# HOST COMMUNITIES IN OIL AND GAS PRODUCING AGREEMENTS: A LEGAL ANALYSIS

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**A PROJECT WORK WRITTEN IN, AND SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN, IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B.) OF THE UNIVERSITY OF BENIN**

**JANUARY, 2025**

## CERTIFICATION

I, **Victoria Alero TSHOLUWA**, with matriculation number **LAW1901260**, hereby certify that apart from the references made to other people's work as duly acknowledged herein, this entire project is the product of my personal research and writing, and has neither in part nor in whole been presented for another degree elsewhere.

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**APPROVAL**

We certify that this project work was completed and written by **Victoria Alero TSHOLUWA** with Matriculation Number **LAW1901260**, in partial fulfillment of the requirements for the award of the Bachelor of Laws degree in the University of Benin.

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## DEDICATION

I dedicate this work to the God Almighty who gave me the strength to complete this work. secondly, this work is dedicated to the resilient host communities whose lives and environments are intricately intertwined with the oil and gas industry. Their experiences, struggles, and contributions serve as a powerful reminder of the need for fairness, justice, and sustainable development in the legal frameworks governing these industries. May this study contribute to a deeper understanding of their rights and the path toward more equitable agreements.

**ACKNOWLEDGEMENT**

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To my beloved parents, l extend my heartfelt appreciation for their unconditional love, prayers, and sacrifices. A very special thank you goes to my dear mother, Mrs. R.E. Tsholuwa Words cannot fully express the depth of my gratitude for her unwavering love, encouragement, and belief in me. She has been my pillar of strength, offering constant emotional and moral support, even in the most challenging times. Her sacrifices, wisdom, and nurturing care have been an inspiration, and I dedicate this work to her, as she has been my greatest motivator throughout this journey. A special note of gratitude goes to Mr Goodluck Uduaghan for the exceptional support, encouragement, and assistance throughout this journey. Your love and generosity have been a source of great inspiration, and I am truly thankful.

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| CSR | Corporate Social Responsibility |
| SPDC | Shell Petroleum and Development Company |
| LFN | Laws of the Federation |
| NNOC | Nigerian National Oil Cooperation |
| OPEC | The Organization of the Petroleum Exporting Countries |
| BP | British Petroleum |
| NNPC | Nigeria National Petroleum Commission |
| MOU | Memorandum of Understanding |
| DDRR | Demilitarization, Demobilization, Rehabilitation and Resettlement |
| NDA | Niger Delta Avengers |
| ASFOGAPCOM | Association of Family Oil and Gas Producing Community |
| LUA | Land Use Act |
| IOCs | International Oil Companies |
| NPDC | Nigeria Petroleum Development Company |
| CFRN | The Constitution of the Federal Republic of Nigeria |
| EEZ | Exclusive Economic Zone |
| WBCSD | World Business Council on Sustainable Development |
| $CO_2$ | Carbon Dioxide |
| $CH_4$ | Methane |
| $N_2O$ | Nitrus Oxide |
| CFC | Chloroflourocarbons |
| NESREA | National Environmental Standards and Regulations Enforcement Agency |
| FEPA | Federal Environmental Protection Agency Act |
| IBAs | Impact and Benefit Agreements |
| PIB | Petroleum Industry Bill, |

**Abstract**

Host Communities in oil and gas producing communities in Nigeria have enjoyed very little recognition and legal relevance in the Nigerian Petroleum Industry. This situation has its root partly in inadequate laws on the one hand and the internal wrangling and conflicts that have been ranging among the various identifiable stakeholder groups within the superstructure of the host communities. Against the background of the observed disparity in the socio-economic rights of host communities who should be properly and justly recognized and compensated in oil and gas producing agreements which peripherally recognize them, this study sought to gauge the efficacy of the provisions for such communities in oil producing agreements and thus to provide a legal resolution of the conflict of interest within the host communities. Particularly, the study sought to determine the role and obligations of all stakeholders in oil and gas producing communities, with a bias to host communities, for a peaceful oil and gas operating environment. The study utilized the doctrinal and library-based research methodology and found among other things that the various efforts and attempts by groups advocating community ownership of natural resources are particularly aimed at addressing the socio-economic imbalance, injustice, marginalization, oppression and exploitation of host communities in the oil and gas producing areas in the Niger Delta region. Also that the current legal regime has failed to lay a legislative background to protect the socio-economic interests of local and indigenous stakeholders. In addition, that the absence or near lack of categorical legal pronouncement concerning the respective interests subsumed in oil and gas producing agreements in respect of host communities has left a vacuum and lacuna in the host communities stakeholders question, thus making the use of the term "host communities" susceptible to ruinous arrogation, abuse, oppression, marginalization, power struggle, conflict of interest and political betrayal and subjugation. On the basis of the findings made, the study recommends among other things that going forward, Impact Benefit Agreements (IBAs) should cover issues relating to employment, environmental protection, land use and reclamation, local business development and infrastructural development. Such an arrangement would not only bring about peaceful resources development between the oil companies and the indigenous stakeholders, it will also boost government's image internationally, because it reflects a strategic balance among interests of the three key stakeholders. Moreover, negotiation should involve all stakeholders and should be based on mutual respect, compromises, authentic goodwill and be fair or equitable. Finally, that an Oil and Gas Host Communities Management Commission should be set up for the specific management and development of the oil and gas host communities in Nigeria. The Commission will, among other issues, ensure that appropriate sharing formula is put in place to determine the percentage or amount that should accrue to the various stakeholders based on the production quantum of oil and gas produced or extracted from their land.

# CHAPTER ONE

# INTRODUCTION

## 1.0 Introduction

When considered from various points of view, it becomes pertinent to state categorically that certain factors account for why a given geographical area could be termed or designated as host community. This is particularly so, given the fact that the host community that has provided accommodation for any industrial operation on its soil places itself at the receiving end of all the attendant devastation that must, of necessity, arise from the carrying on of industrial activities, especially on a large scale like that of oil and gas exploration and production company which forms a focal point of this thesis. In this direction, the enjoyment of the status of oil and gas producing community must be based on certain criteria and yardsticks which must be taken into consideration if a host community must be designated as such. It is by such a designation that multinational and local oil and gas company are able to effectively direct meaningful and impactful Corporate Social Responsibility (CSR) programme according to the identified needs of such a community if the company is to be properly described as a socially responsible corporate entity.

In so doing, the relationship that subsists between an oil and gas company and its host community can be described as mutually beneficial. It is the mutuality of this benefit that morally compels the benefiting company to always fathom out a way of 'giving back' to the host community through the provision of social amenities like electricity, market stalls, health centers, pipe-borne water and learning facilities for the educational development of people from the host community. In certain instances,

skill acquisition and personal development programmes are also provided alongside soft loan for trade and entrepreneurial purposes.

While the immediate geographical area of operation of an oil and gas company can be described as its host community, it is worthy of note to emphasize it that the entire country, Nigeria, is a host community when viewed from a broader point of view. In this wise, Nigeria can be descried as host community to Chevron, the Shell Petroleum and Development Company (SPDC), Agip, Texaco, etc, even though these multinational oil and gas companies actually carry out operations in specific geographical locations within communities in some states within Nigeria.

## 1.1 Definition and Meaning of Oil and Gas Host Community

What then is the meaning of host community with respect to oil and gas related activities? A host community can be defined as a community where oil and gas is extracted from and which houses the facilities for the exploration and extraction of oil.[1] Host community can also be defined as not only the community that houses the facilities of the oil company, but rather, should include those communities that are indirectly affected as a result of the crisscrossing of pipelines through their land[2], including adjacent communities from whose land, drilling of oil could be carried out

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1 This definition of host community was offered by Space-4-Change, <https:// www.sapce4change.com/spaceforcgange.blogspot.com.ng.org> accessed November 26 2024.

2 Communities such as Ughelli, Orogun, Ogulagha, Eruemukowharien have had this experience.

from a distant location using modern technological drilling strategies.[3] This drilling technique is known as 'horizontal drilling', and offers more targeted access to oil wells and reserves under places oil operators, especially seismic engineers might not want to disturb, such as a town, forest or venerated local shrines[4].

Although it is being hotly debated by petroleum engineers of the adverse consequence of which horizontal drilling could have on the environment, the notable concern however should be the difficulty that would arise in determining which fixed community would be described as a host community where drilling and extraction could be effected from very distant location. Furthermore, "host community" means any village, or town within whose jurisdictional boundaries construction of a hazardous waste facility is provided. It is worthy of note to point out that hazardous waste are usually generated in the course of oil and gas production, and such waste have been certified harmful to the health of the people who live in that community. A clear case in point is the toxic waste (ostensibly from oil and gas production) that was dumped in Koko Community in Delta State some 20 years ago.[5]

## 1.2 **Characteristics of Oil and Gas Host Communities**

Broadly deriving from the definitions proffered above with respect to oil and gas host communities, it is pertinent to states that there are certain physical characteristics that

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3 See *Petroleum Technology Development International Journal*, 3( 2), July 2013.

4 Oil and Gas Code of the State of Virginia, United States of America (2012) through <www.defined termes.com/hostcommunity.> Accessed November 26 2024.

5 The Koko toxic waste occurred in 1997

can help in identifying a host community, while the characteristics may not be exhaustible, it is worthy of note that such characteristics and features may vary from one host community to another host community, depending on the nature and extent of operation of the oil company in that geographical area. However, a more general characteristic of host communities includes:

- Presence of well head
- Presence of storage facilities and tank farm
- Presence of refinery
- Presence of pipelines
- Marginal fields
- Presence of Crude Export Terminals

## 1.3 Superstructure of Oil and Gas Host Communities

The term 'superstructure' is here used because there are various stakeholders groups or lesser communities subsumed in the superstructure term, 'host communities' Consequently, with regard to the wider or broader socio-cultural nature of the traditional. African society made up of distinct localities, language, traditions and other yardsticks that aid in the peculiar delineations and identification of each communities, a typical community, in line with fairness, justice, equity and good conscience, is made up of following unique but integral members or stakeholders:

i. Non-oil and gas landowners,

ii. Oil and gas landowners,

iii. Non-landowners, and

iv. Political structure

The uniqueness of each of these groups will now be examined especially on the basis of how each group of stakeholders interrelate and co-depend on one another for a vibrant host community superstructure in an oil and gas producing community.

## 1.4 The Non-Oil and Gas Landowners:

The non-oil and gas landowners can simply be described as members of the superstructure of the host community who, though being a landowner, of such a land either does not produce oil and gas or no significant oil installation is located on such land. This is because even though the host community superstructure may be described as host community, the oil and gas deposit on such land may not necessarily cover the entire length and breadth of the said land. Rather, the oil and gas deposit will be found on certain specific fixed portion of the land within the host community superstructure.

Attaching the property right of a landowner to the socio-economic position of a person who has unimpeachable right or title to a land therefore, landowners within an oil and gas producing community "are those who own landed property, such as farmlands containing certain natural vegetation, floura and fauna, including rivers, and streams, etc as the case may be, in any given community, and whose economic

interests in such lands is neither in dispute or contention".[6]

Thus, landowners or members of such a family may sell, alienate, lease or put the land into any use which they consider appropriate whenever they wish.

### 1.4.1 Oil and Gas Landowners:

While the limitation or impedance restricting the rights of a landowner to more surface right to the exclusion of the subsurface and any mineral deposit there may be found or contained under such lands may have emanated from the State control[7]power these naturally occurring mineral deposits as backed by statute and related legislations[8]

Furthermore, compensation would be paid to the persons(s) in whom the land was vested immediately prior to the commencement of the Land Use Act in1978.

## 1.5 The Political Structure of Oil and Gas Host Communities

The political structure of any host community which ideally could comprise persons drawn from the superstructure made up of the oil and gas landowners, non-oil and gas landowners, non-landowners, as the case may be. These persons are saddled with the responsibility of governance at the local community level. They are the enforcers of

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6 Landowners as defined in a Memorandum presented by ASFOGAPCOM to the Senate Joint Committee on the Petroleum Industry Bill. See n3 at 3.

7 Section 44 of the Petroleum Act, Cap P10 Laws of the Federation of Nigeria (hereinafter LFN) 2004

8 Section 1 Land Use Act, Cap L5 LFN 2004

the local or customary issues that immediately concern the natives. Moreover, the political structure, as presently constituted in most oil and gas producing communities in the Niger Delta, is usually headed by the President-General and a retinue of other executive officers and hierarchies. Their duty is to ensure peace, orderliness and the security of lives and property of members of the community. The confusion of usage that arose from the wrong posturing of the political structure stakeholders within the host community superstructure has been a source of serious concern in the host communities.

## 1.6 Remote and Extant Causes of Conflicts in Oil and Gas Producing Communities

The following are the remote and extant causes of conflict in oil and gas producing communities in the Niger-Delta:

- Government support and cover for oil companies against the indigenous stakeholders
- The intimidating deployment of their (oil companies) endlessly deep pockets to obstruct the course of justice, where there is a breach(s) or deviation from established legal and judicial ethos in the administration or dispensing of justice.
- Where government views conflict from the perspective of economic security, the major causes of the conflict would be lost altogether. The end thereof will remain a vicious circle.
- Intolerance to expressed grievances
- Indifference to expressed grievances

- Levitious handling or response to expressed grievances
- The use of empowered stooges to whittle down the influence of other category of stakeholders within the host community superstructure in the oil and gas host communities by the oil and gas companies
- Limited understanding of the intricate workings of the oil industry and its complexities by many landowners and community leaders who are mostly peasants and farmers.
- The precariousness of lessors not seeking the guidance, counsel and representation by a legal practitioner in particular and perhaps, some guidance from registered surveyors.
- The desperate use of divide and rule tactics where neighbors are armed, assisted and turned on neighbors.

## 1.7 Managing Stakeholders' Relationship in Oil and Gas Host Communities

A Chinese proverb says: "Listen, my son, see this three twines, they are not easily broken when the strength of two is given to the other one". Simply put, there is resilience in unity. Findings in the oil and gas host communities do reveal that there is a deep gulf of disuniting conflicts that almost raise suspicion and mistrust in the relationship mix of the superstructure of the stakeholders in the host communities, the regulatory powers and the investing capitalists or oil majors

In the normal human relation mix, the possibility of being aggrieved is a gapping chance of nine from ten. This explains the point aptly conveyed by the

Greatest Teacher, Jesus Christ when he said but "70 x 7 seventy times seven times.[9]

Consequently, the possibility of a misunderstanding or disagreement arising is high. But when conflicts arise, what are the ways to tackle them when the conflicts have the social-economic interest of the players at its core? Or, what should be the appropriate response of the government to conflicts arising from disputation having bearing on oil and gas operation in the host communities?

## 1.8 Aggrieved Stakeholder Expression and Controlling Reactive Measures in Oil and Gas Producing Communities

Activists and militants from oil and gas producing parts of Nigeria have been branded rascals, rebels, criminals, terrorists, and disgruntled elements. This is particularly because the State perceives the conflict from the stand point of law and order crises. In order to curtail the economic-security malaise, the State embarks on aggressive weaponization and modernization of its arsenal, deployed more troops and sought military assistance to tackle the festering menace and belligerence in the Niger Delta region.

It is baffling to state that while the State is deploying enormous resources mostly derived from the region in modern warfare technologies, it has virtually failed in applying modern and emerging socio-psychologically proven techniques of resolving conflicts and managing change which is abundantly more efficacious in

[9] The concept of forgiveness as recorded in *The Holy Bible* in the book of Matthew Chapter 18 verse 22.

effect and sustainability. The State with its array of high talking politicking gladiators is yet to see, let alone treat socio-psychological roots of an insurgency driven by popular struggle and resistance in favour of social, environmental and resource rights and justice.

The military regimes considered even peaceful agitations as serious threats to security. Hence, the grievous injury inflicted on the whole psyche of the Niger Delta people through the gruesome killing of Isaac Adaka Boro and Ken Saro Wiwa of blessed memory still rivets the people. The injury has failed to heal... The Obasanjo Administration, with Nigeria just fresh into democracy after some sixteen years under the jackboot of the military order, did ordered the military inversion of Odi Community in Bayelsa State. This can be seen as the security, threat military option, following which a Special Security Committee on Oil Producing Areas was set up and Chaired by General Alexander Ogomudia. The mandate was to look at ways and means of instituting effective security of oil and gas operations and installations.[10]

The aforesaid measures and response of the government followed the trajectory whose object is economic security. Along this point of view, the government viewed, and still does view the threat to oil production or disruption as security breaches. This posturing has seen the State setting a precedent of supressing and representing protesters and activists as militants.

In Ogoni, the people were harassed, driven into the bush and forest, tortured,

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[10] See <https://m.guardian.ng>cover>niger-delta-special-security-committee>, accessed March, 11 2024.

raped and brutalized for years, while brothers were pitched against brothers through divide and rule strategies. Others were armed and assisted to devour their own kind. Then follows the gory experience of Oporoza in Gbaramatu Kingdom wherein in a military operation, the Palace of the Traditional Ruler of the town was raised down and the Royal Stool desecrated. Women were carnally abused, while the old and infirm were not spared. The pretexts for these oppressive, misplaced military actions were to capture a particular warlord of an Ijaw extraction[11] on allegation of having masterminded the killing of some soldiers within the control territory under the said warlord.

## 1.9 Militarization of Oil and Gas Producing Areas

The entire Niger Delta region has been a heavily guided forth with huge military command since the 1990s with military and police check points, sandbag posts, searches and harassment. The military has guarded, protected and escorted oil installations, expatriate personnel and quarters, and oil vessels. Military action against militancy was decisive. Helicopters, gunboats, and sophisticated weapons were used against militias and communities alleged to harbor them. The militancy were stationed in strategic points in the communities and waterways conducting operations and searching for militants.

However, in spite of the huge military and security infrastructure in the region,

[11] Chief Government Ekpemupolo popularly known as Tom Polo a self-acclaimed fighter for the Ijaws and later equitable distribution of resource derived from the Niger Delta among its ethnic nationalities.

there was little success in the control, mitigation and eradication of militancy and the insurgent militia forces.

A social commentator recently exclaimed that "this on-going war is already a decade old, if not more, yet none of the two parties to the conflict could give a decisive knock-out blow to the other. The militants who seem to have the tactical advantage fight classical guerrilla hit and run battle; the security forces who are often on the defensive respond in conventional way using helicopters, gunships and air power... The only self-evident and valid conclusion is that there is no military solution to this crisis.

## 1.10 The Amnesty Initiative of the Federal Government

In heeding the advices and appeals from conflict experts and nation-builders' voices mainly from the intellectual minds, well-meaning Nigerians and the wise support from the elders and other representatives of the people of oil and gas producing communities, Late President Yar'Adua looked beyond the economic security threat horizon, and took a side step away from the military crush-threats-posturing of his predecessors in the highest position of political power and took a different lane completely.

Late Yar'Adua accepted that there were problems in the region which he promised to redress. He asked the militants to confide in him and surrender their arms and submit themselves for rehabilitation and reintegration. It was a great show of statesmanship and courage by the President and a massive gamble on the path of

government just as it was equally a big risk to the militants based on trust.

Most of the militant groups, leaders and members accepted, responded and surrendered their arms. Behold, it was a frightening armament of warfare that were honourably, but boldly laid down, such that the then Chief of Defence Staff[12] left the following statement for the records: "Aside quantity, the calibre and sophistication of the weaponry surrendered by the militants are enough to violently overthrow the government of the country".

## 1.11 Rehabilitation Proved a Better Option

The militants having surrendered their weapons as stated in the preceding section of this study above, they were taken into rehabilitation camps and later underwent non-violence training. At the commencement stage of the Amnesty programme, there were delays and hiccups such as the exclusion of gender and affected communities and alleged exclusion of non-militia elements. There were also the delays in payments and short-changing of some others by their ex-militant leaders. Teething problems, as commonly associated with every new effort geared towards state building. In the long run, however, the programme has been quite successful in the:-

i. reduction of youth restiveness in the region
ii. reduction in militia activities
iii. reduction of violence and insecurity

12 Air Marshal Paul Dike who hails from Issele-Uku in Aniocha Local Government Area of Delta State was the Chief of Air Staff from 2006 to 2008.

iv. protection of oil infrastructure

v. reduction in disruption of oil production

vi. increased production output

vii. increased revenue earnings to the federal government as several thousand militants have been trained and others undergoing training in various institutions of higher learning in Nigeria and overseas, trade centre, professional and other human capital development institutions around the world.

Commenting on the blaze of success which had trailed the Amnesty programme, a foremost writer had this to say:

> If we take the fairly successful amnesty as a major milestone in the resolution of conflict, then the Niger Delta is in a transition to political stability and socioeconomic transformation.[13]

## 1.12 Absence of Restorative Justice: A Clear and Present Threat to the Amnesty Programme

Efforts appears to be very weak in terms of changing the political and socioeconomic formation comprehensively enough to substantially address the prevailing inequalities, disadvantages, injustices, ecological devastation and human insecurity meted against the region and its people. In the circumstance, it is emphatically difficult to be emphatic about a prolonged or sustainable peace in the course of the Amnesty Programme.

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13 J Malan, *Understanding Transition Justice in Africa*, (Zed Books, 2008)

This is hinged on the fact that fears abound that the current phase of the programme is only a temporary phase of conflict suppression. This is because several crucial elements of conflict settlement, conflict transformation and peace building are missing.

Foremost is the absence of restorative justice for perpetrators of abuse and violence against persons and communities like Gbaramatu, Odioma, Odi, KAima, Choba, and Ogonil and. The victims of abuse and those who suffered losses of live, body harm, loss of properties, even in whole communities have not been compensated and abandoned.

The multinational oil companies did not pay for the ecological and environmental degradation and devastation of the environment giving rise to repression of host community members orchestrated by them with the meager compensation paid over the years.

Against the above background, the Amnesty Programme having being in place for more than a decade now has proved to have certain challenges stymieing or stunting its sustainability and institutionalized permanence. This is largely due to the ad hoc organizational system by which it is being run.

The whole Amnesty idea was foundationally based on inclusive dialogue, broad consultations and agreements with critical actors, such as communal and ethnic leaders including Chief Edwin K. Clark of Ijaw and Urhobo extraction, Chief Joseph Evah of ljaw Monitoring Group, Engr. Joseph Abinogun of Oil and Gas Landowners

in Oil and Gas Producing Communities, Chief Wellington Okrika, Chief Government Ekpemupolo, a former MEND[14] Leader, Chief James Onanefe Ibori, before his unestablished, vendetta, doubt shrouded and malicious conviction.

Going by the provisions in paragraph 36 of Schedule 1 to the Petroleum Act and by Regulation 17 (1)(c)(ii) of the Petroleum (Drilling and Production) Regulations 1969[15] in the light of the provisions of the Land Use Act,[16] what is clear is that certain rights of a holder in land remain extant even after the promulgation of the Land Use Act.[17] Compensation thereafter which may be by way of annual rental, would continue to be paid to the parties (landowners) from whom the land was originally acquired.

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14 MEND (Movement for the Emancipation of the Niger Delta) was a militant group formed by Ijaw militants headed by Chief Government Ekpemupolo aka Tom Polo to fight for the equitable allocation and management of oil resources to the Niger Delta communities.

15 LN 69 of 1969. Now the Petroleum (Drilling and Production)(Amendments) Regulations 2020. See Nigerian Upstream Petroleum Regulatory Commission (NUPRC) <http://www.nuprc.gov.ng>...> Accessed December 14 2024

16 n8

17 Ibid.

## CHAPTER TWO

## INTRA-STAKEHOLDERS' STRUGGLE FOR HOST COMMUNITIES' SUPERSTRUCTURE OF OIL AND GAS PRODUCING COMMUNITIES

### 2.0 Introduction

There is a certain kind of volatility that pervades the predominantly oil and gas producing communities distributed throughout the Niger Delta and South-South region of Nigeria. Although crude oil is now being found through intense and increased seismic operations in other parts of Nigeria, including the South West[18], and now being reported of the Northern part of Nigeria, as well. This goes to show the amount of natural resources with which Nigeria is endowed

In the midst of these wealth, however, there seem to be the re-echoing of the expressive exasperation of the Bard of Avon, when he aptly reasoned that 'where much wealth abound, much more evil abounds'[19] much like the Holy Bible says that 'But where sin abounded, grace did much abound'[20]. Consequently, the erratic nature of the pervading conflict and apparent resistance and militarization in the oil producing Niger Delta may be attributed to the character of appropriation of exploited resources which tends to ignore, disinherit, marginalize, impoverish and disempower the indigenous people, local, landowners and communities who own and bear resources at the one hand, and at the same time are forced to bear the social and environmental costs and implication of exploitation.

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18 Oil has been found in Ondo, Lagos and other parts of South-South Nigeria. There are also claims that oil has been found in some parts of the northern part of the country.

19 The Bard of Avon is another name by which Williams Shakespeare is known by having been born and raised in Stratford upon Avon, Warwickshire in England.

20 *The Holy Bible*

It is sad, and very sad to note that vast swatches of farmlands have been rendered infertile and unproductive for farming activities in the Niger Delta region of Nigeria. This is aside frequent cases of water, either for fishing or other domestic purposes, have been heavily polluted and rendered unsafe for human use on account of pollution from petroleum products which are usually spilled into the rivers due to either leakage, neglect or acts of criminal vandalization of pipelines and oil and gas installations.

As was succinctly noted by Ukiwo 'the attempt to highlight economic gains due to insurgency and arms build-up in the conflict-ridden Niger Delta only on the consideration of economic benefit, and by so doing branding and criminalizing agitators and militants, glosses over fundamental socio-economic conditions that pervades the Niger Delta and leaves burning political questions either ignored or unanswered.' [21]

On account of the antithetic polarity wherein there is much wealth in stark poverty and neglect and the high-handed nature of government posture through the use of arm-twisting tactics, "the brothers of a common river that flow into one stream[22] began to betray themselves in order to lay their hands on the oil and gas pie. This led to a situation where a unit of the Host Community superstructure began to oppress and suppress the voice of the other member unit of the same host community

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21 U Ukiwo, 'Horizontal Inequalities and Insurgency in the Niger Delta in the Nigerian State, Oil Industry and the Niger Delta' Proceedings of International Conference organized by the Department of Political Science, Niger Delta University and Centre for Applied Environmental Research, University of Missouri, Yenagoa, March 11-13 2008.

22 Owei Lakemfa, *The Vanguard Editorial* Tuesday 15 June 2019

superstructure. A most recent alarm was raised by a foremost Association of oil and gas landowner when they voiced in a Memorandum[23] "that government should enact measures to safeguard the rights and entitlements of landowners against the fraudulent expropriation of their lands by community leaders and oil and gas companies". In fact, the allegation has been making the rounds that the marginalization of landowners who are indeed minorities in the host communities superstructure is usually achieved through connivance between oil and gas companies and fraudulent community leaders who themselves are just a unit stakeholder in the host community superstructure.

## 2.1 Case of Connivance Between Community Leaders and Oil and Gas Companies in Exploiting Landowners in the Host Communities

The fraudulent expropriation of the interests of oil and gas landowners are joint stakeholders in the superstructure of oil and gas producing communities by fraudulent community leaders in connivance with multinational oil and gas companies cannot be more obvious in the celebrated case of *Bonny Landowners represented by Chief Henry Brown v Chief Victor Jumbo*[24] as claimants against the Shell Petroleum -Development Company SPDC, the manipulative and exploitative antics which revealed or rather exposed the ignoble extent oil majors do go in instigating conflicts and division in the host communities can be well understood. In that case, SPDC by

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23 Association of Family of Oil and Gas Communities, in a Memorandum presented to the Senate Joint Committee on Petroleum Industry Bills, on the Neglect and Marginalization of Oil and Gas Landowners in the Niger Delta Region of Nigeria, 16-17 July 2013.

24 See Report in *The Vanguard* of April 20 2010

an Agreement dated July 22nd 1958 entered into between the Bonny oil and gas landowners as represented by Chief Henry Brown and Chief Victor Jumbo, had agreed to use the land for their oil operations at a rent of not more than two pounds which from 1962 became payable yearly. But SPDC, in a rather fraudulent move, without consulting the Bonny Landowners obtained a Certificate of Occupancy (C of O) dated March 18th 1998, a move which purports to turn it (SPDC) into the Landlord rather than a tenant it was by the July 22d 1958 Agreement previously in place.

In that suit, the learned trial judge, Justice Opara noted, that upon the coming into effect of the Land Use Act in 1978, the Claimants (oil and gas landowners) were deemed to be the grantees of, or holders of the right of occupancy over the land covered by the said Deed of Tenancy. Justice Opara further submitted that the act of SPDC in obtaining clandestinely the Certificate of Occupancy over the Claimants' land constituted a challenge or denial of the extant title of the claimants as the Landlords of SPDC, and for which challenge SPDC has forfeited its right as a tenant in respect of the said land. -

As part of the challenge on the title of the landowners therefore, SPDC may have been emboldened by the fact that the Mineral Ordinance Act following which a Deed was signed for the expropriation of vast swathe of farmlands for the purpose of exploration in the then Western and Eastern Regions of Nigeria did not receive the inputs, consent or knowledge of the landowners when the Deed was signed on 29th

May, 1957?[25] This is aside the fact that the Mineral Ordinance Act after which the Nigerian Petroleum Act was drawn up did not put the interest of local or indigenous stakeholders into consideration, except in very minimal, pretentious mention.

## 2.2 Initial Legal Regimes on Oil and Gas Failed to Protect Local Stakeholders in the Host Community

Nigerian legislation on petroleum had existed for about a decade before exploration began. The first piece of legislation was the Petroleum Ordinance[26] which was followed by the Mineral Regulation (Oil) Ordinance[27] both of which laid down a basic framework for the development of petroleum and its natural resources. By the Ordinance of 1907[28], it was stipulated, inter alia, that only British subjects or companies controlled by British subjects would be eligible to explore for oil resources in Nigeria.

The first company to undertake exploration in Nigeria was the German Bitumen Company around what is now known as Ondo State in 1908. The exploration was not successful and the company had to terminate its operations following the outbreak of World War I.

The next concession was given to Shell D'Arcy Petroleum Development

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25 Deed of Lease by which Shell purported to have taken land from the defunct Western and Eastern Religion of Nigeria

26 Petroleum Ordinance of 1889

27 Mineral Regulations (Oil) Ordinance of 1907

28 Ibid

Company in 1938. That followed the original intendment of the Mineral Regulation (Oil) Ordinance[29] that stipulated the monopoly of oil exploration in Nigeria to either British owned companies or British subjects. This concession that occurred in 1938 was indeed an oil exploration license covering the entire mainland of Nigeria.[30]

As can be noted from this concessionary right, not even the interest of the Nigerian host government was taken into account, let alone the interest of the locals and indigenous people. And in the absence of competition, Shell was able to leisurely explore and select choice acreage of land and locations.

Twenty-four years later,[31] it (i.e. Shell) only retained about 15,000 square miles of the original concession area. But in 1959, the sole concessionary rights were reviewed and various rights were extended to other companies of various nationalities, such as Mobil, Gulf (now Chevron) Agip Safrap (Elf) Teneco and Amoses (Texaco/Chevron).

In spite of the various rights extended to companies of other nationalities, however, due to its previous monopolistic position, Shell remains the largest producer of Nigerian oil because about 80% of all existing concessions are held by Shell and half of Nigeria's oil is produced within these arrangements.

The above petroleum regulation was repealed by the Petroleum Act 1969.[32] That Act and its attendant Petroleum (Drilling and Production) Regulations, laid down

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29 n27

30 The country's landmass was estimated to be about 375,000 square miles

31 Precisely in 1962

32 n7

what continues to be the foundation of the legal framework for the regulation of the oil and gas industry in Nigeria.

However, 1971 marked a critical year for the Nigeria oil industry, when in April that year, the Nigeria National Oil Corporation[33] was formed before Nigeria joined the Organization of Petroleum Exporting Countries, OPEC, and according to Gabriel Etikerentse, a notable expert in oil and gas law, the new OPEC policy was the awakening force that led to this unprecedented shift in the current Nigeria oil producing status.

Although the NNOC was formed before Nigeria joined the Oil Producing and Exporting Countries,[34] the policy and resolution statements of OPEC required the existence of a State oil corporation as an essential prerequisite for State participation and recognition in the global oil industry.[35] Negotiations for participation led to the first participation agreement being signed with ELF, in 1971. Under this agreement, the government required a 35% participation interest in the ELF concession. In 1973, 35% participation interests were acquired in the Shell-BP, Mobil and Gulf concessions. Over the years, these interests have increased to the current level of sixty per cent in all the concessions[36] except Shell's. Government stake in the concessions increased to eighty per cent as a result of the Nationalization of British Petroleum (BP) interests in 1979. Since then, the government has reduced its interests in stages to the present

33 Hereinafter NNOC

34 Hereinafter OPEC

35 Terisa Turner, "Nigeria: Imperialism, Oil and Comprador State, in Nore and Turner (eds), *Oil and Gas Struggle* (Zed Press, 1981) 209, 221

36 Y Omorogbe, *Oil and Gas Law in Nigeria*, (Oxford, 2001) 2

level of 55%, to accommodate the other Nigerian liquefied natural gas partners, ELF and Agip.

1972 however, the government announced the assignment to NNOC of all areas in the country not covered by existing leases or licenses, and also any concession areas presently being held by other oil companies which might be surrendered from time to time.

Then in 1973, the Nigerian government announced that no more oil concession or license would be granted to any companies, organizations and/or individuals, and no further concession application would be entertained, although the NOC was free to select others as contractors or partners in working its concessions. This policy stint made by the federal government was never translated into legislation. Similarly, the various participations were not dealt with under legislation. Notwithstanding, these two measures had a profound effect on the current legal framework and brought some fundamental changes in very important respect.

## 2.3 Creation of the Nigerian National Petroleum Corporation, NNPC

By 1977, the Nigerian National Petroleum Corporation NPC was created as a result of the merger between NOC and the Federal Ministry of Mines and Power. By this time, production had been consistently on the rise, peaking at 2.3 million barrels per day by 1979. Then there came the oil glut of the 1980s. As a result, price of crude oil plummeted and exploration was greatly reduced. To encourage interest in exploration

and oil and gas investments, the federal government entered into the first Memorandum of Understanding (MOU) with the oil companies in 1986. The MOU guaranteed a profit margin to the companies. A second MOU came into force in 1991. The third MOU was signed in August, 2000.

Currently, Nigeria's proven reserves are estimated to be in the excess of 21 billion barrels per day and it makes Nigeria the World's sixth largest producer of oil, a position now being hotly contested by Angola due to its large oil production level.

## 2.4 The Petroleum Act[37]

As mentioned in Chapter One above, under the Petroleum Act of 1969, the entire ownership and control of all petroleum in, under, or upon any land in Nigeria is vested in the State on trust. Furthermore, the Act states that only Nigerian citizens or companies incorporated in Nigeria may be granted the following rights.[38]

a) a license, to be known as an oil exploration license, to explore for petroleum. This license must not exceed twelve thousand nine hundred and fifty kilometers in area.[39]

b) a license, to be known as a prospecting license, to prospect for petroleum. This license must not exceed two thousand five hundred and ninety square

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37 n7

38 Sec 2 Petroleum Act

39 Sec (2) Petroleum Act; See also Regulation 2(1) Petroleum (Drilling and Producing) Regulations 1969 as amended by the 2020 Regulations.

kilometers in area.

c) a lease, to be known as an oil mining lease (OML) to search for, win, work, carry away and dispose of petroleum. This Oil Mining Lease, OML can only be in respect of a maximum area of two hundred and ninety five square kilometers".

The essence of the above brief historical explanation is to underscore the fact that very little or negligible room is meant for the accommodation of the interest of indigenous and local people who are the aboriginal dwellers in most of these swathe of land being acquired by multinational oil and gas companies operating in the Niger Delta.

This policy of exclusion and marginalization speaks volumes of the foundational cause and roots of the struggle for resource control by people from the region.

It is now being echoed that the problem of Nigeria is that distribution of wealth and revenue is highly skewed and it is largely not related to resource generation and contribution. Hence, it appears there can hardly be an equalization of revenue sharing through the use of such criteria as land mass, population density, equality and need. While Nigeria operates a capitalist mode of production, the revenue sharing system is socialist.

There is therefore cheap revenue for States and local governments most of which are neither productive nor viable. Resources are being shared and used without

concomitant production and contribution. There is therefore no commitment to the development of resource endowments just as there is no commitment to productivity and efficacy. The downside is that cheap funds in the form of allocation and rent taking have grown a system of no responsibility creativity, transparency and accountability.

The situation has greatly contributed to the intra-stakeholder struggle within the superstructure of oil and gas producing communities in Nigeria. Conflicts even heightened to the point where agitators kidnapped and took expatriate workers captive for ransom.

This was before the Federal Government Amnesty Programme.

## 2.5 Conflict Resolution and Peace Building in Oil and Gas Producing Communities

Conflict denotes the absence of peace or agreement. Peace is a relative state of being, tranquility, wholeness and harmony. Peace denotes the absence of threats, fear, intimidation, brutality, harm, conflicts, violence, war and conditions that warrant, induce and sustain them such as poverty, injustice, oppression, repression, exclusion, deprivation, marginalization and discrimination. Peace-building, therefore is the process of facilitating and strengthening enduring peace. It involves preventing the re-occurrence of violence, addressing the social conditions that underpin and fuel the conflicts, building institutions that enable sustained resolution and peace, and instituting a system of human security.

Human security is defined as the "protection or safety from future risk or severe deprivation, injury or death.[40] Furthermore, human security is also seen as "protecting the vital core of all human lives in ways that enhance freedoms and human fulfillment"[41]

Conversely, there is said to be human insecurity where the citizenry are plagued by vulnerability to hunger, deprivation, natural and man-made disasters, violent conflict intra-state and civil conflicts, political violence, state brutality and repression, socio economic dislocations, internal displacements, refugee crises, humanitarian crisis ecological destruction, food crises, indiscriminate killings, prevalent crime, identity-based persecutions, ethnic cleansing, genocide and insecurity of lives and property. These are only threats to the citizenry and national security, but to development. In fact, "human security and peace building are linked and some even regard peace building as the effort to promote human security in conflict ridden societies[42]

In the same vein, justice is vitally linked and inextricably tied to peace. conflicts in the oil and gas host communities emanate from unjust systems of governance and resource management such as infringements of rights (like the Bonny Lando experience[43]), abuse and atrocities. There are perpetrators of abuses and victim

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40 P Collier and A Hoefler, *Greed and Grievance in Civil War*, (Washington DC Policy Research Working Paper, World Bank, 2000)

41 United Nations Commission on Human Security (UNCHS) *Human Security Now*, (United Nations 2003)

42 H Assefa, *Reconciliation in Peace Building: A Field Guide* (Lynne Rienner Publications 2001)

43 *Chief Henry Brown and Chief Victor Jumbo v. SPDC's Case*

injustice and abuses, and peace building involves addressing issues of punishment, and compensation. This is because a justice linked peace building enables the easing of pains, grief and abuses of victims, the enthronement of new, just, fair and equitable order and the building of a better basis for social harmony and coexistence.

Justice can be retributive or restorative. In retributive justice, perpetrators of crime and abuses are investigated, tried and punished, if found guilty, punishment may involve being banned from public office even if granted amnesty, while victims of abuses and injustice are compensated or paid reparations. It has been observed that where retributive justice is sought from rebels, militants and state militaries, the fear of justice from the agitators sustains continued belligerence and violence. This ideology actually paved the way for the Amnesty Initiative.

## 2.6 **Need for Restorative Justice**

Restoratory justice is based on a system of amnesty, pardon or sometimes punishment through an open truth and reconciliation commission process like the Desmond Tutu Truth and Reconciliation in South Africa, The Oputa Panel in Nigeria, and the Federal Government Amnesty for Niger Delta agitators by Late President Umaru Musa Yar' Adua in 2010. But the ultimate goal is reconciliation, social harmony, the restoration of dignity and identity of victims, their reintegration to society and the satisfaction of their needs.

Conflict resolution involves conflict settlement which refers to the challenges

of securing negotiations, agreements and credible commitment of actors in conflict to a settlement. This is a critical stage in determining post conflict stability because its efficacy depends on many issues, such as inclusiveness in terms of the critical actors and protagonists of violence. Settlements that have the support of critical actors could lead to stopping hostilities and violence. Once a settlement occurs, the process of post conflict transition begins. This is a very sensitive process that determines the sustenance of the settlement and peace or whether there would be a relapse into hostilities.

It is important to note that, it is only when the causes of the conflict have been reversed that conflict resolution can be said to be on course. Furthermore, the level of satisfaction of parties in the post conflict period will depend on the extent of realization with the outcomes of conflict settlement. Also, whether parties are satisfied or dissatisfied with the outcomes of conflict settlement determines the success or otherwise of conflict resolution in post conflict transitions.

## 2.7 Demilitarization, Demobilization, Rehabilitation and Resettlement (DDRR) Peace Strategy in Oil and Gas Producing Communities

A major strategy of conflict management suitable for the oil and gas producing hos communities is Demilitarization, Demobilization, Rehabilitation and Resettlement (DDRR). If consolidating on any peace effort towards sustainable peace and development is not as important, there would not have been a resurgence of hostilities

and vandalized of oil and gas installation in the earlier part of 2016. The resurgence of hostilities be when President Muhammadu Buhari made a policy statement which turned out to be albatross of the oil and gas industry and the Niger Delta region within a very short period of time. In his remark, the President had hinted that the monthly stipends being paid former militants who embraced the Federal Government Amnesty Programme would stopped. He even said the whole Amnesty Programme was not sustainable going global shrinking economic outlook at the time. This policy statement greatly incensed militants who had no option than to press home their grievance and displeasure over such government intention by the resumption of destruction of oil and gas facilities in the Niger Delta by a group styled Niger Delta Avengers NDA.

The resultant loss of oil revenue to the Federal government was colossal as production of crude oil dropped by300,000 bpd in the month of April, 2016.[44]

It was after the intervention of mediators and good advice that the Federal Government backpedaled. As I write this thesis, the Federal Government has sustenance of the Amnesty Initiative.

## 2.8 **Conflicts Induced by Obnoxious Laws**

Going by the assessment of the true state of affairs on ground in the Niger Delta,

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[44] Nigeria Loses N1.1 trillion Oil Revenue due to Niger Delta Avengers Hostilities <https://www.naij.com>94501-Nigeria> Accessed November 20 2024.

particularly in oil and gas producing communities, obnoxious laws and close-ended policy statement by the Nigerian government and its agencies have been observed to contribute a great deal to the unabating conflicts in the oil and gas producing communities.

A good example in point is the blatant arrogation and abuse to which the term 'host communities' have been subjected. Findings reveal that for a long time, community leaders in oil and gas producing communities have been abusing and misusing the ambiguity in the term 'host community' to the disadvantage of other members of the host community superstructure. Mostly affected by this problem are the oil and gas landowners. It must be emphasized again that the host community leadership is only a unit in the whole stakeholders' superstructure in the host community.

It is on account of this exclusion and marginalization that oil and gas landowners in oil and gas producing areas decided to bring themselves under one umbrella or Association in order for them to join forces to fight the apparent injustice. This Association is known as Association of Family Oil and Gas Producing Community, ASFOGAPCOM located in Ekpan, Ivwie L.G.A., Delta State of Nigeria.

Judging by the various exchange of documents between this Association as representing stakeholders in the host community superstructure, and government officials, corporations and government intervention agencies, one disturbing fact stood out: Host communities leaders who are only the political structure and

stakeholders in the oil and gas host communities' superstructure actually consider themselves, albeit, maliciously, as the host community itself. With this posture of host community leaders, oil and gas landowners and other impacted members of the oil and gas producing communities are forthwith shut out of enjoying or participating in the benefits that sometimes accrue from the oil and gas companies operating in those communities. This is due largely to what now appears to be the undoing of landowners due to obnoxious and un-encompassing laws and provisions by statute.

Towards a peaceful means of resolving this debacle, the Association (ASFOGAPCOM) placed two key demands, amongst others before the Nigerian Senate, to wit:

a) That "government should redefine the extent and limitation, scope and intendment of the nomenclature, "host communities" as contained in the Petroleum Industry Bill, which has been in the National Assembly for almost six years now. This is in order to safeguard the property rights of landowners who are also stakeholders in the oil and gas host communities stakeholders' superstructure[45]

   The other demand, which is also akin to the one mentioned above has to do with legislative protection for these group of stakeholder

b) The National Assembly should enact a law to be known as Oil and Gas Landowners Protection Act to safeguard the rights and entitlements of

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45 Memorandum by ASFOGAPCOM to the National Assembly, 2013

landowners against the fraudulent expropriation of their benefits by community leaders and oil and gas companies".[46]

## 2.9 Judicial Intervention and Policies of Government Agencies

In many instances, the high rising cry over government neglect of the oil and gas producing communities in the Niger Delta appeared to have intensified as Nigeria and the world continue to find no suitable alternatives to oil and gas for a myriad of industrial and domestic activities.

Bet that as it may, there have been certain judicial and policy intervention on the part of government and its intervention agencies towards ameliorating some of the agitations. This is because certain laws do recognize certain rights as belonging to cert: members of the host communities who are veritable stakeholders, or so it ought to be.

In order to give a holistic view to this, efforts must begin from the point where oil and gas companies, here referred to as the Lessee, make their first incursion on the land of the indigenous peoples and locals

## 2.10 The Surface Rights of the Oil and Gas Landowners

The rights conferred by an oil mining lease, OML effectively become exercisable from the region of the sub-soil of the concession area. In order to commence

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46 Ibid

operations, it is therefore necessary for the lessee to acquire the rights over the surface of the parcel of land and around the immediate geographical area from which it proposes to drill the well.

In choosing a location, the lessee, in compliance with the provisions of Regulation 17(1) (a) of the Petroleum (Drilling and Production) Regulation 1969[47] must first obtain the written prior approval of the appropriate authority in the State in which the land is situate:[48]

i. any land set out for, used, appropriated or dedicated to public purposes;
ii. any part occupied for the purposes of the government of the federation or the State;
iii. any parcel of land situate within a township, town, village, market, burial grounds or cemetery;
iv. any parcel of land which is the site of or is within 47.42 metres of any building, installation, reservoir, dam, public road or land which is appropriated for or is situate within 47.42 metres of any railway,
v. any land in actual cultivation

With respect to land over which there is no apparent bar to occupation other than it belonging to some other person the lessee having paid adequate compensation thereon, may occupy such land on the further condition that it has obtained the written

47 Petroleum (Drilling and Producing) Regulation, 1969; also clause 9(1)© of the Oil Mining Lease No. 49 granted to Guff Oil Company

48 Ministry of Lands and Surveys through the Minister of Petroleum

permission of the appropriate authority. Here, the appropriate authority refers to such other authority or government department that enjoys the privilege for giving such permission in the State.

For the time being, it is the Ministry of Lands and Surveys in most of the Southern States of Nigeria. The lessee, in seeking this permission, must attach to their application:

i. a map describing or delimiting the area sought to be occupied;

ii. the size of the land

iii. the use to which the land would be put.

The governing authority's consent to occupy the land would be given on the satisfactory proof that the lessee has paid or tendered adequate compensation thereof to the owners or lawful occupiers of the land to be acquired.

## 2.11 Where Issues of who is in Lawful Occupation or of Ownership of the Land Is in Dispute

Without a shadow of doubt, the issue of land ownership or who is in lawful ownership or other encumbrances that could attach itself to land acquired by a lesser who failed to take reasonable precaution can be gargantuan owing to the sensitive interests that could be involved. For the purpose of oil and gas producing communities whose stakeholders may want to resort to unlawful means in pressing home their demand, some by public protests, threats or other means possible, should know the position of

the law and government policy on this issue.

Therefore, when issues of ownership or lawful occupation of the said land surfaces, Regulation 17(2) of the Petroleum (Drilling and Production) Regulation 1969 enjoins the lessee to deposit with the appropriate authority in the State, such sum as shall appear to the said authority to be reasonably adequate as compensation for the damage or loss which would be caused by the operator's proposed work pending the eventual resolution of the issues in dispute,[49]

When the contentious issues are eventually resolved, the lawful payees of the compensation due are paid the amount earlier deposited. In addition, the payees can recover from the lessees any shortfall between the amount deposited and the amount adjudged adequate. By the same reasoning, however, the lessee is entitled to a refund of any sum in excess of the due compensation from the deposit earlier made by it.[50]

## 2.12 What is the Extent of Adequate Compensation that should Accrue to a Landowner?

There do not seem to be a categorical amount of money that is due to a landowner whose land is being acquired for the purpose of oil and gas production and other uses connected therewith. While there may not be a categorical stipulation by statute of what should constitute adequate compensation to a landowner or occupier, available

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49 See also Paragraph 41 of Schedule 1 to the 1969 Petroleum Act as to Settlement by Arbitration

50 These items come under the generic terms of ‘fructus naturales’ and ‘fructus industiales

laws appear to give the person in lawful occupation or the owner of the land the right to receive adequate compensation for

i. the disturbance of surface rights, or
ii. injurious affection, or
iii. other compensation

## 2.13 Items Involved in Surface Rights Acquisition

Broadly, items affected in any land acquisition for surface rights, and in respect of which compensation should be paid, fall under two heads. These are:

i. Land per se; and
ii. The items which include economic trees, cash crops, buildings, other structures, ete on the land which exist naturally or as a result of man-made improvement.

In the process of compensation, some sort economic value could be lost as a result of the disturbance of the surface rights. It is in order to be able to determine such economic value without delay that most oil-exploration and production companies (lessee) in Nigeria establish in their organiation a Lands and Claim Unit whose principal function is the acquisition of land required for the lessee's operations. This unit also investigates damage claims and negotiate payments where necessary for settlement by the companies.

## 2.14 **Compensation For Land**

Before the operation of the Land Use Act which became effective from 29 March 1978, it was the Lands and Claims unit of companies that made contact with the landowners or occupiers who were either individuals or communities. The unit acted either directly or through contact men picked from the communities or locality involved in a proposed acquisition. Such a contact man would help with the identification of the true owners of parcels of land in respect of which compensation was being paid since he was expected to be familiar with most persons in the community. Payment was made to individuals, or to the village/community head or heads on behalf of the villagers or community.

Compensation for land which generally was in the form of annual rentals were made as follows:[51]

a) Land within 12.8 kilometers radius of urban or industrial area;

   i. Dry land ₦ 100.00 per hectare per annum

   ii. Seasonal swamp ₦ 25.00 per hectare per annum

   iii. Fresh water swamp ₦ 25.00 per hectare per annum

b) Land outside 12.8 kilometers radius of urban or industrial area;

   i. Dry land ₦ 50.00 per hectare per annum

   ii. Seasonal swamp ₦ 25.00 per hectare per annum

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[51] See also paragraph 41 of Schedule 1 to the 1969 Petroleum Act as to the settlement by Arbitration

iii. Fresh water swamp ₦ 12.00 per hectare per annum

c) Mangrove swamp ₦100.00 per hectare as one-time payment

d) Borrow put (Dry land) ₦ 1,240.00 per hectare as one-time payment.

## 2.15 Effect of the Land Use Act on Indigenous Peoples' Right

Prior to the promulgation of the Land Use Act (LUA) in 1978, while the ownership of oil belonged to the federal government, the land where the oil was found was vested in the communities and families that owned the land, with whom oil companies had to negotiate compensation for granting access to the oil and any damage to the land.

The passing of the LUA which vested all the lands comprised in the territory of a State of the Federation in the governor of the State in 'trust' for all Nigerians meant oil companies no longer had to deal with the local landowners and communities, instead, the right to access the oil is paid to the Federal government.

Consequently, the LUA has been fingered as the source of much of the agitation in the Niger Delta Region, whose community leaders, landowners, activists and other stakeholders, groups are demanding that oil companies should pay rents and royalties for the use of the land directly to landowners and the local communities instead of paying same to the Federal Government.

## 2.16 Current Petroleum Regulation Structure

Petroleum exploration and production in Nigeria are undertaken as joint ventures between the international oil companies (IOCs) and the Nigeria Federal Government, through Nigeria Petroleum Development Company (NPDC). The Joint Venture account for approximately 95 per cent of all crude oil output with the remaining 5 per cent produced by local oil companies LOCs operating in marginal fields.

In this regard, oil and gas activities are carried out in line with various statutory provisions, the most important ones being the Petroleum Act,[52] Oil Pipelines Act,[53] Oil in Navigable Waters Act,[54] Federal Environmental Protection Agency Act,[55] the NNPC Act,[56] and the Land Use Act.[57]

The Petroleum Act\ is a continuation of an old colonial policy which vested the entire property in petroleum (mineral oils) in the State. Thus, the exclusive ownership right of oil and gas confers absolute control on the Federal government over all resource in the country which exercise of power is carried out by farming out oil mining rights to oil companies and receives rents and royalties from them. That is the Domanial System of oil and gas ownership that shall be examined in chapter

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52 n7

53 Cap O7 LFN 2004

54 Cap O6 LFN 2004

55 Initially Decree No. 59 of 1992. FEPA has been repealed and replaced with the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007 later replaced with the NESREA Act 2017 and amended with the NESREA Act 2018.

56 This Act has now been repealed and replaced with the Petroleum Industry Act of 2021 which has replaced the Petroleum Act; the Associated Gas Reinjection Act; the Hydrocarbon Oil Refineries Act; Motor Spirits (Returns) Act; NNPC Act (pursuant to s.54(3) of the PI Act and the Petroleum Products Pricing Regulatory (Establishment) Act; the Petroleum Equalisation Fund Act and the Petroleum Profit Tax Act among other such acts.

57 n8

three.

## CHAPTER THREE

## THE CONTROVERSIAL ISSUE OF OWNERSHIP OF OIL AND GAS

### 3.1 Meaning, Benefits and Extent of Ownership

Examining the magnitude of the thorny issue of ownership of oil and gas in a ready reference textbook on "Oil and Gas Law in Nigeria, Yinka Omorogbe, an erudite authority in oil and gas law did opined that "ownership matters (of oil and gas) have been of great functional and symbolic significance in the oil industry world-wide, particularly during the 1960s and 1970s.[58]

Furthermore, the benefit of ownership entails the right of enjoying or disposing of a thing in the most absolute manner. In a broader perspective, therefore, ownership is better probably described as being composed of the following rights:

(a) The unfettered power of enjoyment of anything in such a manner that the owner shall be at absolute liberty to determine the use to which the thing is to be put, to deal with, produce, or to destroy it, as the owner pleases.

(b) The power of absolute possession, which includes the right to exclude others.

(e) The power to alienate inter vivos

(d) The power to bequeath by will

(e) The power to charge as security.

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[58] Yinka Omorogbe, Oil and Gas Law in Nigeria, Malthouse Law Books, 2001 Ch.3 at 30

(f) The power to transfer or exchange

(g) The power to barter or exchange

Moreover, an owner may grant to another person several or all of his rights for a stipulated time period and still remain as owner, therefore, according to Omorogbe, ownership is regarded as a magnetic coil which remains when all present rights of ownership are removed from it, and which attracts to itself the various elements temporarily held by others as they lapse.

As stated earlier concerning the scope of this thesis, it shall extend beyond Nigeria to the United States of America, USA, Mexico, Canada and Papua New Guinea. This shall resonate more as cursory look is taken into the fractious issue of ownership of oil and gas around the world. This is particularly so when viewed from the standpoint of the myriads of attention being received by the topic in notable countries around the world, including America where the oil and gas industry originated from. Accordingly, various theories have been put forward regarding the ownership of oil and gas within the oil and gas industry.

## 3.2 Ownership Theories in the Oil and Gas Industry

As a recurring and burning issue in the oil and gas industry, the contention generated by the ownership of oil and gas has led to different postulations with regard to the

subject[59] and myriads of theories thereto.

According to Keith W. Blinn and Cloude Duval, the various ownership theories concerning oil and gas have received mentioned and considered in various international points of view, notably among which are:

(a) Petroleum Ownership under United States Law

(b) The Domanial Law System

(c) Permanent Sovereignty over Natural Resources and Emergent International Law

## 3.3 Petroleum Ownership under United States Law

It has already been noted that the Petroleum Industry originated and had its roots in the United States of America and has undoubtedly remained the epicentre of free enterprise. It is on account of this creative pedigree exercised through the free entrepreneurial spirit, as starkly different from other parts of the world, including Nigeria, that there has been a culture of private ownership of mineral resources including petroleum, or more commonly expressed as oil and gas for the purpose of this Research, right from the inception of the oil and gas industry.

This researcher is radically of the opinion, deriving from the corollary in the foregoing paragraph, that the essence of cross-fertilization of ideas should first make a

[59] K W Blinn and C Duval, 'International Petroleum Exploitation Contracts,' *Euromoney Publications,* 1986, Ch 1

positive impact on the individual who has embarked on the knowledge voyage, as the search and inquiry could take the individual to entirely new findings whose shinning magnificence could be too bedazzling to behold. Having being armed with such impactful information in the form of knowledge from exalted cultures as the American free enterprise spirit amply demonstrates, the individual, in the spirit of patriotism should attempt to replicate same at home for the good and betterment of the human race.

Without trying to grandstand, the essence of this view is to send the plain message home that overregulation is strangulating and squeezing the life out of our socio-economic system. Overregulation which is otherwise the excessive centralization of power has been shown to stymine growth, not only of the individual, but of the entire national fabric.

Thus, the private ownership of petroleum or oil and gas in the United States is conceptually different in form from that which obtains in Nigeria. The ownership of petroleum in Nigeria, like what obtains in most parts of the world, is entirely vested in the Federal Government of Nigeria[60]

However, there is yet another trajectory in the peculiar nature of private petroleum ownership in the United States of America, USA. This is expressed in certain jurisdictions where ownership of oil and gas in situ is not recognised, and ownership is said to occur only when the oil has been produced and reduced to

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60 Section 40(3) of the Constitution of the Federal Republic of Nigeria, as amended (Hereinafter CFRN 1999 as amended); section 44(3) CFRN 1999 (as amended)

possession. This position and practice arose in the early days of the oil industry. In that early period, there was little knowledge about the movement of petroleum underground. That was to the extent of the technological innovation reach at the time.

With the expansion and increase of knowledge in the science and technology of oil and gas, however, what was clearly evident was that crude oil was capable of moving from under one piece of land to another. It was upon this basis that the court in Bernard's case in 1906, refused to enjoin drilling by an adjacent landowner alleged to be draining oil from a reservoir under the plaintiff's land, holding that the plaintiff's remedy was self-help in drilling his own well.[61] Nine years later, Texas courts adopted another ownership concept,[62] reasoning that oil and gas beneath the ground or earth be Blonged to the person who owned the surface.

Thus, this locus classicus case was recently followed to the letter in the *Edwards Aquifer Case*[63] that land ownership must of necessity include an interest in the groundwater or other mineral deposit in place. The most sensible inference to draw from that is that the landowner has a real property interest in the groundwater in place under his land, which right is now being held as being analogous to the landowner's property interest in oil and gas.

To put the icing on the cake, the Texas Supreme Court asserted that the right of landowners to assert a regulatory takings claims against oil and gas companies if

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61 *Bernard v. Monongahela Natural Gas Co.*, 216 Pa 362, 65A 801 (1906) as cited in Blinn and Duval n59 above

62 See n59

63 *Edwards Arquifer v. Day,* Texas Supreme Court, (2012)

they regulate oil and gas exploration in a way that denies the landowners extensive economic benefit of the use of his land. In conclusion, the court held that landowners have some ownership rights in their subsurface property and so they are entitled to protection by statute. Thus, there are two broad ownership theories in the United States as it concerns oil and gas, viz:

## 3.4 Qualified Ownership Theory

Under this theory, the landowner is said not to have title to the oil and gas in situ because of the fact that he can be divested by drainage without consent and without any liability on the part of the person causing the drainage. However, the landowner does have a property interest which is more than a right of capture. Consequently, all the landowners over a common reservoir are designated as collective owners, with equal rights to take oil from the reservoir. In this way, the respective landowners do not have exclusive title to the specific oil and gas underneath their respective land. They also do not have title as tenants in common to an undivided share of the oil and gas in the common reservoir which is equivalent to the amount of oil and gas under their respective lands. What each landowner has is an equal right with his own co-landowner to secure his proportionate part of the oil and gas in the common reservoir through wells drilled upon his land. He also has qualified title interest in the oil and gas as one of the collective owners. This theory obtains in states such as California, Indiana, Texas and Michigan in the United States.

## 3.5 Absolute Ownership Theory

The absolute ownership theory is found in such states as Arkansas, Pennsylvania, Arizona. The essence of this theory is that the landowner is regarded as having title in severalty to the oil and gas in place beneath his land. He is not deemed a co-owner even when the reservoir straddles lands, each owned by a different person. However, the landowner loses his title to an adjacent operator if the oil from his land migrates to the adjacent land and is produced from his neighbour's well. Accordingly, there is no cause of action for this divestiture of title by drainage.

In reality, the effects of both theories are similar. In both theories, the landowner is not in fact entitled to oil and gas beneath his land. What he has are the rights to sink as many wells as he desires subject to good operating practices, and to extract as much oil and gas as he can produce.

## 3.5 The Domanial System

The domanial law system provides for the vesting of ownership rights in the sovereign. This is said to be the most prevalent system of ownership of minerals in most parts of the world. Practically, every country with the major exception of the United States of America, retains sovereign right over all mineral deposits, Nigeria fall into this category. In a large number, this right is enshrined in their respective Constitution.

## 3.6 Oil and Gas Ownership in Nigeria

In Nigeria, according to the 1999 Constitution[64], the entire property in and control of all minerals, mineral oils and nature gas in, under, or upon the territorial waters and the Exclusive Economic Zone, EEZ of Nigeria shall vest in the Government of the Federation.

Also, under the Petroleum Act, 1969, the entire ownership and control of all petroleum in, under or upon any land is vested in the State.[65] The State then has the option of exploring and exploiting its natural resources by itself or granting rights to third parties on whatever condition it may deem appropriate.

## 3.7 Permanent Sovereignty over Natural Resources and Emergent International Law

Recent tends reveal that there is a shift away from investor ownership and control, towards State control and permanent sovereignty over natural resources. In the latter part of the 19th century, and the early part of the 20th century, the tendency was for the company charged with the exploration and production of the natural resources in question, to exercise rights that amounted to sovereignty over the resources and the

64 See section 44(3) CFRN 1999 (as amended)

65 See section 1 Petroleum Act, n7.

area in question. As the host countries became more aware they came to resent this State of affairs. In some Instances, there were naturalizations, as a result of which the nationalising State found that the investor company and its home State were insistent on international rules of compensation. Invariably, these rules required the countries to pay out amounts far in excess of what they could afford, and which were often far more than they felt that the company in question deserved.

The developing and socialist countries, attempted to redress what to them was an inequitable state of affairs, mainly through resolutions of the General Assembly.[66] This was through the insertion of clauses which placed the contracts within the ambit of national and not international law, On December 21th 1952, General Assembly Resolution No. 626 provided that 'The right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty.'

On December 14, 1962, the General Assembly adopted Resolution. 1803 (XVII) titled 'Permanent Sovereignty over Natural Resources which provided *inter alia* that:

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

The resolution further declared that:

> Nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest. In such cases, the owner shall be paid appropriate compensation, in accordance with the rules in force in the State taking such

66 This was made in Latin America and Known as the Calvo Claus

measures and in accordance with international law.

The above statements were reinforced in 1966 by Resolution No. 2158 (XXl) which provided that the General Assembly should, amongst other things:

> Taking into account the fact that foreign capital, whether public or private, forthcoming at the request of the developing countries, can play an important role in as much as it supplements the efforts undertaken by them in the exploitation and development of their natural resources, provided that there is government supervision over the activities of foreign capital to ensure that it is used in the interest of natural development...

Provided also that the regulation in practice further -

> Recognises the right of all countries and in particular the developing countries, to secure and increase their share in the administration of enterprises which are fully or partly operated by foreign capital and have a greater share in the advantages and profits derived therefrom on an equitable basis, with due regard to development needs and objectives of the peoples concerned...

The Regulation further,

> Considers that natural resources of the developing countries are exploited by foreign investors, the latter should undertake proper and accelerated training of national personnel at all levels and in all fields connected with such exploitation.

On December 12, 1974, the General Assembly adopted Resolution No. 3281 (XXIX), entitled "Charter of Economic Rights and Duties of States", which *inter alia* states the following; that

1. Every State has and shall freely exercise full sovereignty that is permanent, including possession, use and disposal, over all of its wealth, natural resources, and economic activities.
2. Each State has the right to nationalise, expropriate or transfer ownership of foreign property in which case appropriate compensation shall be paid by the State adopting such measures, taking into account any relevant laws and regulations and all circumstances that the State considers pertinent. In any case, where

> the question of compensation gives rise to controversy, it shall be settled under the domestic laws of the nationalizing State and by its Tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means.

From the foregoing Resolutions, it is obvious that the definite trend created by international law and emerging trends takes a shift away from the traditional concept of investor ownership - which emphasise the protection of individual rights towards host State ownership of natural resources.

# CHAPTER FOUR

# OIL AND GAS COMPANIES AND CORPORATE SOCIAL RESPONSIBILITY IN HOST COMMUNITIES

## 4.0 Introduction

It should be highly expected of oil and gas companies, as global players in energy resources operating in rural or local communities to show genuine concern and commitment to the socio-economic needs of such host communities. This is the core of the concept of Corporate Social Responsiveness upon which Corporate Social Responsibility, CSR is anchored.

Corporate Social Responsibility refers to a theory of social responsibility that focuses on how companies become aware of and then, respond to the social issues affecting its immediate host community or operating environment. There are many definitions for Corporate Social Responsibility, CSR, foremost amongst which is that CSR is 'a concept whereby companies integrate social and environmental concerns in their business operations and in the interactions with their stakeholders on a voluntary basis.'[67]

Here, the integration of social and environmental concerns of oil and gas producing communities in a responsive and inclusive strategy of all stakeholders will encourage peaceful corporate-host community relations in no small measure.

To the World Business Council on Sustainable Development (WBCSD), the ethical behaviour of a company towards society and its management acting responsibly in it

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[67] CSR as defined by the European Union Green Paper on Corporate Social Responsibility, 2002,

is relationship with other stakeholders who have a legitimate interest in the business. It is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.[68]

With the views subsisting about the essence of Corporate Social Responsibility, it is important to now assess the quality of Corporate Social Responsibility impact in oil and gas host communities in the Niger Delta.

## 4.1 Poor Standard of Living and Deplorable State of Social Infrastructure in the Host Communities

It is no longer news that most oil and gas producing communities in the Niger Delta have been in great socio-economic distress for as long as oil and gas was discovered in the region.[69]Most of the indigenous people of the host communities in the region are mostly agrarian, they are subsistence farmers and fishermen whose farmlands and rivers have been polluted and rendered infertile on account of decades of oil and gas production and exploitation. Oil spill which is harmful to aquatic life now cover the surface of many streams, rivulet, and even wells which is their primary source of drinkable water.

The people generally are poor with little or no support coming from

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68 World Business Council for Sustainable Development

69 Crude Oil in commercial quantity was struck in Oloibiri, Well I, drilled June, 1956, 12, 008 feet,

government programmes due to corruption and greed. Electricity is virtually nonexistent in many host communities. This is as the health of the local people has often meant little to those who endanger their lives through the hazardous nature of industrial waste discharged into their environment.

While the local people are left to grapple with the ecological devastation of their environment, to the point where some even got displaced, no meaningful effort is being made to resettle those who are usually forced to move from their land. Reclamation of devastated lands are hardly done to give new lease of life to the operating environment. Available health centres are mere prescription outlets as such facilities are hardly equipped to tackle even common cold as an ailment of the tropics.

## 4.2 Why Oil and Gas Producing Communities should Be the Focal Point of Corporate Social Responsibility

The abject condition of living as described above is the more reason why oil and gas producing companies should take their host communities as the centre and focus of their corporate social responsibility action because, in the host communities, there is the glaring lack of absence of:

- Pipe borne water (clean water, of course)
- Tarred roads
- Modern medical centres, with staff and medical supplies
- Electricity

- Modern block of classrooms
- Scholarship for indigent students
- Skill acquisition and trade programmes
- Modern markets stalls

## 4.3 Effect of Good Corporate Social Responsibility on Oil and Gas Producing Communities

With both human and material resources being relevant for the development of modern day societies, the concentration of oil and gas companies' CSR programmes in their host community of operation will in no small measure help to check the rapid rise in rural-urban migration which is mainly caused by economic reasons. The need for survival is at the heart of most migration, and where the unskilled person migrates to a highly skilled area like what often occur in rural-urban migration, the unskilled person becomes unemployable. Where there is no suitable employment, nevertheless, the instinct for survival could lead such a person to criminal or illegal activities for survival, and that in itself becomes a social problem to society.

In order to check the incidence of rural-urban migration, therefore, oil and gas companies must unfold pragmatic skill and human development programmes among people who are still within learning age for them to acquire relevant in-demand skill that will help them to properly fit into the society whenever the need to migrate arises.

This is important because entrepreneurs must, in performing their primary

functions, also be good corporate citizens or good neighbours within their host communities by giving attention to the triple bottom line which includes:

1. The totality of the enterprise's profit
2. People, and
3. Place or planet or operating environment or host community.

It must be noted that a complete negligence of transparent business practices based on ethical values, compliance with legal requirements and respect for people, communities and the environment will generate severe consequences for the companies like we have witnessed in the Niger Delta region of Nigeria in recent times.

## 4.4 Social and Environmental Responsibility of Oil Companies in Host Communities

Business and the society are inextricably linked. There is a constant interaction between the business and the society in which the former situates. No business can thrive without making use of the resources that abound in the society: the land, biosphere, water, human, (money and capital) and material.

For oil and gas companies, however, the constant interaction with the earth's resources sometimes leaves the earth in a degraded situation that could threaten lives and the entire ecosystem and its inhabitants.

## 4.5 Oil and Gas Companies and Environmental Pollution of Host Communities

No doubt, environmental issues are now of paramount importance globally speaking, and the oil and gas industry is directly and indirectly, at the centre of the current environmental problem. Research in recent times have revealed that the industrial processes involved in oil and gas activities have changed the earth in many fundamental ways. The seas are polluted to the detriment of various marine flora and fauna, the desert is expanding, the ozone layer is getting damaged, the global climate is being altered; and there is a rapid extinction of plant and animal species. Viruses and bacteria are radically mutating to the perplexity of scientists.

A major waste product of oil and gas production is hydrocarbons. Hydrocarbons have the capacity to pollute the land, seas and atmosphere greatly. Besides, the oil and gas industry has been fingered as a major culprit in the depletion of the ozone layer, thereby leading to unprecedented heat, intensity.

## 4.6 Environmental Pollution

Environmental pollution has been simply defined as the addition or discharge to the natural environment of any substance or energy form (such as heat, sound) at a rate that results in higher than natural concentrations of that substance, and therefore having adverse effect on life. The actions of pollutants vary greatly. Noise pollution is localized and its effects are short-lived, e.g. for as long as the noise exists.

Conversely, some types of pollutants disperse very readily are wide in distribution and their effects are permanent. It is in this group that we find the carbon based emissions of the oil and gas industry that are a bye product of major industrial activities, which are said to form 60 per cent of the carbon dioxide emissions world-wide and whieh have led to greenhouse effect, and other environmental threats.

## 4.7 Greenhouse Gases, Climate Change, Ozone Depletion and Global Warming

Greenhouse gases are certain gases in the atmosphere which form a blanket around the earth that warms it up. Without this blanket, it is estimated that the earth's surface would be 30°C colder than it is today. Key greenhouse gases are carbon dioxide ($CO_2$), methane ($CH_4$); nitrus oxide ($N_2O$) and chloroflourocarbons (CFC). This blanket is known as ozone layer. As a result of industrial activity since the industrial revolution in England in the eighteenth century, this blanket has been getting progressively thicker. Also, increased industrial activity has resulted in deforestation. When forests are cut down, the carbon stored in the tress escapes to the atmosphere. When cattle are raised or rice is planted, gases such as methane and nitrus oxide are emitted. Furthermore, when coal, oil and natural gas are burnt, or utilized for powering engines and cars, large amount of carbon oxide are spewed into the air.

The thickening of the ozone layer means there is likely to be increased global warming of 1 to 3.5°C over the next one hundred years. Sea levels are predicted to rise, threatening low coastal areas near sea level. It is also estimated that there will be

changes in ranfall and wind patterns. There could also be floods and famine and other catastrophies. What is certain is that climate conditions have changed in many areas world-wide. Even now, the average person in Nigeria is almost certain that seasons are hotter than they have been for sometimes and that they have become quite unpredictable. But these changes vary from place to place and the issue of global warming is still being vehemently challenged.[70]

The stark reality which environmental threat poses to the continued existence and survival of oil and gas producing host communities can be said to be enormous because the emission of the various gases[71] and the corresponding effect is usually felt to the fullest in these communities.

## 4.8 International Conventions on the Environment

Since environmental issues are of international concern, invariably, the negative effects of harmful practices cannot easily be contained within host community boundaries. Therefore, there are several international conventions, declarations and resolutions which have been made to regulate issues that affect the environment such as:

1. Declaration of the United Nation's Conference on Human Environment.[72]

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70 The OPEC Perspective in "OPEC's View on Climate Change" at their website <http//www.opec.org.> accessed December 21, 2024

71 Ibid

72 Stockholm, 16 June, 1972

2. UN General Assembly Resolution 3717 and Annex: World Charter for Nature[73]
3. The Rio Declaration on Environment and Development (Rio de Janeiro, 13 June, 1992)
4. Instrument for the Establishment of the Restructured Global Environment Facility (GEF) (Geneva, 16 March 1994)
5. Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March, 1989).
6. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (Amended London 27 - 29 June, 1990.. Nairobi 19-21 June 1991; Copenhagen 23-25 November, 1992.
7. The Kyoto Protocol to the UN Framework Convention on Climate Change (Kyoto, December 1997).
8. Principles for a Global Consensus on Management, Conservation and Sustainable Development of All Types of Forest (Rio de Janeiro, 13 June 1992)
9. International Convention on Civil Liability for Oil Pollution Damage (Brussels 29 November. 1969)
10. International Convention on the Establishment for an International Fund for Compensation for Oil Pollution Damage (Brussels, 18 December, 1971)

## 4.9 Legal Regulation of the Nigerian Oil and Gas Industry Operating Environment

Several laws regulate activities of the oil industry vis-á-vis the environment. These

[73] 28 October 1982

include:

1. The Petroleum Act, Cap 350 LFN, 1990 and its attendant regulations.
2. The Oil in Navigable Waters Act, Cap 331 LNF 1990 and its attendant regulation
3. The Oil Terminal Dues Act Cap 339, LFN 1990
4. The Associated Gas Re-Injection Act, Cap 26 LEN 1990
5. The Federal Environmental Profection Agency Act, Cap 131 LFN 1990

The above enactments have been repealed or subsumed in the Petroleum Industry Act of 2021.

### 4.10 The National Environmental Standards and Regulations Enforcement Agency Act (NESREA)

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act is a law that established the NESREA in Nigeria in 2007 to replace the repealed Federal Environmental Protection Agency Act (FEPA). The Act gives the NESREA the responsibility of protecting and developing the environment in Nigeria, including:

i. Enforcing environmental standards, regulations, and laws
ii. Conserving biodiversity
iii. Sustainably developing natural resources; and
iv. Coordinating with stakeholders on environmental matters

The NESREA Act also allows each state and local government in Nigeria to create their own environmental protection agency. States are also able to create laws to

protect the environment within their jurisdiction. The NESREA Act was amended in 2018 to give the NESREA more authority to protect and develop the environment. Some of the amendments include:

a. Increased penalties for environmental infractions

b. Allowing searches of premises without a warrant

c. Removing the representative of oil exploration and production companies from the NESREA governing council

d. review the conditions of appointment of some council members among other things.

The Scope of the Regulations made pursuant to the NESREA Act include provisions for:-

(a) maximum permissible limit values for certain pollutants in the air, avoid, prevent or reduce harmful wastes. Although FEPA has been repealed and replaced as stated above, some of the regulations made are still relevant. In this regard is the Harmful Wastes (Special Criminal Provisions) Regulations which provides that:

> … any injurious, poisonous, toxic, noxious substances and in particular waste emitting any radio-active substance if the waste is in such quantity, whether with any other consignment of the same or different substances as to subject any person to the risk of death, fatal injury or incurable impairment of physical or mental death.[74]

By the above provision, oil is a hazardous substance and therefore comes under the ambit of the sections which prohibit the discharge of such substances.

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74 Section 15 of FEPA Act, 1988 now repealed and replaced with the NESREA Act 2007 (as amended)

Other Regulations under the repealed FEPA which have been preserved under NESREA aimed at controlling pollution and protecting the environment include:

1. The National Policy on the Environment - which aims to provide a rational, practicable, coherent, comprehensive and sustainable approach to the pursuit of economic and social development. It sets policy goals, provides the concepts and stipulates the strategies which will lead to the procedures, and other concrete action required for launching the country into an era of sustainable development.
2. Guidelines and Standards for Environmental Pollution Control in Nigeria - this guideline directs industries to improve the quality of the environment and free it from pollutions and other environmental hazards. They serve more or less as recommended standards of environmentally good behaviour for industries, especially oil and gas companies.
3. The National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations - which prohibit the release of hazardous or poisonous substances into the environment beyond the limit approved by the Agency and provides for further requirements and procedures, e.g. in cases of accidental or unusual discharges, and it also requires industries to obtain permits for discharges that are beyond permissible limits.
4. Waste Management and Hazardous Waste Regulations - These regulations regulate the collection, treatment and disposal of solid hazardous wastes from municipal and industrial sources, and provide a comprehensive list of chemicals and chemical wastes by toxicity categories.

## 4.11 Environmental Impact Assessment Act

The Environmental Impact Assessment Act requires the government, its agencies, and private enterprises to take several significant steps before engaging in projects that may have environmental repercussions, from initial planning implementation and afterwards.

One of such steps is to compulsorily make in projects which may significantly affect the quality of the environment, a detailed assessment concerning the environmental impact of the project. This assessment will include adverse impact of the project on the immediate host environment.

This assessment will include adverse impact and an indication of cross-border effects. The law requires the publication of such assessment to enable interested parties to examine the environmental propriety and, if need be, object to the proposed project or activity before its commencement. It also stipulates various penalties for non-compliance and incorporates in its schedule, a list of activities or projects for which Environmental Impact Assessment EIA is mandatory.

## 4.12 The Harmful Wastes (Special Criminal Provisions) Act

This Act was enacted in the wake of an incident in which Italian companies with the

collaboration of some local officials and citizens, imported and deposited some highly toxic and radioactive waste materials on a farmland near the local port at Koko in Delta State. The Decree creates criminal offences in respect of movement, handling and disposal of toxic and generally harmful substances on any land or territorial waters or contiguous zone, or Exclusive Economic Zone of Nigeria.

### 4.13 Supervisory and Monitory Role of the Department of Petroleum Resources, DPR

The supervision and monitoring of the oil and gas industry is the main responsibility of the Department of Petroleum Resources, DPR of the Federal Ministry of Petroleum Resources. No law directly empowers DPR to undertake these functions. The NNPC Act specifically gives powers of regulation to the Petroleum Inspectorate which is the precursor of the Department of Petroleum Resources.

# CHAPTER FIVE

# SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

## 5.1 Summary of Findings

In the course of this work, efforts have been made to systematically analyse and stratify the position of the various stakeholders inherently contained in the superstructure of oil and gas producing communities which have been host communities to oil and gas producing companies in Nigeria. The following findings are discernible from the study:

i. That the prevailing relationship that exists between identified stakeholders in the oil and gas industry have been brought under review, including the issues of relevant conflicts both at the intra-community levels and between other relevant stakeholders and the controlling authorities who are saddled with the responsibility of legislative and policy framework aimed at the effective regulation of the oil and gas industry and those whose interests and rights may be affected in one way or the other.

ii. One of the fundamental observations made in this work is the apparent failure of earlier legal regimes to lay a solid legislative background to protect the very sensitive socio-economic interests of local and indigenous stakeholders, especially the oil and gas landowners who are reputed to have surface rights, at least, to the meagre compensation thereto.

iii. Nevertheless, the absence or near lack of categorical legal pronouncement concerning the respective interests subsumed in oil and gas producing

communities left much vacuum and lacuna in the host communities stakeholders question, especially at the grassroots level. On that account, the use of the term "host communities" became susceptible to ruinous arrogation, abuse, oppression, marginalization, power struggle, conflict of interest and political betrayal and subjugation of other members who are a legitimate part of the host communities' superstructure, especially the oil and gas landowners. This is because physical findings in the host communities revealed this fact.

iv. In other words, judicial interpretation and consideration should be ascribed to the respective interest blocks that constitute the "host community', where it specifically has to do with oil and gas. Such interpretation should spell out in clear and discernibly distinct terms of the extent of the respective obligations and socio-economic benefits accruing to the recognised stakeholders in the host communities.

v. In the course of this research, it was also found out that one of the issues hindering and slowing down growth and development in oil and gas producing communities, especially in the Niger Delta is the interference with the right of indigenous people to exercise extensive property right or control over their land and natural resources.

vi. Consequently, the ravaging and impoverishing effects of the Land Use Act[75] and its qualified fetters of state custodianship of all land in trust for the people, has led to a gradual erosion and corrosion of the socio-economic rights of the people for

[75] n8

nearly five decades now.

vii. In the course of comparing and contrasting the extant socio-economic rights of oil and gas landowners in the United States of America vis-à-vis that of their counterpart oil and gas landowners in Nigeria, it was observed that there was material difference between the laws and norms in these jurisdictions, the big difference being hinged on the dynamic nature of judicial evolution and sound culture of adherence to the rule of law as being amply espoused by the United States of America. This is in addition to the free enterprise system of America.

viii. Furthermore, the controversial ownership question of oil and gas needs to be properly addressed in a socially inclusive measure. This is because the ownership of oil and gas has not accorded any special right to the oil and gas producing communities till date. Moreover, findings in this study also revealed serious poverty and infrastructural deficit in many oil and gas producing communities. The people of these area are marginalized in the Nigeria polity.

ix. Moreover, relevant laws should be enacted to provide for 50% royalty payment from oil and gas exploitation to the oil producing areas in the region as it was prior to independence in 1960. The abrogation of the revenue formula of the derivation principle of 50% that then prevailed before the discovery of crude oil Nigeria and additional constitutional provisions and decrees have denied the people of oil and gas bearing communities of access to the natural resources (oil and gas) in their domain.[76] According to Amnesty International, Al[77] "it has been

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[76] Amnesty International Report (2006)

observed that oil and gasn companies operating in the region do not pay royalties to the people who are mostly affected by their operations, rather, what the people get are stipends from the practice of corporate social responsibility by the oil companies. This study therefore affirms that royalty interest and other oil and gas revenue and adequate compensation to oil and gas landowners and other stakeholders are not paid to the Niger Delta people because their Amnesty International Report (2006). land and resources were forcefully taken away from them by extant laws. This needs to change for the purpose of socio-economic inclusion.

x. On this score, the respectful accommodation of oil and gas landowners through government legislation and policies is here considered a sine qua non towards resolving the lingering and seemingly untractable discord in the oil and gas bearing communities, a problem as old as when oil was first discovered in Nigeria.[78] Consequently, it was made very clear in the submission of the Association of Family of Oil and Gas Producing Community (ASFOGAPCOM) to the Senate of the Federal Republic of Nigeria that "..it is the non-accommodating posturing of government laws that actually constitute the subtle but growing impedance to the realization of enduring peace in the Niger Delta Region.[79]

In other words, the enactment of laws to protect stakeholders in oil and gas

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77 Ibid

78 Oloibiri , 1957

79 Memorandum submitted to the Joint Senate Committee on the Petroleum Industry Bill, PIB, 2013

producing areas is important in order to move the Nigerian oil and gas industry towards global standards especially emergent direction of law in this regards. In the case of *Cayote Lake Ranch v. City of Lubbock*[80], the Texas Supreme Court decided, using the principle of "accommodation doctrine' that the groundwater rights of landowners is legally similar to mineral rights. In that case, the learned Chief Justice Michael Hecht wrote in his decision for the Texas Supreme Court "that there is similarities between mineral and groundwater estates. And because of their relationship with surface estate (surface rights) we are persuaded to extend the accommodation doctrine to groundwater interests".

Therefore, one step towards resolving this conflict in the oil and gas producing areas is the recognition of the property rights of landowners which is expected to give extended privilege to oil and gas landowners beyond mere surface right to subsurface right as well.

xi. Moreover, oil and gas companies, apart from their corporate social responsibility programmes should be made to enter into Agreement-Making in Benefit-Distribution with stakeholders in oil and gas producing communities. As practised in Canada, Impact and Benefit Agreements (IBAs) is an agreement entered into between indigenous communities for the development of local communities or host communities. This principle is known as Good Neighbour Agreements in the United States, but practically having the same effect of social

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80 Bonner Cohen, Institute for policy Innovation in Texas Landowners Victorious in Groundwater Right Case, August 10, 2016 at< www.ipi.org/ipi_issues/details> accessed December 17 2024

inclusion and accommodation of relevant stakeholders in the host communities[81]. This is because it has been agreed that agreement-making in natural resources development can bring about the positive social and economic transformation of indigenous people and by extension, local communities and landowners.[82]

xii. Furthermore, the signing of comprehensive agreements between government, the International Oil Companies, 10Cs, the Local Oil Companies, IOCs, and indigenous people has proven to be the best strategy in resolving conflicts that may arise during natural resources development.[83]

## 5.2 Recommendations

The findings of this study having revealed a rather poor working relationship between stakeholders in the oil sector and their host communities. Thus, based on the findings from the study, the following recommendations are humbly proferred:

a. That Impact Benefits Agreements (IBAs) should cover issues relating to employment, environmental protection, land use and reclamation, local business development and infrastructural development. Such an arrangement would not only bring about peaceful resources development between the oil companies and the indigenous stakeholders, it will also boost the host- government image

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81 N J Acutt, Perspective on Corporate Social Responsibility. The South African Experiences with Voluntary Initiative

82 L Godden, L, *et. Al.* 'Accommodating Interest in Resources Extraction: Indigenous People, Local Communities and the Role of Law in Economic and Social Sustainability' (26) *Journal of energy and Natural Resources Law, (*2008) *28*

83 J Warden-Fernandez, Indigenous Versus Development of Natural Resources, 2000) 22

internationally, because it reflects a strategic balance among interests of the three key stakeholders. Moreover, negotiation should involve all stakeholders and should be based on mutual respect, compromises, authentic goodwill and be fair or equitable.[84]

b. Impact Benefits Agreements should also have provisions for capacity and institution building to ensure for continuity after end of oil and gas production or closure. These provisions should be supported by legal tools such as capacity building for communities and landowners to be able to understand the dynamics, intricacies and supply chain for oil and gas development so as to better negotiate. Civil society organizations can take up this challenge to drive knowledge among the indigenous peoples because there are many technical issues involved in oil and gas development, globally speaking. In this direction, civil society organizations can focus on proper presentation of oil and gas information, accountability, negotiation skills and revenue management.

c. It is similarly recommended that although lack of infrastructure, scarce water, and environmental concerns are challenges to oil and gas producing communities in the course of oil and gas development, the fundamental issue of energy security, when properly addressed, will develop and strengthen community/landowner especially the benefit-sharing lessons learned from the United States of America. This can greatly influence and shape-up law and policy-making in oil and gas producing communities in Nigeria.

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84 n83

d. Furthermore, it is also here recommended that Oil and Gas Host Communities Management Commission should be set up for the specific management and development of the myriads of issues connected with oil and gas host communities in Nigeria. The Commission will, among other issues, ensure that appropriate sharing formula is put in place to determine the percentage or amount that should accrue to the various stakeholders based on the production quantum of oil and gas produced or extracted from their land. In addition, the meaning of compensation to landowners should be expanded to reflect current economic realities, and in line with international best practice.

e. While these suggestions, should be properly examined, relevant laws should be made to define the meaning, extent, limitation, applicability and otherwise in the nomenclature: "host communities" to put the heated controversy generated by the rather bogus term to rest.

f. Furthermore, the lenses of economic-cum security perspective with which the Federal Government often view agitation for resources control cannot bring enduring peace. This is because the issue of the criminalization of agitators and activists from oil and gas producing areas has proved futile and has even aggravated the outcome of such action. Rather, the government should employ a rather humane strategy aimed at addressing the perennial neglect and deprivation of the Niger Delta region. In doing this, oil and gas producing States should be given special stats, while funding for the Amnesty Initiative should be increased and strengthened.

g. Finally, there is the urgent need for the implementation of the much awaited Niger Delta Masterplan which experts consider one of the major ways the Niger Delta and oil and gas bearing communities' infrastructure can be greatly improved. And in the event of expressed grievances, the State in its palatial house of glass, should always toe the path of collective dialogue since the prospect of the human survival underlies the trappings of the struggle in most oil and gas producing communities in Nigeria.

## 5.3 **Conclusion**

In conclusion, oil and gas producing communities can be adequately protected through laws, policies and regulations which take into account their special status and not through claims of indigenous ownership. Various efforts and attempts being made by vocal organizations that advocate community ownership of natural resources are particularly aimed at addressing and redressing the current socio-economic imbalance, injustice, marginalization, oppression and exploitation of oil and gas producing areas, especially in the Niger Delta region.

Along this line, very important foundations and initiatives geared towards addressing the host communities issue as it relates to oil and gas should be built upon. For instance, documents such as the Ogoni Bill of Rights and the Kaiama Declaration are not secessionist in character, but are merely calls for inclusive and economic justice and development by a disadvantaged people.

While the Niger-Delta Masterplan should be implemented without delaying any further, certain provisions according special monetary recognition as participatory equity interest of oil and gas bearing communities in oil and gas companies, should be retained in the revised Petroleum Industry Bill, PIB which was rechristened Petroleum Industry Governance Bill, PIGB.

In Australia for instance, the *Mobo*[85] decision had recognised the land and water rights at common law of Australian aboriginals by reversing the terra nillus concept of State sovereignty over natural resources. This decision influenced the outcome of the Native Title Act 1993 with an amendment in 1998 that elevated aboriginal status and introduced agreement-making among developers and oil companies, the government and aboriginals.

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85 *Mobo v. Queensland (*No. 2) (1992) 175 CLR 1.

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