Introduction

In the hierarchy of rights, the right to a safe environment including water, air, land, plants, animals and the surroundings, especially the material and spiritual influences which affect growth, development and existence of a living being would rank highest. It is man’s first right, and it is on it that the other rights depend. Its violation affects enjoyment of the other rights and the effect of its violation is omnicidal because life itself and all things that sustain it depend on a safe environment. Once the environment dies everything else dies.

Environmental sustainability and community rights to natural resources therefore are not entirely separate concepts, especially within the context of our discussion in this meeting on the resource curse.

This arises from the African or indeed the indigenous peoples' conception of the environment beyond the dominant frontiers of flora and fauna to refer to the surroundings, especially the material and spiritual influences which affect the growth, development and existence of a living being. To these people, therefore, land, forests, vegetation and rivers are not mere factors of production. They are the abode of the ancestors and gods. The desecration of certain forests, killing of certain animals etc are believed to spell doom for the concerned community. This explains why these communities would therefore do everything to protect their right to their land from wanton exploitation, even in the name of 'development'.
Flowing from this conception of the centrality of the environment to the very basis of existence and the conception of natural resources to include the resources on and in the land endowed to these communities by nature, it would be difficult, if not impossible, to separate the well-being of the human person from the well-being of the earth. Thus the African Charter of Human and Peoples' Rights in Article 21 admirably declares that 'All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people and in no case shall a people be deprived of it'.

**Environmental Rights and Natural Resources**

Although it has been said that communities in Africa and other indigenous peoples strive to pursue livelihoods with few options outside what natural resources offer them, yet there is no denying the fact that in their exploitation of these resources there is always due regard to their sustainability which is driven by the recognition that land and what it bears belonged to the past, present and future generations. Their exploitation recognises this sacred trust relationship which therefore has to be done in a manner and process that in turn recognises that the present generations are mere trustees. This explains communities' emotional attachment to land and its resources and therefore their determined fight to protect any attempt to exploit resources from their land that does not recognise their rights to this sacred trust.

The exploitation of natural, especially the extractive, resources found mostly in regions inhabited by indigenous peoples, has, almost as a rule, struck a devastating blow at the root of this community concept of sustainability of the environment and their rights to the resources of their lands. One characteristic feature of the regions were these natural resources abound is that they have invariably very difficult terrain where government presence and governance are very rudimentary.

Thus many of these areas have suffered considerable neglect and thus invisible to those in the capital cities which in turn must have made them escape the sustained attention of exploiters and thus their resources have survived in their pristine conditions, more or less. The problems arise when it is subsequently discovered that the resources in these areas are worth more than previously believed or new conditions increase their value thereby leading to a gold rush mentality and the area that previously had limited government presence now becomes occupied by coercive powers of government and transnational corporations basically to capture these resources.
Not only is exploitation of these mostly extractive resources done in a manner that pollutes the environment by withdrawing resources and dumping pollutants in quantities beyond the capacity of ecosystems thereby becoming unsustainable for the communities' very existence, but strikes at the root of their rights in two overarching fronts:

(a) the right of communities to enjoy and make determinations about an environment that is conducive to all aspects of good health and development and,
(b) the right of future generations to enjoy an environment which has not been jeopardised by the actions of those using resources at the present.

This sets in a chain reaction that propels and reinforces the resource curse to the extent that justifies the reproach by a former Venezuelan Oil Minister, Perez Alfonso, who referred to oil as the 'the devil's excrement'. When such environmental devastation that robs the community of their very means of livelihoods, their desire and quest for development as conceived by them and employment and the continued neglect of these demands occur against the backdrop of an overwhelming community feeling of anger that irreplaceable revenue from resources of their land are exploited and used for the development of other areas whilst they live in pristine conditions, the enabling excuse and environment are thus created for gangs and groups to exploit the popular grievance to embark on illegal exploitation of the resources for their private benefit or make direct alliances with outside interests seeking to do so.

The economy created and reinforced by these circumstances therefore became such that make the people and institutions adapt their behaviour in order to survive and maximise economic opportunities that became available through the economic transformation brought about by the conflict. State finances are also affected as warfare represents a diversion of productive activity towards destruction leading to increasing military spending in the name of security. Some of the companies become attracted by the risk premiums they can charge for doing business in the conflict region of the Niger delta. Not only do these have direct relationship with poverty exacerbation and loss of livelihoods as they further devastate the environment but also breed serious conflicts.

The sad reality is that in developing countries of Africa, national development that hinges on extraction of these resources overshadows environmental sustainability questions in several respects. Not only is scant attention being paid to environmental concerns especially when the twin talisman of national development and national security are being
waved, but even when there are proven cases of environmental devastation, it is only if they are accompanied by violations of civil rights that attention sometimes is paid; and even then, the question of environmental sustainability can quickly be overwhelmed when there is associated abuse of civil and political rights and conflict. This is one of the reasons that we have heard relatively little about the environmental consequences of diamond, oil, gold and other valuable extractives in conflict torn parts of Central and West Africa.

This also explains why it took the execution of Ken Saro Wiwa and my other colleagues to draw world attention to the environmental hazards that have bedeviled the Ogoni environment, nay the entire Niger Delta region, that have taken toll of lives of thousands. Similarly, few eyebrows have been raised on the frightening findings by the UNEP Report that found that the Ogoni communities in Nigeria were drinking water contaminated by oil pollutants to the level that benzene levels were some 900 times higher than acceptable levels anywhere in the world. That Report, despite its clear recommendations that certain urgent measures be taken as a matter of national emergency, is still gathering dusts in Abuja.

**Environmental Justice and the Resource Curse**

What appears clear from the above discourse is that the increasing interplay between environmental degradation and the resource curse is an issue which will not be resolved without the most determined national and international actions towards achieving environmental justice. In this respect, despite the hopes that are attached to the new-found modifications of corporate practice such as corporate social responsibility, there is significant risk, if not legitimate fear, that voluntary corporate measures relating to the environment will remain driven by their value in public relations outcomes rather than the extent to which they improve the situation for communities on the ground.

On the national front, against the backdrop that the overriding concern for extractive industries is the timely return on their investment for government and companies alike, it must be realised that where there is a choice between establishing a well-founded legitimate relationship with local communities and a potentially long term expensive damage to the investment, the effort to address local interests adequately is likely to make good financial sense. Governments and companies must therefore abandon the unsustainable situation of treating communities as strangers to their environment and the resources of the environment and swiftly take concrete steps to achieve the recognition of the communities’ legitimate stakes in them.
Whether in the large countries such as the United States of America or the smaller ones like Australia and New Zealand there is a continuing process whereby the question of the rights of indigenous populations are being confronted with the invariable conclusion that past abuses have incurred a sizeable liability, which must be confronted. Not only must efforts be made to restore adequate resources for communities whose right to land, culture and development have been systematically stripped but they need to be made parties to and made to derive actual benefits from any resource exploitation on their land.

On the international front, we believe that the time has come to consider international instruments with the capacity to make binding rulings which specifically seek to address the interplay between governments, companies (particularly multinational companies), and local communities or populations on environmental matters where the government is obviously a financially interested party.

In this respect, we must recall that the strides that have been recorded in the redress of human rights came about when the international community recognised certain abuses to be egregious enough as to be elevated to the status of crimes against humanity, thereby making them to be subject to international jurisdiction, no longer circumscribed by claims of national sovereignty.

In the same vein, we dare propose that when certain violations of environmental rights become sufficiently pervasive and extensive, they should be accorded the status of crimes against nature and subjected to the same treatment and punishment as crimes against humanity. After all, why should it matter that the death which comes to a community is caused by a politically motivated armed group or an economically motivated poisonous effluent by a corporation?

Thank you!

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