

Women in Post-Conflict Niger-Delta of Nigeria: Amnesty versus Restorative Justice

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Abstract

The Niger-Delta of Nigeria is known for violence and conflicts as a result of opposition of militant groups to oil exploration activities concentrated in this area of Nigeria. The militant groups are still agitating for a share of the oil revenue and for the development of their region. Women in the Niger-Delta of Nigeria have experienced different levels of violence and torture during these conflict situations. Some of the crimes perpetrated against women during these conflicts are rape, forced labour, sex slavery, and brutal murder of their family members. In addition, during conflict situations and even thereafter, the women experience a deeper level of poverty as a result of their inability to continue with their economic activities such as farming or fishing due to displacements caused by the conflict as most of the women living in the Niger-Delta rural communities are subsistence farmers. Following years of insurgency by angry militants against the Nigerian government, the amnesty strategy was eventually mapped out by the government of the day in order to give the militant youth economic opportunities to stem the tide of conflicts. However, the vast majority of women and girls who were and are still victims of these conflicts were not included. This paper shall highlight the need for restorative justice especially for women who are victims of the insurgency. Whereas amnesty seeks to give a better future to the militants, the women are unable to recover effectively with little or no means of indemnifying their losses. This paper proposes restitution or compensation for victims while creating constructive roles for victims in the criminal justice process.

Keywords: Women, Niger Delta, Post-Conflict Mechanisms, Amnesty, Restorative Justice.

1 Introduction

Nigeria is Africa's largest oil producer and the sixth largest exporter in the world.² Oil exploration and exploitation activities are concentrated in the Niger Delta region. This region covers an area of about 70,000 square kilometres and is endowed with a number of distinct ecological zones.³ The region consists of nine states, Abia, Akwa-Ibom, Bayelsa, Cross-River, Delta, Edo, Imo, Ondo and Rivers States. There have been conflicts ever since oil was first discovered in commercial quantity in the Ijaw community of Oloibiri, Bayelsa state in 1956.⁴ These conflicts emanated from a wide variety of reasons which were economic and environmental. As Aghedo stated "the people of the Niger Delta depend on their land, mangrove swamps and waters for agricultural purposes and their economic livelihood was derived mainly from crop farming and fish farming.

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²Emeseh E,(2006)"Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria"*IBA Journal of Energy and Natural Resources Law*24, 574-606 at 581.

³Omorodion F, (2006) "Sexuality, Lifestyles and the Lures of Modernity: Participatory Rural Appraisal of Female Adolescents in the Niger Delta Region of Nigeria"*Sexuality and Culture*10, 97-113 at 98.

⁴OjajorotuV, (2010) "Victims of Oil Conflicts in Africa: A case study of the Niger Delta in Nigeria"*ActaCriminologica*23 (2)19-30 at 24.

The exploration and exploitation of crude oil from their land by international oil companies threatened the stability of their environment and profitable economic ventures as a result of the resultant degradation of the land due to oil exploration activities.⁵ In addition, a huge part of the land has also been taken over by the oil companies because of the enormous land acquired by government for oil exploration, production, transportation and storage activities.⁶ These companies operate under a joint venture agreement with the Nigerian government represented by the Nigerian National Petroleum Corporation.⁷ This land crisis was further exacerbated by the enactment of The Land Use Act⁸ which gave government the sole ownership of all lands including land in the area as well as the mineral and oil deposits.⁹ Unfortunately, despite the amount of revenue generated from oil, the Niger Delta is among the most underdeveloped regions of the country, with little or no basic infrastructure and a very high level of poverty.¹⁰ In the face of protracted grievances of neglect and injustice, compounded by the inability of the State to make significant sacrifices to uplift the Niger Delta Region, the oil-bearing communities were compelled to resort increasingly to the use of violence.¹¹ Armed militant youth groups started springing out from the different tribes and communities in the Niger Delta region. Such groups include the Movement for the Emancipation of the Niger Delta (MEND), Niger Delta People's Volunteer Force (NDPVF) and the Niger Delta Vigilante Service (NDV) among others and engaged in acts of sabotage of oil installations as well as kidnapping of staff of international oil companies and/or their family members.¹² The reprisal attacks by the Nigerian military and police force usually degenerated into conflicts that have had devastating effects on the lives of women and their socio-economic wellbeing. Losses include not just lives and property but physical and emotional wounds inflicted as a result of rape, killing of family members and a complete loss of livelihood making restoration very difficult. The amnesty strategy was eventually established by the government of the day in order to give the militant youth economic and educational opportunities. This strategy was to hopefully stop the militants' violent and criminal acts against the oil companies but did not include effective measures for justice for the victims. Unfortunately, this continuous spate of violence, involving the militants and the counter-attacks by Nigerian soldiers, led to the degeneration of the lives of the women/vulnerable people of the communities which the institution of amnesty did not address. Amnesty has been defined by Schey as; "a strategic state policy which takes a form of executive or legislative clemency in which offenders or those involved in illegal actions are formally pardoned. In other words, upon grant of amnesty, the anti-social acts of a person are totally wiped from the records and he/she is considered not only innocent but also as having no legal connection with the crime in the first place."¹³

Amnesty is a process of overlooking the criminal acts of the perpetrator and giving him another chance to function as a good citizen. The amnesty strategy was also an attempt by the Government of Nigeria to stem the tide of violence in the region and ensure that oil exploration by the international oil companies continued unhindered by militant youths/groups, who were the primary cause of the violence. While to a limited extent the amnesty appeared to have doused the spate of militancy and violence in the region until recent times, on the other hand, an application of full restorative justice theory takes a victim-oriented approach to crime that emphasises restitution (compensation) for victims.¹⁴ Rather than focus on the punishment of criminals, supporters of this theory "advocate restoring the victim and creating constructive roles for victims in the criminal justice process."¹⁵

⁵Aghedo I, (2012) "Winning the War, Losing the Peace: Amnesty and the Challenges of Post- Conflict Peace-Building in the Niger Delta, Nigeria," *Journal of Asian and African Studies* 48 (3), 267-280 at 270.

⁶*Ibid* at 267.

⁷*Ibid*.

⁸The Land Use Act, 1978 now Chapter L5, Laws of the Federation of Nigeria 2004, Section 1.

⁹*Ibid*, section 28 sub-sections 1, 2 and 3.

¹⁰Emeseh supra note 1.

¹¹Omeje K, (2005) "Oil Conflict in Nigeria: Contending issues and Perspectives of the Local Niger Delta People" *New Political Economy*, 10 (3), 321-334 at 332.

¹²Aghedo I, (2015) "Sowing Peace, Reaping Violence: Understanding the Resurgence of Kidnapping in Post-amnesty Niger-Delta, Nigeria," *Insight on Africa*, 7 (2) 137-153 at 143.

¹³Schey P, (1977) "The Pardoning Power and the Value of Amnesty" *Journal of Criminology* 9 (5), 325-333 cited in Ajayi and Adesote, (2013) "The Gains and Pains of the Amnesty Programme in the Niger Delta Region of Nigeria, 2007-2012: A Preliminary Assessment" *Journal of Asian and African Studies* 48 (4), 506-520 at 508.

¹⁴Agaba J, (2014) *Practical Approach to Criminal Litigation in Nigeria* (2nded) 1031.

¹⁵*Ibid*.

With this background, this article canvasses the notion of including the protection of women's socio-economic rights as well as their restoration in post conflict situations. Post-conflict mechanisms may include a platform whereby women's socio-economic rights as well as their restoration of what was lost can be addressed. This may achieve the necessary recovery and attainment of economic, physical and mental strength of the victim and other members of the community who need adequate support in the recovery process.

2 Violence against Women In The Niger Delta

In conflicts throughout the world, Heyzer has stated that "violence against women has been used as a weapon of war, not just to violate the women, but also to humiliate the men of the other side, and to erode the social and moral fabric of entire communities across generations."¹⁶ During conflicts in the Niger Delta area, the socio-economic rights of women are usually also violated by the loss of their livelihoods as a result of internal displacement, unsafe and insecure environments. Apart from kidnapping resulting in sexual slavery and forced labour, violation of their socio-economic rights is inevitable when they cannot recover from their financial losses because of the destruction of their homelands.

With the outbreak of militancy and environmental crisis in the region, Amusan opined that "there is a high rate of refugees, internally displaced people, sexual abuse and rape, proliferation of small and light weapons, kidnapping and scarcity of basic needs such as food, water, health and educational facilities of which women and girls are the hardest hit."¹⁷ "The massive amount of wealth mined from the Niger Delta region does not correlate with the existing shabby socio-economic conditions in the region."¹⁸ Additionally, "the Niger Delta Crisis emerges out of this disparity. Thus, the dynamics of the crisis in the Niger Delta area are largely centred on the abundance of oil reserves, the presence of multinational oil companies involved in resource extraction, the anti-social and undesirable state policies, the existence of an array of distinct minority ethnic groups as the historical inhabitants of the area, and decisively, the endemic poverty and deficient socio-economic development in the area, despite the immense resource wealth of the region."¹⁹

Ojajorotu clearly identified the various conflicts in the Niger Delta by stating that the Niger Delta conflict exists on various levels: the conflict between the host communities and the oil companies; the conflict between local communities and constituted authority (mainly militants and the Nigerian government), as well as the struggle and hostilities between the various local communities.²⁰ When the violence erupted in the region the first reaction from the government and oil companies was to kill agitators, destroy properties and burn down whole villages of the people in order to protect their oil investments without consideration for human rights and the lives of the vulnerable in the community. For instance, the Odi Massacre of November 4, 1999 has received great attention both nationally and internationally. Odi is a town in Bayelsa state where an armed gang alleged to be members of the community killed seven Nigerian policemen in the community. Five other policemen were killed in subsequent days. These murders were committed by a group with no apparent political agenda and were later discovered to be armed robbers. Meanwhile, the villagers had previously reported their illegal activities to the police department. However, these activities took place against a rising clamour from those living in the oil producing areas for a greater share of the oil wealth. The military troops in an attempt to arrest the murderers of the policemen demolished every single building, barring the bank, the Anglican Church and the health centre, and killed hundreds of unarmed civilians.

¹⁶Heyzer N, (2005) "Women, War and Peace Mobilizing for Security and Justice in the 21st Century," In Dodds F and Pippard T (eds) *Human and Environmental Security: An Agenda for change*. 50-67 at 54. London, Earthscan.

¹⁷AmusanL, (2014) "Evaluating the Gender Content of the Amnesty Programme in the Niger Delta of Nigeria: Any Concern for the socio-economic Development of Women?" *Gender and Behaviour*12 (3) 5924-5935 at 5925.

¹⁸Ojajorotu supra note 4.

¹⁹*Ibid.*

²⁰*Ibid.*

While the soldiers reportedly shot and killed some of the armed youths who brought trouble to the town, most of the gang is reported to have fled.²¹ Shortly before the military operation at Odi, Nigerian soldiers were also deployed in the nearby community of Choba, in Rivers State, in order to disperse protesters outside the gates of Willbros Nigeria Ltd, the subsidiary of an American pipeline construction company. Community members reported that the soldiers killed four people, and raped a large number of women. Photographs which appeared to show soldiers in the act of raping several women were published in the Nigerian press.²² Another devastating experience for the Niger Delta people was that of the Gbaramatu Kingdom of Ijaw nationalities in Warri South West Local Government Area of Delta State. The Gbaramatu debacle got to the climax when it was allegedly reported that military men on duty including a major, a lieutenant and 16 others were murdered by the militants under the aegis of Camp 5- a militant outfit led by a militant leader, Government Ekpemupolo, alias Tompolo. In response, the Nigerian state on May 13, 2009 ordered the Army backed by the Navy and Air force to invade Gbaramatu kingdom ostensibly in search of the militants. The indiscriminate ground and aerial bombardment of the military destroyed the villages of Kurutie, Oproza, Okerenkoko, Kunukunuma, Kiangbene, Benikurukuru and other communities in Gbaramatukingdom. Many people including women and children were killed while those who fled became refugees in neighbouring communities.²³

Some of the women in Ogoni also a community in the Niger Delta, though simple peasant folk, were also very much a part of the struggle for self-determination and economic justice. They too were shot and imprisoned, but unlike their male counterparts, they also suffered the horrifying ordeal of rape.²⁴ The act of rape is condoned by the military and till date no soldier or member of the mobile police or police force has been held to account for the rape of women in the Niger Delta.²⁵

As a result of the suppression by the military and the government, the International Oil Companies were able to take advantage of the land and resources and ignore the economic needs of the people of the region on which the people's economic survival hangs. Such conflicts degenerated to such an extent that not only are the communities fighting the government and oil companies, they destroy oil installations, while government in collaboration with the oil companies and in a bid to crush the militant attacks, kill innocent people and burn down whole villages leaving the women with the psychological trauma of living in the area. The reprisal attacks by the military are an attempt to end the criminal acts of the militants in sabotaging oil installations, rioting, and kidnapping of oil workers, seizure of facilities, murder and outright declaration of war.²⁶ Yet these reprisals have only ignited a fire within the militants to continue the war. An interview with one of the women in Egi, a village in Rivers state revealed that when the boys who were in hiding came back and saw the devastations and the sufferings of the women, the situation further infuriated them to continue the attacks on the international oil companies in the form of revenge.²⁷ In all these conflicts, it is the women and children that are caught in the crossfire, and left to pick up the pieces of their lives, or what is left of it. The conflicts in the Niger Delta region have also led to the displacement and death of many people, especially women and children.²⁸ The emotional, psychological, physical and economic impact is still felt by those women who are still alive but are living in the shadow of the horrific experiences especially those who watched their loved ones die in the attacks by soldiers. It follows therefore that there is a need to extend the hands of justice to these women in order for them to partake in their socio-economic rights as prescribed in the Constitution and other human rights instruments otherwise peace will continue to be elusive in this region.

²¹Ekine S, (2001) *Blood and Oil, testimonies of Violence from Women of the Niger Delta*, London: Centre for Democracy and Development, Unit 6.

²²*Ibid.*

²³Ogege S, (2011), "Amnesty Initiative and the Dilemma of Sustainable Development in the Niger Delta Region of Nigeria" *Journal of Sustainable Development www.ccsenet.org/jsd* 4 (4), 249-258 at 254.

²⁴Ekinesupra note 21.

²⁵*Ibid.*

²⁶Nwajah S, "Obasanjo Condemned For the Situation in Nigeria" *The News* (Lagos) 6 December, 1999.

²⁷Ekine supra note 21.

²⁸Akinwale A, (2010) "Curtailing Conflicts in the Resource Endowed Niger Delta Communities of Nigeria" *AFFRIKA* 2 (1 & 2), 113-138 at 119.

3 Amnesty versus Restorative Justice

The crisis situation in the Niger Delta was mutually destructive to the country's economy and to the local communities. At the peak of militancy in 2008, Nigerian Oil production was reduced from 2.6 million barrels per day (bpd) to a mere 700,000 (bpd).²⁹ The militants had unleashed large scale destruction on the oil infrastructure in the Delta region leading to a large reduction in oil production.³⁰ Every agitation was usually met with repressive measures by the Nigerian State through its military forces. Since the 1960s, up to 2006, a repressive approach has been the major strategy which every successive government (military and civilian) in the country adopted to quell the agitations of the Niger Delta people.³¹ The Nigerian state was desirous to create an enabling business climate for the multinational oil companies to operate unencumbered.³² The amnesty programme therefore became an inevitable response to the inability of the military with its heavy artillery and weaponry to ensure a peaceful environment for uninterrupted exploration and exploitation to raise the revenue base derivable from oil production.³³ After various failed attempts to restore peace in the region by the different governments in power, on 25 June 2009, the Nigerian President at the time, Alhaji Shehu Musa Yar'dua offered a sixty day general "amnesty and unconditional pardon to all militants in the Niger Delta."³⁴ According to the former president, all armed militants must disarm during this sixty day window to qualify for amnesty. The amnesty program was designed as part of the broad framework of Disarmament, Demobilisation and Reintegration (DDR).³⁵ Although the amnesty program was predicated on conflict resolution and rehabilitation of the former fighters, "the compensatory and restorative regime did not identify some of the real victims of the over-a-decade conflict such as women."³⁶

A policy framework for restoration of victims was apparently not in contemplation in the government's plan to restore peace in the region. Meanwhile, the level of criminality perpetrated during the Niger Delta crisis cannot be easily forgotten without appropriate measures to inculcate justice for all in the process. The government responses were inappropriate by settling just one side of the coin without addressing the other side which consisted largely of criminal acts of soldiers against innocent members of the community including women and children. However, the initial hope that the amnesty programme would bring about sustainable peace in the Niger Delta is faltering by the day as security and development continue to be absent in the region.³⁷ Although the amnesty strategy appeared to have initially curtailed the militancy, same appears to have broken down for a number of reasons, one of which is that sending ex-militants for educational programmes and capacity building within and outside Nigeria can be said to be an incomplete arrangement because of the non-inclusion of women in the peace-building efforts.³⁸

Other reasons can be ascribed to the reintegration phase of the amnesty which was poorly implemented.³⁹ With the recent resurgence of militancy in such magnitude as now experienced, it is doubtful that there was any significant disarmament of these militants during amnesty.

²⁹Aghedo supra note 12 at 138.

³⁰ Available data shows that prior to the full blown unrest in the Niger Delta, Nigeria was producing about 2.4 million Barrels of oil per day. See Aghedo *Ibid*.

³¹ Abimbola J and Adesote S, (2011) "Terrorism and National Security in the Niger Delta area of Nigeria" in Babatolu J and Gbade I (eds) *National Security and Resource Management in Nigeria, Ibadan, Nigeria* cited in Ajayi and Adesote, (2013) "The Gains and Pains of the Amnesty Programme in the Niger Delta Region of Nigeria, 2007-2012: A Preliminary Assessment" *Journal of Asian and African Studies* 48 (4), 506-520 at 513.

³²Ogege supra note 23.

³³*Ibid* at 253.

³⁴*Ibid* at 254.

³⁵Umejesi I, (2014) "Amnesty, Patriarchy and Women: The 'Missing Gender' Voice in Post-Conflict Niger Delta Region of Nigeria" *Gender and Behaviour*, 12 (1), 6223-6237 at 6223.

³⁶*Ibid* at 6225.

³⁷Aghedo supra note 5 at 276.

³⁸Amusan supra note 17 at 5929.

³⁹Aghedo supra note 5 at 272.

Amusan observed that, “there was a lack of adequate facilities for rehabilitating and retraining the disarmed militants, allowances provided for them were not distributed as and at when due because of corruption in the process.” In addition, “some of the ex-militants who were sponsored for retraining in other countries were deported for various reasons as well as the fact that the stipends given to them on a monthly basis were not sufficient and could not meet up to the expensive lifestyle of some of the militants who were used to earning much more from robbery and oil bunkering activities.”⁴⁰ Furthermore, Aghedo argued that, “the implementation of expensive peace building and DDR in the region since 2009 could not guarantee sustainable peace. This situation could be explained in several ways. First, despite the necessity of justice and equity in any DDR process, the peace deal in Nigeria is only beneficial to perpetrators rather than victims of violence. With the Amnesty programme many militants who owned up to direct violence- armed robbery, Kidnapping, rape, murders and other crimes were granted pardon,”⁴¹ whereas the innocent victims of these heinous crimes were left uncompensated.⁴² Societies therefore never truly healed. Second, the fact is that women were also very much a part of the struggle and should have been included in the amnesty process by ensuring they were given regular monetary stipends for their sustenance while the militants were also being paid and trained at the same time.

An example of one of the struggles of women which occurred between June and August 2002 is where thousands of women occupied no less than eight oil facilities belonging to international oil companies, Chevron, Texaco and Shell Petroleum Development Company (SPDC) including Chevron’s main oil terminal at Escravos in Delta state.⁴³ The women occupied the operational headquarters of Chevron- Texaco and Shell Petroleum, singing songs of solidarity to protest years of plunder of their rural environment by the oil companies.⁴⁴In this particular siege, about 800 women were injured during a particularly brutal encounter with security forces belonging to the oil companies.⁴⁵While protesting, women narrated their stories of rape, beating, sexual harassment, burning of their properties, arrest and murder of their sons, fathers and brothers. They spoke of the loss of their fishing ponds and farmlands to pollution, and the poverty of their lives. They also mentioned the lack of employment opportunities for their family members, the harassment of their young sons by police and army personnel.⁴⁶Yet, with all these occurrences of human right violations against the women of the Niger Delta little has been done to ensure that they receive compensation and damages for the losses, destruction of their properties and even criminal acts of rape, torture and violation of their right to human dignity.

4. The Function of Truth and Reconciliation Commissions in Achieving Justice

The establishment of Truth Commissions in Nigeria such as the Human Rights Investigation Commission chaired by Late Justice Chukwudifu Oputa otherwise known as the Oputa panel in 2001 and the Truth and Reconciliation Commission set up by the Rivers State government in 2007 and headed by Late Justice Kayode Eso, still did not ensure the achievement of justice. The fact is that the Oputa Panel Report concluded that the Nigerian military was responsible for gross human right violations and went on to make several recommendations among which is that the victims should be compensated and that there should be security sector reforms involving a restructuring of the Armed Forces and the Police.⁴⁷However, many of the recommendations have not been implemented. Although the commissions were able to identify human rights abuses that occurred and as a result brought reconciliation to feuding parties, it can be observed that there was not much the commissions could do in terms of bringing the perpetrators to acknowledge their misdeeds. Restorative justice also known as transitional justice⁴⁸ can be adopted as a process to achieving justice by the Truth Commissions.

⁴⁰Amusan supra note 17 at 5930.

⁴¹Aghedo supra note 12 at 147-148.

⁴²*Ibid* at 148.

⁴³Ekine S,(2008) “Women’s Responses to State Violence in the Niger Delta” *Feminist Africa*, 10, 67-83 at 69.

⁴⁴Okon E, (2002) Report of the Niger Delta Women for Justice (NDWJ) on the Delta Women’s siege on the American Oil company, Chevron-Texaco in Delta state, Nigeria, available at <https://www.ndwj.kabissa.org> .

⁴⁵*Ibid*.

⁴⁶Ekine supra note 43 at 73.

⁴⁷ Human Rights Violation Investigation Commission (HRVC), The Oputa Panel Report: Summary, Conclusions and Recommendations (2002).

⁴⁸ Transitional justice is not a ‘special’ kind of justice, but an approach to achieving justice in times of Transition from conflict and/or state repression. By trying to achieve accountability and redressing victims, transitional justice provides recognition of the rights of victims promotes civic trust and

A Truth Commission is a body set up to investigate a past history of violations of human rights in a particular country. This can include investigations of violations by the military, other governments and opposition forces.⁴⁹ Truth commissions also serve to provide recommendations regarding legal, administrative and institutional measures that should be taken to prevent the recurrence of human right abuses by the governments of the countries involved.⁵⁰ In view of these functions of Truth Commissions, which are partly administrative and partly investigatory, the implementation of restorative justice should ideally be legally binding through the instrumentality of a court of law and not just administrative in order for it to have enforcement mechanisms resembling that of a court of law. For instance, Sierra Leone introduced a new transitional justice mechanism by utilizing both a Truth and Reconciliation Commission and a special court which operated concurrently.⁵¹ Both institutions had individual mandates but sought to complement each other in the post-conflict development process.⁵² The Truth Commissions in Nigeria two of which are mentioned in this paper, made attempts to reconcile contending parties especially cases of torture and communal wars such as the conflict in the Ogoni community in the Niger Delta.⁵³ The EsoPanel, mentioned above was inaugurated on November 29, 2007 by Governor Rotimi Amaechi in Rivers State. This Truth and Reconciliation Commission was mandated to “unearth the remote and immediate causes of cult clashes in Rivers State and to identify perpetrators and victims. Nevertheless, in both Commissions, the issues of rape, loss of economic opportunities, displacement from and loss of homesteads, and compensation were mingled with other pressing finger pointing allegations of murder and torture.⁵⁴ Thus, restorative justice with regards to victims, particularly the women, was never pursued to a logical conclusion to restore fragmented societies. Restorative justice can properly be included especially where it is brought under a separate institution. An example of where a Truth and Reconciliation Commission also attempted to inculcate restorative justice is the South African Truth and Reconciliation Commission (SATRC), which was the first commission to attempt to rectify the balance between truth and reconciliation. The SATRC added some unique features to the transitional justice process, by conducting Amnesty hearings where the ex-combatants were subjected to rigorous legal and moral questioning⁵⁵ which included the new element of a conditional or earned- amnesty process.⁵⁶

However, the process of transitional justice and amnesty in South Africa has been criticized for several reasons including the fact that perpetrators benefited immediately from the amnesty process, while victims had to wait so long, which caused much frustration. Despite the criticisms, the process under the SARTIC enabled the effects of restorative justice to be far reaching in the sense that a wide range of local justice and reconciliation initiatives have been developed separately throughout South Africa. These include processes of restorative justice dialogues, local community healing meetings, victim counseling programs, disappearance support and investigation programs, survivor advocacy initiatives, ex-combatant reintegration programs and memorialization projects, among others.

Strengthens the democratic rule of law. See <https://www.ictj.org/about/transitional-justice>.

⁴⁹Hayner P, (1995) ‘Fifteen Truth Commissions, 1974-1993: A Comparative Study’ In: Kritz N, (ed) *Transitional Justice: How Emerging Democracies Reckon With Former Regimes*, 225-261, cited in Connolly L, (2012) ‘Justice and Peace building in post-conflict situations an Argument for including Gender Analysis in a new Post-Conflict Model’ 16 (1) *ACCORD Occasional Paper*, 1-38.

⁵⁰Crocker D, (2000) ‘Truth Commissions, Transitional Justice and Civil Society’ In: Rotberg R and Thompson D (eds), *Truth Versus Justice: The Morality of Truth Commissions*, Princeton cited in Connolly, *Ibid*.

⁵¹ The Special Court was known as the Special court for Sierra Leone (SCSL) and was established jointly by the Government of Sierra Leone and the United Nations in terms of UN Security Council Resolution (1315).

⁵²Nworojee B, (2005) ‘Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims’ *Harvard Human Rights Journal*, 18 (85) 85-105 cited in Connolly supra note 49.

⁵³Kukah M, (2011) *Witness to Justice: An Insiders Account of Nigeria’s Truth Commission* 126.

⁵⁴Guaker E, (2009) ‘Qualitative Analysis of the Oputa Panel and the Factors which explain the Failure of the Commission’ available at bora.uib.no/bitstream/handle.../Master%20thesis_Elisabeth_Guaaker_Part%202.pdf?Accessed 4 October 2017.

⁵⁵Van der Merwe H and Lamb G, (2009) *Transitional Justice and DDR: The Case of South Africa* Research Unit International Center for Transitional Justice. 28.

⁵⁶ Connolly supra note 49 at 8.

Some of these initiatives, such as restorative justice dialogues, enabled ex-combatants to engage directly with victims, affecting collaboration in developing local community memorialization initiatives.⁵⁷ Community-based organizations and local NGOs, as well as church-based groups have run these initiatives. Some local justice and reconciliation programs were initiated during the operation of the SATRC, while others sought to continue the efforts of the SATRC to deepen its impact in communities or extend its work to new communities.⁵⁸ Therefore, it is clear looking at the South African example that the process of restorative justice is a long-term process and the Nigerian government must recognise that it can be part of the efforts to eradicate conflicts in the Niger Delta and address the socio-economic and even cultural issues of the victims.

In Nigeria, Matthew Kukah a member of the Human Rights Investigation Commission of 2001 observed that “most victims of human rights violation seemed ready to forgive their oppressors of yesterday, some demanding acknowledgement and an indication of apology.”⁵⁹ This statement is similar to a statement made by one of the women representatives in Choba, where soldiers raped women and destroyed property⁶⁰ speaking on behalf of the women in her community thus,

We the women of Choba appeal to those behind the ugly event to come and do the necessary things to appease the gods. This is important to us because without this, these women are as good as divorced.⁶¹

It follows from the above that restorative justice is one of the ways healing can be realised in such devastated lives as well as restoration and compensation for all that was lost. Restorative justice complements the existing criminal justice system⁶² and is recognition that the rights of these vulnerable people have been violated in the most inhumane circumstances.

In the year 2002, the *United Nations Economic and Social Council adopted the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*.⁶³ The purpose of the Basic Principles is to inform and encourage member states to adopt and standardize restorative justice measures in the context of their local systems but there was no intention to make it mandatory or prescriptive for member states.⁶⁴ Restorative justice is therefore a theory of justice that focuses on ameliorating the effect of crime and wrongdoing against the individual or community rather than as against the state.⁶⁵ Restorative justice is concerned with healing victims’ wounds restoring offenders to law-abiding lives, and repairing harms done to interpersonal relationships and the community. It seeks to involve all stakeholders and provide opportunities for those most affected by the crime to be directly involved in the process of responding to the harm caused.⁶⁶ Both the rehabilitation of offenders and their integration into the community are vital aspects of restorative justice.⁶⁷ It can therefore be observed that amnesty for offenders and restorative justice for the victims has to work together for successful re-integration for all parties. It is not enough to grant amnesty for criminals, this process must be all inclusive. Following the investigatory process under the auspices of the Truth and Reconciliation Commissions for the Niger Delta, the government should have thereafter initiated reparation for the victims as well as ensuring the disarmament of not only the militants but as well as the soldiers. This was not done which is one of the reasons for a resurgence of conflicts in the region in the year 2015/2016. ⁶⁸ Regrettably, the Nigerian army was not included among perpetrators of violence through rape even though the commanding officers representing the Nigerian State were identified and some appeared before the Oputa Commission.⁶⁹

⁵⁷Greenbaum B, (2006) *Evaluation of the 2005 Ex-Combatants’ Dialogues* (Johannesburg: Centre for the Study of Violence and Reconciliation).

⁵⁸Van der Merwe and Lamb supra note 55.

⁵⁹Kukahsupra note 53.

⁶⁰Ekine supra note 43 at 70.

⁶¹*Ibid*.

⁶²Agaba supra note 14 at 1031.

⁶³ See *Handbook on Restorative Justice Programs* (Vienna: United Nations Office on Drugs and Crime, *Criminal Justice Handbook Series 5* cited in Agaba *ibid* at 1029.

⁶⁴Agaba supra note 14.

⁶⁵*Ibid* at 1031.

⁶⁶*Ibid* at 1033.

⁶⁷*Ibid* at 1035.

⁶⁸ Avengers are now a militant group in the Niger Delta which resurfaced after the election of the incumbent President Buhari in April 2015.

⁶⁹Kukah supra note 53 at 396.

On the other hand, the current system, in which crime is considered only as an affront against the State, works on a premise that largely ignores the victim and the communities that are hurt most by the crime. Instead, it focuses on punishing offenders without forcing them to face the impact of their crimes.⁷⁰

5 Bridging the Gap: The Legal Framework

While a rape victim cannot be compensated in the sense of erasing the trauma of her suffering, she can be provided with the means and tools to rebuild her life.⁷¹ The restorative justice mechanism can thus be implemented along with legislation and human right provisions.

First, under international law, states have an obligation to provide reparations to victims of gross violations of human rights. These reparations can take many forms, including material assistance such as compensation payments, pensions, bursaries and scholarships and psychological assistance (trauma counseling).⁷² Furthermore, the United Nations Security Council adopted resolution 1325 (S/RES/1325) on women, peace, and security on 31 October 2000. The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and to incorporate gender perspectives in all UN peace and security efforts. It also calls on all parties to a conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse in situations of armed conflict.⁷³ This resolution is well thought for the reason that in 1998, the International Criminal Tribunal found former mayor of a Hutu village, Jean-Paul Akayesu, guilty of nine counts of genocide, crimes against humanity and war crimes that included his having incited and encouraged his troops to commit acts of rape. While the initial charges against him did not include rape, the presiding judge, Navanethem Pillay, insisted this be probed. As a result of her intervention as well as mounting pressure from women's groups, charges for rape were investigated. This was particularly significant as it was the first time an international court had ever punished sexual violence in a civil war; and it was the first time that rape was found to be an act of genocide, aimed at the destruction of a group.⁷⁴ The court also issued the first definition of rape under international law. It called rape "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." This decision is important confirming that it is imperative that women should be involved and included in post-conflict mechanisms.

Secondly, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa defines violence against women "as all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts, or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war."⁷⁵ Article (4)(2) (e) of the Protocol also provides that "State parties shall take appropriate and effective measures to punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims. Restorative justice emphasises the rehabilitation of the women victims. It must be noted that Nigeria is a signatory to the African Charter and has taken an additional step by enacting the African charter as a domestic legislation. Hence, the domestic courts can apply the provisions of the African charter and by extension the protocol on women's rights. Restorative principles, then, demand a broader sense of responsibility, even as they utilise those same coercive powers to require perpetrators to make restitution."⁷⁶

⁷⁰Agaba supra note 14 at 1040.

⁷¹Zeigler S and Gunderson G, (2006) "The Gendered Dimensions of Conflicts Aftermath: A Victim-Centered Approach to Compensation," *Ethics & International Affairs*, 20 (2), 171-193 at 191.

⁷²Teitel R, (2000) *Transitional Justice* (2000) New York, OUP, cited in Connolly supra note 49.

⁷³For more information see: http://www.un.org/events/res_1325e.pdf accessed 2 September 2016.

⁷⁴https://en.wikipedia.org/wiki/Jean-Paul_Akayesu.

⁷⁵ Article 1(j).

⁷⁶ Zeigler and Gunderson supra note 71.

In the words of Zeigler and Gunderson, “compensation and similar actions taken against the perpetrators of international crimes convey political messages that go beyond the immediate punitive effects. Holding perpetrators culpable and requiring that they confront the consequences of their actions gives substance to international conventions on human rights.”⁷⁷ More importantly, “compensatory remedies serve several important functions for the victims. They may provide psychological and sociological rehabilitation for the victims. International actions on behalf of the victims confirm that they were not responsible for what happened to them and assures them that the world acknowledges what has happened.”⁷⁸

6 Recommendations and Conclusion

The Niger-Delta crisis is an age-long crisis and despite the introduction of amnesty, the militant groups have only re-strategised and multiplied in number. It follows therefore that the re-integration process must of necessity include restorative justice mechanisms, which will add to the peace efforts and as a result bring lasting respite to the region. It is hereby recommended that there may be established alongside with a Truth and Reconciliation Commission a Compensation Commission patterned after the United Nations Compensation Commission.⁷⁹ It is noted that the amnesty programme gulped huge financial resources. Such finances were sourced from the international oil companies and proceeds from the oil exploration activities.⁸⁰ The Commission may thus also source funds through similar means to provide for adequate compensation for the victims of conflict in the Niger Delta region especially for those who have been displaced due to the destruction of their homes, and whose livelihoods have been destroyed. If the women can be compensated for the purpose of re-building their lives it will be more satisfactory for the community as a whole including the militants who will be more responsive to dialogue than seeking revenge through criminal activities. The amnesty program worked for a short while in this sense as money was being released but could not last as fifty per cent of the population (consisting of the women) had still not recovered from their huge losses.

Furthermore, a separate court can be established to ensure that the women are given the opportunity to give evidence about the devastation including rape and killings of family members and children. The court, though manned by the regular court judges may not necessarily be as formal as the regular courts and privacy of the hearing can be emphasised for the protection of the women and other vulnerable victims such as young girls. The courts can then forward the findings to the Compensation commission and give orders with respect to what the offender should do in terms of fines, written apologies or even outright dismissal for commanding officers where soldiers are involved. This does not, however, mean that the commanding officer committed all the acts of rape and arson but the court needs to hold a representative of the State accountable for these criminal acts, which may continue if unchecked by sanctions by the court of law.

In addition, policies in line with the principles applied by the United Nations Compensation Committee (UNCC) can be developed. The UNCC was designed, as the name suggests, as a compensation commission rather than as a war crimes tribunal.⁸¹ Its mission was to aid the victims of war crimes rather than to assign responsibility for the crimes to specific perpetrators. That crucial difference allowed the UNCC to dispense with concerns regarding due process for the perpetrators and to shift its focus to alleviating the suffering of the victims. By defining the mission differently at the outset, the UN shifted the perspective and put the victims at the centre of the Commission’s work. Clearly, the UNCC’s various findings and decisions that led to direct compensation of war crimes victims sets a new precedent for the international community. This was the case after the Iraqi-Kuwaiti conflict which was unique in that there was an obvious source to tap for post-war reparations of this type-Iraqi oil revenue.

⁷⁷*Ibid.*

⁷⁸*Ibid.*

⁷⁹The United Nations Compensation Commission was created in 1991 as a subsidiary organ of the United Nations Security Council. Its mandate is to process claims and pay compensation for losses and damage suffered as a direct result of Iraq’s 1990–1991 invasion and occupation of Kuwait which started the Gulf war. See https://en.wikipedia.org/wiki/United_Nations_Compensation_Commission.

⁸⁰Amusan *supra* note 17 at 5925.

⁸¹Zeigler and Gunderson *supra* note 71 at 192.

The actions of the UNCC following the Iraqi occupation of Kuwait nonetheless constitutes an increased level of concern for individuals and, more particularly, for women victims of armed conflict.⁸²

In conclusion, it is important that women participate in peace –building processes particularly women from civil society organisations involved in assisting the women victims to recover from their losses in accordance with the United Nations Resolution 1325. Guidelines for the implementation of restorative justice should be paramount during the peace negotiations. It is thus important that female judges are chosen to guide the negotiations. It is not enough for courts to deliver judgment for the payment of compensation without restorative justice mechanisms in place. For instance in a recent case filed against the Federal government of Nigeria by the people of Odi following the Odi Massacre, the court awarded the sum of thirty-seven billion naira (Fourteen billion dollars) as damages to residents of Odi town over the invasion of the community by armed soldiers in 1999. While delivering the judgment, the judge berated the government for the “brazen violation of the fundamental human rights of the victims.”⁸³ Nevertheless, rather than delivering the monetary compensation to the community as a whole, the compensation may be distributed in accordance with restorative justice guidelines while adopting the UNCC procedures. Without this, beneficiaries of such compensations may only be the male leaders of the community who may not spend such on restorative programmes for the community. As a result, there may be no finality to violence because soldiers and the Nigerian government generally may not understand the gravity of the loss, while the militant groups may never appreciate the consequence of their violent agitations on their women and communities, while only blaming the State and oil companies for their reprisals.

Bibliography

Articles

- Aghedo I, (2015) ‘Sowing Peace, Reaping Violence: Understanding the Resurgence of Kidnapping in Post-amnesty Niger-Delta, Nigeria’, *Insight on Africa*, 7 (2), 137-153.
- Aghedo I, (2012) ‘Winning the War, Losing the Peace: Amnesty and the Challenges of Post-Conflict Peace-Building in the Niger Delta, Nigeria’ *Journal of Asian and African Studies*, 48 (3), 267-280 at 276.
- Ajayi and Adesote, (2013) ‘The Gains and Pains of the Amnesty Programme in the Niger Delta Region of Nigeria, 2007-2012: A Preliminary Assessment’ *Journal of Asian and African Studies* 48 (4) 506-520 at 513.
- Akinwale A, (2010) ‘Curtailling Conflicts in the Resource Endowed Niger Delta Communities of Nigeria’ *AFFRIKA Journal of Politics, Economics and Society* 2 (1) & (2), 113-138 at 119.
- Connolly L, (2012) ‘Justice and Peace building in post-conflict situations an Argument for including Gender Analysis in a new Post-Conflict Model’ *ACCORD Occasional Paper*, 16 (1), 1-38.
- Ekine S, (2008) ‘Women’s Responses to State Violence in the Niger Delta’ *Feminist Africa*, 10, 67-83 at 69.
- Emeseh E, (2006) ‘Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria,’ *IBA Journal of Energy and Natural Resources Law* 24 (4) 574-606 at 581.
- Nworojee B, (2005) ‘Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims’ *Harvard Human Rights Journal*, 18, 85-105.
- Ogege S, (2011) ‘Amnesty Initiative and the Dilemma of Sustainable Development in the Niger Delta Region of Nigeria’ *Journal of Sustainable Development* www.ccsenet.org/jsd4 (4) 249-258 at 254.
- Ojajorotu V, (2010) ‘Victims of Oil Conflicts in Africa: A case study of the Niger Delta in Nigeria’ *Acta Criminologica* 19-30.
- Omeje K, (2005) ‘Oil Conflict in Nigeria: Contending issues and Perspectives of the Local Niger Delta People’ *New Political Economy*, 10 (3) 321-334 at 332.

⁸²*Ibid.*

⁸³Ibekwe N, <http://www.premiumtimesng.com/news/121196-odi-massacre-court-orders-nigerian-government-to-pay-n37bn-damages-to-residents.html>. *Premium Times* 20 February 2013.

- Omorodion F, (2006) 'Sexuality, Lifestyles and the Lures of Modernity: Participatory Rural Appraisal of Female Adolescents in the Niger Delta Region of Nigeria' *Sexuality and Culture*, 10 (2), 97-113 at 98.
- Schey P, (1977) 'The Pardoning Power and the Value of Amnesty,' *Journal of Criminology*, 9 (5), 325-333.
- Umejisi I, (2014) 'Amnesty, Patriarchy and Women: The 'Missing Gender' Voice in Post-Conflict Niger Delta Region of Nigeria,' *Gender and Behaviour*, 12 (1), 6223-6237.
- Zeigler S and Gunderson G, (2006) 'The Gendered Dimensions of Conflicts Aftermath: A Victim-Centered Approach to Compensation', 20 (2) *Ethics & International Affairs*, 20 (2), 171-193.

Books

- Agaba J, (2014) *Practical Approach to Criminal Litigation in Nigeria* (2014) 2nd Edition.
- Kukah M, (2011) *Witness to Justice: An Insiders Account of Nigeria's Truth Commission* Bookcraft, Nigeria.
- Teitel R, (2000) *Transitional Justice* New York, OUP.
- Van der Merwe H and Lamb G, (2009) *Transitional Justice and DDR: The Case of South Africa* Research Unit International Center for Transitional Justice.

Chapters in Books

- Abimbola J and Adesote S, (2011) 'Terrorism and National Security in the Niger Delta area of Nigeria.' In Babatolu J and Gbade I (eds) *National Security and Resource Management in Nigeria*, Ibadan, Nigeria .
- Crocker D, (2000) 'Truth Commissions, Transitional Justice and Civil Society.' In: Rotberg R and Thompson D (eds), *Truth Versus Justice: The Morality of Truth Commissions*, Princeton.
- Hayner P, (1995) 'Fifteen Truth Commissions, 1974-1993: A Comparative Study' In: Kritz N, (ed) *Transitional Justice: How Emerging Democracies Reckon With Former Regimes*, (pp. 225-261) Washington D.C United States Institute For Peace.

Legislation

- The Nigerian Land Use Act 1978 Cap L5 Laws of the Federation of Nigeria 2004.

International Instruments

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.
United Nations Security Council Resolution 1325 (S/RES/1325) 31 October 2000.

Reports

- Okon E, Report of the Niger Delta Women for Justice (NDWJ) on the Delta Women's siege on the American Oil company, Chevron-Texaco in Delta state, Nigeria, available at <https://www.ndwj.kabissa.org> 2002 accessed 18 August, 2016.
- Human Rights Violation Investigation Commission (HRVC), (2002) The Oputa Panel Report, Volume 1: Summary, Conclusions and Recommendations.
- Ekine S, (2001) *Blood and Oil, testimonies of Violence from Women of the Niger Delta*, London: Centre for Democracy and Development, Unit 6.
- Nwajah S, 'Obasanjo Condemned For the Situation in Nigeria' *The News* (Lagos) 6 December, 1999.
- Greenbaum B, (2006) *Evaluation of the 2005 Ex-Combatants' Dialogues* (Johannesburg: Centre for the Study of Violence and Reconciliation).
- Guaker E, (2009) 'Qualitative Analysis of the Oputa Panel and the Factors which explain the Failure of the Commission' available at bora.uib.no/bitstream/handle.../Master%20thesis_Elisabeth_Guaaker_Part%202.pdf?Accessed 4 October 2017.