

**NIGERIA, OIL AND GAS EXPLORATION AND THE NIGER
DELTA QUESTION: A STUDY IN CORPORATE SOCIAL
RESPONSIBILITY**



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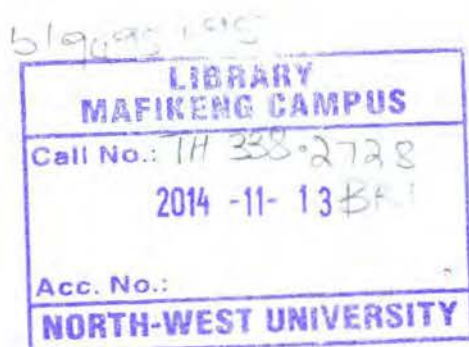
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**THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF LAW IN THE
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DECLARATION BY CANDIDATE

I, Bribena Enokie Kelvin declare that this thesis entitled: "Nigeria, Oil and Gas Exploration and the Niger Delta Question: A Study in Corporate Social Responsibility ", for the degree of Doctor of Laws (LLD) in the North-West University hereby submitted, has not previously been submitted by me for a degree at this or any other university, that it is my own work in design and execution and that all materials contained herein have been duly acknowledged.

.....

BRIBENA ENOKIE KELVIN

NOVEMBER 2011

DECLARATION BY PROMOTER

I, Professor Melvin L.M. Mba0 hereby declare that this thesis entitled: "Nigeria, Oil and Gas Exploration and the Niger Delta Question: A Study in Corporate Social Responsibility " by Bribena Enokie Kelvin for the degree of Doctor of Laws (LLD) in the Department of Public Law and Legal Philosophy, be accepted for examination.

.....

PROF. M.L.M. MBAO

NOVEMBER 2011

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DEDICATION

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LIST OF INTERNATIONAL INSTRUMENTS

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Comprehensive Environmental Response, Compensation and Liability Act
1992 (Superfund), USA.

Constitutive Act of the African Union, 2000.

Convention on Civil Liability for Oil Pollution Damage (1969).

Convention on the Establishment of International Fund for Oil Pollution
Damage (FUND Convention) 1971.

International Covenant on Economic, Social and Cultural Rights (1966).

International Covenant on Civil and Political Rights (1966).

Universal Declaration of Human Rights (1948).

LIST OF ABBREVIATIONS

ASME- American Society of Mechanical Engineering.

AU- African Union.

CDHR- Committee for the Defence of Human Rights.

CDU- Community Development Unit

CEDAW- Convention on the Elimination of all forms of Discrimination Against Women.

CEHRD- Centre for Environment and Human Rights Development.

CERCLA- Comprehensive Environmental Response, Compensation and Liability Act.

CESCR- Committee on Economic, Social and Cultural Rights.

CNOPB- Canada-Newfoundland Offshore Petroleum Board.

CNSOPB- Canada-Nova Scotia Offshore Petroleum Board.

CSCR- Center for Social and Corporate Responsibility.

CSIS- Center for Strategic and International Studies.

CSR- Corporate Social Responsibility.

CSSRD- Center for Social Science Research and Development.

DPR- Department of Petroleum Resources.

ECP- Environment and Conservation Programme.

EGASPIN- Environmental Guidelines and Standards for Petroleum Industry in Nigeria.

EITI- Extractive Industries Transparency Initiative.

EPA- Environmental Protection Agency.

ERA- Environmental Rights Action.

FAO- Food and Agriculture Organization.

FEPA- Federal Environmental Protection Act.

FIDH- International Federation for Human Rights Abuse.

GCC- German Commercial Code.

HCS- Host Communities

HNDC- Hope for Niger Delta Campaign.

HRW- Human Rights Watch.

ICEE- Institute for Climate, Environment and Energy.

ICESCR- International Covenant on Economic, Social and Cultural Rights.

ICMM- International Council on Mining and Minerals.

IPCC- International Panel on Climate Change.

LEANs- Less economically advanced nations.

LWCF- Land and Water Conservation Fund.

MEANs- More economically advanced nations.

MOSOP- Movement for the Survival of Ogoni People.

NCEMA- National Center for Economic Management and Administration.

NDES- Niger Delta Environmental Survey.

NESREA- National Environmental Standards and Regulations Enforcement Agency.

NGO- Non-Governmental Organization.

NNPC- Nigerian National Petroleum Corporation.

NOSDRA- National Oil Spill Detection and Response Agency.

NWLR- Nigerian Weekly Law Report.

OCS- Outer Continental Shelf.

OCSA- Outer Continental Shelf Act.

FAO- Food and Agriculture Organization.

FEPA- Federal Environmental Protection Act.

FIDH- International Federation for Human Rights Abuse.

GCC- German Commercial Code.

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NNPC- Nigerian National Petroleum Corporation.

NOSDRA- National Oil Spill Detection and Response Agency.

NWLR- Nigerian Weekly Law Report.

OCS- Outer Continental Shelf.

OCSA- Outer Continental Shelf Act.

PWYP- Publish What You Pay

SERAC- Social and Economic Rights Action Centre.

API- American Petroleum Institute.

SPDC- Shell Petroleum Development Company.

TCEQ- Texas Commission on Environmental Quality.

TNOCs- Transnational Corporations.

UDHR- Universal Declaration of Human Rights.

UN- United Nations.

UNCTAD- United Nations Conference on Trade and Development.

UNDP- United Nations Development Programme.

UNEP- United Nations Environmental Programme.

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INDIA

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India Environmental Protection Act 1986.

India Gas Act of 1965.

India Water (Prevention and Control of Pollution) Act 1984.

SOUTH AFRICA

Lebowa Minerals Trust Act (1987) South Africa.

Mineral and Petroleum Resources Development Act (2002) South Africa.

South African Development and Trust Act (1936).

ABSTRACT

This thesis addresses issues of the Niger Delta question which represents one of the most intractable sources of socio-political destabilization in the Niger Delta region of Nigeria. The study is on the intricate dynamics amongst the Nigerian state, the transnational oil corporations, the oil producing communities and the insurgent militia conflict. It investigates and explicates the “paradox of plenty” and the “resource curse”, the “absentee government” and “state capture” and the debilitating effects of petroleum politics in Nigeria. The economic exploitation of the Niger Delta region’s vast crude oil reserves by transnational oil corporations and government authorities is juxtaposed with the spectre of environmental degradation, human rights violations, and the recurrent rule of impunity. The protracted problems of the Niger Delta region thus, provide us with a pertinent analytical and contextual framework for the study of the dynamics and issues of transparency in other African petro-dollar states. It is argued in this study that the Niger Delta crisis is a conflict of values and fight for resources arising from decades of unacceptable standards of oil exploration and the absentee character of the Nigerian State.

By its very nature, the study called for a qualitative approach, supplemented by unstructured interviews using aide memoirs with selected officials, on the basis of their innate knowledge of the subject matter. The legal comparative research method, with a historic component also played an integral role in this study.

Some key findings and conclusions:

1. The study found that the Niger Delta crisis graduated from mere political agitations for state creation and provision of social amenities to extreme acts of hostage-taking and a twist of violence as a result of treating a major problem affecting the development of the Niger Delta people with levity for too long a period.
2. The study found that the on-going crisis in the Niger Delta region of Nigeria is a conflict of values and fight for resources amongst the oil-bearing people of the Niger Delta, transnational oil corporations and the Nigerian Government.
3. The study established some causal nexus between oil and poverty; oil and corruption; and, oil and human rights abuses.
4. That, the Niger Delta crude oil conflict is essentially a manifestation of state capture and inertia on the part of the Nigerian Government.
5. The study found that the Niger Delta economies are "criminalized" and are often characterized by conditions of anarchy and impunity. And this disorder is embedded in the dynamics of resource extraction, the nature and role of "shadow" state actors, as well as the interplay and patterns of relationships between organized criminal syndicates and the transnational oil corporations in the host communities.

The study recommends, inter alia:

1. That steps be taken by government to re-define its philosophy of national economic development from a state-driven to citizens-driven philosophy. To this end, Nigeria must seek to develop by developing its

citizens, the aggregate of whose satisfactory living conditions should form the criteria for measuring national development.

- II. That effort must be made to steer the nation towards proper fiscal federalism. The present “food is ready” economy whereby federating units are enslaved to national “cake sharing” instead of value generation, discourages entrepreneurship and sustainable development. It promotes undue dependency on petroleum products, inequity and ethnic distrust.
- III. That Nigeria needs productive resource control, not just development in the sense of house and bridge building. What is needed is a noticeable leap in the standard of living in the Niger Delta. Thus, people and not federal accounts must be the object of improvement.
- IV. It is recommended that government should ensure robust, independent and co-ordinated oversight of the oil industry including its impact on human rights.
- V. Transnational oil corporations should undertake full corporate social responsibility and comprehensive assessment of the social and human rights impacts of all oil and gas projects, ensuring that adequate information is provided to affected individuals and communities and that the process is transparent.
- VI. It is strongly recommended that an Oil Pollution Liability Trust Fund should be established by the Federal Government in concert with oil companies. The fund will be made up of a percentage of tax levied on oil companies and a percentage of earnings of the Federal Government

from oil. The fund should be used in ameliorating the conditions of the impacted environment and people.

It is hoped that these findings and recommendations will go a long way in the quest for significant environmental and social improvements in the Niger Delta region of Nigeria.

CHAPTER ONE: INTRODUCTION

1.1. Background to the Study

Some amazing paradoxes have come from the development of the Niger Delta region. Ordinarily, the Niger Delta should be a gigantic economic reservoir of national and international importance. Its rich endowments of oil and gas resources feed methodically into the international economic system, in exchange for massive revenues that carry the promise of rapid socio-economic transformation within the delta itself. In reality, the Niger Delta is a region suffering human rights abuse, administrative neglect, crumbling social infrastructure and services, high unemployment, social depravation, abject poverty, filth and squalor, and endemic conflict arising from the untenured operations of transnational oil corporations.¹

Oil mineral exploration and exploitation ordinarily should bring in enormous resources to sustain development in the areas where such activities are carried out. But in Nigeria, they have become a serious impediment to regional growth and development, as apparent neglect spanning several decades have made people in oil-bearing communities of the Niger Delta region of Nigeria restive and, sometimes belligerent. This study, therefore, focuses on the 'Niger Delta Question' within the Nigerian polity. The study, from a legal perspective, explores the economic, political and social forces at play, the extent and impact of oil mineral production activities in the Niger Delta in terms of corporate social responsibility, environmental sustainability, environmental degradation and the regulatory challenges posed by Transnational Oil Corporations (TNOCs). The study evaluates the law and policy on Oil and Gas exploration in Nigeria and its impact on the Niger Delta. Why the neglect of the region by the Nigerian Federal Government? This

¹ UNDP (2009) "Niger Delta Human Development Report", p.9.

work also examines the struggle for 'resource wealth control' and fiscal federalism and the likely impact on the Nigerian state. The work evaluates the position of the political leaders on resource control which has thrown up a major debate on the vexed issue of federalism in Nigeria. No doubt, the challenges of the Niger Delta have laid bare the fact that the nation's search for stable society and good governance, has to do with deviations from the principles of the present practice of federalism. This study attempts to look into emerging trends and the challenges of the Niger Delta vis-a-vis the similitude in other jurisdictions.

The study focuses on the conflicts in the Niger Delta region of Nigeria. The Niger Delta is Africa's largest delta, covering some 70,000 square kilometres. About one-third of this area is wetland, including the largest mangrove forest and fresh water swamps in the world.² Most of Nigeria's oil comes from this heavily populated region and adjoining offshore.

1.2. Statement of the Problem and Substantiation

The Nigerian state is a neo-colonial state whose character has been deeply affected by the dynamism generated from the colonial experience and the attendant weak development of capitalist relations in terms and scope which allowed the transnational oil corporations in their exploitation and exploration of these natural resources.³ Consequently, it interposes coercion in economic processes, and easily assumes authoritarian form because of its conceptualization by the ruling elite as an agency for the transformation of

² Brandom, G. (2006) "The strategic Importance of the Niger Delta in the Economic Development of Nigeria in the 21st century", A paper presented at the Corporate Social Responsibility Conference, London, February 6.

³ Festus, I. (2008) "Oil Companies and the Politics of Community Relations in Nigeria" in Raji, W. et al (eds.), *Boiling Point*, Lagos: CDHR, p.186.

society. As an agent of transformation and in accordance with its ideology of development, the state assumes wider roles, which are economic, political and cultural.

Economically, because the state is endowed with a pre-supposed progressive content, as an agent of development, it appropriates and centralizes surplus funds from export commodities in the name of accelerating development.⁴ Politically, the ideology of development makes it play an integrative role. As such, the repression of popular demand and of dissent is justified by the state as playing an integrative political role or what some refer to as nation-building.⁵ The integrative role results from the inchoate and fragmented multi-form society which colonialism created. Development becomes consistent with centralization of power and repression of dissent. The present researcher is bewildered as to the reasons or causes for these sharp differences and as to what role government must play in our societies in the context of the emerging trends and challenges in the Niger Delta region of Nigeria. This has made the "Niger Delta Question" an all important topic for this comparative study.

Equally important, topical and problematic, are juridical questions relating to compliance with EIA (Environmental Impact Assessment) standards that deal with the vulnerability of the environment. This study therefore, seeks to address the following questions: what is the historical ante of the Niger Delta and exploration for oil in Nigeria? What are the laws regulating the activities of transnational corporations engaged in oil exploration? Are these laws in

⁴ Eboe, I. (1984) *The Modern State and Violence: The Peripheral Formation*, Port Harcourt: Uniport, p.17.

⁵ Mariam Ikejiani Clank, (2004) *Igbo in Contemporary Nigeria*, Enugu: African First, p.628.

conformity with international standards and obligations considering human rights and the likely abuses thereof? What is the role of the Government in terms of good corporate governance? What is the character of the Nigerian State and its political will power to demand and enforce good corporate social responsibility? Are there trends of state capture or political inertia? What roles must the government of Nigeria play in the context of possibly emerging negative trends and challenges? What are the gaps or *lacunae* in the laws or in the law enforcement mechanism?

The above questions deserve much attention because of the sensitive and topical nature of the issues involved. Accordingly, this study will isolate the specific problematic issues and discuss them *seriatim*.

This work, then, hinges upon the understanding that the emergence of centralization in Nigeria's post-colonial politics has resulted in the expropriation and under-development of the Niger Delta region.⁶ The emergence of centralizing trends arose largely from the clamour by political elites for a strong interventionist state to facilitate accumulation.⁷ Thus, the high stakes of the central government in the control of crude oil became an important channel for the dominant elite to facilitate the process of appropriating the oil wealth for private use at the expense of oil-producing communities of the Niger Delta. Therefore, the need arises urgently to evaluate the law and policy on oil and gas exploration in Nigeria for possible

⁶ Tobias et al. (2007) *Fossil Fuels, Oil Companies, States, and Ethnic Minorities, Impact on Environment, Livelihoods and Cultural Change*, Hamburg: LIT Verlag, pp.25-30.

⁷ Onimode, B. (1982) *Imperialism and Underdevelopment in Nigeria: The Dialectics of Mass Poverty*, London: Zed Press, p.142.

fresh perspectives and to cover the lacuna between the law as it is and the law as it ought to be.

The interest of the Nigerian state, which represents an over-centralized federation of ruling elites from the larger ethnic groups, is to continuously produce oil. Acting against the background of a neo-colonial state, these forces employ a continuum of strategies to retain control of oil revenue. The expropriation of this revenue has produced a variety of negative consequences for the communities in the Niger Delta. This has led to the emergence of various forms of community movement groups like the Movement for the Emancipation of Niger Delta (MEND) led by Ateke Tom and Movement for the Survival of Ogoni Peoples (MOSOP) led by the late Ken Saro-Wiwa, who was brutally and arbitrarily killed by the Nigerian Government for organizing peaceful protests in defence of the massive abuse of human rights and environmental degradation in Ogoniland by transnational oil corporations.

1.3. Aims and Objectives of the Study

1.3.1. General Aims

Oil and gas have become one of the most lucrative sources of wealth and now the most important energy source of the world.⁸ Although, the exploitation has created some of the largest fortunes and has helped to achieve economic growth and development, little or no attention has been directed to the impact of this exploration and exploitation on the oil and gas

⁸ Amaogbari, C. (2009) *Economic History of the Niger Delta*, Port Harcourt: Rivers Publishers, pp.9-10.

producing areas, the Niger Delta.⁹ The slow pace of realizing the socio-economic rights entrenched in the Constitution of the Federal Republic of Nigeria, 1999 has, in recent times, led to violent protests arising from human rights violations by transnational corporations, coupled with government's inability to deliver social services to the oil producing-communities. This is important not only as it affects the standard of living of the people of the Niger Delta, but also because of the magnitude of the consequences that are already flowing from the government's inability to remedy the restive situation in the Niger Delta.

Therefore, the study aims to develop understanding of what factors are responsible for the perceived break down of law and order, to examine the gap between policies giving effect to socio-economic rights and their implementation as well as how the issues of resource control can be addressed to bring about stability and safety to the communities of the Niger Delta. The primary aim of this study is to investigate how the Nigerian oil and gas industry can be best positioned in line with the government to ensure prompt and equitable delivery of socio-economic services to alleviate the burden of poverty and environmental degradation orchestrated by advertent neglect of the oil-producing communities in the Niger Delta region of Nigeria.

1.3.2. Specific Objectives

Mindful of the above, the specific aims of this study are as follows:

1. To locate the root causes of the agitations of the people of the Niger Delta region of Nigeria and the continued eruption of violence.

⁹ Robert, S. (1983) "The Impact of Oil Operations on the Producing Regions of Southern Mexico", *3rd World Planning Review*, 5 February, p.57.

2. To examine the control mechanism of the resources accruing from the exploration of oil and gas in the Niger Delta region and to provide a comprehensive outcome which can generate further debate on the urgent need for a proper resource wealth control and management model for the Niger Delta.
3. It is the aim of this research to evaluate the various laws and policies on oil and gas exploration and how they have impacted on the people of the Niger Delta area of Nigeria.
4. To search for lasting solutions and ways to correct the anomalies in the Niger Delta region of Nigeria.
5. To find new palliative methods to be used by stakeholders for the purpose sustainable development through proper monitoring of the activities of transnational oil corporations (TNOc) to abide by the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises so as to avoid human rights abuses that create restiveness.

1.4. Basic Hypothesis

The basic question to be addressed is: why is the Nigerian State unable or unwilling to live up to its legal obligations in relation to oil and gas exploration in the Niger Delta? What lessons can Nigeria learn from successful models in some countries such as Botswana and South Africa? It is hypothesised that the failure or unwillingness of the Nigerian Government to enforce the law, thereby protecting the human rights and the physical environment of the Niger Delta is intimately related to the concept of "state capture" under which

successive governments and political elites have been colluding with transnational oil corporations.

1.5. Data Collection and Research Methodology

General Method of Investigation

Basically, there are two kinds of research methodology. These are the qualitative and the quantitative methods of data collection. Qualitative research has been broadly defined as any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification and the major components of this method include: case study, phenomenology, demography and historical analysis.¹⁰ On the other hand, quantitative research simply refers to research that involves analysis of numerical data.¹¹ It is worthy of note that the strengths and weaknesses of qualitative and quantitative methods are a perennial debate especially in the social sciences.¹² This study will not engage the continuity of such debate as this is not the most appropriate avenue save to indicate that according to Wilcoft (1990), qualitative analysis has two major advantages.

First, it produces more in-depth, comprehensive information. Second, it uses subjective information and participant observation to describe the context, natural setting or the variables under consideration as well as the interaction of the various variables in the context. It seeks a wider understanding of the

¹⁰ Neil, J. (2006) "Analysis of Professional Literature: Qualitative Research 1". Available at <http://wilderdom.com/OECourses/PROFLIT/Class6Qualitative1.htm> Accessed 14/8/09.

¹¹ Neil, J. (2007) "Qualitative Versus Quantitative research: Key Points in a Classic Debate". <http://wilderdom.com/research/QualitativeversusQuantitativeResearch> Accessed 14/8/09.

¹² Matveev, A.V. (2002) "Theory of Communication and Applied Communication", *Institute of Management, Business and Law*, Vol.168, No.1, pp.59-67.

entire investigation.¹³ Despite these advantages, Wilcolt is quick to point out the disadvantages of qualitative research methods. He argues that such research is subjective in nature and as such it is difficult to prevent or detect researcher-induced bias.

Nevertheless, the qualitative method of research is the most appropriate for the topic under investigation. The basic raw materials for this study have been distilled from primary sources – policy documents, federal and state laws, court decisions, commentaries and works of authority. These have been supplemented by participant observation over a two and a half year period and interviews with crucial role players such as chiefs and traditional authorities. Mindful of this, extensive use was made of the library sources including the inter-campus library services that enabled access to primary and secondary sources of the law. The study employed primary sources (International and regional standards, national legislations including the Nigerian Constitution, Judicial precedents - binding and persuasive, Resolutions of the African Union/United Nations and various Conventions relating to extraction of natural resources, environmental protection, wealth control, human rights and corporate social responsibility/corporate culture and governance) and secondary sources (policy documents, articles in journals and views of learned scholars as expressed in text books). In addition to desk-top research, participant observation and in-depth interviews, both structured and unstructured interviews were conducted in order to facilitate an in-depth analysis of the problem under investigation. Accordingly, six field trips were made to the Niger Delta for information relating to this study. But

¹³ Wilcolt, H.R. (1990) "Qualitative Enquiry in Education: The Continuing Debate", Available at www.okstate.edu/ag/agedcm4/academic/aged5980/newpage_21.htm Accessed 2/7/09.

for ethical/security reasons the names of the people actually interviewed cannot be disclosed.

Bearing in mind the age we are in, extensive use was made of the internet being the most modern and efficient research tool. Through this tool, vital and relevant choice information was gathered for this study.

In examining how the Nigerian Government can be positioned to ensure effective delivery of socio-economic services and the enforcement of related rights, this study adopted a policy evaluation and human rights approach. Nonetheless, given the nature of this topic, political and historical perspectives were not ignored. Furthermore, this study is descriptive, analytical, comparative and prescriptive in approach. Therefore, mindful of the fact that the Nigerian Government is broad-based given the governance structure of the country, it becomes difficult for a study of this nature to be deeply focused on all regions of the country. While the system of government was examined to have a broad picture of the operation of governmental system, an empirical and in-depth analysis was limited to the evaluation of the policies and standards in the Niger Delta region of Nigeria as is elucidated below in the section dealing with the delimitations of the study.

1.6. Literature Review

In any study of this nature, an elaborate literature review is imperative since it situates the thesis in context by providing a point of departure and identifying the lacuna to be filled. Geographically, the entity known as Nigeria came into existence with the amalgamation of the Northern and Southern protectorates

in 1914 by Lord Lugard, the then colonial Governor-General of both protectorates.

Exploration for oil in Nigeria began in the 1930s when the British colonial government granted the Shell Petroleum Development Corporation (SPDC)- a subsidiary of Royal/Dutch Shell, the exclusive prospecting and exploration rights in the whole of Nigeria.¹⁴ However, success only came in 1956 when the company discovered oil at Oloibiri in the current Bayelsa State.¹⁵ Two years later in 1958, the company struck commercial quantities of oil and it was time for the first commercial shipment out of the country.¹⁶ In March 1960, more oil was discovered by Shell BP in the Ogoni division, under what is now Rivers State. From then, it was smooth sailing for the country as far as oil discovery and production was concerned. While in 1960 Nigeria produced 17,000 barrels per day, this rose to 1,083,000 barrels per day in 1970. At the same time annual revenues jumped from 17million Naira in 1960 to 176million Naira in 1970. This had the effect of tremendously improving the country's balance of payments, with taxes and royalties constituting the majority of government revenue. With oil accounting for 88.2% of total exports, and 95.7% of merchandise exports, it was proving a major stimulant.¹⁷ With this state of affairs, Nigeria and Nigerians entered into a period of affluence, capable of spoiling even the most prudent spenders.

¹⁴ Asuka, T.T. (2010) *Ijaw World-View and Struggle for self Determination in the Niger Delta*, Ibadan: Stirling-Horden, p.75.

¹⁵ Khan, S.A. (1994) *Nigeria: The Political Economy of Oil*, Oxford: Oxford University Press, p.57.

¹⁶ Onimode, B. (1982) *Imperialism and Underdevelopment in Nigeria: The Dialectics of Mass Poverty*, London: Zed Press, p.142.

¹⁷ Bachrach, E.O. (1998) "Oil and Development: The case of Agriculture in Nigeria and Algeria", A dissertation Submitted to the Graduate School in Partial Fulfilment of the Requirements of the Degree of Doctor of Philosophy, Evanston: Illinois, p.85.

During all this time, the oil sector was controlled by transnational oil corporations with the succeeding governments in the country acting as hosts and collecting rents.¹⁸ Oil was bringing a lot of wealth to the country. Something had to be done. It was at this point that the country joined the Organization of Petroleum Exporting Countries (OPEC) in 1971.¹⁹

1.6.1. Developmental Implications for the Oil and Gas Sector

Development is a concept, which has assumed a pivotal position in modern polemics and socio-economic discourse. Recognized globally in 1986 as an inalienable right,²⁰ the expression “development” describes the process of accessing a higher, fuller and richer standard of living. Development is a process and not a project. As Ake has rightly observed, it is the process by which the subject matter recreates its life circumstances by attaining through self-effort, higher and richer standard of living in accordance with its needs, values and aspirations.²¹

According to Walter Rodney, in his epic – “How Europe Underdeveloped Africa”:

¹⁸ The Transnational oil companies had invested heavily in the oil business in the country and already by 1963 they were making handsome profits. The following companies were involved and the profits were made in British Pounds: Standard Oil of New Jersey (240 million); Royal Dutch/Shell BP (180 million); Gulf (120 million); Texaco (140 million); Mobil (68 million); Standard Oil of California (100 million); British Petroleum (65 million); Compagnie Francaise Petroleum (CFP) (42 million); and other smaller entities were making about 45 million pounds. See Onimode, B. (1982) *Imperialism and Underdevelopment in Nigeria: The Dialectics of Mass Poverty*, London: Zed Press, p.142, Aluko, S.A. and M.O. Ijere, (1965) “The Economics of Mineral Oil”, *Nigerian Journal of Economics and Social Studies*, Vol. 7, p.142.

¹⁹ OPEC was established in 1960 with three aims. Firstly, to co-ordinate and unify prices of member countries; Secondly, to attain the stabilization of prices in the international market; and thirdly, to promote a reasonable margin for those investing in the petroleum industry. On OPEC see Robinson, Jeffrey and Yamani, (1988) *The Inside story*. London: Simon and Schuster; Tobias et al. (2007) *Fossil Fuels, Oil Companies, States, and Ethnic Minorities, Impact on Environment, Livelihoods and Cultural Change*, Hamburg: LIT Verlag; and Zalloum, A. Y. (2007) *Oil Crusades: America Through Arab Eyes*, London: Pluto Press, pp.12-30.

²⁰ See the *United Nations Declaration on the Right to Development* (1986), Article 1(1).

²¹ Ake, C. (1987) “An African Context of Human Right”, *Africa Today*, Vol.34, No.1&2, p.8.

At the level of the individual, development implies increased skill and capacity, greater freedom, creativity, self-discipline, responsibility and material well-being.²²

The challenge of development in the broadest sense is to improve the quality of life. Development is a collective increase or advancement in the capacity of a people to realise greater or higher quality and standard of life in accordance with their values, yearnings and environment. Development is therefore a manifestation of the capacity of a people to independently increase their ability to live a more satisfactory life through independent pursuit, understanding and exploitation of their environment. In other words, the ability and process of attainment of an all-round higher standard of living through indigenous or personal effort.²³

In effect, a nation develops when its citizens by their own effort, and indigenous industry, stimulate the attainment of the above qualities in their society. It would therefore not be development if the qualities are attained by external assistance or if the character of the attainment is foreign completely or fundamentally at variance with the needs, values and aspirations of the particular developing society.²⁴

It is important to understand the human character of development as the human being is at the very root, centre and end of the process. As has been beautifully espoused by the United Nations:

²² Rodney, W. (1972) "How Europe Underdeveloped Africa", Allen: Unwin, p.9.

²³ Wokocho, R.A. (2002) *Development Right Issues in the Niger Delta*, Port Harcourt: Jite Books, p.14.

²⁴ World Bank (2001) *World Development Report*, Oxford, p.4.

*The human person is the central subject of development process; development policy should therefore make the human being the main participant and beneficiary.*²⁵

Ake shares this view when he posits that the people must be the means and end of the development process.²⁶ It is urgent and important to stress this point as the prevailing view in Nigeria would appear to be the enriching of government coffers and the continual enlargement of its content, with little or no reference or interest to the peoples' direct involvement in the process or outcome.

1.6.2. Right to Development

A right, we may say, is a capacity or interest recognized and protected by the law or some other norm. A right may therefore be religious, moral, social or cultural, but is legal only when the law beyond recognition procures its protection and enforcement. Such protected rights include liberty, power, immunity and claim.²⁷ It is said that we have a right when others have no authority or justifiable right to affect us (liberty), e.g., freedom of movement. When others are duty bound to obey or respect our bidding or command (power), e.g., depository rights of will-making. When others are helpless or powerless over us (immunity) and when others are legally liable to us and our will (claim/right), e.g., right to life or property which others must respect.²⁸

Each of these categories or variety of rights, signifies a character of the aggregate of the legal positions we refer to as right and each of them

²⁵ Article 2(1) of the Declaration on the Right to Development, 1986.

²⁶ Ake, C. (1986) "The Marginalization of Africa", Ibadan: Malthouse Press, p.42.

²⁷ Ehiguelua, I. (2007) *Environmental Protection Law*, Warri: New Pages, pp.50-60.

²⁸ Amachree I.T. (2011) *Compensation Claims Relating to Crude oil Spillage and Land Acquisition*, Port Harcourt: Pearl Publishers, p.20.

represents a position which the law will respect and protect as legal right. While liberty and immunity are defensive claims, power and claim are offensive or positive claims which the bearer can enforce against others. So long as we have not been disqualified by any impediments of a legal nature, these rights can be exercised and enforced by the courts of law of the land.²⁹

It follows naturally that where a right is not justiciable as in cases where the law creates a duty on government but confers no right of action on the citizens, such legal provisions should function as defences to charges of breach of public policy or duties, which may arise in the event of a citizen taking advantage of the constitutional directives to the government in ordering his life, conduct or business to his developmental advantage.

Can we then in the light of the above, say that there is a right to development? Put differently, is development a right? To answer this question, we must have recourse to the statute books since the right of our interest is a right legally enforceable. For, it then means that we must find expression and justification of such assertion, somewhere spelt out in one law or another capable of enforcement in the ordinary courts of law.

Since development includes educational, economic, scientific, social and cultural advancement, we can find provisions in the 1999 Constitution of the Federal Republic of Nigeria (CFRN). These include the provisions for judicious management of the economy and material resources of

²⁹ Adebowale, A.O.J. (2011) "Environmental Best Practices for Mineral Resources Development", *Research and Development Journal*, Vol.6, No.1, pp.103-110.

communities for the common good of all including the oil-bearing communities.³⁰

Section 17(2)(d) therefore provides:

Exploration of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented.

At the regional level, the African Charter on Human and Peoples Rights (HCHPR) now adopted into Nigerian Law by Chapter 10 of the Laws of the Federation of Nigeria (LFN), 1990 and upheld by the Supreme Court to be applicable in Nigeria's courts in the case of *Abacha vs. Fawehinmi*,³¹ declares in no uncertain terms in several provisions, the right of a people to existence and enjoyment of their natural resources. These include Articles 18, 19, 20 and 22 which provide that:

- 1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common development of mankind.*
- 2. States shall have duty, individually or collectively to ensure the exercise of the right to development.*

The right to development has long since transcended national or municipal legislation, to one of international protection. A number of international instruments not only declare human and peoples' right to development, but also demand national respect for such individual and collective rights.

The Universal Declaration of Human Rights (UDHR) declares that:

Everyone as a member of society has the right to social security and is entitled to self-realization through national effort and international co-operation and in accordance with the organization and resources of each

³⁰ Section 16 of the 1999 Constitution of the Federal Republic of Nigeria.

³¹ [2000] 6 NWLR (Pt. 660) 228.

*state of the economic, social and cultural rights indispensable for his dignity and free development of his person.*³²

The above, taken together with other provisions of the UDHR, leave us in no doubt as to the character of the right to development. If there ever was a doubt about the international status of development, that doubt was cleared by the United Nations in 1966 when it adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Article 1 of both Covenants provide identically as follows:

1. All peoples have the right to self-determination. By virtue of the right, they can freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

These provisions are further embellished by the United Nations Declaration on Permanent Sovereignty over Natural Resources which provides inter alia:

*The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.*³³

Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations and hinders the development of

³² Article 22 UDHR.

³³ Article 1, United Nations Declaration on Permanent Sovereignty over Natural Resources.

*international co-operation and the maintenance of peace.*³⁴

International concern for the right to development climaxed in 1986 when the United Nations, following its earlier Declaration on Social Progress and Development (1969), adopted the United Nations Declaration on the Right to Development. While the former sought to proclaim the right to development as part of man's socio-economic rights, the latter proclaims in a clear and unambiguous manner, the international human rights character and content of the right to development, proclaiming the human person as the central subject of development who should be the active participant and beneficiary of the right³⁵ and charging the State with the responsibility of providing the enabling environment for its realization.³⁶ The Declaration in its Article 1 provides:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

The peoples of the Niger Delta are persons and nations which fall within the purview of these expressions in international law and municipal law, and are therefore entitled to rights, protections and guarantees so clearly emphasised in the municipal and international legislative provisions above.

The right to a clean environment and to enhanced capacity to enjoy a higher life expectancy are related, and equally important in development. The degradation of the Niger Delta environment portends ecological disaster and

³⁴ Article 7, United Nations Declaration on Permanent Sovereignty over Natural Resources.

³⁵ Article 2(1), United Nations Declaration on Social Progress and Development (1969).

³⁶ Article 3(1), United Nations Declaration on Social Progress and Development (1969).

environmental genocide. A poisoned environment affects the people through inhalation of unhealthy chemicals, poisoning of plants and animals as well as the soil which, consequently, yields no harvest. This is a crime against the people as it denies them the right to life³⁷ by killing them instalmentally,³⁸ a situation that negates Article 24 of the domesticated ACHPR which provides that:

All people shall have the right to a general satisfactory environment favourable to their development.

The present state of oil and gas development in Nigeria poses serious problems of developmental dimensions. Gigantic as the sector may appear, its effect rather than develop the sector, retards it deeper and further into underdevelopment.

The environment is our common heritage. It is not just our habitat; it is indeed "us", for, without the environment there cannot be a people, as even the people are an integral part of the environment.³⁹ It is for this reason that the good stewardship of the environment and its safeguard has been considered a collective responsibility of every person, natural or corporate, individual, group or states.⁴⁰ Similarly, the need to preserve the environment has transcended the municipal concern, to a global or universal quest. In line with above, the United Nations Declaration on the Environment at the Stockholm Convention, has sought to ensure the measured and reasoned exploitation and utilization of natural resources and the environment without prejudice to

³⁷ Section 33 of the 1999 Nigerian Constitution.

³⁸ Owhoko, M.H. (2010) *The Language of Oil and Gas*, Lagos: Media Issues, p.3.

³⁹ Atsegbua, L. (2004) *Oil and Gas Law in Nigeria*, Benin: New Era, p.5.

⁴⁰ This will enable all such stake holders take positive and proactive steps towards protecting the environment from abuse.

the right of unborn generations. The environment, can, therefore, be adequately described as not a gift to squander but a loan from our forebearers standing in credit to our future generations.

The present state of development in the Nigerian oil and gas sectors is not just ineffective, but highly germane to environmental mismanagement and recklessness. The power to monitor and manage the environment rests on the government, which doubles as a de-jure senior partner in the business of exploitation of the environment.⁴¹ Accordingly, this makes the Nigerian Government not only a reluctant protector of the environment, but also a major partner in the violation of the environment which, therefore, has a greater need to conceal and suppress protests against environmental degradation, while window-dressing the nation as one where the international standards of environmental management are largely observed.⁴² The effect of this is the emergence of emboldened foreign operators who disregard host community concerns and safety as the Nigerian government has guaranteed them untrammelled operation through its agencies of coercion.

With the seat of government far-removed from the host communities of oil and gas exploration, the government is pre-occupied with the maximization of revenue and far too removed to be sensitive to its impacts, which include the destruction of flora, fauna and general gradual poisoning of the habitat.

⁴¹ By possessing 60% of shares of participating companies.

⁴² This has become the unofficial policy of the government's image launderers, especially since these protests began around 1992.

Secondly, it has left the government turning a blind eye to identified environmental malpractices by the oil operators in the Niger Delta, thereby resulting in severe environmental dislocations and despoliation of the host communities, gradual destruction of its habitat and instalmental decimation of its people.

Host communities now feel alienated from their natural resources, and harassed by their own government. They are thus gradually losing their sense of belonging to the Nigerian state and losing confidence in the ability of its government to protect them and preserve their human/citizenship rights. This has led to an explosion of ethnic nationalism.⁴³

Similarly, relentless suppression of the people by the government has led to a relentless resistance to apparent oppression.⁴⁴ This has heightened insecurity in the operational areas of the sector, and led to several deaths of oil operation staff and host citizens, hijacking of operational staff and frequent attacks on oil and gas installations.⁴⁵ This would appear to be natural as repression breeds increased resistance and dissent among oppressed people the world over.⁴⁶

Nigeria, at independence, operated a regionalist federation. The country was grouped into regions and each region operated independently without undue

⁴³ Chokor, B.A. (2000) "Appraising the Structural Aspect of the Crisis of Community Development and Environmental Degradation in the Niger Delta" in Oshuntokor (ed.), *Environmental Problems of the Niger Delta*, Friedrich Ebert Foundation, pp.72-73.

⁴⁴ Agaba et al (2010) "From Contention to Confrontation: The Politics of Environmental Protection and Agitation in the Oil Producing Areas of Nigeria" in Akpotor et al (eds.) *Sustainable Environmental Peace and Security in the Niger Delta*. Abraka: Delsu Press, pp.347-355.

⁴⁵ This trend has been frequent since 1996 especially after the Ogoni killings.

⁴⁶ Oyerinde, A. (1998) *Oil Disempowerment and Resistance in the Niger Delta*, Lagos: CDHR Publication, pp.55-70.

interference and hindrance from the centre. Each region mobilized their human and material resources in revenue generation and socio-economic development. Then, the military ventured into politics and oil became the major foreign exchange earner for the country.⁴⁷ As is characteristic of military rule, Nigeria became a unitary State. The control over oil and oil revenue became centralized, while the component units became mere military outposts that relied on the central government for directives and funding, thus, stifling local initiative for revenue generation. The result is the massive pillage and underdevelopment which now characterize the Niger Delta region of Nigeria.⁴⁸

Hence, this study examines, *inter alia*, the root causes of the deformities of the federal system as operated in Nigeria, the factors responsible for the extortion, degradation and consequent under-development of the Niger Delta region and what led to the rise in agitations, kidnapping/abduction of expatriates and armed conflict across the region. This trend is what has become known as the "Niger Delta Question" within the Nigerian polity, and to which no one has found lasting answers. It is the aim of this work to find and proffer such lasting and durable solutions to this unending debacle of armed conflicts in the Niger Delta. It is a conflict that involves agitations against the Federal Government and the Oil Companies, on the one hand, and between ethnic groups themselves, on the other, that has led to the formation of mass movements or organizations like the Movement for the Emancipation of Niger Delta (MEND) led by Ateke Tom, Movement for the Survival of Ogoni People

⁴⁷ Sagay, I. (2008) "The Constitution, Federalism and Resource Control: My Response", Available at www.nigerdeltacongress.com Accessed 17/9/09.

⁴⁸ Julius, I. (2009) "A recipe for Perpetual Crisis: The Nigerian State and the Niger Delta" in *Boiling Point*, Lagos: CDHR Publication, pp.89-90.

(MOSOP) led by the late Ken Saro-Wiwa etc. It is this increase in conflicts across the region that gave rise to the emergence of the agitation for resource control and return to fiscal federalism. The agitation is hinged upon the assumption that the operation of fiscal federalism is the only way through which the Nigerian state could release the necessary resources needed for the development of the Niger Delta region⁴⁹.

Consequently, this work argues that, for lasting peace to return to the Niger Delta and for stability and healthy competition among the federating units, there is an urgent need for re-examination and re-structuring of the federal system of government in Nigeria to reflect fair and equitable distribution of resources and an acceptable measure of autonomy at all levels of the constituent parts of the federation. The study argues that the continued operational standards of the transnational oil corporations (TNOOC) in terms of corporate social responsibility, the obligation to respect, protect and promote human right and other international standards of corporate culture needs evaluation.⁵⁰ Accordingly, the choice of this topic was necessitated by several factors some of which are elucidated in the problem statement.

1.6.3. Development of a Rentier Status

The increase of revenues from oil had its own effect on the country. Slowly other sources of revenue were ignored and all attention was focused on oil. Nigeria was fast becoming a country whose economy was solely being organized and run around a single commodity –oil. This was problematic as

⁴⁹ Ojeife, I. (2008) "The Nigerian State and The Niger Delta Question", *Environmental and planning Law Review*, Vol. 5, No.3, p.3.

⁵⁰ United Nations Human Rights Report (2008) "Responsibilities of Transnational Corporations and Related Business Enterprises", A/HRC/8/16 May.

Nigeria was catching an economic ailment called the “Dutch Disease.” According to economists, a country can be said to be ‘suffering’ from this disease when the large oil sector is causing an over-valuation of the exchange rate and thus the prices of exports rise and that of imports fall.⁵¹

At this point, Nigeria was slowly drifting into total dependence on the rents and royalties being paid by the TNOCs. It was becoming both a rentier⁵² and as well as a dependent State.⁵³ Its economy was dependent and relied on rent which was coming from foreign transnational oil corporations. The state was the main collector of the rents with the rest of the population standing on the periphery.

Membership of Nigeria in OPEC led to a new development. In the mid-1970s, revenues from oil rose sharply. This gave the member states a false impression that they had a lot of money and as oil was their main stay, they could borrow from the international financial institutions for development projects. This assumption was not entirely correct and was to cost many of them dearly, including Nigeria. They were soon left with heavy loans and debts to pay and service.

Thus, with time, oil was proving to be a curse rather than a solution to Nigeria’s problems. Whereas the resource could have led the country to

⁵¹ Karl T.L., (1997) *The Paradox of Plenty: Oil Booms and Petro-States*, Berkeley: University of California Press, where the author at p.5 characterises the ‘disease’ as “a process whereby new discoveries or favourable price changes in one sector of the economy leads to the abandonment of the other.”

⁵² Beblawi, Hazem and Luciani (1987) *The rentier States*, London: Croom Helm, p.50.

⁵³ Ihonvbere Julius and Timothy Shaw (1988) *Towards a political Economy of Nigeria: Petroleum and Politics at the Periphery*, Aldershot: Avebury, p.69.

economic independence, it pushed it deeper and deeper into dependence. Transnationals in other branches of business were also there to share the spoils. They controlled a variety of sections of the Nigerian economy and thus equally benefited from the country's oil industry.

TNOCs are usually very united. When a transnational operates in a rentier state, it functions in an oligopolist fashion. Oligopolists avoid price wars because of the detrimental effects of these wars on their economic interest; for price wars can result in colossal losses despite full control of the market. In order to sustain their grip on the world's oil resources the oligopolists share the market and invariably embark on gentlemen's agreements which ensure a minimisation of their losses and maximisation of their profits. There is no re-investment of economic surplus in the country of derivation and these transnational corporations fail to create any significant employment opportunities for the indigenes of producer countries throughout their years of operation.⁵⁴ This type of co-operation among trans-national corporations can only spell doom to the host economy. In the case of Nigeria, dependence was total with foreign interests having a total grip of the national economy; the country was borrowing heavily from international financial institutions and some of the revenues accruing was going into the servicing of the external debts of the country.⁵⁵

Unfortunately for Nigeria, with this onslaught from international capital suffocating her, the politics was not steered towards a fight to defend the

⁵⁴ Nwankwo A., (1982) *After Oil What Next?* Enugu: Fourth Dimension, pp.59-61.

⁵⁵ Deinduomo, G. (2009) "Oil Exploration Activities and Oil Producing Communities: A Framework for Breaking the Barriers to Development of Oil Producing Communities" in Emiri, F. and Deinduomo, G. (eds.), *Law and Petroleum Industry in Nigeria*, Lagos: Malthouse, pp.357-378.

economy. The TNOCs found no resistance but collaboration from both the civilian elites and the opportunistic military.⁵⁶ As one writer puts it:

*Members of the Nigerian bourgeoisie are actually and potentially active collaborators with foreign monopoly capitalists in Nigeria.*⁵⁷

Both the Nigerian political elites and the military were now ready to play second fiddle to the TNOCs who were in control of the economy.⁵⁸ They would pacify the people and control labour⁵⁹ to ensure that petroleum continued to flow as long as they get their rent in terms of fees and royalties or were appointed local representatives of these TNOCs. The people of Nigeria were left on their own, both those in the oil producing regions and the rest. The leadership had let them down. In the words of the novelist Chinua Achebe, the leaders had failed to rise to the responsibility and he identifies that as the trouble with Nigeria. In his own words:

*The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigerian character. There is nothing wrong with the Nigerian land or climate or anything else. The Nigerian Problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which is the hallmarks of true leadership.*⁶⁰

The Niger Delta crisis is essentially but among others, a resources and governance crisis. As noted by some writers, "nobody should be under any illusion that the oil companies and the federal government are not the most

⁵⁶ Ake Claude, (1981) *Political Economy of Africa*, London: Longman, p.116.

⁵⁷ Osoba Segun, (1978) "The Deepening Crisis of the Nigerian National Bourgeoisie", *Review African Political Economy*, Vol.13, p.63.

⁵⁸ Nwankwo, A. (1981) *Can Nigeria Survive?* Enugu: Fourth Dimension, p.91.

⁵⁹ Ihonvbere, J. (1998) *Labour, State and Capital in Nigeria's Oil Industry*, New York: Edwin Mellen. See also Ihonvbere, J. (1996) "Class struggles in the Oil Industry, the 'Rentier' State, and Labour Controls in Nigeria" in Onyige, P.U. (ed.), *Energy and Social Development in Nigeria*, Lagos: Longman, p.74.

⁶⁰ Chinua Achebe, (1985) *The Trouble with Nigeria*, Enugu: Fourth Dimension, p.3.

important factors driving the inter-ethnic and inter-community conflicts in the region.”⁶¹ While the nature of relations of the Nigerian state with the TNOCs is at the root of the problems of the Niger Delta, its under-development, repression and the nature of corporate governance by transnational oil corporations in the Niger Delta is also abundantly indicated. State and corporate governance are intricately linked in the three levels of conflict in the region: communities versus federal government, communities versus TNOCs and communities versus communities.⁶² Oil exploration and extraction with anticipated benefits becomes a problem when it ignores the impact of such exploration on the environment as well as the socio-economic well-being of the people of the oil-producing communities.

Nigeria, in February 2010 celebrated fifty-two years of oil exploration in the country. In spite of the enormous wealth oil has fetched the country, opinions of observers on the performance of this sector have not been altogether impressive. Nigeria's former Minister of Petroleum and former president of OPEC, Rilwan Lukman described it as “a blessing and a curse”.⁶³ Similarly, one author depicted it as “52 depressing years of oil in Nigeria.”⁶⁴ In the same vein, Shamsudeen Usman, Nigeria's Minister of Finance has observed that the Niger Delta region of Nigeria remains poor despite being rich.⁶⁵

⁶¹ Michael Watts and Ike Okonta (2003) “Petro Politics and Nigerian Democracy”, *Berkeley Workshop on Environmental Politics, Working papers 03-12*, Institute of International Studies, University of California, Berkeley.

⁶² Ikelegbe, A. (2006) “The Economy of Conflicts in the Oil Rich Region of the Niger Delta”, *Journal of Asian and African Studies*, Vol.5 (1).

⁶³ Aiyetan, D. (2010) “Oil Has Been a Blessing and a Curse”, *Tell*, February 18.

⁶⁴ Ezeobi, (2010) “52 Depressing Years of Oil in Nigeria”, *Punch*, February 17.

⁶⁵ Ojakorotu, V. (2008) “The Internationalization of Oil Violence in the Niger Delta of Nigeria”, *Turkish Journal of International Relations*, 7(1), pp.34-45.

1.6.4. Actual Challenges in the Niger Delta

The Niger Delta is quite strategic for development. It is not only strategic as a result of it being the epicentre of West African economic resource base but also because it is lavishly endowed with enormous water resources. Approximately, 21 major rivers connect the region to the luminous Atlantic Ocean which is an aquatic highway that opens coastal Nigeria to all the continents of the world. There are clear indications that huge underground lakes of fresh water abound in this area, suggesting that a prosperous water-based export economy can be sustained.⁶⁶

The region is encompassed with a unique constellation of ecological zones including sandy coastal ridge barriers, brackish saline mangroves, freshwater, permanent and seasonal swamp and low lands. It is traversed by a large number of rivers, streams, rivulets and canals as over 60% of the region is criss-crossed with creeks and dotted islands while the remainder is a low-land rain-forest.⁶⁷ In spite of the amazing wealth deposit as discovered and explored for over five decades, the quality of living and the developmental challenges confronting the region are still daunting. The following are some of the actual challenges of the Niger Delta region:

(i) Neglected Rural Settlements

Due largely to its difficult topography, over 95% of the people live in small, rural settlements with less than 5000, in population. In fact, 85% of these rural population depend on informal enterprises (fishing, canoe carving,

⁶⁶ Darah, G. (2003) "Repression in the Niger Delta", Paper presented at the 3rd All Nigerian Socialist Conference, Benin City.

⁶⁷ Abibe, E. and Essaugh, A. (1999) *Environmental Impact Assessment*, Enugu: Immaculate Publication, pp.45-50.

subistence farming, etc.) as their primary sources of livelihood. Similarly, these rural communities lack basic infrastructure. The social services here are grossly inadequate and deplorable, thereby, encouraging the youths to drift to the already overcrowded urban centres.⁶⁸

(ii) Low Poverty Ranking

Analysis of poverty and human development index (HDI), a standard measure of well-being encompassing the longevity of age, knowledge and decent standard of living qualified in terms of access to portable water, quality health, and educational services, electricity, good roads, gainful employment, political participation, etc., paint a very sordid picture of the Niger Delta as the area's HDI is as low as 0.564 with 1 being the highest ranking score.⁶⁹ This ranking, no doubt, places the Niger Delta region slightly above the country's overall HDI of 0.453, but its ranks are much lower than regions and nations with identical oil and gas resources such as Saudi Arabia (0.800), United Arab Emirates (0.846), Kuwait (0.844), Libya (0.799) and Venezuela (0.722).⁷⁰

(iii) Hopelessness and Youth Criminality

These long years of resource conflicts, poor service delivery, economic exploitation, social marginalization, political exclusion, infrastructural neglect and environmental degradation have transformed the Niger Delta into a zone of frustrated expectations, dashed ambitions and unprecedented restiveness. There is a siege mentality and psychology of deep-seated distrust and animosity against the state and TNOCs. These youths who are denied

⁶⁸ Okaba, B. (2008) "Petrodollar, the State and the Crisis of Development in the Niger Delta", Conference paper on *The State, Oil Industry and the Niger Delta*, NDU, 11-13 March.

⁶⁹ *Human Development Index Report*, (2010).

⁷⁰ *Human Development Index Report*, *ibid.*

meaningful education and employment and therefore a promising future, now indulge in conflicts and vices of all ramifications, including hostage taking, prostitution, armed-robbery, drug trafficking etc. as strategies to escape poverty and deprivation.⁷¹

(iv) **Environmental Despoliation**

Wide ranging and often destructive environmental changes emanating from the oil and gas businesses and industrialization, particularly oil spills and gas flares, have destroyed the natural resource base crucial to sustaining independent indigenous livelihood as brought out in *SERAC's* case.⁷² In most parts of the region for instance, hitherto very fertile lands are no longer productive. In fact, various attempts by the local people to avenge this economic disarticulation perpetuated by the State and oil companies have always compounded their environmental crisis leading to more devastating pollution of water wells, fisheries and frequent loss of lives and property arising even from reprisal attacks by state security forces. The Jesse (host community of some oil projects in the Niger Delta region) inferno of 1998 arising from pipeline explosion that claimed over 1000 lives is a worthy example.⁷³ The peasant farmers in the region have lost the fertility of their land to oil exploration. The resultant alienation of the people from their homeland and local substance base has intensified ineffective and inequitable land use practices.

⁷¹ Okaba, B. (2005) *Petroleum Industry and the Paradox of Rural Poverty in the Niger Delta*, Benin: Ethiope Publishing, pp.14-20.

⁷² Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001).

⁷³ Okaba, B. (2003) "Political Economy of Petroleum Pipeline Vandalization in the Niger Delta", *Journal of Business*, Vol.1, pp.35-45.

For instance, the Ogoni saga is a notable sad story. The Ogoni people in the Niger Delta grow mostly yam, cassava and plantain from which bumper harvests are recorded at the end of each farming season. Ogoni fishermen need not foray into the deep seas; the banks were rich enough with fish stocks to make business “boom”. The soil of Ogoniland was rich and loamy. Its natural position on coastal plains, nourished by creeks and rivers running slowly into the Atlantic coast, guaranteed successful farming. But all these were before 1958. Right after the discovery of oil in Ogoniland the story turned sour.⁷⁴

The intensive exploitation of the area’s rich resources, brought with it, severe environmental degradation and pollution. Several hectares of Ogoniland were acquired forcefully and devastated by oil explorers in the attempt to lay oil pipelines. The eventual promulgation of the Land Use Act of 1978, removed finally, the control of the land from the people and placed it in the hands of a ‘detached’ and virtually non-existent Federal Government. Apart from the acquired lands, adjoining farmlands also suffered, crops were destroyed, water polluted and the air fouled. None of these destructions were acknowledged let alone compensated for.⁷⁵

Farming in Ogoniland in the Niger Delta region has become an exercise in futility. The land has been raped of its virginity and deprived of its fertility through the continuous exploitation and irresponsible practices of the oil multinationals. The degradation by the multinational oil giant in Ogoni area –

⁷⁴ Rekiya, S. (2008) *MOSOP and the Ogoni Struggle*, Lagos: CDHR, p.78. See also *SERAC v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

⁷⁵ Rekiya, *ibid* note 74 at p.78.

Shell, continues till today. About 900 million barrels of oil have been carted away from Ogoniland with no returns made to the people by way of infrastructural development.⁷⁶

Apart from serious health hazards which locals are exposed to, buildings and metals are also corroded as a result of acid rain occasioned by persistent gas flaring. Shell BP, for instance, flares gas horizontally, and on several occasions, directly on communities. The majority of Ogoni population live in abject poverty. They live below poverty levels, in huts, dilapidated buildings and squalor. Many suffer from diseases of the lungs, heart attacks, skin diseases, dysentery and all other ailments because they lack basic amenities and health care. The Ogonis were left with no other option than to struggle to survive. This imperative created the need for Ogoni people to organise themselves into community based organizations under the umbrella of the Movement for the Survival of Ogoni People (MOSOP) with the late Ken Saro-Wiwa as the arrowhead.⁷⁷

Thus, the Ogoni region of the Niger Delta became the focus of international attention in the early 1990s, when residents began to protest the environmental degradation and harm to local communities associated with the large scale extraction of oil. The government of Nigeria used violent means to quell the protests, resulting in the death of and injury to activists, and ultimately in the arrests of several people, including Ken Saro-Wiwa, the leader of the Movement for the Survival of Ogoni People (MOSOP). Ken

⁷⁶ Girigiri, B.K. (2007) "Issues in the Problem of Youth Restiveness: Niger Delta Context" In Nwanna-Nzewunwa, O.P. et al (eds.) *Social Studies: Foundations, Methods and Contemporary Social Problems*, Owerri: Springfield, pp.141-153.

⁷⁷ CDHR (2008) *Ken Saro-Wiwa and the Crisis of the Nigerian State*, Lagos: CDHR, p.87.

Saro-Wiwa and eight others (otherwise referred to as the “Ogoni 9”) were accused of murder, and tried by a special military tribunal, and hanged on November 10, 1995. Family members along with other residents of the Ogoni region involved in the protests, sued Royal Dutch Petroleum Company, Shell Transport and Trading, a company official and the Nigerian affiliate of Shell Petroleum, alleging that they acted in concert with the Nigerian Government’s conduct, including torture, cruel, inhumane and degrading treatment, summary executions, arbitrary arrests and detention and crimes against humanity.⁷⁸ The case brought thirteen years ago in the Federal District Court in New York, was settled for US \$15.5 million on June 8, 2009.

In this context, the Ken Saro-Wiwa settlement represents a significant victory for the plaintiffs, for human rights and, the rule of law generally. The public terms of settlement and the substantial (at least to the plaintiffs) amount of money involved, demonstrate that some victims of human rights abuses at the hands of transnational corporations can find meaningful redress in U.S. courts.

(v) Non-diversification of the Rural Economy

The economic tragedies of these oil bearing Niger Delta communities are heightened by the non-diversification of the rural economy. This is so because the local people are often excluded from the benefits of the oil business, including contract awards and meaningful gainful employment due to lack of appropriate skills and since the once-rich agricultural potentials exploited in the mid-20th century which generated sustainable foreign

⁷⁸ *Wiwa et al vs. Royal Dutch Petroleum et al* S.D.N.Y. No.96 Civ. 8386 (2009).

exchange have been abandoned, the local populace now depend on a jaundiced informal sector that lacks everything it takes to flourish.

(vi) Environmental Refugees

An emergent phenomenon of environmental “refugees” resulting from environmental degradation, decreasing agricultural profitability, and oil induced inter and intra communal crisis, is the drifting away of over 40% of family heads and 60% of youths from the comfort of their traditional homes into the hell of urban shack settlements, leading to the crisis of population explosion, over-stretched infrastructure, high criminality etc.⁷⁹ Consequently, this has made life more unsafe for both the rich and poor in the urban areas.

(vii) Reckless Human and Environmental Rights Abuses

The Niger Delta region experiences reckless human and environmental rights abuses and other forms of social injustices chiefly perpetuated by the State and oil companies. In addition to the deployment of armed troops and the use of “uncivilized” conflict resolution techniques by these agencies, municipal and international environmental protection laws and statutes, particularly those concerning compensation, reparation and remediation principles are not respected. Rather, the Petroleum Act, Land Use Act, Inland Waterways Act and other obnoxious pieces of legislation have turned the region into a virtual imperial fiefdom, only good enough for plunderers.⁸⁰

⁷⁹ Onu, C.H. (2003) “The Oil Rich Niger Delta Region: A Framework for Improved Performance of the Nigerian Regulatory Process”, Royal Swedish Academy of Science, p.78.

⁸⁰ Okaba, B. (2003) “The State, Oil Multinationals and Informal Repression in the Niger Delta”, *Journal of Minority Studies*, Vol.3, No.1.

(viii) Upsurge in Ethnic Militia Groups

The Niger Delta region has also witnessed the emergence of warlords and a multiplicity of armed youth groups, pirates and cult fraternities, encouraged by the divide and rule tactics of the oil companies and sustained by the need to gain local control and privileges from the oil companies. The upsurge and wide spread growth of ethnic militia groups in the Niger Delta is not unconnected with the belief by the indigenes that they are a more dependable security force needed to safeguard and defend their environment, resources, lives and property. The accompanying arms proliferation and escalation of violent conflicts arising from hostage-taking may, if not checked, translate into outright warfare with adverse implications for national security, international diplomacy and direct foreign investment.⁸¹

(ix) High Prevalence of HIV and AIDS

These deplorable economic, political and social imperfections explained above have thrown the region's windows and doors wide open to the infiltration and spread of the dreadful and most potent obstacle to sustainable development: the HIV and AIDS. A combination of factors ranging from social and economic insecurity, decaying social and moral values, inaccessibility to basic health care information and services, the indulgence in illicit sexual relationships and other forms of harmful behaviour and practices by oil workers and the local people have exposed the youthful population to the scourge of HIV and AIDS and high rates of deaths of the much-needed human capital.

⁸¹ Personal communication by way of interview with five ex-militant leaders 30/7/2010.

By and large, this study argues that oil producing communities and states bear the responsibility of remedying environmental impact and infrastructural wear-and-tear accompanying oil and gas activities disproportionately. These states and regions also harbour concerns about rapid development in shore-side communities. The aforementioned concerns are equally at the root of the current agitations by the Niger Delta region of Nigeria.⁸²

The region is beset with monumental challenges. The natural terrain is difficult for purposes of rapid development while about five decades of petroleum exploitation by the industry has compounded the natural problems.⁸³ These problems have been worsened, over the years, by apparent absence of adequate, appropriate and sincere attention given to the region by the Nigerian Federal Government.

As a region of minority ethnic groups, it has been most difficult for successive Nigerian leaders from the major ethnic groups to comprehend, let alone empathize with or even listen to the basic demands of the region. They also failed to respond appropriately to the acute problems and human pains of the region;⁸⁴ this became worsened with the incursion of the military into politics.

To this end, this study evaluates the extent to which the Nigerian Government, in its enforcement of laws and policies, complies with relevant international standards, bearing in mind instant cases like the *Social and*

⁸² Personal communication by way of interview with two traditional rulers in the Niger Delta region 10/1/10.

⁸³ Sam, O. (2008) "A note of welcome: in lieu of a host", Paper presented at the seminar on: *The Niger Delta and Nigerian federalism* at the Petroleum Training Institute, Warri, Nigeria, pp.3-4.

⁸⁴ Hutful, E. (1984) *The Modern State and Violence: The Peripheral Formation*, Port Harcourt: Uniport, p.7.

Economic Rights Action Centre (SERAC) and Another v Nigeria,⁸⁵ where it was alleged that the Nigerian government in consortium with Shell Petroleum Development Company (SPDC) had exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing of toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium of Shell and Nigeria also neglected and/or failed to maintain its facilities causing numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, increased risk of cancers, and neurological and reproductive problems.

It was alleged that the Nigerian Government has condoned and facilitated these violations by placing the legal and military powers of the state at the disposal of TNOCs. It alleged that in the course of the past years, Nigerian security forces had attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement for the Survival of Ogoni People (MOSOP).⁸⁶ These attacks had come in response to MOSOP's non-violent campaign in opposition to the destruction of their environment by oil transnationals. For this very reason, MOSOP's founder and president, Ken Saro-Wiwa, a journalist and an international speaker, was hanged, having been sentenced by an arbitrary tribunal set up by the Abacha dictatorial government.

The various demands, agitations and armed conflicts in the Niger Delta have been propelled by the need to seek social justice in terms of equity, fairness

⁸⁵ (2001) AHRLR 60 (ACHPR).

⁸⁶ *SERAC, ibid* note 85.

and equitable access to basic rights by the Niger Delta people. We are reminded that many different kinds of things are said to be just and unjust: not only laws, institutions, and social systems, but also particular actions of many kinds, including decisions, judgments, and imputations.⁸⁷ The primary subject of justice is the basic structure of the society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. According to Steve Azaiki:

*Social justice refers to the concept of a society in which justice is achieved in every aspect of the society, rather than merely the administration of law. It is thought of as a world which affords individuals and groups fair treatment and impartial share of the benefits of society.*⁸⁸

Natural resources can be said to be fairly evenly distributed in Nigeria, as there is no region of the country that is devoid of some resources. Therefore, equity and justice imply that each state should control a substantial part of its resources. Fairness is explained here in terms of allowing areas with natural resources to enjoy more of the benefits, while such areas are made to pay taxes to the centre. Equity and justice is thus defined in terms of allowing those areas endowed with natural resources to be better off without necessarily making non-endowed areas worse off.⁸⁹

The current agitations and crisis in the Niger Delta region are reactions to what has been described as 'historic wrongs' and official insensitivity to the

⁸⁷ Rawls, J. (1990) *A Theory of Justice*, Oxford: Oxford University Press, p.7

⁸⁸ Azaiki, S. (2009) *The Evil of Oil*, Ibadan: Y-Books, pp.5-13.

⁸⁹ Abieyi, S.O. (2005) "A Review of Some Conceptual Issues on Resource Control in Nigeria" in Orabator, E., Ifowodo, F., & Edosa, E. (eds.), *Federal, State and Resource Control in Nigeria*, Benin: Parker, pp.57-58.

rights of the minority oil producing communities. Oil has opened up several areas on the surface of the earth to unprecedented development and has helped in no small measure to propel all other industries since oil assumed great ascendancy in industrialization. Countries like the United Arab Emirates, Iraq, Kuwait, Saudi Arabia, Libya, Britain, Singapore, among others, have explored and exploited their oil industry to the benefit of their own people. Nigeria has also benefited from the oil booms in the global market. Unfortunately, the Niger Delta region which harbours Nigeria's billions of barrels of crude oil, has had a peculiar experience at the hands of the oil companies and Nigeria's various governments. From available literature, the relationship between the TNOCs, the Nigerian state and the Niger Delta portrays mutual harmony between the oil transnationals and the Nigerian State on the one hand, and mutual exploitation of the Niger Delta and its people by the TNOCs and the Nigerian state on the other.⁹⁰

Thus, while the TNOCs continue to make huge profits, and the Nigerian state continues to amass wealth, the Niger Delta undergoes continuous exploitation, underdevelopment and neglect. Oil proceeds have imbued the Nigerian state and its political and economic elites with unprecedented wealth, affluence and opulence while the Niger Delta and its people continue to wallow in abject poverty and subjected to irreparable environmental degradation and deprivation, which is a violation of the right to general

⁹⁰ Ezike, E.O. (2011) "Remediating Environmental Pollution in Nigeria: Need to Adopt the Principle of Absolute Liability", *Journal of Petroleum, Natural Resources and Environmental Law*, 3(1). See also Azaiki, S. (2009) *The Evil of Oil*, Ibadan: Y-Books, pp.5-9.

satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment as it is widely known.⁹¹

No doubt, the situation is one of contradictions. While oil has made a positive impact on the Nigerian state, oil operations made negative, indelible marks on the Niger Delta. While oil brought Nigeria to limelight at the international level through unprecedented wealth, the Niger Delta drew international attention through the crisis resulting from the environmental degradation, health hazards, and impoverishment in the area.⁹²

The health risks in oil producing communities can be fatal. Accordingly, in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*,⁹³ part of the legal issues was that the TNOCs exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards, that the consortium of the Nigerian government and TNOCs also neglected and/or failed to maintain their facilities causing numerous avoidable spills in the proximity of villages, that the Nigerian government and the oil transnationals destroyed and threatened Ogoni food sources through a variety of means and that the government participated in irresponsible oil

⁹¹ *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

⁹² Olorode, O. (1998) "Imperialism, Neocolonialism and the Extractive Industries in Nigeria" In Olorode et al (eds.), *Ken Saro-Wiwa and the Crisis of the Nigeria State*, Lagos: CDHR Publication.

⁹³ (2001) AHRLR 60 (ACHPR 2001).

development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended.⁹⁴

There have been unquantifiable environmental degradation and hazards, loss of valuable agricultural land and settlements to burrow pits. This led some writers to observe that:

*Oil exploration activities have impacted adversely on the lives of the people. As more oil is exploited and taken away, more devastation is left behind. The petrodollars earned do not benefit the people whose lives have been shattered.*⁹⁵

The Niger Delta has become one of the hot-beds of crisis and conflicts in Nigeria. This is so because the problems of neglect and marginalization have been pushing the people to resist deprivations, intimidation and domination, hegemonic politics and injustice. Their grievances and struggles have led to the formation of liberation movements, such as, the Movement for the Emancipation of Niger Delta (MEND), Movement for the Survival of Ogoni People (MOSOP), with resultant incidence of citizenship contestations, youth violence and armed conflicts. The issues are economic and governance-related leading to abuse of the inherent fundamental human rights of the people of the Niger Delta and have provided the wellspring of crisis and conflicts in the region.⁹⁶

The above literature is quite extensive on the issues raised in our problem statement but are wanting in many respects. First, none of the writers has

⁹⁴ *SERAC v Nigeria*, *supra* at note 91.

⁹⁵ Oloruntimehin, B.O. and Ayoade, J.A.A., (2002) *An Overview of Conflicts in Nigeria: 1984-2000*, Ibadan: Development Policy Centre.

⁹⁶ Ifie, E. (2006) *Friends and Enemies of the Niger Delta*, Lagos: Azuka Books, pp.45-60.

examined or evaluated critically or otherwise the law and policy on oil and gas exploration and exploitation as the core concern. Secondly, none of the writers has presented a coherent account of the issues of sustainable environment and environmental justice as oil exploration and exploitation are land-based activities. A remarkable feature of environmental injustice in the Niger Delta region of Nigeria is that renewable resources like land, forests and underground aquifers are destroyed in the process of extracting non-renewable resources like crude oil and gas. Thirdly, there is no one comprehensive study bringing human rights back into the Niger Delta discourse regardless of the notorious and flagrant abuse of human rights in the Niger Delta region of Nigeria as evidenced by the hanging of Ken Saro Wiwa and others. Fourthly, there has been a clear failure to assess the role these TNOCs have played in relation to corporate social culture or responsibility in shaping the sordid Niger Delta story. Fifthly, nothing is written on state capture or government inertia. The focus of writers⁹⁷ has been on resource control and at best revenue sharing formulae. There have not been proper policy recommendations dealing with the control laws of oil exploration and corporate citizenship. The Niger Delta Question remains topical and looms large today regardless of the introduction of amnesty to the scene.

In view of the above, this study aims at filling the gaps by:

First, providing a coherent, historical overview of the Nigerian State, the Niger Delta Question and the impact of oil exploration and exploitation by TNOCs on the Niger Delta region of Nigeria from a comparative perspective and user perspective.

⁹⁷ Ikelegbe, 2005; Azaiki, 2009; Oloworaran, 2010; Ezeobi, 2011; Sagay, 2008; Oronto, 2009; Watts, 2008; Kemedi, 2008.

Secondly, examining and evaluating the laws and policies on oil and gas exploration and exploitation in the Niger Delta region of Nigeria from a comparative perspective to determine whether these laws and policies comply with international standards; and

Thirdly, assessing the Niger Delta 'Question' from a human rights perspective to ascertain whether there has been respect for these rights through compliance with global corporate governance norms.

In this way, this study hopes to contribute to the on-going efforts at finding lasting solutions to the problems associated with resource extraction and extortion, environmental degradation and the human rights of the people of the Niger Delta.

1.7. Scope and Limitations of the Study

1.7.1. Scope

This thesis is concerned with the Nigerian nation, the exploration and exploitation of its oil and gas resources as it affects the Niger Delta region of Nigeria, which has given rise to what is called the 'Niger Delta Question' and how to address the seemingly unending armed conflict in the Niger Delta region.

To achieve the aims and objectives as stated above,⁹⁸ this thesis is divided into seven inter-related chapters.

⁹⁸ See Paragraph 1.3 of this chapter.

Chapter one deals with the introductory part of this study and is aimed at identifying the problem under investigation. It defines the aims and objectives of the study. It also carries the rationale, justification and literature review, data collation and research methodology as well as the scope of the study.

The second chapter deals with the socio-economic history of the Niger Delta region of Nigeria and political analysis within the historical context of the nation, Nigeria. This chapter examines the extent to which developmental government systems have fuelled and fanned the furnace of armed conflicts in the Niger Delta region. It examines the existing political order in terms of the operational constitution in a comparative dimension.

The third chapter deals with a comparative evaluation of the Nigerian State and other jurisdictions of petro-dollar states contending with the 'paradox of plenty'. It examines comparatively, resource exploration and exploitation practices in global deltas, bearing in mind the developmental crisis in the Niger Delta region of Nigeria.

The fourth chapter examines the issue of natural resource management in Africa. It attempts to evaluate the factors that negatively impact on the management of natural resources in Africa. It also discusses the characteristics of some models of successful resource management and what lessons Nigeria can draw from these success stories.

The fifth chapter interrogates the crisis of corporate social responsibility and good citizenship in the context of the role of TNOCs in the Niger Delta region

of Nigeria. It attempts to bring human rights back into the Niger Delta discourse with regards to international and regional trends within the context of the United Nations, the African Union, etc.

The sixth chapter examines the impact of petroleum and pollution on human rights in the Niger Delta. It embodies a critique of the laws and policy on oil and gas exploration and exploitation in the Niger Delta.

The seventh chapter carries the broad findings, conclusions and recommendations.

1.7.2. Limitations and Delimitations of the Study

This investigation is limited in certain aspects for particular reasons. First, the term 'Nigerian State' is broad and as the title of this work indicates, the focus is on specific government departments, especially at the federal, state and local levels that are directly involved in the implementation of policies and the enforcement of socio-economic rights, with particular reference to the Niger Delta region of Nigeria.

Geographically, the study is principally concerned with the Niger Delta, although reference is made to experiences in other countries similarly affected by the questions of environmental degradation and its negative impact on the human rights of the affected communities.

1.8. Conceptual Clarifications

1.8. (a) Oil and Gas Exploration

In a broad sense, oil and gas exploration is usually categorised as either upstream or downstream or both. In the business of moving petroleum from

the ground to the final consumer, five separate and interrelated functions are performed -exploration, production, transportation, refining and marketing.⁹⁹ In the 'more economically advanced nations', such as U.K., U.S.A., Germany, France, and Japan, petroleum investments are usually more pronounced in the last three segments (Downstream).¹⁰⁰

On the other hand, exploration and production (Upstream) are the main investment attractions in 'less economically advanced nations'. The upstream functions can conveniently be sub-divided into pre-drilling activities, exploratory drilling, developmental drilling and equipping of wells and production itself. It is important to observe that, no mention is usually made of the protection and development of the petroleum resource base (environment), in defining petroleum investment.¹⁰¹ This traditional concept is predicated on the very narrow interests of the petroleum investor and government –a very profitable return on their investment.

1.8. (b) Law and Policy

A precise and concise definition of the word "Law" that is universally acceptable and applicable for all purposes and at all times is impossible for the purpose of this study. Therefore, the simple grammatical definition is adopted. This defines law as a "rule or body of rules enacted or customary in a community and recognized as enjoining or prohibiting certain actions and

⁹⁹ Pearson, S.R. (1981) *Petroleum and the Nigerian Economy*, California: Stanford University Press, pp.5-7.

¹⁰⁰ This is not to suggest that these countries do not engage in upstream operations, after all, both the U.S.A and U.K are significant oil and gas producers. But because of the sophisticated demand for petroleum products and the generally higher consumption in these countries, they invariably concentrate more on the down stream segments.

¹⁰¹ Worika, I.L. (2002) *Environmental Law and Policy of Petroleum Development*, Port Harcourt: Anpez centre for Environment and Development, p.28.

enforced by the imposition of penalties.¹⁰² Policy on the other hand is a course or principle of action adopted or proposed by a government, party, business or individual.¹⁰³ In practice, policy usually precedes the law; otherwise, it would be tantamount to putting the cart before the horse.

1.8. (c) Niger Delta and the Niger Delta Question

The Niger Delta area is located in the southern most fringe of the country, Nigeria. It is what is now popularly called the South-South zone of the country. It is a natural merger through a confluence of the River Niger and River Benue at Lokoja city in the middle belt, flowing downwards in numerous tributaries or outlets in the form of estuaries and creeks into the southern landmass of the geographical entity called Nigeria. The area is located between longitude 5° and 6° and between latitude 4° and 40° and 6°-10° North. The name 'Niger Delta' is synonymous with the Riverine people of Nigeria.¹⁰⁴

¹⁰² Thompson, D. (1995) *The Concise Oxford Dictionary*, Oxford: Clarendon Press, p.770.

¹⁰³ Thompson, Ibid note 102 at p.1507.

¹⁰⁴ Abila, S.E. (2009) "Historic Philosophical Foundation of Minority Rights Movements in the Niger Delta" In Emiri, F. and Deinduomo, G. (eds.), *Law and Petroleum Industry in Nigeria: Current Challenges*, Lagos: Malthouse, pp.175-210.



Diagram 1: Map of Nigeria showing the Niger Delta States

The ethnic groups that are found in the Niger Delta are the Ijaws -the fourth largest ethnic group in Nigeria, Itsekiris, Isokos, Urhobos, Ikweres, the Ogonis etc among others.¹⁰⁵ On the other hand, the “Niger Delta Question” refers to the root causes of the deformities of the governmental system as operated in Nigeria, the factors responsible for the extortion, degradation and consequent under-development of the Niger Delta region, what led to the rise in agitations, kidnapping and abduction of expatriates and armed conflicts across the region. This trend is what has become known as the “Niger Delta Question” within the Nigerian polity, for which no lasting answers have been found. It is the aim of this work to make a modest contribution to the on-going search.

¹⁰⁵ Willinks Committee Report, 1958, pp. 37-51.

1.8. (d) **Petro-dollar State**

A petro-dollar state is a state that is dependent on oil production for the bulk of its exports or gross domestic product and has weak state institutions due to a matrix of concentric circles of pay-offs and rewards built on blackmail and violence. It represents a conjuncture of oil and politics, the corrupt interactions that take place between oil production by transnationals and the activities of the state or government in the midst of material dialectics.

Petro-dollar state represents a state, where corruption flourishes owing to distortions in the policy and regulatory regime and the institutions of restraint. In petro-dollar states, private interests wield their influence through illegal means to take advantage of opportunities for corruption and rent-seeking, thereby violating the public trust and corroding social capital.¹⁰⁶

1.8. (e) **State Capture**

State capture is a concept that describes the state of affairs where temporary minorities in charge of the coercive powers of the state collude with political and economic elites to misuse the apparatus of their status to further their own narrow interests. It is a state of pretending absence in obligation while actually being present. This is open hijack of public funds for personal aggrandizement to the detriment of the. It describes the passiveness of the state due to institutionalised corruption in the face of obvious challenges.

¹⁰⁶ Kempe, R.H. (2000) "Corruption and Development in Africa" in Kempe, R.H. and Chikulo, B.C. (eds.), *Corruption and Development in Africa: Lessons from Country Case-Studies*. London: Macmillan, pp.17-39.

1.8. (f) **Dutch Disease**

Dutch disease refers to the seeming relationship between the exploitation of natural resources and a decline in other viable sectors. It is a situation whereby a country drifts slowly into total dependence on rents and royalties being paid by the transnational corporations. It leads a state to become a rentier state (depending on rents).

1.9. **Summary**

In this chapter, the foundation upon which the entire thesis is prosecuted has been laid. In so doing this Chapter outlines the background, aims and objectives of this study, the rationale and justification, the research methodology as well as an analysis of available literature with the view to identifying the problem under investigation. The basic hypothesis that this study seeks to establish is clearly stated and the scope and limitations of the study have been delineated.

The next chapter examines the development of socio-economic crisis in the Niger Delta from historical perspectives in order to test and validate some of our hypothesis.

CHAPTER TWO

DEVELOPMENT OF SOCIO-ECONOMIC CRISIS IN THE NIGER DELTA: HISTORICAL PERSPECTIVES

2.1. Introduction

Historical perspectives are of critical importance for a study of this nature, mainly because they provide an opportunity to test the validity of some of the stated hypotheses. They further enable us to discover the past and to use that past to interpret and understand the present as well as use the present to map the way forward. As aptly put by two eminent writers: "wisdom sometimes looks to the past for guidance in the future"¹⁰⁷.

Mindful of the above dicta, this chapter discusses the socio-economic history of the Niger Delta region of Nigeria within the historical context of the whole nation of Nigeria. This chapter also examines the extent to which developmental government systems have fuelled and fanned the furnace of armed conflicts in the Niger Delta region. It explicates the existing political order in terms of the constitution in a comparative dimension. The chapter also analyses the basis of Nigerian federalism, the nature of her jurisdictional allocation of powers to the federating units and the central government and issues relating to fiscal relations.

Economic history is that segment of history that deals with the economic resources, economic activities, economic growth, development, economic management and their attendant consequences on the other sectors of

¹⁰⁷ Rossouw, B. and Carabine, J. (1999) *Introduction in Fraud and the African Renaissance Martyrs*, Makerere: University Press, p.57.

societal endeavour. The roles of the economy in historical development are many and varied. However, the leading role of the economy in fashioning the pattern of growth is worthy of close examination.

Karl Marx, the leading exponent of socialism viewed the economic approach in historical explanation of events as the materialist conception of history or as "historical materialism" as labelled by Fredrick Engels', a close collaborator of Karl Marx.¹⁰⁸ In subsequent studies of the theories of Karl Marx, scholars have labelled this system "the economic interpretation of history and dialectical materialism". According to the Marxist school of thought, the character of any society is determined by its "economic foundation" or base. They argue that the economic structures constitute the foundational base, and the other institutions, i.e., the social, political and legal aspects are super structures, built on the economic foundation. Marxists buttress the significance of the economic foundation of societies by tracing the various stages of historical development in the world.

In European and North American history, the economy has always been paramount in the process of their development. Such periods as the Stone Age, Age of Discovery, Feudalism, Industrial Revolution, Mercantilism, Slave Trade, etc. were all predicated on economic exigencies of the time, which formed substantial part of their history.

¹⁰⁸ Robinson, L. (1978) "The Marxist Approach to Historical Explanation", *Historical Methods*, Vol.6, No.1, pp.8-9.

The economy was also an important factor during the era of European imperialism and colonialism. In his book, *Imperialism*, Hobson, stressed the economic base as being the primary motive for imperialism.¹⁰⁹

In Africa under which Nigeria is subsumed, the story is not different. The economies of most African societies have helped in shaping the course of their histories. In many African societies, states, empires and kingdoms, their rise to prominence, decline and fall have been attributed mainly or principally to the unstable forces of the economy. In the pre-colonial African societies, the Trans-Saharan trade was a vital commercial link between North African states and the states and kingdoms of the Western Sudan (West Africa).

This trade route opened up avenues of exchange of products between these two sub-regions. Trade in commodities such as fire-arms, salt, swords, liquor, clothes, kola nuts, gold-dust, etc., flourished. The introduction of fire arms among the traded commodities encouraged and intensified intra-and inter-ethnic rivalries which often led to warfare with the resultant destruction of lives and property in most African states. These conflicts, wars and raids produced slaves which became another important commodity of trade. It has been estimated that more than 1,000,000,000 persons were sold to North Africa as slaves through the Trans-Saharan trade routes in the 17th century.¹¹⁰

In a similar vein, the histories of most pre-colonial East, Central and South Africa were largely tied to the economy. For instance, the Bantu migration to

¹⁰⁹ Hobson, J.A. (1982) "Imperialism" In C.A. Leads (ed.), *European History; 1789-1914*, London: Oxford University Press, p.57.

¹¹⁰ Alagoa, E.J. (1986) "The Slave Trade in the Niger Delta: Oral traditions and History" in Paul, E. (ed.), *Africa in Bondage*, Wisconsin: Oxford University Press, p.67.

the south of their original homelands, the trade in the Congo, the Cokwe, Zambia, Zumbo, the Rozwi Mambo, etc. were all predicated on the prevailing economy at the time. The early white settlements (the Dutch and the British) at the Cape in South Africa were necessitated by the conducive and favourable economic atmosphere in the region.¹¹¹

2.2. Niger Delta Pre-contact Socio-economic History

Lacking the written records on which the historian relies, the pre-historian seeks to reconstruct the past through the means of archaeological evidence.

The objects recovered from archaeological excavation bear the evidence of man's exploitation of his natural resources and utilization of those materials that serve to fulfil his aspirations. These may be objects of warfare, tools for hunting, procuring and preparing his food, for collecting and storing drinking water, ornaments for beautifying his body, objects to satisfy psychological and physiological needs, ritual objects and currency. These objects and their placement within a geographical context assume added significance if they are associated with materials such as charcoal and shell for radiometric dating; or objects of trade such as beads, copper manilas and cowry shells for cross cultural dating. Each object has its potential for supplying information on the disposition, habits, attitude and technological progress of the people who lived on the site or in the area of study.¹¹²

¹¹¹ Akinyele, R.T. (2003) *Race Ethnicity and Nation Building in Africa: Studies in Inter-Group Relations*, Lagos: Rex Publishers, p.53.

¹¹² Anozie, F.N. (1988) "Cultural Prehistory in the Niger Delta", in E.J. Alagoa, F.N. Anozie and N. Nzewunwa (eds.), *The Early History of the Niger Delta*, Hamburg: Helmut, pp.45-67.

The archaeologist must carefully select sites for investigation, rigorously record the locations of findings, and painstakingly analyze their relationships. It is through this careful attention to what may have been the household of refuse of another era that the culture of a people can begin to be reconstructed, as well as their place of origin and patterns of migration. Often, however, physical artifacts cannot tell the "story" in its full complexity. Oral tradition, ethnographic studies, and environmental data can then complement or help to explicate the archaeologists' findings.

The Niger Delta is the largest delta in Africa, covering approximately 75,000 square kilometres.¹¹³ Its formation has been traced to the early tertiary period. During times of increased rain fall, the Atlantic Ocean exceeded its natural boundaries and encroached on land. It retreated in subsequent periods of prolonged dryness, leaving deposits of sediments. It was through this alternating process that the Delta originated.¹¹⁴

Okonny has indicated that "the near-radial disposition of the main delta rivers and their non-interrupted discharge into the sea classifies the Niger Delta as a highly-constructive delta that has been gradually building up and gaining more ground than it loses to erosion". Sediments entering the Niger Delta come from three independent sources: the Niger Benue drainage basins of rivers including the Volta in Ghana. The maximum thickness of the detrital

¹¹³ Okonny, I.P. (1988) "The Historical Geology of the Niger Delta", in E.J. Alagoa, F.N. Anozie, and N. Nzewunwa (eds.), *The Early History of the Niger Delta*, Hamburg: Helmut, pp.21-29.

¹¹⁴ Peek, P. and Keith, N. (2002) "Lower Niger Bronze Industries and the Archaeology of the Niger Delta" in Martha, A. and Philip, P. (eds.), *Ways of the Rivers*, Los Angeles: UCLA, pp. 39-59.

sediments of the Delta is approximately 8,000 metres.¹¹⁵ This subsurface has been divided into three layers: the Akata Formation, a shaley layer that extends from the sedimentary base; the Agbada Formation, which consists of alternating sandstone and shale that is the main oil reservoir sediment layer; and the Benin Formation, which is the sandy uppermost layer. The three layers extend across the entire Niger Delta.¹¹⁶

Economic prehistory should be understood as an attempt to describe ways in which groups have sought to modify their physical environment to satisfy their basic needs for food and shelter. It is appropriate to reveal the economic potentialities and/or natural resources in the Niger Delta. This approach brings to light two significant points worthy of acknowledgement in the pre-European contact economic activities in this region. First, the economic potentials showed the richness or otherwise of the region, and second, these natural resources influenced and dictated, to a considerable extent, the economic activities of the inhabitants of this zone.

The economic resources which had sustained life in this region from earliest times were abundantly found in three sub-ecological and geographical zones of the Niger Delta. These three geographical belts included the *Sandy beach belt* located along the Atlantic seaboard, the *Salt water belt* and the *Fresh water belt*.¹¹⁷ All three belts have their corresponding economic resources

¹¹⁵ Hospers, J. (1965) "Gravity Field and Structure of the Niger Delta", *Nigeria Geological Society, American Bull* 70, p p.381-97.

¹¹⁶ Udo, R.K., (1978) *A Comprehensive Geography of West Africa*, London: Heinemann, pp.30-35.

¹¹⁷ Anozie, F.N. and Derefaka, A.A. (2008) "Economic and Cultural Prehistory of the Niger Delta", *Environmental and Planning Law Review* 3:16, 27-44.

and attendant value. The geographical belts and their resources are as listed below:

i. **Sandy beach belt-** The resources in this zone are the many water ways (rivers, creeks, etc.), fishes (accordingly, fishing was very important in the economies of the Niger Deltans), aquatic animals, game (antelope, monkey, apes, etc.) and birds of various kinds, seashells, sand and raffia palms.

ii. **Salt water belt-** Most of the resources above are also available in this zone. However, a distinguishing economic phenomenon is the presence of the red mangrove plants which have given the name 'the mangrove forest' to the zone. The mangrove tree is the most important economic tree in this belt. Almost all parts of the tree are useful. It is also a host to some shell fish as they stick to it for existence. The salinity of the river water is an invaluable asset to the inhabitants of the zone, just as the production of salt from the roots of the mangrove tree and the sea water became a viable occupation of the people.

iii. **Fresh water belt-** The land in the fresh water belt is very arable. There are many water and forest resources. Apart from the water resources, forest resources include various economic trees like Abura, mahogany, Iroko, the palm tree, game and birds.

The economic relevance of these resources cannot be over-emphasised. They have sustained the lives of the people from the distant historical past to the present.

2.3. Economic activities in the Niger Delta

Ever since the Niger Delta has been in existence, the resident communities have continued to eke out a living from it. The ethnic nationalities of the zone comprise people from the Western, Central and Eastern Delta from pre-colonial times who have engaged in varied economic activities. Besides, they also developed tools, technologies and techniques of exploiting, extracting and harnessing these economic resources found abundantly in the Niger Delta in harmony with the natural environment.¹¹⁸

As noted earlier, the Niger Delta falls into three ecological zones, viz, the Sandy, the Salt and Fresh water zones. Therefore, the economic resources derive from the sandy, salt and fresh water as well as from the forest, which invariably set the pace for the economic activities of the region.

Some of the notable economic activities of the people of the Niger Delta before the advent of oil exploration are as follows:

i. Fishing: Fishing in the various water ways was an-age long economic activity and occupation of many people in the Niger Delta region. Fishing was most common and widely practiced due mainly to the deltaic nature of the environment. The delta abounds in a network of numerous waterways in the form of rivers, creeks, streams and canals which cross and criss-cross one another. Fishing as an occupation in the Niger Delta can be divided into two broad areas, namely, subsistence or domestic fishing and extensive or commercial fishing.

¹¹⁸ Akinwumi et al (2007) *Historical Perspectives on Nigeria's Post Colonial Conflicts*, Lagos: Unimark, p.193.

ii. Farming: Farming is a major economic activity of the Niger Delta people aside from fishing. The fresh water zone of the Niger Delta is endowed with rich clayish soil which extends to merge with the hinterland non-deltaic region. The vegetation in this region is tropical rain-forest and forest products such as high trees, palm oil trees and raffia palms abound. Farmers cultivate trees and food crops.

iii. Palm oil production: One of the most important economic activities that cuts across the length and breadth of the Niger Delta is the extraction of palm oil. Palm trees abound in the fresh water zone of the Delta, just as there are abundant mangrove trees in the salt water zone (in the mangrove forest). The palm trees are some of the most useful and viable economic plants in the Niger Delta. Apart from the finished products of the oil and the palm nuts, the leaves and even the stems have been of economic value to the people in the making of brooms used for sweeping and cleaning.

iv. Hunting and trapping: The twin occupation of hunting and trapping has been an age long occupation of the riverine peoples of the Niger Delta. The various vegetational zones in the Niger Delta were home to a variety of game (wildlife) and reptiles. They included monkeys, hyenas, birds and even snakes. Others included antelopes, bush pigs, grass-cutters, alligators and other aquatic and land reptiles.

2.4. The Niger Delta and its Bio-diversity

Besides white collar jobs, there are alternative economic activities available in the Niger Delta region and that can be found in biodiversity. The Nigerian government only needs to be sensitive to the plight of these oil-producing communities and develop the wetlands of the Niger Delta region in order to give them a sense of belonging. Biodiversity is the key to food security. It is the most important foundation for food security. Food security ultimately depends on the protection of the cultural and natural ecosystem and services, as well as the knowledge and materials needed to provide and process food and drinks. Although the Niger Delta is biologically the least known ecosystem in Nigeria, it has Africa's largest mangrove forests with extensive fresh water swamps.

Biodiversity provides immense economic value in the area of eco-tourism and sustainable livelihood for local communities and for conservation of natural environments, which was recognized internationally when the United Nations declared 2002 as the International Year of Tourism. Eco-tourism represents one of the areas where the link between economic development and conservation of natural areas is potentially clear and direct.¹¹⁹ Eco-tourism could help generate benefits to local communities in terms of employment and revenues. Biodiversity allows for the establishment of forest reserves, natural parks and game reserves. It is reported that the bare areas created in mangrove forests by oil workers could be successfully re-vegetated with adaptable indigenous trees and shrubs. Education of rural communities on

¹¹⁹ Ekeke, B.A. and Nwonvala, A.I. (1999) "Forestation of Bare Degraded Mangrove Areas in the Niger Delta", *6 Delta Agriculturist*, pp.75-90.

the natural roles and importance of biodiversity can increase their awareness and open avenues for better utilization of forest resources.¹²⁰

2.5. Oil Developmental Complex of the Niger Delta

Taking a cue from Oloibiri, we have a classical situation in which the decline in economic importance of a town, community or region leads to its potential oblivion, social obscurity and developmental neglect or decay because its glory has departed, hence the developmental complex or what we may label or refer to as "Oloibirinization". This derivative concept from the dehumanizing experiences of Oloibiri (the host community of the No.1 Oil Well in the Niger Delta region of Nigeria) provides us with a useful paradigm to envisage a situation in which after oil, the Niger Delta would suffer neglect for a number of reasons, factors and forces already at work. First, the tempo of development in the Niger Delta will nose-dive because one of the partners, namely, the oil companies would no longer have reasons to be around. Second and very importantly, the current abysmally low level of commitment of the various agents of the Nigerian state -federal, state, local government and specialised development agencies like the Niger Delta Development Commission (NDDC) to the development of the Niger Delta at a time the region is yet the beautiful bride or cash cow of the nation, strongly indicates that when she becomes a hag and an economic liability because her glory, oil is gone, she will be abandoned. Existing but ageing infrastructure may never be rehabilitated and new ones may not be embarked upon.

¹²⁰ Idumah, F.O. (2001) "Forestry Sub-Sector and Poverty Alleviation in Nigeria" in Popoola, L., Abu, J.E. and Oni P.I. (eds.), Proceedings of the 27th Annual Conference of the Forestry Association of Nigeria (FAN), Abuja, 17th -21st September, pp.319-327.

At present, accounts of the level of development are depressing. For instance, the Niger Delta Human Development Report stated clearly that “analysis of poverty and human development paint a dismal picture particularly when the Niger Delta is compared with other oil-producing regions of the world.¹²¹ Even while the region is the reigning queen of natural wealth, she suffers from infrastructural neglect. The report clearly indicates that: “The Niger Delta is a region suffering from administrative neglect, crumbling social and physical infrastructure and services, high unemployment, social deprivation, poverty, filth and squalor and endemic conflict”.¹²²

Successive governments have been unwilling to embark on developmental projects until threatened by crisis or after the actual outbreak of hostilities between the people, the state and oil companies. The conflict in the Niger Delta has remained one of the most intractable conflicts in the country since the Biafran civil war, with no clear solution in sight. A credible response to these threats to human security lies in peace-building.¹²³ Since 1999, Nigeria has been experiencing conflicts arising mainly from deeply-rooted threats to human security. The threats to human security have been exacerbated by a long period of economic mismanagement, endemic corruption, lack of accountability and transparency.¹²⁴ The relationship between human security and peace building is dynamic and interdependent. To enhance the constructive transformation of the existing conflict in the Niger Delta, Nigeria

¹²¹ UNDP (2009) *Niger Delta Human Development Report*.

¹²² *Tell* (2008) “Oil Conference: New barrels of Hope for Nigeria”, February 29.

¹²³ Zartman, I.W. (1995) *Elusive Peace: Negotiating an End to Civil Wars*, New York: Brookings, pp.34-40.

¹²⁴ Assefa, H. (2001) *Reconciliation in Peace Building: A Field Guide*, Colorado: Reinner Publishers, pp.335-346.

should develop sustainable infrastructure of human security that is guaranteed through packages of peace building measures.

2.6. Constitutional Development and the Niger Delta Socio-political Situation

1. Pre-independence Constitution

The geographical entity known as Nigeria came into existence with the amalgamation of the Northern and Southern protectorates in 1914.¹²⁵ However, it was not until 1951 that an acceptable constitutional framework was worked out by the colonialists and people of Nigeria. The 1951 constitution introduced fundamental changes into the relationship between the colonialists and the natives on the one hand and between the native Nigerian groups themselves,¹²⁶ on the other.

The constitution was promulgated after an unprecedented process of consultation with the peoples of Nigeria as a whole. The consultation was total from the villages to a national conference. The outcome of the consultations marked the first formal introduction of *federalism* into Nigeria. The conference noted that: "we have no doubt at all that the process is already given constitutional sanction, and fully justified by experience, of devolution of authority from centre to the regions should be carried much further so that a federal system of government can be developed".¹²⁷ The

¹²⁵ Inyovbaire, J. (2009) *A Recipe for Perpetual Crisis: the Nigerian State and the Niger Delta*, Lagos: CDHR Publication, p.83.

¹²⁶ Marian, I.C., (2004) "Igbo in Contemporary Nigeria" In Ofomata G.E.K., (ed.), *A Survey of the Igbo Nation*, Enugu: Africana, p.628.

¹²⁷ Sagey, I. (2001) "Nigeria: Federalism, the Constitution and Resource Control", Lecture delivered at the *Fourth Sensitization Programme on Resource Control*, 19th May, Lagos.

general conference was of the opinion that over-centralization would be a grave mistake “in this vast country with its differing conditions and needs”.¹²⁸

Federalism is an arrangement whereby powers are shared between a federal or central authority and a number of component units in such a way that each unit, including the central authority, exists as a government separately and independently from others, operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of affairs and with an authority in some matters exclusive of all others.¹²⁹ In a federation, each government enjoys autonomy, separate existence and independence of control of any other government. Each level of government exists, not as an appendage of another government, but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from directives from any other government.

It was expected that federalism would help in the effective management of heterogeneity, enhance democratic consolidation and facilitate socio-political and economic co-existence, while at the same time creating unique divergences, which would subsequently facilitate the process of nation building as well as development.

2. The 1960 Independence and Post-Independence Constitutions

The 1960 Independence and 1963 Republican Constitutions of Nigeria epitomized some elements of a true federal system. The 1950 national

¹²⁸ Moro, A.I. (2008) *The Niger Delta Crisis: Beyond Employment and Physical Development*, Port Harcourt: Mind Quest, p.76.

¹²⁹ Preboye, I.C. (2005) *The Core Delta*, Ibadan: Rural Books, pp.80-100.

conference was followed by other consultations in 1953, 1954, 1957 and 1959, in which the practice of federalism was perfected. An important feature of these Constitutions was the extensive powers granted to the regions, making them effectively autonomous entities and a revenue arrangement, which ensured that the regions had the resources to carry out the immense responsibilities of governance.¹³⁰ Under these constitutions, the true federal system was made up of strong regions and a central government with limited powers. Certain features emphasised the thoroughness of the federal system in this period. These included:¹³¹

- i. Each region had its own separate constitution, in addition to the federal constitution.
- ii. Each region had its separate Coat of Arms and Motto different from that of the Federal Government.
- iii. There was a separate judicial system for each region which enabled the regions to have not only High Courts, but also Regional Courts of Appeal.
- iv. The revenue allocation system under these constitutions was based on derivation. That meant that the amount of revenue accruing to a state was determined by what the federal government derives from that state.

The federal constitution of 1960 in Part 2 of Chapter 9 allocated the country's revenues to the two levels of government and shared other federally collected revenue between them. Section 140 of the 1963 Constitution made provision

¹³⁰ Wheare, K.C. (1953) *Federal Government*, London:OUP, p.53.

¹³¹ Adejumobi, S. (2005) "Civil Society and Federalism in Nigeria" In Onwudiwe, E. and Suberu, R. (eds.), *Nigerian Federalism in Crisis: Critical Perspectives and Political Options*, Ibadan: Archers, p.32.

for the sharing of the proceeds of minerals, including mineral oil. It stated thus:

*There shall be paid by the federal government to a region a sum equal to 50% of proceeds of any royalty received by the federation in respect of any minerals extracted in that region and any mining rents derived by the federal Government from within any region.*¹³²

Interestingly, each region strove to have a dominant revenue-yielding product: the North had groundnut pyramids and cotton, the West had cocoa and rubber and the East had palm oil. Thus, the federal principle at this point was a basis for defining competition between the regions for social and economic progress in Nigeria.¹³³

It was a period in which competition among the various regions generated economic gains that ushered in industrialization, and a massive investment in education. Progress was made not because of natural resources, but because of the healthy competitiveness which caused the leaders in the 1960's to become creative and rigorous in public choice-making. There was steady progress, especially between 1956 and 1966, before the military intervened in politics, and crude oil assumed the position of the largest foreign exchange earner.¹³⁴

2.7. Centralization of Revenue Sources

As noted earlier, at independence in 1960, Nigeria was a federation of three powerful regions. Each region was provided a tax base composed largely of

¹³² Bello-Imam, I.B. (1999) *Fiscal Federalism in Nigeria*, Ibadan: National Centre for Economic Management and Administration (NCEMA).

¹³³ Moro, A.I. (2010) *Socio-Political Crisis in the Niger Delta*, Ibadan: Spectrum Books, p.253.

¹³⁴ Utomi, P. (2008) "Resource Control, Fiscal Federalism and Political Stability in Nigeria", A paper delivered at the Seminar on *Niger Delta and Nigerian Federalism*, 15th February, Lagos.

revenues easily identifiable as originating from these regions. A pooling account was also established for sharing revenues considered to be of national significance such as mining rents and royalties and customs duties – import and export excise-duties and company taxes.¹³⁵ The principle of derivation played an important role in the sharing of pooled resources at the time because the country was concerned with setting the right incentives for tapping local revenue sources and encouraging fiscal responsibility in the regions.¹³⁶

The first misguided, but direct attack on federalism in Nigeria was by the military in January, 1966, when General Aguiyi Ironsi seized powers from the elected government and promulgated Decree No.33 and 34 of May 1966, abolishing the federal system and replacing it with a unitary form of government.¹³⁷ Because of the general inclination of Nigerians to a federal system of government, the abolition was resisted and opposition to Aguiyi Ironsi's unification of the country by military fiat led to violent and bloody riots in the North, which culminated in a second military coup in July 1966; then a reversion to the federal system and later a civil war broke out in 1967.

The abrupt and unexpected termination of democratic rule by the military initiated a process that steadily eroded the powers of the regions (later states) with the transfer of several items hitherto in the residual and concurrent lists to the exclusive list. However, the first major development that made the dominant political elites at this time to re-think their role in the control of the oil

¹³⁵ Etekpe, A. (2007) *Minority Politics in Nigeria*, Lagos: Kemuela Publications, pp.10-26.

¹³⁶ World Bank (2003) *Nigerian State Finances Study*, Report No.257, 10 April, p25.

¹³⁷ Moro, *supra* note 133 at p.256.

industry was the Nigerian civil war.¹³⁸ The contest of the right to revenue payments between the federal government and the government of the secessionist Biafra brought to the fore the need for a closer control of the industry by the dominant ruling elites. Also, given the atmosphere of the civil war, the ruling elites saw the concentration of power at the centre as a strategy for strengthening the political class and building some platform for cohesion.

In 1967, the military introduced a 12 state structure to replace the existing four regions¹³⁹ and through a series of decrees issued from 1969, set about the process of centralizing fiscal powers, with exclusive powers to legislate on solid/mineral oil and natural gas, thereby undermining the basis of federalism,¹⁴⁰ especially the Petroleum Act of 1969 and the Land Use Act of 1978. In 1970, the federal military government allocated the bulk of federally collected revenue to the central government. It also jettisoned the principle of derivation (for need) and a lump sum transferred to cover the fixed cost of running a government, in state allocation. It also introduced a dichotomy between on-shore and off-shore and assigned off-shore rents and royalties to itself.¹⁴¹

The process of centralization was completed with the introduction in 1980 of the Federation Account (FA) to hold all federally collected revenue, including

¹³⁸ Ibaba, S.B. (2008) *Democracy and Development in the Niger Delta*, Port Harcourt: Haray Publications, pp.105-135.

¹³⁹ Eson, P.O. (2009) *The Political Economy of Oil Extraction in Nigeria*, Lagos: CDHR Publication, pp.34-50.

¹⁴⁰ It is important to note that state creation was repeatedly used by the military both to whittle-down the political influence of the State and to create rivalry among the numerous states in the polity thereby effectively reducing opposition to the centre.

¹⁴¹ World Bank, *Supra* note 136, at p.25.

the 20% on-shore mining rents and royalties hitherto conceded on the basis of derivation.¹⁴² The principle of derivation was now given only a token recognition by the introduction of a special fund for mineral producing areas to receive a small transfer of between 1% to 1.5% from the federation account and to be shared by states on the basis of derivation. The federal government, which had become unitary in practically every sense of the word, relied on periodic grants or special allocations to the states.

This arrangement did not change significantly during the brief civilian administration of 1979 to 1983 and the second military period of 1983 to 1999. In order to find avenue for expending the increased resources at its disposal as a result of this centralization of revenue, the federal government began to extend its activities to areas of expenditure once reserved for states, first by the process of encroachment and later by formal legislation-backed take overs.¹⁴³ The federal government became directly involved in primary and basic education, agriculture, banking, industry and commerce, etc. Some of these involvements were later formalized in the 1979 and 1999 constitutions.

2.7.1. Effects of Centralization on the Niger Delta Economy

A few questions are pertinent:

First, what happened to the resources, which the governments of the former four regions depended upon to fund their respective economic and developmental programmes before the advent of oil?

¹⁴² Middleton, P. (2007) *The End of Oil: the Gulf, Nigeria and Beyond*, London: Magpie, pp.23-56.

¹⁴³ At the exit of the military in 1999, this fund received only 1% from the federation account revenues.

Secondly, what happened to the groundnut pyramids, the cotton, the plywood, the rubber, the timber, the cocoa and the palm oil/palm kernels?¹⁴⁴

Economic indices show that the per capita income and overall standard of living of Nigerians were higher in the era of regionalism and fiscal federalism. The current, perennial haggling over revenue allocation is indicative of how the country has deviated from the original idea of federalism, which was adopted by the founding fathers of the nation. They would never have imagined that the federation of their dreams would give rise to States that cannot survive without hand-outs from the federal government.¹⁴⁵ It is disheartening, therefore, to note that an overwhelming majority of the states in the federation of today can hardly survive without the constant support of the federal government. Rather than develop locally based resources, most of the states now wait for largesse from the federal government, in the name of allocations from oil revenues.

Over-centralization has stifled local initiative. Instead it has promoted inefficiency and fostered a sense of over-dependence on the federal government. In fact, it has created a situation, a system or mechanism that discourages work by having "booty"¹⁴⁶ which is shared every month. If people are not working but depend on booty sharing, there cannot be any meaningful increased economic activity. You cannot nurture a people on a system of

¹⁴⁴ World Bank, *supra* note 136, at p.26.

¹⁴⁵ Justice Kayode Eso (2004) "Enduring Democracy and Federalism in a New Democratic Nigeria", Lecture delivered at the commemoration of Chief F.R.A. Williams (SAN) 60 years in Legal Practice, Lagos, 18th February, Published in the Guardian, Tuesday February 24, p.9.

¹⁴⁶ Adejumobi, S. (2005) "Civil Society and Federalism in Nigeria" in Onwudiwe, E. and Suberu, R. (eds.), *Nigerian Federalism in Crisis: Critical perspectives and Political Options*, Ibadan: Archers, pp.46-67.

booty-sharing without production and expect development. This paternalistic form of federalism, which is the order of the day in Nigeria, cannot be sustained, especially with the increasing crisis and endemic conflicts in the Niger Delta region of Nigeria. The actual effects of centralization on the Niger Delta economy are:

2.7.1. (a) **Poverty**

Beginning from 1969, the politics of Nigeria, whether military or civilian, became that of determining the control of oil resources. As Ken Saro-Wiwa aptly observed, "oil is not only money, it has been at the centre of Nigerian federalism, for a long time, with the federal government reserving for itself "a huge chunk of oil revenue".¹⁴⁷ However, the nature of rent-based income that accrued from oil production and the neo-colonial ruling elite has elicited a pattern of development that is excessively distorted. One area in which the underlying crisis in the economy has been felt most in recent times is in the Niger Delta, the main crude oil producing region.

Today, only 13% of rents and royalties from oil exploration is now allocated on the basis of derivation, meaning far less resources to the Niger Delta, despite the degradation and under-development associated with oil production in the region. The federal government controls the rents and royalties, allocates them and decides policies on investment, technology, the environment, and employment. Even at the peak of the false oil boom in the economy, the oil producing regions were subjected to abject neglect and poverty. The oil producing areas remain the most under-developed areas of

¹⁴⁷ Bamidele, O. (2004) "Nigeria cannot Develop Sharing Niger Delta Resources as Booty", *Daily Independent*, Thursday, July 22, p.10.

the country, lacking in modern infrastructure, such as roads, education, medical facilities, electricity connectivity etc.¹⁴⁸

The traditional economic activities of the region such as fishing and farming have been ravaged by pollution and environmental degradation associated with oil extraction. The region has the highest rates of unemployment in the country today.¹⁴⁹ Thus, the striking paradox of the Niger Delta is that while it is a treasure base, it is also paradoxically Nigeria's poverty enclave.¹⁵⁰ To make matters worse, the extractions of oil over the years have taken a rather high toll on the ecology and environment of the region. This study argues that it is morally unfair and politically unwise for revenue derived from particular states to be used almost exclusively for the development of other sections of the country whereas the very states from which these revenues are derived are neglected. Unfortunately, this is the case with the Niger Delta. The region is home to the poorest of the poor in Nigeria. It is unimaginable to think that in the oil-rich Ogoniland, the bicycle is still used as a commercial means of transportation. Yet, it is on record that before 1998, about USA \$50 billion worth of oil was extracted from Ogoniland alone.¹⁵¹

2.7.1. (b) Degradation of the Environment

Several decades of transnational oil corporations' activities in the Niger Delta have damaged the ecosystem of the region. According to official estimates of

¹⁴⁸ Ojeifa, I.A. (2008) "The Nigerian State and the Niger Delta Question", *Environmental and Planning Law Review*, Vol. 3, pp.13-14.

¹⁴⁹ Ekeke, B.A. and Nwonvala, A.I. (1999) "Reforestation of Bare Degraded Mangrove Areas in the Niger Delta", *6 Delta Agriculturist*, pp.75-90.

¹⁵⁰ Ken Saro-Wiwa (1991) *Similia: Essays on Anomic Nigeria*, London: Saros, p.169.

¹⁵¹ Taiwo, F. (2000) "Nigeria and other Oil Producing Countries – A Comparative Analysis of Oil Revenue Sharing Formular" in Raji et al (eds.), *Crisis in the Oil Producing Communities in Nigeria*, Lagos: CDHR Publication, pp.47-68.

the Nigerian National Petroleum Corporation (NNPC), based on the quantities reported by operating companies, between 1976 and 1996, there were a total of 4,835 incidents resulting in the spill of at least 2,466,322 barrels (102.7million US gallons), of which an estimated 1,896,930 barrels (79.7million US gallons; 77%) were lost to the environment.¹⁵²

Another calculation based on oil industry sources, estimates that:

More than 10.7million barrels (45million US gallons) of oil were spilled in Nigeria from 1960 – 1997. Nigeria's worst spill was an offshore well blow out in January 1980, when at least 200,000 barrels of oil (8.4 million US gallons), according to industry sources spewed into the Atlantic from Texaco facility and destroyed 340 hectares of Mangrove forest. Directorate of Petroleum Resources estimates were that more than 400,000 barrels of oil (16.8million US gallons) were spilled in this case.¹⁵³

The Niger Delta region has the longest mangrove forest. The mangrove swamps are particularly vulnerable to oil spills, because the soil soaks up the oil like a sponge and releases oil every raining season, thereby causing more damage to a wider area than anticipated.

One of the most devastating forms of pollution is, of course, pollution by gas-flaring. Before the Nigerian Liquefied Natural Gas plant went into production in October 1999, 95% of the gas produced along with oil known as associated gas, was flared after separation from the crude oil. In volume, this came to two million standard cubic feet of gas, which was flared into the Niger Delta environment everyday. Apart from the enormous economic loss to the nation, the cost of degradation of the environment and to the health of the people of

¹⁵² Iyayi, F. (2009) *Oil Companies and the Politics of Community Relations in Nigeria*. Lagos: CDHR Publication, p.43.

¹⁵³ Sagay, I., (2009) *Federalism, the Constitution and Resource Control* in Raji et al (eds.), Lagos: CDHR Publication, p.5.

the oil producing communities is incalculable. Unburned carbon is transported into their homes and working area, all vegetation around is destroyed, the soil is rendered completely infertile and the tremendous heat creates unceasing hardship and discomfort.

The net effect of these and other consequences of oil exploration in the Niger Delta have been to produce weak societies that are characterised by a high degree of fragmentation, low levels of social solidarity and a great deal of anomic behaviour. Hence, the situation has resulted in a great deal of unrest in the core oil producing regions of the country.¹⁵⁴

2.8. Challenges of Nigerian Federalism in the Niger Delta

Thirty years of military rule might have preserved the unity of Nigeria as one country. But it is believed to have deformed her federal arrangement and tilted it more towards unitarism. Yet, federalism was introduced in the country in 1954 as a preferred political structure that would solve the vexing problem of cultural pluralism of the country. Calls to re-structure the country have been a recurrent decimal. The Niger Delta crisis bordering on resource control and other cries of marginalization from time to time by sections of the country constitute current dimensions of the call. Drawing profusely from situations in other countries, especially federations, this study re-examines some key issues of Nigerian federalism.

Accordingly, this study argues that, Nigerian federalism is structured on wrong federal instrumentalities, i.e., the states and local governments as

¹⁵⁴ Diepreye, A. (2005) *Managing Youth Unrest in Nigeria: A Holistic Approach*, London: News Africa, p.108.

structured are artificial and cannot be the true basis of federalism in the country: that revenue sharing is not only lopsided in favour of the central government but also against the localised origins of revenues -the host communities and that the federal government's direct intervention in many areas of service delivery not only increases its power inequitably, but encourage competitive rather than co-operative federalism.

Federalism is generally believed to be a system of government that could better take care of problems of pluralism among the people of the state. The United States of America (USA), which is considered the foremost modern federal state, for instance, adapted it to accommodate the imminent pluralism of "a group of independent states, that agreed to come together into one country, merging most of their pre-existing sovereignty, but protecting themselves by reserving under their own control certain powers which they had enjoyed in the past".¹⁵⁵ This was the case with Switzerland when separate cantons in the neighbouring Alpine valleys decided to join forces to secure their continued joint-independence, and also Australia, when the separately administered British colonies around the coast of the vast Island continent decided to pool their resources.

In differing circumstance, some modern federations (Canada, Belgium, and India being typical examples) are countries, which at a certain stage of their historical development, opted for federalism to address the obvious plural divisions among the people. The agitation for resource control in the Niger

¹⁵⁵ Price J.H. (1975) *Comparative Government: Four Modern Constitutions*, London: Hutchinson, p.58.

Delta region has reached a crisis stage in recent times, culminating in all kinds of youth restiveness in the region.¹⁵⁶

One of the most critical challenges facing political systems all over the world is how to build a common identity and a sense of community among their citizens. Conflicts over various resources and factors such as fiscal resources, ethnic and religious identities are among the most explosive causes of political turmoil. Most remarkably plural societies like Nigeria are worse for this assertion. Nigeria has an extremely diverse population of over 150 million people divided into 250 ethnic nationalities, with diverse cultures and customs.¹⁵⁷ The country is best described as an accidental creation of the British colonial government. The country is sharply divided between Muslims, mainly resident in the North and Christians who populate the South. There is a significant class division based on income levels creating a high degree of inequality, ethnic and class cleavages.¹⁵⁸

These various plural characteristics interact in different ways and are usually exploited to engineer conflicts. Issues bordering on marginalization and neglect often lead to large-scale conflicts as typified by the crisis of youth restiveness in the Niger Delta region. Not to be forgotten are the sporadic raging ethnic and religious conflicts that re-emerge in various parts of the country at the least provocation. There is also the problem of political conflicts present at the threshold of any election in the country. In fact, the challenges

¹⁵⁶ Ikeajiani-Clark, M. (2004) "Constitutionalism in Nigeria", *Nigerian Journal of Public Administration and Local Government*, Vol.12, No.1, pp.199-238.

¹⁵⁷ Mundt, R.J. (2004) "Politics in Nigeria" In Almond, G.A., Powell, G.B., Strom, K. and Dalton, R.J. (eds), *Comparative Politics Today: A World View*, Singapore: Pearson, p.208.

¹⁵⁸ Markakis, J. (1998) *Resource Conflict in the Horn of Africa*, London: Sage, p.56.

are innumerable. Opinions abound as to why these challenges persist and, in some cases, degenerate into more serious crisis like that of the Niger Delta hinging upon resource control, environmental degradation, marginalization and neglect.¹⁵⁹

What can be gleaned from the above is that most Nigerian constitutions including the operative one (1999 Constitution) did not reflect the wishes of the people. In most cases, Nigerian constitutions were authored/drafted by the military and retained by the military disposition 'to keep Nigeria one at all cost'.¹⁶⁰

The problem of constitutionalism, of course, manifests itself in so many ways as it generates the feeling of exclusion, deprivation and marginalization and illegitimacy of the existing political order. The major off-shoot of this is the intense struggle for leadership at the power and resource distribution centres, often for personal and group interests evidencing state capture in Nigeria. The most core challenges of Nigerian federalism continue to hinge on the structural basis of the federation, the nature of the division of powers between the centre and the sub-units and the ways and manner of revenue generation and allocation.¹⁶¹

2.8.1 Re-thinking Nigerian Federalism

Nigeria is a federation of 36 states, a federal capital territory and 774 local governments, as the local government is equally given constitutional

¹⁵⁹ Omotola, J.S. (2006) "Sustaining Nigeria's Federal Democracy: Constitutional Imperatives", *Journal of Constitutional Development*, Vol. 6, No.2, pp.21-45.

¹⁶⁰ Ighodalo, A. (2005) "Oil Pollution and Environmental Conflict in the Niger Delta Region: A Framework for Conflict Management" in Hassan, S. et al (eds.), *Democracy and Development in Nigeria: Economic and Environmental Issues*, Ilorin: Concept Publications, pp.317-339.

¹⁶¹ Tamuno, T.N. (1998) *Nigerian Federalism in Historical Perspective*, Ibadan: Spectrum, p.87.

recognition as a separate tier of government. However, these are seen as artificial creations that do not properly represent the actual segments and divisions in the country. States and local governments as presently constituted in Nigeria are structures devised by the military to suppress the significance of regionalism, like the Niger Delta region and, ethnicity in Nigerian federalism.¹⁶² Although, the Federal Military Government gave quite different reasons for the states' creation, it was obvious that the fears of the minorities were exploited by the Federal Government to break the seeming solidarity of the people. While states and local governments have been multiplied since 1967, it is clear that the problem of minorities has not been solved.¹⁶³ Pockets of ethnic or indigenous peoples, like the Ogonis, are still enmeshed in states or local governments in which larger ethnic groups emasculate them.

The policy of assimilation that is portrayed by trying to diffuse the unity of some ethnic groups in the way states and local governments are created can be seen to be an ineffective federal arrangement. Structuring federalism in most developing countries was highly influenced by the assimilation paradigm that undermined the key plural characteristics of the people. Assimilation has not been the best approach to nation-building in ethnically diverse states.¹⁶⁴

¹⁶² Okoli, F.C. (1998) *An Introduction to the Theory of Local Government: A Nigerian perspective*, Nsukka: Topmost, p.76.

¹⁶³ Folarin, S. (2007) "Niger Delta: Environment, Ogoni Crisis and the State", *Journal of Constitutional Development*, Vol.7, No.1, pp.37-61.

¹⁶⁴ Sanubi, F.A. (2006) "The Ethnic Dimension to Political Conflict in Nigeria: Appraising Some Contemporary Theoretical Evidence" in Omotor, D.G., Sanubi T.A. and Ohwoha, A.I. (eds.), *Readings in Conflict Management and Peace Building in Africa*, Abraka: Delta State University Press, p.43.

The break-up of the Soviet Union after over 70 years of being held together by brute force reinforces the truth that federations are built by bargain, compromise and granting of adequate autonomy to accommodate deep-seated sociological differences among peoples. In Belgium and Canada, lasting peace has been achieved by declaring federations in the once unitary states. In their federations, sub-national units were created, based on territorially existing diversity: in the Belgian, French and Dutch regions, and in Canada, the French speaking Quebec region, and not to diffuse them. Ethnicity is a significant factor in Nigerian political and economic bargain.

Therefore, it is believed that federalism in Nigeria will be truer if this persistent index of difference is considered in its restructuring. Ethnic nationalities, no matter how small, expect to receive commensurate recognition and accommodation in the scheme of political and economic resource distribution. Obvious neglect of some small ethnic groups and communities cannot be ruled out of the Niger Delta agitations and indeed in most instances of ethnic violence in Nigeria.¹⁶⁵

Thus, federalism operates in Nigeria essentially as a unitary system where the central government dominates.¹⁶⁶ Federalism, therefore, conflicts with unitarism where the power of the central government both in legislative, executive and finance far overrides those of the sub-units since they, the sub-units, should be coordinates rather than subordinates in a federal system.¹⁶⁷

¹⁶⁵ Etekpe, A. (2007) *Politics of Resource Allocation and Control in Nigeria*, Port Harcourt: Harey Publications, pp.109-128.

¹⁶⁶ Osadolor, O.B. (1998) *The Development of Federal Idea and the Federal Framework*, Ibadan: Spectrum, p.37.

¹⁶⁷ Preboye, I.C. (2005) *The Core Delta*, Ibadan: Rural Books, p.89.

2.9. Perceived Socio-economic Future of Post-oil Niger Delta

After about a quarter century of fruitless search, Shell D'Archy, the Anglo Dutch Oil Company (now Shell Petroleum Development Company), finally struck oil on June 12, 1956 in a 12,008ft deep well at Oloibiri, a village then in the Eastern region but which, with subsequent restructuring of the Nigerian federation, fell into Bayelsa State in 1967 and 1996, respectively. For the oil company, this brought joy and hope. The first export of crude oil was made on February 17, 1958 with huge income to finance future operations. This discovery, drilling and export of crude oil from the first oil well as well as others that were subsequently drilled in the eastern Niger Delta meant more revenue for the Eastern region at a time when the principle of derivation was accorded due prominence. It has been recently argued that the decision of the Eastern region to secede in 1967 derived from interests in oil rather than ethnic rivalry as supposed.¹⁶⁸

For the Oloibiri community which started playing host to the oil companies since August 21, 1953, the successful drilling and export of oil from her womb raised high hopes, like a woman who delivers a long awaited male child to an African King in modernity. The good things of life associated with modern civilization were going to be at her beck and call.

52 years on, Shell has indeed grown to be a giant in the oil industry worldwide, bestriding the eastern and western Niger Delta like a colossus.

¹⁶⁸ Oboreh, J.S. (2010) "The Origins and the causes of crisis in the Niger Delta: The Way Forward", in Ojakorotu, V. (ed.), *Anatomy of the Niger Delta Crisis*, Berlin: LIT verlag, pp.17-36.

With laws that transferred ownership and control of oil resources from individuals, communities, regions and states to the Nigerian state, the country is now the sixth largest member of the Organization of Petroleum Exporting Countries (OPEC), has derived some USA \$800 billion and continues to derive about 93% of her export earnings from oil even as massive development projects including the building of a new federal capital territory (Abuja) are financed by revenues from oil.¹⁶⁹

For Oloibiri, however, the story is sadly different. Basic amenities are non-existent. Water projects embarked upon by Shell and the Niger Delta Development Commission (NDDC) have been abandoned. Its 22 housing units and a General Hospital under construction since 1972 has not been commissioned about 38 years after.¹⁷⁰ Of course, because its oil wells are now dry, Oloibiri is no longer regarded as an oil producing community and, therefore, not entitled to any share of the revenue arising from the 13% allocated to derivation. The best a grateful Nigerian state could do to immortalize Oloibiri thus far has been the erection of a commemorative pillar cum foundation stone for a non-existent Nigerian Institute for Oil and Gas Research beside the No. 1 Oil well in March 2001 by Olusegun Obasanjo, former President of the Federal Republic of Nigeria from May 1999 to May 2007.¹⁷¹ Thus, as Nigeria's foremost news magazine, TELL stated, the town "wallows in abject poverty and neglect"¹⁷² and has become a "frightening metaphor for the whole of the Niger Delta of what they might become after oil

¹⁶⁹ Human Rights Watch (1999) *The Price of Oil: Corporate Social Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities*, New York: HRW.

¹⁷⁰ TELL Magazine, February 25, 2008, p.24.

¹⁷¹ As observed on a visit to Oloibiri (location of the first oil well in Nigeria) on Friday October 8, 2010.

¹⁷² TELL, *supra* note 170 at p.24.

is gone".¹⁷³ In other words, it is a possibility that when oil is no longer relevant, the Niger Delta would also lose its significance within the polity of the Nigerian nation and as such, suffer abandonment and neglect, just like Oloibiri.

How real is such a possibility? Is the portrait of a bleak post-oil economic future the product of sensational speculation or merely another strategy in the resource-control campaign for the Niger Delta? Assuming that such a possibility exists, how could it be averted? The above are some of the issues this study seeks to address in this chapter. Its task is to predict the socio-economic and developmental future of the Niger Delta. Of course, it is a well-known fact that prediction is a hazardous enterprise in law or social sciences. Nevertheless, by examining the past and present realities, one is able to paint an objective picture of the future as a basis for recommendations of measures that would correct any ugly features of that picture.

Thus, taking a cue from Oloibiri, we have a classical situation in which decline in economic importance of a town, community or region leads to its political oblivion, social obscurity and developmental neglect or decay. This derivative concept of dryness of Oloibiri due to the dry wells provides one a useful handle for a scientific inquiry and prediction of the future of post oil Niger Delta region. For instance, we could now pose the questions such as: would the Niger Delta region experience a decline in economic importance if the oil dries up or oil ceases to be important in the Nigerian or global economy? Would her non-oil resources as presently known accord her the same pride of

¹⁷³ Alagoa, E.J. (2004) *History and Policy in the Niger Delta*, Port Harcourt: Onyoma Research Publications, pp.12-34.

place as oil? Even if such resources and economic opportunities provided by the mangrove forests and water resources could yield more revenues than oil, would they still be available for exploitation after oil, given their massive destruction and degradation as a result of oil exploration and marketing? If in spite of its present economic importance and corresponding political relevance and ascendancy, the development profile of the Niger Delta leaves much to be desired, what guarantee is there that after oil the existing infrastructure would be maintained not to talk of initiating new ones? Even after oil, something as good as oil shows up, what is the assurance that the same forces which turned oil boom into gloom would not do the same all over? Indeed what are those forces that undermine the development of the Niger Delta region and which, if unchecked, would inevitably ensure its demise?

The economic and political history of the Niger Delta is characterised by repeated circles of ascendancy and decline. No doubt, with the discovery and drilling of oil at Oloibiri in 1956 and Nigeria's first export of crude oil from Oloibiri Well No.1 in 1958, there began a new wave of economic ascendancy for the Niger Delta region. Within a decade of its arrival on the Nigerian economic landscape, oil had become so important to be implicated in the secessionist bid for Biafra and the consequent 30-month civil war. The region has since become the home of transnational oil companies, including Chevron, Mobil, Saipem, Agip, Shell BP, etc. and a host of other oil-servicing companies with so many activities. Aside from these burgeoning economic activities associated with the oil industry, the real economic importance of the Niger Delta as a result of the advent of oil lies in the importance of the product

to the global community and the revenue it yields to the Nigerian state. Oil and gas from the region account for about 50% of Nigeria's national GDP, 80% of total government revenues and 98% of foreign exchange earnings.¹⁷⁴

It would seem reasonable to think that for as long as the oil lasts and remains crucial to the Nigerian and global economy, the Niger Delta would remain economically and politically relevant. But the inevitable question is, would oil last, reign and rule forever? The obvious and justified answer is an unequivocal no! First, oil is a non-renewable resource. At current and projected rates of exploitation, the reserves would be exhausted in 40-50 years. Second and perhaps more important is that, given the environmental problems associated with fossil fuel and the vigorous global search for alternatives which are already yielding results, oil may soon become of lesser relevance even while the reserves last¹⁷⁵. Thus, either by reason of using up the reserves or displacement by cheaper and cleaner alternative sources of energy, oil would cease to be of significant relevance to the Nigerian and global economy in the not too distant future, hence, the economic decline if not the demise of the Niger Delta is imminent.

It is obvious that for the Niger Delta, falling back on palm oil, fishing and farming, while these could provide subsistence as in the past, cannot make the region retain its present level of national and global economic significance. Expectedly, exploration and related activities of transnational oil corporations (TNOCs) have gone a long way to vitiate and degrade the

¹⁷⁴ Udeme, E. (2004) *The Niger Delta and Oil Politics*, Lagos: International Energy, p.56.

¹⁷⁵ Nicholas, A. (2008) "Climatic Change and Nigeria's Destiny", *The Guardian*, January 13, p.11.

natural habitat and eco-system of the Niger Delta, leaving the people to groan under harsh geographical and economic conditions¹⁷⁶.

Oil exploration in the Niger Delta has led to the degradation and destruction of life-supporting ecological systems and natural resources. Apart from the destruction of the vegetation during the exploration and production, the flaring of associated gas in the process of extracting the crude oil poses a major threat to human life. Unburned carbon is often transported into the homes as well as the working areas of the Niger Delta inhabitants. Accordingly, whenever it rains, thick soot is washed off roofs and other surfaces causing the black-like water believed to contain harmful chemicals that affect the fertility of the land. Some gas-flaring sites in the Niger Delta have been in existence for more than 30 years, running 24 hours a day. Hence, about 35 million tons of carbon and 12 million tons of methane are released in a year.¹⁷⁷ To take fishing and farming as examples, (which are the core means of subsistence), the adverse effects of the oil industry greatly hindered the region's capacity for these ancient occupations, not only in terms of destruction of the physical environment through oil spills and evacuation of harmful effluents into the water and land bodies but also, in terms of the socio-cultural impact of non-socialization of the younger generation into the fishing and farming tradition.

¹⁷⁶ Amaogbari, O.C.C. (2009) *Introduction to Economic History of the Niger Delta*, Port Harcourt: Savvy Publishers, p.37.

¹⁷⁷ Asakitikpi, E.A. and Oyelaran, A.P. (1999) "Oil Extraction and the Socio-Cultural Impact on the Peoples of the Niger Delta", A paper presented at the *Annual Conference of Environmental Protection Society of Nigeria, No.1*.

Oil exploitation and exploration are land-based activities which culminate in the displacement of the indigenous communities from their heritage and their means of production. This displacement deepens the concomitant sacrilege, which is made manifest in the alienation of the people.¹⁷⁸ The oil industry, which is not labour-intensive, provides only a very small number of jobs and, therefore, provides no alternative to government supported development.

2.10. Summary

This chapter traced the socio-economic and political history of the Niger Delta as it relates to Nigeria from pre-colonial contact times to the present period with the aim of understanding how the past has informed the present and how the present can inform the future. It has been observed that the Niger Delta had a very rich subsistence economy that met the needs of the Niger Delta peoples from the pre-colonial contact days and through the colonial contact period prior to the discovery of oil. It has also been observed that the oil “boom” has brought a lot of “doom” to the rural dwellers and peasant farmers of the host communities of these rich natural resources. This chapter has also evaluated the emerging trends in Nigerian Federalism, its growth and has observed that federalism has been operating in Nigeria (besides its original formative years) essentially as a unitary system where the central government dominates, thereby undermining the deep sociological differences rooted in the heterogeneity of the people.

¹⁷⁸ Azaiki, S. (2009) *The Evil of Oil*, Ibadan: Y-Books, pp.5-17., See also Mark, M. (2008) “Niger Delta Swamp Forests”, 3 *Environmental and Planning Law Review*, 49-57.

The next chapter evaluates comparatively the Nigerian state and other jurisdictions of Petrodollar States in Sub-Saharan Africa with the 'paradox of poverty in the midst of plenty'. It examines comparatively the legal framework for resource exploitation and management in global deltas, bearing in mind the socio-economic crisis in the Niger Delta region of Nigeria.

CHAPTER THREE

THE NIGERIAN STATE AND OTHER PETRO-DOLLAR JURISDICTIONS IN COMPARATIVE PERSPECTIVE

3.1. Introduction

In the previous chapter, the economic history of the Niger Delta was examined, taking into consideration the context within which it evolved and the extent to which the subsistence economy as it were has given way to the economy of survival due to ecological abuse and environmental degradation. The socio-political milieu and the emerging trends of Nigerian federalism in respect of the Niger Delta region were also examined. The purpose of that discussion was to lay a historical foundation upon which some of the stated hypothesis could be tested as well as to use our knowledge of the past to interpret and understand the present for the purposes of advancement.

Mindful of the above, it becomes necessary for us to focus this chapter on a comparative evaluation of the Nigerian state and other jurisdictions, following the general rubric of petrodollar states in Sub-Saharan Africa with the 'paradox of plenty'. This chapter examines, comparatively, the legal framework for resource exploitation and management in global deltas as well as compares and contrasts the salient features with the intention of testing the validity of some of our basic hypothesis, bearing in mind the endemic socio-economic and political crisis in the Niger Delta region of Nigeria.

Socio-political and economic theories are almost in agreement in their perception of the primary function of the state as promoting the common good and interest of the public.¹⁷⁹ However, there exist a plethora of divergent opinions on what precisely constitutes that common good and the public interest it purports to serve. Social contract theorists represented by the likes of Locke, Hume and Rousseau see the state as an abstract entity, a moral and collective created by general agreement of the whole community, a neutral body that is impartial towards all within its fold.¹⁸⁰

However, Marx and Engels contended that the character and dynamics of state operations were reflective of the prevailing mode of production as well as the dominant political class in control of state power. As an instrument of class domination and control of property accumulation, the state in a capitalist society, like most of the oil producing economies in Africa, functions to protect the interest of those who own the means of production.¹⁸¹ Control, rather than ownership, has become a significant variable in African peripheral states.

According to Friedman, a petro-dollar or petro-politics state is a state that is both dependent on oil production for the bulk of its exports or gross domestic product and has weak state institutions or is run outright by an authoritarian government.¹⁸² He gives examples of petro-states or petrodollar states such as Azerbaijan, Angola, Chad, Egypt, Equatorial Guinea, Gabon, Iran,

¹⁷⁹ John, E. (2000) *Man and the State: Issues in Socio-Political Philosophy*, Uyo City: Afariaide Publishers, p.6.

¹⁸⁰ Efemini, A. (2002) "Ake on Development" in Efemini (ed.), *The Nigerian Experience: Ake and African Development*, Nigeria Paragrphics, p.12.

¹⁸¹ Okowa, W. (2005) "Oil, Babylonian Mathewnomics and Nigerian Development", University of Port Harcourt Inaugural Lectures Series, No. 40.

¹⁸² Friedman, T.L. (2006) "The First Law of Petro-politics", *56 Foreign Policy*, pp.23-45.

Kazakhstan, Nigeria, Russia, Saudi Arabia, Sudan, Uzbekistan, and Venezuela.¹⁸³ The activities between the transnational oil corporations and their host states is a matrix of concentric circles of pay-offs and rewards built on blackmail and violence. This, in effect, is what a petro-politics or petro-dollar state means –the conjuncture of oil and politics, the interactions that take place between oil production and the activities of the state or government in the midst of all these material dialectics.¹⁸⁴ Friedman has observed that oil politics and the conversion of oil producing states to petro-dollar states actually started with the advent of the industrial revolution when the West felt the need for oil, and realized their oil reserves would not meet their demand.

Friedman goes further to articulate his laws of petro-dollar politics. According to him, the first law of petropolitics posits that the price of oil and the pace of freedom always move in opposite directions in oil-rich petro states. According to the first law of petro-politics, the higher the average global crude oil prices, the more free speech, free press, free and fair elections, an independent judiciary, the rule of law, and independent political parties are eroded. And these negative trends are reinforced by the fact that the higher the price of oil, the less petro states are sensitive to what the world thinks or says about them. Conversely, according to the first law of petro-politics, the lower the price of oil, the more petro states are forced to move towards a political system and a society that is more transparent, more sensitive to opposition and more focused on building legal and educational structures that

¹⁸³ Friedman, *ibid* note 182 at 23-45.

¹⁸⁴ Ibeanu, O. (2002) "Oiling the Friction: Environmental Conflict Management in the Niger Delta", *Environmental Change and Security Report*, Issue 6, Washington D.C.: The Woodrow Wilson Centre.

will maximize the peoples' abilities. The lower the price of crude falls, the more petrolist leaders are sensitive to what outside forces think of them. This more or less describes the Nigerian state.

Following a critical performance evaluation of the Nigerian state, particularly after the legendary inflow of petrodollars (since the 1970s), several scholars have described it as exploitative, cruel and illegitimate, weak, captured, dependent and hegemonic,¹⁸⁵ ethnically factionalized and privatised by a class of kleptocratic elites to protect their tenuous relationship with the productive forces.¹⁸⁶ These traits have a direct bearing on this study, in particular as they implicate the ability of the state to enforce its own laws, including corporate social responsibility.

Also worrisome is the World Bank and IMF reports to the effect that countries that are poor grew four times more rapidly than resource rich-countries between 1970 and 2004 despite the fact that they had half their savings. The greater the dependence on oil and mineral resources, the worse the growth performance.¹⁸⁷ It is against this background that this work examines the relationship between the internal dynamics of capitalist state formation, petroplitics/petrodollar dependency and underdevelopment of the Niger Delta region of Nigeria.

¹⁸⁵ Okaba, B. (2003) "The State, Oil Multinationals and Informal Repression in the Niger Delta", *AFAS Journal of Minority Studies*, Vol.3, No.1.

¹⁸⁶ Orugbani, A. (2002) "Class Interest and State Policy in Africa" in Efemini (ed.), *The Nigerian Experience: Ake and African Development*, Nigeria Paragraphics, pp.5-23.

¹⁸⁷ Gary et al. (2006) *Bottom of the Barrel: Africa's Oil Boom and Poverty*, London: Catholic Relief Services. See also Human Development Index Report 2005, IMF Report 2006.

3.2. Sub-Saharan Petrodollar States and the 'Paradox of Plenty'

Within the geo-political space of Sub-Saharan Africa are ten major oil exporting countries: Angola, Chad, Cameroon, Congo-Brazzaville, Democratic Republic of Congo, Gabon, Equatorial Guinea, Nigeria, Sudan and Sao Tome and Principe. Average oil production in the region by 2010 was projected at 9.8 million bpd, with the increase concentrated in four countries (Angola, Chad, Equatorial Guinea and Nigeria).¹⁸⁸ The America Petroleum Institute projected a capital investment of \$10 billion for lifting and shipping every one million bpd increase in production. It postulates further that:

*About \$52 billion will be invested in deep water African fields by 2010. In 2005, the Gulf of Guinea received the world's largest amount of offshore hydrocarbon capital investment with Angola and Nigeria alone netting \$50 billion.*¹⁸⁹

It is obvious that African, oil-exporting countries have, over the years (for Angola and Nigeria five decades ago), raised a lot of revenue from the sector through oil taxation, levies, royalties, signatory bonuses, production-sharing agreements and/or joint venture partnerships. Oil plays very leading roles in these countries' average GDP (Nigeria 87%, Angola 90%, etc.).¹⁹⁰

Though the governments of these African oil exporting countries ultimately decide which of the transnational oil corporations could operate within their borders, they function in an international business environment that is

¹⁸⁸ Olorode, O. (2008) "Imperialism, Neocolonialism and the Extractive Industries in Nigeria" in Olorode, O. et al (eds.), *Ken Saro-Wiwa and the Crises of the Nigerian State*, Lagos: CDHR.

¹⁸⁹ Okaba, B. (2005) *Petroleum Industry and the Paradox of Rural Poverty in the Niger Delta*, Benin: Ethiope Publishing, p.34.

¹⁹⁰ Enweremadu, D.U. (2008) "The Vicious Circle: Oil, Corruption and Armed Conflicts in the Niger Delta", Conferece Paper on *The Nigerian State, Oil Industry and the Niger Delta*, NDU, March 11-13, p.445-457.

dominated and manipulated by the transnationals who enjoy a monopoly of both capital and technology. Therefore, this prevalent asymmetry in capital, power and technological expertise that exists between the transnational oil corporations and the highly dependent host governments in Africa, no doubt, stifles genuine development on the continent. In 2001, for instance, Exxon Mobil made a profit of USA \$15 billion in its operations in Chad, while the Chad government for the same year recorded a GDP of US1.4 billion.¹⁹¹ This ugly scenario repeats itself almost in every African petro-dollar state and thus presents itself as a crucial factor in the analysis of the why and how of the dismal economic performance of African petro-dollar states.¹⁹²

To further appreciate the impact of this “resource curse” and “Dutch disease” and other significant internal causative dynamics in these petro-dollar states on their development, this study will give a brief account of the experiences in Gabon, Angola, Sudan and more elaborately on Nigeria. This section of the study relies principally on the field work report published by Gary et al.¹⁹³

3.2.1. Gabon

With a population of 1.3 million, an unevenly distributed per capita GNP of USA \$3,200, a human development index of 117 out of 173 and an oil production figure of 247,000 bpd, Gabon is rated as one of Africa’s greatest oil-exporters. Here the Government has, over the years, built up an elaborate bureaucracy, and embarked upon very lavish spending and ambitious

¹⁹¹ Ibeanu, O. and Lukham, R. (2006) *Niger Delta: Political Violence, Governance and Corporate Responsibility in a Petro State*, Abuja: Centre for Democracy and Development, p.13.

¹⁹² Klare M. (2006) *Blood and Oil: the Dangers and Consequences of America’s Growing Dependence on Imported Petroleum*, New York: Paul, p.27.

¹⁹³ Gary et al, *Supra* note 187.

infrastructural projects but failed to manage poverty and a sustainable model of development. Unfortunately, Gabon is running out of oil. Unlike other African nations that operate a National Oil Company, oil exploration in Gabon is governed by its Mining Code of 1982 which favours production sharing contracts (PSC) under which contractor companies pay all investment costs up-front.

Gabon was once marked as the world's largest per capita importer of champagne. In the absence of quality infrastructure, Libreville still maintains an ostentatious urban culture.¹⁹⁴ This situation is worsened by the profligate spending of government. In the 1990s, the country's ruling class was involved in a string of scandals including allegations of hidden oil deals and the use of banks for money laundering; corruption and absence of transparency and accountability.¹⁹⁵ In the midst of this mess, the country's poverty reduction records were very embarrassing. According to World Bank reports, pockets of extreme poverty are growing in urban areas and more than half of the population in the three major cities lack access to electricity, or running potable water. The health and education sectors are poor. Worse still, over 50% of the 2003 budget went into debt servicing.¹⁹⁶

3.2.2. Angola

Angola is the continent's second largest oil exporter, with a proven reserve of over 7 billion barrels. Between 1995 and 2001, oil tax revenue constituted 70% - 90% of state income and over 60% of GDP. Over 90% of Angola's oil is

¹⁹⁴ Asiedu, E. (2005) *Foreign Direct Investment in Africa*, Helsinki: United Nations University, pp.27-50.

¹⁹⁵ Asiedu, *ibid* at p.27.

¹⁹⁶ IMF Reports (2006) Washington D.C., p.8.

explored offshore, therefore, drastically reducing conflict with oil-bearing communities.¹⁹⁷

Paradoxically, Angola ranks 161 out of 173 in the Human Development Index with an average life expectancy of 45; 68% of the population live below the poverty line of US \$1 per day and 66% without safe drinking water. Worse still, 4.3 million Angolans have been displaced by the country's decades of wars believed to have been fuelled and fanned in part by oil and diamonds and also by struggles for the control of these resources.¹⁹⁸

Angola was ranked 4th most corrupt country in Southern Africa and 12th most corrupt country world-wide in 2010.¹⁹⁹ In 2000, an estimated 50% of state expenditure was not recorded in the nation's official budget. In 1999, the IMF estimated the oil backed loans owed by the Angolan Government as 33% of Angola's total external debt, approximately \$11 billion.²⁰⁰ While the war with UNITA is officially over, conflict between government forces and rebel forces in the oil rich enclaves of Cabinda persists.²⁰¹

3.2.3. Sudan

The Catholic Bishops of Sudan sum up the Sudanese experience thus: "Our country is "poor and in need of economic development".²⁰² However, oil is not

¹⁹⁷ Human Rights Watch (2004) *Some Transparency, No Accountability: The Use of Oil Revenues in Angola and its Impact on Human Rights*, Washington D.C.: HRW, pp.15-17.

¹⁹⁸ CSIS, (2004) *Promoting Transparency in Africa's Oil Sector*, Washinton D.C.: Center for Strategic and International Studies, pp.8-12.

¹⁹⁹ Transparency International (2010) *Corruption Perception Report*. www.transparency.org/news Accessed 30/9/11.

²⁰⁰ Hodges, T. (2001) *Angola: From Afro-Stanilism to Petro-Diamond Capitalism*, Oxford: Currey. See also Justin, P. (2002) IMF: Angola's Missing Millions, BBC News. Accessed 10/4/11.

²⁰¹ James, M.W. (2004) *Historic Dictionary of Angola*, Human Rights Watch.

²⁰² Gary et al, *supra* note 187 at p.30.

contributing to the development. The world has witnessed displacement of our flocks from their houses, kids driven away by helicopter gun-ships, anti-novel bombers and government troops and militia in order for oil companies to work in relative security. Private companies like any other organ in the society are obliged to abide by and promote respect for the principles of the Universal Declaration of Human Rights".²⁰³

Sudan earned over US \$450 million from oil between 2000 – 2003. Over 2 million Sudanese have died and 4 million displaced during the last 20 years of war between the Government of Sudan and the main rebel movement based in the south, the Southern Sudanese Peoples Liberation Movement (SPLM) before Southern Sudan became independent.

Before Southern Sudan gained its independence, the message of the Sudanese Churches (doubling as Civil Society Organizations), to the oil companies, the government and the international community is very instructive. It reads thus: "Because oil revenue fuels the war, stop exploiting the oil until a just peace is negotiated".²⁰⁴ In fact, the modalities for the sharing of future oil revenues was a critical factor in peace negotiation between the government and the opposition forces.

3.2.4. Nigeria

Nigeria is Sub-Saharan Africa's largest exporter of oil, with a production figure of 2.3 million bpd, a population of 150 million and Human Development Index of 148 out of 173. Nigeria's oil revenue earning is legendary, ranked only

²⁰³ Gary et al, *ibid* at pp.28-30.

²⁰⁴ Klare, M. (2004) *Blood and Oil*, New York: Metropolitan, p.55.

behind the world's oil giants: Saudi Arabia, Venezuela, Iran and the United Arab Emirates. Petro-dollar averagely accounts for over 87% of the Federal Government's revenue, more than 95% of export earnings and approximately 50% of GDP. However, as a classical example of the paradox of plenty, Nigeria, in the midst of this astronomical wealth, records overwhelming levels of poverty with 80% living on less than US \$1 a day, 50% lacking safe drinking water and sanitation, 85% lacking access to regular power supply and 50% infant mortality rate.²⁰⁵ Nigeria is of course the jewel in the African oil crown. A long time member of OPEC, Nigeria is an archetypical "oil nation" with reserves estimated at close to 40 billion barrels.²⁰⁶

The rise of Nigeria as a strategic player in the world of oil geopolitics has been dramatic and has occurred largely in the wake of the civil war that started in 1967 and ended in 1970. In the late 1950s, petroleum products were insignificant, amounting to less than 2% of total exports. Between 1960 and 1973, oil output exploded from just over 5 million to over 600 million barrels. Government oil revenues, in turn, accelerated from 66 million naira in 1970 to over 10 billion in 1980.²⁰⁷ A multi-billion dollar oil industry has, however, proved to be little more than a nightmare.

To take stock of the "achievements" of Nigeria's oil development is a daunting exercise: 85% of oil revenues accrue to 1% of the population; perhaps US \$100 billion out of USA \$400 billion in revenues since 1970 have simply gone "missing"; the anti-corruption chief, Nuhu Ribadu, claimed that in 2003 70% of

²⁰⁵ Okonta, I. (2005) "Nigeria: Chronicle of a Dying State", *Current History*, pp.203-208.

²⁰⁶ Davies, M. (2006) *Planet of the Slums*, London: Verso, p.67.

²⁰⁷ Barnes, S. (2005) "Global Flows: Terror, Oil and Strategic Philanthropy", *Africa Studies Review*, 48/1, pp.1-23.

the country's oil wealth was stolen or wasted.²⁰⁸ Between 1970 and 2000 in Nigeria, the number of people subsisting on less than US \$1 a day grew from 36% to more than 70%, from 19 million to a staggering 90 million.²⁰⁹ Oil did not seem to add to the standard of living and could have contributed rather to a decline in the standard of living. Over the last decade GDP per capita and life expectancy, according to World Bank estimates, have both fallen.²¹⁰

It is hard to grasp the full consequences and depth of such a claim. From the vantage point of the Niger Delta –but no less from the vast slum worlds of Kano or Lagos –development and oil wealth is more of a cruel joke. These paradoxes and contradictions of oil are no where greater than on the oil fields of the Niger Delta. In the oil-rich states such as Delta State, Bayelsa State and Rivers State, there is only one doctor for every 150,000 inhabitants. The government's presence is only felt in the form of machine guns and jackboots.²¹¹

The recent UNDP report on human development in the Niger Delta was unflinching in its assessment and it runs thus: "the appalling development situation in the Niger Delta reflects the incontestable and shameful fact, that after half a century of oil development, the vast resources from an international industry have barely touched pervasive poverty".²¹² A much – publicized Commission of Nobel Laureates on Peace, Equity and

²⁰⁸ Esavwede, J.P. (2009) "Problems of the Nigerian Environment and Constitutional Response" in Emiri, F. and Deinduomo, G. (eds.), *Law and Petroleum Industry in Nigeria: Current Challenges*, Lagos: Malthouse, pp.133-138.

²⁰⁹ Martin and Subramania (2003) *Addressing the Resource Curse: An Illustration from Nigeria*, Washington D.C.: IMF, p.4.

²¹⁰ Hart, G. (2003) *Disabling Globalization*, Berkeley: University of California press, pp.34-56.

²¹¹ Ayuba, J.M. (2010) "The Democratization of Violence in the Niger Delta of Nigeria" In Victor Ojaborotu (ed.), *Anatomy of the Niger Delta Crisis*, Berlin: LIT verlag, pp.131-144.

²¹² UNDP (2010) *Human Development Report on the Niger Delta*, pp.2-4.

Development in the Niger Delta Region concluded that: "the wealth earmarked for the region was large but stolen by politicians".²¹³

Over-valued exchange rates, resulting from the Dutch-Disease has led to the total collapse of the agricultural and manufacturing sectors. Nigeria practically produces nothing as a country outside of its crude oil which the country cannot even refine for local consumption. As a nation, Nigeria relies on imported fuel for local consumption. Partly due to the nation's vulnerability to oil booms and bursts, various development schemes and poverty-alleviation programmes have spectacularly failed. These schemes have failed because: they were not "designed to alleviate poverty...They lacked clearly defined policy framework and they suffered from policy instability, political interference, lack of continuity and designed to promote corruption".²¹⁴ They were not derived from the felt needs of the people. Presently, infrastructural decay is experienced in all sectors in Nigeria: education, health, energy, water, roads, sports, transport, housing, etc.²¹⁵

But paradoxically, the Niger Delta is so relevant, and has thus attracted national and international concern partly because it has been the engine room of Nigeria's economy for the past five decades. It is a major source of energy supply and, therefore, a viable asset to the world's industrial development.²¹⁶

The region presents a perfect example of the paradox of excruciating poverty

²¹³ *Vanguard*, December 2, 2006, p.1.

²¹⁴ *TELL*, "50years of Oil in Nigeria", February 8, 2008.

²¹⁵ Obi, C. (2004) "The Impact of Oil on Nigeria's Revenue Allocation System: Problems and Prospects for National Reconstruction" in Amuwo, K. (ed.), *Federalism and Political Restructuring in Nigeria*, Ibadan: Spectrum Books, pp.3-10.

²¹⁶ Darah, G. (2003) "Repression in the Niger Delta", A paper presented at the 3rd *All Nigeria Socialist Conference*, Benin city, Nigeria.

and misery in the midst of stupendous wealth, as the resources of the region have barely touched on their pervasive poverty. Resource misuse has transformed the region into a theatre of bloody confrontations, not good enough for national and international peace and business investment.²¹⁷

3.3. Resource Ownership and Control in other Jurisdictions

A survey of other jurisdictions reveals that control of mineral resources in various nations occur in either of three ways. These are (1) Government control in absolutism. (2) Private or individual control and (3) Joint control or co-existence of government and private rights of ownership and control. These methods of control and the respective jurisdictions that practice them are discussed hereunder.

3.3.1. Government Ownership and Control of Natural Resources

Government control of resources occur where the ownership and or right of control vests in a sovereign state acting through its government. This is usually achieved by providing in the constitution or statutes of the country for the rights to vest in the government of the country. Leading examples of countries that have adopted this approach include Algeria,²¹⁸ Angola, Equatorial Guinea and Ghana. Nigeria, of course, falls within this group. On the ambit of the law in these jurisdictions, the Angolan Constitution provides a classical example. According to Article 12 thereof:

*All natural resources in the soil and subsoil, in the territorial waters, on the continental shelf and in the airspace shall be the property of the state.*²¹⁹

²¹⁷ Okaba, B. (2005) "Development Partnership and Sustainable Development Agenda for the Niger Delta Region", *Pan African Social Science Review*, Vol.7, No.8.

²¹⁸ Article 17 of Algerian Constitution, 1963.

²¹⁹ See also Articles 27 and 28 of the Constitution of Equatorial Guinea, 1991.

Similarly, the Constitution of Ghana provides:

*Every mineral in its natural state in, under or upon any land in Ghana, rivers, stream, water-courses throughout Ghana is the property of the Republic of Ghana and shall be vested in the president on behalf of and in trust for the people of Ghana.*²²⁰

In these countries, individual ownership of land precludes ownership of the minerals found in them.

3.3.2. Private Ownership and Control of Natural Resources

Private control of natural resources occurs where the right to own and control the exploitation of resources in property vests in the persons who own the property in which they are found. Leading examples of African countries in this group include Botswana, Namibia, Gabon, Burkina Faso, and Benin Republic. For example, the Namibian Constitution provides that the state or any competent organ may expropriate property in the public interest only subject to the payment of just compensation according to law,²²¹ and vests natural resources in the state only where it occurs on a land not already otherwise validly owned by a person.²²²

On a similar note, the Botswana Constitution provides that no property of any description shall be compulsorily taken or acquired, except where it is necessary or expedient and provision is made for the prompt payment of adequate compensation.²²³

²²⁰ Section 257 of the 1992 Constitution of Ghana.

²²¹ Article 16(2) Constitution of Namibia, 1990.

²²² Article 100 Constitution of Namibia, 1990.

²²³ Section 8(1) Constitution of Botswana, 1966.

3.3.3. Mixed Ownership and Control of Natural Resources

Control in a jurisdiction is mixed where the legal system permits both public and private ownership. Here, the state can own and control natural resources especially on government-owned lands, while the other legal persons such as individuals or corporations enjoy the rights of resource ownership and control. Notable examples here include Australia, the United States of America, and Canada.²²⁴

In Australia, where mineral resources occur on public lands, they are owned and controlled by public authorities, while those that occur on or in private lands are equally so privately owned and controlled by such private owners.²²⁵ Private ownership results from the common law rule of *Quic quid plantatur solo solo cedit*, where he who owns a land owns all that is above and beneath it. Such private rights are often enjoyed in full, while the law however, provides for the public acquisition of such lands for development of the resources, subject to payment of adequate compensation.²²⁶

The United States of America offers yet another excellent example. Mineral resources ownership is vested in private and public forms, respectively. Minerals on private land are vested in the land-owners who control their exploitation according to the rules of contract, while minerals on public land are owned and controlled by the various state governments. Where, however,

²²⁴ Nwauche, E.S. (1998) *Ownership and Control of Mineral Resources: Minorities and Human Rights in Federations*, Port Harcourt: Jite Books, p.33.

²²⁵ Nwauche, *ibid* at p.48.

²²⁶ Ayodele-Akaakar, F.O. (2002) "Appraising the Oil and Gas Laws: A Search for Enduring Legislation for the Niger Delta", *Journal of Sustainable Development*, Vol.3, No.2. See also Lang and Crommellin (1979) *Australian Mining and Petroleum Laws*.

such public land is owned by the Federal Government, the right and control vests in the Government of the Federation.²²⁷

Minerals in the continental shelf, generally vest in the Federal Government of the USA, which controls and develops same for the benefit of the USA.²²⁸

This situation remains so in virtually every other federation or state, including Canada and Northern Ireland.²²⁹ Federal vestige, this study believes, derives from the fact that the continental shelf enjoys a peculiar characteristic as an aspect of international law, a sovereign state's claim against the international waterway, one which, therefore, inures in the sovereign state and not a part thereof unknown to international law especially for that purpose.²³⁰

It is important to state here that the vesting of ownership as shown above among other jurisdictions, must not be taken as confirming or justifying the manner of control in Nigeria. There is a wide gulf between the similarities of law on ownership and its implementation. The USA situation, for instance, does not leave actual exploitation in USA federal corporations as in Nigeria; neither does it preclude its people from participating effectively in all sectors of the industry, unlike the Nigerian situation where federal control effectively excluded indigenous people or participation in preference for exclusive foreign control.

²²⁷ Leshly, J.D. (2005) "Indigenous Peoples, Land Claims and Control of Mineral Development: Australia and US Legal Systems Compared", *University of New South Wales Law Journal*, Vol.8/9, p.287.

²²⁸ See *US v State of Louisiana*, 420 US 529 (1975).

²²⁹ See *Northern Ireland Law Quarterly*, Vol.27, No.1, Spring, 1976.

²³⁰ This contrasts sharply with the situation in the First Republic of Nigeria when regions owned and controlled resources in their continental shelf.

A stronger point of difference, yet, is in the manner of computing of the extent of federal ownership of such offshore located resources. In a manner that classically differs from the Nigerian situation where the coastal states retain ownership of resources within three nautical miles of the outer continental shelf, except in Western Florida and Texas where state land extends to nine nautical miles. Federal territorial waters only began after the nautical miles aforesaid.²³¹

Finally, the disbursement of the revenue derived from the waters designed as federally owned, still shows great departure from the Nigerian situation. As at 1999, a legislation introduced at the 105th Congress of the United States of America, allocated half of the rents, royalties and bonuses derived from the federally owned outer continental shelf to the coastal states from which they extend. With on-shore revenues, 50% is allocated to the state in which the lease is located, and 40% is ear-marked for the reclamation fund. Only 10% goes to the federal treasury.²³²

The above, indeed, is a great departure from the Nigerian context of federal ownership and control of everything. It is clearly a more equitable and correct approach to natural resource wealth administration in federations.

The lesson for Nigeria is that a state does not need to own and control every available natural resource to lead well in a democratic setting. These nations (USA, Canada, and Australia) are doing well regardless of their liberal regime

²³¹ Kumins, L. (2008) "Outer Continental Shelf: Oil and Gas Leasing and Revenue", Available at: http://11cine.org/NLE/CRS_reports/energy/eng-45.com Accessed 15/8/11.

²³² Kumins, *ibid* note 231 at p.7.

in ownership and control of natural resource wealth. Transparency demands equitable distribution of resources owned and accommodation of the rights of others in the polis. Political and institutional leaders need not use government as a cloak for the aggrandisement of oil funds meant for reclamation of the environment of the Niger Delta states suffering degradation due to oil production activities.

The above is the point expressed by five community leaders of coastal communities interviewed for this study. They maintain that their environments are in naked danger of total destruction due to oil production activities and that government always turns a blind eye to their plight by colluding with oil transnationals to defraud them of their natural habitat.²³³

3.4. Legal Regime of Petroleum Resources in Select Jurisdictions

The legal frame-work for oil-operations in Nigeria has been premised on government ownership of mineral resources located anywhere in the federation.²³⁴ The following are some of the pieces of legislation for petroleum resources management in Nigeria and other global delta jurisdictions.

3.4.1. Nigeria

(a). Mineral Oil Ordinance of 1924

During the colonial era, the Mineral Oil Ordinance of 1924 was the instrument regulating mines and minerals. The ordinance vested all mineral oil in the Crown as a trustee for and on behalf of the people of Nigeria.

²³³ Personal communications by way of interviews conducted with five community leaders of riverine towns in the Niger Delta.

²³⁴ Section 44(3) of Nigerian Constitution, 1999.

(b). Constitutions of the Federal Republic of Nigeria

Both the Independence (1960) and Republican (1963) Constitutions of the Federal Republic of Nigeria empowered the federal government to legislate on mines and minerals, including oil fields, oil mines, natural gas and geological surveys in an exclusive capacity.²³⁵

The 1999 Constitution vests all mineral wealth in Nigeria in the federal government. According to the Constitution:

*“the entire property in, and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, under or upon the territorial waters and exclusive economic zone of Nigeria shall be vested in the Government of the Federation, and shall be managed in such a manner as may be prescribed by the National Assembly.”*²³⁶

By this provision, the ownership right and management over natural resources within Nigeria’s offshore and onshore territories vests in the federal government.

(c). Petroleum Decree of 1969

The Petroleum Decree vests the entire ownership and control of all petroleum in, under or upon any land in the federal government.²³⁷ The Decree defined land as land covered by water, land under the territorial sea or fishing part of the continental shelf.²³⁸ Accordingly, the control and ownership of petroleum in any land, be it land under the territorial sea or fishing part of the territorial

²³⁵ Sections 66 and 69, Cap 121 LFN 1990 Pt. 1, Item 25 of Schedule thereto.

²³⁶ Section 44(3) Nigerian Constitution, 1999.

²³⁷ Section 1 Petroleum Act, No.51, 1969.

²³⁸ Section 2 Petroleum Act, No.51, 1969.

zone, is vested in the federal government.²³⁹ This Act gave the Federal Government sole ownership and control of the country's oil and gas reserves.

(f). Territorial Waters Act, 1963

This Act stipulates that, within twelve nautical miles, the Federal Government of Nigeria is conferred with exclusive jurisdiction over the mineral resources deposited in the territorial waters of Nigeria

(g). Oil and Minerals Act, 1958

The Minerals Act of 1958 was enacted to amend and consolidate all existing legislations relating to mines and minerals,²⁴⁰ vesting ownership of mineral resources of which petroleum is one, in the Federal Government.²⁴¹

The Act was amended again in 2004. According to the 2004 Oil and Minerals Act, "the entire property in and control of oil minerals, in, under or upon any land in Nigeria, ... is, and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria".²⁴²

The Act further states: "All lands in which minerals have been found in commercial quantities shall, from the commencement of this Act, be acquired by the Federal Government of Nigeria in accordance with the provisions of the Land Use Act and the Minister may, from time to time, with the approval of the president, designate such lands as security lands".²⁴³

²³⁹ Cap 350 LFN 1990.

²⁴⁰ The Minerals Oils Ordinance, No.17, 1914 and No.1, 1924.

²⁴¹ Sections 3 &10, Cap 121 LFN, 1959.

²⁴² Section 1(1) Oil and Minerals Act Cap M12 LFN 2004.

²⁴³ Section 1(2) Oil and Minerals Act Cap M12 LFN 2004.

(i). **The Land Use Act, 1978**

The Land Use Act vests all land in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state, who holds all such land in trust for the people and is responsible for allocations of land in all urban areas to individuals resident in the state and organizations for residential, agricultural, commercial and other purposes while similar powers with respect to urban areas are conferred on Local Governments.²⁴⁴

According to the Act, all land in the territory of each state in the federation vests in the Governor of that state and such land is held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act.²⁴⁵

With the above legal framework, ownership and control of all rights pertaining to petroleum resources became vested exclusively in the Federal Government of Nigeria, which is thus entitled to grant licenses for prospecting and entry upon any specified lands or waters in Nigeria.²⁴⁶

3.4.2. South Africa

South Africa has a dual ownership model for mineral resources, where part of the mineral wealth is held in private hands and part held by the state. The private ownership is based on the law of property and provides long-term tenure for those involved in mining. The Royal Bafokeng and Bakgatla Ba

²⁴⁴ Preamble to the Land Use Act, 1978.

²⁴⁵ Section 1 of the Land Use Act, 1978.

²⁴⁶ Ajomo, M.A. (1972) "Oil and Law in Nigeria" in Elias, T.O. (ed.), *Social Change in Nigeria*, Ibadan: Spectrum, p.153.

Kgafela communities in South Africa's North West Province are among the few traditional authorities in the country that receive royalties directly from extractive corporations operating on their land.²⁴⁷ Flowing from the above, the absence of direct community control of mineral wealth remains a major factor in the communal resistance and socio-economic conflict witnessed in the natural resource-endowed Niger Delta region of Nigeria.

It is against this background that the idea of "community control" – as a form of community participation, gained much recognition. One prevailing argument is that direct control of natural resources by local communities is an important precondition for equitable utilization of the natural resource wealth, peaceful co-existence between extractive industries and indigenous communities, and congenial relations between local communities and the state.²⁴⁸ The Royal Bafokeng community, for instance, reported a total asset value of 33.5 billion Rand in 2007 mainly from royalties. With these resources, the community has reportedly invested in such amenities as educational, medical and sporting infrastructure.²⁴⁹ Being an agro-pastoralist people, the Royal Bafokeng only began to directly participate in the extractive economy in 1999 after winning a legal battle to exercise indigenous land rights. Prior to this, the struggle for indigenous control had been with the Boers and with the former Homeland government under which it fell during the apartheid era.²⁵⁰

²⁴⁷ Mnwana, S. (2010) "Participation and Paradoxes: Community Control of Mineral Wealth in South Africa's Royal Bafokeng and Bakgatla Ba Kafela Communities", Ph.D Thesis submitted to the Department of Sociology, University of Fort Hare, South Africa.

²⁴⁸ Mnwana, *Ibid* note 247, at 12-23.

²⁴⁹ Mnwana, *ibid* note 247, at 5-10.

²⁵⁰ Chanells, R. and Aymone, T. (2004) "The Rights of Indigenous People in South Africa" in Hitchcock, R. and Vinding, D. (eds.), *Indigenous Peoples' Rights in Southern Africa*, Copenhagen: IWGIA, pp.98-113.

On the other hand, state ownership took different forms where the Transkei, Bophututswana, Venda and Ciskei (TBVC) states and self-governing territories, mineral rights were owned by those states and territories in terms of the South African Development and Trust Act,²⁵¹ which provided for the vesting of these rights in the South African Development Trust (SADT) on behalf of blacks. Others were held by government in trust for specific traditional communities; these included those which vested in Lebowa Minerals Trust (LMT) under the Lebowa Minerals Trust Act²⁵² and the Ingonyama Trust (IT).²⁵³ Provision was made for the vesting of trusteeship in the South African Government in cases where land together with minerals were held by communities. Mineral rights in Namaqualand were governed by the Rural Areas Act,²⁵⁴ and were regarded as state-owned.

The Mineral and Petroleum Resources Development Act (2002) South Africa

The 1998 White Paper on Minerals and Mining enunciated the international norm of vesting custodianship of mineral rights in the State as articulated in Article 2(1) of the United Nations (UN) Charter on Economic Rights and Duties of States, granting states sovereignty, including possession and disposal over their natural resources.

Accordingly, the Mineral and Petroleum Resources Development Act²⁵⁵ as promulgated in May 2004, gives effect to the notion of state custodianship of

²⁵¹ South African Development and Trust Act, 1936.

²⁵² Lebowa Minerals Trust Act, 1987.

²⁵³ Under the Ingonyama Trust Act, 1994.

²⁵⁴ Rural Areas Act, 1974.

²⁵⁵ Mineral and Petroleum Resources Development Act (MPRDA), South Africa, 2002.

mineral rights. The Act effectively transferred ownership of privately held mineral rights to the state to enable any third party to apply to the Department of Minerals and Energy (DME) for new order prospecting rights or mining rights over these previously privately held minerals, predominantly by the white-owned companies. The foreword of the MPRDA recognises the mineral wealth as a national asset, a common heritage that belongs to all in South Africa and pronounces the state as the custodian thereof.

For this reason, the African Exploration, Mining and Financing (Pty) Ltd. (a wholly state-owned company) was resuscitated in 2007 to undertake exploration and mining of minerals of strategic significance to South Africa.

3.4.3. Canada

Canada has a unique system of federalism where ownership of natural resources is vested in the provinces making up Canada. Canada practices regional ownership of oil. Under this arrangement, ownership and control of oil resources is vested in the people of the region where the resources are located. Each province owns and administers oil within its borders. By this arrangement, oil-rich provinces are permitted to maintain direct control over their oil resources. Local administrators are appointed to administer oil resources. They are directly responsible to the citizens of the provinces rather than to the federal government. Oil revenue is strongly concentrated in a few provinces, and accounts for less than 5% of the total revenue of the provincial government.²⁵⁶

²⁵⁶ Mckenzie-Brown et al (1993) "The Great Oil Age", Calgary: Detselig, p.13-24.

Both the federal and provincial governments exercise constitutional powers in energy development, transportation, marketing and use with regards to oil and other natural resources. The provinces retain responsibility over oil exploration and production within provincial borders. While each province collects and allocates its oil revenue in its chosen manner, the Canadian Federal Government is empowered to levy taxes and regulate certain aspects of the oil industry of each province through its powers over foreign investment. There is thus decentralization of oil revenue in Canada.²⁵⁷

The above arrangement has been successful in Canada so far, largely because Canada is not dependent solely on its oil industry. In Canada, the oil industry is the 7th largest industry. Moreover, Canada has achieved a highly developed political culture of transparency and accountability. This has made it impossible for regional officials to attempt to exploit the immense power of their ownership interest in oil resources.²⁵⁸

Canada is an energy giant whose geopolitical map shows ten provinces and three territories. Petroleum production takes place in one form or the other in every province and territory in Canada. The present day oil and gas frontiers are in the territories and in the offshore regions of Atlantic Canada and British Columbia.²⁵⁹ The Canadian petroleum industry arose in parallel with that of the United States of America. Canada has unique geography, geology,

²⁵⁷ Valerie, S. (2001) "Between a Rock and a Hard Place: Regime Change in Newfoundland" in Brownsey, K. and Howlett, M. (eds.), *The Provincial State in Canada: Politics in the Provinces and Territories*, New York: Broadview press, pp.12-34.

²⁵⁸ Bott, R. (2004) *Our Petroleum: Sustainability into the 21 st Century*, Calgary: Canadian Centre for Energy Information.

²⁵⁹ *History of Petroleum Industry in Canada*, Available at: <http://en.wikipedia.org/wiki/>. Accessed 21/7/09.

resources and patterns of settlement. Canadian petroleum production is now a vital part of the national economy and an essential element of world supply. Because petroleum is a strategic commodity mostly found on crown land and an important source of government revenue, Canadian governments have long been involved in developing energy policy and passing it into law. The petroleum industry in Canada is regulated by the following:

(a). The Atlantic Accord

An important policy question of who owns Newfoundland's offshore minerals briefly stood in the way of offshore oil and gas development. With the discovery of Hibernia came the prospect of petroleum riches from under the sea. In response, the government of Newfoundland and Labrador laid claim to mineral rights in its offshore regions. The province had been a dominion (that is ownership rights of petroleum resources was vested in the sovereign) until 1934 and run by a Commission of Government subordinate to the British Government in London. When it eventually became a Canadian Province in 1949 it ceded its offshore resources to Ottawa.²⁶⁰

In terms of petroleum politics, the decade beginning in 1973 was a fractious period in Canada, and Newfoundland's claim led to a stand-off with the liberal government of Pierre Trudeau. In the end, however, wisdom prevailed and the issue was resolved politically. In 1985, the newly elected Progressive Conservative (PC) government of Brian Mulroney and Newfoundland's PC government (headed by Brian Peckford) negotiated a deal known as the

²⁶⁰ The Atlantic Accord: Memorandum of Agreement between the Government of Canada and the Government of Newfoundland on offshore Oil and Gas Revenue Management and Revenue Sharing, February 11, 1985.

Atlantic Accord.²⁶¹ The Accord put aside the question of ownership of those resources. Instead, the agreement acted as though the two levels of government had equal mineral rights in the offshore territory of Newfoundland.

In the formal signing, Ottawa and St. John's described the purpose of the Accord in these terms:

1. To protect, preserve and advance the attainment of national self-sufficiency and security of supply.
2. To recognize the right of Newfoundland and Labrador to be the principal beneficiary of the oil and gas resources off its shores, consistent with the requirement for a strong and united Canada.
3. To recognize the equality of both governments in the management of the resource, and ensure that the pace and manner of development optimize the social and economic benefits to Canada as a whole and to Newfoundland and Labrador, in particular.
4. To provide that the Government of Newfoundland and Labrador can establish and collect resource revenues as if these resources were on land, within the province.
5. To provide for a stable and fair offshore management regime for the industry.
6. To provide for a stable and permanent arrangement for the management of the offshore adjacent to Newfoundland by enacting the relevant provisions of this accord in legislation of the parliament of Canada and the Legislature of Newfoundland and Labrador and by

²⁶¹ Peter, M.B., Gordon, J. and David, F. (1993) *The Great Oil Age*, Calgary: Detselig, pp.78-80.

providing that the accord may only be amended by the mutual consent of both governments; and

7. To provide within the system of joint management, insofar as is appropriate, consistency with the management regimes established for other offshore areas in Canada.

With the Accord signed and the necessary legislation being prepared, the companies involved in Hibernia could complete their development plans and negotiate project approval with the Canada-Newfoundland Offshore Petroleum Board, a regulatory body representing both levels of government.²⁶²

(b). Accord Implementation Act (1987)

The Accord Implementation Act (1987), operates to manage petroleum resources in Accord areas. The Accord areas include the Newfoundland and Nova-Scotia Offshore areas. Newfoundland has a Department of Mines and Energy; Nova-Scotia has a Petroleum Directorate. Under this Act, the responsibility for the management of oil and gas activity is jointly shared by the Minister of Natural Resources for Canada and the Minister responsible for Natural Resources for the respective provinces.²⁶³

Each area has an Offshore Petroleum Board and a Minister responsible for Natural Resources which manage oil and gas activity on behalf of the Minister for Natural Resources of each province. Thus, there is the Canada-

²⁶² Robert, B. (2004) *Our Petroleum Challenge: Sustainability into the 21st Century*, Calgary: Canadian Centre for Energy.

²⁶³ Article 42 of Canada-Newfoundland Atlantic Accord Implementation Act, 1987.

Newfoundland Offshore Petroleum Board (CNOPB) and the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) which manages oil and gas activity on behalf of the ministers. The CNOPB and CNSOPB are independent Boards, in that their staff is neither federal nor provincial civil servants. However, certain key decisions of these Boards, referred to in the Accord Implementation Act as “fundamental decisions”, are subject to review by the federal and provincial ministers. The ministers are advised on fundamental decisions, as well as on Board management issues such as budgets and appointments, by their respective departments, that is, the Newfoundland Department of Mines and Energy, and the Nova-Scotia Petroleum Directorate.

The Canadian model shares responsibilities and control mechanism amongst all stakeholders for the purposes of transparency and accountability, every unit knows what comes in and what goes out in terms of revenue and costs. This is a good learning point for Nigeria that runs an exclusive and highly centralized control of the oil and gas industry in terms of revenues.

3.5. Summary

This chapter examined and analysed comparatively the relationship between the internal dynamics of petro-dollar dependency and underdevelopment in African petrodollar states with the “paradox of plenty”. What has emerged are a number of similarities and challenges, given the lessons drawn from Sub-Saharan Africa. It has been observed that African oil exporting nations have, over the years, raised much revenue from the sector through oil taxation, levies, royalties, signatory bonuses etc. Nevertheless, this multi-billion dollar

oil industry has proved to be little more than a nightmare. The chapter also examined resource ownership and control in other jurisdictions which revealed that control of resources in various nations occurs in either of three ways. These are public or government control in absolutism, (2) private or individual control and (3) mixed control or existence of public and private rights of ownership and control.

While in Nigeria ownership and control of mineral resources is seen to be vested solely in the federal government, in the USA, Canada and Australia, there is private, public and joint ownership and these countries appear to be more liberal in the policies that shape their legal framework towards oil and gas activities with regard to the host communities and states. It is hoped that the purpose of this chapter as set out in the introduction has been achieved.

The next chapter examines the management of natural resource wealth in Africa. It attempts to evaluate factors that negatively impact such management and evaluate the characteristics of some models of successful resource management by drawing from the experiences of Botswana as an African country and Norway from Northern Europe in Scandinavia.

CHAPTER FOUR

NATURAL RESOURCE WEALTH MANAGEMENT IN AFRICA

4.1. Introduction

From time immemorial, the earth's resources have played a vital role for human communities. Indeed, natural resources have given their name to entire epochs (e.g., the "Bronze Age"). Today, it is information and technology which are viewed as important. Yet, every civilization and technical advancement depends on raw materials. Resource-rich developing countries, in particular, can acquire urgently needed capital development by extracting and trading in mineral raw materials.

Nowadays, the management of our finite natural resources has become an urgent issue, at both national and international levels. Due to the rising demand from emerging economies such as China and India, safeguarding access to raw materials is more difficult than before; as a result, resource prices are at an all-time high and resource conflicts are escalating in various regions of the world but more particularly on the African continent. The extraction and utilization of natural resources are also invoking environmental hazards, which, in turn, require urgent solutions. Climatic change and the over-exploitation of these natural resources are two sides of the same coin. There is a growing interest, in both the business community and politics, in a global resource management regime.

In the spring of 2007, the Federation of German Industries held a conference on the issue, and the German government unveiled its "Elements of a Natural

Resource Strategy” at around the same time. The European Commission, in its Thematic Strategy on the Sustainable Use of Natural Resources published in 2005, proposed the establishment of an International Panel for Sustainable Resource Management, to commence work by the end of 2007.²⁶⁴ As with the International Panel on Climate Change (IPCC) in the climate process, this body was to collate current knowledge from around the world and prepare appropriate policy recommendations.

Against this backdrop, this chapter examines critically the issue of natural resource management in Africa. It attempts to evaluate some of the factors that negatively impact on the management of natural resource wealth in Africa. The chapter also examines the characteristics of some models of successful natural resource wealth management by drawing from the experiences of Botswana as an African country and Norway from Northern Europe in Scandinavia with a view to drawing important lessons for Nigeria.

Africa is so rich in natural resources, and efforts are increasingly being made to ensure that these resources play a positive role in the development and growth of Africa. As mineral resources and oil are finite and, therefore, not sustainable, African countries can use them to kick-start their developmental agendas and to serve as the continent’s spring-board into industrialization, as occurred in Europe and North America as well as in the Asian “Tiger economy” countries such as Indonesia.²⁶⁵ The efficient management of revenue from these commodities can contribute significantly in fighting

²⁶⁴ Raimond, B. (2007) *Material Flows and Resource Management*, Bruges: Institute for Climate, Environment and Energy (ICEE).

²⁶⁵ Bloomfield, S. (2008) “Niger Delta: The Curse of the Black Gold”, *The Independent*, Thursday, April 17.

poverty, improving the socio-economic conditions of citizens and promoting diversification of the economy in African countries. The international community also shares in the optimism generated by the discovery and exploration of oil in developing nations. A world Development Report of the United Nations Conference on Trade and Development (UNCTAD) for example states that:

*Extractive activities (including oil exploration) can have profound social and political impacts. They can have a positive effect on development by creating jobs, encouraging business and providing vital infrastructure for remote communities such as roads, electricity, education and health.*²⁶⁶

It is clear from the levels of poverty that exist in most resource-abundant African countries that African governments, with the exception of a few such as Botswana and South Africa, have generally managed their countries' resources badly.

The literature today points to robust empirical evidence of a negative relationship between natural resources wealth and economic growth, especially in Africa, where the so called "resource curse" is rooted. The presence of abundant reserves of oil and gas has been identified by many authors as a potentially mixed blessing for oil-producing countries. The World Bank, International Monetary Fund (IMF) and numerous scholars are now involved in searching for solutions to the resource curse problem.²⁶⁷

Compiling best practice models when it comes to resource management is therefore, imperative. However, does such a model exist and can it be

²⁶⁶ UNCTAD, (2007) *World Investment Report: Transnational Corporations, Extractive Industries and Development*, Geneva: United Nations.

²⁶⁷ World Bank (2009) *Experiences with Oil Funds: Institutional and Financial Aspects*, Washington: World Bank, p.17.

replicated in other countries such as Nigeria for example? Are there certain conditions that would lead to the better use of mineral resources? This chapter will seek to address these and other pressing questions, with a view to drawing important lessons for Nigeria.

4.2. Natural Resource Wealth and Conflict

Empirical evidence to date, particularly in developing countries, shows that the discovery and exploration of high valued natural resources, including oil has plunged oil-producing countries into anarchy and conflict.²⁶⁸ Natural resources do not pose challenges to the economy of a state but have a tendency to generate civil conflicts. In an analysis of 73 civil conflicts that occurred between 1965 and 1999, it has been argued that the most powerful explanatory factor for these conflicts has been the fact that they occurred in states that derived a significant amount of their GDP from the export of primary commodities.²⁶⁹

It is further argued that having abundant natural resources is, therefore, one of the traps that a poor country might find itself in²⁷⁰. It is indicated that from 1990 to date, not less than 36 violent conflicts have been sparked by the exploration of natural resources, including oil in regions such as Angola, Cambodia, the Democratic Republic of Congo, Dafur in the Sudan and the Middle East.²⁷¹ These intra-state armed conflicts can be national or confined

²⁶⁸ World Bank, *ibid* at p.21.

²⁶⁹ Collier, P. and Hoeffler, A. (2000) *Greed and Grievances in Civil War*, Washington D.C.: World Bank, p.34.

²⁷⁰ Akpan, F. (2006) "Ethnic Militancy and the Nigerian State", *Journal of International Politics and Development Studies*, Vol. 2, No. 2, p.12.

²⁷¹ Boonstra et al (2008) "The Politics of Energy: Comparing Azerbaijan, Nigeria and Saudi Arabia", *FRIDE 68 Working paper*.

to a specific region of a country. In most cases, these intra-state armed conflicts are influenced by inequalities in the allocation of oil revenues, especially when the local communities living in the oil producing regions are chronically disadvantaged as is the case in the Niger Delta region of Nigeria.²⁷²

Insurgency is on the increase in Nigeria and this is coupled with frequent attacks on oil installations and increases in the kidnapping of Western oil workers (over 150 between 2006 and 2009).²⁷³ The Niger Delta has become a chaotic haven for armed gangs with increasing instances of kidnapping and daily violence. A good account is also provided of the extent to which the war in Angola was fuelled by proceeds from the sale of oil and access to diamonds in the UNITA-controlled Southern, Eastern and Northern regions of Angola.²⁷⁴

Table 1.1: Police records of cases of kidnapping and hostage-taking in Niger Delta region of Nigeria

S/N	CASE	DATE	MILITANTS	VICTIMS/ORIGIN	RELEASED
1.	Kidnapping	03/03/04	32	13 Hostages	08/03/04
2.	Hostage-taking	19/12/05	24	42 Hostages	03/01/06
3.	Hostage-taking	15/01/06	48	14 Expatriates and 1 Nigerian	23/02/06
4.	Sea piracy	19/02/07	9 pirates	6 Policemen	19/02/07

²⁷² *Ibid*, note 270 at 68.

²⁷³ UNEP (2009) *From Conflict to Peace Building: The Role of Natural Resources and Environment*, United Nations Environmental Programme.

²⁷⁴ Le Billon, P. (2001) "Angola's Political Economy of War: the Role of Oil and Diamonds 1975-2000", *African Affairs*, 100, pp.55-80.

5.	Kidnapping	10/05/07	Faceless	16	23/05/07
6.	Kidnapping	25/05/07	40	9 Expatriates of Texaco	08/06/07
7.	Kidnapping	31/07/07	14	11yr-old boy	04/08/07
8.	Kidnapping	08/08/07	11	An aged woman	22/08/07
9.	kidnapping	18/08/07	23	An aged woman	07/09/07
10.	Kidnapping	08/10/07	Pius group	1 Nigerian	15/10/07
11.	Kidnapping	15/10/07	Unknown	1 Nigerian	15/10/07

Source: Police Crime Diary, Bayelsa State Command, Nigeria (2009).

While the formation of the Organization of Petroleum Exporting Countries (OPEC) to ensure solidarity in the determination of both the volumes and prices of crude oil has worked largely to curtail inter-state conflicts over oil, inter-state conflicts and tensions do occur sometimes with the discovery and exploration of oil, especially when the discovered oil reserve is on a shared border. There have been tensions, sometimes reaching critical and conflict dimensions, between Uganda and Congo DR on their shared border along Lake Albert since oil was discovered.²⁷⁵ Also, the tension between Nigeria and Cameroon as a result of the dispute over the oil-rich Bakassi Peninsular, which required international arbitration is worthy of note.²⁷⁶ Hence, the discovery of oil especially along borders has the potential of engendering hostilities among neighbouring nations.

²⁷⁵ Patey, L.A. (2007) "State Rules: Oil Companies and Armed Conflicts in Sudan", 18 *Third World Quarterly*, pp.1-19.

²⁷⁶ Yav, J. (2007) "The Curse of Oil in the Creeks of Africa", <http://www.globalpolicy.org> Accessed 17 April, 2009.

The involvement of transnational oil corporations (TNOCs) in conflicts in high-valued resource-rich developing nations cannot be down-played. Usually, these corporations engage in divide and rule tactics where they support some passive rulers or communities against the more radical ones calling for reforms.²⁷⁷ Transnational corporations exploiting the resources of the developing world have in some cases played significant roles in a number of the most destructive civil wars in the developing world: Colombia, Sierra Leone, Angola, the Democratic Republic of Congo, Azerbaijan and Myanmar are obvious examples.²⁷⁸

Conflict, whether of an intra-state or inter-state nature, has serious implications for the individuals caught up in the conflict, particularly women. During periods of conflict, the moral fibre of a society degenerates and women become the targets of the pent-up frustrations of men in their communities.

Thus, in places such as the Democratic Republic of Congo (DRC), where conflict rages over the numerous mineral resources located in the land, incidence of rape and sexual violence had reached epidemic proportions. In the South Kivu Province of the DRC which borders Rwanda and Burundi and serves as the entry point for armed foreign groups, it has been estimated that there is an average of 40 rapes a day, totalling 14,600 a year; 13% of the survivors are under the age of 14, 3% die and 10-12% contract HIV and

²⁷⁷ Bisina, J. (2004) "Oil and Corporate Recklessness in Nigeria's Niger Delta Region", <http://www.pambazuka.org/publications/africanvoices> Accessed 8/4/ 09.

²⁷⁸ Patey, *op.cit.* 275 at 19.

AIDS.²⁷⁹ More recent studies and estimates are much higher suggesting that the number of sexual assaults average 27,000 a year.²⁸⁰

Nigerian women as victims of harassment and repression at the hands of the state and TNOCs, have been stripped, beaten, maimed, raped and killed.²⁸¹ Instances of such cases abound in the Nigerian media. For example, Onwuemeodo of the Vanguard newspaper noted in 1999 how 238 Ijaw women had been raped in 4 major crackdowns on Ijaw resistance in oil-producing areas of the Niger Delta.²⁸² The brutal nature of sexual violations in conflict zones – including women being gang-raped in front of their partners led to the United Nations Security Council adopting Resolution 1820, a resolution which calls for the classification of rape as a weapon of war, in June 2008. In the Rwandan case, it was classified as part of genocide and a crime against humanity.²⁸³

4.2.1. Natural Resource Wealth and Politics

It is undeniable that oil, christened 'black gold,' is noted for its ability to impact negatively on the ways in which politics play out in these communities. The discovery and exploitation of oil has the potential to and, in most cases, have negatively affected the political system of developing nations.²⁸⁴ Western political censorship of governments is sometimes uncritical of badly governed

²⁷⁹ Rodriguez, C. (2007) "Sexual Violence in South Kivu, Democratic Republic of Congo", 27 *Forced Migration Review*, pp.45-46.

²⁸⁰ Wakabi, W. (2008) "Sexual Violence Increase in Democratic Republic of Congo", 371 *Lancet* (9606,) pp.15-16.

²⁸¹ Obi, C.I. (2001) *The Changing Forms of Identity Politics in Nigeria under Economic Adjustment: The Case of the Oil Minorities Movement of the Niger Delta*, Uppsala: Nordic African Institute.

²⁸² Ikelegbe, I. (2005) "Engendering Civil Society: Oil, Women, Groups and Resource Conflicts in the Niger Delta Region of Nigeria", 43 *Journal of Modern African Studies*, 241-270.

²⁸³ Rodriguez, *supra* note 279, at 45-46.

²⁸⁴ Gemade, W. (2008) "Angola: Blood Oil and Western Hypocrisy", <http://angolansecurityupdate.blogspot.com> Accessed 5/7/08.

but oil-rich developing nations. It is argued that the West is selective in their pressure for African countries to democratize by ignoring countries that are rich in oil such as Chad, Gabon and Equatorial Guinea. It is argued that oil and mineral production are linked to authoritarian rule.²⁸⁵ There is indeed an intricate relationship between energy production and democracy such that international pressure for bad regimes in oil-rich nations to reform is increasingly weakened as Western countries seek to access the scarce resources in more competitive global markets.²⁸⁶

In Nigeria, it has been argued that just as oil has polluted the environment of the Niger Delta, so has it polluted the politics of Nigeria. Likewise, it has been observed that the rise of oil revenues in Azerbaijan has been associated with the decline in democratic gains.²⁸⁷ The news of oil discovery has also threatened the stability of some governments in the developing world. For instance, in Nguema Basongo's Equatorial Guinea, the news of the discovery of oil in commercial quantities resulted in an attempted coup d'etat. Accordingly, Ghana is already being advised to avoid all these negative impacts of oil exploration and exploitation as oil has just been discovered there, that the right institutions and transparent policies ought to be in place before commercial production begins.²⁸⁸

²⁸⁵ Ross, M. (2001) "Does Oil hinder Democracy"? *53 World Politics*, 325-61.

²⁸⁶ Pegg, S. (2009) "Chronicle of Death Foretold: The Collapse of Chad-Cameroon Pipeline Project", *108(431) African Affairs*, 311-320.

²⁸⁷ Boonstra et al, *supra* note 271 at 68.

²⁸⁸ Gary, I. (2009) *Ghana's Big Test: Oil's Challenge to Democratic Development*, Oxfam: Integrated Social Development Centre.

4.2.2. Natural Resource Wealth and Corruption

Associated with the negative impact of oil exploration on local politics is the problem of corruption. Petro-states are especially viewed as corrupt. According to a World Bank report, huge spending and contract allocation associated with the oil business are fertile grounds for engendering corruption in these countries.²⁸⁹ In addition to scoring low on the Human Development Index, countries which depend on oil revenues exhibit higher levels of corruption as the resources are often misappropriated by corrupt leaders and officials.²⁹⁰ In Nigeria, for example, the oil business offered the opportunity for corrupt politicians to enrich themselves at the expense of the people while it is stated that in Azerbaijan, corruption proportionately has increased as oil revenue increased.²⁹¹

Equatorial Guinea stands out as a good example of the ways in which corruption can negate the potential benefits of oil wealth. Between 1997 and 2001, the GDP of Equatorial Guinea grew at a faster rate than any other country in the world and by 2003, its GDP per capita was estimated at \$5,310, one of the highest in Africa.²⁹² However, the people of Equatorial Guinea do not feel the impact of this wealth; the government spends much less on health and education than many other African states, including petro-states. In the period when its GDP grew at a faster rate than any other country in the world, the government of Equatorial Guinea spent only 1.23%

²⁸⁹ World bank, (2009) *Experiences with Oil Funds: Institutional and Financial Aspects*, Washington: World Bank.

²⁹⁰ Jegede, A.E. (2008) "Corruption and the Locales: Redesigning Niger Delta Marginalization Thesis", *Conference proceedings on the Nigerian State and the Oil Industry*. Port Harcourt: Harvey Publishers, pp.1053-1065.

²⁹¹ Palley, T.I. (2006) "Lifting the Natural Resource Curse", *80 Foreign Service Journal*, 54-61.

²⁹² Frynas J.E. (2004) "The oil Boom in Equatorial Guinea", *African Affairs* 103(413) pp.527-546.

of its budget on health compared to 3.4% by Cameroon, 5.95% by Nigeria, 10.6% by Mozambique and 12.1% by South Africa.²⁹³

A similar story can be told in the education sector. Indeed, Frynas notes, "Living standards for the majority [of Equatorial Guinea] have...fallen despite a huge rise in GDP per capita." The real beneficiaries of the oil wealth in Equatorial Guinea seems to be President Nquema Basongo and his close family members; his eldest son is the Minister of Infrastructure, his second son is the Deputy Minister of Petroleum while other family members and close associates run employment agencies that demand party membership before jobs in the oil sector are provided to citizens.²⁹⁴

Likewise, it is argued that the key beneficiaries of oil exploration efforts in Sao Tome and Principe happen to be the owners of ERHC/Chrome. The deal between ERHC/Chrome and Sao Tome and Principe, it has been argued, has no precedent in the history of African oil industry since the end of colonialism.²⁹⁵ In this deal, which the consortium in question won without competitive bidding, a consortium with only \$1.5 million in cash and \$30 million in market capitalization could find a partner with \$50 million to buy an oil concession for which they did not have to pay a signature bonus.²⁹⁶ In addition, they had future rights to benefits that otherwise should accrue to petro-states such as future petroleum taxation. Corruption on the part of the state means that oil revenue is not likely to trickle down to local communities.

²⁹³ Frynas, *ibid* note 292 at 540.

²⁹⁴ Frynas, *ibid* note 292 at 534.

²⁹⁵ Frynas et al (2003) "Business and Politics in Sao Tome/Principe: from Cocoa Monoculture to Petro-State", *102 African Affairs*, 51-80.

²⁹⁶ Frynas et al, *Ibid* 295 at 68.

4.2.3. Natural Resource Wealth and Forced Re-settlements

Forced settlements are also identified as one of the negative developments associated with the development of extractive industries. The April 3, 2009 edition of the Sudan Tribune reported, for example, that in Sudan, thousands were forcefully evicted to make way for a low sulphur crude oil venture in south-central Sudan. Through this forced eviction, the people of the community lost venerated ancestral homes, died from contamination and saw livelihoods jeopardised.²⁹⁷ Agriculture is the mainstay of a substantial number of African families as documented.²⁹⁸ The agricultural systems in Africa depend as much on the efforts of women as they do on the efforts of men.²⁹⁹ However, men are more likely to be cash-crop farmers and food-crop farmers are usually the poorest in the Niger Delta.³⁰⁰

4.2.4. Natural Resource Wealth and the Health of Citizens

A prevalent problem in host communities of oil reserves is the relatively poorer health of community members. The impact of oil discovery and exploration in developing countries indicates the dwindling health status of the people in communities near oil reserves due to massive pollution. This was also one of the legal issues in the case of *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria*, where the communication alleged that the Nigerian government violated the right to health and the right to a clean environment as recognized under Articles 16 and 24 of the African

²⁹⁷ Sudan Tribune (2009) "Southern Sudan Villagers Environment Suffer from Oil Boom", <http://www.sudantribune.com/article26231>. Accessed 3 April, 2009.

²⁹⁸ Whitehead, A. (1999) "Lazy Men, Time Use and Rural Development in Zambia", 7 *Gender and Development*, 49-61.

²⁹⁹ Baanante et al (1999) "Labour Contributions of Women to Crop Production Activities in Three Regions of Africa: An Analysis of Farm Survey Data", 15 *Research Review*, 80-100.

³⁰⁰ Darkwah, A.K. (2005) "Poverty Trends in Ghana over the Last Fifteen Years", 2 *Legon Journal of Sociology*, 81-100.

Charter by failing to fulfil the minimum duties required by these rights.

Namely, that the Nigerian government has:

- (a) Direct participation in the contamination of air, water and soil, thereby harming the health of the Ogoni population.
- (b) Failed to protect the Ogoni population from the harm caused by the Nigerian National Petroleum Corporation (NNPC)/Shell consortium but instead using its security forces to facilitate the damage.
- (c) Failed to provide or permit studies of potential or actual environmental and health risks caused by oil operations.³⁰¹

These rights recognize the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss:

*An environment degraded by pollution and defaced by the destruction of all beauty variety is as contrary to satisfactory living conditions and the development of personality as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.*³⁰²

The right to a generally satisfactory environment, as guaranteed under Article 24 of the African Charter (which has been domesticated in Nigeria) or the right to a healthy environment, as it is widely known, therefore, imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote

³⁰¹ (2001) AHRLR 60 (ACHPR).

³⁰² Alexander, K. (2006) "Concept and Possible Implications of the Right to Environment" in Kathleen, M. and Paul, M. (eds.), *Human Rights in the Twenty-first Century: A Global Challenge*, p.553.

and not destroy conservation, and to secure an ecologically sustainable development and use of natural resources.

A recent UNEP report on the Niger Delta, indicates, for example, that the exploration of natural resources has the tendency to engender health risks and that these risks are more acute in developing countries. In the same light, a report by a US Non-Governmental Delegation that visited the Niger Delta indicated that in the local communities, diseases such as respiratory diseases, skin rashes, coughing up blood, tumours, gastro-intestinal problems, different kinds of cancers and malnourishment were common.³⁰³ It is also stated that the incidence of haematopoietic diseases tends to increase the closer one resides to oil fields and the overall incidence of cancer is significantly higher in both men and women in the countries where oil operations, exploration and exploitation had been going on for over 20 years.³⁰⁴

In Ecuador, for instance, cancer has been observed in the population under 10-years in both males and females exposed to oil exploration.³⁰⁵ In Sudan, according to the April 3, 2009 report of the Sudan Tribune, 27 adults and three children have died because of their consumption of contaminated water from the oil fields.

³⁰³ United States Non-Governmental Report (2010) *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta*, Washington DC: United Nations.

³⁰⁴ Personal communication by way of interviews with medical doctors in four communities (Imiringi, Otuasega, Gbaraintoru and Obuna) all in Bayelsa State, Niger Delta region of Nigeria.

³⁰⁵ Hurtig, A. and Miguel, S. (2005) "Epidemiology vs Epidemiology: the Case of Oil Exploration in the Amazon Basin of Ecuador", *34 International Journal of Epidemiology*, 1170-1172.

Explosions from pipelines have also resulted in injuries and in some cases deaths of people in the local communities. According to a UNCTAD report, because the products of the oil industry are mostly combustibles and explosives, accidents such as fires and explosions can have serious effects. In October 1998, for example, a pipeline leak led to an oil flood near the village of Jesse in the Niger Delta region of Nigeria and ultimately resulted in an explosion in which over 1000 people, mostly women and children, were reported to have died.³⁰⁶ Although, in some instances, explosions resulting in injuries and fatalities have been caused by defective pipelines, in other instances, they have been caused by attempts by the local people to siphon some oil. Attempts to siphon oil from pipelines, criminal as they may be, are what Marxist criminologists such as Quinney define as crimes of accommodation as the poor people of the local communities in response to the destruction of their livelihood attempt to siphon oil to sell in order to eke out a living.³⁰⁷

In addition to health hazards for the local communities from environmental pollution and accidents as a result of oil explorations, the influx of migrant population also brings health hazards to the local population through the introduction of new diseases across Rivers State, Cross River State, Delta State and Bayelsa State. New settlers and migrant workers in some instances become vectors through which new diseases hitherto unknown, are introduced into the local communities. A UNCTAD report cites the case of the

³⁰⁶ US Non-Governmental Delegation to the Niger Delta Report, 2000.

³⁰⁷ Quinney, R. (1974) *Critique of Legal Order: Crime Control in a Capitalist Society*, Boston: Little Brown, p.23.

Ecuadorian Amazon where the new settlers and migrant workers of Chevron Texaco introduced various diseases to the local population.³⁰⁸

Moreover, oil exploration also has the potential of destroying the health seeking behaviour of local communities. The negative environmental impacts of oil exploration affect plants some of which are used by the local communities near oil reserves in their health-seeking behaviour. According to the 2007 UNCTAD report, the construction of pipelines leads to the destruction of medicinal plants used by the local populations. It is also corroborated that environmental destruction through oil exploration has led to the scarcity of medicinal plants used by traditional birth attendants in Nigeria.³⁰⁹

Oil exploration increases the risks and dangers associated with women undertaking their reproductive roles. These risks and dangers arise as a result of the pre-disposition to peculiar diseases in communities where oil exploration takes place. This, coupled with poor antenatal care and malnutrition, makes the lives of pregnant women in these communities particularly precarious. Research shows that pregnant women living close to oil reserves have a higher mortality risk for both themselves and that of their unborn children. It has been argued that women living in communities near oil fields are at a 2.5 higher risk of spontaneous attacks than other women.³¹⁰

³⁰⁸ UNCTAD (2007) *World Investment Report: Transnational Corporations, Extractive Industries and Development*, Geneva:United Nations.

³⁰⁹ Dadiowe, T.E. (2003) "Niger Delta Fund Initiative - Women, Environmental Impact Assessment (EIA) and Conflict Issues in the Niger Delta: A Case Study of Gbaran Oil Field Communities in Bayelsa State", A paper presented at the National Workshop on *Gender, Politics and Power: Overcoming the Barriers to the Emergence of Women Political Leaders in Nigeria*, Organised by the Centre for Social Science Research and Development (CSSRD), Lagos (July 28-30 2003).

³¹⁰ Dadiowe, *ibid* note 309.

The proximity to oil reserves also predisposes pregnant women to a higher incidence of delivering children with defects. In the Ecuadorian Amazon, oil exploration by Chevron Texaco has resulted in a number of birth defects in communities close to the oil reserves.³¹¹

In addition to problems with reproduction, the general health of women is also adversely affected by living close to oil reserves. It is indicated that women living in oil communities near oil fields reported higher rates of skin mycosis, tiredness, itchy noses, sore throats, headaches, red eyes, ear pains, diarrhoea and gastritis.³¹²

4.2.5. Natural Resource Wealth and Development

There are two main views in the literature regarding the impact of natural resources on a society and economy. The first view is the conventional wisdom on the relationship between development and natural resources. It argues that natural resources are advantageous for development: "The possession of a sizeable and diversified natural resource endowment is a major advantage to any country embarking upon a period of rapid economic growth."³¹³

This observation was made by Norton Ginsburg and other mainstream economists in the 1950s, and was based on the rapid development and growth seen at the time in such countries as the United States, Australia and

³¹¹ Heyns, C. and Killander, M. (eds.), [2007] *Compendium of Key Human Rights Documents of the African Union*, Pretoria: PULP, pp.251-261.

³¹² Turner et al (2005) "The Curse of Nakedness: Nigerian Women in the Oil War", London: Zed Books, pp.169-191.

³¹³ Higgins, B. (1968) *Economic Development: Problems, Principles and Policies*, New York: Norton, p.222.

Britain. But Ginsburg fails to consider the role played by mineral resources in the development of Canada or Australia “the minerals-led industrialization in those countries was not driven by mineral resources endowment per se, but by an “overall transformation in business and financial organization, education, research and knowledge development, human capital accumulation and infrastructure expansion.”³¹⁴

As some African countries struggled with economic development in the 1970s and 1980s and the World Bank was implementing its structural adjustment programmes, neo-liberal economists such as Bela Belassa maintained that what natural resources had done for other countries was true for African countries too: “Natural resources could facilitate a country's industrial development by providing domestic markets and investable funds.”³¹⁵ The neo-liberal economists failed, however, to consider the changing internal and external environmental dynamics within which the extraction and management of Africa's natural resources was happening. In Africa, the extraction happens in conditions where “human capital creation and accumulation is neglected, governments are not responding to the needs of the poor, social infrastructure is weak, economic policy dysfunctional, rent-seeking prevails, corruption reigns, public income is squandered by the elite in power and those close to it, (as is the case in Equatorial Guinea) and wars of attrition and conflicts are common (as in the Niger Delta).”³¹⁶

³¹⁴ Power, T.M. (2002) *Digging to Development? A Historical Look at Mining and Economic Development*, Washington D.C: Oxfam, p.25.

³¹⁵ Belassa, B. (1980) *The Process of Industrial Development and Alternative Development Strategies*, Princeton: Princeton University, p.2.

³¹⁶ Pedro, A. (2004) “Mainstreaming Mineral Wealth in Growth and Poverty Reduction Strategies”, *ECA Policy Paper*, NO.1, Addis Ababa, Ethiopia.

The second view, which is a total opposite of the first, maintains that natural resource abundance is associated with various negative development outcomes. The unpredictability of the international commodity markets in the late 1980s brought about a new observation that rather than being a blessing, natural resource abundance increases the likelihood that countries will experience negative economic, political and social outcomes, including poor economic performance, low levels of democracy and civil wars.

The author of *The Paradox of Plenty, Oil Booms in Petrol States*, calls this phenomenon the "Midas touch myth." It is the paradox of rich countries with poor people,³¹⁷ suggesting that "resource-rich countries are performing worse than those with smaller endowments"³¹⁸ like Botswana that exports diamonds and beef to the European Union.

It is important, however, to recognize that a resource curse is not necessarily the outcome of resource abundance, as this view seems to suggest. Various political and social forces mediate the relationship between natural resource wealth and development outcomes, and these forces are shaped by historical, cultural and other dynamics³¹⁹ that are specific to each country. This will explain why neighbouring countries such as Botswana and Zambia, both mineral producing countries, have different experiences with their economic performance. However, these forces are not seriously considered in many of the discussions and models dealing with the topic. This is why Andrew Rossner criticises scholars of the resource curse school for being

³¹⁷ Terry, L.K. (1997) *The Paradox of Plenty, Oil Booms in Petrol States*, Berkeley: University of California Press, pp.10-25.

³¹⁸ Stiglitz, J.S. (2005) "Making Natural Resources into a Blessing rather than a Curse" in *Covering Oil: A Report Guide to Energy and Development*, Revenue Watch Institute.

reductionists and asking the wrong questions when it comes to reversing the resource curse.³¹⁹

Rossner argues that rather than asking why natural resource wealth has fostered various political pathologies and, in turn, promoted poor development performance, they should have been asking what political and social factors enable some resource abundant countries to utilize their natural resources to promote development and prevent other resource abundant countries from doing the same.³²⁰

Rossner's position is that as we search for solutions we must pay careful attention to the latter question, not only because it will enhance our understanding of when natural resource abundance is associated with poor development outcomes but also because it will generate useful policy recommendations for addressing the resource curse.

4.3. Emerging Trends in Natural Resource Management in Africa

The management of natural resources in Africa, in general, provides one with enough evidence to suggest that natural resource abundance is associated with negative development outcomes. Put differently, in many instances, the management of natural resources on the continent confirms the link between natural resource extraction and the resource curse.

From east to west and north to south, Africa is blessed with abundant natural resources. In most cases, however, these resources have been badly

³¹⁹ Rossner, A. (1996) "The Political Economy of the Resource Curse: A Literature Survey", *UK Institute of Development Studies, Working Paper No. 268.*

³²⁰ Rossner, *ibid* note 319 at 268.

exploited, and instead of contributing to growth, development and poverty eradication, they have done the opposite.³²¹ The situation has been exacerbated by weak and, in some cases, no proper sector regulations. The results in many instances have been:

- the uncontrollable exploitation of resources;
- lack of transparency and accountability in the management of the sector;
- the misappropriation and looting of sector revenues;
- an absence of basic organisation in the sector;
- a lack of predictability for both national and foreign investors; and
- the absence of monitoring capacity and evaluation of the sector, which contributes to a destructive environmental behaviour that produces land degradation and environmental problems such as water and air pollution.

In the worst cases, poor resource management has fuelled wars – DRC, Sudan, Angola, Liberia and Sierra Leone – and created much instability in areas such as Nigeria’s Niger Delta region and eastern DRC.

It is argued in this study, that the absence of strong governance benchmarks in Africa’s extractive industry is the main cause of bad resource management in Africa, the end result of which is rent-seeking rather than growth and development.

³²¹ Cilliers, J. (2008) “Africa in the New World: How Global and Domestic Developments will Impact 2025”, Institute for Security Studies, Monograph No.151.

The world is replete with examples of countries that have managed their natural resources successfully, leading to economic growth and development. International examples in this category are the USA, Australia, Britain, Canada and Norway, while South Africa and Botswana stand out in the African continent. However, there are numerous examples of resource-rich African countries that lack positive management models.

Wheeler found that during the 1970s, countries in sub-Saharan Africa that were rich in minerals grew slower than those that were not.³²² Furthermore, evidence suggests that the economic problems facing some resource-abundant countries have gone beyond poor levels of economic growth to include poor performance in other sectors of the economy, especially agriculture. Such countries have also been characterised by weak export diversification, poor savings performance, wage dualism, high unemployment, high external indebtedness and high export earnings instability.³²³

4.4. Perceived Factors that Negatively Influence the Management of Natural Resources Wealth in Africa.

1. Regime Type

There is a causal nexus between the level of effective resource management and the level of democracy that exists in a country: resource-abundant African countries that manage their resources badly usually also have low levels of democracy, for example, DRC as compared to Botswana. The

³²² Wheeler, D. (1984) "Sources of Stagnation in Sub-Saharan Africa", *12 World Development*, 1-23.

³²³ Nankani, G. (1979) *Development Problems of Mineral Exporting Countries*, Washington D.C.: World Bank.

situation in Africa thus provides convincing evidence that the way in which resources are managed is influenced by the political environment.³²⁴

Without discounting the effect on weak primary commodity exporting states of, for example, a skewed export structure and unfavourable international terms of trade, the biggest problem facing these states is the way they utilise the revenue from their resources - small as it may be. The perceived main reason for the resource curse in Africa is that the political elite in weak democracies or weak governance zones are able to *capture* the revenue generated from resources and use it to promote rents.³²⁵ For instance, the rentier character of the Nigerian state is such that, it has been more pre-occupied with its predatory role as a passive recipient of petro-dollars, than with any concern about the environment.³²⁶ In an undemocratic country, rent-seeking and rent-protection by the ruling elite create a concentration of power around the sources of revenue and favour the formation of an unhealthy symbiotic relationship between the resource extraction companies and the government leaders, making a classic case of *state capture*.

When the management of high government offices is premised on the need to control resources, such political power becomes an end in itself. Controlling resource extraction and revenue thus become critical to the regime's survival,³²⁷ contracts and access are given to friends and pro-regime

³²⁴ Nduka, O. (2006) *The Roots of African Underdevelopment*, Ibadan: Spectrum, pp.20-30.

³²⁵ Gumede, W. (2008) "Angola: Blood Oil and Western Hypocrisy". <http://angolansecurityupdate.blogspot.com>

³²⁶ Kayode, S. and Ebenezer, O. (1998) "Politics of Oil Corporations in Post-Colonial Nigeria" In Omotoye, O., Wumi, R., Jiti, O. and Tunde, O. (eds.), *Ken Saro-Wiwa and the Crisis of the Nigerian State*, Lagos: CDHR Publication.

³²⁷ Egypt under Mubarak and Tunisia under Ben Ali are obvious examples.

companies. The nature of the regime in power thus seems to be a decisive factor in determining whether resource endowment is a blessing or a curse for a particular country. It seems that in the absence of democracy and good governance, one cannot implement western business models or aspire to improved management of the extractive industry and the revenue generated thereof. In fact, it is argued that, lack of transparency and accountability poses the greatest threats to any natural resource management model, e.g. Nigeria. Revenue from natural resource is often squandered on “prestige projects”, pilfered by corrupt officials or used by undemocratic governments to repress political opponents. This is one of the main reasons why living standards in Africa’s resource rich countries are lower now than they were at independence.³²⁸

2. Resources, Wars and Civil Strife

The mismanagement of resources in Africa has triggered civil conflicts due to the unfair distribution of wealth. The continent’s recent history includes wars, vast human rights abuses (which continue across West Africa with the exception perhaps of Ghana and Senegal), internal ethnic and regional rivalries, and interference by the world’s great powers (the new great powers are scrambling to exploit Africa’s resources through their multinationals).

War, or the threat thereof, and instability mean that a country’s revenue and resources are diverted away from social and economic transformation programmes, and are instead used to purchase arms. For example, when the ruling regime in Chad was threatened by a rebellion, President Idris Deby

³²⁸ Villarroel, R.C. (2006) “Environmental Conflicts and the Plundering of Resources”, *49 Journal of Development*, 32-37.

decided unilaterally to dip hands into oil revenues that were being kept in the future generation fund.³²⁹

3. Tax Collection Structure

Africa's governments that tend to manage properly their revenue from the extractive industries are those with a transparent and accountable tax regime, and those that are capable of collecting the taxes due to states.³³⁰

4. Policy and Implementation Challenge

It would be wrong to assume that since resources are not contributing to the development of societies in resource-rich countries, these countries lack progressive laws and policies. The problem, however, is the gap that exists between policy and implementation – for reasons enumerated above or simply lack of capacity and political will to follow through on pious declarations of intent.

5. Inability to Control Revenue Volatility

The inability to control the volatility of revenue is a serious problem. Auty³³¹ and Mikesell,³³² in fact, offer revenue volatility as a possible explanation for the resource curse. Price volatility is a big problem, making it extremely difficult for governments to follow a prudent fiscal policy. While Botswana seems to have found a solution to the problem (as will be shown hereunder), in many countries windfall revenues from fluctuating prices are consumed

³²⁹ Pegg, S. (2009) "Chronicle of a Death Foretold: The Collapse of the Chad-Cameroon Pipeline Project", *108 African Affairs*, 311-320.

³³⁰ Claude, K. (2008) "The Search for Responses to Resource Curse", *Resource Insight Issue No.6* pp.8-19.

³³¹ Auty, R.M. (1998) "Mineral Wealth and Economic Transition in Keaton", *24 Resource Policy* 224-249.

³³² Mikesell, R. (1997) "Explaining the Resource Curse with Special Reference to Mineral Exporting Countries", *23 Resource Policy*, 191-199.

rather than invested,³³³ especially in those countries that lack democratic systems and good governance. These countries often engage in excessive consumption as a consequence of bad decision-making.

4.5. Strategies to Improve Resource Management in Africa: the Case of Botswana and Norway

A successful resource management model is one that has avoided or overcome the resource curse. Most models that have worked have relied on a responsive and accountable state, and this is, in fact, a pre-requisite for good and sustainable resource management, along with the elements of democracy and good governance. Countries around the world that have succeeded in utilizing their natural resources efficiently have used models that combine economic, political and social factors prudently. Economically, successful resource-rich countries have emphasized putting in place a sound macroeconomic policy, which is necessary in helping to avoid the “Dutch Disease” (the seeming relationship between the exploitation of natural resources and a decline in other viable sectors).

It is suggested that the most important questions facing a resource-rich country include the following:

- I. How fast the resources should be extracted and how should the revenue be *used*?
- II. Should the country increase its cash flow by borrowing?
- III. What institutional reforms should be adopted to ensure that appropriate macroeconomic decisions are put in place?

³³³ Weinthal, E. and Loung, P.J. (2001) “Energy Wealth and Tax Reform in Russia and Kazakhstan”, *Resources Policy*, 222.

In attempting to answer these questions, case studies of Botswana and Norway give us a series of lessons.

4.5.1. The Botswana Model

Independent Botswana has developed rapidly and sustained economic growth (over the decade from 1992, for example, at 8.4% a year, third-highest among all developing countries, and far in excess of any other in Africa).³³⁴ Its economic growth-rate record has been impressive. From being one of the poorest countries in the world at independence, Botswana is now classified by the World Bank as an Upper Middle Income country.³³⁵

Because of such growth rates and the fact that it has been ostensibly operating a stable democracy from the outset (in contrast to most African countries before 1990, with the exception of Mauritius), Botswana has been showered with praise and has been repeatedly dubbed the “African Miracle” (a phrase originally coined by Thumberg-Hartland in 1978, repeated by Samatar in 1999).³³⁶ The bulk of the literature on Botswana is heavily imbued with celebratory positions. However, much of this is idealistic and largely economistic in its approach, missing much of the political dynamics of the country’s pre- and post-independence experience.³³⁷

³³⁴ *The Economist* (London), 18 September, 1993.

³³⁵ World Bank Human Development Report (2003), p.284. Though Botswana’s growth in GDP, 1970-1997, was the World’s highest, diamonds constituted 45% of total GDP, 65% of government revenue, and 80% of export earnings in 2002: the ratio between the consumption of the richest and the poorest 10% of the population earlier was 77.6%; and the country experienced a drop in its Human Development Index (HDI) from 95th to 126th place between 1991 and 2002, the only one in the world to suffer such a fall during a period of rapid domestic growth (World bank, 2000:9).

³³⁶ Leith, J. (2004) “Why Botswana Prospered”, Paper Presented at the Politics Seminar, University of Botswana, March 3.

³³⁷ Good, K. and Ian, T. (2005) “Presidential Succession in Botswana: No Model for Africa”, Paper presented at the Politics Seminar, University of Botswana, February 28.

Diamonds were discovered in Botswana in 1967, just a year after the country attained its independence from Great Britain. From that significant discovery, the Botswana government has relied on a set of policies aimed at avoiding fiscal deficits.

Its key instrument in this regard is the Sustainable Budget Index (SBI). This stabilizing tool ensures sustainability in the way that revenue from diamonds is utilised. The SBI measures the ratio between consumption expenditure and non-resource revenue. As long as the SBI is less than one, the government is sure that natural resource capital is not being consumed. The strategy has worked well in Botswana; so far the government has avoided excessive spending in the good times and has cut spending drastically when the diamond price is down. Botswana also introduced new variable tax revenue. Through this, the country has been able to obtain increasing tax revenue during periods of high commodity prices. Though the situation has changed, due basically to corruption here and there, the important lessons about financial and political good governance remains green.³³⁸

4.5.2. The Norwegian Model

The second lesson for Nigeria is the idea of national control. Norway has relied on national companies to maximise revenue for the state. The government of Norway initially selected an approach similar to what is happening in Africa today whereby foreign companies carried out all the petroleum extraction activities on the Norwegian continental shelf. This

³³⁸ Good, K. (2004) "Resource Dependency and its Consequences: the Cost of Botswana's Shining Gems", Paper Presented at the Politics Seminar, University of Botswana, November 17.

extraction happened, however, within an environment of accountability and transparency.³³⁹

The model evolved over time, with national companies becoming the main investors in the sector. Norway created wholly-owned oil companies to control the extraction of oil and to maximise revenue for the state. The main oil companies are Statoil and Norsk Hydro.

Unlike the complacency and mismanagement seen in African national companies (such as Angola's Sonangol and Nigeria's NNPC), the Norwegian model encourages competition and co-operation between its local oil extracting companies. The competition has pushed the companies to acquire better and more advanced technological, organizational, managerial and commercial expertise, and has ensured substantial revenue for the state.

The Norwegian model is successful because it has achieved control of the exploitation of oil and its re-distribution on behalf of the Norwegian people. Importantly, the model is predictable and transparent. There is clear responsibility and roles to ensure that important social considerations – such as environmental issues, inspections, the monitoring of benefits to accrue to the state and the Norwegian people, technological upgrades and staff training are safeguarded and benefits are passed on to the society as a whole.

³³⁹ Claude, *Op.cit.* note 330 at 8-19.

As a matter of fact, Weinthal and Loung argue that countries that sell their natural resource sector to domestic interests have greater bargaining power than those that sell the sector to foreign investors. They argue that:

*Whereas the bargaining power of foreign investors decline once their capital and costs are sunk, domestic investors maintain their bargaining power vis-à-vis the state because both need the other in order to survive, enabling them to reach a compromise or find that their interests have converged over time.*³⁴⁰

Botswana has also moved to ensure some level of control in the extraction of its minerals. The government of Botswana has invested in all mining companies operating in Botswana.³⁴¹

A good comparative example at how control has played out is the case of Russia and Kazakhstan. Both sold their oil sectors to domestic and foreign investors respectively. While in Russia the domestic companies are helping to foster the development of an increasingly viable tax regime, in Kazakhstan the tax regime has become volatile and overly reliant on foreign businesses.³⁴² Rossner argues that similar reasons explain Indonesia's success in overcoming the resource curse.³⁴³ A positive involvement by national companies enhances returns for the state.

A critical pre-requisite for successful resource management is political will. That is, the political elite must support and work towards the establishment of

³⁴⁰ Weinthal, E. and Loung, P.J. (2001) "Energy Wealth and Tax Reform in Russia and Kazakhstan". *27 Resources Policy*, 222-240.

³⁴¹ Jacob, T. (2008) Notes presented to preparatory workshop on the Geneva Trade and Development Forum, Belgium.

³⁴² Weinthal and Loung, *op.cit.* note 340, at 215.

³⁴³ Rossner, A. (1996) "The Political Economy of the Resource Curse: A Literature Survey", UK Institute of Development Studies, Working Paper 268.

a model whereby the maximum proceeds of a country's petroleum or mining activities are passed on to the people and the society as a whole.

The fact is, managing natural resources does not simply entail managing extraction and the revenues therefrom only; it also involves managing a complex portfolio of assets including structures and machinery. Other factors such as resource policy, fiscal policy, economic policy, political factors, institutions, governance structures, human resources, technology, revenue distribution, labour laws and the environment all play a role in ensuring that resource endowments are a blessing and not a curse. The examples of Botswana and Norway show that natural resources are "governance-intense" assets. Therefore, there is the need to have in place a functional state that can mitigate factors leading to a resource curse, such as rent-seeking behaviour, weak state capacity, and weak institutions. State capacity is crucial as it impacts on the state's ability to formulate policies and implement them, as well as its ability to collect taxes from the extraction of its resources.

Also, there is need for transparent and fair distribution of revenue. This minimises opportunities for corruption and mis-appropriation as windfall revenue stays out of the hands of public officials.

The lesson for Nigeria from Botswana and Norway, which produce minerals and oil respectively, is that, sound forward-thinking economic policies play a critical role in ensuring successful resource management, which will allow future generations to benefit from the extraction of exhaustible natural resources. Botswana has used fiscal discipline. One of the characteristics of

the mining industry is that it is cyclical, with prices often rising and falling over a very short periods of time.³⁴⁴ It is the absence of a forward-looking policy that makes most developing countries, pressed to attract investors during depression periods, to enter into contracts which benefit the multinational companies more than the countries where the extraction is taking place.

4.6. Characteristics of Successful Models

Successful models around the world have the following characteristics:

4.6.1. Responsible Government: A leadership that respects the rule of law and works for the interest of the citizens in negotiating contracts and in the utilization of revenue is paramount for any successful mineral resource management. Government must be transparent not only on the revenue management but throughout the entire value chain from the negotiation of contracts to issues of revenue utilization. For this to happen, there must be checks and balances in the system.

4.6.2. Internally Driven: Successful resource management models are generally those that are developed domestically, taking into account the local realities and country dynamics. In many cases the models used in Africa have been generated abroad, especially by such organizations as the World Bank and IMF. African countries should also be wary of oil or mineral corporations, which have a reputation across the continent for their belligerent disregard for

³⁴⁴ The mining industry is currently in over drive due to high commodity prices which appear to remain strong. But the price of diamonds declined following the economic crisis of 2006-2008, resulting in a budget deficit for the first time.

community structures and for the health and safety of communities on the ground.

4.6.3. Competent Bureaucrats and Technicians: It appears that the presence of highly qualified bureaucrats assists a country substantially in avoiding the resource curse. In Botswana these competent bureaucrats comprised both expatriates and talented black South Africans driven north by apartheid.³⁴⁵ An International Council on Mining and Minerals (ICMM) research report found that similar groups of capable bureaucrats played critical roles in Chile where they were called the “Chicago Boys”, in Indonesia where they were called the “Berkeley Mafia” and in Malaysia where they were called the “Backroom Boys”.³⁴⁶ An important question that the ICMM research poses is why political and socio-economic circumstances and foresight have been less favourable to the formation of such groups in other countries?

4.6.4. Knowledge of the Quantity and Quality of Resources: It is important to have an idea of the country’s natural resource potential and of the life span of the reserves, since resource development decisions made today will impact on the society for generations to come. Establishing these policies requires at the outset an understanding of the quantity and quality of the country’s resource endowment, its commercial viability, expectations for future production and sustainability, how much extraction corporations are making and how much governments (including municipalities) are collecting

³⁴⁵ ICMM (2006) “The Challenges of Mineral Wealth: Using Resource Endowments to Foster Sustainable Development”, Literature Review for the Analytical Framework, p.12.

³⁴⁶ ICMM, *ibid* note 345 at 12.

from these extractions. This exercise reveals how states that rely on natural resource extraction address issues of poverty, inequality and sustainability.

4.6.5. Strong Democratic Principles: A sustainable model cannot exist outside of democratic principles. This suggests that one cannot expect improvements in the management of resources by relying simply on the goodwill of the government, international institutions or investors. Good political governance is crucial.

4.6.6. Presence of Strong Oversight: A strong civil society is imperative in forcing government and corporations to respect legislation. This is now being observed across the continent with many civil society organizations embracing new movements such as the Publish What You Pay (PWYP) campaign and the Extractive Industries Transparency Initiative (EITI).³⁴⁷ This suggests that it is no longer “business as usual”, that there must be change and that Africans cannot improve the management of their resources without new efforts. In Nigeria, for instance, the Upper House (Senate) of the National Assembly has passed the EITI Bill into law. This is a commendable starting point.

4.6.7. Consultation with Citizens and Communities: The involvement of citizens is integral to the process of improved management since local communities are both the problem and the solution to local level resource

³⁴⁷ Hyden, G. (2006) “Between State and Community: Re-designing Governance in Africa”, Conference paper on *Designing Constitutional Arrangements for Democratic Governance in Africa*, African Studies Program, Indiana University, Bloomington, USA, 30-31 March.

management.³⁴⁸ It is argued that increased local control of natural resources motivates long-term investment and favours management accountability and performance.³⁴⁹ Lack of consultation has seen an increase in social unrest among communities that feel excluded and believe they are not benefiting from the extraction of their natural resources. Examples are the U'wa community's battle against oil corporations in Colombia and the case of SERAC in the Niger Delta.

4.6.8 Creation of Future Funds or Trust Funds: An important issue in natural resource management is how to ensure that the interests of future generations are protected by way of sustainable development. Norway and Kuwait are examples of countries that have established functioning trust funds to address this issue, while in Africa, Botswana and Mauritania have established similar funds with varying degrees of success.³⁵⁰

4.6.9. Regional Common Standards: It is important for African countries to co-operate, develop and implement common, minimum standards with regard to the exploration, exploitation and management of Africa's natural resources. This is crucial in presenting a common front vis-à-vis powerful multinationals that are vying to access Africa's resources. Common natural resource management and governance strategies could go a long way towards controlling resource exploitation and lessening Africa's resource dependence.

³⁴⁸ Since 1993 the U'wa, a small indigenous community in Colombia, have been waging a battle against American Occidental Petroleum Corporation and the Colombian state-owned oil corporation, Ecopetrol, to keep them from drilling for oil on their ancestral land.

³⁴⁹ Luis, C. (2008) *The U'wa Community Battle Against the Oil Companies: A Local Struggle Turned Global*, London: Spectrum, p.23.

³⁵⁰ Obi, C. (2004) "Globalization in Nigeria's Oil Industry: Implications for Local Politics" in Agbaje, A.A. et al (eds.), *Nigeria's Struggle for Democracy and Good Governance*, Ibadan: University Press, pp.441-459.

4.7. Perceived Challenges across the Continent

Arising from the above, a number of challenges facing governments across the African continent dealing with resource management seem to have emerged. Below are some but, by no means, exhaustive:

First, Governments are faced with the challenge of creating viable, integrated and diversified industries as well as sustaining the wealth they generate without compromising environmental, social and cultural considerations and ensuring a regulatory framework that encourages wealth production. The challenge is how to create and sustain mineral wealth without compromising environmental, social and cultural assets of the people.³⁵¹

Second, Governments must invest windfall revenues in order to ensure lasting wealth. They are faced with the challenge of deciding how much should be saved and how much should be invested, and in what sector.

Thirdly, another major challenge is to ensure that revenue from extraction is distributed equitably and in a way that balances and manages conflicts and concerns, both at local and national levels. Government must also decide on the form of allocation that would best promote sustainable development by focusing on poverty alleviation. This raises the further challenge of ensuring that extractive and exploitative natural resource-based activities are fully integrated into community development planning in order to maximise their contribution to sustainable livelihoods in the areas where these resources are extracted.

³⁵¹ Edigheji, O. (2004) "The African State and Socio-Economic Development: An Institutional Perspective", *9 African Journal of Political Science*, 84-14.

Fourthly, ensuring sound governance and a stable macro-economic environment are essential if government wants to curb rent-seeking and corruption, to manage the adverse impact of resource rents, currency appreciation and commodity price volatility, and to enhance citizens' interest in wealth conservation. Transparency and clarity in the way that mineral rights are granted and in the management of exploitation are important challenges that must be dealt with.

Fifthly, the availability of domestic capacity and expertise determines whether a country can overcome the other challenges involved in resource management. The natural resource sector is complex and sophisticated and requires high-level technical and managerial capacity. The extractive sector tends to be capital intensive and uses little unskilled or semi-skilled labour. The challenge, therefore, is in building competence in the area of natural resource management at all levels – that is, at community, local government or municipality, state government, national government, civil society and company levels. State capacity is critical since government must be able to understand and monitor the extraction sector. The state must also have the capacity to:

- a. Formulate, implement and monitor policies and laws;
- b. Create a system that maximises internal revenue from exploration and exploitation;
- c. Promote value-added industries prior to export; and
- d. Ensure that co-ordination exists between the extractive sector and other sectors of the economy.

Another challenge is that of predictability. In this regard, all stakeholders must understand the legal framework which sets conditions and rules for the extraction of resources. The way in which legislation is framed can hinder or promote better management of the extractive industry and the revenue therefrom.

Natural resources, in most cases, are not renewable, meaning, oil wells as well as mines are finite and will inevitably close. Clear strategies are, therefore, needed to deal with this eventuality and plans must be in place to ensure sustainable growth after the depletion of the resources. The challenge for Africa today is to ensure that its natural resources are utilised in a way that contributes to pro-poor growth and progress towards the Millennium Development Goal targets.³⁵² It is, therefore, not surprising that the management of these resources and the myriad associated issues, especially the revenue accruing from them, are under considerable scrutiny. An important question being asked at present is whether the innovative approaches emerging on the continent in managing natural resources and the wealth they generate are making a demonstrable difference.

4.8. Summary

This chapter examined natural resource wealth management in Africa in relation to conflict, corruption, health of the citizens, politics and development generally. It evaluated the emerging trends in natural resource wealth management in Africa and highlighted the perceived factors that negatively influence the management of such resources in Africa. The chapter examined

³⁵² UN Millennium Declaration, A/HRC/4/9/ 2000.

strategies and successful models for proper management of natural resource wealth on the continent.

The above examination of how countries manage their resources and the challenges faced by resource-rich countries suggests that there is no broad theory that can fit all cases, and no single and simple explanation of what steps need to be taken to create a resource 'blessing' rather than a resource "curse". However, from the foregoing, the lesson for Nigeria is that the proper management of resources is required to ensure growth and development in the Niger Delta and that finding a suitable management system or model to match a country's specific circumstances remains the sole responsibility of the state.

In the next chapter, this study examines the crisis of corporate governance vis-à-vis transnational oil corporations and the conflict in the Niger Delta.

CHAPTER FIVE

TRANSNATIONALS AND THE CONFLICT IN THE NIGER DELTA: ISSUES OF CORPORATE GOVERNANCE

5.1. Introduction

This chapter interrogates the relations between transnational oil corporations (TNOCs) and the host communities (HCs) from the perspective of corporate social responsibility, their communal governance systems and the existence or otherwise of conflict, crime and violence. This puts part of our hypothesis to test, whether the nature of TNOCs' exploitation and appropriation of natural resources and the nature of corporate governance in relation to the HCs underpin intra-and inter-communal conflicts and the disarticulation of local governance and cohesion.

This chapter also evaluates the false (or true?) developmental promise of corporate social responsibility (CSR) anchored on evidence from TNOCs by examining the motives for corporate social responsibility engagement and their implications, the evolution of the concept of corporate social responsibility and its limitations, and above all, a case study of best practice in corporate social responsibility.

Corporate social responsibility or corporate citizenship denotes different things to different people. One end of the spectrum is compliance with laws and the other philanthropy.³⁵³ Another way of looking at it is who benefits? The beneficiaries range from employees to suppliers to customers to the

³⁵³ Aswathappa, K. (2008) *International Business*, Toronto: McGraw-Hill, p. 610.

amorphous entity called “community”. However, complying with the law is the basic minimum for legitimate stay in continued business operation.

Good corporate governance is essentially about effective and responsible leadership. Responsible leaders build sustainable business by having regard to the corporation’s economic, social and environmental impact on the community in which it operates. Responsible leaders do not compromise the natural environment and the livelihood of future generations.³⁵⁴ Corporate social responsibility is as much about not polluting and being concerned about people being displaced when an industrial unit is set up beyond legal compliance. Today, the concept reiterates corporate culture, a notion that development is not the exclusive responsibility of the government.³⁵⁵

Corporate houses have also laid great emphasis on respecting the entire development process. This means being participative, not prescriptive, creating independent rather than dependent communities and focusing on the excluded and the powerless.³⁵⁶ Accordingly, TNOCs have come to embrace major international corporate social responsibility initiatives such as Kofi Annan’s Global Compact and the Global Reporting Initiative (established by CERES - Coalition for Environmentally Responsible Economies). They participate in partnerships with established development agencies such as the US Agency for International Development (USAID) and the United Nations Development Programme (UNDP), while using NGOs to implement development projects on the ground.

³⁵⁴ King Code of Governance Principles 3 (2009) South Africa.

³⁵⁵ Furnham, C.R. and Gunter, H.O. (2007) *Culture in Organization*, Toronto: Toni Publishers, p.76.

³⁵⁶ Karpagam, M. (2006) *Environmental Economics*, New Delhi: Sterling Publishers, p.110.

5.2. International Developments on Sustainability

Sustainability issues have gained importance internationally since the beginning of this millennium. The United Nations has published the Global Compact and the Principles for Responsible Investment. There has also been the European Union Green Paper on Corporate Social Responsibility (CSR) and the OECD Guidelines for Multinational Companies.

The Swedish Government has laid down that its state-owned enterprises must have sustainable reports following the Global Reporting Initiative's (GRI) G3 guidelines.³⁵⁷

In the United Kingdom, corporate social responsibility as part of the Companies Act came into operation in October, 2007. It requires that directors consider in their decision-making, the impacts of the company's operations on the community and the environment. As has been pointed out in 'The Reform of United Kingdom Company Law', the intention of corporate law reform in this area was to:

- Encourage companies to take seriously their ethical, social and environmental responsibilities.

In Germany, in terms of the German Commercial Code, management reports must include and demonstrate that their decisions have taken corporate social responsibility into account in an effective way.³⁵⁸

³⁵⁷ Esser, I. and Dekker, A. (2008) "The Dynamics of Corporate Governance in South Africa: Broad Based Black Economic Empowerment and the Enhancement of Good Corporate Governance Principles", *Journal of International Commercial Law and Technology*, 3(3) p.157-169.

³⁵⁸ King Code of Governance Principles 3, *supra* note 353, at 20-57.

In January, 2009, the Norwegian Government launched a national White Paper on corporate social responsibility. The paper deals with the responsibility of companies in Norway to report on sustainability performance.

In December, 2008, the Danish Parliament passed a law on corporate social responsibility reporting for its companies, mandating that companies disclose their corporate social responsibility activities or give reasons for not having any, following the United Nations principle of 'comply or explain'.

However, the effectiveness of corporate social responsibility initiatives in the oil and gas sectors as regards the Niger Delta region of Nigeria has been increasingly questioned, and there is mounting evidence of a gap between the stated intentions of these TNOCs and their actual behaviour and impact in reality.³⁵⁹ In fact, some oil industry insiders are also highly critical of corporate social responsibility. Indeed, it is significant that some of the most scathing criticisms of corporate social responsibility initiatives were expressed by former and current oil company staff and company consultants with first-hand experience of corporate social responsibility practice in the oil and gas sector.³⁶⁰ Of course, oil companies have plenty of 'corporate social responsibility believers' and practitioners who would undoubtedly like to dismiss such claims. Criticism by industry insiders must be taken seriously, and calls for close assessment of corporate social responsibility practices within the Niger Delta region of Nigeria.

³⁵⁹ Frynas, J.G. (2000) *Oil in Nigeria: Conflict and Litigation between Oil companies and Village Communities*, London: Lit Trans, pp.20-45.

³⁶⁰ Personal communication by way of interview with Human Resources Department staff, Shell B.P., Warri, 10th of February, 2011.

The Niger Delta crisis is, essentially, but among others, a governance crisis. It is a crisis of the state and corporate governance. As Michael Watts and Ike Okonta have noted, "Nobody should be under any illusion that the transnational oil corporations and the federal government are not the most important actors driving the inter-ethnic and inter-community conflicts in the region".³⁶¹

While the nature of relations of the Nigerian state with TNOCs is at the root of the problems of the Niger Delta. Similarly, the underdevelopment, poverty, marginalization and the failure of corporate governance of the TNOCs in the region is also abundantly indicated. That the TNOCs are a key driving force of these conflicts is underscored by their huge presence, influence, roles and interventions in the communities. Given the enormous resources and consequent power and influence that the TNOCs exert over the HCs, they are a dominant and significant social force, which have shaped and re-shaped the local economies, local struggles, local politics and local conflicts.³⁶²

The situation of the region raises questions about the nature of corporate governance and relationship with the HCs. In the Niger Delta, after over four decades of transnational oil corporations' exploitation and presence, the host communities are saturated with feelings of neglect, bitterness, frustration,

³⁶¹ Watts, M. and Okonta, I. (2003) "Petro Politics and Nigeria Democracy", Preface to Dimieari Von Kemedi (2003) *Community Conflicts in the Niger Delta: Petro Weapon or Policy Failure?* Berkeley Workshop on Environmental Politics, Working Papers 3-12, Institute of International Studies, University of California, Berkeley.

³⁶² Wells, J.B., Perish, M. and Guimaraes, L. (2001) "Can oil and Gas Companies Extend Best Operating Practices to Community Development Assistance Programs?" Paper presented at the SPE Asia Pacific Oil and Gas Conference and Exhibition, Jakarta, Indonesia, 17-19 April.

alienation and protests about the political economy of oil.³⁶³ The communities are factionalised, unstable, criminalised and violent. The HCs relations with the TNOCs is so underlined by loss of trust, scepticism and hostility that there is an increasing resort to extra-legal means of settling disagreements such as subversion, violence and disruptions.³⁶⁴ Since the 1990s, TNOCs and HCs relations have become contentious and the protestations have become more aggravated that threats, kidnappings, hostage-takings, vandalization of flow stations, terminals and platforms and attacks on staff have become rampant. The threat to transnational oil corporations is so profound that security now constitutes a major segment of their staffing.³⁶⁵

5.3. The Nigerian State, TNOCs and the Oil Economy

The Niger Delta region today is enmeshed in violent conflicts over oil. These are not pervasive conflicts of violence and insecurity alone, but a breakdown of social and political order. The creeks, riverine and coastal areas are becoming ungovernable; there is heightening insurgency and criminality.³⁶⁶

The crisis in the region has brought into sharp focus the nature of the Nigerian state with oil, the TNOCs and the Niger Delta region as well as the nature of TNOCs' relations and contributions to the HCs. The nature and character of the Nigerian state has underpinned the nature and relations with

³⁶³ Ejumudu, K.B.O. (2008) "Youth Restiveness in the Niger Delta: A Constraining Factor to Sustainable Development in Nigeria", *1 Research and Development*, pp.9-17.

³⁶⁴ Obi, I.C. (1999) "The Crisis of Environmental Governance in the Niger Delta ", *3 AAPS Occasional Paper Series*.

³⁶⁵ Obi, I.C. (2001) "Oil Friendships are Greasy: A Political Economy of Corruption in Oil Company-Community-Relations in the Niger Delta", A Paper Presented at the International Political Science Association Conference in Collaboration with the Nnamdi Azikiwe University, Awka, and The African Center for Democratic Governance, Abuja, October 15-17.

³⁶⁶ Lubek, P., Watts, M. and Lipschutz, R. (2007) *Convergent Interests: US Energy Security and the Securing of Nigerian Democracy*, Washington D.C.: Centre for International Policy, p.9.

oil and the TNOCs. First, being a neo-colonial capitalist peripheral economy, the state is controlled by a dependent comprador ruling class, which is accumulative, parasitic, exploitative, profligate and unproductive.³⁶⁷ The Nigerian ruling class has depended on oil since the late 1960s for accumulation. The mentality, outlook, methods of orientation and activities of the ruling class determined the predatory relations of TNOCs and HCs.³⁶⁸

Second, Nigeria is regarded as a rentier state. One major fall out of “rentierism” has been that the nation has earned and earns huge revenues without production, control and responsibility. Since there has been no relationship between revenues and expenditure on one hand and citizen based taxes, the state has not been liable or responsible to the citizen and has been absolved from accountability, checks and resistance from the citizenry.³⁶⁹ Oil has created a large system of patronage, clientele and corruption. The consequence has been enormous oil based-leakages and frittering, which with over N400 billion earned, has kept the nation tottering as one of the most endowed, most corrupt and poorest countries in the world.³⁷⁰

³⁶⁷ Yomere, G.O. (2002) “Corporate Social Responsibility of Oil Companies in the Niger Delta” in Orubu et al (eds.), *The Petroleum Industry, the Economy and the Niger Delta*, Abraka: Delta State University Press, pp.170-178.

³⁶⁸ Ikelegbe, A. (2005) “The State, Ethnic Militias and Conflicts in the Niger Delta”, *39 Canadian Journal of African Studies*, 490-516.

³⁶⁹ Dickerson, M. and Flanagan, T. (2006) *An Introduction to Government and Politics: A Conceptual Approach*, Toronto: Thompson Publishers, pp.34-40.

³⁷⁰ *The Vanguard*, August 3, 2009, p.36.

Table 1.1. Contribution of Oil to Government Revenue in Nigeria

Year	Amount (million naira)	Percentage	Amount (million Naira)	Percentage	Total
1970	11111166.6	26.3	1111467.4	73.7	11111.634
1971	11111510.1	43.6	1111658.7	56.4	111168.80
1972	11111764.3	54.4	1111640.8	45.4	111405.10
1973	111016.00	59.9	1111679.3	40.1	116695.30
1974	113724.00	82.2	1111813.3	17.9	114537.40
1975	114271.50	77.5	111243.20	22.5	115514.70
1976	115365.20	79.3	111400.70	20.7	116765.90
1977	116080.60	75.6	111961.80	24.4	118042.40
1978	114555.08	61.8	112815.20	38.2	117371.00
1979	118880.08	81.4	112031.60	18.6	110912.40
1980	112353.03	81.1	112880.20	18.9	115233.50
1981	118564.04	64.4	114726.10	35.6	113290.50
1982	117814.09	68.3	13618.8	31.7	111433.70
1983	1117253.0	69.1	113255.70	31.1	110508.70
1984	118269.02	73.5	112984.10	26.5	111253.30
1985	110923.07	72.6	114126.70	27.4	115050.40
1986	118107.03	64.4	114488.05	35.6	112595.80
1987	119027.00	75.1	116353.60	25.1	125380.60
1988	119831.07	71.9	117765.00	28.1	127596.70

1989	139130.05	72.6	114739.90	27.4	153870.40
1990	171887.01	73.3	126215.30	26.7	198102.40
1991	182666.04	81.9	118325.20	18.1	100991.60
1992	164078.01	86.2	126375.10	13.8	190453.20
1993	162102.04	84.1	130667.00	15.9	1192769.4
1994	160192.04	79.3	141718.40	20.7	201910.80
1995	324547.06	70.6	135439.07	29.4	459987.30
1996	369190.00	71.1	151000.00	29.1	520190.00
1997	1416811.1	71.5	1166000.0	28.5	1582811.1
1998	1289532.3	62.5	1174076.5	37.5	1463608.8
1999	1724422.5	76.3	1224765.4	23.7	1949187.9
2000	1591675.8	83.5	1314483.9	16.5	1906159.7
2001	1707562.8	76.5	1523970.1	23.5	2231532.9
2002	1230851.2	71.1	1500986.3	28.9	1731837.5
2003	2074280.6	80.5	1500815.3	19.5	2575895.9
2004	2285788.9	85.7	1410765.2	18.1	2774483.6
2005	2291643.7	87.4	1253027.0	16.5	2864882.9
2006	2301251.2	88.1	1135136.1	14.7	2915713.7
2007	2395342.5	88.9	1113214.0	13.2	2977564.4
2008	2513142.1	90.2	1012143.1	12.5	2998974.2

Source: Central Bank of Nigeria (CBN) Statistics Bulletin and various other issues of CBN Reports, Government Printers, Abuja.

The nature and forms of oil exploitation and the practices and behaviour of the TNOCs are underpinned by the politics of oil, the policies that flow from it and the nature of collaboration, regulation and control that exist between the Nigerian state and oil capital. For example, because of the rentier nature and character of the ruling class, as well as the identity and power struggle over it, the Nigerian state has remained entirely and largely dependent on the royalties, taxes and profits shared from oil exploitation. Its concern is in maintaining and protecting the oil flow and its profits.³⁷¹

Thus far, an assessment by this study of the legal and regulatory framework for the industry, compliance by oil operators and the effectiveness of Nigeria's control and regulation of the industry reveal deep inadequacies and poor performance. The Nigerian state has been and remains weak in the monitoring and regulation of the operations and practices in the industry.

There is laxity and passiveness in the Directorate of Petroleum Resources' (DPR) monitoring, oversight and enforcement functions. The DPR has not effectively asserted its role and effectively engaged the oil industry operators in terms of effecting compliance with rules, standards, regulations and prescriptions. The oil industry's practice in the management of waste and environmental pollution is extremely poor and far below international standards.³⁷²

³⁷¹ Egware, I. (2007) *Poverty and Poverty Alleviation*, Enugu: Fourth Dimension, p.49.

³⁷² Ibaba, S.I. (2005) *Understanding the Niger Delta Crisis*, Port Harcourt: Amethyst and Colleagues, p.35.

There are several explanations for the poor performance. The Nigeria National Petroleum Corporation (NNPC) and DPR have lacked adequate technical and technologically competent human capital to effectively monitor the petroleum industry. Furthermore, the technological capacity to effectively monitor and oversee the industry is poor. There is the problem of overlapping functions, the lack of effective co-ordination and sometimes distrust, between the DPR and other agencies of government. This limits the latitude and span of activities and hampers effective functioning.

Several difficulties within the Petroleum Inspectorate have been identified by this study through direct and personal communications, which actually mirror those generally faced by such third world institutions that regulate critical resource sectors and powerful transnationals.³⁷³

First, the Department finds it difficult to regulate a critical resource exploitation industry, in which the Nigerian state is extensively involved. Particularly, it has been difficult to regulate the negative externalities of oil and gas production, which constitutes the revenue base of the government. As an equity holder in the TNCOs, the state lacks the "distance and arms-length relationship required in imposing costly sanctions".³⁷⁴

Second, the regulatory agencies, in this case the Petroleum Inspectorate Department does not have the capacity and ability to effectively supervise and monitor the oil and gas industry. The inspectorate staff are not

³⁷³ Hutchful, E. (1998) "Building Regulatory Institutions in the Environmental Sector in the Third World: The Petroleum Inspectorate in Nigeria (1987-1997)", *XXIII African Development*, 121-160.

³⁷⁴ Personal communication by way of interview with some senior staff of the Department of Petroleum Resources, Abuja, 8th and 11th July 2011.

adequately trained and equipped for efficient supervision of such large, complex and very influential institutions as TNOCs.³⁷⁵

Third, the inspectorate staff do not have the logistics, the capacity to gather, process, analyse and interpret data due to poor scientific and laboratory capabilities. Furthermore, the inspectorate staff is not equipped to match the TNOCs in terms of competence, incentives, commitment and technical operational experience.³⁷⁶

5.4. The Nature and Failure of Corporate Social Responsibility in the Niger Delta

There are different explanations for the failure of CSR. For instance, the non-participatory character of development intervention in the region has been implicated for the provision of projects that the communities have no need of. That apart, the sustainability of projects has been called into question, especially against a back-drop of projects that fail to serve the communities shortly after their commissioning.³⁷⁷

Environmental concerns and human rights violations in oil producing communities in the Niger Delta hardly count for much in the calculus of TNOCs if the above explanations are acceptable.³⁷⁸ That means our understanding as to why corporations do things the way they do would hardly be enhanced, except we are to take it that by the very nature of corporations,

³⁷⁵ Personal communication.

³⁷⁶ Personal communication.

³⁷⁷ Aaron, K.K. (2005a) "Perspective: Big Oil, Rural Poverty and Environmental Degradation in the Niger Delta of Nigeria", *Journal of Agricultural Safety and Health*, 11(2), pp.11-23.

³⁷⁸ Gore, C. and Pratten, D. (2003) "The Politics of Plunder: the Rhetorics of Order and Disorder in Southern Nigeria", *102 African Affairs*, 211-240.

they are meant to serve the interest of shareholders, not the welfare of communities. What this suggests is that even when they pretend to be nice to HCs, what Milton Friedman, would call 'hypocritical window-dressing', they do so only insofar as it makes sense from the perspective of profit.³⁷⁹

Joel Bakan's insights into the nature and workings of corporations supports and underscore our argument here. Writing in his highly provocative book on corporations pursuit for profit and power,³⁸⁰ Joel Bakan makes the point that the evolution of corporate law in both the United Kingdom and the United States in the 19th century amounted to a transformation of the corporation into a person, "with its own identity, separate from the flesh and blood of people who were its owners and managers and empowered, like a real person, to conduct business in its own name, acquire assets, employ workers, pay taxes and go to court to assert its right and defend its actions".³⁸¹

But if the corporation were a person, what kind of personality would it have? Bakan tells us that the corporation would be, literally speaking, a psychopath, lacking the conscience and morality that define humanity and capable of doing harm to society in the pursuit of its self-interest. Indeed, he sees the corporation as 'a pathological externalising machine'.³⁸² He recognizes the fact that corporations, in their pursuit of selfish interest have created jobs and useful products for society but nonetheless, avers that the corporation has a

³⁷⁹ Friedman, M. (1970) "The Social Responsibility of Business is to Increase Profit", The New York Times Magazine p.15. <http://www.colorado.edu/tudentgroups/libertarian/issues/friedman-soc-respo-business>. Accessed 18/4/09.

³⁸⁰ Bakan, J. (2004) *The Corporation: The Pathological Pursuit for Profit and Power*, New York: Free Press, pp.16-30.

³⁸¹ Bakan, *ibid* note 380 at 16-30.

³⁸² Bakan, *ibid* note 380 at 16-30.

'built-in compulsion to externalize its cost,' a fact that is implicated in many of the world's social and environmental problems. He cites the example of the design of the fuel tank of the 1979 Chevrolet Malibu in which the imperatives of cost-benefit analysis dictated the company opt for a faulty, but cheaper design, a decision that was implicated in an accident in which three children of a woman driver were burnt to death when the vehicle was involved in an accident.³⁸³

Harsh as Bakan's judgment on the nature and the workings of corporations may sound, this researcher is, nonetheless, persuaded by his argument. It is this in-built compulsion to externalize costs in the pursuit of maximum profits that is at the root of the failure of corporate social responsibility as a strategy for development in the Niger Delta, thus justifying Milton Friedman, who stated that there was no place for social responsibility as a business function. Professor Friedman of the University of Chicago, was an American Nobel Laureate economist and a public intellectual whose works are widely acclaimed and cited. He opined that a corporation's only responsibility is to make profits for its shareholders.³⁸⁴ However, Grace and Cohen argue that a business comprises people that possess views that are both humanistic and naturalistic in nature. The humanistic view, according to them, is that a deteriorating environment and planet are of no relevance in the sustainability of human life, let alone business. The naturalistic view on the other hand, draws a line between the exploitation of natural resources and the destruction of the fauna and flora.³⁸⁵

³⁸³ Bakan, *ibid* note 380 at 21.

³⁸⁴ Friedman, *op.cit.* note 379 at p.15.

³⁸⁵ King Code of Governance Principles 3 (2009) Institute of Directors, South Africa.

The view of Grace and Cohen is quite profound and cannot be ignored if we consider the fact that a business is useless and defunct without the human factor. If, as a result of the activities of a business, the environment deteriorates, like in the cases of pollution and poor waste disposal, a business should not just be contented with paying taxes and paying workers their wages and benefits.³⁸⁶ Decisive steps should be taken to curb the deterioration of the surrounding physical environment. Such a step may not seem to be business-oriented, but it will definitely pay off eventually since it is preserving the lives of the people from whom the profit is derived. A business may not even contribute to the deteriorating environment; nevertheless, its practice of social responsibility will build valuable goodwill that can serve as a safety net in case of crisis.

For the purposes of this study, it is submitted that businesses, particularly TNOCs, should not only be involved in corporate social responsibility, but should actually take the lead in driving a sustainable environmental development agenda. And sustainable development should “meet the needs of the present without compromising the ability of future generations to meet their own needs” as stated by the World Commission on Environment and Development (WCED).³⁸⁷

TNOCs lie at the heart of this study because of the magnitude of their operations in the Niger Delta, and the significant contribution they are capable

³⁸⁶ Grace, D. and Cohen, S. (2005) *Business Ethics problems and Cases*, Australia: Oxford University press, pp.12-34.

³⁸⁷ World Summit on Sustainable Development, Johannesburg, South Africa, September 2002. Available at: <http://www.un.org/esa/sustdev/documents> Accessed 8/10/11.

of making in the developmental process. They are also focused upon because of the amount of business they control and their prominence in the Niger Delta. Besides, they are generally blamed for the deterioration of the Niger Delta's physical environment through their oil exploration and exploitation activities. It is impossible therefore, to discuss the crisis in the Niger Delta without implicating the role of the TNOCs as a result of their exploration processes.

5.5. The Case for Sustainable Environmental Development

Sustainable environmental development is a phenomenon channelled towards the enhancement of the human environment, "which meets the needs of the present without jeopardizing the chances for the future generations to meet their own needs".³⁸⁸ It is of no little importance to emphasize the benefit of future generations in this concept. Considering the current state of the environment in the Niger Delta, it is apparent that it is not the same as it was about fifty years ago. Obviously, the environment has deteriorated over the years. If the current trend is kept, the fate of the future generations can best be imagined.

This chapter is, therefore, located within the framework of systems theory. The theory provides a way to study complex systems in nature, society, and science. According to Baskin et al., systems theory provides a way to view relationships. It captures the notion of the inter-relationship between parts and wholes. The theory can be used to look at parts of an organization – employees and managers, departments and shops, etc. The organization is

³⁸⁸ Robbins, S.P. (2007) *Organizational Behaviour: Concepts, Controversies and Applications*. New Jersey: Prentice-Hall, p.110.

forced to reckon with its stakeholders because of the various constraints they may impose on it. Customers can boycott its products, employees can go on strike, and the host community can become hostile.³⁸⁹ The theory crystallizes the need for an organization to depend on the stakeholders who depend on it. For the business to be profitable, the organization must enjoy a favourable relationship with all its stakeholders. This implies the trickle down approach of profit, people and environment.³⁹⁰

In this study, TNOCs are viewed through the eye of the systems theory. The size of the corporations notwithstanding, they must enjoy the goodwill of all the people and groups they deal with.³⁹¹ TNOCs cannot operate in isolation of their host communities in the Niger Delta. This kind of relationship will be impossible to build if the TNOCs continue to contribute to the degradation of the environment and evasion of their responsibilities. A full involvement in driving sustainable environmental development is paramount to the cordial symbiotic relationship with HCs.

If TNOCs realize that they are just part of the whole picture, while their stakeholders, particularly the HCs, form the rest of the picture, then they will be more committed to investing heavily in the environment. Oil transnationals should not wait until legal cases are brought against them before they take responsibility for the environments in which they do their business. Oil exploration and exploitation must be carried out with proper Environmental

³⁸⁹ Baskins et al (1997) *Public Relations: The Profession and the Practice*, New York: McGraw-Hill, p.80.

³⁹⁰ King Code of Governance Principles (3) *supra*, note 385.

³⁹¹ Chevron Nig. Ltd. (2006) *Community Development Philosophy*, Lagos: CNL Publishers, p.12.

Impact Assessment (EIA) procedures in place, bearing in mind the welfare of future generations.

5.6. The Interface between the Environment and the Economy

The World Commission on Environment and Development (WCED) of the United Nations which commissioned the report titled "Our Common Future," came into existence with the sole aim of addressing growing concerns about the accelerating deterioration of both the human environment and natural resources. The Commission was also concerned about the consequences of such deterioration on economic and social development. The mandate of the Commission, therefore, underscores the importance of the environment and natural resources to human existence.

It is important, at this juncture, to bring to the spotlight the relationship that the Commission established between the environment and the economy. According to the Commission, there is a tendency for the deterioration of the environment and natural resources to have severe consequences on economic development. In fact, among the institutional reforms that the Commission has called for, two of them associated the environment with the economy. First, the Commission proposed the incorporation of environmental concerns and investment into issues of national security. Though, this may seem vaguely related to economy, we know the problems that the neglect of the environment may constitute to national security. This is practically witnessed in the Niger Delta where the neglect and deterioration of the environment due to the exploitation of oil has led to crisis of different degrees. Not only is national security threatened, the international image of the country

is also stained. It goes without saying, of course, that no business entity can thrive effectively in such a toxic environment where there is incessant crisis of violence, abductions and kidnappings, etc. Second, the Commission recommended the changing of the nature of institutions and laws to reflect the inter-connectedness of environmental and economic problems. Taking again the crisis in the Niger Delta, for instance, it is obvious that environmental problems cannot be divorced from economic problems, more so, when the economic activities in the area are directly linked with the environment. It can be deduced, therefore, that if the environment can affect the economy, then the economy must be able to affect the environment.³⁹²

Specifically, TNOCs in the Niger Delta are aware that the sustainability of an electricity project powered by solar energy or gas turbine, would be better guaranteed than a diesel-powered generating plant for rural communities whose inhabitants are too poor to buy diesel. It is no accident that gas is being flared in oil producing communities by oil TNOCs. Natural gas, a by-product of crude oil extraction, could earn the Nigerian government and TNOCs huge revenues. But TNOCs chose to flare it (even against regulations), due mainly to the high costs associated with harnessing gas and the low penalty that gas flaring attracts.³⁹³

By some account, Nigeria flares about 2.4 billion cubic metres (0.84 trillion cubic feet) of associated gas annually – the equivalent of 25% or 30% of the

³⁹² Seitel, F.P. (2007) *The Practice of Public Relations*, USA: Prentice Hall, p.115.

³⁹³ Doyle, T. (2004) *Riding the Dragon: Royal Dutch Shell and the Fossil Fire*, Munroe: Common Courage, pp.2-10.

annual consumption of the United States and European Union respectively.³⁹⁴

It is estimated that Nigeria loses USA \$2.5 billion annually from gas-flaring.³⁹⁵

What this suggests is that even when the long-term interests of TNOCs are involved, preference would be given to short-term gains. The findings by Christian Aid on Shell's corporate social responsibility projects in Umuechem, reflects, on a general note, the CSR outcomes in the Niger Delta:

~~We have taps that are dry, this town of 10,000 people also has a hospital that has never treated a patient, a secondary school where no lesson has been taught, a post office that has never handled a letter and a women's centre that has never held a meeting.~~³⁹⁶

This may sound exaggerated, but sadly, it is the glaring truth. Even more disconcerting is the fact that this is not an isolated case. In a recent study tour of some communities within the region of Niger Delta,³⁹⁷ this researcher observed that the landscape of the Niger Delta is replete with overhead water tanks of uncompleted or poorly completed and dysfunctional water projects, shore protection projects fully paid for, but not done and redundant generating plants that worked for a few days after the commissioning of electricity projects, in communities where the people are too poor to afford diesel, and so on. The net result is that unmet expectations placed on corporations fuel further violence in the region.³⁹⁸

³⁹⁴ Ukiwo, U. (2007) "From Pirates" to "Militants": A Historical Perspective on Anti-State and Anti-Oil Company Mobilization among the Ijaw of Warri, Western Niger Delta", *106 African Affairs*, 587-610.

³⁹⁵ *Oneworld*, November 15, 2010.

³⁹⁶ Christian Aid (2004) *Behind the Mask*, p.10.

³⁹⁷ Personal communication by way of interview and visit to oil producing communities, 25-27 August, 2011.

³⁹⁸ Omeweh, D. (2005) *Shell Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger Delta: A Study in Environmental Degradation*, Trenton: Africa World Press, p.76.

Having realised, therefore, that there is a tendency of disparity between the corporate social responsibility policies of TNOCs and the actual execution, the study is prompted to compare and contrast two areas that host oil activities; the Niger Delta and the State of Texas in the United States of America. The study will also examine the manner of crisis witnessed in each community due to the activities of TNOCs and their implications on sustainable environmental development. The Niger Delta was selected because it is the subject of this study, the State of Texas on the other hand was selected because it is considered necessary to examine the operations of TNOCs in a developed country. Furthermore, Texas houses several refineries, and maintaining them also requires a high degree of corporate responsibility.

5.6.1. The Texas Perspective

Among the items stated in the Health, Safety and Environmental Policy of Shell B.P. is the pursuit of the goal of no harm to the people, to protect the environment and pursue the goal of prevention of pollution.³⁹⁹ However, Shell B.P. was sued on 7 January, 2008 for allegedly releasing pollutants from its suburban Houston refinery. The company was sued by environmental groups, particularly the Sierra Club, because they felt the governmental agencies responsible for monitoring Shell- the Texas Commission on Environmental Quality (TCEQ) and the US Environmental Protection Agency had failed to make the refineries comply. The groups alleged that Shell B.P. had committed more than one thousand (1,000) violations for which they demanded a fine of USA \$32, 000 per day for each violation. According to

³⁹⁹ Omeweh, *ibid* note 398 at p.76.

Neil Carman, the spokesman for Sierra Club, Shell B.P. had not taken the necessary corrective action to keep the volume of emission to the minimum.

An analysis done by environmental groups of Shell's report to the Texas Commission on Environmental Quality revealed that since 2003, more than 2 million pounds of sulphur dioxide, more than 600,000 pounds of carbon monoxide, more than 250,000 pounds of nitrogen oxides, more than 90,000 pounds of benzene and more than 60,000 pounds of 1, 3-butadiene had been released at the refinery.⁴⁰⁰ According to the Environmental Protection Agency, Benzene and 1, 3-Butadiene are classified as human carcinogens; nitrogen carbon monoxide leads to the formation of ozone, and sulphur dioxide contributes to respiratory illness. Though Shell B.P. paid the fines, the Sierra Club still argued that those fines had been set at too low a level.

Another case of TNOCs' involvement in environmental misconduct is that of Citgo- a Houston-based subsidiary of Venezuela's State-owned oil company, PDVSA, and the nation's No. 4 gas retailer. Citgo refinery and Citgo Corporation were convicted in June, 2007, of knowingly violating the Clean Air Act by operating two enormous tanks illegally as oil and water separators by not installing the proper pollution control device, that is, a floating or fixed roof for over 10years. This resulted in years of community exposure to benzene, a carcinogen and other toxic chemicals. The State of Texas records also showed that Citgo operated an Acid Gas Flare and Sour Water Gas Flare which was in violation of its TCEQ (Texas Commission on

⁴⁰⁰ Canales, S. (2008) "Big Oil in Texas: the Victims of Citgo's Crimes". Available at <http://www.shellfacts.com/article> Accessed 3/8/10.

Environmental Quality) permit. The company was only authorized to use the flares in cases of emergency.⁴⁰¹

Consequent upon the charges brought against the company, Citgo was expected to carry out installations worth USA \$320 million in pollution controls at six of its refineries and pay a USD\$ 3.6 million fine to settle a federal law suit alleging Clean Air Act violations.

It is significant to note, however, that Citgo did not admit to the allegations despite the verdict. The spokesperson for the company insisted that Citgo at worst misinterpreted complex and vaguely written regulations on how to handle waste streams, but was not guilty of knowingly breaking the law. He claimed that though the company had begun installing roofs on the two tanks, the gesture could not be seen as an admission of guilt.⁴⁰² Citgo's settlement was the 12th reached under an EPA initiative which was begun in December 2000.

5.6.2. The Niger Delta Perspective

No doubt, the process of oil exploration in the Niger Delta has led to the degradation and destruction of the life-supporting ecological systems and the natural resources.⁴⁰³ Apart from the destruction of the vegetation during oil exploration and exploitation, the flaring of associated gas in the process of extracting the crude oil poses a threat to human life. Unburned carbon is

⁴⁰¹ Clanton, B. (2007) "Citgo Trial on Dirty Air Test", Available at www.citgojustice.org/citgo/trial Accessed 30/12/10.

⁴⁰² *Ibid* note 398, at p.3.

⁴⁰³ Asakitikpi, E. A. and Oyelaran, A.P. (1999) "Oil Extraction and the Social-Cultural Impact on the People of Niger Delta", A Paper Presented at the 4th Annual Conference of Environmental Protection Society of Nigeria.

often transported into the homes as well as the working areas of the Niger Delta inhabitants. Some gas-flaring sites in the Niger Delta have been in existence for more than 40 years, running 24 hours a day. Hence, about 40 million tons of carbon dioxide and 15 million tons of methane are released in a year.⁴⁰⁴

In 2005, the Nigerian National Petroleum Corporation (NNPC), along with Shell, Exxon, Chevron, Total and Agip joint venture companies were sued by the Niger Delta communities. This was done with the support of Environmental Rights Action (ERA)/Friends of the Earth Nigeria to stop gas flaring. According to ERA, more gas is flared in the Niger Delta than anywhere else in the world even though it has been generally prohibited under environmental regulations since 1984.⁴⁰⁵

According to environmentalists, the amount of gas associated with crude oil that is wasted every day is estimated to be at least two million cubic feet. The waste contains a mix of toxins that pose severe health risks to the human population. In fact, a vast majority of the Niger Delta residents increasingly face child respiratory diseases, asthma, cancer, and premature deaths as a result of the massive gas flaring.⁴⁰⁶ In April, 2006, the Nigerian High Court revisited the case and insisted that Shell must take immediate steps to stop the flaring. This was consequent on the non-compliance by Shell with the verdict given in November, 2005. The Court also ordered Shell to pay USA

⁴⁰⁴ Alao, O.A. (2005) Impact of Niger Delta Crisis on Nigeria's National Security. An unpublished Masters Thesis Submitted to the Institute of African Affairs, University of Ibadan, Nigeria.

⁴⁰⁵ Aham, U. (2008) "More Money, More Problems: 50-Years of Oil in Nigeria", *Tell*, 18 February.

⁴⁰⁶ Rizvi, H. (2005) "Shell Ordered to Stop Wasteful, Poisonous 'Gas Flaring' in Niger Delta", Available at <http://www.commondreams.org/headline> Accessed 19/8/09.

\$1.5 billion in damages for polluting the Niger Delta. The payment was meant to compensate communities in Bayelsa State for degrading their creeks and spoiling crops and fishing.⁴⁰⁷

According to the Oil Spill Intelligence Report commissioned by Greenpeace, an international organization that works for environmental conservation and the preservation of endangered species, Shell's major spills in Nigeria total a massive 7.4million litres. A 10-year spill record revealed that of the major spills from Shell operations in over 100 countries worldwide, 40% occurred in Nigeria.⁴⁰⁸ The spills continually flow into near-by streams, devastating farmlands and costing communities their water and means of livelihood, especially fisheries.⁴⁰⁹

The Niger Delta is a catchment area for over 20 river systems and estuaries; hence, six million people depend on the area's fertile fishing grounds and arable agricultural land. In 1999, Shell Oil Company was alleged to have injected a million litres of waste into an abandoned oil well in Erovie. Many inhabitants who consumed crops or drank water from the swamps around the area displayed symptoms such as vomiting, dizziness, stomach ache and coughing. Sadly, within 2 months, 93 people had died from the illnesses. Three laboratories and two Nigerian universities conducted independent research a year after the health problems were identified. All the tests confirmed a poisonous concentration of lead, zinc and mercury in the

⁴⁰⁷ Carrol, R. (2006) "Shell to Pay USD1.5 billion", Available at <http://www.guardian.co.uk/oil/story>. Accessed 16/8/09.

⁴⁰⁸ Nkoro, E. (2008) "Conflict in the Niger Delta: the Way Forward", *5 Environmental & Planning Law Review* 163-175.

⁴⁰⁹ Hinman, P. (2008) "Greenpeace Exposes Shell's Pollution Record", Available at <http://www.greenleft.org> Accessed 24/7/10. See also SERAC's case.

dumped substances.⁴¹⁰ But amazingly, in the same year Shell was alleged to have approved USA \$32 million on advertising campaigns that projected it as a company that was environmentally and human rights responsible.⁴¹¹

5.6.3. Critical Observations of Both Perspectives

From the foregoing, some salient observations emerge: the convergence and the divergence of experiences. Under the convergence of experiences, it becomes obvious that there are some similarities in the situations experienced in both Texas and the Niger Delta. For instance, there is similarity in the “anti-environment” attitude displayed by TNOCs, both in the State of Texas and the Niger Delta. The members of both communities also reacted in similar ways by going through the courts of law.

It has been crystallized in this research that some TNOCs have the tendency of failing to implement environmental protection policies made by the government of their host communities. This observation is exemplified in the case of Citgo in Texas that claimed to have mis-interpreted the policy, and Shell in Nigeria that failed to comply with the instruction to stop gas flaring. It can also be readily observed that these oil TNOCs, even after the courts have found them guilty of the charges, still insist on their innocence thereby making the payment of their fines seem like another humanitarian gesture. The TNOCs seem to be more concerned about their profits as well as their

⁴¹⁰ Human Rights Watch (2008) “The Niger Delta: No Democratic Dividend”, 5 *Environmental & Planning Law Review* p.81-162.

⁴¹¹ Ofehe, S. (2009) “Shell’s Environmental Pollution”, Available at <http://www.nigerdeltacampaign.com/html/environmentalpollution.html>

corporate image than the well-being of residents of their HCs.⁴¹² It is quite disturbing to think that these TNOCs invest so much resources raked from the environment of these communities into building their images in the media than on improving the environment. Also, both in Texas and the Niger Delta, it has been observed that TNOCs have refused to reduce pollution until legal cases were brought against them. It seems as though more time is spent by these corporations in writing their environmental policies than is spent on executing them.

In the divergence of experiences, however, this researcher has observed some distinctive differences between the events in the State of Texas and in the Niger Delta. In Texas, there are several environmental protection groups fighting for the preservation of and sustainability of the environment. This has helped to generate a lot of awareness among the people. It has also helped to support the case against these corporations in the courts since all the concerned groups argue their cases with facts and research results of all kinds. In the Niger Delta, however, there are quite few environmental protection groups to fight for the preservation of the environment. And some of the few that exist require much support from other international organizations.

The legal systems in the two cases also serve as a point of divergence. As it has been earlier stated, the settlement made in the case of Citgo was the 12th achieved so far by the Environmental Protection Agency (EPA). This is an indication of an effective legal system. The courts were also able to prevail on

⁴¹² Ajala, V.O. (2005) *Public Relations: In Search of Professional Excellence*, Ibadan: May Publishers, p.56.

the TNOCs involved to comply with the injunction. In the Niger Delta however, cases are tried indefinitely and successes are few and far between. The case that was made against Shell that finally yielded a positive verdict for the Niger Delta communities had been in court for over a decade.⁴¹³

In the area of community development, it is imperative to note that with the exception of a few, TNOCs have failed to deliver on their promises through corporate social responsibility by projects that have no direct bearing with the real needs of the people as it were.⁴¹⁴ It is not for nothing that TNOCs prefer to pay a notable local for a contract that was executed only on paper. It is the pathological pursuit of profits that is at the heart of the inadequacies associated with corporate social responsibility practices in the Niger Delta.⁴¹⁵

This understanding of the nature of corporations, side-by-side with the crisis of development in the region as evidenced by the dire absence of any meaningful infrastructure taken for granted by civilized humanity, leads one to the considered view that, to expect TNOCs to develop the oil-bearing communities in the Niger Delta region through the instrumentality of corporate social responsibility amounts to nothing more than pipe-dream, born out of naivety or ignorance or a combination of both on the nature of corporations and the crisis of development in the Niger Delta region of Nigeria.⁴¹⁶

⁴¹³ Natufe, I. (2007) "Resolving the Crisis in Niger Delta", *The Guardian*, February 16.

⁴¹⁴ Agbakwa, S. (2003) "A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peace Building in Africa", *8 Journal of African Law*, 50.

⁴¹⁵ Clark et al (1999) *Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta*, A US Non-governmental Delegation Trip Report, 6-20 Sept. 1999.

⁴¹⁶ Frynas, J.G. (2001) "Corporate and Social and State Responses to Anti-Oil Protest in the Niger Delta", *102 African Affairs*, 211-240.

In the early days of oil exploitation, the HCs, being ignorant and weak, expressed their grievances through petitions addressed to the Ministry of Mines and Power and top government officials. Protests only became an instrument when it became evident that help was not forthcoming from anywhere. Even when pockets of reaction became noticeable, the rage of the people and the clamour for rights was not appreciated until it assumed widespread and violent dimensions.⁴¹⁷ The rage of the Niger Delta people became apparent when an increasing number of communities began to clamour for their rights, often through violence. The HCs decided to take their destiny in their own hands as a result of an insensitive and alienating state and TNOCs' activities.

Initially, the HCs' demands for compensation were treated with contempt and disdain. Thereafter, the oil transnationals began to placate and subdue agitators by compromising them with money, employment and contracts.⁴¹⁸ It was only in the late 1990s, when the communities and the entire region had become so aware, angry, mobilized and agitated and a regime of loud, highly vocal and disruptive protests had emerged that the oil transnationals began to re-consider and re-configure their erstwhile governance methods, practices and strategies, because islands of prosperity cannot survive in a sea of poverty.⁴¹⁹ The sea will ultimately engulf the islands.

⁴¹⁷ Akinola, S.R. (2003) "Resolving the Niger Delta Crisis Through Polycentric Governance in Nigeria, Paper Presented at the a Colloquium Organized by the Workshop in Political Theory and Policy Analysis, Indiana University, Bloomington, USA. December 1.

⁴¹⁸ Omoweh, D. (1995) "Environmental Pollution and Culture and Health in Nigeria: the Sad Plight of the Ughelli Communitites", *3 African Spectrum* 20-34.

⁴¹⁹ Pegg, S. (1999) "The Cost of Doing Business: Transnational Corporations and Violence in Niger Delta", *30 Security Dialogue* 473-484.

Therefore, unless oil transnationals give back to the land and the people from which they have taken so much, unless they look beyond business as usual and enable the disadvantaged communities to fend for themselves, act as a catalyst of socio-economic development, issues like growing poverty, unemployment, lop-sided development would continue to haunt TNOCs. Global industrial history and statistics prove that the corporations which survived the test of time are those which never compromised on issues of ethics and corporate social responsibility. The socio-economic development of the residents of oil transnationals operational spheres should not merely be a policy statement as it were, but an integral part of the Corporation's corporate philosophy and culture.⁴²⁰

The way to go, therefore, is the construction of a community of interest among the stakeholders, that is, the people, oil transnationals and the state. Specifically, if oil is exploited in an environmentally sensitive and people-friendly manner, doing minimal harm to the environment, with relevant taxes paid to the state which should be alive to its regulatory roles and resource control rights guaranteed, the prospects of development for oil-producing communities would be enhanced more effectively.

5.7. Motives for Corporate social Responsibility Engagement and Their Implications

It is often assumed that the rise of corporate social responsibility can be traced directly back to globalization and a concomitant expectation that business would fill gaps left behind by global governance failures. As a result,

⁴²⁰ Egwu, S. (2006) *Poverty and Ethnic Violence*, Lagos: University Press, p.6.

TNOCs have been pressurised to do something about the environment, community development or global warming. In some cases the serious social engagement of a TNOc may be triggered by a pressure group campaigning against it.⁴²¹ TNOcs have been subjected to public pressure of varying magnitudes, which helps explain why the reactions of companies to calls for greater social engagement have also varied, as illustrated by the contrast between Exxon's and BP's responses to NGO's pressures regarding global warming.⁴²² However, this study suggests that TNOcs' motives for social engagement are much more complex than simply a response to external pressure. These motives greatly limit the positive developmental potential of corporate social engagement.

What, then, drives specific firms to engage in social investment? In this study, three primordial factors that influence TNOcs to embark on community development projects have been identified. This list is by no means exhaustive and other drivers may be added. Furthermore, social initiatives may serve to address several of these motives simultaneously or may be partly motivated by a genuine desire 'to do the right thing'. But even this brief list can help us to understand why social initiatives have only limited potential. Below, this study briefly discusses each of these four factors and suggests why the oil transnationals' motives for embarking on community development projects limit their developmental benefits.

⁴²¹ Frynas, J.G. (2003) "Global Monitor: Royal Dutch/Shell", *8 New Political Economy*, 275-285.

⁴²² Rollands, H.I. (2000) "Beauty and the Beast: BP's Positions on Global Climate Change", *18 Environment and Planning*, 339-354.

5.7.1. Winning Competitive Advantage

Social investment can provide TNOCs with competitive advantage vis-à-vis other corporations with less social engagement. In a number of oil-producing countries, socially responsive TNOCs appear to have been favoured by governments in the awarding of oil and gas concessions. For instance, Chevron Texaco in Angola appears to have used its social investments strategically in its attempt to renew its stake in 'Block O', Angola's most priced oil asset with an output of 400,000 barrels per day. Some Chevron Texaco staff have admitted in private that the announcement of a USA \$50 million partnership among Chevron Texaco, USAID and UNDP in November, 2002 was timed to coincide with the 'Block O' negotiations. In early 2004, Chevron Texaco's concession was finally extended from 2010 to 2030, and the corporation pledged a further USA \$80 million to a social fund.⁴²³

While Chevron Texaco's partnership with USAID and UNDP has had discernible developmental benefits in Angola, there has been controversy with regard to the corporation's payments to the Social Bonus Fund of the Angolan State Oil Corporation, Sonangol and the Angolan President's Eduardo Dos Santos Foundation. Indeed, it has been suggested that this corporate 'social giving' has often served simply as another means of channelling money to Angolan government officials, with few developmental benefits.⁴²⁴ Aside from activities related to the award of concessions, oil corporations have occasionally initiated specific social projects to curry favour with a

⁴²³ Frynas, J.G. (2005) "The False Developmental promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies", *81 International Affairs*, 581-598.

⁴²⁴ Frynas, J.G. and Geoffrey, W. (2001) "Oil and war in Angola". *28 Review of African Political Economy*, 587-606.

specific government official, for instance, through building an orphanage in the official's village or community.

From the perspective of oil corporations, the benefit of social initiatives may be to bring corporations closer to political decision-makers while appearing to be socially responsible. From the perspective of a broader society, a crucial pitfall of using social initiatives as a competitive weapon is that the development priorities pursued by oil corporations may be those of specific government officials and not necessarily those of the people for whose benefit the initiatives are ostensibly undertaken.⁴²⁵

5.7.2. Sustaining a Stable Working Environment

In some cases, for instance, in the Niger Delta region of Nigeria, community protests have halted oil operations, so development projects are occasionally initiated as a way of buying the local communities' agreement to allowing the TNOCs to continue their commercial operations. For example, Shell's main Nigerian affiliate, Shell Petroleum Development Company (SPDC) provides its major contract managers with a development budget so that when a new pipeline is built, the manager can initiate a new development project within a community in order to enable construction to continue unhindered. When the SPDC team finishes the construction of a particular section of the pipeline, the community development budget for the area is simply closed,⁴²⁶ which

⁴²⁵ Scott, P. (2006) "World Leaders and Bottom Feeders: Divergent Strategies Towards Social Responsibility and Resource Extraction" In Christopher May (ed.), *Global Corporate Power*, Boulder: Lynne Rienner, pp.23-34.

⁴²⁶ Essien, D. (2006) "Ethical Perspectives on Environmental Insecurity and Violence in Nigeria's Niger Delta", *11 African Journal of International Affairs and Development*, 67.

raises the logic of why the corporation embarked on the project, in the first instance.

Thus, projects are driven by short-term expediency rather than the long-term developmental needs of a community; and the problem of this short-term funding is exacerbated by the fact that the major contract managers are not development specialists.

If social projects are initiated in order to buy a short spell of peace, the corporations are unlikely to engage in proper consultation with the entire community. In line with stakeholder theory, firms will listen primarily to those stakeholders who pose the greatest threat to their operations, not those best placed to contribute towards development aims.⁴²⁷

5.7.3. Dressing External Perceptions

Many corporate social responsibility initiatives have been started following bad publicity which can be seen as attempts to improve a corporation's reputation. Corporate social initiatives, in most cases, have been used for public relations, irrespective of their seeming success in fostering the long-term development of a local community. In extreme cases, TNOCs have publicised projects which did not exist on the ground, or were only partially functional,⁴²⁸ a practice made easier in developing countries by the difficulty of verifying all such claims. If public relations priorities take precedence over

⁴²⁷ Jawahar, I. and McLaughlin, G. (2001) "Towards a Descriptive Stakeholder Theory: An Organizational Life Circle Approach", 26 *Academy of Management Review*, 397-414.

⁴²⁸ Joseph, E. (2005) "The Concept of Ownership of Nigerian Mineral Resources and the New International Economic Order", *Environmental and Planning Law Review*, 2:1, p.20.

development priorities, then the planning and the implementation of corporate social responsibility initiatives will be faulty.

The preceding three factors have demonstrated that the 'business case for corporate social responsibility' (that is, the use of social initiatives to attain corporate objectives) sets limits on what such initiatives can achieve for the wider society. Since the 'business case' drives corporate social responsibility, it is not surprising that many corporate social initiatives do not go beyond narrowly philanthropic gestures; for example, donating objects such as school books, mosquito nets or life-jackets to local communities, without any attempt to consult either the community itself or development specialists. Such simplistic gestures sometimes end up as failures.

In Equatorial Guinea, ExxonMobil donated mosquito nets to the Ministry of Health for malaria prevention, but officials then reportedly sold them not least through export to Cameroon. In Angola, Shell BP reportedly distributed Asian-made condoms as part of an anti-AIDS campaign, but the condoms turned out to be too small for African men.⁴²⁹ The reason is that there were no consultations so there was no measurement for size and the needs of the people. In the Niger Delta, this study witnessed non-functioning white elephant projects, including unfurnished buildings designed to be health clinics or schools, water projects where the water is unfit for human consumption, or projects such as health clinics which lacked electricity connections, running water, basic equipment or staff.⁴³⁰

⁴²⁹ Le Billion, P. (2001) "Angola's Political Economy of War: the Role of Oil and Diamonds 1975-2000", *African Affairs* 100:398, pp.55-80.

⁴³⁰ Participant observations by way of a visit to the Niger Delta, 25-31 August, 2011.

Increasingly, some corporations have gone far beyond simple philanthropic engagements and have become more sophisticated in terms of addressing development issues. However, since delivering development is not a primary motive for corporations to engage in social initiatives, the 'business case' frequently leads to the failure of projects such as the construction of health clinics. According to a leaked 2001 independent audit report commissioned by Shell, less than one-third of Shell's development projects in Nigeria were fully successful in the sense that they were functional.⁴³¹ The audit found that Shell B.P. was still essentially trying to buy off the local people with gifts rather than trying to offer them genuine development; this followed the logic of using corporate social responsibility to maintain a stable working environment and improve public perceptions of Shell.

It is argued that the business case for corporate social responsibility raises fundamental questions that go far beyond the success or failure of specific CSR initiatives – for example, why crucial economic issues tend to be excluded from the contents of corporate social responsibility standards. As this thesis will suggest below, the economic impact of oil and gas investments tends to be more damaging to oil producing countries than the environmental impact. If TNOCs are expected to take responsibility for oil spills, they could equally be expected to take responsibility for their contribution towards the decline of non-oil-producing sectors of the economy. However, current CSR approaches do not envisage conferring such a responsibility on TNOCs.

⁴³¹ See "Nigeria and Shell: Helping, but not Developing", *The Economist*, 12 May, 2001, p.15.

5.8. Corporate Social Responsibility and its Limitations

Despite the paramountcy of the 'business case', corporate social responsibility has evolved and the issues of development have been addressed to some extent by a number of corporations, showing the ability of business to adapt to new challenges. One important reason for the evolution of corporate social responsibility is that the glaring failure of social projects harms a corporation's reputation, while doing little to maintain either a stable working environment or staff morale. Therefore, there is a business case for 'effective' delivery of developmental schemes, and corporate social responsibility practice has evolved and become more sophisticated.

This evolution can be witnessed in the case of Shell Petroleum Development Company (SPDC) in Nigeria. SPDC has recently re-organized its Community Development Unit (CDU) into the Sustainable Community Development (SCD) Unit, with a new emphasis on sustainability and the long-term perspective for all its projects. The Corporation has moved away from its focus on infrastructure projects such as hospitals towards more promising smaller projects such as micro-credit schemes. SPDC has entered into partnerships with external development agencies such as USAID and various NGOs, which have greater expertise in implementing development projects on the ground. SPDC has also introduced various guidelines for implementing development-related projects to ensure some consistency. Some SPDC's schemes – notably micro-credit schemes for women implemented by NGOs – are considered relatively successful from a micro-level developmental

perspective. Therefore, Shell in Nigeria is an instructive case for investigating the multiple potentials of corporate social responsibility for development.⁴³²

However, Shell in Nigeria is also a good example of the constraints faced by even the most sophisticated use of current corporate social responsibility practices within corporations. While SPDC – or, more specifically, its sustainable development (SCD) unit – has been ahead of other oil corporations in terms of its development thinking, there are still major flaws in Shell's development work. Even Shell/NNPC senior staff and consultants contacted by this researcher have admitted in private conversations that the creation of the SCD Unit is unlikely to have a major impact on the corporation's behaviour in local communities.⁴³³

Why, then, do corporations such as Shell in Nigeria fail in their developmental efforts? As argued above, one key reason is the primacy of the 'business case' and the incompatibility of corporate objectives with developmental objectives. During the research for this work, a number of other important constraints on the implementation of corporate social responsibility were identified. The list is in no way exhaustive, but it can serve to point out the limited developmental potential of corporate social responsibility initiatives. We turn now to discussing each of these constraints and suggest why the developmental benefits of corporate social responsibility are inherently limited.

⁴³² Aderuomu, J. and Dauda, Y. (2009) "Poverty Eradication in Rural Areas". *Social Science Journal*, pp.230-242.

⁴³³ Personal communication by way of interview with senior staff of NNPC, Warri, Delta State, 17 January, 2011.

5.8.1. Country and Context-specific Issues

Specific contexts or countries may make it difficult for corporations to implement even the best CSR ideas. The example of Shell in Nigeria demonstrates some of these problems. While Shell's SCD Unit has some excellent strategies and skilful staff, the company also faces many practical implementation problems.

In countries as diverse as Nigeria, Colombia or Yemen, CSR work may also be seriously impeded by conflict (e.g. a guerrilla war or inter-ethnic conflict). Notwithstanding these country – and context-specific problems, there are more fundamental limitations to the efficacy of CSR work, to which we now turn.

5.8.2. Failure to Involve the Beneficiaries of Corporate Social Responsibility

Participation and self-help are regarded as the best routes for development assistance by organizations as diverse as the World Bank and IMF. A central idea expressed in the World Bank's Comprehensive Development Framework is that the 'doer' (a person, community, a country, etc.) needs to be 'in the driver's seat' and actively help itself.⁴³⁴ To quote Schumacher: '[if] the rural people of the developing countries are helped to help themselves, I have no doubt that a genuine development will ensue...[but it] cannot be "produced"

⁴³⁴ Ellerman, D. (2001) "Helping People Help Themselves: Towards a Theory of Autonomy-Compatible Help", Washington DC: World Bank, Working Paper 2693.

by skilful grafting operations carried out by foreign technicians or an indigenous elite that has lost touch with the ordinary people'.⁴³⁵

In contrast to best development practice advocated by the World Bank or Oxfam, corporate social responsibility initiatives have often been conceived by the 'helpers' in the air-conditioned offices of TNOCs and consultancies rather than through on-going participation with the beneficiaries; again the approach follows the logic of corporate social responsibility serving corporate objectives. Where oil companies have consulted local communities, the consultation exercises have usually been superficial and grossly inadequate.

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Oil corporations usually fail to consult beyond local chiefs and community leaders. It is submitted that such brief encounters usually result in the local people spontaneously demanding obvious amenities such as electricity, a school or a hospital, without proper consideration of the economic cost, the local needs, and the impact of such schemes or the causes of the community's problems.

The involvement of the beneficiaries of corporate social responsibility in the implementing of projects tends to be limited or non-existent and may be limited at best to awarding contracts to locally-based companies. While the involvement of locally-based companies can be beneficial as it creates local employment, this researcher's experience from Nigeria is that these

⁴³⁵ Schumacher, E.F. (1973) *Small is Beautiful: Economics as if People Mattered*, New York: Harper & Row, pp.204-205.

⁴³⁶ Omeje, K. (2007) *State-Society Relations in Nigeria: Democratic Consolidation, Conflicts and Reforms*, London: Adonis and Abbey, p.157.

companies are often linked to local “strongmen” and the award of contracts serves simply to maintain a stable working environment.

Worse still, the failure to involve local people has fostered a dependency mentality. Since the construction of buildings and other development projects does not genuinely involve the local people, social initiatives are seen as ‘gifts’ from outsiders and the local people do not feel that they ‘own’ the projects. Schemes introduced in this way cannot remain functional without the continued support of outsiders, which contravenes a basic principle of development.⁴³⁷

Many of these problems could be avoided through in-depth consultation and the participation of the local people in genuine self-help initiatives, using local knowledge, skills and tools. But the involvement of local communities is inherently constrained by the companies’ lack of developmental expertise and the technical/managerial approaches of oil company staff.

5.8.3. Lack of Human Resources

Even if TNOCs set out to act as quasi-development agencies, they tend to lack the requisite human resources to plan and execute genuine developmental schemes. Few people with overseas development expertise move into commercial companies, and community development units are often staffed with managers, former administrative staff, engineers or former government officials. When Shell BP initiated courses to teach its managers about issues such as biodiversity and global warming, they typically turned to

⁴³⁷ Participant observation by way of a visit to the Niger Delta, 25 August -3 September, 2011.

a business school rather than a development institution. Furthermore, the staff often spends very little time in the field and lack an understanding of specific local problems.⁴³⁸

The internal workings of TNOCs also render long-term development initiatives more difficult. Asset managers are often rotated among subsidiaries in different countries (BP moves them every four years), so they tend to lack a long-term commitment to the local communities where the firm operates. Even if one asset manager is committed to genuine corporate social responsibility, his/her successor may not be as committed and may simply halt a social initiative begun by the predecessor. Thus, the championing of development projects with a long-term planning horizon may depend on the leadership of individual managers whose term of office is inherently limited.

5.8.4. Failure to Integrate Corporate Social Responsibility Initiatives into Larger Development Plans

Given the corporate objectives of corporations and the practical problems of executing corporate social responsibility schemes, it is not surprising that corporate social initiatives rarely form part of larger regional development plans. Existing independently of such plans, corporate social responsibility can yield no more than a drop in the ocean of development efforts, and even those resources that are devoted to it may not be channelled for the most effective developmental use.

⁴³⁸ Ikelegbe, A. (2008) "The Economy of Conflict in the Oil Rich Niger Delta Region", *14 Nordic Journal of African Studies*, 208.

Since projects are often driven by short-term expediency, decisions are taken at too low level as to which projects to execute, as one development professional put it. So, there may be little co-ordination in determining which areas should benefit and how projects can be put together to contribute to a greater whole. In one area visited for this study, a TNOG in Nigeria built a road which ran parallel to another road built by the Niger Delta Development Commission (NDDC): this is an extreme example of coordination failure, but it underlines the importance of planning and co-ordination for the success of development projects.⁴³⁹

5.8.5. Best Practice Example in Corporate Social Responsibility

Not surprisingly, in view of the problems discussed above, there are very few examples of oil-company-funded projects which could be regarded as 'best development practice' along the lines advocated by the World Bank or Oxfam. However, this study identified just one such project: Statoil's Akassa project in Bayelsa State. Indeed, Statoil's funding for this project in south-eastern Nigeria has come to symbolize the potential positive benefits of oil corporation development work and has recently served as a role model for other oil corporations and external donors in the Niger Delta. Below is an outline of the project, and suggestions as to why even the best projects, such as this one, have inherent developmental limitations.

The Akassa project was funded by Statoil but was implemented by a development NGO called ProNatura, which had exceptional developmental expertise and was able to execute the project without interference from oil

⁴³⁹ Participant observation, note 437.

company managers. One important distinguishing factor of the Akassa project was that it was based entirely on grass-roots priorities, driven not by outsiders deciding which specific initiatives should be implemented but largely by the local people.

In contrast to the often superficial consultation exercises with local people undertaken by oil companies, ProNatura conducted an in-depth appraisal of the needs of the community over a long period of time. ProNatura staff went to live in the villages and had extensive discussions with the local people about their problems and the causes of these problems, before even starting to plan any initiatives. Furthermore, the project was fully community-led, the planning process involving not just the chiefs (as in previous oil company schemes) but also women and 'youths'. Also, crucially, ProNatura helped to build up the capacity of the local people to help themselves, among other ways by helping to set up new institutions such as a Development Foundation and Community Development Councils, as well as providing training and advice to the local people. Finally, the Akassa project was not targeted at one or several 'host communities' but was part of a development plan for the entire Akassa Clan (encompassing some 30,000 people).⁴⁴⁰ The Akassa project has now come to be seen as a benchmark for best practice in the Niger Delta.

Nonetheless, even if such best practice can be adopted, corporate social responsibility does not solve some of the most fundamental issues arising

⁴⁴⁰ Knight, W.D., Alagoa, N.C. and Von Kemedi, D. (2000) "Akassa: A New Approach to the Problems of Niger Delta", Paper presented at the SPE International Conference on Health, Safety and the Environment in Oil and Gas Exploration and Production, Stavanger, Norway.

from oil operations namely, the negative impact of the oil industry on the environment, society and governance. However, with the exception of reduction in carbon dioxide emissions championed by environmental pressure groups, corporate social responsibility initiatives focus on the micro-level effects of the oil industry on specific families or communities and fail to address the macro-level effects. While social and environmental effects are mitigated minimally and some well-meaning community development projects are initiated, no attention is given to the economic and political effects on the nation-state.

To put it differently, even if some developmental benefits can be derived from corporate social responsibility, it does not address crucial questions of governance. The reason why corporations such as Shell BP in Nigeria have been asked to build schools and hospitals is that the government has failed in its developmental role. When governance fails, local people often turn to TNOCs to provide them with development projects and this phenomenon can be seen in extreme form in Nigeria, where Shell BP has been regarded as quasi-government. But the development projects funded by TNOCs are often inadequate, as shown above.⁴⁴¹ And even if corporate social responsibility in the oil industry were to develop best practices and deliver development effectively, then there would be less pressure on governments in countries such as Nigeria to provide such benefits.

While improvements in governance are, arguably, what many developing countries need most, TNOCs tend to be reluctant to contribute towards better

⁴⁴¹ Knight, *ibid* note 440.

governance, despite the fact that this would have greater developmental potential in the longer term than isolated charitable giving. Oil corporation managers tend to reject the notion that they could play a constructive role in helping to address governance failures and they have a legitimate concern over corporate involvement in the political process. However, such a stance denies the threefold reality that: (1) business entities already intervene in the political process to attain corporate objectives (e.g., lobbying for new legislation); (2) oil industry operations may be contributing to governance failures; and (3) under certain circumstances, TNOCs may benefit commercially from governance failures in developing countries (e.g., through non-enforcement of certain government regulations).⁴⁴² It is argued here that, given their significance, governance issues could conceivably be an important part of a corporate social responsibility agenda, but the boundaries of current corporate social responsibility appear to have been set without regard to the most pressing developmental challenges.

This thesis does not argue that corporate social responsibility is discredited because some corporate initiatives have failed. Development agencies and NGOs also have their share of failed development projects, despite their superior developmental expertise.⁴⁴³ The issue is not that corporations simply make mistakes or create negative externalities. Rather, the argument of this thesis is that, there are fundamental problems about the capacity of corporations to deliver development, and the aspiration of achieving broader development goals through corporate social responsibility may be flawed.

⁴⁴² Frynas, J.G. (1998) "Political Instability and Business: Focus on Shell in Nigeria", *19 Third World Quarterly*, 457-479.

⁴⁴³ Younger, S. (1992) "Aid and the Dutch Disease: Macro-economic Management", *20 World Development*, 1587-1597.

This thesis does not question the right of oil transnationals to make profit, but it does suggest that profit-maximizing motives are often incompatible with good developmental practices.

5.9. Summary

This chapter has been concerned with issues involved in TNOCs and their HCs, bearing in mind the nature of TNOCs. A number of constraints on corporate social responsibility have been identified in this chapter, including: country and context-specific issues; the failure to involve the beneficiaries; the lack of human resources; and the failure to integrate corporate social responsibility projects into larger development plans. It is observed from the foregoing that, as it exists today in the oil industry, corporate social responsibility has limited potential for fostering genuine local community development in practice.

Notwithstanding this barrage of constraints, this study does not deny a place for TNOCs in development. Beyond their purely economic role, TNOCs could be expected to play a constructive part in macro-development and governance. It is observed in this study that the current corporate social responsibility agenda fails to address the crucial issues of corporate governance.

The next chapter evaluates and synthesizes the impact of petroleum and pollution on human rights in the Niger Delta and public policy responses so as to draw broad conclusions and findings.

CHAPTER SIX

SYNTHESIS AND EVALUATION OF THE IMPACT OF PETROLEUM AND POLLUTION ON HUMAN RIGHTS IN THE NIGER DELTA

6.1. Introduction

The purpose of this chapter is to critically evaluate and synthesize the impact of pollution and environmental degradation caused by the oil industry on the human rights of the people living in the Niger Delta area in order to ascertain whether there has been compliance with international and locally set standards of good practice. This chapter examines specific cases of oil pollution in order to gauge the measure or level of environmental damage in the Niger Delta and the issue of evading responsibility and complicity by corporations and the role of the Nigerian Government in the face of international human rights law. While there are other sources of pollution in the Niger Delta, the oil industry has been a major contributor for more than half a century.⁴⁴⁴

One of the greatest threats facing the people of the Niger Delta is that the Nigerian Government frequently fails to meet its obligations to respect and protect human rights, while providing security to the oil industry, because of its importance to the economy.⁴⁴⁵

⁴⁴⁴ Ahmed, A. (2006) "The Implications of Rising Oil Prices and Environmental Concerns for oil Exporting Countries", *32 Nigerian Journal of International Affairs*, 23-45.

⁴⁴⁵ Emoyan, O., Akpoborie, I.A. and Akporhonor, E. (2008) "The Oil and Gas Industry and the Niger Delta: Implications for the Environment", *12 Journal of Applied Science and Environmental Management*, 29-37.

As pointed out earlier, the Niger Delta is one of the five most important wetland and coastal marine ecosystems in the world and is home to some 31 million people.⁴⁴⁶ The Niger Delta is noted as the largest wetland in Africa and the third largest in the world, consisting of flat low lying swampy terrain that is criss-crossed by meandering and anatomizing streams, rivers and creeks.⁴⁴⁷ This well-endowed eco-system, which contains one of the highest concentrations of bio-diversity on the planet, in addition to supporting the abundant flora and fauna, arable terrain that can sustain a wide variety of crops and economic trees, has more species of fresh-water fish than any eco-system in West Africa.⁴⁴⁸

However, this eco-system is under threat from pollutants generated by a multiplicity of oil and gas related installations, including flow stations, oil well heads, loading terminals and tank farms.⁴⁴⁹ It has been argued that oil exploration and exploitation has, over the last 50-years, impacted negatively on the socio-physical environment of the Niger Delta's oil bearing communities, massively threatening the subsistence peasant economy, the environment and hence the entire livelihood and basic survival of the people.⁴⁵⁰ It is forcefully asserted by the United Nations Development Programme (UNDP) that:

⁴⁴⁶ *Report of the Niger Delta Technical Committee* (2008), p102. Figure is based on the last census 2006.

⁴⁴⁷ Environmental Rights Action (2005) Netherlands.

⁴⁴⁸ Awosika, L. (2006) "Climatic Change and Impact on the Coastal Environment of Nigeria" in Ivbijaro et al (eds.), *Sustainable Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity*, Ibadan: Mativi Publishers, pp14-34.

⁴⁴⁹ Akpoborie, I. A. and Diwanbor, G.U. (2007) "Do Environmental Laws Encourage Conflict in Nigeria? A Case Study of the Ozoro Deep-Well Waste Injection Facility" in Omotor, D.G. et al (eds.), *Readings in Conflict Management and Peace Building in Africa 2*.

⁴⁵⁰ Olobaniyi, S.B. and Efe, S.I. (2007) "Comparative Assessment of Rainwater and Groundwater Quality in an Oil Producing Area of Nigeria: Environmental and Health implications", *6 Journal of Environmental Health and Research*, 111-118.

*The Niger Delta is a region suffering from administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor and endemic conflict.*⁴⁵¹

It can be concluded, therefore, that since the commencement of oil and gas exploration and exploitation activities in the Niger Delta region, there has been social, economic, health and ecological destabilizations, and a significant reduction in terrestrial and aquatic life.

Since 1970, crude oil has assumed a prime position in the Nigerian economy. Government dependence on oil revenues has also experienced a phenomenal increase since 1970. According to the Statistical Bulletin of the Central Bank of Nigeria,⁴⁵² the average contribution of oil to government export revenues and national earnings between 1970 and 2008 was 93 per cent. The irony is that the region which produces this large percentage of national wealth continues to experience abject poverty, psychological and environmental abuse and degradation resulting from the intensive exploration and exploitation of the petroleum resource that is yielding the wealth. Their poverty and its contrast with the wealth generated by oil, has become one of the world's starkest and most disturbing examples of the resource curse.⁴⁵³ This situation is made possible by the skewed and cynical national legislation on natural resource ownership, successive years of bad governance,

⁴⁵¹ UNDP (2009) *Niger Delta Human Development Report*, p.29.

⁴⁵² Central Bank of Nigeria, *Export Earnings Statistics*, 2008.

⁴⁵³ Wurthmann, G. (2006) "Ways of Using the African Oil Boom for Sustainable Development", African Development Bank, *Economic Research Working Paper*, No. 84.

ineffectual policies that are operated by a bloated bureaucracy, as well as selfish leadership.⁴⁵⁴

On the negative impact of oil exploration on the human rights of the people of Niger Delta, the results of random, unstructured panel discussions with 10 “traditional rulers” (each representing a large group of people) and 21 “ex-militants from the Niger Delta region in January 2011 and May 2011, respectively confirmed that abuse of human rights in the region through uncontrollable pollution by oil transnationals is rampant or deep-seated in the Niger Delta.⁴⁵⁵

The participant observation also confirmed that the challenges of human rights abuse and the endemic poverty arising from the chronic underdevelopment of the Niger Delta region of Nigeria will remain if a radical approach is not adopted to revamp the region by both government and the oil corporations. This view is largely corroborated by the UNDP 2009 report on the Niger Delta region.⁴⁵⁶ The report lays emphasis on the developmental responsibility of both the Nigerian government and TNOCs as major stakeholders.

This study, after an evaluation of the Nigerian state, oil exploration and the “Niger Delta question”, makes a finding that the basic rights of indigenous peoples such as the Ogonis and Ijaws are trampled upon without access to

⁴⁵⁴ Magbagbeola, I. (2002) “Environmental Underdevelopment of the Niger Delta: An Eclectic View” in Orubu, C., Ogisi, D.O. and Okoh, R.N. (eds.), *The Petroleum Industry, Economy and the Niger Delta Environment*, pp.32-40.

⁴⁵⁵ Personal communication by way of an interview on 10 and 12 January, 2011.

⁴⁵⁶ UNDP (2009) Human Development Index Report, pp.5-9.

justice, due partly to lack of adequate information and their protests are too often put down with murderous attacks by government or private security forces. Some companies, unfettered by environmental regulations or government oversight have engaged in practices that would make them criminally liable in the USA (as demonstrated in the oil spill incidents of Exxon Valdez and Gulf of Mexico), and leave a landscape and local communities devastated by oil spills, toxic pools of drilling mud, poisoned rivers and streams and destroyed forests, and polluted air. However, this study has found, with satisfaction, that international tribunals have also developed a standard for corporate complicity in human rights abuses. One criterion for corporate complicity is: "knowingly providing practical assistance, encouragement or moral support that has a substantial effect on the commission of the crime". And "Companies may also be considered liable if they derive an indirect economic benefit from the wrongful conduct of others, depending on the closeness of the company's association with the actors".⁴⁵⁷

Under Nigerian law, local communities have no legal rights to oil and gas reserves in their territory.⁴⁵⁸ The Federal Government allocates permits, licences and leases to survey, prospect for and extract oil to the petroleum corporations, who are then automatically granted access to the land covered by their permit, lease or licence.⁴⁵⁹ The fact that the people of the Niger Delta

⁴⁵⁷ International Federation for Human Rights Abuse (2011) *Corporate Accountability for Human Rights Abuses*, Paris: FIDH, pp.5-12.

⁴⁵⁸ The Constitution of the Federal Republic of Nigeria, 1999, Section 44 states: "...the entire property in and control of all mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such a manner as may be prescribed by the National Assembly". The Petroleum Act of 1969, Section 1 states: "the entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State".

⁴⁵⁹ See Petroleum Act, 1990 and Oil Pipelines Act, 1990.

have not benefited from oil wealth is only part of the story. Widespread and unchecked human rights violations related to the oil industry have pushed many people deeper into poverty and deprivation, fuelled conflict and led to a pervasive sense of powerlessness and frustration.⁴⁶⁰ The multi-dimensional crisis is driven by the actions of the security forces and militant groups, extensive pollution of land and water, corruption, corporate failures and bad practice and serious government neglect.

While acknowledging the complexities that oil corporations face in operating in the Niger Delta, it is submitted that much of the pollution and damage that has contributed to serious abuses of human rights are foreseeable and, therefore, avoidable. Where problems do occur, timely and effective action can mitigate the consequences. The complexity of the Niger Delta is too frequently used as an excuse for failure to take tenacious action in line with international good practice and standards to prevent and address pollution and environmental damage and protect the human rights of communities affected by oil operations.

Much of the population in the oil producing areas of the Niger Delta relies on fisheries, subsistence agriculture and associated processing industries for livelihood. Oil spills, waste dumping and gas flaring are endemic in the Niger Delta. This pollution, which has affected the area for decades, has damaged the soil, water and air quality.⁴⁶¹ Hundreds of thousands of people are affected, particularly the poorest and those who rely on traditional livelihoods

⁴⁶⁰ Egwu, S. (2003) *Poverty and Economic Development in Nigeria*, Jos: Heritage and Rodeview Publication, pp.51-52.

⁴⁶¹ Mmuozoba, C.U. (2009) "Oil Economy, Corporate Social Responsibility and the Politics of Oil Pipeline Explosions", *1 Petroleum, Natural Resource and Environmental Law Journal*, 55.

such as fishing and agriculture. The human rights implications are serious, under reported and have received little attention from the government of Nigeria or the transnational oil corporations. This is despite the fact that the communities themselves and local NGOs, as well as the African Commission on Human and Peoples' Rights (African Commission) and the United Nations Human Rights Council have all expressed serious concern about pollution and called on the government of Nigeria to take urgent action to deal with the human rights impact of oil industry pollution and environmental degradation.⁴⁶²

The main human rights issues examined in this chapter, which are provided for in the Nigerian constitution and regional or international human rights instruments to which Nigeria is state party are:

- I. Violations of the right to an adequate standard of living, including the right to food – as a consequence of the impact of oil-related pollution and environmental damage on agriculture and fisheries, which are the main sources of food for many people in the Niger Delta.
- II. Violations of the right to gain a living through work – also as a consequence of widespread damage to agriculture and fisheries, because these are also the main sources of livelihood for many people in the Niger Delta.
- III. Violations of the right to water – which occur when oil spills and waste materials pollute water used for drinking and other domestic purposes.
- IV. Violations of the right to health – which arise from the failure to secure the underlying determinants of health, including a healthy

⁴⁶² Omeje, K. (2008) *Extractive Economies and Conflicts in the Global South: Multi-regional Perspectives on Rentier Politics*, London: Ashgate, pp.24-37.

environment, and the failure to enforce laws to protect the environment and prevent pollution.

- V. The absence of any adequate monitoring of the human impact of oil-related pollution – despite the fact that the oil industry in the Niger Delta is operating in a relatively densely populated area characterised by high levels of poverty and vulnerability.
- VI. The failure to provide affected communities with adequate information or ensure consultation on the impact of oil operations on their human rights.
- VII. The failure to ensure access to effective remedies for people whose human rights have been violated.

This study has made a finding that companies take advantage of the weak regulatory systems that characterize many poor countries, which frequently results in the poorest people being the most vulnerable to exploitation by corporate actors.⁴⁶³ The people of the Niger Delta have seen their human rights undermined by oil corporations that their government cannot or will not hold to account. They have been systematically denied access to information about how oil exploration and exploitation will affect them, and are repeatedly denied access to justice.⁴⁶⁴ The Niger Delta provides a stark case study of the lack of accountability of a government to its people and of TNOCs' almost

⁴⁶³ Personal communication by way of interview with 10 farmers in Bayelsa State, Nigeria, 2–3 September, 2010.

⁴⁶⁴ Responding to the question of lack of information on the impacts of extraction, some companies referred to Environmental Impact Assessments (EIAs), which are required by law, and which are supposed to give communities the opportunity to know about projects. However, this study found EIAs to be difficult to access and few communities were aware of the actual or potential impact of projects (as opposed to the fact that the project might exist). These issues will be examined later in this chapter.

total lack of accountability when it comes to the impact of their operations on human rights.

6.2. National and International Framework for Human Rights

Nigeria is a State Party to the International Covenant on Economic, Social and Cultural Rights (the Covenant) and the African Charter on Human and Peoples' Rights (African Charter). Both of these international legal instruments require the protection of economic, social and cultural rights. However, although the African Charter has been domesticated through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of 1990, full protection of economic, social and cultural rights is not yet fully reflected in the domestic laws of Nigeria. The lack of enabling legislation does not, however, absolve the Nigerian government from meeting its obligations under international treaties that it has signed and ratified.

The 1999 Constitution of the Federal Republic of Nigeria recognizes a number of fundamental rights, but these do not include economic, social and cultural rights. However, economic, social and cultural rights have been included in the provisions dealing with the fundamental objectives of the Constitution which provides that: the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria⁴⁶⁵ and "the State shall direct its policy towards ensuring ... that suitable and adequate shelter, suitable and adequate food, reasonable national minimum wage, old age care and pensions, and unemployment, sick

⁴⁶⁵ Section 20 of the 1999 Constitution of the Federal Republic of Nigeria.

benefits and welfare of the disabled are provided for all citizens”.⁴⁶⁶ The Constitution also provides that “exploitation of ... natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented”.⁴⁶⁷

Nigeria operates as a federation of 36 states. Each state has its own government, led by a State Governor and State House of Assembly. At the federal level, the executive and legislative branches consist of the President and the National Assembly, respectively. Legislative powers shared between the States and Federal Government are established under the Constitution. The National Assembly has powers to make laws in relation to a range of areas and issues, including any issue that is on the Exclusive List set out in Part 1 of the Second Schedule to the Constitution. The oil and gas industry is on the Exclusive List, which means that all laws in relation to this all-important industry are made at the federal level.

6.3. Impact of Oil Pollution on Human Rights in the Niger Delta

The links between human rights and pollution of the environment have long been recognized. The 1972 United Nations (UN) Conference on the Human Environment declared that “man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself”.⁴⁶⁸ Human rights monitoring bodies, and international, regional and national courts, are increasingly recognizing poor

⁴⁶⁶ Section 16 (2) of 1999 Constitution of the Federal Republic of Nigeria.

⁴⁶⁷ Section 17 (2)(d) of 1999 Constitution of the Federal Republic of Nigeria.

⁴⁶⁸ Declaration of the United Nations Conference on the Human Environment, para 1. Available at <http://www.unep.org/documents.multilingual/default.asp?DocumentID=97&ArticleID=503> Accessed 7/8/11.

environmental quality as a causal factor in violations of human rights. The most common examples include pollution of water, soil and air, resulting in violations of the rights to an adequate standard of living, to adequate food, to water, to adequate housing, to health and to life.

Judge Weeramantry of the International Court of Justice, the principal judicial organ of the UN, stated in an opinion that:

*The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate this, as damage to the environment can impair all the human rights spoken and written of in the Universal Declaration and other human rights instruments.*⁴⁶⁹

For the people of the Niger Delta, environmental quality and sustainability are fundamental to their overall well-being and development. According to UNDP, more than 60 per cent of the people in the region depend on the natural environment for their livelihood.⁴⁷⁰ For many, the environmental resource base, which they use for agriculture, fishing and the collection of forest products, is their principal or sole source of food. Pollution and environmental damage, therefore, pose significant risks to their human rights.

According to a study carried out by a team of Nigerians and international environmental experts:

The Niger Delta is "one of the world's most severely petroleum-impacted ecosystems". The damage from oil operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a

⁴⁶⁹ *Hungary vs. Slovakia* [1997] ICJ Rep 7, p.4 (Case concerning the Gabčíkovo-Nagymaros Project).

⁴⁷⁰ United Nations Development Programme (2009) *Niger Delta Human Development Report*, p.74.

*severely impaired coastal ecosystem and compromised the livelihoods and health of the region's impoverished residents.*⁴⁷¹

The African Charter on Human and Peoples' Rights (African Charter), to which Nigeria is a party, also recognizes, in Article 24, the right of all peoples to a "generally satisfactory environment favourable to them". This right is more widely known as the right to a healthy environment.⁴⁷² Article 24 of the African Charter imposes clear obligations upon a government: "it requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and secure an ecologically sustainable development and use of natural resources".⁴⁷³

The UN Committee on Economic, Social and Cultural Rights has also clarified that the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights extends to the underlying determinants of health, including "a healthy environment".⁴⁷⁴ Nigeria is a party to the Covenant. The Committee has also clarified that a state's obligation under Article 12.2(b) extends to "the prevention and reduction of the population's exposure to harmful substances such as ... harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon

⁴⁷¹ Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with the Federal Ministry of Environment (Abuja), "Niger Delta Natural Resources Damage Assessment and Restoration Project Report", May, 2006.

⁴⁷² See African Commission on Human and Peoples' Rights, Decision on Communication of the *Social and Economic Rights Action Centre (SERAC) v Nigeria* (155/96), Para 54. The decision was adopted at the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001 (*SERAC v Nigeria*). Available at <http://www.ume.edu/humanrts/africa/comcases155-96b.html> Accessed 30/2/10.

⁴⁷³ *SERAC v Nigeria*, *ibid* at Para 54.

⁴⁷⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C. 12/2000/4, 11 August, 2000, Para. 4.

human health”.⁴⁷⁵ A government’s failure to take necessary measures to prevent third parties from polluting or contaminating food, water supplies and air, including the failure to enact or enforce laws, can constitute violations of the rights to health (Article 12), to water and to adequate food (Article 11 of the Covenant).

In 2001, the African Commission stated that: “Pollution and environmental degradation to a level humanly unacceptable has made living in Ogoni land a nightmare”.⁴⁷⁶ Similar pollution and environmental degradation is experienced across much of the oil-producing areas of the Niger Delta. It is important that the impact of the oil industry on the environment in the Niger Delta is understood as occurring in a context where the livelihoods, health and access to food and clean water of hundreds of thousands of people are closely linked to the land and environmental quality. As the cases and data presented in this chapter will make clear, the environmental damage that has been done continues as a consequence of oil production in the Niger Delta.

People living in the Niger Delta have to drink, cook with, and wash in polluted water; they eat fish contaminated with oil and other toxins – if they are lucky enough to still find fish; the land they use for farming is being destroyed because of the lack of respect for the ecosystem necessary for their survival; after oil spills, the air they breathe reeks of oil and gas and other pollutants;

⁴⁷⁵ CESCR, *ibid* at Para 15.

⁴⁷⁶ African Commission on Human and Peoples’ Rights, Decision on communication of The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights/Nigeria (155/96), para 70. Decision made at the 30th ordinary session of the African Commission of Human and Peoples’ Rights, Banjul, 13-27 October 2001. <http://www.umn.edu/humanrts/africa/cases/155-96b.html> Accessed 30/2/10.

they complain of breathing problems, skin lesions and other health problems, but their concerns are not taken seriously and they have almost no information on the impact of pollution.⁴⁷⁷

6.3.1. Case Study 1: The Oil Spill at Bodo, 2008

"If you want to go fishing, you have to paddle for about five hours through several rivers before you can get to where you can catch fish and the spill is lesser ... some of the fishes we catch, when you open the stomach, it smells of crude oil".⁴⁷⁸

On 28 August, 2008, a fault in the Trans-Niger oil pipeline resulted in a significant oil spill into Bodo Creek in Ogoniland.⁴⁷⁹ The oil poured into the swamp and creeks for weeks, covering the area in a thick slick of oil and killing the fish that people depend on for food and for their livelihood.⁴⁸⁰ A local NGO, the Centre for Environment, Human Rights and Development (CEHRD), which investigated the case (including video footage of the leak), reported that the oil spill had resulted in death or damage to a number of species of fish that provided the protein needs of the local community.⁴⁸¹

The community claimed that the spill began on 28 August 2008. Shell had reportedly stated that the spill was only reported to them on 5 October of that year. The Rivers State Ministry of Environment was informed of the leak and

⁴⁷⁷ Aduche, R.W. (2005) *Resource Control in Nigeria*. Owerri: Civinics Publishers p11.

⁴⁷⁸ Interview with local fisherman reported in Center for Environment, Human Rights and Development (CEHRD) report on the state of human rights abuses and violence in the Niger Delta region of Nigeria, 2008. Available at: www.cehrd.org Accessed 9/2/09.

⁴⁷⁹ *Ibid.*

⁴⁸⁰ Environment and Conservation Program (ECP) (2008) "Persistent Oil Spillage at Bodo Creek: Unprecedented Impacts on Ecosystem Stability, Biodiversity and Food Security of Ogoni Communities". Available at: www.cehrd.org Accessed 9/2/09.

⁴⁸¹ Amnesty International (2009) Report on Petroleum, pollution and Poverty in the Niger Delta, p.7.

its devastating consequences on 12 October by CEHRD. However, the leak was not stopped until 7 November. A community representative stated:

*We want the Federal Ministry of Environment and Shell in particular to come and put a stop to this ... My people ... do not go fishing any longer – you can see the devastating effects and this is our main source of livelihood.*⁴⁸²

It is not clear why Shell failed to stop the leak and contain the spill swiftly, as required by Nigerian oil industry regulations.⁴⁸³ Nor is it clear why the federal regulators did not take action. The failure to stop the leak swiftly, significantly increased the damage. “The creek is dead” CEHRD concluded, finding that as a result, “there is real food insecurity in the area...”.⁴⁸⁴

Nigerian Government regulations also require the swift and effective clean-up of oil spills. As of May 2009, the site of the spill had still not been cleaned up. Although the oil spill had seriously undermined the local community’s right to food, no adequate action had yet been taken to address the food insecurity. On 2 May 2009, eight months after the spill, Shell BP staff reportedly brought food relief to the community, which they rejected as wholly inadequate. According to Nenibarini Zabbey of CEHRD, “Shell officials arrived at the palace of the paramount ruler of Bodo on Saturday 2 May, 2009, and presented as relief materials – 50 bags of rice, 50 bags of beans, 50 bags of garri (cassava flakes), 50 cartons of sugar, 50 cartons of dry peak milk, 50

⁴⁸² Representative of the Bodo community speaking in the video footage by CEHRD at the spill site in October 2008.

⁴⁸³ The Department of Petroleum Resources, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), Revised Edition 2002, Section B, para 2.6, states: “For contamination on water, it shall be required that operators respond immediately for containment of oil spill in order to prevent the spreading of the spilled product”, Para 2.6.3 goes on to state: “Clean-up shall commence within 24 hours”.

⁴⁸⁴ E-mail Communications with Nenibarini Zabbey, Head of Environment and Conservation Program at CEHRD, 7 May 2009 reported by Amnesty International.

cartons of milo, 50 cartons of tin tomatoes and 50 tins of groundnut oil. The Bodo population is little above 70,000. Given the population figure, the Bodo people considered the offer by Shell as insulting, provocative and beggarly, and unanimously rejected the items".⁴⁸⁵ Frequent oil spills are a serious problem in the Niger Delta. The failure of the oil corporations and regulators to deal with them swiftly and the lack of effective clean-up greatly exacerbates the human rights and environmental impact of such spills.

In some unstructured interviews⁴⁸⁶ with lawyers in the Ministry of Justice, Bayelsa State, in the Niger Delta region of Nigeria, there seem to be near unanimous agreement that the 1999 Constitution of Nigeria be amended to clearly provide for justiciable economic, social and cultural rights. They opined that, since there is general reluctance to enforce socio-economic rights, there is the need to amend the Constitution so as to incorporate these rights. The Niger Delta has suffered for decades from oil spills, which occur both on land and offshore. Oil spills on land destroy crops and damage the quality and productivity of the soil that communities use for farming. Oil pollution on water damages fisheries and contaminates water that people use for drinking and other domestic purposes. There are a number of reasons why oil spills happen frequently in the Niger Delta. Spills result from the corrosion of oil pipes, poor maintenance of infrastructure, spills or leaks during processing at

⁴⁸⁵ E-mail communication, *ibid* note 484.

⁴⁸⁶ Personal communication by way of interview with some Senior State Counsel of the Ministry of Justice, Bayelsa State, Nigeria on 7 January 2011. Due to ethical considerations, their names have been withheld.

refineries,⁴⁸⁷ human error and as a consequence of deliberate vandalism or theft of oil.⁴⁸⁸

Accordingly, the impact of oil operations in Nigeria was taken up by the African Commission in 1996 in response to a complaint filed by the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights, on behalf of Ogoni people. The complaint stated that the government of Nigeria had allowed the exploitation of oil reserves in Ogoni land "with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways". It claimed that Shell and the Nigerian National Petroleum Corporation (NNPC) had "failed to maintain their facilities causing numerous avoidable spills in the proximity of villages and that the resulting contamination of water, soil and air had serious short and long-term health impacts".⁴⁸⁹ It also alleged that the government had failed "to protect Ogoni population from harm caused by the NNPC Shell Consortium".⁴⁹⁰

In a landmark decision in 2002, the African Commission found Nigeria to be in violation of a number of rights guaranteed under the African Charter,⁴⁹¹ and stated that:

⁴⁸⁷ A 1995 World Bank report noted: "Lumps from oil spillage can be directly observed and oil films cover the water surface. Spills of raw materials or leaks during processing can cause serious surface water, soil, and groundwater contamination", World Bank, "Defining an Environmental Development Strategy for the Niger Delta", 25 May 1995, Vol. II, Industry and Energy Operations Division, West Central Africa Department, p.35.

⁴⁸⁸ Richard, S. (2008) *Double Standards? International Best Practice Standards to Prevent and Control Pipeline Oil Spills, Compared with Shell Practices in Nigeria*, Alaska: University of Alaska, USA. Available at: <http://www.milieudefensie.nl/English/shell/the-peopleofnigeria-versus-shell>

⁴⁸⁹ Communication 155/96, The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria.

⁴⁹⁰ SERAC, *supra* note 472.

⁴⁹¹ African Commission on Human and Peoples' Rights (ACHPR), Decision on Communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), decision of the 30th ordinary session of the African Commission of

Despite its obligation to protect persons against interferences in the enjoyment of their rights, the Government of Nigeria facilitated the destruction of Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil corporations in particular, to devastatingly affect the well-being of the Ogonis.⁴⁹²

The decision of the African Commission clearly recognizes the link between environmental destruction and human rights, and the responsibility of government to protect people from such damage by non-state actors such as oil corporations. The Commission called on the government, amongst other things, to protect the environment, health and livelihood of the people of Ogoniland, ensure adequate compensation to victims of the human rights violations, undertake comprehensive clean-up of lands and rivers damaged by oil operations, and to provide information on health and environmental risks as well as meaningful access to regulatory and decision-making bodies for communities likely to be affected by oil operations.

The African Commission's decision has never been implemented in Nigeria, with the result that Ogoniland remains polluted (as confirmed by this study through visits to oil spill sites in January, 2011) and the human rights violations detailed by the African Commission persist. Most of the problems outlined in the Ogoni complaint to the African Commission are found right

Human and Peoples' Rights, Banjul, 13-27 October 2001. Available at <http://www.1.ume.edu/humanrts/africacomcases/155-96b.html> The African Commission found Nigeria in violation of the right to non-discrimination (Art.2), the right to life and the integrity of person (Art.14), the right to health (Art.16), the right protection of the family unit (Art. 18(1)), the right of peoples to freely dispose of their wealth and natural resources (Art 21), the right to food, the right to housing, and the right to a general satisfactory environment favourable to their development (Art.24).

⁴⁹² ACHPR, *ibid* note 491.

across oil producing areas of the Niger Delta, affecting hundreds of communities.

6.3.2. Foundation for Human Rights Violations in the Niger Delta

Land and oil laws lay foundations for human rights violations in the Niger Delta region of Nigeria. Under Nigerian law, local communities have no legal rights to oil and gas reserves in their territory.⁴⁹³ Moreover, their security of tenure and the protection of their right to an adequate standard of living, including housing, food and water, have been compromised by both constitutional provisions and a number of laws that give precedence to oil operations in terms of access to land. Section 44 of the 1999 Constitution of the Federal Republic of Nigeria states that “the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly”.

Under the 1978 Land Use Act, all land is vested in the Governor of the State and it is lawful for the Governor to revoke a right of occupancy for an over-riding public interest. Over-riding public interest includes the requirement of the land for mining purposes or oil pipelines or for any purpose connected

⁴⁹³ Section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria states: “Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the national Assembly”.

therewith.⁴⁹⁴ Communities living on the land cannot prevent this from occurring, and there is no provision in the law for consultation.

The Petroleum Act and the Oil Pipelines Act empowers the Federal Government to grant access and use rights in relation to land for the purposes of oil prospecting and mining. Once a corporation has been given a permit, licence or lease, the state government has to give it access to the land. The communities are compensated according to a formula that primarily assesses value based on "surface goods" lost.⁴⁹⁵ These are buildings, crops, economic trees and access to fishing grounds. The compensation calculations do not appear to consider the long-term implications of loss of access to critical livelihood resources. Moreover, the Land Use Act bars the courts from addressing any concerns about the amount or adequacy of compensation paid to people who lose access to their land under the terms of the Act.⁴⁹⁶

A combination of the constitutional provisions on oil and gas, the Land Use Act and aspects of the oil laws of Nigeria has given sweeping powers to the

⁴⁹⁴ Section 28(1) and 28(2)(c) and 28(3)(b) of the Land Use Act, Cap 202, LFN, 1990.

⁴⁹⁵ Under the Land Use Act of 1978, if a right of occupancy is revoked for purposes related to mining and oil, the occupier is entitled to compensation under the appropriate provisions of the relevant Mining or Oil laws. Section 36 of the Petroleum Act states: "holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of this Act, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands". Section 20 of the Oil Pipelines Act states: "If a claim is made under subsection (3) of section 6 of this Act, the court shall award such compensation as it considers just in respect of any damage done to any buildings, crops or profitable trees by the holder of the permit in the exercise of his right thereunder and in addition may award such sum in respect of disturbance (if any) as it may consider just". In practice, the tendency has been to focus compensation calculations on the surface goods lost under the headings of crops, economic trees and buildings.

⁴⁹⁶ Section 47 (2) of the Land Use Act 1978 states: "No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act".

government to expropriate land for use by the oil industry without due process or adequate compensation, in contravention of its international human rights obligations, in particular the right to an adequate standard of living.⁴⁹⁷ The provisions of these laws, which significantly undermine communities' security of tenure, also create the legal foundations for oil corporations to operate without due regard for the impact of their operations on human rights. For example, holders of leases and licences and permits to survey under the Petroleum Act, Oil Pipelines Act and subsidiary legislation are entitled to engage in a range of activities – from cutting down trees and other vegetation, to dredging – without any adequate safeguards in terms of the impact of these activities on the environment and associated livelihoods of the communities.⁴⁹⁸ The result is conflict between the communities and the oil corporations over land. Oil corporations depend on land because the oil is beneath it, while communities depend on land for farming.⁴⁹⁹ However, in almost every respect the human rights of the people of the Niger Delta have been undermined by the laws enacted to allow oil and gas extraction to occur.⁵⁰⁰

⁴⁹⁷ Article 11 of the International Covenant on Economic, Social and Cultural Rights.

⁴⁹⁸ Section 5 of the Oil Pipelines Act states: "A permit to survey shall entitle the holder, subject to section 6 of this Act, to enter together with his officers, agents, workmen and other servants and with any necessary equipment or vehicles, on any land upon the route specified in the permit or reasonably close to such route for the following purposes – (a) to survey and take levels of the land; (b) to dig and bore into the soil and subsoil; (c) to cut and remove such trees and other vegetation as may impede the purposes specified in this subsection; and (d) to do all other acts necessary to ascertain the suitability of establishment of an oil pipeline or ancillary installations, and shall entitle the holder, with such persons, equipment or vehicles as aforesaid to pass over land adjacent to such route to the extent that such may be necessary or convenient for the purpose of obtaining access to land upon the route specified". Section 6(3) of same Act states: "The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered and any buildings, crops or profitable trees thereon, shall make compensation to the owners or occupiers for any damage done under such authority and not made good".

⁴⁹⁹ Frynas, *op.cit.* note 439 at 20-45.

⁵⁰⁰ Ukpene, A.O. (2002) "Evolving a Sustainable *Environmental Education Programme* in Nigeria: Some issues for Consideration", *2 African Journal of Education*, 84-90.

6.3.3. Pollution of Water Bodies

Society views water as a “public good”, the provision of which is the state’s duty. It has been argued that the true economic value of water is not acknowledged and it is replaced by government subsidies which lead to waste and environmentally damaging use.⁵⁰¹

The view of the right to water as a human right, no doubt, has some significance. Human rights instruments either establish an express entitlement to water or consider it to be an implicit attribute, that is, in the nature of a derivative right of any of the fundamental rights to life, health or environment. International human rights instruments that enshrine express entitlements to water include the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),⁵⁰² the United Nations Convention on the Right of the Child⁵⁰³ and the African Charter on the Rights and Welfare of Children.⁵⁰⁴

Though, the African Charter on Human and Peoples’ Rights (the African Charter) has been domesticated in Nigeria by the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act,⁵⁰⁵ yet, there is lack of express entitlement to water.⁵⁰⁶ The right to water can be read into the African Charter’s right to enjoy the best attainable state of physical and mental health. This point is further amplified by the fact that in 2002 the United Nations

⁵⁰¹ Emmanuel, O. (2011) “Precautionary Principles and Environmental Management and Control”, *3 Petroleum, Natural Resources and Environmental Law Journal*, 70.

⁵⁰² Article 14(2). CEDAW entered into force on 3/9/81 and was ratified by Nigeria on 13/7/85.

⁵⁰³ Article 24, The Convention entered into force on 2/9/90 and the Bill of Rights, which it established for children, has been incorporated into Nigeria’s Child’s Right Act No.26 of 2003.

⁵⁰⁴ Article 14, The Charter entered into force on 29/1/99.

⁵⁰⁵ Act No.2 of 1983, now Cap. A9 LFN, 2004.

⁵⁰⁶ On the direct enforceability of the African Charter in Nigeria, see the Supreme Court decision in *Abacha v Fawehinmi*, [2000] 4 S.C. (Part II) 1.

Committee on Economic, Social and Cultural Rights, which is charged with monitoring state compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵⁰⁷ declared in its General Comment 15 that the right to water should be recognized as an independent human right as it is fundamental to human survival and to achieving an adequate standard of living.⁵⁰⁸ Thus, the Committee's position had advanced from that held in 2000, when in General Comment 14 (2000) on the right to health in Article 12 of the ICESCR, it declared that the right to health should extend beyond the provision of adequate health care and should cover access to safe drinking water and other requirements essential to achieving good health.

The Niger Delta is a wetland, and the health of the environment and the lives of people are intertwined with the health of the water system. The food, water, and cultural identity of many local peoples are closely related to the delta ecosystem. The rivers and streams are used for drinking, fishing, harvesting, and fermenting cassava. The Niger Delta ecosystem, as Shell Petroleum Development Company (SPDC) has noted, is "particularly sensitive to changes in water quality such as salinity or pollution ...".⁵⁰⁹ In the light of this, one of the most disturbing findings of this research is that the water system – the rivers, streams and ponds – have, for decades, been the receiving bodies for oil spills and waste discharge, including waste water and dumped drilling waste. Rivers and creeks have also been subjected to dredging and

⁵⁰⁷ ICESCR entered into force on 3/1/76 and was ratified by Nigeria on 13/7/85.

⁵⁰⁸ For the full text of General Comment 15 (2002), see United Nations Economic and Social Council, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights", E/C.12/2002/11 of 26/11/2002.

⁵⁰⁹ SPDC (2001) *People and Environment Report*. p9.

canalization. The combined and cumulative impact of these practices by oil corporations has significantly impaired the Niger Delta's waterways.

The majority of the Niger Delta's population has no access to potable water. Many communities depend on untreated surface water and wells for drinking water, which leads to health problems from water-borne diseases.⁵¹⁰ Three-quarters of all rural communities in the Niger Delta do not have access to safe water sources.⁵¹¹

As a party to the International Covenant on Economic, Social and Cultural Rights (the Covenant), that has been domesticated, Nigeria is under an obligation under international law to ensure the availability of sufficient, safe, and acceptable water for personal and domestic uses.⁵¹² The human right to water is part of the right to an adequate standard of living guaranteed under Article 11 of the Covenant, and is closely linked to the rights to health (Article 12) and food (Article 11.1).⁵¹³ The right to water includes the right to maintain access to existing water supplies necessary for the enjoyment of the right, and the right to be free from contamination of water supplies.⁵¹⁴

Under international law, states must take steps to protect people's economic, social and cultural rights from actions of non-state actors that would

⁵¹⁰ Nwilo, P.C. and Badejo, O.T. (2006) "Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas", 5th FIG Regional Conference, Accra, Ghana, March 8-11.

⁵¹¹ UNDP (2009) *Niger Delta Development Report*, p.28. See Niger Delta Environment Survey (NDES) Report (2000) covering the states of the Niger Delta region, which also found that "most settlements depend on untreated surface water and wells, which leads to health problems from waterborne diseases. It was estimated that only 20 per cent to 24 per cent of rural communities and 45 per cent to 50 per cent of urban communities have access to safe drinking water.

⁵¹² Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E./C.12/2002/11, 20 January 2003.

⁵¹³ CESCR, General Comment No.15, para 3.

⁵¹⁴ CESCR, General Comment No.15, para 10.

undermine the enjoyment of those rights. The obligation to protect requires the Government of Nigeria to prevent third parties, including corporations, from interfering in any way with the enjoyment of the right to water. The obligation includes;

*Adopting the necessary and effective legislative and other measures to restrain, for example, third parties from ... polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.*⁵¹⁵

Although the government of Nigeria has some regulatory systems in place, the evidence from the Niger Delta is that these do not work. For example, at Bodo, referred to above, the spill undermined access to water for thousands of people, not only because of the spill itself but because of the failure to contain it and clean up the site effectively. In cases such as Bodo, the pollution of drinking water is highly visible⁵¹⁶ but in other cases people may not be able to detect what pollutants are in their water. There has been no effective monitoring by the government of the volumes of oil-related pollutants entering the water system, or of their impact on water quality, fisheries or health. Monitoring and disclosing contamination levels are important as they demonstrate whether levels are above internationally recognized limits. This is particularly important for water sources that may be used for drinking, washing and bathing.

6.3.4. Damage to Fisheries

Tens of thousands of families in the Niger Delta rely on fishing in inland rivers as well as offshore for both income and food. Damage to fisheries is widely

⁵¹⁵ CESCR, General Comment No.15, para 23.

⁵¹⁶ Participant observation 20 March 2009.

acknowledged by governmental and non-governmental sources as one of the major impacts of the oil industry.⁵¹⁷ According to the UN Food and Agriculture Organization (FAO): "For brackish-water resources, the state of the resources is deplorable. Fishing pressure is very high, arising from the lack of alternative employment for estuarine communities. Oil pollution further complicates the scenario, with the devastation of aquatic life in the area".⁵¹⁸ As one of the locals expressed it:

*Because of oil exploration there are no more fisheries ... We experience the hell of hunger and poverty. Plants and animals do not grow well again, the fish have died...*⁵¹⁹

Pollution kills fish, their food sources and fish larvae, and damages the ability of fish to re-produce, causing both immediate damage and long-term, cumulative harm to fish stocks.⁵²⁰ When waste are discharged into an enclosed body of water, fish are directly exposed to pollutants and can die. In moving water, such as a river, fish may be able to move away from the immediate vicinity of oil pollution but fish eggs and larvae cannot escape and frequently die. This has caused a major decline in overall stocks, according to fisheries and environmental pollution experts.⁵²¹ Oil spills and other oil-related pollution have also seriously damaged the Niger Delta's mangroves, which

⁵¹⁷ According to Niger Delta Resources Damage Assessment and Restoration Project, Phase I Scoping Report, May 2006, conducted by Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Education (Abuja), many of the oil facilities and operations in the Niger Delta are located within sensitive habitats – including areas vital to fish-breeding.

⁵¹⁸ Food and Agriculture Organization (FAO) Report (2008), Available at www.fao.org/fishery/countrysector/fi-CP_NG/en Accessed 10/7/11.

⁵¹⁹ Jonah Gbemre from Iwerhekan Community, Ughelli South Local Government Area of Delta State, speaking to Amnesty International, April 2008.

⁵²⁰ This impact is due to blanketing of fish spawning and feeding areas and the elimination of certain food organisms; these directly affect fish through pill abrasion and fin rot, and reduce sunlight penetration, thereby impairing photosynthesis of aquatic plants. Suspended sediment decreases recreational values, reduces fishery habitat, adds to the mechanical wear of water supply pumps and distribution systems if water is to be obtained from the river for potable use.

⁵²¹ Jahan, S. (2003) "Unequal Impacts Environmental Damage" in Fukuda, S. and Kumar, S. (eds.), *Readings in Human Development*, London: Oxford University Press, pp.336-337.

are an important fish breeding area and are very hard to clean once polluted.⁵²²

6.3.5. Damage to Farms and Natural Resources

Many people in the Niger Delta rely on agriculture for food and for their livelihood. The main crops grown include yam, cassava, pumpkin and various fruits. Oil pipelines run close by or sometimes right through farmland, and other oil infrastructure, such as well heads and flow stations, are often close to agricultural land. Even without oil spills, the existence of such infrastructure within a relatively densely populated rural setting can cause difficulties for farmers.⁵²³

When oil spills occur on agricultural land, they are usually devastating. Crops in the ground rarely survive. The immediate effect is the destruction of any crops that come into contact with the oil. A significant problem for the rights of farmers in the Niger Delta is the failure to address the long-term impact of oil pollution on soil fertility and agricultural productivity. Experts say that in some cases soils recover in a reasonably short time while in others, the impact can last for decades. One problem facing the Niger Delta region is that some sites have been devastated by repeated spills.⁵²⁴

6.3.6. Disposal of Waste

The activities involved in petroleum exploration and production produce waste of varying chemical compositions, which are generated at each phase of the operation. The disposal of these wastes in the Niger Delta has polluted land

⁵²² Personal communication by way of an interview with staff at the Institute of Pollution Studies, Port Harcourt, Rivers State, Nigeria. 25 and 26 March, 2010.

⁵²³ IPIECA, (2009) "Biological Impact of oil Pollution". <http://www.ipieca.org> Accessed 20/5/10.

⁵²⁴ Obire, O. and Amusan, F.O. (2003) "The Environmental Impact of Oilfield Formation Water on Freshwater Streams in Nigeria". 3 *Journal of Applied Science & Environmental Management*, p50.

and water, damaging fisheries and agriculture, undermining the right to an adequate standard of living. According to a senior official from the Rivers State Ministry of Environment, "effluent and waste from the oil industry which should be treated is dumped and finds its way into the surface water of the Delta..."⁵²⁵

Waste water is one of the major sources of waste material. When oil is pumped out of the ground, a mixture of oil, gas and water emerges. Hundreds of tonnes of oil together with other potentially toxic substances are released into the Niger Delta in wastewater.⁵²⁶ Another major source of waste is drilling, which produces large amounts of mud and dry cuttings. Drilling waste has frequently been disposed of indiscriminately, often into drainage channels and waterways, which affects water quality and land used for agriculture.

6.4. Case Study 2: The Ogbodo Spill, 2001

On 25 June, 2001, residents of Ogbodo in Rivers State, Niger Delta region of Nigeria heard a loud noise, which sounded like an explosion. The sound came from a pipeline, which ruptured. Crude oil from the pipe spilled over the surrounding land and waterways.⁵²⁷ The community notified Shell Petroleum Development Company (SPDC) the following day but there was no immediate response. The oil subsequently caught fire. Some forty-two communities were

⁵²⁵ Personal communication by way of an Interview with a senior officer of the Rivers State Ministry of Environment 25 March, 2011.

⁵²⁶ Adewumi, A.A. (2010) "The Regulation of Water Resources in Nigeria: Law and Policy", 2 *Petroleum, Natural Resources and Environmental Law Journal*, p.35.

⁵²⁷ Amnesty International representatives visited Ogbodo on 4 October 2003 and interviewed members of the community about the 2001 spill. Amnesty International also received reports from the Center for Social and Corporate Responsibility, including the accounts of staff members who were on site after the spill and did follow-up work with the community. See also: Environmental Rights Action and Friends of the Earth (2005), *The Shell Report, Continuing Abuses in Nigeria – 10 Years after Ken Saro-Wiwa* ERA.

affected by the Ogbodo spill as the oil moved through the water system.⁵²⁸ The communities' water supply, which came from the local waterway, was contaminated.

Petrol fumes in the spill area were described as "intense", even days after the spill and fire, making breathing difficult. People in the area complained of numerous symptoms, including respiratory problems. The situation was so dire that some families reportedly evacuated the area, but most had no means of leaving. The impact of the spill and fire on local livelihoods was extensive. Crops and fishing areas were badly damaged. The river-bank was described as "littered with dead fish and animals".⁵²⁹ Amnesty International's research team visited the area in 2003, and found the community still suffering from the impact of the oil spill. The devastating impact of the Ogbodo oil spill was exacerbated and prolonged because of the failure to contain the spill swiftly and because clean-up of the site was both slow and inadequate. According to Amnesty International reports, a representative of Shell from London came to Nigeria. He and Shell Petroleum Development Company (SPDC) staff visited the Ogbodo spill site and promised that a post-impact assessment would be done, and that the site would be remediated. However, when an Amnesty International representative visited the area on 4 October 2003, almost two years later, the site had still not been adequately cleaned up.⁵³⁰

⁵²⁸ Interview conducted by Amnesty International with Father Kevin O'Hara, who worked with the Center for Social and Corporate Responsibility (CSCR) at the time of the Ogbodo oil spill and who visited the community on several occasions. Interviews conducted on 6 and 9 of June, 2009.

⁵²⁹ Onuoha, F.C. (2008) "Oil Pipeline Sabotage in Nigeria: Dimensions, Actors, and Implications for National Security", *17 African Security Review*, 3.

⁵³⁰ SPDC (2009) *People and Environment Report*, p.41.

Moreover, the way in which some oil companies deal with oil spills – where they do so – causes further pollution problems. They sometimes use chemical dispersants. These chemicals break up the oil on the surface, dispersing it in the water. Both government and non-government fisheries experts expressed concern about the use of chemical dispersants in the relatively shallow waters of the Niger Delta. Dispersants do not clean the water; the oil is simply broken up and falls to the bottom to kill fish food supplies, further damaging fish stocks.⁵³¹

Oil pollution also raises concerns about food safety in an area where so many people depend on fish as a main source of protein. Some academic studies have shown elevated levels of dangerous chemicals in fish exposed to oil pollution. For example, a study carried out by Friends of the Earth in Ikot in Akwa Ibom State of the Niger Delta region in 2008, following an oil spill, stated that “the fish tissue has contents of heavy metals ... higher than what is found in uncontaminated fish tissues.”⁵³² The ingestion of hydrocarbon directly or indirectly through contaminated food can lead to negative health effects.⁵³³

6.4.1. The Right to Food

Article 11 of the International Covenant on Economic, Social and Cultural Rights establishes “the right of everyone to an adequate standard of living ... including adequate food”. Precisely, the right to adequate food requires

⁵³¹ Emoyan et al (2006) “Water Quality Assessment of River Ijana in Warri, Delta State of Nigeria”, *31 Journal of Chemical Society*, 154-160.

⁵³² *Environmental Impacts of the Oil Spill at Ikot in Akwa Ibom State, Nigeria*, submitted by Prof. Udo, E.J., Pam Scientific Laboratories, Uyo, Nigeria, to Environmental Rights Action/Friends of the Earth, May 2008.

⁵³³ Expert comment provided by Dr. Carolyn Stephens, Reader in International Environmental Health, Public Health Research Unit, Department of Public Health and Policy, London School of Hygiene and Tropical Medicine, 3 April 2009.

States Parties to the Covenant to ensure the availability and accessibility of food.⁵³⁴ Availability includes being able to feed oneself directly from productive land or other natural resources. As part of their obligation to protect peoples' resources base for food, the UN Committee on Economic, Social and Cultural Rights has made clear that States Parties should "take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food".⁵³⁵

The African Commission has also identified government obligations in the context of the right to food, stating that:

*The African Charter and International law require and bind [states] to protect and improve existing food sources and to ensure access to adequate food for all citizens. The right to food requires that the [government] should not destroy or contaminate food sources. It should not allow private parties to destroy or contaminate food sources, and prevent peoples' effort to feed themselves.*⁵³⁶

In the case of Nigeria, the government has clearly failed to protect the natural resources base upon which people depend for food in the Niger Delta, and has contravened its (state) obligations to ensure the availability of food. Thousands of oil spills and other environmental damage to fisheries, farmland and crops have occurred over decades. The lack of adequate clean-up and rehabilitation, as well as the failure to assess and address the possible

⁵³⁴ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, social and Cultural Rights, E/C.12/1999/5), Para 12.

⁵³⁵ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, social and Cultural Rights, E/C.12/1999/5), Para 27.

⁵³⁶ African Commission on Human and Peoples' Rights, Decision on Communication of *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (155/96) Para 68.

longer-term effects on agricultural land, crop productivity and food safety, have made food security even more precarious.

The UN Committee on Economic, Social and Cultural Rights has clarified that the obligation that food be “free from adverse substances”⁵³⁷ sets requirements for a range of protective measures by both public and private means to prevent contamination of foodstuffs.

In the landmark Ogoni decision, referred to earlier, the African Commission held that Nigeria had violated the right to food of the riverine peoples by allowing private oil corporations to destroy food sources.⁵³⁸ Almost eleven years after this decision, the government of Nigeria has continued to violate its obligations under the Covenant and the African Charter by failing to take effective measures and to enforce laws to prevent contamination and pollution of the food sources (both crops and fish) by private oil companies in the Niger Delta.

It has been observed, that, both studies and the anecdotal testimony of communities have pointed to potentially serious food safety problems in the Niger Delta related to oil pollution. Referring to an environmental impact assessment of the 1983 Oshika oil spill in Rivers State,⁵³⁹ the United Nations Development Programme (UNDP) stated that:

The implication of these findings is frightening, given that human health is tied to the web of food. Udoette

⁵³⁷ CESCR, General Comment No.12 (1999) on the right to adequate food (Article 11 of the International Covenant on Economic, Social and Cultural Rights, E/C. 12/1999/5), Para 8.

⁵³⁸ *SERAC vs Nigeria*, supra note 472 .

⁵³⁹ Powell and White (1985) quoted in UNDP, Niger Delta Human Development Report, 2006, p.47.

(1997) reported, for example, that ingestion of hydrocarbon directly or indirectly through contaminated food leads to poisoning. Some researchers such as Kanoh et al. 1990, and Snyder and Hedlim 1996, have documented the toxic carcinogenic effects of exposures to high concentrations of hydrocarbons.

A study carried out for Friends of the Earth, Netherlands, found that high contents of some heavy metals above the normal levels are also detected in the soils and water bodies, and also in the tissues of fish and plant samples. This would clearly affect the quality of crops and aquatic animals. Even if food safety is not an issue, the acceptability of food tainted by oil is a concern.

6.4.2. The Right to Work and to an Adequate Standard of Living

I want them to come and see what we are experiencing. There is no food for us. We need rehabilitation. Because of all these things, today we are dying of hunger – there is pollution in the air, pollution in the water and pollution everywhere.⁵⁴⁰

Article 6 of the Covenant obliges States Parties to recognize the right of everyone to gain their living by work which they freely choose or accept and to take appropriate steps to safeguard this right. The Government of Nigeria is obligated to take all necessary measures to prevent infringements of the right to gainful living through work by third parties.

Article 11 of the Covenant also establishes “the right of everyone to an adequate standard of living ... and to a continuous improvement of living conditions”. This Article reflects Article 25 of the Universal Declaration of Human Rights (UDHR) which states that: “everyone has the right to a

⁵⁴⁰ Member of Bodo community after the oil spill in 2008, describing the damage and the ordeal they are going through due to the oil pollution.

standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". This right is closely linked with the rights to food and housing, which form part of the right to an adequate standard of living, but also to gain a living by work and to the right to health.⁵⁴¹

As described above, fisheries and agriculture have been damaged as a result of oil spills and waste dumping and other harmful environmental practices. In the case of damage to fisheries and farm land, the compensation that is paid often fails to take into account the longer-term impact of the pollution on livelihood activities.

6.4.3. International Guarantee of the Right to Health and Healthy Environment

Article 12.1 of the Covenant guarantees "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health..." The UN Committee on Economic, Social and Cultural Rights (the Committee), the expert body which monitors the implementation of the Covenant, has clarified that:

The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the

⁵⁴¹ See the discussion on the drafting history of this Article in Craven, M. (1995) *The International Covenant on Economic, Social and Cultural Rights*. London: Oxford University Press, p.293.

*underlying determinants of health, such as ... a healthy environment.*⁵⁴²

Article 12.2 of the Covenant further provides that, "The steps to be taken by the states parties to the present Covenant to achieve the full realization of this right shall include ... (b) The improvement of all aspects of environmental and industrial hygiene". The Committee has clarified that a state's obligation under Article 12.2(b) extends to "the prevention and reduction of the population's exposure to harmful substances such as ... harmful chemicals or other detrimental conditions that directly or indirectly impact upon human health".⁵⁴³ The African Charter also guarantees the right to health (Article 16) and to a generally satisfactory environment (Article 24). The African Commission found the Government of Nigeria to be in violation of these rights, and stated that:

*Pollution and environmental degradation in Ogoniland in the Niger Delta were at a level that was "humanly unacceptable" and has made living in Ogoniland a nightmare.*⁵⁴⁴

The level of pollution and environmental degradation found in Ogoniland, which the African Commission considered to be a breach of human rights, is found in most parts of the Niger Delta region of Nigeria.

⁵⁴² CESCR, General Comment No.14 (2000) on the right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4), Para 4.

⁵⁴³ CESCR, General Comment No.14 (2000) on the right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/2000/4), Para 15.

⁵⁴⁴ African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria (155/96), para 70. Decision of the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October, 2001.

For instance, the recent (August 2011) report of the United Nations Environmental Programme, which is the first of its kind, based on two years of in-depth scientific research, provides irrefutable evidence of the devastating impact of oil production on people's lives in the Niger Delta region of Nigeria—one of Africa's most bio-diverse regions. One of the most serious facts to come to light is the scale of contamination of drinking water, which has exposed communities to serious health risks. In communities affected, water was found to contain benzene, a known carcinogen at levels 900 times above World Health Organization (WHO) guidelines.⁵⁴⁵ The report unequivocally states that:

*Ogoni people live with this pollution every minute of every day, 365 days a year.*⁵⁴⁶

The UNEP report's findings also expose the serious failure of the Nigerian government to regulate and control corporations like Shell. UNEP found that Nigeria's legal regime and regulators are weak and Nigeria's oil spill investigation agency is often totally reliant on the oil corporations to do its work.

The report reveals that Shell's systematic failure to address oil spills goes back many decades. It stated that the environmental restoration of Ogoniland could prove to be the world's most wide-ranging and long-term clean-up ever, if contaminated drinking water, land, creeks and other eco-systems are to be brought back to full health. The UNEP study concludes that it will take 25-30

⁵⁴⁵ UNEP (2011) *Environmental Assessment of Ogoniland*, p.11.

⁵⁴⁶ *Ibid* at p.204.

years to restore the Niger Delta health environmentally⁵⁴⁷ at an estimated initial cost of USA \$1 billion.⁵⁴⁸

The report was astonishing and the toxicology of the Niger Delta environment as a result of oil exploration, pollution, oil spillages and negligence was underlined. The report also corroborated the genocidal claim made by the Ogoni people, as they experience slow death resulting from oil agents like benzene, toluene, ethyl benzene, and xylene (BTEX), mercury, PAHs (polycyclic aromatic hydrocarbons), VOC (volatile organic compounds), polluted reactive gases, and metals.⁵⁴⁹ Shell Oil Corporation has knowingly degraded the Niger Delta Environment and made the people live and die slowly from pollutants, a man-made poison for 55 years, while applying different operating standards in the West. It is classed as the height of injustice and environmental racism when Shell accepted liability in the United State's Gulf Oil spill in 2010 by carrying-out adequate clean-up and setting-up a compensation fund, while doing very little, if anything, in the several cases of pollution occurrence in the Niger Delta region of Nigeria.

For instance, while in the USA, oil spills get immediate responses, as were in the cases in the Gulf of Mexico oil spill, 2010 and Exxon Valdez 1989, to avert community and media uproar, in the Niger Delta, where there are far more incidents of pollution, response, if it comes at all, can take as long as months as can be observed from the spill cases examined in this chapter.

⁵⁴⁷ *Ibid* at p.12.

⁵⁴⁸ *Ibid* at p.15.

⁵⁴⁹ *Ibid* at pp.9-15.

In fact, in the aftermath of the Exxon Valdez incident, the United States of America Congress passed the Oil Pollution Act of 1990, which required the Coast Guard to strengthen its regulations on oil tank vessels and oil tank owners and operators. Today, tank hulls provide better protection against spills resulting from a similar accident, communications between vessel captains and vessel traffic centres have improved to make for safer sailing.⁵⁵⁰ While in the case of the Gulf of Mexico oil spill, criminal liability of even individual Directors and CEOs was imposed and those indicted lost their jobs.⁵⁵¹

6.4.4. The Right to a Clean and Healthy Environment and the Fundamental Human Rights Provisions of the Nigerian Constitution

Though generally referred to as third generation rights, environmental rights, by their very nature, have developed to such a stage that inference can be drawn that in certain instances, an environmental right may be identical with, or subsumed in an enforceable negative first generation right. In various jurisdictions, some aspects of environmental rights, especially the right to a clean and healthy environment has been recognized and accommodated in juristic interpretation as part of the universally recognized fundamental right to life and to the dignity of the human person.⁵⁵²

This study appraises here the emergence of judicial pronouncements on the relationship between the rights to life and to a clean environment in Nigeria.

⁵⁵⁰ See History: Exxon Valdez Oil Spill. Available at <http://www.epa.gov/oem/content/exxon.htm> Accessed 23/8/11.

⁵⁵¹ See General Facts about the Gulf of Mexico. Available at <http://www.gulfbase.org/facts.php> Accessed 23/8/11.

⁵⁵² For example, such a right has been recognized in India, Pakistan and Bangladesh. For details, see *Gbemre vs Shell and Others, Suit No. PHC/CS/B/153/2005*, where the court in its decision accorded to this right.

The development of Nigerian law in this regard, can be traced to the recent Federal High Court decisions in the cases of *Gbemre vs. Shell Petroleum Development Company Nigeria Ltd and Others*⁵⁵³ and *Okpara vs. Shell Petroleum Development Company Nigeria Ltd and Others*⁵⁵⁴.

These two cases represent the premiere attempt in Nigeria at interpreting the fundamental rights provisions of sections 33 and 34 of the Constitution of the Federal Republic of Nigeria 1999 to include the right to “clean, poison-free, pollution-free, and healthy environment”.

This study examines here the approach of the court in the two cases, pointing out the gradual but steady emergence of new attention and awareness on the environment over mere economic and political considerations which have led to a re-ordering of judicial rationalism in environmental litigation in Nigeria. Eventually, despite the fact that the two cases came out with contradictory decisions, this thesis concludes that there exists, presently, a compelling and positive jurisprudential basis to interpret the right to life to accommodate the right to a clean and healthy environment.

The facts and claims in the two cases were similar, having arisen from gas flaring. As such, the facts shall, for the purpose of brevity, be jointly analysed. In summary, the claimants in both cases approached two different divisions of the Federal High Court at Benin and Port Harcourt respectively for the enforcement of their fundamental human rights, seeking in summation, declaratory and injunctive reliefs including a declaration that the

⁵⁵³ *Gbemre vs Shell*, *ibid* note 552.

⁵⁵⁴ Port Harcourt Division, decision of September 29, 2006.

constitutionally guaranteed fundamental rights to life and dignity of the human person, provided for in sections 33(1) and 24(1) of the Constitution of the Federal Republic of Nigeria, 1999 and reinforced by Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act,⁵⁵⁵ inevitably includes the right to clean, poison-free, pollution-free and healthy environment. Predicated on the above, they sought a declaration that gas flaring constitutes a breach of the said right to clean, poison-free, pollution-free and healthy environment.

Accordingly, they urged the Courts to declare that the provisions of section 3(2) (a) and (b) of the Associated Gas Re-injection Act⁵⁵⁶, and section 1 of the Associated Gas Re-injection (continued Flaring of Gas) Regulations⁵⁵⁷ under which continued flaring of gas in Nigeria may be allowed were inconsistent with the applicants' rights to life and/or dignity of the human person, enshrined in sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria, 1999 and Articles 4, 16 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, and were, therefore, unconstitutional, null and void by virtue of section 1(3) of the same Constitution. They sought a perpetual injunction restraining the defendants by themselves or by their agents, servants, contractors or workers or otherwise howsoever from further flaring of gas in the applicants' communities.

The facts upon which the applications were based were that the respondents had been engaged in unbridled and relentless gas flaring in the various communities represented by the applicants, which affects the health of the

⁵⁵⁵ Laws of the Federation of Nigeria, 2004, vol. 1, Cap. A9.

⁵⁵⁶ Laws of the Federation of Nigeria, 2004, vol. 1, Cap. A25.

⁵⁵⁷ Laws of the Federation of Nigeria, 2004, vol. 1, Cap. A25.

applicants. The flaring of gas by the defendants was said to have poisoned and polluted the environment in the respective communities involved, and had also resulted in the emission of carbon dioxide, the main greenhouse gas. The flares were also said to contain a cocktail of toxins that affected the health, lives and livelihoods of the affected communities.

The risks associated with flaring in the applicants' estimation included premature death, respiratory illnesses, asthma and cancer. It was part of their contention that gas-flaring contributed to the adverse climate change in the affected communities as the emitted carbon dioxide and methane caused warming of the environment, polluted food and water, caused painful breathing, chronic bronchitis, decreased lung function and eventually – death. The food security of the affected communities was also said to have been adversely affected. They also alleged that gas flaring caused acid rain and corroded corrugated house roofs.

Apart from the constitutional right to life and dignity of the human person contained in Chapter IV of the 1999 Constitution, they also alleged that the provisions of the Environmental Impact Assessment (EIA) Act⁵⁵⁸ and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act had been breached.

Predictably, the two cases, took different turns. In Gbemre's case, before the Benin High Court, several dramatic developments took place before the case

⁵⁵⁸ Cap. E12, LFN, 2004.

was finally decided in favour of the claimants.⁵⁵⁹ In its ruling, the court stated thus:

Upon a thorough evaluation of all the processes, submissions, judicial and statutory authorities as well as the nature of the subject matter, together with the urgency which both parties through their counsel have observably treated these weighty issues raised in the substantive claim, I find, myself able to hold as follows: (after a thoroughly painstaking consideration) That this constitutionally guaranteed right inevitably includes the right to a clean, poison-free, pollution-free healthy environment. To flare gas in the course of their oil exploration and production activities in the Applicant's Community is a gross violation of their fundamental right to life (including healthy environment) and dignity of the human person as enshrined in the Constitution.

The court went ahead to hold that gas flaring was unconstitutional, and granted all the reliefs sought by the applicants.

On the other hand, Okpara's case turned on a bout of legal technicalities and philology and was struck out, based on preliminary objections. In striking out the matter, the court ruled thus:

I therefore uphold the submission of the learned counsel for the 2nd, 3rd and 4th Defendants that the present suit cannot be maintained in a representative capacity. I also uphold the objection of the learned SAN (Senior Advocate of Nigeria) for the 1st Defendant counsel, the 5th and 6th Defendants on the ground that this suit is incompetent for wrong joinder of cause of action.

6.5. The Issue of Evading Responsibility

The oil corporations, particularly Shell Petroleum, have operated for over 30 years without appreciable control or environmental regulation to guide their activities.⁵⁶⁰

⁵⁵⁹ For details, please see the court's judgment.

⁵⁶⁰ UNDP (2009) *Niger Delta Human Development Report*, p.24.

The preceding sections of this chapter dealt with the widespread oil pollution problems of the Niger Delta and the impact on the human rights of the people of the Niger Delta. This section of the chapter addresses the question of why such pollution has gone relatively unchecked, and who is responsible. As noted earlier in this chapter, the oil industry in the Niger Delta comprises the government and the TNOCs. The TNOCs, however, are operators. This thesis posits that the government of Nigeria is failing in its obligation to respect and protect the rights of people in the Niger Delta. Some of the oil corporations have exploited a weak regulatory system, no doubt, and their operations are characterised by failure to take appropriate preventive and remedial action in relation to pollution and environmental damage. Accordingly, this section attempts to examine the role of both the government and the corporations.

6.5.1. The State's Duty to Protect

Under international law, the government of Nigeria has an obligation to respect, protect and fulfil human rights. The obligation to respect rights means states parties should refrain from any measures that would result in preventing or undermining the enjoyment of rights. The obligation to protect requires measures by states to ensure that other actors (such as corporations) do not undermine or violate human rights. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of human rights. While there is evidence that the government of Nigeria is failing on all three levels in the Niger Delta, this study focuses primarily on the duty to protect.

The African Commission, in the Ogoni decision, dealt specifically with the government of Nigeria's duty to protect peoples' human rights from damaging acts that may be perpetrated by private parties. The Ogoni decision was specific to the situation in the Niger Delta and the government's duty to protect rights in the context of the operations of oil transnationals. As the Ogoni case made clear, the failure of the government to control the oil corporations effectively had devastating consequences for human rights.

The duty to protect human rights against abuses or harm by corporations requires that the state take all necessary measures to prevent such abuses. In the context of the oil industry, effective prevention involves establishing an appropriate regulatory system based on international best practice and effective enforcement of regulations. This point is clearly reflected in the recommendation of the African Commission in the Ogoni case, to:

*Ensure that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry.*⁵⁶¹

Effective protection of human rights in the context of an industry which involves dangerous substances and heightened risk to human life and health should also include measures for dealing with accidents and emergencies, such as oil spills and oil fires. While action to prevent oil operations from

⁵⁶¹ African Commission on Human and Peoples' Rights, Decision on communication of The Social and Economic Rights Action Center and the for Economic and Social Rights/Nigeria (155/96), decision made at the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001. <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html> Accessed 21/6/09.

harming human rights and introducing effective systems to deal with accidents and emergencies should be a priority, the UN Special Representative of the Secretary-General on Business and Human Rights, underlined in a 2008 report to the Human Rights Council, that:

*State regulation proscribing certain corporate conduct will have little impact without accompanying mechanisms to regulate, punish, and redress abuses.*⁵⁶²

Protecting human rights in the Niger Delta requires that the government has adequate means in place for dealing with corporations' failure to comply with laws and regulations.

6.5.2. The Absentee Government: Failure to Protect Rights

For decades the oil industry in the Niger Delta has operated with little or no effective regulation or monitoring.⁵⁶³ This has not been for want of laws or statutes on the books. Nigerian law prohibits pollution of land and water, requires TNOCs to ensure "good oil field practice" and to comply with internationally recognized American Petroleum Institute (API) and American Society of Mechanical Engineering (ASME) standards. The main Nigerian oil industry legislation and regulations are:

1. The Oil Pipelines Act of 1956 as amended in 1965.
2. The Petroleum Act of 1969.
3. The Oil Terminal Dues Act of 1969.
4. The Oil in Navigable Waters Act of 1968.

⁵⁶² Protect, Respect and Remedy: A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/8/5, para 82.

⁵⁶³ See: UNDP, Niger Delta Human Development Report, 2006, and the Report of the Technical Committee on the Niger Delta, November 2008. The failure of regulation over decades was also repeatedly raised in this study in interviews and personal communications with NGOs, academics and oil industry experts.

5. The Nigerian National Petroleum Corporation Act 1990.
6. The Oil in Navigable Waters Regulations, 1968.
7. The Mineral Oils (Safety) Regulations, 1963.
8. The Petroleum (Drilling and Production) Regulations, 1969.
9. The Associated Gas Re-injection Decree of 1979.
10. The Harmful Waste (Special Criminal Provisions) Decree of 1988.
11. The Federal Environmental Protection Agency Decree of 1988.
12. The Environmental Impact Assessment Decree of 1992.
13. The National Oil Spill Detection and Response Agency (NOSDRA) Act, 2006.

These laws collectively, declare ownership of the resources, provide for licensing of operators, set safety standards and protect the environment, regulate activities in the sector, establish monitoring agencies and prescribe civil or penal liability as the case may be. These policies are of course on ground and on paper. While this study may admit that ample legal provisions exist, it remains apposite to state that the implementation of the laws leaves much to be desired in order to attain meaningful development of a sustainable character, owing to lack of political will to enforce the laws coupled with corruption and bureaucratic inertia.

As can be seen from the above, alongside the oil industry laws are the country's environmental laws. Most were only developed decades after oil operations began. The content of Nigeria's law on oil operations is considered minimally sufficient by environmental and oil experts. However, these laws are also considered to have significant flaws, particularly as they relate to the

impact of the oil industry on the environment and the affected population. Moreover, because the laws are so poorly enforced, in reality the oil industry remains largely self-regulated or, frequently unregulated.⁵⁶⁴ It has been observed by this study that the failure to enforce laws and regulations is closely related to the following:

6.5.3. Confusion and Conflicts within the Regulatory System

Studies have been unable to clearly delineate governmental responsibilities with regard to the regulation of the oil industry and its impact on the environment and human rights.⁵⁶⁵ Several departments appear to have statutory authority, but these authorities are sometimes over-lapping, contradictory and even chaotic.⁵⁶⁶

Oil operations in Nigeria are under federal jurisdiction.⁵⁶⁷ The Federal Government is both a partner in the oil industry and required by federal law to enforce environmental laws and standards. It is not uncommon for a government to be a partner in the business that it regulates. However, unless robust, independent regulatory and oversight mechanisms are in place, conflicts of interest can result in violations of human rights. Independent

⁵⁶⁴ Olowoaran, B.A. (2010) "Environmental Protection through Public Procurement Legislations: The Nigerian Case", *4 Petroleum, Natural Resources and Environmental Law Journal*, 123-141.

⁵⁶⁵ Ezike, E.O. (2010) "Judicial Attitude to Natural Resources Control in Nigeria", *4 Petroleum, Natural Resources and Environmental Law Journal*, 82-122.

⁵⁶⁶ Ibeanu, O. (2008) "Bringing Human Rights Back into the Niger Delta Discourse". Conference Proceedings on *The Nigerian State, Oil Industry and the Niger Delta*. Port Harcourt: Harvey Publishers, p.102.

⁵⁶⁷ Section 44 of the Constitution of the Federal Republic of Nigeria. Under the Constitution of the Federal Republic of Nigeria, the Exclusive Legislative list under section 323, the Second Schedule to the Constitution lists those areas where the Federal Government has exclusive legislative authority. This includes mines and minerals, including oilfields, oil mining, geology surveys and natural gas.

oversight of the petroleum industry was one of the main recommendations of the African Commission in 2002.

However, the Government of Nigeria has failed to ensure independent regulation of the oil industry; instead, it has left significant regulatory powers in the hands of the Department of Petroleum Resources (DPR), a department aligned with the Ministry of Energy (Petroleum Resources). The Ministry's role is to develop Nigeria's energy resources. Many non-governmental and academic sources point to the nature of the relationship between the DPR and the TNOCs as one of partnership, which fundamentally conflicts with the concept of an independent body regulating the industry.⁵⁶⁸ According to the World Bank:

*This situation has resulted in the government inadequately regulating oil pollution while at the same time, being party to much of the oil-related environmental problems of the Niger Delta.*⁵⁶⁹

The Federal Ministry of the Environment's role in relation to oil operations seems limited to dealing with oil spills and Environmental Impact Assessments. However, in both cases, the DPR is also involved, and lines of reporting and authority are unclear.⁵⁷⁰ While, the Federal Ministry of Environment officials are supposed to be involved in the investigation of oil spills and in certification of spill clean-up, the Ministry has almost no role in

⁵⁶⁸ Abdulkadir, A.B. and Sambo, A.O. (2011) "Climatic Change and Sustainable Development: The Legal Frameworks Examined", 5 *Petroleum, Natural Resources and Environmental Law Journal*, 83.

⁵⁶⁹ World Bank, *Defining an Environmental Development Strategy for the Niger Delta*. 25 May 1995, Vol. II, Industry and Energy Operations Division, West Central Africa Development, p.45.

⁵⁷⁰ This issue is addressed in a recent environmental assessment: The World Bank, *Nigeria Rapid Country Environmental Assessment, Final Report*, 30 November, 2006.

the enforcement of regulations that would prevent pollution or sanction bad practice and thus, perhaps, address root causes.

State Ministries of Environment have very limited power in relation to the oil industry. Because the oil industry falls under federal jurisdiction, state regulatory bodies are unable to enforce state regulations. States are frequently required to deal with protests by communities about the impact of the oil industry but have no power to address the oil spills and pollution problems which often give rise to community protests, even when they can clearly see that these problems exist.⁵⁷¹

6.5.4. Weakening the Regulatory Oversight of Oil Corporations

In 2007 the Federal Government of Nigeria further weakened any independent oversight of the oil and gas industry by significantly curtailing the authority of the Ministry of Environment in regulating the environmental impact of the industry. The National Assembly passed a law repealing the Federal Environmental Protection Agency (FEPA) Act 1988 and establishing the National Environmental Standards and Regulations Enforcement Agency (NESREA) 2007.⁵⁷² The Agency is supposed to ensure enforcement of all policies, laws, standards and regulations relating to the environment, including international agreements. However, the Act establishing NESREA repeatedly bars the agency from enforcing compliance in the oil and gas sectors. Although the Agency is barred by law from carrying out almost all its

⁵⁷¹ Aluko, M. (2002) *Social Dimensions and Consequences of Environmental Degradation in the Niger Delta of Nigeria*, Lagos: Ebert Foundation, p.55. See also Ohisson, L. (2000) *Livelihood Conflict: Linking Poverty and Environment as causes of Conflict*, Stockholm: Environment Policy Unit, p.67.

⁵⁷² Section 36 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act of 2007 repeals the Federal Environmental Protection Agency (FEPA) Act.

major functions in relation to the oil and gas sectors, the governing council of the Agency is obliged by law to include a representative of the Oil Exploratory and Production Corporations of Nigeria. The National Oil Spill Detection and Response Agency (NOSDRA) established in 2006, claims to have some responsibility for enforcing environmental regulations in the oil and gas sectors.⁵⁷³

The repeal of FEPA, and its replacement with a law that specifically excludes the Ministry of Environment from enforcing compliance in the oil and gas industry, is deeply questionable and further entrenches government failures to ensure effective oversight of the oil industry and to protect the environment and human rights.

6.5.5. Lack of Resources and Capacity

Questions as to which agency or ministry has responsibility for ensuring that TNOCs comply with environmental and safety regulations become somewhat irrelevant when the issue of enforcement is considered. In examining the capacity of both the DPR and the State and Federal Ministries of Environment to enforce environmental laws and standards, and address pollution, which would help to protect people's rights, they were all found to be seriously constrained by lack of capacity and resources.⁵⁷⁴ But this seems inexcusable

⁵⁷³ Section 6(1) (a) of the National Oil Spill Detection and Response Agency (establishment) Act, 2006.

⁵⁷⁴ See: World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 25 May 1995, Vol. II, Industry and Energy Operations Division, West Central Africa Depart, p45-53; The World Bank, *Nigeria Rapid Country Environmental Assessment, Final Report 11/30/2006* p39, which states: "Environmental Inspectors belonging to the Federal Ministry of Environment often have to rely on oil corporations to provide cars to undertake monitoring activities, in addition to hotel bills, per diems and other expenses, compromising legitimacy and effectiveness in environmental monitoring process".

given the hundreds of billions of dollars in oil revenues that have been collected by the Nigerian government.

The DPR environmental monitoring and enforcement capacity is also found to be equally weak. DPR staff in the Niger Delta often lack the technical, financial, and material resources to carry out their required functions effectively. According to the UN, "Even though the department appears to have more clout within the industry, its effectiveness has been seriously hampered by inadequate personnel, funding, equipment and logistics support".⁵⁷⁵

6.5.6. Law and the Enforcement of Law

In light of the significant impact of oil pollution on health, agriculture and fisheries, the pertinent question for this thesis is whether the laws and regulations in Nigeria adequately address the major pollution issues described in this chapter.

As noted earlier, under Nigerian law, many of the activities that cause pollution and environmental damage should be prohibited or controlled. The Petroleum Act, 1969 and Oil Pipelines Act, 1956 make certain provisions in relation to interference with waterways and land use rights, but also allow for potentially damaging actions by oil operators⁵⁷⁶ if compensation is provided or Ministerial permission is granted.⁵⁷⁷

⁵⁷⁵ UNDP, Niger Delta Human Development, 2009.

⁵⁷⁶ Section 5(1) of the Oil Pipelines Act (1956).

⁵⁷⁷ Section 14 of The Oil Pipelines Act, for example, prohibits a licence holder from: altering the flow of water in any navigable waterway, or constructing work in a navigable waterway that might obstruct or interfere with the free and safe passage of vessels, canoes or other craft; or from constructing work or depositing material in such a way that would alter the flow of water required

Under section 11 (4) of the Oil Pipelines Act 1956, "The holder of a licence shall have power to dig and get free of charge any gravel, sand, clay, stone or other similar substance ... within any land included within the area covered by the licence to the extent that such gravel, sand, clay, stone or other substance, will facilitate the construction or maintenance of a pipeline or any ancillary installations". Similarly, the Gas Re-injection Act, 1979 prohibits gas-flaring but permits it if Ministerial approval is given.⁵⁷⁸

The restrictions placed on holders of permits, leases and licences are limited and appear inadequate to protect the rights of affected communities. For example, under section 6 of the Oil Pipelines Act 1956, the holder of a permit to survey can enter any building, enclosed court or garden attached to any building, or any cultivated land provided notice of 14 days is given to the owners or occupier. Under section 9 of the Oil Pipelines Act, any "person whose land or interest in land may be injuriously affected by the grant of a licence may ... lodge verbally or in writing ... notice of objection stating the interest of the objector and the grounds of the objection". However, consideration of objections appears to be based on ministerial discretion and in reality, the system does not appear to function effectively.

for domestic, industrial or irrigational use by diminishing or restricting the quantity of water available for such purpose, or construct such work or make such deposits in a way as would cause flooding or erosion, without the prior permission in writing to the Minister.

⁵⁷⁸ The Associated Gas Re-injection Act 1979 required every corporation to submit a plan on how they would implement the re-injection of associated gas, including a scheme for the utilization of all produced gas (section 2). Under section 3 of the Associated Gas Re-injection Act 1979, consent to continue flaring can only be issued if the Minister is satisfied that utilization or re-injection is not appropriate or feasible in a particular field or fields. The associated Gas Re-injection (Continued Flaring of Gas) Regulations 1984, include a range of conditions for continued gas flaring but also seems to allow the Minister to authorise the production of oil from a field that does not satisfy any of the conditions specified in these Regulations.

The law also states that, “The holder of a permit to survey acting under the authority of section 5 of this Act shall take all reasonable steps to avoid unnecessary damage to any land entered upon and any buildings, crops or profitable trees thereon, and shall make compensation to the owners or occupiers for any damage done under such authority”.⁵⁷⁹

The requirements to “take all reasonable steps” and pay compensation are insufficient to protect human rights, particularly in a context where the government regulatory capacity is so weak, and the population largely poor, highly dependent on the environment and possessing few resources to challenge the corporations. Moreover, the fact that those communities do not appear to have any right to be consulted (only notified) and limitations within the process to raise objections to oil operations on land used for livelihood, exposes communities in the oil producing areas to systemic and sustained human rights violations.

Under the Petroleum Act 1969, which empowers the Minister to allocate oil exploration licences, oil prospecting licences and oil mining leases, there are no provisions for communities in the licence or lease areas to be consulted, no provision for objections and only limited provisions within subsidiary legislation to prohibit or restrict activities that would harm livelihoods.

⁵⁷⁹ Section 6 (2), Oil Pipelines Act, 1956 as amended in 1965.

6.5.7. Failure to Deal with the Human Implications of the Oil Production Industry

While there are some areas where regulation is in place but where lack of enforcement is the problem, there are also significant gaps. The regulatory framework in Nigeria focuses on technical and environmental issues related to the oil sector, but has little to say about socio-economic issues. As expressed above, effective enforcement of existing regulations and laws would benefit human rights. Given the high population density and the vulnerability of the population as a consequence of widespread poverty, as well as the fact that the Niger Delta is a water system where health, lives and livelihoods are all intertwined, the government should have in place adequate systems to address the human impacts of the oil industry. This was one of the main recommendations of the 2002 African Commission decision in the Ogoni case, which the government of Nigeria has never implemented.

Hundreds of thousands of women, men and children in the oil-producing areas of the Niger Delta have been abandoned by their government. They have seen their livelihoods undermined and in some cases irreparably damaged. They drink water and eat food that are polluted often having no alternatives. They fear for their health but there is little data to confirm or refute their concerns, because neither the government nor the corporations monitor the human health implications of pollution (or, if they do this, information is not published or disseminated). The communities of the Niger Delta confront powerful business actors whose word appears to be law in some cases, and rarely see any governmental authority act to protect their rights. From the foregoing, it is submitted that environmental assessment

processes in the Niger Delta mainly focus on assessing the quality of the environment rather than on the measurement of social or economic impact.

6.5.8. Lack of Information and Consultation

Oil-related pollution and environmental damage have clearly undermined the human rights of the people of the Niger Delta. The problems have been exacerbated by lack of information. The collection, analysis and publication of information are critical to ensuring that human rights are protected in many contexts. The UN Committee on Economic, Social and Cultural Rights has recognized the importance of information in relation to the rights to health and water, among others.⁵⁸⁰ The Committee has affirmed that access to health-related education is an important component of the right to health. The Committee's General Comment on the Right to water goes further to state that:

*The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.*⁵⁸¹

In the classical Ogoni case, the African Commission held that to comply with Articles 16 and 24 of the African Charter (the rights to health and healthy environment):

Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of

⁵⁸⁰ Committee on Economic, Social and Cultural Rights, General Comment No.14 on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000, Para 11, and General Comment 15 on the right to water, E/C.12/2202/11, 20 January 2003, Para 48.

⁵⁸¹ CESCR, *ibid* note 580.

*threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.*⁵⁸²

Access to adequate information is vital to enable individuals and communities to claim, defend and protect their rights. Poor communities are frequently denied information on a whole range of subjects that affect their human rights. They are also excluded from participation in decisions that affect them. The right of people to participate in decisions that may affect their rights is grounded in international human rights law and standards.⁵⁸³ Access to comprehensive, accurate and timely information is a necessary requirement for genuine and meaningful consultation.

In the context of the Niger Delta, the failure to ensure that people have access to adequate information is a consequence of lack of data gathering by the government and the oil industry. The failure to capture and monitor data can contribute to serious human rights violations. For example, the failure to monitor levels of toxicity or the health implications of pollution may mean that a government fails to deal with the risks posed to the population, leaving people exposed to significant harm. Given the multiple risks to which the

⁵⁸² African Commission on Human and Peoples' Rights, Decision on Communication of The Social and Economic Rights Action Center v Nigeria (155/96), Para 55. The decision was adopted at the 30th Ordinary Session of the African Commission of Human and Peoples' Rights, Banjul, 13-27 October 2001.

⁵⁸³ Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (the Covenant) guarantee the right to take part in government or in the conduct of public affairs. According to the Human Rights Committee, interpreting Article 25 of the ICCPR, this includes a right to participate in the formulation and implementation of policy from local to the national and international levels. ICCPR, General Comment 25, "The right to participate in public affairs" UN Doc. ICCPR/C/21Rev.1/Add.7 (1996), Para 5.

communities are exposed, the failure of the government of Nigeria to monitor these issues and provide information publicly constitutes a violation of its obligation to protect human rights. Lack of access to information can also increase the risk of or exacerbate conflicts within and between HCs, TNOCs and the State. Lack of information and transparency can breed distrust and suspicion, and can be a catalyst for wider human rights challenges, particularly when community tensions are met with forceful responses by public and private security forces. Moreover, lack of information has a significant impact on the ability of communities to seek redress for harm caused by extractive projects.

6.5.9. Lack of Effective Sanctions and Penalties

Appropriate punishment of both state and non-state actors who abuse human rights is an important part of a government's obligations under international law.⁵⁸⁴ Impunity for past acts can and does fuel future violations and abuses of human rights. Relatively light penalties undermine both environmental protection and human rights in the Niger Delta. By failing to deal adequately with corporate actions that harm human rights and the environment, the government of Nigeria has compounded the problem. A culture of impunity has been reinforced for TNOCs in the Niger Delta because of a lack of adequate sanctions for bad practices that damage human rights.

Both the Petroleum Act, 1969 and the Oil Pipelines Act, 1956 require operators to take all practicable precautions to prevent damage to land and water pollution. However, neither Act provides for meaningful sanctions for

⁵⁸⁴ Dugard, J. (2000) *International Law: A South African Perspective*, Ndabeni: JUTA, pp.234-250.

the failure to take such precautions; nor does the legislation appear to deal with persistent poor performance. Under the Petroleum Act, the Minister of Petroleum Resources has general supervisory powers over oil company activities and may revoke “any oil prospecting licence or oil mining lease if in his opinion the licensee is not conducting operations in accordance with good oil field practice”.⁵⁸⁵ The penalties for pollution and environmental damage are frequently financial and relatively poor. For example, the fine for failing to report an oil spill to NOSDRA is 500,000 Nigerian naira (approximately USA \$3,500).⁵⁸⁶ The fine for failure to clean up the impacted site “to all practical extent, including remediation” incurs a fine of one million naira (approximately USA \$7,000). These fines are inadequate to ensure compliance with the law and to prevent harmful practices. In particular, the fine for failure to clean up and restore oil impacted sites is a cause for concern, given that such failure prolongs serious human rights violations.

6.6. Access to Justice and the Right to Remedy

It is submitted that securing justice and redress is not only a way of addressing the past but is an essential tool to shape the future, providing incentives to protect against recurrence, and a framework for redress when things do go wrong.

The right to an effective remedy is a broad right that includes access to justice and adequate, effective and prompt reparation. The right to an effective remedy is an imperative part of the realization of economic, social and cultural

⁵⁸⁵ Section 25 (1) (a) (iii) of Petroleum Act, 1969.

⁵⁸⁶ National Oil Spill Detection and Response Agency (Establishment Act), 2006.

rights. The UN Committee on Economic, Social and Cultural Rights has stated that:

The Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.⁵⁸⁷

The previous sections in this chapter have highlighted how widespread pollution associated with the oil industry has resulted in violations of human rights by damaging the land and water that people use for agriculture and fisheries to feed or sustain themselves and secure their livelihoods, and by undermining the right to a healthy environment and access to safe drinking water. As preceding sections have made clear, the state is responsible where it has failed to establish an effective system to ensure that companies prevent pollution and environmental damage, and respond effectively when pollution does occur.

Under international human rights law, people whose rights are violated should have access to an effective remedy. The right to effective reparation includes: restitution, measures to restore the victim to his/her original position; compensation for economically assessable damage; rehabilitation; satisfaction, which should include: effective measures aimed at the verification of the facts and full and public disclosure of the truth, judicial and

⁵⁸⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment 9 Domestic Application of the Covenant, Un Doc. E/C. 12/1998/24, 1 December 1998, Para 2. See Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, 7 April, 2008, A/HRC/8/5, Para 54.

administrative sanctions against persons liable for the violations and guarantees of non-repetition.

6.7. Required Regime for Environmental Remediation in the Niger Delta

Modern life would be unthinkable without oil. This is because oil has become the fuel that powers all aspects of human life. But, unfortunately, this oil pollutes the environment. Nature has placed oil beneath the earth's surface, with the result that it must be discovered and exploited before it can be used. In the course of the exploitation, refining, transportation and consumption of oil products, there are by-products or wastes which are left behind in the process. These products result in environmental pollution. Pollution is defined by the Stockholm Declaration of 1972 as "the introduction by man, directly or indirectly, of substances or energy into the environment resulting in such deleterious effects as a hindrance to marine activities including fishing, impairment of the quality and use of sea water and reduction of amenities."⁵⁸⁸

Environmental pollution is defined as:

*An undesirable change in physical, chemical or biological character of our air, land and water so that they may or will harmfully affect human life or that of other desirable species, our industrial process, living condition and cultural assets, or that may or will waste, deteriorate or completely damage our raw material resources.*⁵⁸⁹

These definitions show that pollution injects into the environment pollutants that are of dreadful consequences to both human and animal lives. The problem associated with pollutants from activities in the oil industry include flooding and coastal erosion, sedimentation and siltation, degradation and

⁵⁸⁸ United Nations Conference on Human Environment, Stockholm – Sweden 5th – 6th June, 1972

⁵⁸⁹ Report on Nature of the Environment, Federal Council for Science and Technology, U.S.A., 1966.

depletion of water and coastal resources, land degradation, air pollution, land subsidence, bio-diversity depletion, noise and light pollution, low agricultural production, health problems and socio – economic problems. These problems are multifarious and they affect all aspects of the environment.

Undoubtedly, there has been a great environmental awareness by the world bodies which led to the emergence of many international instruments (conventions and treaties) to protect the welfare of the environment.⁵⁹⁰ Notably among all these is the World Commission on Environment and Development (WCED) established by the United Nations in 1983, which came up with a report in 1987 named after the chairperson of the Commission as Brundtland Report and entitled "Our Common Future"⁵⁹¹ in which the principle of sustainable development was formulated.⁵⁹²

The summary of all these efforts is to ensure sustainable development which was defined by the Brundtland's Commission Report as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".⁵⁹³ In order to promote sustainable development, nations have enacted series of legislation aimed at protecting

⁵⁹⁰ Some of these are the International Convention for the Prevention of Pollution of the Sea by Oil in 1954; the Atmospheric Test Ban Treaty of 1963; the International Convention Relating to Intervention on the High Sea in cases of Oil Pollution Casualties, 1969; the FUND Convention of 1971; the United Nations Conference on Human Development (Stockholm Conference), 1972; the United Nations Environment Programme (UNEP), 1972; the World Charter for Nature, 1982 which set forth principles of conservation by which all human conduct affecting nature is to be guided and judged. Then came the United Nations Convention on Law of the Sea (UNCLOS), 1982 which sets up a comprehensive framework for the establishment of global rules on the protection of the marine environment and marine living resources.

⁵⁹¹ See "the Brundtland Commission". <http://en.wikipedia.org/wiki/BrundtlandCommission> Accessed 17/6/11.

⁵⁹² The follow – up from Brundtland's Report are the Montreal Protocol of 1987 (originally signed in 1987 and substantially amended in 1990 and 1992. An International Agreement aimed at the ozone layer); the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1982; the Kyoto Protocol on Climate Change and, finally, the Mexican Conference on climate change in December 2010.

⁵⁹³ The Brundtland Report (n.d.) *Encyclopedia of Sustainable Development*, http://www.ace.mmu.ac.uk/esd/Action/Brundtland_Report.html Accessed 17/6/11.

the environment and the rights of the people to a healthy and safe environment. The crux of all these legislation is to protect the environment and this can be achieved, in great measure, by compensation. "Compensation makes the injured person whole".⁵⁹⁴ Compensation on environmental matters is sustainable on the legal maxim of *restitutio in integrum* [restoration to the previous condition]. This means that the sum of money paid as compensation should as far as possible restore the victim of environmental damage to the same position he/she would have been had the damage not occurred.

The problem many victims of environmental pollution damage encounter is getting the polluter liable and securing compensation. In spite of much legislation and the common law torts, many victims of environmental pollution still fail to successfully prosecute their environmental law suits. The question then is: should the traditional rules of causation and strict liability entrenched in common law tort remedies and statutes continue to be applied to oil pollution claims? The answer to this question is the aim of this study/chapter. It will be shown that the traditional rules of causation and strict liability are fraught with problems which are sometimes insurmountable by genuine claimants. This study, therefore, advocates for the abandonment of these traditional rules and the adoption of the principle of 'absolute liability' in environmental law suits. The principle means that any enterprise that is engaged in an inherently dangerous activity is absolutely liable to compensate all those affected by an accident and such liability is not subject to any of the exceptions which operate vis – `a – vis the principle of strict

⁵⁹⁴ B.A. Garner, (E-in-C) *Black's Law Dictionary* (8th edn.), (St. Paul Minn: Thompson West, 2004), p. 301.

liability under the rule in *Rylands v Fletcher*⁵⁹⁵ as will be adumbrated hereunder.

6.7.1. Statutory Remedies to Environmental Damage

Nigerian statute books are replete with pieces of legislation on the environment.⁵⁹⁶ These laws create strict liability and not absolute liability on the oil companies. The result is that the polluters escape liability by pleading any of the defences available under strict liability actions. Were the liability to be absolute, the pollution emanating from their activities whether caused by an Act of God or act of a stranger will be adequately taken care of in terms of compensation and remediating the damaged and polluted environment.

6.7.2. Absolute Liability Principle

This study submits that Nigerian statutes dealing with the environment be amended and/or new ones enacted to expressly provide for absolute liability. This is because, the strict liability principle under the common laws and statutes and as applied by Nigerian courts has failed to adequately address

⁵⁹⁵ (1866) LR 1 Exch 256, affirmed (1868) LR 330.

⁵⁹⁶ The legal framework for oil operations in Nigeria is controlled by the Petroleum Act, Cap. P10 LFN 2004. The Petroleum Act will be replaced by the Petroleum Industry Bill (PIB) currently before the National Assembly when passed into law. The Bill has been described as “a most comprehensive piece of legislation creating a legal and regulatory framework that is 21st century compliant” – Kolawole, Z. (2009) “Petroleum Industry Bill: The Grundnorm for Nigeria’s Oil Industry”. http://www.ng.total.com/06_total_nigeria_press/0607_10Aug2009_features_1.htm Accessed 20/6/11. The PIB aims at sweeping reforms of Nigeria’s oil sector. Its main plan is to create new institutions to govern operations of the industry; transform the existing joint ventures between multinational oil companies and the Nigerian National Petroleum Corporation (NNPC) into Incorporated Joint Ventures (IJVs); turn the NNPC into a fully-capitalized and profitable National Oil Company; institute a new fiscal regime that significantly increases government’s take; remove confidentiality in industry operations and fully deregulate the downstream sector. We hope that under the new law, the oil industry is to be substantially free from government control and run strictly as a business concern in a deregulated environment. Otherwise, it will be business as usual. Other existing legislation that will be affected and possibly replaced by the Bill include: the Petroleum Profit Tax Act, 1959, the Petroleum Technology Development Act 1973, the Associated Gas Re-injection Act, 1979, the Petroleum Equalization Fund Act, 1989, the Oil Pipelines Act 1990, the Nigerian National Petroleum Corporation Act 1997 and the Petroleum Products Pricing Regulatory Agency Act, 2003. Other statutes that create remedies for the environment include s. 11(5) of the Oil Pipelines Act, Cap. O7, LFN, 2004, Paragraph 36 of Schedule I to the Petroleum Act, Regulation 23 of the Petroleum (Drilling and Production) Regulations.

the environmental pollution problems in Nigeria. India has taken the lead in this regard. In 1986, the Supreme Court of India formulated the principle of absolute liability which grew out of the common law rule of strict liability. This was developed in the case of *M.C. Mehta vs. Union of India* (Oleum Gas Leak case).⁵⁹⁷ In that case the Full Court held that any enterprise that is engaged in an inherently dangerous activity is absolutely liable to compensate all those affected by an accident. The key feature of the judgment was the principle of absolute liability, in which no exceptions (such as an act of God) are entertained. The Court went on to say that:

*We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in *Rylands v Fletcher*. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.*⁵⁹⁸

This application of the principle of absolute liability has become a rule of thumb in India and it has helped the environment considerably. In another case of *India Council of Enviro-Legal Action vs. Union of India*,⁵⁹⁹ the Supreme Court of India held that the defendant company was absolutely

⁵⁹⁷ [1987] All India Report (AIR) 1086 SC.

⁵⁹⁸ *MC Mehta v Union of India* *Ibid* note 580, at Para 32.

http://en.Wikipedia.org/wiki/MC_Mehta_v_Union_of_India Accessed 14/ 6/11.

⁵⁹⁹ [1996] All India Report (AIR) SC 1446.

liable for the environmental degradation caused by the production of acid. It was up to the company to pay for the pollution and undo the environmental damage and wrong caused by its industrial activity. The Supreme Court of India was aided in their far-reaching decisions by positive statutory provisions as enshrined in their Constitution and Statutes.⁶⁰⁰ Nigeria should borrow a leaf from India in order to take care of the environment and remediate the massive environmental damage caused by pollution of all sorts. To achieve this, this study proposes, first, that Nigerian laws dealing with strict liability on environmental issues be amended to create absolute liability. Secondly, that the judiciary becomes dynamic and hold all environmental polluters absolutely liable in all cases. The effect of the above proposal is that if the polluters know that they will always be held responsible whenever pollution occurs, whether by an act of God or a stranger, they will take serious measures to avoid pollution in the first place. But when it does happen, they will be obliged not only to fully compensate the victims, but also to clean up and restore the environment.

6.7.3. Compensation for Victims of Oil Pollution

There is no doubt that the best remedy for the victims of environmental pollution is compensation. This will be better achieved if the absolute liability principle is adopted. The object of compensation, just like damages in the law of contract, is to put the injured party, so far as money can do it, in the same position he was before the act/omission occurred. Environmental damage is far-reaching and devastating. Therefore, large sums of money must be

⁶⁰⁰ The Indian Gas Act of 1965 which in s. 14 imposes absolute liability for damages caused by gas escaping from underground storage. Other Indian statutes with similar provisions include the Air (Prevention and Control of Pollution) Act 1981, the Water (Prevention and Control of Pollution) Act 1984 and the Environmental Protection Act, 1986.

needed by the victim to re-gain his former position as if nothing had happened. Put differently, where monetary compensation is paid for damaged properties in pollution-affected cases, what the law gives to the victims is the right to be put so far as money can do it, in the same position as if his/her land or property has not been destroyed.

In the case of *Shell Petroleum Development Company Ltd. v Councilor F.B. Farah*,⁶⁰¹ the Court of Appeal affirmed the High Court's award of 4.6 million Nigerian Naira against the appellant being special and general damages for an oil blow out which occurred in 1970 resulting in loss of income, general inconvenience and rehabilitation of land. Again in the case of *Shell Petroleum Development Company Ltd v Tiebo VII and others*,⁶⁰² the respondents were awarded a total sum of 6 million Nigerian Naira as special and general damages for an extensive oil spill caused by the appellant.⁶⁰³ But in the case of *R. Mon and Anor. v Shell Petroleum Development Company Ltd.*,⁶⁰⁴ the court awarded a paltry sum of 200 Nigerian Naira. Compensation is relevant in two circumstances in the oil industry, (a) where land is acquired for oil exploitation and exploratory activities, and (b) when there is oil pollution and resultant damage. The right to receive just compensation for expropriation of private right is a constitutionally guaranteed right under the Nigerian Constitution⁶⁰⁵, but like any other legal regime for compensation in pollution cases, the Constitution fails to provide the mode of accessing the compensation.

⁶⁰¹ [1995] 3 NWLR (Pt. 148) 175.

⁶⁰² [1996] 4 NWLR (Pt. 445) 657.

⁶⁰³ Other cases where sizable amount of money was awarded as compensation to victims of environmental pollution: *Shell Petroleum Development Company Ltd v Otoko* [1990] 6 NWLR (Pt. 159) at 693; *Ogiale and Others v Shell Petroleum Development Company Ltd.* [1997] 1 NWLR (Pt. 480); *Chief Joel Amare and Others v Shell Petroleum Development Company Ltd.* (Unreported). (1970-1972) 1 RSLR 71.

⁶⁰⁵ Section 44(1)(a) of the 1999 Constitution of Nigerian gives to any person whose property is compulsorily acquired the right to prompt payment of compensation.

6.7.3.(a) National Legislation and Regulations on Compensation of Victims of Environmental Pollution Damage

It is regrettable that only very few statutes on the environment expressly provide for compensation of victims. For instance, section 11(5)(c) of the Oil Pipelines Act⁶⁰⁶ provides that the holder of a license shall pay compensation to any person suffering damage as a consequence of any breakage of or leakage from the pipeline or an ancillary installation. The Petroleum Act in paragraph 36 of Schedule 1 also provides that a holder of a license with respect to oil production activities shall in addition to any liability for compensation be liable to pay fair and adequate compensation for disturbance of surface or other rights of any person who owns or is in lawful occupation of the licensed or leased land. The Petroleum (Drilling and Production) Regulations in Regulation 23 provides only for compensation for interference with fishing rights. The repealed Federal Environmental Protection Agency (FEPA) Act in section 21(1)(b) provided for, in addition to the spiller's liability, payment of compensation for any damage resulting from a breach of the provisions of section 20(1) of the same Act. The National Environmental Standards, Regulations and Enforcement Agency (NESREA) Act⁶⁰⁷ which replaced FEPA has no such provision. It is noted that these measures are so few in number, and so shallow in effect.

It is apposite that not only are they so few in number, and so shallow in effect regarding compensation of victims of oil pollution, so much so that none of these Acts specify the amount payable as compensation. This means that the

⁶⁰⁶ Cap. O7, LFN, 2004.

⁶⁰⁷ No 25 of 2007.

determination as to the actual amount payable is left to the discretion of the courts⁶⁰⁸.

In contrast, reference may be made here to the United States Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)⁶⁰⁹ also known as Superfund. This Act comprehensively provides adequate response guidelines for environmental clean-up and remediation, by creating a liability scheme for those responsible for environmental pollution and establishing a trust fund to under-write clean up exercises. Nigeria's Legislation on compensation fails to meet up with the standard in the above USA Act.

6.7.3.(b) International Instruments for Compensating Victims of Environmental Damage

On the international scene, compensation for oil pollution is based on two international conventions: The Convention on Civil Liability for Oil Pollution Damage (CLC), 1969⁶¹⁰ and the Convention on the Establishment of International Fund for Oil Pollution Damage (FUND Convention) 1971.⁶¹¹ These conventions cover compensation for all sea-going vessels carrying oil in bulk as cargo and they apply to pollution damage within the waters of countries that are party to them. But they only apply to oil spillages⁶¹² by ships on the high seas. They do not, therefore, accommodate spillages from oil

⁶⁰⁸ *Ogiale & Ors vs. Shell Petroleum Development Company* (1997) 1 NWLR (Pt. 480) at 693.

⁶⁰⁹ 42 USC Section 9659. See also "Summary of the Comprehensive Environmental Response, Compensation and Liability Act (Superfund)" (02 March 2011) EPA available at <http://www.epa.gov/lawsregs/laws/cercla.html> Accessed 20/6/11.

⁶¹⁰ Available at <http://www.admiraltylawguide.com/conven/civilpoll1969.html> Accessed 16/6/11.

⁶¹¹ Available at <http://www.admiraltylawguide.com/conven/oilpollfund1971.html> Accessed 16/6/11. Both conventions were amended by two additional protocols in 1972 which came into force in 1996. So the 1992 protocol has replaced the 1971 convention. See <http://www.admiraltylawguide.com/conven/protooilpollfund1992.html> 16/6/11.

⁶¹² In 1996, a new international convention was adopted to cover liability and compensation for damage in connection with the carriage of hazardous and noxious substances (HNS) by sea. It is yet to come into force.

pipelines which are the major cause of pollution in Nigeria. It should be noted that both the Convention of Civil Liability for Oil Pollution Damage (CLC), 1969 and International Fund for Oil Pollution Damage (FUND Convention), 1971 are based on strict liability, making it unnecessary for the claimant to prove that the ship owner was negligent.

The beauty of the Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 is its two-tier system of compensation. This makes it possible for victims to claim from ship-owners whose ships caused the oil pollution damage but where the sum to which the liability of the ship owner is limited is insufficient to compensate the victims because of the enormity of the damage, the victims can also recover from the FUND. The FUND is funded by levies from all persons who have received in the calendar year more than 150,000 tons of crude oil and heavy fuel oil from a state party to the FUND-Convention based on reports of oil revenues received by individual contributors.

Nigeria is a signatory to the Convention on Civil Liability for Oil Pollution Damage (CLC) 1969 but not a signatory to its Protocol of 1972. Nigeria is a signatory to the FUND Convention but has not acceded to the FUND Protocol of 1972. It has not yet domesticated any of these conventions. Therefore, the regime on liability and compensation presently running in Nigeria is the Petroleum Regulation 36 and other statutes, but these are a far cry from the aspirations of the international conventions on pollution damage, liability and compensation.

6.7.3.(c) Oil Pollution Liability Trust Fund

It is submitted that an Oil Pollution Liability Trust Fund be established by the Federal Government in concert with oil companies. The Fund should be made up of a percentage of tax levied on oil companies and a percentage of earnings of the Federal Government from oil. The Fund can be used in cleaning up the impacted environment where the responsible party is unable to pay adequate compensation to victims of oil pollution, not only for personal and proprietary damage, but also for restoring the damaged environment. This will be in line with what obtains in the United States of America.⁶¹³

Rehabilitation of the polluted environment is of paramount importance. A damaged environment affects everyone. This is why the decision of the court in the case of *Councilor F.B. Farah vs SPDC*,⁶¹⁴ is very laudable, where the court not only awarded damages in favour of the plaintiff as compensation, but also compelled the defendant to rehabilitate the polluted land. In the *Exxon Valdez case*, the issue of rehabilitation of the environment was uppermost in the minds of both the court and the polluter. The polluter had already spent a large sum of money in cleaning-up the water that the court reduced drastically what it fined against the company.

It is apt to acknowledge here that the Nigerian legal system has made some progress in restoring the environment. First is the removal of the relator action, thus making it possible for an individual to sue for damages caused by oil pollution where it constitutes a public nuisance thus, rendering the

⁶¹³ Ezike, E.O. (2011) "Remediating Environmental Pollution in Nigeria: Need to Adopt the Principle of Absolute Liability", 3 *Journal of Petroleum, Natural Resources and Environmental Law*, 26.

⁶¹⁴ [1995] 3 NWLR (Pt. 382) 148.

distinction between public and private nuisance in the institution of actions irrelevant.⁶¹⁵ Second is the Fundamental Rights (Enforcement Procedure) Rules, 2009 which has watered down the monster of *locus standi*. According to the Rules:

*The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists/advocates, or groups as well as any non-governmental organizations, may institute human right application on behalf of any potential applicant.*⁶¹⁶

Environmental matters now come under fundamental human rights in Nigeria, by reason of domestication of the African Charter on Human and Peoples' Rights.⁶¹⁷ The effect of this is that private citizens can now bring actions to enforce their rights in environmental issues and will not be barred on account of *locus standi* as has been the case before now.⁶¹⁸ It is submitted that Nigerian courts should embrace this development as it will greatly enhance our environment.

Happily, this has been done in a recent landmark case where the Nigerian Judiciary for the first time referred to fundamental human rights in an environmental context. In *Jonah Gbemre vs Shell Petroleum Development Company and Others*,⁶¹⁹ the court held that the impact of the respondents' gas-flaring activities on the applicant's community was a violation of their fundamental human rights. The court, consequently, ordered the respondents

⁶¹⁵ See *Adediran vs. Interland Transport Ltd.* [1991] 9 NWLR (pt. 214) 164 at 182.

⁶¹⁶ Ezike, E.O. (2010) "Liabilities for Environmental Pollution Damage in Nigeria", 28 *JPPL*, 6–88.

⁶¹⁷ See African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, Cap. A9 LFN, 2004.

⁶¹⁸ See *Fawehinmi v President Federal Republic of Nigeria*, [2007] 14 NWLR (Pt. 1054) 275 at 342, Para. D-E where it was held that it would be wrong to slam the door of the courts against complaints of executive excesses and unconstitutionality under the guise of lack of *locus standi*.

⁶¹⁹ (2005) Suit No. FHC/B/CS/53/05.

to cease their gas-flaring activities. The application which was in a representative capacity was made in order to enforce their fundamental human rights to life and human dignity as provided for by sections 33(1) and 34(1) of the 1999 Constitution and as re-enforced in Articles 4, 16 and 24 of the African Charter on Human and Peoples' Rights.⁶²⁰

Gone are the days when the theories of causation and strict liability were lauded as the panacea for restoring environmental degradation.⁶²¹ The theory of causation and strict liability are outdated and lack the capacity to firmly protect the environment on account of their loopholes, exceptions and defences. When liability is absolute it excludes totally any reliance on the exceptions that may normally avail in strict liability.

This principle may be likened to the 'polluter pays' principle. The latter is the requirement that the costs of pollution should be borne by the polluter. It further means that the polluter should bear the expenses of carrying out pollution prevention and control as decided by public authorities. The implementation of the 'polluter pays' principle is proactive in nature while the application of absolute liability is dynamic. Both are positive steps towards a friendlier environment. A lot of ink has flowed⁶²² in calling for the domestication of the 'polluter pays' principle. The time is now ripe for making these principles part of our legal system in order to create a congenial

⁶²⁰ Ladan, M.T. (2009) *Law, Cases and Policies on Energy, Mineral Resources, Climate Change, Environment, Water, Maritime and Human Rights in Nigeria*, Zaria: Ahmadu Bello University Press, p.122.

⁶²¹ Fekumo, J.F. (1990) "Civil Liability for Damages Caused by Oil Pollution" in Omotola (ed.), *Environmental Laws in Nigeria, Including Compensation*, Lagos: Unilag Press, pp. 254–284.

⁶²² Onyebor, E. (2009) "Application of Common Law Principles in Adjudicating Water Pollution Violation: A Rethink," *1 Journal of Petroleum, Natural Resources and Environmental Law*, 107-108.

environment for “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁶²³

6.7.5. Summary

This chapter has examined how decades of pollution and environmental damage caused by the oil industry have resulted in violations of the right to an adequate standard of living by violating the right to a clean and healthy environment. It has been argued that human rights violations in the context of environmental degradation are a consequence of serious failures of the government of Nigeria.

Among the critical failures of the government underpinned in this chapter are: multiple failures to effectively regulate and control the oil industry despite the recommendations of numerous bodies, including the African Commission on Human and Peoples’ Rights (African Commission); failure to monitor the impact of oil exploration by TNOCs or provide people with adequate information; failure to deal with people at risk by devolving critical areas of human rights responsibility to the oil corporations; failure to ensure access to justice; failure to ensure adequate action to prevent pollution and damage to human rights, and entrenching in law a system that allows land to be taken from communities for oil operations, without adequate protections, as required by human rights law.

The situation in the Niger Delta is complex. While the major failures of the government and the companies are clear, they are not the only actors

⁶²³ The Brundtland’s Report, *op.cit.* note 584.

involved in destruction of the environment. Communities engage in acts of vandalism and sabotage. Militant groups pose a significant threat to oil company staff safety. While there is no one underlying explanation for the complex conflict situation in the oil-producing states of the Niger Delta region of Nigeria, the actions of armed groups and communities, while important to acknowledge, should not be used by oil corporations and the government to deflect attention away from their own failures and poor practice.

In the next chapter, our broad conclusions and recommendations are presented.

CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

7.1. Introduction

This is the concluding chapter of this thesis. The chapter carries the conclusions and recommendations.

The thesis is on the Nigerian State, exploration and exploitation of oil and gas and the conflict in the Niger Delta region that brought about the emergence of the Niger Delta question. The study set out to investigate the Niger Delta question within the Nigerian polity. It attempted to explore the historical, economic, political and social forces at play, the extent and impact of oil mineral production activities in the Niger Delta in terms of corporate liability and environmental sustainability, the problem of environmental damage and regulatory challenges posed by transnational oil corporations. The study evaluated the law and policy of oil and gas exploration and exploitation in Nigeria and its impact on the Niger Delta. The work discussed the struggle for resource control and fiscal federalism and the likely impact on the Nigerian State. It attempted to examine the emerging trends of the challenges of the Niger Delta region vis-à-vis other petro-dollar jurisdictions. Moreover, the study evaluated the management of natural resource wealth in Africa by drawing from the examples of Botswana in Africa and Norway in the Scandinavia.

The study also raised and appraised issues of state capture and the 'absentee state' as it relates to the protection or abuse of human rights in the face of stark oil exploration and exploitation in the Niger Delta. The study examined specific cases of oil pollution in order to put our hypothesis to test and to know the measure or level of environmental damage in the Niger Delta and the issue of evading responsibility and complicity by corporations and the role of the Nigerian Government in the face of international human rights law.

Based on the findings of this study, it is submitted that the Niger Delta crisis which graduated from mere political agitations for state creation and provision of social amenities to extreme acts of hostage-taking and twist of violence was as a result of treating a major problem affecting the development of the people with levity for too long a period.

The study found the Niger Delta youths' restiveness and the emergence of organizations like the Movement for the Survival of Ogoni People (MOSOP) to be in conformity with the celebrated 'theory of violence' propounded by Frantz Fanon, which contended that:

*Those who make peaceful change impossible make violent change inevitable.*⁶²⁴

Likewise, the approach of oil transnational corporations and the Nigerian Government's resort to the instrument of state violence also summarizes the Joseph Chamberlain's view when he became the Colonial Secretary after 1895 in the Gold Coast (present day Ghana). As quoted in Crowther, the Colonial Secretary contended that:

⁶²⁴ Fanon, F. (1963) *The Wretched of the Earth*, New York: Penguin Books, p.68.

*You cannot have omelettes without breaking eggs.*⁶²⁵

The on-going crisis in the Niger Delta region of Nigeria therefore, can be summarized as a conflict of values and fight for resources amongst the oil-bearing people of the Niger Delta, transnational oil corporations and the Nigerian Government. The people of the oil-producing areas have been compelled to live with the deleterious consequences of oil-exploration and exploitation. The developmental problems underpinned in this study are by no means exhaustive; yet, they are heinous, enormous and portend grave developmental challenges for the effective development of the oil and gas sector in Nigeria.

All of the above was with a view to recommending legal reforms, policy amendments, newer regulatory initiatives and other appropriate responses. Therefore, it is submitted that there is an urgent need to re-visit the policies regulating the sector and to re-think the practice of exclusion, expropriation and emasculation that prevails in the sector at present. To do this, bold steps of economic and revolutionary nature must be taken to bring desired radical but positive and development promotional change into the industry. Towards this agenda for change, the following recommendations are made.

7.2. General Recommendations Towards Effective Resource Control in Nigerian law

1. Nigeria is a republican federation and should see its national developmental needs to manage and control resources as a need to enable

⁶²⁵ Crowther, M. (1968) *West Africa Under Colonial Rule*, London: Hutchinson, p.35.

federating units control and exploit their natural resources in a safe development – positive manner that will enhance their access to scarce resources and at the same time underpin sustainable development. Accordingly, Nigerian laws like the Land Use Act, Petroleum Act, etc being undemocratic and “unfederal”, should be amended or repealed where necessary to allow the citizens and constituent units unhindered participation and reasonable control of their natural resources and economic destinies in line with the trends and aspirations of other progressive federations such as the United States of America, Canada, etc.

2. In furtherance of the above, it is recommended that the United States of America should be the model after Nigeria’s heart, as it allows resources in its world-renowned federation to be owned and controlled by federal, state and municipal governments as well as private citizens according to their location. This is consistent with the federalist culture which, within the context of one nation, allows constituent members to direct their own affairs and pursue their own development.

3. This study recommends that control of mineral resources should be expunged from the Exclusive Legislative List of the Nigerian Constitution and transferred to the concurrent list to enable states and regions participate in the exploration and management of these resources. This participatory right to control should be available to other federative constituents such as the local government, community, the family and private individuals.

4. It is recommended that the function of the Nigerian National Petroleum Corporation (NNPC) should be regulatorily confined to general matters of safety, avoidance of economic sabotage, and management of petroleum resources in Federal territories such as the Federal Capital Territory, the continental shelf, any land owned by the federal government and any other place which, either by international or democratic municipal law, falls within the jurisdiction of the government of the federation.⁶²⁶ The relevant law should empower states to constitute their own resources regulatory agencies, with which to monitor and manage mineral resources in their region, subject only to the payment of agreed tax to the federal government and observance of federal safety rules.

5. It is submitted in this study that economic development is at the root of resource control conflicts in Nigeria. This study, therefore, recommends that steps must be taken by government to re-define its philosophy of national economic development from a state-driven to citizens-driven philosophy. To this end, Nigeria must seek to develop by developing its citizens. The aggregate of whose satisfactory living condition should form the criteria for measuring national development.

6. It is recommended that Nigeria should break the currently prevailing mono-economic culture and begin to develop its numerous other natural endowments such as the agricultural resources which once ruled the economy and which exist throughout the country. These are the main revenue earners in other countries like South Africa and if well managed, can

⁶²⁶ Provided that the rights of states to participate and benefit from the sharing of the revenue there from is guaranteed, where such source falls within their territory.

catapult the nation from one of the debt-ridden countries of the world to a major credit generating nation.

7. It is submitted that deliberate steps must be taken to steer the nation towards proper fiscal federalism. The present “food is ready” economy whereby federating units are enslaved to national “cake sharing” instead of value generation, discourages industry and sustainable development. It promotes undue dependency on petroleum products, the politics of which breeds inequity, ethnic distrust, which in turn overheats the polity.

This study, therefore, recognizes that this issue is more jurisprudential than juristic. It calls for a patriotic and equitable re-examination of Nigerian fiscal jurisprudence and demands unflinching patriotism in the search for answers. What is needed in Nigeria is productive resource control, not just development in the sense of house and bridge building. What is needed is a noticeable leap in the standard of living in the country. Thus, people and not federal accounts must be the object of improvement. If that were ever the goal of Nigeria and if that goal were ever to be realised, it will be by Government at all levels, re-thinking development, re-thinking the philosophy of resource control and management and legally enhancing the capacity of the federative units and peoples' to improve their living standard, not by a Governmental effort at putting bread on the peoples' tables, but by democratizing the right of access to the means of achieving that lofty ideal – resources. It is imperative to remember and be guided by the instructive observations of Alexis de Tocqueville concerning the economy of democracies when he said:

*In democratic countries as elsewhere, most of the branches of productive industry are carried on at a small cost by men little removed by their wealth or education above the level of those whom they employ. These manufacturing speculators are extremely numerous; their interests differ; they cannot therefore easily combine their exertions. On the other hand, the work men have always some sure resources which enable them to refuse to work when they cannot get what they conceive to be the fair price of their labour. In the constant struggle for wages that is going on between these two classes, their strength is divided and success alternates from one to the other.*⁶²⁷

It is submitted that, this philosophy, if adopted in Nigeria will not just engender improved individual circumstances, it will not only ensure national development, but will ensure sustainability of development in an atmosphere of peace and equity, devoid of rancour and corruption. No doubt, by that singular change, Nigeria shall be creating an enduring society of innumerable value creators, in place of an oligarchy of cake sharers, eating themselves to stupor from a cake that they neither baked nor bore the heat of baking. As Alex Boraine has instructively warned, and we verily conclusively agree with him:

*The best constitutions in the world cannot survive civil unrest brought about by deep-seated poverty, grievances and unfulfilled expectations. Economic development must go hand in hand with political change.*⁶²⁸

7.3. Specific Recommendations to the President and the National Assembly of Nigeria

1. To be effective as a regulator of the oil industry, government should restrict its activities in the sector to regulation. It should leave exploitation to the

⁶²⁷ De Tocqueville, A. (1835) *Democracy in America*, Wordsworth Classics, p.273.

⁶²⁸ Boraine, A. (1997) *Reflections on Democracy*, New York: Idasa, p.16.

business class and concentrate on regulation and administration of tax revenues with which it can effectively discharge its duties as developed countries do.⁶²⁹ For this purpose, the Nigerian National Petroleum Corporation (NNPC) should be separated entirely from the Petroleum Inspectorate Division, as it cannot effectively discharge its duties both as a major participant and regulation enforcer in an industry as demanding as the oil and gas industry. In the alternative, an independent safety regulator like the Federal Environmental Protection Agency (FEPA) should be charged with the regulation of safety and standards in the sector. To ensure effectiveness, its membership for the purpose of oil and gas, should include stakeholders like "operations host community representatives" as well as well-known and, or reputable agencies of civil society such as environmental non-governmental organizations (NGOs).⁶³⁰ This is in view of the fact that inter-governmental relations mired in bureaucratic timidity which is well established in third world countries like Nigeria, will defeat the goal of monitoring, as it leaves the departments of state engaged in "cake sharing".

It is in the character of administrative agencies to get drowned in bureaucratic red-tapism to the detriment of their functional objective. Regulatory agencies generally have displayed a number of disturbing tendencies. They may become enmeshed in the bureaucratic net created by the particular system of administration.

⁶²⁹ This is the case among progressive countries like U.S.A., UK and Canada.

⁶³⁰ Such organizations as Hope for Niger Delta Campaign (HNDC), Environmental Rights Action (ERA), Friends of the Earth, Green Peace, are already actively involved in environmental monitoring in advanced countries such as the Netherlands, U.S.A., Canada and the U.K. They are usually neutral and effective.

2. This study recommends the full implementation of the recommendations of the African Commission on Human and Peoples' Rights in the Niger Delta.

3. It is recommended that government should ensure robust, independent and co-ordinated oversight of the oil industry including its impact on human rights. Oversight of the environmental, social and human rights impact of the oil industry must be fully independent of the oil corporations and the Ministry of Petroleum Resources. An oversight body should have the power to: (a) overhaul regulation and management of the industry, (b) oversee clean-up of oil impacted areas, (c) review the compensation and remedial systems and, (d) carry out independent inspections of oil operations and sanction non-compliance with law and carry out or ensure studies are done on human rights impact of the oil industry, specifically on health, water quality, fisheries and agriculture.

The oversight body should be adequately resourced to work effectively with key government agencies, such as the National Oil Spill Detection and Response Agency (NOSDRA), and ministries, including the Federal and State Ministries of Environment, Health, Agriculture and Justice. It is submitted that the role of NOSDRA should be strengthened through adequate staff, financial resources and equipment in order to carry out its functions properly and independently of oil corporations. The Agency should have the capacity to record all investigations into oil spills on video and should be able to call on expert advice in cases where the cause of an oil spill is disputed. The Agency should have the capacity and mandate to look at the impact of oil spills, including on individuals and communities and pay particular attention to the impact on women, and on potentially marginalized groups.

4. There is the need for a comprehensive clean-up of oil pollution and environmental damage. This suggests a systematic clean-up of pollution. This work should involve co-ordinated action by an independent oversight body, working closely with NOSDRA and other relevant ministries and agencies. Work plans and budgets for the clean-up process should be disclosed and regular reports published. It is imperative that a mechanism be put in place to ensure communities in the oil bearing areas of the Niger Delta are both consulted and kept informed of the clean-up process, and that they help identify areas which may need cleaning up. Identification of areas requiring cleaning up and remediation should not be done solely by the oil companies.

5. Furthermore, it is recommended that a fair and transparent compensation and reparations system be put in place. While a non-judicial system should be maintained to ensure swift resolution of compensation cases, the control of the non-judicial compensation system should not be with TNOCs. At a minimum specially trained government officials should ensure oversight and transparency of the system. In this regard, this study recommends that laws on compensation be amended to ensure that compensation amounts are not only fair and adequate, but cover long-term impact, health issues and all other reasonable damages. Corporations should be required by law to pay damages both to individuals and for communal losses and that women are not discriminated against in the compensation process. Government should make sure that all oil operators have in place adequate insurance and funding structures to ensure they can pay compensation to those affected by oil industry or pollution in accordance with the law. This study strongly recommends that provision and appropriate plans be put in place to provide

access to clean water across all oil-affected areas. This should include emergency access as well as plans to provide long-term access to clean water for domestic use.

6. As a matter of urgency and necessity, assessment of the social and human rights impact of all oil and gas projects be made mandatory. This should include assessment of potential impact on human health, access to clean water and livelihoods and the participation of the community that will be affected. The consultation processes are to pay adequate attention to gender dynamics and the inclusion of potentially marginalised groups. It is of importance that such impact assessments contain non-technical summaries, and are made easily and publicly available throughout the lifetime of the project, and that they are reviewed and updated periodically. In view of this, the study recommends that it should be required by law that companies conduct meaningful consultations with affected communities and disclose all information requested by the communities that cannot be objectively considered confidential.

7. This study further recommends the amendment of the Land Use Act to ensure the laws are consistent with Nigeria's human rights obligations, and do not undermine the human right to an adequate standard of living, including housing, food and water. The above underpins the need for the establishment of a programme to ensure that people in the oil producing region of the Niger Delta are aware of their rights in relation to the oil corporations and aware of what legal protections exist. Accordingly, the present Petroleum Bill should be

revisited. Many of the above recommendations could be incorporated within the draft petroleum Bill.

8. In view of the finding of the lack of unity and the element of mistrust among the various federating geo-political zones or regions of Nigeria, this study is of the view and strongly recommends re-negotiating the terms of the Nigerian union. For, unless and until the various nationalities and ethnic groups in Nigeria are afforded the opportunity to re-draw the ground rules of inter-personal and inter-ethnic relations such as will accommodate a measure of local ownership and control of resources, the Nigerian polity would continue to be afflicted with crises and thus continue to move in circles. Accordingly, if a proper fiscal federalism is elaborated, assuring the component parts of the country of their right to development, a giant step would have been taken towards enhancing mutual respect and social harmony.⁶³¹

9. The above underscores the need for government to promote educational values by providing to the teeming rural populace in the Niger Delta region, qualitative, accessible and affordable education. Technical skills acquisition centres could be established to occupy and engage jobless youths with some level of economic activity. Proper identification of real stakeholders and the effective application of stakeholder analysis at both public policy planning and formulation stages as well as at both implementation and monitoring stages are imperative in tackling the Niger Delta developmental challenges.

⁶³¹ Oyeboode, A. (2000) "The Legal Framework of Oil Exploration in Nigeria: A Critique" in Wumi Raji et al (eds.), *Boiling Point*, Lagos: Committee for the Defence of Human Rights (CDHR), p.61.

10. Therefore, this study recommends the gradual removal of the presence of the military from the Niger Delta as a positive signal to the people and showcasing the readiness of the Government of Nigeria and oil transnational corporations to engage in a tangible problem-solving dialogue with the Niger Deltans.

7.4. To Transnational Oil Corporations

1. This study recommends that there is an urgent need to re-define the relations between the oil transnational corporations and host communities.

According to Oyebode, an erudite scholar:

*A situation where foreign oil workers and their collaborators live in a totally different world from that of their host, almost totally oblivious of the needs and interests of the latter, is, to put it bluntly, scandalous.*⁶³²

It is submitted that novel forms of participation of the local community in the oil industry would have to be considered. Equity participation, establishment of employment quotas for members of oil-bearing communities, greater and better TNOCs' involvement in community affairs and development in fulfilment of the requirements of good corporate citizenship and culture rather than charity or hand-outs are possible examples of what is feasible.

2. It is recommended that oil transnationals disclose information on the impact of oil operations on the environment and human rights in non-technical language, including:

- All oil spills, volumes and locations.

⁶³² Oyebode, *ibid* at p.61.

- Information on waste disposal (particularly where waste disposal is into the environment- land, air or water).
- Environmental impact assessment.
- Any studies conducted on the impacts of oil operations on water, land and air.
- Funds paid in respect to land acquisition/lease.
- Amounts paid in compensation with a breakdown of what items were covered, thorough environmental accounting to be put in practice.
- Lobby for positions in relation to legislation in Nigeria that would have an impact on the environment and human rights.

In view of the above, if government prohibits the disclosure of any of this information, companies should state this fact publicly and challenge the government on this issue. It is recommended that transnational oil corporations should make public statements of their support for independent oversight of the oil industry in the Niger Delta, and confirm that each company will not lobby against independent oversight. Independent review of the TNOCs' environmental management processes should be allowed, which should include physical site inspections. Independent review should include representatives of independent governmental and non-governmental bodies and the results should be made public.

3. Transnational oil corporations should undertake comprehensive assessment of the social and human rights impact of all oil and gas projects, ensuring adequate information is provided to affected individuals and communities and that the process is transparent. Ensure that impact

assessments, and plans to prevent and mitigate any harm to human rights, are made public and accessible. They are to undertake a comprehensive clean-up of oil pollution in consultation with affected communities and report on this publicly and regularly.

4. It is recommended that oil companies should fully over-haul community engagement and consultation practices and ensure there is robust oversight of the community engagement process. The above underpins the need to establish a complaints mechanism to allow communities' access to a senior officer to raise concerns about how community engagement is undertaken. Accordingly, training should be provided to all relevant staff on gender dynamics and specifically how to ensure that interaction with the communities is both non-discriminatory and respectful of local customs. Also, it is imperative to make it a contractual obligation for all contractors to be fully aware of company policy on human rights, environment and gender issues so as to ensure they act in accordance with ethical principles.
5. Publication of all revenue payments to the Federal Government to enhance accountability and transparency.

7.5. To Governments of States

First, this study recommends that governments of home states of transnational corporations should require by law that extractive companies headquartered or domiciled in their countries undertake human rights due diligence measures according to the United Nation's guidelines to respect and protect human rights in respect of all their overseas operations, with particular

attention to high-risk areas such as the Niger Delta. They must ensure these measures are reported on publicly. It is recommended that due diligence measures should be adequate to demonstrate that all reasonable efforts have been taken by the company to become aware of and prevent negative human rights impacts from extractive operations in which the company is involved.

Accordingly, transnational oil corporations should seek to ensure the following:

- I. An adequate impact assessment is conducted – in consultation with the local stakeholders – which covers impacts on all human rights that may be negatively affected by projects, including health and livelihoods.
- II. Disclosure of the impact assessment, including a non-technical summary for every project.
- III. Public reporting on community consultations and outcomes.
- IV. Disclosure of waste management practices including where there are in-country differences.
- V. Disclosure of all payments to governments, including state and local governments.
- VI. Respond to requests for legitimate information or provide a reason for failure to do so.

The disclosure of information is one of the critical means of ensuring that affected communities can effectively participate in the decision-making processes prior to and during project development and that extractive industries can be effectively monitored and held to account especially in countries where the regulatory system is failing.

Second, home states of oil TNOCs should establish parliamentary or similar oversight mechanisms to hear evidence on and review complaints made against corporate actors in the extractive sector.

Third, governments of home states should ensure that people whose human rights are violated by the overseas operations of extractive corporations headquartered or domiciled in their country can access effective remedy in the home state, including access to the courts, in cases where they cannot access effective remedy in their own state. This is very useful because the assets of the TNOCs will be located there and not in the host state.

Finally, it is submitted that, home states should engage with and support the government of Nigeria in establishing an independent oversight body for the oil and gas industry. It is recommended also that home states should engage with and support the government of Nigeria to increase access to effective remedy for people whose rights are affected by oil operations in the Niger Delta.

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ANEXTURE "A"

LIST OF OFFICIALS/GROUPS INTERVIEWED FOR THIS STUDY

- Personal communication by way of an unstructured interview with the Special Adviser to His Excellency, Goodluck Jonathan, President of the Federal Republic of Nigeria, on Niger Delta Affairs in Abuja, Nigeria on 6 June 2011.
- Personal communication by way of an unstructured interview with some members of the National Assembly (House of Representatives) of the Federal Republic of Nigeria and Chairman, House Committee on Justice, Abuja, Nigeria on 8 June 2011.
- Personal communication by way of an unstructured interview with a Justice of the Federal High Court, Abuja, Nigeria on 10 June 2011.
- Personal communication by way of an unstructured interview with some senior staff of NNPC, Warri, Delta State (Niger Delta region), Nigeria on 6 December 2010.
- Personal communication by way of an unstructured interview with a retired HOD, Human Resources, Shell B.P. Warri, Delta State (Niger Delta Region), Nigeria on 8 December 2010.
- Personal communication by way of an unstructured interview with some senior staff of Shell B.P. Port Harcourt, Rivers state (Niger Delta Region), Nigeria on 10 December 2010.
- Personal communication by way of an unstructured interview with the Hon. Commissioner for Women Affairs, Bayelsa State (Niger Delta Region), Nigeria on 13 December 2010.

- Personal communication by way of an unstructured interview with some advocates with the Ministry of justice, Bayelsa State (Niger Delta Region), Nigeria on 7 January 2011.
- Personal communication by way of an unstructured panel discussion with 10 traditional rulers from the Niger Delta region of Nigeria on the 10 and 12 January 2010.
- Personal communication by way of an unstructured panel discussion with twenty-one ex-militants (one female and twenty males) from the Niger Delta region of Nigeria in the School of Aviation, Mafikeng, South Africa, after State pardon on 2 - 5 May 2011.
- Personal communication by way of an unstructured interview with human rights lawyers in the Niger Delta Region, Nigeria on 6 January 2011.

ANNEXURE “B”

LIST OF AIDE-MEMORY INTERVIEW QUESTIONS

Aide-memories for ex-militants

1. What is actually the purpose of your attacks on oil facilities?
2. Is it true to say that youth restiveness in the Niger Delta is targeted to reduce federal government revenue base?
3. Do youths violence drastically disrupt the operations of transnational companies?
4. Does kidnapping of expatriates, oil workers and hostage taking of honourable members' children and parents by militant youths and the demand for a ransom really take place in the Niger Delta region?
5. Do the militant youths resort to livelihood conflict over the devastated state of their occupations (i.e. fishing rivers and farmlands) through oil exploration and pollution by oil corporations?
6. Do you think the federal government of Nigeria and oil corporations deliberately impoverished the Niger Delta populace?
7. Are you satisfied with the creation of Niger Delta Ministry?

Aide-memories for law/policy makers

1. What is your name and position in government?
2. What is your understanding of the Niger Delta conflict?
3. Do you think there are fundamental issues in the enabling laws/regulations guiding the relationship between the oil bearing communities and the oil prospecting corporations vis-a-viz the federal government?

4. Obviously, there are reflections of contradictions of environmental governance and oil politics in Nigeria, what is your view on these dysfunctional ties and negative effects of oil exploration in the Niger Delta?
5. Do you think the creation of more States as done in the past will solve the problems of youth restiveness in the Niger Delta region?
6. Do you think there is social and economic security of livelihood in the Niger Delta?
7. As a law/policy maker, what changes would you propose to your government to correct the horrors of environmental degradation and human rights abuses the Niger Delta people have suffered thus far?

Aide-memories for traditional rulers/community leaders

1. Your Majesty, you are the royal father of this clan or of your people?
2. Your Majesty, if I may ask, how long have you ruled your people?
3. Your Highness, how do you have anything to say about the environment in the Niger Delta?
4. Are there any abuses suffered by you and your people?
5. Are you satisfied with the oil prospecting and property acquisition laws of Nigeria?
6. As a traditional ruler, what means have you employed to address this issue of kidnapping and hostage taking of expatriates and others?
7. Your Majesty, how do you expect the Federal Government and oil corporations to go about resolving this harsh situation in the Niger Delta?