

## PROMOTING ECONOMIC, SOCIAL AND CULTURAL RIGHTS: AN UNEXPLORED ROUTE TO CONFLICT RESOLUTION IN NIGERIA'S NIGER-DELTA REGION \*

Intractable conflicts are hard to resolve because their underlying causes are often deeply entrenched and closely interwoven. Conflict resolution strategies that fail to account for the complexity of those causes or expect to resolve the whole conflict quickly are likely to be ineffective in bringing a peaceful end to intractable disputes.<sup>1</sup>

Underlying causes of conflict are what make it intractable. Since each conflict is unique, there is no one underlying cause of intractability. That said, there is one common denominator to all intractable conflicts. They are all based on long lasting and deep divisions.<sup>2</sup> Conflict has been responsible for more death and displacement than famine or flood.<sup>3</sup>

Since the end of the cold war, civil war has become the predominant form of violence globally. For example, of the 25 major armed conflicts listed by the Stockholm International Peace and Research Institute (SIPRI) in 2000, all except two were internal.<sup>4</sup> Also, of the 15 most deadly conflicts in 2001, those that caused 100 or more deaths were internal conflicts. Indeed, all but three of 57 major armed conflicts registered for 1990-2001 were internal.<sup>5</sup> Unfortunately, in SIPRI'S 2000 Yearbook, it was stated that "Africa continued to be the region with the greatest number of conflicts"<sup>6</sup>

The scale and nature of warfare have directly affected the lives of many millions of Africans. The main elements of this tragedy are the millions of rooted people who have lost their homes and livelihood, the increasing numbers of direct civilian casualties and increased level of violence.<sup>7</sup>

Over the past decade, there has been relative progress in strengthening peace and security in Africa through the upholding of peace accords in Mozambique, Sierra Leone, Mali, Liberia and Ivory Coast and building Africa's own capacity to manage conflict through the African Union and New Partnership For African Development (NEPAD). Just as instability long precedes violence, instability persists long after a peace agreement has been reached.<sup>8</sup>

Alexander and Smith<sup>9</sup> are of the view that to achieve positive and sustainable peace and development in Africa, therefore, understanding the manifestation of

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1 Hauss, C., 'Addressing Underlying Causes of Conflict' in Beyond Intractability, Burgess, G. and Burgess, H., (eds.) Conflict Research Consortium, University of Colorado, Boulder. Posted: July, 2003 <[http://www.beyondintractability.org/essay/addressing\\_underlying\\_Causes/](http://www.beyondintractability.org/essay/addressing_underlying_Causes/)>

2 Ibid. see also Fukuda-Parr, S, Picciotto, R., 'Conflict prevention and development Cooperation' a concept paper from a joint project of JICA and UNDP, 28 May, 2007, 9-16.

3 'The causes of Conflict in Sub-Saharan Africa' Framework Document of Department for International Development (DFID) (Part 1), October 2001 at 9.

4 Anyanwu, J., 'Economic and Political Causes of Civil Wars in Africa: Some Econometric Results' Peace, Conflict and Development, Issue 4, April 2004 available at <<http://www.CivilWarAfrica.pdf>>

5 Ibid.

6 SIPRI Yearbook of World Armaments & Disarmaments. Oxford: Oxford University Press, 2002 noted in Anyanwu, J., note 4 above.

7 See 'The Causes of Conflict in Sub-Saharan Africa', note 3 above at 9.

8 Alexander, L. Smith, D., 'Evidence and Analysis: Tackling the Structural Causes of Conflict in Africa & Strengthening Preventive Responses' a paper prepared for the Commission of Africa, London, September, 2004 at 3.

9 Note 8 above, at 5

geographic, environmental, economic, historical and political structural causes<sup>10</sup> of conflict is essential for delivering preventive, holistic and long-term approaches to the pre- and post- phases of violent conflict.

Conflicts in developing countries stems from a constellation of factors, including ethnic rivalries and environmental scarcities, as well as inter group competition over resources such as land, water and development aid.<sup>11</sup> In conflict situations, there is usually some combination of perceived unfairness in resource distribution, injury to a group's sense of cultural identity,<sup>12</sup> struggle for control over access to high value primary resources, and a precipitous decline in household incomes due to a natural disaster or a plunge in the price of key mineral or agricultural commodities.<sup>13</sup> The causes of war therefore range from individual or group volition to structural inequality and injustice.<sup>14</sup>

There is a theory that wars can reap high rewards, be they in the form of gold, diamonds or oil. Almost any economist would come to a different conclusion if all the costs to the populations involved were added up against the gains from such looting. On any case, the gains of wars are generally illegally siphoned off so they usually should be counted as loss to the public. All loss, no gain.<sup>15</sup>

Frances Stewart, in her article 'Root Causes of Violent Conflict in Developing Countries'<sup>16</sup> suggests some important policy conclusions for conflict-prone countries: One is that policies to tackle poverty and environmental degradation will reduce the likelihood of war, as well as being critical development objectives. Reducing large horizontal inequalities is essential to eliminate a major source of conflict. Policies that diminish private incentives to fight, especially once the conflict is underway, are also needed. Above all, there is a need to secure inclusive government from political, economic, and social perspectives and a flourishing economy so that all major groups and most individuals gain from participation in the normal economy.

## **THE UNITED NATIONS STEPS TOWARDS PEACE BUILDING.**

Prior to 1945, international law was generally not concerned with how states treated individuals within their own borders. Such matters were regarded as being within the domestic jurisdiction of each state. Exceptions did exist in the cases of slavery, humanitarian intervention, the treatment of aliens, minorities, and the laws of war, but they were spasmodic, limited in scope, and largely political rather than idealistic in motivation.<sup>17</sup>

In the immediate aftermath of World War II, the initiators of the UN system and the Universal Declaration of Human Rights (UDHR) were convinced that respect for human rights and the dignity of the individual were essential to peace and conflict

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10 They defined structural causes as 'pervasive factors that have become built into the policies, structure and fabric of a society and which may create the preconditions for violent conflict.'

11 Messer, E. Cohen, M., 'Breaking the Links Between Conflict and Hunger in Africa' 2020 Africa Conference Brief No. 10 of The International Food Policy Research Institute, February 2004.

12 For example, in the conflict in Matebeland in post-independence Zimbabwe, Ndebele identity was used to advance political objectives. Another example is the Hutus in Rwanda.

13 See generally, Ohlsson, L., 'Livelihood Conflicts: Linking Poverty and Environment as Causes of Conflict'

14 See 'Causes of Conflict in the Greater Horn of Africa' available at <<http://www.CAIIAdminDatabase/resources/ghai/costcaus.htm>>

15 Amoako, K. 'The Economic Causes and Consequences of Civil Wars and Unrest in Africa' in an address to the 70th Ordinary session of the Council of Ministers of the Organisation of African Unity, Algeria, 8 July 1999.

16 Available at <<http://www.bmj.com/cgi/content/full/324/7333/342#art>>

17 See Craven, C., *The International Covenant on Economic, Social, and Cultural rights: A perspective on its Development*. Clarendon Press. Oxford, 1995, at 6

prevention.<sup>18</sup> This gave rise to the birth of international human rights movement. The United Nations General Assembly adopted the UDHR on 10<sup>th</sup> December, 1948 which was a major step in promoting the rule of law at the international and national levels. The Declaration contains a comprehensive list of civil, political, economic, social and cultural rights. According to Mrs. Eleanor Roosevelt, United States' representative to the General Assembly and Chairman of the United Nations commission on Human rights during the drafting of the declaration, it "is not, and does not purport to be a statement of law or of legal Obligation", it is instead, she continued, "a common standard of achievements for all peoples of all nations".<sup>19</sup> Despite this the Declaration has undoubtedly had considerable impact in shaping subsequent treaties on human rights, and has been relied upon extensively by persons putting forward claims for unfair treatment in terms of human rights.<sup>20</sup>

The Declarations laid the ground work for more than 80 conventions and declarations on human rights including two international covenants<sup>21</sup> (which covenants make the rights legally binding on states that are parties to them). The enormous list of conventions include: conventions to eliminate racial discrimination and discrimination against women; conventions on the rights of the child; against torture and other degrading treatment or punishment, the status of refugees, and the prevention and the punishment of the crime of genocide, and declarations on the rights of persons belonging to national, ethnic, religious or linguistic minorities, the right to development and the rights of human rights defenders.<sup>22</sup>

Once the Universal Declaration of Human Rights was adopted, the Commission on Human Rights set out to translate its principles into international treaties that protected specific rights. Given the unprecedented nature of the task, the General assembly decided to draft two covenants codifying the two sets of rights outlined in the Universal Declaration: civil and political rights and economic, social and cultural rights.<sup>23</sup> The member states debated the individual provisions for two decades, seeking to give explicit endorsement to certain aspects of the universality of human rights only implicitly referred to in the Universal Declaration, such as the right of all peoples to self-determination, as well as reference to certain vulnerable groups, such as indigenous people and minorities.

Consensus was reached in 1966 and the United Nations General Assembly adopted the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights that year.<sup>24</sup>

## **CIVIL AND POLITICAL RIGHTS VERSUS ECONOMIC, SOCIAL AND CULTURAL RIGHTS.**

Clearly, the UDHR and its associated covenants have been in existence before many of the armed conflicts that have taken place in African countries. Shall we then say the conventions are at best white elephants as far as conflicts in Africa are concerned?

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18 Agbakwa, S., 'A Path Least Taken: Economic and Social Rights and The Prospects of conflict Prevention and Peace building in Africa' (2003) 1 J.A.L., 47.

19 Wallace, R., *International Law: Cases and Materials*, 3rd ed. London: Sweet and Maxwell, 1997 at 65

20 Ibid.

21 One covenant deals with economic, social and cultural rights (ICESCR) and the other with Civil and political rights (ICCPR). Together with the declaration they constitute the International Bill of Human Rights.

22 Stewart, N., 'International Protection of Human Rights: The United Nations System.' (2008) 12 (1) I.J.H.R., 89 at 95.

23 Ibid.

24 The preambles and Articles 1,2,3, and 5 are virtually identical in both International Covenants. Both preambles recognize that human rights derive from the inherent dignity of human beings.

It is interesting that implicit in the prevalence of conflicts and civil strife in Africa and elsewhere is the partial adherence to one of the cardinal tenets of the UDHR mentioned above. For while the UDHR recognizes the centrality of human rights, “protected by the rule of law” as a conflict prevention tool, in practice, states scarcely reckon with, and are all-too-often dismissive of, a vital set of human rights corpus, termed economic, social and cultural rights (ESCR).<sup>25</sup> The international community constantly regards civil and political rights (CPR) as more significant and deserving of protection than ECSR. It has been asserted that economic, social and cultural rights constitute a ‘second generation’ of human rights, the first generation being the CPR, and that in recent years a third generation of solidarity rights has been added, such as the right to self determination and the right to development. This notion of three generations which was first put forward by Karel Vasak in 1979 appeared quite suggestive and has been repeated by many.<sup>26</sup> For analytical purposes, it may be convenient to distinguish between categories of human rights. One such effort was made by Sieghart,<sup>27</sup> whose distinction was based on what is sought to be protected: (i) physical integrity, (ii) standard of living (iii) health (iv) family (v) work (vi) social security, assistance and welfare (vii) education and training (viii) property (ix) legal integrity (x) mental and moral integrity (xi) joint activities (right of assembly, association of trade unions), (xii) politics and democracy (xiii) collective rights. Sieghart’s classification has the advantage that it cuts across CPR one hand and ESCR on the other. As he points out however, classifications of rights differ and should be treated with caution. Most human rights are related and cover different aspects of the same three basic concerns: integrity, freedom, and equality of all human beings.<sup>28</sup>

The picture is even less promising at the national level. In majority of states, economic, social and cultural rights are almost entirely absent from the common discourse on human rights.<sup>29</sup> Even in those states where economic and social rights are constitutionally enacted or where ICESCR forms part of domestic law, national courts rely on the oversimplified characterization of economic and social rights as ‘non-justiciable’ rights, with the result that they have rarely given them full effect.<sup>30</sup> Constitutions of some other states do not contain social rights provisions at all<sup>31</sup> and they do not have economic and social rights provisions in any separate Bill of Rights enactment. Yet, these states are parties to relevant international human rights covenants, including the UN Charter, which underscores the importance of protecting all human rights as a means of averting future conflicts.<sup>32</sup> The apparent disregard of, or inattentiveness to, the potentials of socio-economic rights in conflict prevention is actuated by, or a tacit endorsement of, or gravitation towards, the ideologically laden myths and assumptions<sup>33</sup> about economic and social rights generally.

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25 Agbakwa, S., note 18 above at 39.

26 Eide, A., Krause, C., Rosas, A., *Economic, Social and Cultural Rights: A Textbook*. Martinus Nijhoff Publishers, 1995 at 16.

27 Sieghart, P., *The International Law of Human Rights*, 1983 noted in Eide, A., et al note 24 above at 21.

28 Ibid.

29 Craven, M., note 17 above at 11.

30 Chapter II of the 1999 constitution of Nigeria is a ready example. This chapter is titled ‘Fundamental Objectives and Directive Principles of State Policy’. It contains economic, social, environmental and educational objectives among others. Rights arising from any of the above objectives are non-justiciable and as such cannot be enforced by any court of law. Others in this category include Cameroon, Lesotho, Liberia, Malawi, Sierra Leone and Tanzania.

31 Examples are Comoros, Ivory Coast, Djibouti, Mauritania, Togo, Zambia, and Zimbabwe.

32 It is no surprise, given the fact that such instruments themselves undermine the importance of such rights.

33 This has been discredited by many.

An example of such myths and misconceptions is that economic and social rights are not a matter of law or rights because they lack the absoluteness and immediacy of civil and political rights, being merely programmatic, to be realized gradually. Another is the view that economic and social rights are “positive rights”, resource intensive, and require the interventions of the state, unlike civil and political rights which are “negative rights”, cost-free and merely requiring state forbearance.<sup>34</sup> The proponents of the above views believe that civil and political rights are qualitatively and significantly different from economic and social rights. Again, it is claimed that one cannot speak of the individual possessing a ‘right’ if they are not able to ‘claim’ or ‘enforce’ it as such.

To the first thesis, Craven<sup>35</sup> has the following objections: he says, first, to assert that the rights expressed in the UDHR were inspired solely by the philosophy of Hobbes or Locke is little more than mere speculation and indeed might lend force to claims of cultural relativism. He says human rights is a name given to plural and ‘divergent ideologies’, such that a search for an immutable or universal foundation is bound to fail. He says further, that even if one were to accept the basic assertion that human rights have their roots in the natural rights philosophies of the seventeenth and eighteenth centuries one is not left with a coherent picture of which rights might accordingly be justified.<sup>36</sup> While the philosophies of Hobbes and Locke are often interpreted as providing the basis for only a limited range of civil rights, Locke refers extensively to the right to private property which is, if anything, an economic or social right.<sup>37</sup>

To the second myth, he answers that the point is that all human rights-civil, political as well as economic and social apply to every one. It is just that the exercise of those rights is related to the particular circumstances in which individuals find themselves.<sup>38</sup>

To the third ‘myth’ it cannot be overemphasized that where there is a right, there is a remedy. To this end, national law has to be available and adequate. There must be a powerful legal framework to impose a moral duty to stop and redress human rights violations and to prevent them from happening in the future. It is beyond doubt that the judiciary has a role to play in enforcing what the legislature has positively and clearly decided as regards social as well as civil matters, be they expensive or cost free.<sup>39</sup>

It suffices at this point to mention that the initial planning of the United Nations was mainly carried out within United States administration. In Roosevelt’s State of the Union address, he advocated the adoption of an ‘Economic Bill of rights’, saying that:

“We have not come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men.

People who are hungry and out of job are the stuff of which dictatorships are made”.<sup>40</sup>

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34 See Vierdag, E., “The Legal Nature of Rights Granted by the International Covenant on Economic, Social and Cultural Rights”, (1978) 9 *Netherlands Y.B. Intl. L.*, 69 at 103 noted in Agbakwa, S., note 18 above at 56.

35 Note 17 above at 11

36 Human rights are a species of natural rights to the extent that they can be deduced from human nature rather than from custom or from law.

37 Craven, M., note 17 above, at 12.

38 *Ibid.* see also Oloka-Onyango, J., ‘Human Rights and Sustainable Development in Contemporary Africa: A New Dawn or Retreating Horizons?’ A Human Development Report Background Paper, 2000, at 11.

39 Koch, I., ‘Economic, Social and Cultural Rights as Components in Civil and Political Rights: A Hermeneutic Perspective’ (2006) 10 (4) *I.J.H.*, 405 at 406.

40 Cited in Eide, A., et al, note 25 at 28.

It has also been demonstrated<sup>41</sup> that ESCR constitute three interrelated components and the different components also have links to civil and political rights. At the core of social rights is the right to an adequate standard of living.<sup>42</sup> The enjoyment of this right requires, at a minimum, that every one shall enjoy the necessary subsistence rights-adequate food and nutrition rights, clothing, housing and the necessary conditions of care. Closely related to this right is the right of families to assistance.<sup>43</sup> In order to enjoy these social rights, there is also a need to enjoy certain economic rights. These are the right to property,<sup>44</sup> the right to work<sup>45</sup> and the right to social security.<sup>46</sup>

In the European system, the right to education and cultural rights are considered in conjunction with the civil and political rights rather than with economic and social rights, shown by the fact that the right to education is included in protocol No.1 to the Convention for the Protection of Human Rights and Fundamental freedoms (European Convention of Human Rights) and not the European social Charter, and that there are ongoing discussions on a new protocol to the ECHR on the cultural rights of minorities.<sup>47</sup>

In legal theory, efforts have been made to wipe out the distinctions between the two sets of rights by replacing the traditional positive/negative dichotomy with a tripartite terminology, to *respect, protect and fulfill*, showing that compliance with human rights-social and civil-can ensure various measures from (passive) non-interference to (active) ensuring satisfaction of individual needs depending on the given circumstances.<sup>48</sup>

In the final analysis, there are no really convincing arguments either for denying ESCR, the status of human rights or for maintaining absolute distinctions between them and CPR. Certainly, differences between rights might be identified in terms of their historical recognition, philosophical justification, or emphasis in implementation but rarely in any coherent or categorical manner. Indeed it should be borne in mind that the identification of economic, social, and cultural rights as a discrete and separate group of rights was principally a result of the ideological rivalry between east and west during the drafting of the International Bill of Rights.<sup>49</sup>

### **SOCIO-ECONOMIC RIGHTS: A MAJOR FACTOR IN AFRICAN CONFLICTS.**

If, as the UDHR posits, the protection of human rights is key to preventing people from embracing rebellion as a weapon against oppression;<sup>50</sup> and if human rights are truly interdependent, interconnected and indivisible, as the Vienna Declaration affirms, it stands to be reasoned that the absence of meaningful protection of economic and social rights is inherently a fertile basis for rebellion.<sup>51</sup> Denial of any right at all, is hardly conducive to peaceful co-existence. It is usually a wellspring of popular discontent and violent conflicts.<sup>52</sup>

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41 Ibid at 29.

42 Article 25 UDHR; Article 11 CDESCR

43 Article 10 CDESCR

44 Article 17 UDHR

45 Article 23 UDHR; Article 6 CDESCR

46 Articles 22&25 UDHR; Article 9 CDESCR.

47 This in no way denies the fact that there are some significant differences between some CPR and ESCR.

48 Koch, I., note 38 above at 406.

49 Craven, M., note 17 above at 16.

50 See Universal Declaration of Human rights, G.A. Res. 217, UN Doc.A/810 (1948), 3rd preambular paragraph.

51 See Vienna Declaration and Programme of Action, 25 June, 1993 UN World Conference on Human Rights in Vienna, UN Doc. A/CONF. 157/24 (1993)

52 Agbakwa, S., note 18 above at 42.

The magnitude and nature of a conflict sometimes depends on the extent of denial and the depth of feelings of injustice, although not all cases of human rights deprivations lead to violent conflicts. Again, given the roots of conflicts in Africa, and elsewhere reflect a rich diversity and complexity. Armed conflicts may not always result from all cases of socio-economic injustice; nonetheless, a strong causal linkage exists between certain conflicts and denial of basic socio-economic rights.<sup>53</sup> In its 1979-80 Annual Report, the Inter-American Commission on Human Rights noted that the “neglect of economic and social rights, especially when political participation has been suppressed, produces the kind of social polarization that leads to acts of terrorism by and against the government.”<sup>54</sup> Indeed several conflicts in Africa share the distinct characteristics of originating from mass popular movements for social justice and for better socio-economic conditions.<sup>55</sup> In an important study of the Sierra Leonean conflict, the role played by socio-economic factors in precipitating the conflict was underlined. Among other things, the following were identified as issues in the conflict: lack of well defined and properly co-coordinated economic and social policies and programmes; mass poverty and unemployment (resulting in feelings of hopelessness and despair among the youth); a highly illiteracy rate; and poor salary and working conditions, resource misallocation, mismanagement, corruption, poor fiscal policies, and structural adjustment policies.<sup>56</sup> The above dynamics have manifested glaringly in our case study, Nigeria. Nigeria is a country rich with natural and mineral resources and human talent which, if properly harnessed, can enable the country to develop economically, which is necessary for the country to meet its developmental goals. Nigeria is the largest oil producer in Africa, and fifth-largest within OPEC. Instead, even 44 years after independence, seven out of ten Nigerians live on less than US\$1 per day. Economists widely accept this as the measure of absolute poverty.

Economic and social rights, such as the right to health and the right to an adequate standard of living, remain unfulfilled for many Nigerians. This is particularly pronounced in the Niger Delta which is coincidentally the main oil producing – and hence main revenue-generating – region in the country. The amount of oil that Nigeria produces could go a long way for the state to deploy resources to realize economic, social and cultural rights.

The Nigerian State is primarily responsible for the respect, protection and fulfillment of all human rights in Nigeria. While international human rights conventions acknowledge resource constraints that most states face, and therefore accept that states should progressively realize the economic, social and cultural rights of the population, states are nevertheless required, irrespective of resource constraints, to ensure a minimum core level of economic, social and cultural rights.<sup>57</sup> The Nigerian State, despite the availability of resources, has failed to take the necessary steps to ensure the core content of these rights, in violation of international law. It has not provided enough essential services, nor built the social and physical infrastructure in large parts of the country, necessary to ensure a minimum acceptable level of the rights to health,

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53 Ibid.

54 Inter-American Commission on Human Rights, Annual Report 1979-1980 (1980) at 151 noted in Agbakwa, S., note 18 above at 42.

55 Ibid.

56 Laggah, J, Allie, J, Wright, R., ‘Sierra Leone’ in Adedeji, A., (ed.) *Comprehending and Mastering African Conflicts: The Search for Sustainable Peace and Good Governance*, London, 1999 cited in Agbakwa, S., note 18 above, at 43.

57 See generally, Niger Delta Human Development Report Abuja: UNDP, 2007 at 10-17

education, and access to drinking water, and an adequate standard of living. The lack of realization of the economic, social and cultural rights affects all sections of the society.<sup>58</sup>

The conflicts in the Niger Delta region of Nigeria revolve around three key players: the oil producing communities (OPCs), the multinational oil companies (MOCs) and the Federal Government of Nigeria (FGN). At the core of the crises are unresolved disputes centered on the issues mentioned above and fuelled by the obvious acute neglect of the host communities by the MOCs, who argue that it is beyond their corporate callings and social responsibilities to play the role of an alternative government and provide social amenities and infrastructure of the required magnitude to OPCs to facilitate resource extraction rather than to benefit the communities.<sup>59</sup> Some of the most contentious irritants are delays in paying compensation for expropriating communal resources – particularly land, and for oil spills, pollution and destruction of farmlands and a general denial of responsibility by the government and/or oil companies with respect to pollution and other adverse impacts.<sup>60</sup> Over the years, the OPCs have moved from peaceful protests over ‘inequitable’ wealth distribution policies of the federal government to violence and armed confrontations as well as hostage taking in the last three years to press home their demands. The OPCs, with the Ijaws in the forefront, have consistently demanded the following:

- A larger proportion of Nigeria’s oil wealth should be spent on their communities, rather than being distributed throughout the country, basing their demands on the ‘derivation formula’ that obtained under the 1960 and 1963 Federal Constitutions in Nigeria.<sup>61</sup>
- The derivation formula should either be 20-25 per cent or 50 per cent.
- Ownership and management of the resources located on their land, including offshore oil fields.
- The repeal of the Petroleum Act,<sup>62</sup> the Land Use Act,<sup>63</sup> the National Inland Waterways Authority Act<sup>64</sup> and other laws that concentrate too much power in the hands of the federal government and contribute to the unequal distribution of revenue.<sup>65</sup>
- A true national development plan that is reflective of the national character and not selective development.<sup>66</sup>

The Nigerian Government has largely ignored these demands even though it offered to slightly increase the revenue allocation to oil-producing states from its current 13 per

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58 Ibid. see also ‘Corporate Responsibility and Human Rights Violations in Nigeria’s Oil Producing Communities’ The Price of Oil, New York: Human Rights watch, 1999 at 53.

59 C Ukeje, ‘Youths, Violence and Collapse of Public Order in the Niger Delta of Nigeria’ (2001) 1-2(xxvi) Africa Development 342.

60 See Price of Oil note 58 above, at 75-79.

61 Under sections 134 and 140 of the 1960 and 1963 constitutions respectively, 50 per cent of revenue from agriculture and natural resources was returned to the states in which they were derived. Under the 1999 Constitution, the derivation formula stands at 13 per cent of oil revenues, which the Nigerian Supreme Court has ruled in the case of Attorney General of the Federation v Attorney General of Abia State & 35 Ors (2002) 6 NWLR [Pt763] 264 applies to revenues from onshore oil only. See also D Dafinone, ‘Supreme Court’s Verdict on Resource Control: The Political Imperatives,’ The Guardian, 5 May 2002, at 7-8.

62 Cap P10 LFN, 2004.

63 Cap L5 LFN, 2004.

64 Cap N47 LFN, 2004.

65 See Sagay, I., ‘The Niger Delta and The Case for Resource Control’ Vanguard, 13 June, 2005

66 Torulagha, P., ‘The Case for Resource Control’ at [www.unitedijawstates.com/resource\\_control.htm](http://www.unitedijawstates.com/resource_control.htm).



cent, which the OPCs find unacceptable. Rather than exploring peaceful alternatives in resolving the disagreements and attendant conflicts, the MOCs, backed by the federal government, have consistently employed military repression in quelling agitations.<sup>67</sup> In response, youths from these communities have formed militant groups to launch operations<sup>68</sup> against energy infrastructure and energy workers in the delta, as well as against government authorities.<sup>69</sup> The region has gained notoriety for bloodletting,<sup>70</sup> kidnappings and hostage taking. The federal government is showing signs of panic, as these vices are already short-circuiting the government's budgetary projection from the energy sector, as well as the international concerns being generated by rising costs of crude oil attributable in part to constant disruptions in crude oil production in the Niger Delta.<sup>71</sup>

The overarching logic is that citizens expect their governments to provide them with not only political stability but also socio-economic security, including employment, healthcare and shelter, the non fulfillment of which breeds discontent and social unrest or even serious political challenge.<sup>72</sup> To reduce the likelihood of wars therefore, it is essential to promote inclusive development; reduce inequalities between groups; tackle unemployment; environmental degradation; and individual (economic) incentives to fight.<sup>73</sup>

## **A NEW COMPONENT FOR PEACEBUILDING STRATEGIES IN NIGERIA...In Conclusion**

Although constitutional guarantees of socio-economic rights *per se* cannot forestall conflicts, opportunities and processes they create are likely to curb incidents that usually provide motivation for conflicts. In effect, constitutional guarantees are indispensable tools for good governance and peaceful co-existence based on mutual recognition of everyone's humanity.

The very concept of the legal protection of human rights assumes and presupposes the existence of a state that accepts responsibility for upholding the authority of human rights and has the institutional capacity and political will to effect such protection.<sup>74</sup> Constitutional law makes no genuine advance until it isolates the problem of rights against the state and makes that problem part of its own agenda. This argues for a

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67 Ann Talbot, 'Nigerian government launches assault on civilians in Delta region,' at [www.wsws.org/articles/2004/oct2004/nige-004.html](http://www.wsws.org/articles/2004/oct2004/nige-004.html). The first significant militant operations within the OPCs occurred in the 1990s in Ogoniland. The military government promptly clamped down on the Ogonis and hanged nine of their minority rights activists, including Ken Saro Wiwa purportedly for 'coup plotting' thereby effectively weakening the Ogoni resistance. For details, see 'Movement For The Survival Of The Ogoni People' at [http://en.wikipedia.org/wiki/movement\\_for\\_the\\_survival\\_of\\_the\\_ogoni\\_people](http://en.wikipedia.org/wiki/movement_for_the_survival_of_the_ogoni_people).

68 These operations are embodied in the Kaiama Declaration, which set out four strategies to harmonize the disparate positions of the micro-ljaw oil communities in their relations with MOCs and the Nigerian State. The strategies include: Operation Climate Change (shutting down oil installations and extinguishing gas flares), Operation Lunch (protest marches against hunger and poverty), Operation Reach Out (reconciliation of warring neighbours) and Operation Warfare, involving counter-reprisals by the youths in response to real or anticipated military attacks from whatever quarters.

69 Wikipedia, 'Conflict in the Niger Delta' at [http://en.wikipedia.org/wiki/Conflict\\_in\\_the\\_Niger\\_Delta](http://en.wikipedia.org/wiki/Conflict_in_the_Niger_Delta).

70 Polgreen, V, 'Blood Flows With Oil in Poor Nigerian Villages,' New York Times, 1 January 2006.

71 Kalu, V, Stewart, N., 'Nigeria's Niger Delta Crises and Resolution of Oil and Gas Related Disputes: Need for a Paradigm Shift' (2007) 25 (3) J.E.N.R.L, 244 at 247.

72 Agbakwa, S., note 18 above at 43.

73 Stewart, F., 'Root Causes of Violent Conflicts in Developing Countries' note 16 above.

74 An-Na'im A., 'Introduction: Expanding Legal Protection of Human rights in African Contexts', in An-Na'im, (ed.), *Human Rights Under African Constitutions: Realizing The Promise for Ourselves*, Philadelphia: University of Pennsylvania Press, 2003 at 4.

fusion of constitutional law and moral theory, a connection that, incredibly, has yet to take place.<sup>75</sup>

The greatest benefits of enforceable (justiciable) rights is the assurance it gives to people that effective mechanisms for adjudicating violations or threatened violations of their rights are available. The degree to which these rights become justiciable varies, but at least some social rights are rather often capable of being invoked in courts of law, in some jurisdictions already on the basis of a generally formulated clause.<sup>76</sup>

Enforceable economic and social rights content is therefore germane and indispensable, not only because of the need to protect these rights as human rights but also because effective protection of these rights is inherently invaluable and fundamental for peace and stability.<sup>77</sup>

One potential contribution to enforceable economic and social rights to conflict prevention and peace building is that by giving voice to the voiceless-the oppressed-enforceable socio-economic rights provide an outlet or platform to ventilate bottle-up grievances. A strategic, even if symbolic, importance of socio-economic rights is the “institutional advantages” of providing important avenue for telling the stories of those whose humanity and place in the community are marginalized.<sup>78</sup> In essence, the enforcement mechanisms may provide a cathartic process that can potentially depressurize a heated polity. Pent-up destructive energy may be displaced by the glimmer of hope radiating from the enforcement process and the expectations of having the perceived wrongs aired, “righted” where necessary, and the (rights of the) oppressed vindicated. While decisions may not always favour the victim, the transparency of the process owing to the involvement of a supposed independent arbiter deflects, at least some attention away from governments and government institutions.

Legal protection is particularly important for human rights not only for the judicial enforcement of these rights as legal entitlement, but also to sustain the efficacy and credibility of all other mechanisms and processes relevant to their implementation;<sup>79</sup> however, the successful legal protection of rights has its own requirements and conditions. It presupposes a certain degree of political stability, economic resources, institutional capacity, and the willingness and ability of the public at large to resort to the courts for the enforcement of their rights.<sup>80</sup>

In light of the foregoing therefore, mere guarantee of rights by itself, cannot prevent violations of those rights, nor are such guarantees the only path available for the realization of social justice. In the struggle for human rights, non-legal strategies might be as effective as legal ones and may even be more successful in specific situations and circumstances; thus, International institutions, the Nigerian Legislature, Non-Governmental Organizations (NGOs), the media<sup>81</sup> and the public at large need to take a fresh look at the question of economic, social and cultural rights.<sup>82</sup>

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75 Dworkin, R., *Taking Rights Seriously* (New Impression with a Reply to Critics) London: Duckworth & Co. Ltd, 2002 at 149.

76 Eide, A., et al, note 25 above at 44. This will be discussed further in the next chapter.

77 Agbakwa, S., note 18 above at 58

78 Ibid.

79 An-Na'im, A., 'The Legal Protection of Human Rights in Africa: How to Do More With Less' in *Human Rights: Concepts, Contests, Contingencies*, Sarat, A., Kearns, T., (eds.) The University of Michigan Press, 2004 at 91

80 Ibid.

81 That is, to the extent that they maintain their objectivity.

82 See generally Pollard, M, Odo, G., 'Conflicts and Human Security in West Africa (Conference Report) vol.1 (1) Essex H.R.Rev. at 89.; Saunders, J., 'Bridging Human Rights and Conflict Resolution: A Dialogue Between Critical Committees' Report on a Carnegie Council Workshop, 16-17 July, 2001

Asserting that the enforcement of economic and social rights in Nigeria is a panacea to the conflicts there in would be, at least, a naïve oversimplification; however, steps taken towards the enforcement of these rights are indispensable to prevention of conflicts because they touch on the very fundamentals of such conflicts.