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Andre Taylor

*American University Washington College of Law*

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# OIL MULTINATIONALS AND THE FIGHT FOR SUSTAINABILITY IN NIGERIA'S NIGER DELTA

*by Andre Taylor\**

## INTRODUCTION

Multinational oil companies and the Nigerian government have instigated extreme environmental damage throughout the Niger Delta region.<sup>1</sup> The Nigerian government fosters a weak regulatory environment that allows unchecked water and soil pollution, which threatens the livelihoods of thousands. In failing to address mounting ecological catastrophe while repressing environmentalist advocacy, the Nigerian government has breached its international human rights obligations by denying residents of the Niger Delta their right to an “adequate standard of living” and “enjoyment of [...] physical and mental health” under Articles 11 and 12 of the ICESCR.<sup>2</sup> The Nigerian government’s violation of these laws undermines its international obligations and fails to promote national prosperity, contributing to ongoing security and humanitarian issues in Africa’s largest economy.

\* Andre Taylor is a 1L student at American University’s Washington College of Law. He is a contributor for the *Human Rights Brief*.

<sup>1</sup> *Nigeria: 2020 Could Be Shell’s Year of Reckoning*, AMNESTY INT’L (Feb. 10, 2020), <https://www.amnesty.org/en/latest/news/2020/02/nigeria-2020-could-be-shell-year-of-reckoning/>.

<sup>2</sup> International Covenant on Economic, Social and Cultural Rights arts. 11–12, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

To confront the socio-economic issues facing Niger Delta communities hosting oil operations, the Petroleum Industry Act (PIA) mandates that “settlers” make an annual contribution of three percent of the previous year’s operating expenditure to a Host Community Development Trust Fund.<sup>3</sup> The purpose of each community’s trust fund is to finance “capital projects,” including railway construction, roads, and telecommunications networks.<sup>4</sup> Each community’s trust fund is led by a board of trustees that must have at least one member from the host community. However, the PIA misses the chance to reverse the environmental damage that has already taken place in the Delta, fails to put mechanisms in place to challenge oil-industry related repression, and provides insufficient funding to host communities.<sup>5</sup> This Article will discuss how the Nigerian government’s current regulatory environment for the oil industry breaches international human rights obligations by denying Niger Delta citizens their right to an “adequate standard of living” and “enjoyment of [...] physical and mental health” under Articles 11 and 12 of the ICESCR. It will further explore how the recently passed PIA is insufficient to bring the Nigerian government in line with its international duties because it makes paltry investments in infrastructure in communities that host oil operations.

<sup>3</sup> Petroleum Industry Act No. (6), (2021) 108:142 O.G., A121 § 234 (Nigeria) [hereinafter PIA].

<sup>4</sup> SOLINA KENNEDY ET AL., *Nigeria’s Petroleum Industry Bill: A Missed Opportunity to Prepare for the Zero-Carbon Future*, COL. CTR. SUSTAINABLE INV. 3 (2021), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1190&context=sustainable\\_investment\\_staffpubs](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1190&context=sustainable_investment_staffpubs) (discussing the social and economic ramifications of the PIA).

<sup>5</sup> *New Law Stokes Tension in Nigeria’s Blighted Oil Delta*, FRANCE24 (Jan. 9, 2021), <https://www.france24.com/en/live-news/20210901-new-law-stokes-tension-in-nigeria-s-blighted-oil-delta>.

## I. BACKGROUND

Crude oil and gas accounts for more than ninety percent of Nigerian export earnings and approximately two-thirds of government revenue.<sup>6</sup> To entice multinationals to invest in oil extraction operations, the Nigerian government has both overlooked negligent environmental practices in the oil industry and aided in the abuse of citizens demanding more care for the Niger Delta ecosystem.<sup>7</sup> Since the 1950s, companies such as Shell and Chevron have been responsible for hundreds of oil spills and leakages during their extraction efforts in the Niger Delta, which has wrought environmental devastation on the area.<sup>8</sup> Nigeria loses roughly 400,000 barrels of oil to spills and leakages a day, outpacing the nation with the second highest rate of spillage, Mexico, by nearly 4,000 percent.<sup>9</sup> Environmental degradation caused by the hydrocarbons entering the ecosystem can have a harmful effect on human communities, often leading

to higher rates of infant mortality,<sup>10</sup> liver damage,<sup>11</sup> and emotional distress.<sup>12</sup>

Oil corporations and the Nigerian government collaborate on security and armed operations around oil producing areas. As recently as the 1990s, companies like Shell have paid Nigerian military officials to torture and kill activists, such as Ken Saro-Wiwa, who have spoken out against environmental degradation and the company's failure to clean-up after spills.<sup>13</sup> Chevron, Shell, and Eni have historically rejected responsibility for the environmental issues their operations cause, opting to blame ethnic violence and theft of onsite materials by locals for the rate of spillage in the Niger Delta.<sup>14</sup> The Nigerian government has also denied allegations that it is mishandling the money needed to finance clean-up operations and is using the military to

<sup>6</sup> *Nigeria's Revenues Rise in June on Higher Oil, Tax Receipts*, REUTERS (July 19, 2019), <https://www.reuters.com/article/us-nigeria-oil-revenue/nigerias-revenues-rise-in-june-on-higher-oil-tax-receipts-idUSKCN24KOLD>.

<sup>7</sup> Dalue Mbachu, *The Toxic Legacy of 60 Years of Abundant Oil*, BLOOMBERG (July 1, 2020), <https://www.bloomberg.com/features/2020-niger-delta-oil-pollution/>.

<sup>8</sup> Adam Vaughan, *Oil in Nigeria: A History of Spills, Fines and Fights for Rights*, GUARDIAN (Aug. 4, 2011), <https://www.theguardian.com/environment/2011/aug/04/oil-nigeria-spills-fines-fights>.

<sup>9</sup> Agency Report, *Nigeria Records 4,919 Spills in 6 Years, 4.5 Trillion Barrels Stolen in 4 Years—Minister*, PREMIUM TIMES (July 6, 2021), <https://www.premiumtimesng.com/news/headlines/471901-nigeria-records-4919-oil-spills-in-6-years-4-5trn-barrels-stolen-in-4-years-minister.html>.

<sup>10</sup> ANNA BRUEDERLE & ROLAND HODLER, EFFECT OF OIL SPILLS ON INFANT MORALITY IN NIGERIA, PROC. NAT' ACAD. SCI. OF THE U.S.A. (2022), <https://www.pnas.org/doi/epdf/10.1073/pnas.1818303116>.

<sup>11</sup> Jennifer Dorroh, *Nigerian Authorities Promise Clean Drinking Water After Reporters Reveal Health Effects of Oil Spills*, INT'L CTR. FOR JOURNALISTS (Nov. 11, 2020), <https://www.icjf.org/news/nigerian-authorities-promise-clean-drinking-water-after-reporters-reveal-health-effects-oil>.

<sup>12</sup> JEROME NRIAGU ET AL., HEALTH RISKS ASSOCIATED WITH OIL POLLUTION IN THE NIGER DELTA, NIGERIA, MDPI (2016), <https://www.mdpi.com/1660-4601/13/3/346/htm>.

<sup>13</sup> John Vidal, *Shell Oil Paid Nigerian Military to Put Down Protests, Court Documents Show*, GUARDIAN (Oct. 2, 2011), <https://www.theguardian.com/world/2011/oct/03/shell-oil-paid-nigerian-military>.

<sup>14</sup> *Shell Discusses Onshore Exit with Nigerian Government*, ARGUS MEDIA (May 18, 2021), <https://www.argusmedia.com/en/news/2216025-shell-discusses-onshore-exit-with-nigerian-government>; *Shell Accused of Lying over Nigeria Oil Spill Clean-up*, ALJAZEERA (Nov. 3, 2015) <https://www.aljazeera.com/news/2015/11/3/shell-accused-of-lying-over-nigeria-oil-spill-clean-up>.

abuse communities by attacking public facilities and arresting citizens.<sup>15</sup> Nigeria has similarly encouraged a regulatory environment that has failed to demand higher standards from oil companies operating in the Niger Delta, enabling rampant pollution to continue without a coordinated legislative or judicial response.

Nigerian President Muhammadu Buhari signed the PIA into law in August 2021.<sup>16</sup> The law's primary aim is to create a new administrative and financial framework for the national oil industry.<sup>17</sup> The PIA seeks to remedy the issues brought by oil extraction by creating Petroleum Host Community Development Trusts, which are designed to provide direct social and economic benefits to communities hosting oil operations.<sup>18</sup> The PIA obligates oil corporations in the Niger Delta to contribute three percent of earnings to local Host Community Development Trusts for investment in infrastructure and local clean-up efforts by trust funds.<sup>19</sup> However, while broadly praised by international investors for streamlining the Nigerian oil industry and encouraging investment, Nigerian Delta stakeholders have harshly criticized the PIA for insufficiently addressing the ongoing humanitarian issues facing the region.<sup>20</sup>

<sup>15</sup> See Neil Munshi, *Graft and Mismanagement Claims Taint Nigeria Oil Clean-up*, FIN. TIMES (Dec. 29, 2019), <https://www.ft.com/content/33485e22-104e-11ea-a225-db2f231c-feae>; see also Tife Owolabi, *Military Sweep in Nigeria's Delta Risks Fueling More Dissent*, REUTERS (June 10, 2016), <https://www.reuters.com/article/us-nigeria-security-delta/military-sweep-in-nigerias-delta-risks-fuelling-more-dissent-idUSKCN0YW169> (explaining that Nigerian officials have been denying allegations of corruption and misused funds in clean-up operations).

<sup>16</sup> *Nigeria's Buhari Signs Historic Oil Overhaul Bill into Law*, REUTERS (Aug. 16, 2021), <https://www.reuters.com/world/africa/nigerias-buhari-signs-historic-oil-overhaul-bill-into-law-2021-08-16/>.

<sup>17</sup> *Id.*

<sup>18</sup> PIA, *supra* note 3, § 240(2).

<sup>19</sup> *Id.* § 240(2).

<sup>20</sup> Omowumi Iledare, *New Law Will Make Nigeria's Petroleum Industry Attractive to Investors*, CONVERSATION (Sept. 3, 2021), <https://theconversation.com/new-law-will-make-nigerias-petroleum-industry-attractive-to-investors-16686>.

## II. LEGAL ANALYSIS

The Nigerian government is bound by the ICESCR because it ratified the treaty in 1993.<sup>21</sup> ICESCR demands its parties to preserve fundamental economic, social, and cultural rights associated with quality of life. Nigeria is violating its obligations under the ICESCR because it permits widespread environmental degradation, which poses an ongoing threat to the health and livelihood of entire communities in the Niger Delta.<sup>22</sup> Article 12 of the ICESCR is concerned with ensuring that states provide for “the improvement of all aspects of environmental and industrial hygiene.”<sup>23</sup> This necessitates that states make a genuine effort to develop the infrastructure and economic practices needed to preserve the environment and protect the health of citizens.<sup>24</sup> Additionally, Article 11 requires that states must “recognize the right of everyone to an adequate standard of living for himself and his family . . . .”<sup>25</sup> Thus, under Article 11, states are obligated to facilitate policies that support communities and their quality of life.<sup>26</sup> Likewise, Article 12 has further expounded that the right to health includes freedom from “exposure to harmful substances such as radiation and harmful chemical or other detrimental environmental conditions that directly or indirectly impact upon human health.”<sup>27</sup>

<sup>21</sup> ICESCR, *supra* note 2, arts. 11–12.

<sup>22</sup> Scheagbe Mayumi Grisby, Note, *Enforcing Economic, Social, and Cultural Rights: A Stark Dichotomy*, 9 NE. U. L. REV. EXTRA LEGAL 1, 5 (2017) (explaining the way in which environmental degradation caused by oil pollution both disrupts traditional ways of life and damages long-term health outcomes); Commc'n. on The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria, Afr. Comm'n Hum. & Peoples' Rts., Commc'n No. 155/96 (2002) (finding that the military government of Nigeria was responsible for violations of rights to health, a clean environment, and family born out of failure to monitor oil corporations operating in Ogoniland).

<sup>23</sup> ICESCR, *supra* note 2, art. 12.

<sup>24</sup> Grisby, *supra* note 22.

<sup>25</sup> ICESCR, *supra* note 2, art. 11.

<sup>26</sup> *Id.*

<sup>27</sup> U.N. Comm. on Econ., Soc. & Cultural Rts. [CESCR], *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, U.N. Doc. E/C.12/2000/4 ¶ 15 (Aug. 11, 2000).

The dire ecological circumstances and state repression of environmental advocacy presented in the Nigerian oil industry demonstrate a failure to adhere to these various agreements. Where Articles 11 and 12 of the ICESCR mandate that nations seek to advance industrial practices, the Nigerian government has regressed in its efforts to address the frequent oil spills that continue to affect communities of the Niger Delta region. Corruption and theft have been blamed for the slow clean-up efforts in the region by international observers, such as those associated with the African Commission on Human and Peoples Rights.<sup>28</sup> Many of the international and domestic funds that support these efforts are unaccounted for, leading many international organizations to speculate that Nigerian officials are misusing the funds, reducing the rate at which ecological healing can occur.<sup>29</sup>

Nigeria's solution to this environmental damage, Chapter 3 of the PIA, does not go far enough to improve the socio-economic wellbeing of Niger Delta citizens bearing the brunt of environmental degradation. The three percent allocated to community development in the PIA is inadequate to address the widespread disenfranchisement and economic devastation brought by oil pollution.<sup>30</sup> Using the income poverty threshold of \$3.20 USD

<sup>28</sup> The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria, Afri. Comm'n on Hum. & Peoples' Rts., Commc'n No. 155/96 ACHPR/COMM/A044/1 (2001).

<sup>29</sup> *False Starts for Clean-Up: Incompetence and Corruption Threaten the Latest Government Body to Be Set up to Tackle Oil Pollution*, AFRICAN CONFIDENTIAL (July 12, 2019), [https://www.africa-confidential.com/article/id/12691/False\\_starts\\_for\\_the\\_clean-up.](https://www.africa-confidential.com/article/id/12691/False_starts_for_the_clean-up;); see also Tendai Marima, *There's an Invisible Cost to Nigeria's Oil Spill Disasters*, QUARTZ AFRICA (Dec. 11, 2016), <https://qz.com/africa/859201/theres-an-invisible-cost-to-nigerias-oil-spill-disasters/>.

<sup>30</sup> Mary Izuaka, *Buhari Signs PIB, Ignored Concerns over 3% Host Communities Fund*, PREMIUM TIMES (August 16, 2021), <https://www.premiumtimesng.com/news/headlines/479516-buhari-signs-pib-ignores-concerns-over-3-host-communities-fund.html>.

outlined by the World Bank, seventy-one percent of Nigeria's population is living in extreme poverty.<sup>31</sup> A high poverty rate mandates more extensive investment in communities facing water and soil pollution in the Niger Delta. Development trusts are a conceptually innovative means of sparking local employment and reversing the damage caused by oil extraction, but a three percent investment requirement is woefully inadequate to affect meaningful change for the communities they are designed to uplift.<sup>32</sup> A three percent levy requirement may also instigate violence from Nigerians who feel the government has betrayed them.<sup>33</sup>

### III. RECOMMENDATIONS

A starting point for addressing the Niger Delta's issues around environmental injustice would be to raise the allocation of funds by oil companies up from three percent. The PIA could also create an anonymous system for concerned workers and citizens in the area to complain to the local government about abuses directly relating to the oil industry, such as if the military were to target them for speaking against Shell's operations. This could put Nigeria in line with its human rights duties by placing protections in place for citizens against harm in pursuance of their Article 11 right to an "adequate standard of living."<sup>34</sup>

The Nigerian government could manage the system through a website that doubles as a means of compiling the various complaints across an entire year to create an annual report that documents the number of direct instances of violence in the Niger Delta. This increased transparency could elevate the Nigerian public's awareness of oil-related violence

<sup>31</sup> Stephen Onyeiwu, *Nigeria's Poverty Profile Is Grim. It's Time to Move on Beyond Handouts*, CONVERSATION (June 27, 2014), <https://theconversation.com/nigerias-poverty-profile-is-grim-its-time-to-move-beyond-handouts-163302>.

<sup>32</sup> Izuaka, *supra* note 30.

<sup>33</sup> *Petroleum Industry Bill Controversy*, PUNCH (NIGERIA) (July 19, 2021), <https://punchng.com/petroleum-industry-bill-controversy/>.

<sup>34</sup> ICESCR, *supra* note 2, art. 11.

and put further pressure on the government and its corporate allies by the international community.

## CONCLUSION

The Nigerian government's efforts to attract multinational oil companies have led to the negligent nonenforcement of environmental regulations and the normalization of environmental degradation.<sup>35</sup> The resulting oil spills do significant harm to the Niger Delta ecosystem and severely impact the health and livelihoods of local communities.<sup>36</sup> The Nigerian government's enabling of environmental damage violates Articles 11 and 12 of the ICESCR. The PIA seeks to address this issue in part through Chapter 3; however, the provision fails to help Nigeria comply with its international obligations because the funds provided to host communities are insufficient to meaningfully advance the standard of living and right to health of Niger Delta citizens.<sup>37</sup>

The Chapter 3 provision misses the chance to reverse the environmental damage that has already taken place in the Niger Delta.<sup>38</sup> It also fails to put in place enough mechanisms to call out oil industry-related state repression, and it provides too little funds to host communities. For a policy touted as an institutional revamp of the Nigerian oil industry, the PIA does little to address key humanitarian concerns in the Niger Delta. With Nigeria primed to be one of the most populous nations on Earth and with some of its most substantial oil reserves, the future of the increasingly economically and politically prominent nation and the entire West African region is reliant

on responsible management of the Niger Delta ecosystem and respect for its inhabitants for socio-economic stability.<sup>39</sup>

<sup>35</sup> *Clean It Up: Shell's False Claims about Oil Spill Response in the Niger Delta* 33, AMNESTY INT'L (Nov. 3, 2015), <https://www.amnesty.org/en/documents/afr44/2746/2015/en/>.

<sup>36</sup> Gabriel Eweje, *Environmental Costs and Responsibilities Resulting from Oil Exploitation in Developing Countries: The Case of the Niger Delta of Nigeria*, 69 J. BUS. ETHICS 27, 38 (2006) (discussing the scope of the environmental damage in the Niger Delta by stating that the 4,000 oil wells operated in the region are potentially compromised and pose a threat to fishing and agricultural activities needed by rural communities).

<sup>37</sup> PIA, *supra* note 3, § 240(2).

<sup>38</sup> *Id.* § 240(2).

<sup>39</sup> Yomi Kazeem, *Africa's Population Will Triple by the End of the Century Even as the Rest of the World Shrinks*, QUARTZ AFRICA (July 26, 2020), <https://qz.com/africa/1881468/how-fast-is-africas-population-growing/>.

# HOW THE MANY RECENT DEATHS OF MALAYSIAN CITIZENS EXPOSE THE COUNTRY'S CORRUPT POLICE SYSTEM

by Amy P. Lyons\*

## INTRODUCTION

The death of Sivabalan Subramaniam, an hour after the Malaysian police arrested him, has sparked national outrage.<sup>1</sup> The police report indicates that Subramaniam died in the custody of police at 12:25 P.M., but the police did not notify Sivabalan's sister that her brother was in "critical condition" at a hospital until 3:00 P.M.<sup>2</sup> This story is one of many, all-too-familiar civilian encounters with the Malaysian police. The Malaysian government's lack of checks or balances on the Royal Malaysia Police (RMP) has allowed the force to commit numerous

\* Amy P. Lyons is a second-year law student at American University Washington College of Law who is also pursuing a Master's degree at American University's School of International Service with a concentration in International Peace and Conflict Resolution. Amy graduated from the University of Maine in 2018 with dual bachelor's degree in International Affairs and Business Administration with concentrations in International Security and International Business, as well as with minors in Legal Studies, Political Science, and Spanish. She aspires to pursue a legal career with a focus on atrocity and genocide prevention.

<sup>1</sup> Minderjeet Kaur, *Man Dies Less than an Hour After Arrest by Gombak Cops*, FREE MALAYSIA TODAY (May 20, 2021), [https://www.freemalaysiatoday.com/category/nation/2021/05/20/man-dies-less-than-an-hour-after-arrest-by-gombak-cops/?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_NbDkXVuvfrYyayZ4QVdzcn27IuPi-jQ4VNF2bDnE9tpk-1635539515-0-gqNtZGzNARujcnBszQol](https://www.freemalaysiatoday.com/category/nation/2021/05/20/man-dies-less-than-an-hour-after-arrest-by-gombak-cops/?__cf_chl_jschl_tk__=pmd_NbDkXVuvfrYyayZ4QVdzcn27IuPi-jQ4VNF2bDnE9tpk-1635539515-0-gqNtZGzNARujcnBszQol).

<sup>2</sup> *Id.*

acts of torture against persons in their custody, and in some cases, that torture has led to death.<sup>3</sup>

A report by Amnesty International states that there were 140 civilian deaths in police custody from 2008 to 2018 in Malaysia.<sup>4</sup> Since early 2021, multiple news sources have written articles detailing these atrocious acts, as well as the discrepancy in the accurate number of cases reported, suggesting that these numbers are actually much higher.<sup>5</sup> The unhampered police powers of the Royal Malaysian Police force, and the plethora of incidents they have committed against persons in custody, constitute torture under international law.

## I. BACKGROUND

Unchecked police brutality continues to be an underlying problem of racism in Malaysia, just as it is in the United States.<sup>6</sup> Police brutality, as defined by Amnesty International, includes torturous acts such as physical

<sup>3</sup> See Matthew Bugher, *Malaysia: Critics Are Suppressed While Police Brutality Goes Unaddressed*, ARTICLE19 (July 2, 2021), <https://www.article19.org/resources/malaysia-critics-suppressed-police-brutality-unaddressed/> (detailing the criminal proceedings against individuals who have spoken out against police misconduct); see also Ramisa Nuzhat, *Police Brutality in Malaysia; Block in the Road of Humanity*, MEDIUM (July 9, 2021), <https://medium.com/tlmun-herald/police-brutality-in-malaysia-block-in-the-road-of-humanity-90249006a079> (detailing accounts of those held in police custody who were assaulted and tortured with chili paste and ice cubes); see also "No Answers, No Apology": *Police Abuses and Accountability in Malaysia*, HUM. RTS. WATCH (Apr. 1, 2014), <https://www.hrw.org/report/2014/04/01/no-answers-no-apology/police-abuses-and-accountability-malaysia> (recounting stories of unjustified shootings and mistreatment and deaths while in police custody by the Royal Malaysia Police).

<sup>4</sup> *Malaysia: A Historic Opportunity: Ensuring an Effective Police Commission in Malaysia*, AMNESTY INT'L (July 6, 2020), <https://www.amnesty.org/en/documents/asa28/2125/2020/en/>.

<sup>5</sup> *Suaram Disputes Home Minister's Data on Custodial Deaths*, FREE MALAYSIA TODAY (Sep. 21, 2021), <https://www.freemalaysiatoday.com/category/nation/2021/09/21/suaram-disputes-home-ministers-data-on-custodial-deaths/>.

<sup>6</sup> See MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited Apr. 15, 2022) (identifying the number of U.S. deaths from police violence each year, with 1,141 people killed in 2021).