political Rights.
International Covenant on Economic Social and Cultural Rights.
Pretoria Declaration on Economic, Social and Cultural Rights in Africa.
Universal Declaration of Human Rights 1948.
Vienna Convention on the Law of Treaties 1969.

National

Federal Environmental Protection Agency Act.
Harmful Waste Act.
Interpretation Act 1964
Land Use Act
National Inland Waterways Authority Act.
Niger Delta Development Board Act 1961.
Niger Delta Development Commission Act 1961.
Oil Mineral Producing Area Development Commission Act.

Cases

Abacha v Fawehinmi (2000) 6 NWLR (Pt 600).
Adeyinka Oyekan and others v Musendiku Adele (1957) 1 WLR 876.
Alexkor Ltd. v Richtersveld Community (2003) 12 BCLR.
Amodu Tijani v The Secretary of Southern Nigeria (1921) AC.
Ballantyne, Davidson and McIntyre v Canada HRC Part II UN Doc. A/48/40 1 November 1993).
G. and E. v Norway Nos.9278/81, DR 35 (1983).
Katangese Peoples' Congress v Zaire (2000) AHRLR 72 (ACHPR 1995) 8th Annual Activity Report.
Kerajaan Negeri Selangor and others v Sagong Bin Tasi and others (2005)MLJ.
Kitok v Sweden Communication No.197/1985.
Mayagna (Sumo) Awas Tingni Community v Nicaragua 79 IACHR (Ser C) (2001).
Manuel Coy on behalf of the Maya Village of Conejo and Others v Attorney-General of Belize and Others (2007) SCB 171.
Peoples Union for Civil Liberties (PUCL) V Union of India and Others WP (Civil) No 196/2001.

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001).

United States Diplomatic and Consular Staff in Tehran (USA V Iran) (1980) ICJ Rep.

Websites

ANEEJ 'Poverty of Oil in Niger Delta' <<http://www.boellnigeria.org/documents/Oil%20of%20Poverty%20in%20Niger%20Delta.pdf>> (25 Sep 2008).

BN joku 'Towards a better life for the people', Online *Vanguard Newspaper*, http://www.vanguardngr.com/index.php?option=com_content&task=view&id=6414&Itemid=0 (accessed 24 September 2008).

C Nkwopara 'Environmental Degradation of the Niger Delta Enormous-FG' *Online Vanguard Newspaper* <http://www.accessmylibrary.com/coms2/summary_0286-13047080_ITM> (accessed 25 September 2008).

Choba, 22 December 1999' <<http://www.hrw.org/press/1999/dec/nibg1299.htm>> (accessed 6 October 2008).

E Courson 'Odi revisited? Oil and state violence in Odioma, Brass LGA, Bayelsa state' <<http://geography.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/7-Courson.pdf>> (accessed 6 October 2008).

E Courson 'The Burden of Oil' <<http://geography.berkeley.edu/ProjectsResources/ND%20Website/NigerDelta/WP/15-Courson.pdf>> (accessed 22 September 2008).

E Guttschuss 'Nigeria's oil industry is beset with corruption. The result is higher oil prices and widespread human rights abuses' <<http://hrw.org/english/docs/2008/07/21/nigeri19408.htm>> (accessed 21 September 2008).

FMA Ukoli 'Beyond Social and Political Issues in Urhoboland' being a paper presented at the Third Annual Conference and Meeting of the Urhobo Historical Society 1-3 November, 2002, Goldsmith College of London University. See <<http://www.urhobo.kinsfolk.com/Conferences/ThirdAnnualConference/ConferenceMatters/AcademicPapers/Ukoli.htm>> (accessed 21 September 2008).

FMA Ukoli 'Urhobo Biography' http://www.waado.org/Biographies/Mowoe/Lectures/Mowoe_ukoli.htm (accessed 20 September 2008).

Freedom House 'Freedom in the World, 2008', <<http://www.infoplease.com/world/statistics/freedom.html>> (accessed 1 October 2008).

Human Rights Watch World report 2000 'The Destruction of Odi and the Rape in J Bisina' 'Environmental Degradation in the Niger Delta'

<<http://www.pambazuka.org/en/category/comment/38728>> (accessed 24 September 2008).

K Kubeyinje & T Nejiaya 'Delta communities protest neglect' <<http://www.un.org/ecosocdev/geninfo/afrec/subjindx/131nigr6.htm>> (accessed 28 September 2008).

L Mitee, the MOSOP president and successor of KS Wiwa in <<http://www.youtube.com/watch?v=zalqYjcjA2Y&feature=related>> (accessed 21(September 2008).

PEkeh, 'Studies in Urhobo Culture' <<http://www.africanbookscollective.com/books/studies-in-urhobo-culture>>

Priye Torulagha 'The Destruction of Odi: Political and Psychological Implications' <<http://www.ijawcenter.com/odi.html>> (accessed 6 October 2008).

UNHCHR <<http://www.unhchr.ch/development/approaches.html>> (accessed 18 September 2008).

WAREC Pepal http://www.worecnepal.org/rights_based.html#whatare (accessed 19 September 2008).

'Urhoho Information' <<http://www.uiowa.edu/~africart/toc/people/Urhobo.html>> (accessed 2 November 2008).

Vienna Declaration and Programme of Action <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)> (accessed 1 October 2008).

WS Owabukeruyele 'Hydrocarbon Exploration, Environmental Degradation and Poverty in the Niger Delta Region of Nigeria' <<http://www.waado.org/Environment/PetrolPolution/EnvEconomics.htm>> (accessed 25 September 2008).

Wikipedia 'Conflict in the Niger Delta' <http://en.wikipedia.org/wiki/Conflict_in_the_Niger_Delta> (accessed 9 September 2008).

Wikipedia, 'Human Rights in Nigeria' <http://en.wikipedia.org/wiki/Human_rights_in_Nigeria>

Wikipedia 'Ogoni People' <http://en.wikipedia.org/wiki/Ogoni_people> (accessed 21 September 2008).

<<http://www.unhchr.ch/development/approaches-08.html>> (accessed 9 September 2008).

<<http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>> (accessed 21 September 2008).

<<http://www.nigerdeltaevi.com/About%20us.html>> (accessed 24 September 2008).

<<http://www2.ohchr.org/english/bodies/ratification/4.htm>> (accessed 3 October 2008).

<<http://www2.ohchr.org/english/bodies/ratification/3.htm>> (accessed 3 October 2008).

<<http://www2.ohchr.org/english/bodies/ratification/2.htm>> (accessed 3 October 2008).

<<http://www.unhchr.ch/html/menu3/b/62.htm>> (accessed 1 October 2008).

<http://www.youtube.com/watch?v=YZhy_VaYisU&NR=1> (accessed 22 September 2008)

<http://www.youtube.com/watch?v=YZhy_VaYisU&NR=1> (accessed 21 September 2008).

Newspapers

'Amendment of the NDDC Act' *The Vanguard Newspaper*, 12 September 2001 12

'Report of the Commission of Nobel Laureates on Peace, Equity and Development' *Vanguard Newspaper*, Lagos, 2 December 2006.

'Government is playing with the N.D.D.C' *Punch Newspaper*, 23 July 2008 3.

Interview

Hansungule, M in an oral interview with him at the Centre for Human Rights, University of Pretoria. 14 May 2008.

Fred Bluff, in oral interview at the Shkelele open market, Mozambique, on 3 October 2008.

OTHERS

ACHPR and IWGIA (2005) *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* Denmark: Eks/Skolens. Adopted by the African Commission at the 28th ordinary session.

ACHPR and IWGIA (2006) *Indigenous Peoples in Africa: The Forgotten Peoples? The African Commission's work on indigenous peoples in Africa* Denmark: Eks/Skolens. Published by the ACHPR and the International Work Group for Indigenous Affairs *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* HRI/GEN/Rev.8 8 May 2006.

Deschenes, J 'Proposal Concerning a Definition of the Term "Minority", UN Doc. E/CN.4/Sub.2/1985/31.

Pant, R *Land Rights and Minorities, Minority Rights Group International*, 11 Cited in Kamu, V Being a dissertation submitted in 2007 to the Centre for Human Rights, University of Pretoria.

CNN report, 3rd August, 2008.

Lecture handout and other materials

Alamieyeseigha DSP, 'Energy, Environment and Disaster: The Niger Delta Experience' being a lecture presented as Governor of Bayelsa State of Nigeria at the International Conference on Energy, Environment and Disaster, Charlotte, North Carolina, USA, July 24 (2005) 6. Copy with this writer.

Fernand, V 'Minority Rights and the Prevention of Ethnic Conflicts' being a paper presented at the Sixth session of the Commission on Human Rights' Sub-Commission on Promotion and Protection of Human Rights Working Group on Minorities 22-26 May 2000 E/CN.4/Sub.2/AC.5/2000/CRP. A lecture handout given to the 2008 LLM class in March 2008, Centre for Human Rights, University of Pretoria.

Heyns, CH 'A "Struggle Approach" to Human Rights' *Concepts and Language of Human Rights and Related Ideas* 15. Extract from Clapham and ILC Draft Article. Being a handout from professor Heyns (former Director of the Centre for Human Rights, University of Pretoria) to the 2008 LLM class during his lecture on in February 2008, University on Pretoria.

Padilla D 'State Obligation to Respect the Rights of Indigenous Peoples and Maroons under Inter-American Human Rights Law' being a lecture handout to LLM Students, 2008, Centre for Human Rights, University of Pretoria.

Wolmarans, FG 'Democracy as a form of government' being a lecture handout given to the 2008 LLM class, in April 2008, Centre for Human Rights, University of Pretoria.