



This publication provides an overview of status and trends regarding the constitutional, legislative and administrative protection of the rights of indigenous peoples in South Africa.

This report provides the results of a research project by the International Labour Organization and the African Commission's Working Group on Indigenous Communities/Populations in Africa with the Centre for Human Rights, University of Pretoria, acting as implementing institution. The project examines the extent to which the legal framework of 24 selected African countries impacts on and protects the rights of indigenous peoples.

This report was researched and written by B Fagbayibo (with comments by Chidi Oguamanam incorporated).

For an electronic copy of the other 23 country studies and the overview report of the study, see www.chr.up.ac.za/indigenous

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the International Labour Organization and the African Commission on Human and Peoples' Rights on
the constitutional and legislative protection of
the rights of indigenous peoples:
Nigeria

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NIGERIA: CONSTITUTIONAL, LEGISLATIVE AND ADMINISTRATIVE PROVISIONS CONCERNING INDIGENOUS PEOPLES

B Fagbayibo (with comments by Chidi Oguamanam incorporated),
Nigeria: Constitutional, legislative and administrative provisions concerning indigenous Peoples

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1. Indigenous people in the country – basic situational overview

1.1 Indigenous communities/groups in Nigeria

There are numerous but open-ended criteria for identifying indigenous peoples. These include cultural distinctiveness; the extent to which their culture and way of life are under threat; dependence on the immediate natural environment; a history of suffering from colonization, discrimination, domination and exploitation; self-identification; and political and social marginalisation.¹ For the most part, claims to indigeneity are context-dependent.

Based on the above criteria and for the purpose of this project, three such groups may be identified in Nigeria, namely, the Ogonis, the Ijaws and the Nomadic Fulanis. However, Nigeria's uniquely-complex ethnic composition suggests that this list is not closed.²

The Ogoni people number approximately 500 000.³ The Ogonis are said to have settled in the area well before the 15th century.⁴ The Ogonis occupy an area of 404 square miles in the Niger Delta region of Nigeria.⁵ Ogoniland has six kingdoms, with four main languages – related but mutually unintelligible – spoken.⁶ Traditionally, the Ogonis depend on agriculture and fishing.⁷ In the second half of the 20th century, oil was discovered in the Niger Delta. Today, oil accounts for over

* The report was prepared by Babatunde Fagbayibo, with supplements by Prof Chidi Oguamanam, Dalhousie University; Ms Lemea Nkipnee Keziah acted as reader.

¹ Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, IWGIA, (2005) 89. Article 1(2) of the 1989 Convention Concerning Indigenous and Tribal Peoples in Independent Countries emphasises the principle of self-identification as a fundamental criterion for identifying indigenous peoples.

² The limitation of Nigeria's indigenous peoples to the three groups identified may be criticised, but is opted for on the basis of them arguably meeting the criteria used in this study, and on the availability of desk-top sources of information about these groups. Other 'minority' groups may also meet these criteria. For instance, in the Niger Delta region, there are many other minority rights agitators that may fit the term 'indigenous' as it is used here. These groups include - but are not limited to - the Isoko, Urhobo, Itsekiri, Efik and Ibibio. In the northern and central parts of Nigeria, there are many minority groups whose search for identity and self-determination may not be necessarily resource driven. For instance, most of those are subjected to cultural and religious domination that threaten their traditional ways of life and identity. They also tend to be excluded from political power. The impression that the Nomadic Fulani is the only indigenous group in northern Nigeria is therefore open to contention.

³ K Saro-Wiwa *Genocide in Nigeria: The Ogoni Tragedy* (1992).

⁴ As above.

⁵ n 2 above.

⁶ 'The Ogoni Nation' Sourced from <http://www.mosop.net/MOSOPOgoniK.htm> (Accessed 25 July 2007).

⁷ Saro-Wiwa (n 2 above).

90 per cent of Nigeria's export earnings and 80 per cent of government revenue. Land tenure is based on customary laws, which means that the right to sell or dispose of the land belongs to the community, and that individuals only have rights of usufruct.⁸ Because the Ogonis revere the land on which they live and the rivers that surround them, they claim that the degradation of their environment, as a result of oil pollution, is a threat to their culture and way of life.⁹ This is because oil pollution undermines the agricultural viability of their lands and also interferes with the worshipping of their gods.¹⁰ The Ogoni people feel that the revenue allocation formula, which places the control of oil revenues in the hands of the federal government of Nigeria, is discriminatory.¹¹

The Fulani pastoralists number approximately 5.3 million.¹² The largest group of pastoralists is the Fulbe or Fulani that constitute about 95 per cent of the nomadic herders in Nigeria.¹³ The Fulani pastoralists emigrated into Hausaland of Nigeria from the Senegambia in the western Sudan at the beginning of the 14th century.¹⁴ This immigration spanned several centuries moving in small units of compound families.¹⁵ As a result of their nomadic nature, they are found in varying concentrations in 31 out of the 36 states of Nigeria.¹⁶ The Fulanis draw their livelihood from livestock herding based on unrestricted grazing and movement of their ruminant livestock according to the availability of water, grazing pasture and the limitation of livestock diseases.¹⁷ They hold over 90 per cent of Nigeria's livestock population with the livestock sub-sector

⁸ See *The Ogoni of Nigeria: Oil and Exploitation* Sourced from http://www.minorityrights.org/Dev/mrg_dev_title6_nigeria (Accessed 30 October 2006).

⁹ n 5 above.

¹⁰ As above.

¹¹ As above.

¹² Other Nigerian nomadic pastoralists include the Shuwa (1.01m), Koyam (32 000), Badawi (20 000), Dark Buzza (15 000) and the Buduma (10 000). See G Tahir *et al*, 'Improving the quality of nomadic education in Nigeria, Association for the Development of Education in Africa (ADEA) 2005', sourced from <http://www.ADEAnet.org> (accessed 25 December 2006).

¹³ See E Fabusoro 'Key Issues in Livelihood Security of Migrant Fulani Pastoralists: Empirical Evidence from South-Western Nigeria', sourced from http://ecas2007.aegis-eu.org/commence/user/view_file_forall.php?fileid=931 (Accessed 25 July 2007).

¹⁴ See 'The history and social organization of the Pastoral Fulbe society', sourced from <http://intercultural.dk/icms/filer/dissertation/firefemseks.pdf> (Accessed 25 July 2007). Also see n 11 above.

¹⁵ n 12 above.

¹⁶ I Iro, 'From nomadism to sedentarism: An analysis of development constraints and public policy issues in the socioeconomic transformation of the pastoral Fulani of Nigeria'; sourced from <http://www.gamji.com/fulani1.htm> (accessed 13 December 2006).

¹⁷ n 12 above.

accounting for 3.2 per cent of the nation's Gross Domestic Product (GDP).¹⁸ In spite of this, Fabusoro¹⁹ writes that

...the pastoral Fulani are untouched by modernity and controlling little of their economic and political destinies, the pastoral Fulani wander ceaselessly with their animals in treacherous weather conditions especially in the tropical rain, heat, and harmattan.

Abubakar²⁰ is of the view that the cultural identity of the Fulanis – ownership of cattle and migratory patterns – is often regarded as backward and neglected by policy makers, thereby leading to faulty and ill-suited policies. Ownership of cattle, herdsmanship, migration and living in the bush all represent the cultural distinctiveness of nomadic Fulanis.²¹ Because the Fulanis are always on the move in search of better conditions for raising their herds, they are usually exposed to violent attacks from other ethnic groups in the competition for land and other scarce land resources.²² As a result of the customary property regimes in the hosts' communities, nomadic Fulanis are often alienated from the natural resources required for keeping their animals.²³

The Ijaws (also known as 'Ijo' or 'Izon') are regarded as the oldest settlers in the Niger Delta area of Nigeria.²⁴ The Ijaws are the fourth largest ethnic group in Nigeria, numbering 14 825 211.²⁵ They are found in 5 out of the 36 states of Nigeria.²⁶ As with other indigenous peoples, the Ijaws are closely tied to their environment, and their survival is absolutely depended on the land.²⁷ The land provides for their needs and is seen as sacred and is managed by communal land tenure and the extended family.²⁸ Like the Ogonis, Ijaw communities engage in fishing and aqua-cultural economy.²⁹ It is claimed that, due to oil pollution and environmental degradation there has been a

¹⁸ As above

¹⁹ n 12 above

²⁰ *The fallacy of the cattle complex theory and its implications*, sourced from <http://www.gamji.com/article4000/NEWS/4872.htm> (accessed 25 July 2007).

²¹ As above.

²² See 'More Fulanis Killed', sourced from http://www.afrol.com/News2002/nig029_fulanis_Killed.htm (accessed 13 December 2006). See also n 11 above.

²³ n 12 above.

²⁴ See J Alagoa *A history of the Niger Delta* (1972) 17.

²⁵ <http://www.ijaw.net/people.htm> (accessed 24 March 2007).

²⁶ 'Bayelsa, Delta, Rivers, Akwa-Ibom and Ondo States' http://www.minorityrights.org/Dev/mrg_dev_title6_nigeria (accessed 30 October 2006).

²⁷ Y Banigo *The State, TNCs and Indigenous Peoples: The case of the Ijo-speaking People* (Unpublished PhD thesis, University of Port Harcourt) (2006) 200.

²⁸ As above, 201.

²⁹ As above.

dislocation of the traditional mainstay of the Ijaw communities.³⁰ With regard to discrimination and domination by other groups, Banigo³¹ claims that

The Nigerian state in its present form is structurally and institutionally imbalanced in favour of the major ethnic groups. The effect is that the more populated regions have taken advantage of their size to influence and determine the political and economic activities through the state apparatus for their benefits.

1.2 Main human rights concerns of indigenous peoples

Indigenous groups in Nigeria have the following human rights concerns: land and natural resource rights, access to quality education and health, provision of basic infrastructure and social services, economic and other aspects of cultural self-determination, and environmental degradation. (These issues are fully explored in the following section).

Land and resource rights: The indigenous peoples of Ogoni and Ijaw claim that the biggest impediments to the realisation of their land rights are the Land Use Act of 1978 and the Petroleum Acts of 1969. In principle, these two laws vest the control and ownership of lands and mineral resources in the government of Nigeria. There has been a move to have these laws be repealed.

Environment degradation: The Ogonis, Ijaws and other ethnic minority groups in Nigeria's oil-rich Niger Delta complain of the negative impact of oil and gas exploration on their environment, health and ways of life. They claim that with the connivance of the Nigerian state, oil companies' practices in their ancestral territories fall below international best practices and do not have regard for Environmental Impact Assessments. These companies are accused of discharging toxic effluents into ancestral rivers, as well as destroying their farmlands and fishing resources.

Access to quality health and education: For the Fulanis, in spite of their vulnerability to diseases and natural hazards due to their constant mobility, access to qualified medical officials, health centres and drugs, as well as to education, are lacking.

2 Background to the country

Because of colonial intervention, Nigeria is an amalgamation of more than 250 traditional African ethnic groups. They include the Hausa, Fulani, Yoruba, Igbo, Ijaw, Ibibio, Kanuri, Tiv, Nupe,

³⁰ As above.

³¹ As above, 185.

Ogoni and a host of others.³² Three major ethnic groups (Hausa-Fulani 29 per cent, Yoruba 21 per cent and Igbo 17 per cent), constitute 68 per cent of the total population. Other bigger groups are the Ijaw ethnic group, which constitutes 10 per cent, Kanuri 4 per cent, Ibibio 3.5 per cent, and the Tiv, with 2.5 per cent of the total population.³³

Nigeria's official language is English. In addition, the Constitution recognises three main ethnic languages: Yoruba, Ibo, and Hausa.³⁴ 'Broken English' ('pidgin' English) is perhaps the most widely spoken language in Nigeria and indeed West Africa; it is a creolization of English language and other local languages.³⁵

2.1 Pre-colonial history

As noted earlier, the Ijaw speaking people are the oldest settlers in the Niger Delta. Alagoa³⁶ notes that the Ijaw language has been calculated to be at least 5 000 years distant from the languages of its neighbours. The Ijaw language is part of the Kwa branch of the Niger-Congo family of the African languages.³⁷ The geographic conditions of the Niger Delta placed the Ijaws on strategic trade routes.³⁸ The Ijaws exploited this opportunity by establishing routes connecting them to other West African groups as early as the 15th century.³⁹ The Ijaws were one of the first groups in Nigeria to have contact with Westerners by serving as intermediary slave traders.⁴⁰

The Fulbe Fulanis reached what is today known as Northern Nigeria at the beginning of the 14th century.⁴¹ In some places, the Fulbe herders acknowledged the authority of the autochthonous hosts while violent conflicts erupted in other places.⁴² Between 1809 and 1903, the Fulanis were involved in the spread of Islam throughout Northern Nigeria.⁴³ In 1809, a Fulani cleric, Sheikh

³² <http://www.nigeria.gov.ng/AboutNigeria.aspx> (accessed 1 January 2007).

³³ As above.

³⁴ Sec 55 Nigerian Constitution, 1999.

³⁵ n 31 above.

³⁶ See Alagoa n 23 above.

³⁷ As above, 15.

³⁸ See 'Ijo information', sourced from <http://www.uiowa.edu/africart/toc/people/Ijo.htm> (accessed 25 July 2007).

³⁹ As above.

⁴⁰ As above.

⁴¹ n 13 above.

⁴² As above.

⁴³ As above.

Usman Dan Fodio, led a religious war (*jihad*). The war resulted in the establishment of a Muslim Fulbe Sokoto Caliphate over Northern Nigeria.⁴⁴

2.2 Colonial history

British colonial rule started in Northern Nigeria in the first decade of the 20th century. The first British High Commissioner, Lord Lugard, administered the area through the system of indirect rule which granted the Fulbe caliphs considerable powers over their subjects.⁴⁵ Colonial rule brought nomadic Fulani relative stability and security to traverse the whole of Northern Nigeria in search for good pasture and water.⁴⁶ The levying of tax on nomadic Fulani by the colonial authorities strained the hitherto cordial relationship between the two.⁴⁷

Like other ethnic groups, the Ogonis resisted the British. However, in 1908 they were incorporated into the colonial Calabar Province.⁴⁸ Subsequent clamour for a separate political division by the Ogoni elites led to the creation of the Ogoni Native Authority in 1947 and was integrated into the Eastern region in 1951.⁴⁹

The indigenous and minority peoples of Nigeria continued to agitate for self-determination and protection within the framework of the pre-independent Nigerian colonial state. The issue of minority rights was quite prominent in different colonial constitutional reviews, especially during the period immediately predating Nigeria's independence. Such constitutional reviews provided the basis for the post-colonial restructuring of the Nigerian state which is presently represented in a 36-state federal structure and a federal capital territorial under a democratic presidential framework.

2.3 Post-colonial history

At independence, the Delta minorities (including the Ogonis, Ijaws, Efiks, Ibibios, and Kalabaris) were part of the Eastern region with the Igbos as the majority. Subsequent violence against the

⁴⁴ As above.

⁴⁵ As above.

⁴⁶ As above.

⁴⁷ As above.

⁴⁸ J Watts 'Petro-violence: Some thoughts on Community, extraction and political ecology', sourced from <http://globetrotter.bekery.edu/EnvirPol/WP/01-Watts.pdf> (accessed 25 July 2007).

⁴⁹ As above.

Igbos living in northern Nigeria led to a secession attempt of the eastern region under the 'Republic of Biafra'. A civil war that lasted from 1967 to 1970 ensued between the federal forces and the secessionists group. In order to undermine the secessionist movement and deny it access to the oil resources of the Niger Delta, the military government in 1967 carved Rivers State out of the Eastern Region for the delta minorities (including the Ogonis and the Ijaws).⁵⁰ Continued political restructuring under successive military regimes progressively increased the number of states in Nigeria and ensured that minority groups in the North and South were either accommodated in states of their own or in which they had controlling majority.

After Nigeria gained independence in 1960, the nomadic Fulanis were increasingly affected by modern society and pressure to change their lifestyle.⁵¹ At independence, the Delta minorities (including the Ogonis, Ijaws, Efiks, Ibibios and Kalabaris) were part of the Eastern region with the Igbos as the majority.

Like other ethnic groups, the Ogonis resisted the British. However, in 1908 they were incorporated into the colonial Calabar Province.⁵² A subsequent drive for a separate political division by the Ogoni elites led to the creation of the Ogoni Native Authority in 1947 which was integrated into the Eastern region in 1951.⁵³

The violence against Igbos living in northern Nigeria led to a secession attempt of the eastern region under the "Republic of Biafra". A civil war that lasted from 1967 to 1970 ensued between the federal forces and the secessionists group. In order to undermine the secessionist movement and deny it access to oil resources of the Niger Delta, the military government in 1967 carved Rivers State out of the Eastern Region for the delta minorities (including the Ogonis and the Ijaws).⁵⁴

⁵⁰ n 46 above.

⁵¹ n 13 above.

⁵² n 48 above.

⁵³ As above.

⁵⁴ As above.

Continued political restructuring under successive military regimes progressively increased the number of states in Nigeria and ensured that minority groups in the North and South were either accommodated in states of their own or in which they had controlling majority.

2.4 Current government structure.

After 16 years of military rule, Nigeria reverted to a democracy in 1999 under a federal system of government with a military-supervised constitution. A democratic electoral process was used to fill all electoral offices at federal, state and local government levels. As a matter of political expediency, Nigeria is divided unofficially into six geo-political zones: North-East, North-West, North-Central, South-East, South-West and South-South.

The Ijaws, Ogonis and many other Southern ethnic minorities are located in the South-South region while the Fulanis are found in virtually all the regions of the North and some parts of the South country with large concentration in North-East, North-West and parts of the North-Central. In the North, especially the North Central sub-region, there are ethnic minority and indigenous groups other than the Nomadic Fulani.

There are three arms of government:

- (i) the executive, which comprises the office of the President, the Vice-President and the cabinet;⁵⁵
- (ii) the legislature, which is bi-cameral: the National Assembly (Senate), headed by a Senate President (three senators from each state plus one from the Federal Capital Territory, numbering a total of 109) and the House of Representatives, headed by the speaker of the House of Representatives (the number of representatives is determined by the population of each state, the total is 360);⁵⁶ and
- (iii) the judiciary which is headed by the Chief Justice who is appointed by the President on the recommendation of the National Judicial Council.⁵⁷

⁵⁵ Ch 6 of the Nigerian Constitution.

⁵⁶ Ch 5 of the Nigeria Constitution.

⁵⁷ Sec 231 of the Nigerian Constitution.

2.5 Role of the media and the civil society

Historically, Nigeria has always had a vibrant, independent and privately-owned press, dating back to colonial times. The press was instrumental in the success of Nigeria's independence struggle as well as in the fight against military dictatorship and the entrenchment of democracy in the post colonial era. Presently, Nigeria has a significant number of independent print and electronic media. It has the second largest newspaper market in Africa, with an estimated circulation of seven million copies per day.⁵⁸ The federal government owns the Nigeria Television Authority (NTA), the Federal Radio Corporation of Nigeria (FRCN) and the Voice of Nigeria (external broadcasts) as its official electronic media. Although the FRCN broadcasts mainly in English, Hausa, Yoruba and Ibo, in states where these languages are not spoken by the majority broadcasts are done in the relevant indigenous/minority languages.

Nigeria has an active civil society. In recent times, civil society has been involved in the protection of minority and indigenous peoples' rights in Nigeria. Some notable NGOs are the Movement for the Survival of Ogoni People (MOSOP),⁵⁹ Social and Economic Rights Action Centre (SERAC), Economic Rights Action Centre for Economic and Social Rights (CESR), the Ijaw National Congress (INC), Civil Liberties Organisation, and the National Council of Women's Societies. Recently, there has been a proliferation of rival militia-like organisations involved in criminal and gang-related activities such as hostage-taking for ransom. Almost all of these promote petroleum resource control for the indigenous and ethnic minorities of the Niger Delta as their political objective.

3 Background to legal system

3.1 Legal system

In Nigeria, the Constitution is the basic norm from which all other laws derive their validity and whenever there is a conflict with any other law, the Constitution prevails. Each of the 36 states and the Federal Government (for Abuja, the Federal Capital Territory) have powers to make laws governing the states or the territory. This may be done to the extent that their powers derive from

⁵⁸ 'Egypt has the highest circulation in Africa', sourced from <http://en.wikipedia.org/wiki/Nigeria> (accessed 19 January 2007).

⁵⁹ MOSOP's describes itself as 'an Ogoni-based non governmental, non-political apex organisation of the Ogoni ethnic minority of South-Eastern Nigeria,; see <http://www.mosop.net/MosopAbtus.htm> (accessed 5 August 2007).

the constitution and such laws are not in conflict with it. The legislative powers and legislative jurisdictions of each tier of government are listed under exclusive and concurrent legislative jurisdiction as schedules to the constitution. The states do not have individual constitutions even though each state legislature (Houses of Assembly) makes laws for the good governance of their respective states. Local customs are applicable in all states of the Federation in so far as they are not repugnant to natural justice, equity and good conscience and are consistent with existing law.⁶⁰

3.2 Sources of law

Because of its colonial history, Nigeria is a common law state. English law has a great influence on the Nigerian legal system. The Nigerian legal system is based on the 1999 Constitution, legislation, English law (common law), customary law, Islamic law and judicial precedent. Customary law is dominant in the areas of marriage, divorce, succession and guardianship.⁶¹ Unlike customary law, Islamic law is written and is being enforced in some states in the northern part of the country.⁶²

Fundamental human rights are guaranteed in sections 33 to 44 of the Constitution. However, socio-economic rights are listed in Chapter II of the Constitution as part of the ‘Directive Principles of State Policy’ which are not justiciable.

3.3 Court structure

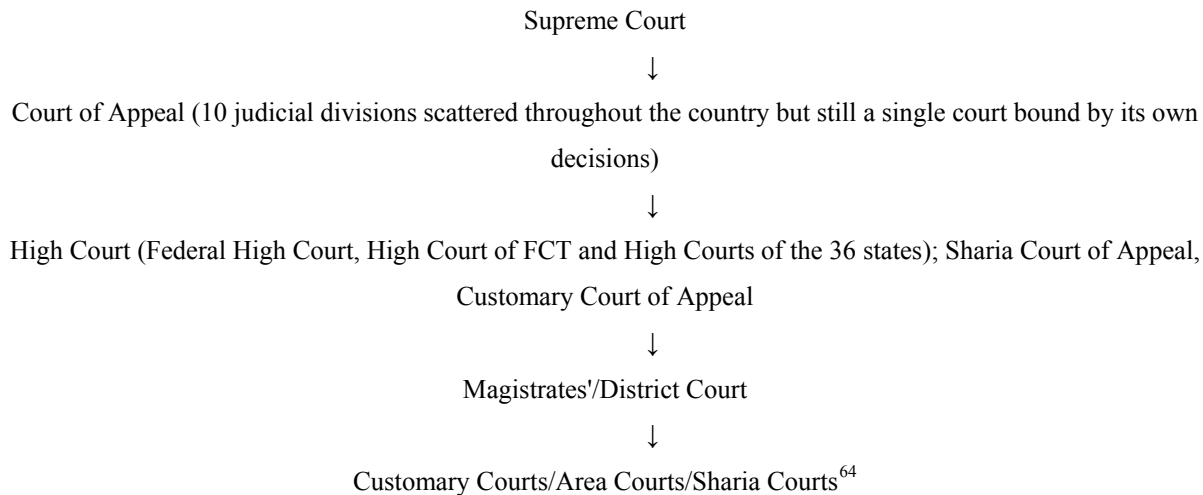
Even though the Constitution affirms the independence of the judiciary, the President appoints the Chief Justice of Nigeria and other judges of federal courts on the recommendation of the National Judicial Council. Such judicial appointments are, however, subject to confirmation by Senate.⁶³ In terms of the protection of human rights, Section 46 of the Constitution confers special jurisdiction on states’ high courts to provide redress for human rights violations. The Federal High Court has important human rights-related jurisdiction, especially in regard to infringement of the civil liberties of citizens. Below is a schematic outline of the hierarchy of the Nigerian judicial system:

⁶⁰ Y Dina *et al* ‘Guide to Nigerian Legal Information, 2005’, sourced from <http://www.nyulawglobal.org/globalex/Nigeria.htm> (accessed 12 December 2006).

⁶¹ As above.

⁶² As above.

⁶³ As above.



*The closest analogy to a small claims court is the magistrate court, even though access thereto is enhanced mostly by private legal representation.

3.4 Status of international law

International law is defined as the rules and principles that govern states in their relations *inter se*.⁶⁵ As the most populous African nation, Nigeria is mindful of its role and influence regionally and globally. Historically, Africa is the centre piece of Nigeria's foreign policy. Despite a long history of military dictatorships, Nigeria remains a responsible member of the international community and it is a signatory to a significant number of international treaties.

Nigeria is a dualist state whereby international treaties require local legislative sanction before they become effective internally. The Africa Charter on Human and Peoples' Rights has been made part of Nigerian national law by an act of Parliament - the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

⁶⁴ As above.

⁶⁵ U Umozurike *Introduction to International Law* (1993) 1.

3.5 Ratification of UN, ILO and regional instruments⁶⁶

Instrument	Date of deposit of ratification/accession
ICCPR	29/07/1993
ICESCR	29/07/1993
Optional Protocol to ICCPR	-
CERD	16/10/1967
Art 14 of CERD	23/02/2004
CEDAW	13/06/1985
Protocol to CEDAW	8/09/2000
CRC	19/04/1991
Protocol to CRC- Armed Conflict	8/09/2000
Protocol to CRC – Sexual Exploitation	-
Genocide Convention	-
Slavery Convention 1927	-
Supplementary Slavery Convention 1956	26/06/1961
CAT	28/06/2001
Art 22 of CAT	-
CMW	-
Art 77 of CMW	-
Biodiversity Convention	08/29/1994
ILO 29 (Forced Labour)	17/10/1960
ILO 105 (Abolition of Forced Labour)	17/10/1960
ILO 169 (Indigenous Peoples)	-
ILO 182 (Worst Forms of Child Labour)	02/10/2002
ILO 100 (Equal remuneration)	08/05/1974
ILO 111 (Discrimination)	02/10/2002
ILO 138 (Child labour)	02/10/2002

⁶⁶ Sourced from <http://www1.umn.edu/humanrts/research/ratification-nigeria.htm>, <http://www.ilo.org/ilolex/english/convdisp.1.htm> (accessed 25 January 2007).

Ratification of AU instruments⁶⁷

Instrument	Date of deposit of ratification/accession
African Charter	22/06/1983
African Charter on the Rights of the Child	23/07/2001
Protocol on the Rights of Women	16/12/2003
Protocol on the African Court	-
Convention on Nature and Natural Resources, 1968	07/05/1974
Revised Version of Convention on Nature and Natural Resources, 2003	-
OAU Refugee Convention 1969	24/06/1986
African Cultural Charter	24/09/86

3.6 Status of reporting⁶⁸

Under CERD, Nigeria submitted its first report on 22 January 1970 (A/8027). Nigeria's last report was submitted on 28 February 2005 (CERD/C/476/Add.3). Under the ICCPR, Nigeria's only submission to date was on 7 February 1996 (CCPR/C/79 Add.64); and under the ICESCR, one report was submitted (E/C.12/1/Add.23).

Under the African Charter, Nigeria's first report was due on 22 June 1988, but the report was submitted only in August 1990. Its last report was due on 22 June 2003, but has yet to be submitted.⁶⁹

3.7 National human rights institution

The National Human Rights Commission of Nigeria (NHRCN or Commission) was established in 1995 under a military regime. It has a mandate for the protection and promotion of human rights in

⁶⁷ Sourced from http://www.achpr.org/english/info/status/submission_en.html, http://www.achpr.org/english/_info/index_ratification_en.html; <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20nature%20and%20natural%20resources.pdf> (accessed 25 January 2007) Nigeria has domesticated the African Charter as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

⁶⁸ <http://www.ochr.org/english/countries/ng/index.htm> (accessed 25 January 2007).

⁶⁹ http://www.achpr.org/english/info/status.submission_en.html (accessed 25 January 2007).

Nigeria as contained in Section 5 of its enabling act. The Commission has impacted positively on the lives of Nigerians and has developed a political action plan.⁷⁰ These are despite some problems militating against its effectiveness. These problems include poor funding, inadequate operational resources, legal limitations and a lack of political will regarding the enforcement of its mandate, especially in relation to state agencies such as the police, the military and other armed forces.⁷¹

⁷⁰ K Blessing *The role of the NHRCN in the promotion and protection of human rights in Nigeria* (2004) 64.

⁷¹ Draft Annual Report of the NHRCN 1999-2000 28.

Part II: Legal provisions

1. Introduction

This section highlights the legal and administrative frameworks that promote and protect the rights of the indigenous and minority peoples of Nigeria. It also identifies some defects in the regime and points to the need to strengthen and create legal provisions that protect the rights of indigenous peoples and ethnic minorities in Nigeria.

2. Recognition and identification

Article 1(2) of the ILO Convention provides that self-identification must be regarded as a fundamental criterion for determining an indigenous people. The Nigerian government does not specifically refer to any group as indigenous - it rather identifies all people as being part of ethnic groups.⁷² In the Nigerian context, indigenous peoples often identify themselves as minorities.⁷³ The Ogonis and Ijaws self-identify themselves as indigenous peoples through the works of organisations such as the MOSOP (which represents the cause of the Ogonis) and the Ijaw National Congress (which represents the cause of the Ijaws). Through the works of these organisations, the Ogonis and Ijaws are able to describe their experience within the Nigerian state as implicating the majority of internationally-recognized criteria for determining claimants to indigeneity. However, this must not be construed to prejudice other ethnic minorities who shares similar experiences but lack vocal organs to articulate them.

Citizenship issues fall within the exclusive jurisdiction of the federal government. Chapter III of the Nigerian Constitution provides for citizenship by birth, registration and naturalisation. The issue of identification is very important to indigenous people but the constitution is silent on it. The Nigerian government policies in recent times send mixed signals on the subject of the recognition of ethnic group membership as a component of citizenship. While the government initiates various stakeholders' meetings and encourages the participation of minority and indigenous rights leaders

⁷² See n 31 above.

⁷³ Numerically, the indigenous population of Ijaw, Ogoni and nomadic Fulani extraction constitute a small fraction of the Nigerian population. This is often cited as one of the major reasons for political and economic marginalisation of these groups.

of the Ijaw and the Ogoni in order to address the Niger Delta issue, it deliberately fails to include identification on the basis of tribal, religious or ethnic membership in Nigerian population censuses. This failure usually happens on an *ad hoc* basis, but recently, it is assuming a more permanent trend, perhaps as a result of the escalating gang-related hostilities by Niger Delta militias that frequently disrupts oil exports from that region.

As a member of the UN Human Rights Council, Nigeria abstained from voting on the Declaration on the Rights of Indigenous Peoples. In a way, this could be seen as an affirmation of Nigeria's ambiguous position on the rights of indigenous peoples, a situation that is, however, not different from that of the rest of the post-colonial African countries.

3 Non-discrimination

Chapter IV of the Nigerian Constitution contains a variety of fundamental rights set out in Sections 33 - 44. Of particular relevance is Section 15 which prohibits discrimination on the grounds of ethnic origin, sex (gender), religion, or linguistic affiliation. To ensure fairness, equity and even representation, the Nigerian Constitution provides for the use of a 'federal character' principle in the appointment of public officers in order to promote national unity and to foster a sense of belonging among the citizens.⁷⁴ This principle operates as a form of affirmative action. The federal character principle extends equally to governments at state and local levels.⁷⁵ Consequently, there is a quota system for employment in the civil service, for placement in government-owned educational institutions,⁷⁶ and for recruitment into the police, military and other armed forces. Nigeria has ratified ILO Convention 111 (Discrimination (employment and occupation) Convention). However, indigenous and other peoples, including the Ogonis and Ijaws, consider the employment policies of oil companies operating in their ancestral homelands as failing to accommodate them adequately.⁷⁷

⁷⁴ Ch II sec 14(3) of the Nigerian Constitution.

⁷⁵ Sec4(4) of the Nigerian Constitution.

⁷⁶ The Federal Ministry of education quota system for admission applies to both secondary schools and federal tertiary institutions. See C Nwagwu 'The Environment of Crisis in the Nigerian Education System' 33 (1997) *Comparative Education* 92.

⁷⁷ A Onduku 'Towards a culture of peace in the Niger Delta', sourced from <http://www.waado.org/NigerDelta/Essay/ResourceControl/Onduku.html> (accessed 21 July 2007).

Indigenous groups (specifically the Ogonis and the Ijaws) argue that Federal laws, such as the Land Use and the Petroleum Acts which vest the ownership of both on-shore and off-shore oil and gas resources in the federal government, entrench discriminatory and unjust practices along ethnic lines. The bulk of these revenues are used to develop other parts of the country to the detriment of the oil-producing minority communities perceived as wielding little political influence in Nigeria.⁷⁸ In its conclusion and recommendation, the Committee on the Elimination of Racial Discrimination enjoined the Nigerian government to engage the people of the Niger Delta region in meaningful consultation and to combat environmental racism and degradation.⁷⁹

The current constitutional regime provides for the allocation of 13 per cent of oil revenue to the special needs of oil-producing states. This revenue is not channelled directly to the minority oil communities but to their state governments. In spite of these laws, the Ijaws and Ogonis claim high levels of economic and political exclusion. They complain of inadequate access to oil wealth, discrimination in the areas of employment by the oil companies, political appointments, the creation of local units of governments and poor infrastructural development. These complaints have taken a violent form in recent times.⁸⁰ The Movement for the Survival of the Ogoni People (MOSOP) submitted a shadow report to the UN Committee on the Elimination of Racial Discrimination highlighting the exclusion of religious and ethnic variables in the 2006 census as an indication of the non-recognition of the Ogonis.⁸¹ This sentiment is shared even by major ethnic groups, especially the dominantly Christian Igbo.

With regard to the nomadic Fulani, Iro⁸² notes that they are among the most neglected groups in Nigeria. He observes that government policies are geared towards developing livestock capital to

⁷⁸ See 'Status of the Implementation of the International Convention on the Elimination of All Form of Racial Discrimination in Nigeria: An Alternative Report'. Presented by the Civil Liberties Organisation (CLO) to the 67th Session of the Committee on the Elimination of Racial Discrimination, August 2005.

⁷⁹ The Committee also recommended that the Land Use Act of 1978 and the Petroleum Decree of 1969 be repealed. See Nigeria, U.N.Doc. CERD/C/NGA/CO/18 (2005) Sourced from <http://www1.umn.edu/humanrts/country/nigeria2005.html> (accessed 28 March 2007).

⁸⁰ This has led to the emergence of organized armed groups like the Movement for the Emancipation of the Niger Delta (MEND) which champion local control of oil and gas resources.

⁸¹ *Ogoni: Oral intervention at the Working Group on Minorities 2006*. Sourced from <http://www.unpo.org/article.php?id=5124> (accessed 14 February 2007).

⁸² n 15 above.

the detriment of the nomads.⁸³ For example, more money is spent on vaccinating cattle than on immunizing the children of the nomadic Fulanis.⁸⁴ Nomadic Fulanis also experience discrimination at the hands of host communities who feel that they are encroaching on their territories.⁸⁵ Part of government's response to the plight of the Nomadic Fulani is a Federally-funded Nomadic Education Program that targets them.⁸⁶

4 Self-management

The Preamble of ILO Convention 169 recognises the aspirations of indigenous people to exercise control over their cultures, ways of life and economic development. Articles 6 and 7(1) of the ILO Convention provide that the government should ensure the participation of indigenous peoples with regard to programmes that affect their all round development. Nigeria operates a federal system of government. While the existing administrative structures do not directly interfere with the cultures and ways of life of indigenous peoples, they nevertheless place the control and management of natural resources in the hands of the federal government. For example, Section 162(2) of the Constitution provides that nothing less than 13 per cent of the revenue accruing to the Federation account directly from any natural resources must be payable to a state of the Federation from which such natural resources are derived. The Ijaws and Ogonis claim that this constitutional principle deprives them of control over their natural oil wealth.

The clamour for fiscal federalism and the constitutional devolution of powers to the states in Nigeria have intensified over the years. This has led to the call for a Sovereign National Conference aimed at drawing up a constitution that grants each federating unit the power to control and manage its own resources. In 2000, the Niger Delta Development Commission (NDDC) was established with the aim of achieving greater efficiency and effectiveness in the 'use of the sums received from the allocation of the Federation account for tackling ecological problems which arise from the exploration of oil minerals in the Niger Delta area and for connected purposes'.⁸⁷ The

⁸³ As above.

⁸⁴ As above.

⁸⁵ n 12 above.

⁸⁶ See I Iro, 'Nomadic Education and Education for Nomadic Fulani', <http://www.gamji.com/fulani7.htm> (accessed 6 August 2007).

⁸⁷ The Federal government and the NDDC require over N400BN to execute the master plan. See <http://www.projectnddc.com/> (accessed 24 March 2007). Although the establishment of these agencies and the constitutional reassignment of at least 13% of centrally-collected oil and gas revenue to oil producing

Niger Delta Regional Development Master Plan is a comprehensive development and transformational blueprint to address endemic poverty and environmental degradation in the oil producing regions and also to afford the indigenous and minority peoples there the opportunity of participating fully in the decision-making process.⁸⁸

Iro⁸⁹ is of the view that national planners and foreign experts often develop and implement plans which antagonize rather than encourage the participation of Fulani nomads in the management of livestock production (this includes attempts to curb overstocking among the pastoralist Fulanis).

The 1999 Constitution does not recognise traditional leadership. Local government councils are charged with the responsibility of exercising authority over traditional associations and the common interests of the community.⁹⁰ The constitutional position, however, conflicts with actual practice in the sense that in all the states of the Nigerian Federation, there are laws that recognise traditional rulers and their role in their various communities. In fact, traditional rulers are assigned different roles in the governance of their local communities and are incorporated in local government administration albeit usually in minimal roles.⁹¹ In an anticipated constitutional review, the present government had pledged to support the provision of a constitutional role for traditional rulers.

5 Participation and consultation

Articles 6 and 7(1) of the ILO convention provide that the government should ensure the participation of indigenous peoples with regard to programmes that affect their all round

states has been hailed as a commendable move on the part of the Nigerian government, there is still a strong national consensus that the Nigerian government needs to do more. See T Suberu 'Reconstructing the architecture of federalism in Nigeria: The option of non-constitutional renewal' www.dartmouth.edu/jcarey/suberu.pdf (accessed 30 October 2006).

⁸⁸ On the 27th of March, 2007, the Nigerian president unveiled the NDDC master plan, see <http://www.thenationonline.com/dynamicpage.asp?id=14678> (accessed 28 March 2007).

⁸⁹ See I Iro 'Should pastoral Fulani of Nigeria be resettled' sourced from <http://www.gamji.com/fulani2.htm> (accessed 13 December 2006). See also n 19 above.

⁹⁰ Sec 7 Nigerian Constitution.

⁹¹ O Agbese 'Chiefs, Constitutions and Policies in Nigeria' (2004) 6 *West African Review*. Traditional rulers in the Niger Delta, acting under the aegis of the Association of Traditional Rulers of Oil Mineral Producing Communities of Nigeria (ATROMPCON) – it includes traditional rulers from Ijaw and Ogoni communities - collaborate with government in ensuring lasting peace and development in the region. See also A Ogbu 'Niger Delta receives N3.07 Trillion in 8 years' Sourced from <http://www.legaloil.com/NewsItem.asp?DocumentIDX=1174818064&Category=news> (accessed 10 July 2007).

development, including their consultation in administrative and legislative measures. Section 14(2)(c) of the Nigerian Constitution requires the participation of people in their government while Chapter IV of the Constitution provides for freedom of expression in Section 39 and peaceful assembly and association in Section 40.

The federal character principle earlier mentioned⁹² is a constitutional mechanism for equitable representation and participation by Nigerians in the process of their governance, including indigenous and ethnic minorities. Also, the federal structure of Nigeria accommodates indigenous and minority communities within the federating state units in which they have a majority status in a manner that facilitates their effective participation in their governance at state and local levels. To promote the participation of indigenous people in policies affecting them, the government has introduced initiatives such as the Consolidated Council of Socio-Economic Development of the Constitutional State of the Niger Delta, which includes government representatives and community members, aimed at uplifting the oil-producing communities.⁹³ Historically, indigenous and minority groups have effectively participated in the Nigerian constitution-making process, the last two of such exercise being the military-organised constitutional conference that gave rise to the 1999 Constitution and the political reform conference that preceded the now-suspended review of the 1999 Constitution by the immediate past Federal administration. Indigenous groups, however, continue to complain of marginalisation and exclusion from mainstream politics in Nigeria. Indigenous groups in the Niger Delta, including the Ogoni and the Ijaw, claim that their non-inclusion in decision-making deprives them of the opportunity to influence the location of development projects in their communities.⁹⁴ Although a number of federal laws, including, for example, the Environmental Impact Assessment Act of 1992, provide for the participation of these communities in decision-making on issues that directly affect them,⁹⁵ this expectation has not always been realised.⁹⁶

⁹² Sec 14(4) of the Nigerian Constitution.

⁹³ The composition of the Council has been criticised as elitist due of the failure of the government to appoint representatives of credible civil societies as committee members. See International Crisis Group 'Nigeria's Faltering Federal Experience' 1 (2006) *African Report*.

⁹⁴ See n 78 above.

⁹⁵ Sec 1(c) of the EIA Act 1992.

⁹⁶ In the *Gbemre* case, which is discussed under para 8 below, the court ruled that Shell had failed to conduct an environmental impact assessment.

In terms of political representation, a breakdown of the number of seats in Parliament suggests that indigenous and minority peoples could benefit from greater representation in Parliament.⁹⁷ Inadequate representation has a negative impact on the level of development of indigenous and minority regions. As a result of a deliberate policy to address minority and indigenous agitation for political power, recently a minority Ijaw and former state governor of an exclusive Ijaw state was nominated by the ruling party and was successfully elected into the office of Vice-President.

With regard to Nomadic education for the pastoralist Fulani, national planners are accused of developing programmes based on ill-conceived notions and stereotypes without engaging the people concerned.⁹⁸ As mentioned earlier, national planners are also accused of failing to involve the pastoralists in issues relating to livestock production and resettlement (sedentarization).

6 Access to justice

Section 36 of the Constitution guarantees the right to a fair hearing. The Constitution also guarantees the right to legal counsel of one's choice. Section 46(1) provides that any person whose right has been infringed may apply to the courts for redress. Also, citizens are at liberty to submit themselves to the jurisdiction of appropriate courts, especially in matter of customary or personal relations. It is worth noting that indigenous groups such as the Ijaw and Ogoni have at several times taken the government and oil companies to court for various human rights violations (some of these cases are discussed below.) A survey of cases already brought by various groups, however, indicates that the resources at the disposal of the government and the oil companies greatly weigh against the people. It has been observed that the Ogoni communities face insurmountable barriers in asserting their rights due to a lengthy legal process in a congested court system coupled with an unsatisfactory record of enforcement of court orders, especially under military dictatorships.⁹⁹

⁹⁷ A breakdown shows that the Ijaws have six senators in the upper legislative house which consists of 109 members; 12 in the lower legislative house which consists of 360 members; 24 local government councils out of 774 and only one state of their own out of 36. See D Alamiyeseigha *Thoughts on federalism, South-South & Resource Control* (2005) xviii.

⁹⁸ Iro (n 15 above).

⁹⁹ n 7 above.

Customary law and Islamic laws apply to the areas of personal and family relations such as divorce, marriage, succession and inheritance. Customary law and Sharia (Islamic) law (in parts of the North) are enforced in customary or Sharia courts. Higher courts are also permitted to enforce rules of customary law that is not repugnant to natural justice, equity and good conscience and has also not been abolished by any legislation.¹⁰⁰ While they seem desirable, these qualifications were formulated under the colonial common law jurisprudence with little regard to prevailing customary realities in a way that undermines indigenous customary systems, world views and ways of life. However, post-colonial Nigerian jurisprudence reflects a judicial inclination to modify those qualifications to reflect the local socio-cultural context.

Section 46(b)(i) and (ii) of the Constitution guarantee the provision of legal aid. The Nigerian Legal Aid Council, established by an act of Parliament is responsible for providing free legal services to indigent Nigerians. Under the Legal Aid Scheme, indigent citizens of Nigeria are eligible for legal aid subject to statutory prescribed limitations. The legal aid regime is hampered by bureaucratic hurdles as a result of which access to legal aid by those most in need is circumscribed.

7 Cultural and language rights

Section 21 of the Nigerian Constitution provides that the state shall promote and protect Nigerian culture. Section 10 emphasises that Nigeria is a secular state and Section 38 affirms freedom of thought, conscience and religion. In 1990, in *Oyewumi v Ogunesan* the Supreme Court affirmed that

customary law is the organic and the living law of the indigenous people of Nigeria, regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls their lives and transactions subject to it. It is said that custom is the mirror of the culture of people.¹⁰¹

Although the Nigerian Constitution does not specifically provide for language rights, Section 55 provides that ‘the business of the National Assembly shall be conducted in English, Yoruba, Igbo and Hausa’. The government’s obligation in Section 21 of the Constitution to promote Nigerian

¹⁰⁰ n 52 above.

¹⁰¹ SC 178/1988 <http://www.nigeria-law.org/David%20Oye%20Olagbemi.html> (accessed 28 March 2007).

culture could be understood as a duty to promote languages. State broadcasters at national and state levels are mandated to broadcast in local languages.

The National Language Policy states that ‘apart from preserving the peoples’ culture, the government should consider it to be in the interest of national unity that each child be encouraged to learn one of the three majority languages other than his own mother-tongue. The government considers the three major languages in Nigeria to be Hausa, Igbo and Yoruba. This is without prejudice to the promotion of minority languages in states where indigenous and ethnic minorities are predominant. Educational institutions owned by federal and state governments located in indigenous and minority areas, as a matter of practice, teach languages prevalent in their immediate environment. Nigeria has a National Institute for Nigerian Languages with a curriculum that is not limited to the major languages. However, indigenous and minority groups have criticised the national policy on language as a tool for the suppression of other languages in Nigeria because it assumes that Nigeria has only three basic cultures and languages.¹⁰²

Abubakar¹⁰³ views the ownership of cattle and migratory pattern as vital aspects of the nomadic Fulani culture. Ownership of cattle is not only a source of food and labour, it is also a bringer of prestige and a form of insurance against draught and disease.¹⁰⁴ He argues that policy-makers often neglect these cultural factors when designing developmental programmes on traditional pastoralism in Nigeria.¹⁰⁵

8 Education

The Nigerian Constitution does not explicitly provide for the right to education. However, Section 18 provides, in part, that ‘government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels’.¹⁰⁶ It further provides for free, compulsory and universal primary education as well as free secondary and university education. The Universal Primary Education Decree of 1978 and the Universal Basic Education Act of 2004 are aimed at

¹⁰² R Aluede ‘Universal Basic Education and Cultural Development in Nigeria’ 13 (2006) *Journal of Social Science* 53-56; also see n 81 above.

¹⁰³ n 19 above.

¹⁰⁴ As above.

¹⁰⁵ As above.

¹⁰⁶ This is part of the Directive Principle of State Policy.

giving effect to the goals of free compulsory primary education. The Universal Basic Education Commission is the body responsible for primary education at the federal level while the State Primary Education Board is responsible at state level. As already noted, admission into federal government-owned educational institutions is based on the federal character principle which accommodates a quota system of admission of eligible citizens from all federal state units. A significant number of indigenous or minority states are classified as educationally disadvantaged in relation to other states. Consequently, admission of the states' indigenes may be based on concessionary or affirmative grounds.

The National Commission for Nomadic Education was established by Decree 41 of 1989, with the mandate of formulating policies for nomadic education in Nigeria and the successful implementation of the Nomadic Education Programme (NEP).¹⁰⁷ These include the use of collapsible classrooms and radio and television programmes for the benefit of the nomadic population of Nigeria. The progress of this programme is curtailed by a lack of infrastructure, unqualified teachers and poor pay packages, and a fear of religious imposition on children.¹⁰⁸ A study of the nomadic Fulani reveals that parents are unwilling to send their children to school due to a number of factors which include – commuting far distances, the children's preoccupation with herding and the highly itinerant nature of Fulani families.¹⁰⁹ Usman identifies the 'shift system' as one of the issues affecting the participation and attendance of Fulani children in school.¹¹⁰ Like many indigenous communities, the Fulanis are also worried about the relevance of western education to their culture and lifestyle.¹¹¹

¹⁰⁷ n 11 above.

¹⁰⁸ I Iro 'Problems of Nomadic Education and Education for Nomadic Fulani', sourced from <http://www.gamji.com/fulani7.htm> (accessed 13 December 2006).

¹⁰⁹ D Denga 'The effect of Mobile group counselling on nomadic Fulani's attitudes towards formal education' 52 (1983) *Journal of Negro Education* 170-175.

¹¹⁰ The Fulani parent is faced with the dilemma of either sending the child to herd in the early morning or to school. Since cattle economy is the main sustenance of the nomadic Fulani, the parent is left with no choice but to send the child herding. See L Usman 'Rural nomadic Fulbe boys' primary schooling: Assessing the repertoires of practice in Nigeria' 41 (2006) *McGill Journal of Education* 164.

¹¹¹ A Fulani leader remarked 'We are not opposed to the idea of getting our children to schools, but we fear that at the end of their schooling they will only be good at eating up cattle instead of tending and caring for them'. See <http://www.gamji.com/fulani2.htm> (accessed 13 December 2006).

9 Land, natural resources and environment

Among the Ijaw, Ogoni, and other indigenous and minority groups, land is seen as borrowed for future generations and is thus managed by communal land tenure and the extended family.¹¹²

The constant migration of the nomadic Fulani makes them 'strangers' to customary land tenure system in Nigeria.¹¹³ The customary land tenure system holds that land is held whether it is under cultivation or lying fallow.¹¹⁴ As a result of this system, lands are loaned to nomadic Fulanis for grazing and water purposes and it reverts to the customary owners after the passage of the nomads.¹¹⁵

Section 43 of the Constitution prescribes that, subject to the provisions of the Constitution, 'every citizen of Nigeria shall have the right to acquire and own any immovable property anywhere in Nigeria'. Despite statutory intervention in customary land tenure, *de facto* land regimes in many indigenous, minority or traditional local communities in Nigeria are a highly gendered regime in which women are excluded from owning land or landed properties.

While Section 44 of the Constitution provides for payment of compensation in the case of the expropriation of land by the state, Section 1 of the Land Use Act of 1978 provides as follows:

All lands in the territory of each state (except lands vested in the federal governments or its agencies) is vested in the Governor of the state, who holds such land in trust for the people and would henceforth be responsible for the allocation of land in urban areas to individuals resident in the state and to organisations for residential, agricultural, commercial and other purposes while similar powers with respect to non-urban areas are conferred on the local governments.¹¹⁶

The Act has been criticised for reducing customary land rights or interests of Nigerians, including indigenous or minority ethnic communities, to a mere right of occupancy, revocable by the authorities at will.¹¹⁷ The Ijaw, Ogoni and oil-bearing communities complain that the Act denies

¹¹² See n 5 and n 26 above.

¹¹³ C Ezeomah 'Land tenure constraints associated with some recent experiments to bring formal education to nomadic Fulani in Nigeria', sourced from <http://www.odi.org.uk/pdn/papers/20d.pdf> (accessed 15 June 2007).

¹¹⁴ As above.

¹¹⁵ As above.

¹¹⁶ Laws of the Federation of Nigeria 2004.

¹¹⁷ See http://www.oxfam.uk/what_we_do/resources/downloads/wp_nigeria_envpov.pdf (accessed 24th January, 2007).

them access to ownership of land for farming and housing¹¹⁸ and other activities incidental to their ways of life.

The compulsory acquisition of lands by the state results in pressure on traditional farming practices and has a negative impact on the quality of agricultural production and general economic disempowerment of affected indigenous and local communities. Given that agriculture, traditional fishing and aquaculture are the major occupations of the Ogoni, Ijaw and the riverine indigenous communities of the Niger Delta, the loss of income limits their ability to realize their cultural and economic potential.

Article 21 of the Oil Pipelines Act (1990) provides that where the interest of a community in a land has been affected injuriously, the court may order that compensation be paid to any traditional chief, headman or member of the community on behalf of such community or to a scheme of distribution approved by the court or into a fund to be administered by a person approved by the court.¹¹⁹

The Petroleum (Drilling and Productions Regulations) Act of 1969 provides for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and vests ownership of, and all onshore and offshore revenue from resources derivable from it in the Federal government. The Ogoni, Ijaw and affected minority and indigenous groups claim that this Act alienates them from their oil wealth, a claim that has resulted in part in the 13 per cent oil revenue allocation scheme. Section 1 of the Act states that 'the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State'.

¹¹⁸ Thus, the communities lost the right to grant or refuse permission to the oil companies, the use of their land, and also the right to participate in negotiations about the rate of compensation to be paid for their destroyed resources. The implication is that the federal government sets the compensation rates which sadly are too meagre to commensurate the losses. For example, while a mature mahogany tree can generate N10 000 Nigerian Naira, when processed into boards or planks, the compensation rate is a paltry sum of N600 Nigerian Naira.

¹¹⁹ See <http://www.nigeria-law.org/Oil%20pipelines%20Act.htm> (accessed 30 October 2006).

The Grazing Reserves laws of 1965 empower the native government to expropriate any land for grazing purposes.¹²⁰ The National Agricultural Policy of 1988 indicated that 10 per cent of the national territory (about 9.83 million hectares, of which 20 per cent was to be low-lying *fadama*) would be acquired for grazing purposes.¹²¹ A study, however, reveals that only about 313 grazing reserves, a total of 2.82 million hectares, had been acquired so far.¹²² The construction of large-scale irrigation schemes sometimes eliminates productive pasture ground.¹²³ This state of affairs has a negative impact on the traditional life of the nomadic Fulani who would otherwise have benefited from these lofty policies on grazing.

The Willink Commission¹²⁴ was set up in 1958 by the colonial authorities to look into the complaints of the people of the Niger Delta. The Commission recommended the setting up of an agency charged with the responsibility of tackling the problems of the area. This led to the establishment of the Niger Delta Development Board (NDDB) in 1962. Colonial petroleum laws include the Mineral Oils Ordinance of 1914 and the Mineral Ordinance of 1946.¹²⁵ These laws placed the control of minerals under or upon any land in Nigeria under the Crown.

Post-colonial petroleum laws include: Petroleum Decree 51 of 1969, Petroleum (Drilling and Regulations) Decree of 1969, The Petroleum Production and Distribution (Anti-sabotage) Decree of 1975, the Miscellaneous Offence (Anti-sabotage) Decree 1984 and the Land Use Decree of 1978 (Section 14).¹²⁶ These laws vest the ownership of oil and land in the Nigerian government. It needs mentioning that while the federal government controls Nigeria's rich petroleum and gas resources in the Niger Delta, economic resources from other regions of the Federation are for the most part under the control of local authorities.

¹²⁰ See the Center for Environmental International Law Database http://www.ciel.org/publications/CBPR_Nigeria_9-18-06.pdf (accessed 30 December, 2006).

¹²¹ As above.

¹²² As above.

¹²³ Iro (n 15 above).

¹²⁴ In its report, the Willink Commission stated that 'the Niger Delta is a poor, backward and neglected region'.

¹²⁵ n 26 above, 96-98.

¹²⁶ As above, 108-117.

Section 162(2) of the Constitution provides that nothing less than thirteen percent of the revenue accruing to the Federation account directly from any natural resources shall be payable to a state of the Federation from which such natural resources are derived.

In *Attorney General of the Federation v Attorney General of Abia State & others*,¹²⁷ the eight littoral states (oil producing states) claimed that their territories extend beyond the low water mark onto the territorial water and onto the continental shelf and maintained that natural resources derived from both onshore and offshore are derivable from their respective territories and in respect thereof each is entitled to not less than 13 per cent as prescribed by section 162(2).¹²⁸ The Supreme Court held that the seaward boundary of each of these states only extends to the low water mark and that natural resources located within the continental shelf are only accrue exclusively to the federal government.¹²⁹

The peoples of the Niger Delta continue to agitate for resource control. They hope to have complete and exclusive control of Nigeria's oil resources derived from their ancestral territories or in the interim 50 per cent thereof. This sentiment was reiterated at the National Conference on Political Reforms (NCPR) set up by the federal government in 2005.¹³⁰

In *Social and Economic Rights Action Center (SERAC) and Economic Rights Action Center for Economic and Social Rights (CESR) v Nigeria*, the African Commission held that the Nigerian government has violated the right of the Ogoni people to dispose of their wealth and natural resources.¹³¹

¹²⁷ (No2) (2002) 6 NWLR (Pt. 764) 542 S.C.

¹²⁸ As above.

¹²⁹ The Ogoni and the Ijaw indigenous groups are well-represented in these eight states. There has, however, been a political solution to this crisis. In 2004, the government abolished the dichotomy thus paving the way for 13% of the oil revenue to go to oil producing states in accordance with the 1999 Constitution. The increase has not, however, put an end to the agitation for resource control by the oil producing communities.

¹³⁰ The delegates from the Niger Delta staged a walk-out after the conference failed to adopt its recommendation of a minimum of 25% of oil revenue - see n 85 above

¹³¹ See Communication 155/96; see also J Nwobike 'The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights under the African Charter: *Social and Economic Rights Action Center (SERAC) and Economic Rights Action Center for Economic and Social Rights (CESR) v Nigeria*' (2005) 2 *African Journal of Legal Studies* 129-146.

Section 20 of the Constitution provides that the ‘state shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria’. The Federal Environmental Protection Agency (FEPA) was established in 1988 to address the problem of environmental degradation.¹³² In 1999, the federal government created a federal ministry of the environment. Despite the bureaucratic structures on environmental management, the environmental crises in the Niger Delta communities remain unabated, mainly as a result of oil pollution and gas flaring. Major environmental concerns of indigenous people include periodic droughts, soil degradation, desertification, water and air pollution, loss of arable land, loss of flora and fauna, erosion, loss of biodiversity, oil pollution and oil spills and climate change.¹³³

In *Jonah Gbemre v Attorney General of the Federation & others*,¹³⁴ the Federal High Court held that the continued flaring of gas by Shell without an environmental impact assessment is a violation of the Iwherekan community’s rights.¹³⁵ In *Shell Petroleum Development Company v Ijaw Aborigines of Bayelsa State*,¹³⁶ the Federal High Court held that Shell has violated Article 24 of the African Charter which provides that “[a]ll people shall have right to general satisfactory environment favourable to their development.” Shell was ordered to pay a sum of \$1.5 billion dollars. Shell has appealed against this ruling. In the *SERAC* case,¹³⁷ the African Commission held that the Nigerian government violated the Ogoni peoples’ right to clean environment by directly contaminating water, air and soil.

10 Socio-economic rights

The Nigeria Constitution recognises economic and social rights but not as enforceable human rights. These rights are contained in Chapter II of the Constitution dealing with fundamental objectives and directive principle of state policy. The objectives are mere aspirations and markers of good governance and are non-justiciable by virtue of Section 6(6)(c) of the Constitution. Nigeria has formally adopted the African Charter on Human and Peoples’ Rights into its national law by

¹³² n 109 above.

¹³³ As above.

¹³⁴ FHC/CS/B/153/2005.

¹³⁵ This community belongs to the Ijaw indigenous group. Summary sourced from <http://www.climatelaw.org/media/gas.flaring.suit.nov2005/ni.pleadings.doc> (accessed 3 April, 2006).

¹³⁶ Summary sourced from <http://www.voanews.com/english/archive/2006-05/2006-05-22-voa36.cfm?cfid> (accessed 6 December 2006).

¹³⁷ n 123 above.

virtue of Chapter 10 in the Laws of the Federation 1990. This charter includes economic and social rights. In *Fawehinmi v Abacha*,¹³⁸ the Court of Appeal held that the provisions of the Charter are superior to domestic law. In *Ogugu v State*¹³⁹ the Supreme Court held that the provisions of the Charter are enforceable in the several high courts in Nigeria, depending on the circumstances of each case. In *Oronto Douglas v Shell Petroleum Development Company Limited*,¹⁴⁰ the applicant's action arose out of Shell's alleged violation of the environmental right under the African Charter. The High Court refused to entertain the suit but the Court of Appeal subsequently sent the case back to the lower court for hearing. In the celebrated *SERAC* case, the African Commission held that Nigeria has violated the Ogoni peoples' rights to property (article 14), health (article 16), environment (article 24) and the right to food (articles 4, 16 and 22).¹⁴¹

A Community Sensitization Empowerment (CSE) initiative aimed at providing functional literacy and numeracy for Fulani adults has been launched.¹⁴² The programme has successfully established interactive radio instruction programmes, classrooms, training of nomadic women on health care, nutrition and management of co-operatives.¹⁴³

In an effort to give impetus to socio-economic reforms, the government has adopted the report of the Consolidated Council of Socio-Economic Development of the Constitutional State of the Niger Delta (this include both the Ogonis and the Ijaws), which, among other things, highlights the provision of road infrastructure, education, health and gainful employment.¹⁴⁴

The 1999 Constitution does not explicitly provide for the right to health. However, the Directive Principles of State Policy is aimed at ensuring that 'there are adequate medical and health facilities for all persons'.¹⁴⁵ The National Health Insurance Scheme Decree of 1999, the National Primary Health Care Development Agency (NPHCDA), National Health Policy, National Emergency Health Policy and the National Health Bill and the National programme on Immunisation are some

¹³⁸ (1996) 9 NWLR (Pt.475) 710.

¹³⁹ (1994) 9 NWLR (Pt 366) 1.

¹⁴⁰ (1999) 2 NWLR (Pt 591).

¹⁴¹ See Aluede, n 94 above.

¹⁴² See n 11 above.

¹⁴³ As above.

¹⁴⁴ http://www.nigeriafirst.org/article_6738.shtml (accessed 24 March 2007).

¹⁴⁵ Sec 17(3)(d) of the constitution.

of the policies which are aimed at improving the citizens' access to health¹⁴⁶ Data have shown that due to the frequent movements of the nomadic Fulani, children miss immunization services in static health facilities.¹⁴⁷

Indigenous peoples, including the Ijaw, Ogoni, and the Fulani, continue to complain about their lack of access to health care facilities because of ill-equipped hospitals, a lack of drugs and medical personnel and the non-availability of hospitals in some areas.¹⁴⁸ This is a general trend in the larger Nigerian society, however, in relation to indigenous and minority groups, it seems to resonate strongly. For example, at a time in a general hospital in Ogoniland, there was a water supply crisis that resulted in the hospital depending on a contaminated water source.¹⁴⁹ Nomadic Fulani women suffering from the high prevalent disease of Vesicovaginal Fistula (VVF) claim that their access to proper medical attention is hampered. They blame the intolerance of medical staff to their plight and their inability to influence the latter in order to obtain appropriate medical attention.¹⁵⁰

The National Action Committee on AIDS was established in 2000. This Committee includes government representatives, NGOs and the private sector.¹⁵¹ There is a Health Sector Strategic Plan on HIV/AIDS 2006-2010.¹⁵² The National Anti-retroviral Scale up Plan was launched in 2004.¹⁵³ The government has also rolled out a nation-wide Nigeria National Response Information Management System.¹⁵⁴ The national response to the HIV/AIDS pandemic remains constrained due to a lack of health workers, weak processes of procurement, delays in the delivery of anti-retroviral drugs, limited access to entry points and an inadequate monitoring and evaluation capacity.¹⁵⁵ Endemic poverty and the visible presence of well-paid Nigerian and foreign oil

¹⁴⁶ http://www.nigeria.gov.ng/fed_min_health.aspx (accessed on the 25 January 2007).
¹⁴⁷ http://www.who.int/countries/nga/areas/polio/infosheet_boosting_child_immunity.pdf (accessed 14 February, 2007).
¹⁴⁸ See I Iro *Characteristics of the Fulani*, sourced from <http://www.gamji.com/fulani3> (accessed 13 December 2006).
¹⁴⁹ See n 7 above.
¹⁵⁰ See K Bello *A selection of essays: Vesicovaginal Fistula (VVF): Only to a woman accursed*, sourced from http://www.idrc.ca/en/ev-28382-201-1-Do_Topic.html (accessed 15 July 2007).
¹⁵¹ Africa Today 8 (2006) 24-30; http://www.who.int/hiv/HIVCP_NCA.pdf (accessed 24 January 2007).
¹⁵² As above.
¹⁵³ As above.
¹⁵⁴ As above.
¹⁵⁵ As above.

workers in the Niger Delta area have led many impoverished indigenous and minority womenfolk to resort to prostitution, thereby exacerbating the incidence of HIV/AIDS among them.¹⁵⁶ The Niger Delta AIDS Response (NiDAR) project is a private sector initiative aimed at delivering a comprehensive care system to HIV victims in both the Ijaw and Ogoni indigenous communities of the Niger Delta.¹⁵⁷

11 Gender equality

Sections 15 of the Nigerian Constitution prohibits discrimination on the grounds of gender or sex. Nigeria has also ratified CEDAW.¹⁵⁸ Indigenous societies are largely patriarchal, hence the existence of traditional practises which discriminate against women. There are no federal laws banning FGM in Nigeria, however, some state governments have banned this practice. It is, however, difficult to monitor the implementation of this law.¹⁵⁹ According to a research analysis, only the Fulani do not practise any of the three types of FGM, the Ijaw – depending on the local community – practise one of the three forms.¹⁶⁰ Many customary practises do not recognise a woman's right to own land, landed property or to inherit property. In *Mojekwu v Mojekwu*¹⁶¹ the court held that there is no general custom on inheritance in Nigeria.

As a result of customary and religious inclinations, polygamy is prevalent in indigenous and local communities in Nigeria. Often women are abandoned by their polygamous husbands with the sole responsibility for providing for their children. With life expectancy for women slightly higher than that of men, coupled with asymmetry in the age of wives to their husband, there is high number of indigent, young and uneducated widows in indigenous and local communities. Polygamy is, however, criminalised for those who first marry under the Western-style colonial marriage statute. But there is no record of any successful prosecution. Also, in relation to women, there is a high prevalence of VVF among the Fulani indigenous group, due to the fact that girls are given in

¹⁵⁶ N Udonwa *et al* 'Oil doom and AIDS boom in the Niger Delta Region of Nigeria' (2004) 4 *Rural and Remote Health (Online)*.

¹⁵⁷ B Oghifo 'In Niger Delta, another strategy to fight HIV/AIDS', sourced from <http://www.thisdayonline.com/nview.php?id=84020> (accessed 20 July 2007).

¹⁵⁸ CEDAW was ratified in 1985.

¹⁵⁹ <http://www.state.gov/g/drl/rls/hrrpt/2005/61586.htm> (accessed 13 December, 2006).

¹⁶⁰ <http://www.nigeriaonline.com/links/adv.asp?blurb=551> (accessed 13 February, 2007).

¹⁶¹ (1991) NWLR (Pt 194 at 739).

marriage at a very young age.¹⁶² The government has made efforts to address this by enacting Child Rights Act of 2003 aimed at prohibiting girl-child marriage and child betrothal.¹⁶³ With regards to the economic empowerment of women, the Nigerian government established the National Micro Credit Scheme for Rural Women.¹⁶⁴ Before this initiative there existed a government-owned Peoples' Bank which extended soft credit to petty business owners, including rural and indigenous women petty traders. Although the success of the now defunct bank in regard to access to soft credit by indigent indigenous and rural poor is debatable, the bank exemplified a strategic way to address endemic poverty and promote the economic empowerment of women and others in indigenous and local communities.

There are, however, various obstacles to the implementation of these initiatives, such as limited financial and human resources, persistent violence against women and a low proportion of women in decision-making positions.¹⁶⁵

Oil spillages have had a devastating effect on the women of the Niger delta. Women are the mainstay of the pristine tropical rainforest; they are involved in farming and fishing. Oil spillages have destroyed the ecological foundation of the indigenous women's subsistent living. Ogoni women have experienced first-hand violent attacks by the military.¹⁶⁶ It was against this backdrop that the Federation of Ogoni Women Association (FOWA) was formed.¹⁶⁷

12 Indigenous children

ILO Convention 138, known as the Minimum Age Convention, stipulates that 15 is the minimum acceptable age for labour. The ILO Convention 182 stipulates that slavery and child prostitution are part of the worst forms of child labour. Nigeria has ratified both conventions. Section 17(3)(f) of the Constitution protects children and young persons from exploitation as well as moral and material neglect. The minimum work age is 15 years, the law restricts child labour to home-based

¹⁶² See n 142 above.

¹⁶³ http://www.un.int/nigeria/docs/GA_Docs/s_m-c_10_12_05.htm (accessed 24 January 2007).

¹⁶⁴ As above.

¹⁶⁵ As above.

¹⁶⁶ <http://www.cs.org/publications/csq/csq-article> (accessed 13 February, 2007).

¹⁶⁷ As above.

agriculture or domestic work.¹⁶⁸ Economic hardship has aggravated the incidence of child labour throughout the country.¹⁶⁹ Child labour and child trafficking may be regarded as separate but is an interwoven aspect of an illegal transmission which illegality is lost in the prism of acceptable cultural practices and economic expediency of survival.¹⁷⁰ Due to economic hardship, especially among indigenous people, children are frequently exploited or employed as street beggars, street vendors and domestic servants in more affluent households in the urban centres. For example, some Fulani parents involve their children in herding rather than sending them to school.¹⁷¹

The inspections department within the Ministry of Employment, Labour and Productivity is charged with the enforcement of legal provisions relating to conditions of work. The National Agency for Prohibition of Traffic in Persons (NAPTIP) also bears some responsibility in enforcing child labour laws. UNICEF provides technical and financial support to NAPTIP, which has yielded positive results in combating child trafficking and child labour.¹⁷² This may perhaps be attributed to a lack of sufficient public enlightenment on the ills and dangers of child labour and trafficking, and a lack of a strong political will by the government to fight child labour and trafficking.

¹⁶⁸ n 127 above.

¹⁶⁹ As above.

¹⁷⁰ O Bolaji Paper presented at the Annual Conference of Nigerian Bar Association (2005).

¹⁷¹ According to a study conducted on the nomadic Fulani population in Osun State, South-west Nigeria, 85% of the household surveyed involve their children in animal rearing; see D Torimiro *et al* 'Perception of Nomadic Household on Children involvement in Animal Rearing Industry Among the Fulani Communities in Nigeria' (2004) *Stud Tribes Tribals* 131-135; also see Aluede (n 94 above).

¹⁷² A 2003 FOS/ILO National Child Labour Survey estimates that there are 15 million child labourers in Nigeria; see <http://www.unicef.org/infobycountry/nigeria> (accessed 24 January 2007).

Part III: Conclusion and recommendations

It is imperative that the Nigerian government considers ratifying ILO Convention No 169. This would enable the government to formulate a framework and strategies for addressing some of the concerns being raised by the indigenous peoples of Nigeria.

It is becoming less fashionable for states to remain ambiguous on the issue of indignity in their territories. Nigeria's complex ethnic and historical composition requires that it remains proactive in the commitment to indigenous causes, nationally and internationally. The phobia for disintegration, as a consequence of indigenous rights, has proven to be unfounded and misleading. States have much to gain in the recognition of indigenous and minority rights claims.

The lack of an attempt by the Nigerian state to define or determine which group qualifies as indigenous is commendable. This leaves fertile ground for self-identification. However, there are several categories of peoples and ethnic minority populations in Nigeria who meet most of the criteria for indigeneity but who are not vocal or visible enough. Thus, Nigeria's complex composition requires that the enumeration of its indigenous population remains an ongoing and not a closed exercise. Governments and NGOs in Nigeria should help in the process of identifying Nigeria's indigenous peoples as an ongoing process in order to connect such peoples to the national and international frameworks for articulating and realising their rights.

While recognising the progressive accommodation of indigenous and ethnic minorities in Nigeria's federating units, continued progress in the devolution of power from central to local levels should be encouraged in the ongoing political restructuring of Nigeria. This is a way to empower Nigeria's indigenous, ethnic and local communities and ensure that the economic and social benefits of their natural resources have a direct impact on them.

Nigeria should reconsider as a matter of urgency its disregard for ethnic, religious and language affiliations as enumerable criteria in its national census. The negative implication of this policy for national planning and promotion of indigenous and ethnic minorities' rights is self-evident.

As Nigeria engages the indigenous and ethnic minority peoples of the Niger Delta in a renewed process of self-determination and political integration, it must shun the temptation to reduce the question of indigenous peoples' rights to only a Niger Delta issue or one defined by the urgency of resource control and environmental degradation. It must use the opportunity created by the Niger Delta question to elaborate a comprehensive legal, socio-cultural and economic policy on indigenous and minority peoples in accordance with international law on the subject.

It is also important that the government reviews existing laws such as the Land Use Act and the Petroleum Decree so that indigenous peoples could have access to their lands and resources. Although there is a Niger Delta master plan which aims at addressing developmental challenges of the region, there still exists a need for the review of the revenue allocation formula in order for more money to be allocated for developmental plans in the region.

Relevant policies need to be put in place in order to address land accessibility, livelihood security and security of land rights for the pastoralist Fulanis. This must include the protection of grazing routes and the full implementation of the National Agricultural Policy.

Government must ensure that there is consultation and participation of the Ogoni, Ijaw and nomadic Fulanis in the design, implementation and evaluation of community development projects.

Multinational companies working in the Ijaw and Ogoni indigenous communities must be compelled to contribute towards the development of the area and ensure that environmental standards are complied with.

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