ACHIEVING SHORT TERM JUSTICE: THE NIGER DELTA OIL CRISIS

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SCHOOL OF LAW
Sharing the Oil and Gas CAKE

This unfortunate picture above depicts the ugly experience in oil-rich Niger Delta region. The critical question is how will Nigeria solve this ugly experience?
Table of Contents

| Title Page | .......................................................... | 1 |
| Table of Cases | .......................................................... | 6 |
| ABSTRACT | .......................................................... | 8 |
| DECLARATION | .......................................................... | 9 |
| COPYRIGHT STATEMENT | .......................................................... | 9 |
| ACKNOWLEDGEMENT | .......................................................... | 11 |
| ABBREVIATIONS | .......................................................... | 12 |
| INTRODUCTION | .......................................................... | 14 |
| 2. RESEARCH METHODOLOGY | .......................................................... | 20 |
| 3. RESEARCH QUESTIONS | .......................................................... | 21 |
| 4. RESEARCH STRUCTURE | .......................................................... | 21 |
| CHAPTER 1 | .......................................................... | 24 |
| THE HISTORICAL BACKGROUND AND OIL DISCOVERY IN NIGERIA | .......................................................... | 24 |
| 1.1 INTRODUCTION | .......................................................... | 24 |
| 1.2 THE PRE-COLONIAL ECONOMY | .......................................................... | 25 |
| 1.3 THE POLITICAL STRUCTURE | .......................................................... | 30 |
| 1.4 THE COLONIAL PERIOD | .......................................................... | 32 |
| 1.5 COLONIALISM AND ITS POLITICAL STRUCTURE | .......................................................... | 36 |
| 1.6 THE PERIOD OF OIL DISCOVERY | .......................................................... | 46 |
| 1.7 THE OIL-RELATED LEGISLATION AND ITS CONSEQUENCES | .......................................................... | 51 |
| 1.8. DEFECTS OF THE OIL-RELATED LEGISLATIONS | ................................................... | 55 |
| CONCLUSION | .......................................................... | 59 |
| CHAPTER 2 | .......................................................... | 61 |
| THE LAND USE ACT AND THE ROLE OF NIGERIAN COURTS IN OIL-RELATED LITIGATIONS | ................................................... | 61 |
| 2.1. INTRODUCTION | .......................................................... | 61 |
| 2.2 THE LAND USE ACT OF 1978 | .......................................................... | 62 |
| 2.3 SOCIAL CONSEQUENCES OF THE ACT | .......................................................... | 66 |
| 2.4 THE ATTITUDE OF NIGERIAN COURTS TO OIL-RELATED LITIGATIONS | ................................................... | 67 |
| (i) CORRUPTION IN THE JUDICIARY | .......................................................... | 69 |
| (i) TIME CONSTRAINTS | .......................................................... | 70 |
| (i) COMPENSATION CLAIMS | .......................................................... | 71 |
| CONCLUSION | .......................................................... | 80 |
| CHAPTER 3 | .......................................................... | 82 |
| THE EQUITY ISSUE AND THE POLITICS OF NIGERIA OIL ECONOMY | ................................................... | 82 |
| 3.1 INTRODUCTION | .......................................................... | 82 |
| 3.2 WHAT IS THE TERM ‘EQUITY’ | .......................................................... | 83 |
| 3.3 PARTICIPATION IN THE OIL OPERATION | .......................................................... | 87 |
BORROWING FROM JOHN RAWLS: TOWARDS A SHORT-TERM SOLUTION  
TO THE NIGER DELTA OIL CRISIS .......................................................... 183

7.1 INTRODUCTION .................................................................................. 183

7.2 THE APPLICATION OF RAWLSIAN METHOD: THE NIGERIAN EXPERIENCE .......................................................... 184

7.3 THE PRINCIPLE OF NO VETO .......................................................... 186

7.4 THE PRINCIPLE OF BORROWING ENVIRONMENTAL AGENCIES AND LAWS .................................................... 191

7.5 THE PRINCIPLE ESTABLISHING THE REJECTION OF VIOLENCE ................................................................. 192

7.6 THE PRINCIPLE OF SPECIAL COMPENSATION FOR SPECIAL BURDEN .......................................................... 195

7.7 THE PRINCIPLE AGAINST EXCESSIVE PROFIT .......................................................... 199

7.8 THE PRINCIPLE OF REVERSED COLONIALISM .......................................................... 201

CHAPTER 8 .............................................................................................. 205

CONCLUSIONS, SUGGESTIONS, RECOMMENDATIONS AND THE WAY FORWARD .......................................................... 205

BIBLIOGRAPHY ...................................................................................... 212

APPENDIX .............................................................................................. 220

Appendix 1. The Map of Niger Delta Oil-Producing States .......................................................... 220

Appendix 2: An illegal oil refinery near River Nun in Niger Delta of Bayelsa State .................. 221

Appendix 3: Oil Pipeline Explosion caused by oil theft at Arepo Village, in Niger Delta ........ 222

APPENDIX 4: High Risk Signage Constructed by Shell in Niger Delta .................................. 223

Appendix 5. Akpomena in a fishing boat with no fish .......................................................... 224

Appendix 6: A Man operating illegal oil refinery at river Nun in Bayelsa State of Niger Delta region .......................................................... 225

Appendix 7: A complete site of illegal oil refinery operated by unemployed youths at Bayelsa State, Niger Delta .......................................................... 226

Appendix 8: A typical example of polluted water caused by oil spill in Niger Delta ............... 227

Appendix 9: Another illegal oil refinery site in Niger Delta .................................................. 228

Appendix 10: This is a crude oil site where it is refined and then to be smuggled out for sale to foreign buyers at the border .......................................................... 229

Appendix 11: Security Officers looking for the oil criminals in the Creek of Niger Delta .... 230

Appendix 12: Oil Explosion incident caused by pipeline vandalization/Oil theft .......... 231

Appendix 13: A typical method of oil smuggling in barges/Canoe ........................................ 232

Appendix 14. Oil Storage pit constructed by oil smugglers .................................................. 233
Table of Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ereku v. the military Governor of Mid-Western States...</td>
<td>84</td>
</tr>
<tr>
<td>(LPELR)-SC.100/197</td>
<td></td>
</tr>
<tr>
<td>Allar Irou v. Shell-BP Development Company (Nig.) Ltd. No. W/89/71</td>
<td>87</td>
</tr>
<tr>
<td>R. Mon &amp; Anor v. Shell BP</td>
<td>91</td>
</tr>
<tr>
<td>Nvogoro v. Shell-BP...1972) 2 RELR</td>
<td>94</td>
</tr>
<tr>
<td>Seismograph Service Ltd. v. Etedgbe Onokpasa... (1972) 4 SC.123</td>
<td>96</td>
</tr>
<tr>
<td>Seismograph Services v Akpuruovo1974) 6.SC.119</td>
<td>97</td>
</tr>
<tr>
<td>Bodo Community in Ogoniland v Shell in 2008 oil spill</td>
<td>98</td>
</tr>
<tr>
<td>Attorney General of Lagos State v. Attorney General of the Federation</td>
<td>123</td>
</tr>
<tr>
<td>Diepreye Alamieyeseigha v. United Kingdom Metropolitan Police</td>
<td>127</td>
</tr>
<tr>
<td>Gbemre v. Shell Petroleum Development Co</td>
<td>129</td>
</tr>
</tbody>
</table>
LIST OF FIGURES

Figure 1: Evidence of oil Pipeline leakage belonging to Agip Oil Company........111
Figure 2: Evidence of Oil Spill in Niger Delta region.................................112
Figure 3: Report by Amnesty International on oil spill in Niger Delta.....113
Figure 4: Abundant Fish supply ( the Fish Basket of Gokana community )...113
Figure 5: Volume of Gas Flaring in the World........................................116
Figure 6: Shell’s Gas Flaring site in Niger Delta area...............................117
Figure 7: Shell flares gas at the back of residential area in Warri, Niger Delta...117
Figure 8. Gas Flaring site at residential areas...........................................118
Figure 9: Acid Rain on Fresh Water forest, and on aquatic ecosystems........119
Figure10: Poor state of education in Ogoniland, Niger Delta.................131
Figure11: A Typical School located at Shell quarters in OgunuNiger Delta....131
Figure 13: A well-armed Niger Delta Militant Group...............................134
Figure 14 Kidnapped Oil Workers by the Militants in Niger Delta region....134
Nigeria is currently the 10th largest oil producer in the world, accounting for about 2.2 million bpd in 2012, and it is the largest oil exporter in the African continent. Currently, the country’s oil resources generates at about $136 billion a year, accounting for more than 85 per cent of Nigeria’s revenue and approximately 90 per cent of her total exports. Given Nigeria’s substantial resources, it should be the jewel in the crown of Africa. But it is not.

The country is struggling with abject poverty, political instability, social insecurity and underdevelopment. The huge revenue derived from oil have not improved the living conditions of the Nigerian people because it has not been optimally and wisely utilized. Communities in the Niger Delta whose land bears the oil have remained politically ostracised, economically disempowered, ecologically frustrated and infrastructurally underdeveloped. This is owing to rent mismanagement, profligate spending, kleptomania and the bad polices of successive Nigerian government. The excessive oil profits are being taken away by foreign oil companies. Apart from that the foreign oil companies collude with corrupt government officials to disobey environmental laws. This development has caused monumental environmental degradation.

As a result of these prevailing circumstances, the Niger Delta region has resisted oil operations in their land by carrying out consistent protest, sectarian violence, and other forms of clandestine activities. For example, the militia groups have engaged in kidnapping of oil workers, destruction of oil installations, and extra-judicial killings. Hostilities from local communities have increased because oil exploration negotiations and bargaining process were unfavourable, unjust, lopsided and frustrating. In the light of these problems, the thesis argued that Nigeria’s oil resource is nothing but a curse and not a blessing. The situation has gone from bad to worse because too much emphasis has been placed on long term measures instead of short-term solutions. This is not more than scratching the surface while the substance of the problem is left untouched.

The centrepiece of this thesis therefore is how the Nigeria government can approach the Niger Delta oil crisis in a short-term course. The thesis argued that short-term justice will help to provide the immediate needs of tens of millions of neglected and impoverished citizens of Niger Delta region in the meantime while the government continue to work on long-term solutions to her problems. However, I shall weave my argument around a method of justice as propounded by John Rawls to produce specific short-term solutions that will solve the problem of economic injustice, political marginalization, social conflicts, and revenue distribution imbroglio. In this regard, we are not going to be discussing how we can permanently solve all Nigerian’s problems or how we can leap from dysfunctional state to a functional state overnight. Our focus in this thesis is going to be on what we can do to make things better now even if there is still work to do before complete justice can be implemented.

In attempting to develop solutions that will mitigate the Niger Delta oil crisis, I will apply John Rawls’s method of justice. Though many people have criticised Rawls’s theory as controversial, and inconsistent, this thesis is not going to join in the controversy or devote arguments to defend Rawls. I will assume that the Rawlsian method is at least plausible and a defendable way of developing specific principles of justice that will produce short-term solutions to the problem of distributive justice, impoverishment, and social conflicts. The idea will be to develop short-term measures that no member of the current conflicts can reasonably object.
DECLARATION

I wish to state that no portion of this research study referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other University or other institute of learning.

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DEDICATION

I dedicate this thesis to my Late parents Boniface Sunday Maduforo, Virginia Maduforo and my beloved junior brother Fabian Emeka Maduforo who died while this work was in progress.
ACKNOWLEDGEMENT

In particular, I would like to profoundly appreciate and thank my principal supervisor, Mark R. Reiff who not only inspired me to take this area of research in the School of Law, but also directed my work with painstaking and penetrating comments and criticisms that gave this work its tight focus and vigour. His unsurpassed knowledge of International law and Jurisprudence, his motivation and encouragement have been of immense value to the completion of this research. Mark, I am indebted to you. I must specially thank Jackson Maogoto, whose critical and analytic contribution was a great asset to this research. His moral support and his academic advice also encouraged was an added advantage to completion of this research.

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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRA</td>
<td>Alliance for a Green Revolution in Africa</td>
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<td>AIDS</td>
<td>Acquired Immunodeficiency Syndrome</td>
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<tr>
<td>BPD</td>
<td>Barrels Per day</td>
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<tr>
<td>BH</td>
<td>Boko Haram</td>
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<td>CBD</td>
<td>Convention on Biological Diversity</td>
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<td>CDC</td>
<td>Community Development Commission</td>
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<tr>
<td>DPR</td>
<td>Department of Petroleum Resources</td>
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<tr>
<td>ERA</td>
<td>Ecological Risk Assessment</td>
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<tr>
<td>FGN</td>
<td>Federal Government of Nigeria</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GGRF</td>
<td>Global Gas Flaring Reduction</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
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<tr>
<td>HRW</td>
<td>Human Right Watch</td>
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<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>ILO</td>
<td>International Labour Organisation</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<tr>
<td>MASSOB</td>
<td>Movement for the Actualization of the Sovereign State of Biafra</td>
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<tr>
<td>MEND</td>
<td>Movement for the Emancipation of the Niger Delta</td>
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<tr>
<td>MNOC</td>
<td>Multinational Oil Companies</td>
</tr>
<tr>
<td>MOSOP</td>
<td>Movement for the Survival of Ogoni People</td>
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<tr>
<td>NBA</td>
<td>National Bar Association</td>
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<tr>
<td>ND</td>
<td>Niger Delta</td>
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<tr>
<td>NDVS</td>
<td>Niger Delta Volunteer Service</td>
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<td>NDPR</td>
<td>Niger Delta People’s Republic</td>
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<tr>
<td>NIC</td>
<td>National Intelligence Council</td>
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<td>NNDB</td>
<td>Niger Delta Development Board</td>
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<tr>
<td>NNDC</td>
<td>Niger Delta Development Commission</td>
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<td>NNPC</td>
<td>Nigeria National Petroleum Corporation</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>NNOC</td>
<td>Nigeria National Oil Corporation</td>
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<td>NOAA</td>
<td>National Oceanic Atmospheric Administration</td>
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<td>NPC</td>
<td>National Population Commission</td>
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<td>OEL</td>
<td>Oil Exploration Licence</td>
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<td>OML</td>
<td>Oil Mining Licence</td>
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<tr>
<td>OMPADEC</td>
<td>Oil Minerals Producing Area Development Commission</td>
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<tr>
<td>OPEC</td>
<td>Organization of the Petroleum Exporting Countries</td>
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<td>OPC</td>
<td>Oodua People’s Congress</td>
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<tr>
<td>OPL</td>
<td>Oil Prospecting Licence</td>
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<tr>
<td>PTF</td>
<td>Petroleum Trust Fund</td>
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<tr>
<td>PIB</td>
<td>Petroleum Industry Bill</td>
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<td>SPDC</td>
<td>Shell Petroleum Development Company of Nigeria Ltd.</td>
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<tr>
<td>UNCC</td>
<td>United Nation Compensation Commission</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>UNDP</td>
<td>United Nation Development Programme</td>
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<td>UNFCC</td>
<td>United Nation Framework on Climate Change</td>
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<td>UN</td>
<td>United Nations</td>
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<td>US</td>
<td>United States.</td>
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<td>WC</td>
<td>Warrant Chiefs</td>
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<td>WCED</td>
<td>World Commission on Environmental and Development</td>
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INTRODUCTION

Nigeria is a resource-rich country, with huge agricultural exports that generated more than 40.7% of the total annual revenue. Agriculture was the mainstay of the economy before oil revenue began to double revenue from agriculture. The country’s main exports products include coca, rubber, timber, palm produce, groundnuts and cotton. Suddenly, agriculture was neglected because of huge revenue from oil. For example, in the 1980s, oil revenue provided 90 per cent of Nigeria foreign exchange earnings and 85 per cent of the government revenue. Nigeria extracts approximately 93.1 million metric tons of oil from the Niger Delta which account for 2.9% of world production and approximately 2.6 million bpd. This accounts for 90% of Nigeria’s foreign exchange earnings. In fact, by 2012, the International Monetary Fund (IMF) estimates Nigeria’s oil and natural gas export revenue at 96% of the total export revenue. In 2013, Nigeria’s budget was framed on a reference to oil price of $79 per barrel, providing a wide safety margin in case of price volatility.

Countries, like the U.S. depend on Nigeria’s oil for her energy generation because Nigeria’s oil is free from sulphur and has been classified as ‘light’ and ‘sweet oil’. Apart from her huge oil reserves, Nigeria plays a substantial role in Africa in areas of socio-economic assistance and regional peacekeeping operations. For example, Nigeria participated actively in peacekeeping operations during the Liberia civil war and successfully brokered peace between the warring parties in Liberia and some other West African countries. The oil boom era assisted the country to successfully execute capital project. But the military incursion into politics coupled with huge political corruption changed political climate and the economic stability of the country. . Nigeria has also engaged in manpower supply to neighbouring countries like Sudan, Gambia and Niger Republic. The country ought to be prosperous, and well developed than South Africa and

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3 Ibid.
Ghana. Apart from that, Nigeria ought to be an African success story and an economic force to be reckoned with among the international economies of the world.

But unfortunately, the country is crawling, backward and has been encumbered by political instability, insecurity problems, and poverty despite her rich oil resources and gas reserves which are estimated to be in the tune of 25 billion barrels and 130 trillion cubic feet\(^7\). The U.S. imports index\(^8\) of Nigeria’s crude oil indicates a serious decline and this trend has continued to show sharp fall in oil exports to U.S. and other European countries due to supply disruptions and shut-in production caused by incessant conflicts and insecurity problems since 2012\(^9\). The country’s estimated population according to world Population Review 2014 is 173, 611, 131 people\(^10\) and the population dynamics of the country indicates profound inequalities, inflated figures and disproportions, when analysed within the human development indicators. According to human development indicators, there are 23 doctors per 100,000 people; infant mortality rate of 112 per 1000 live births: maternal mortality of over 980 per 100,000 live births, and life expectancy at birth is projected at 50.1 years\(^11\).

The tens of millions of Nigerian citizen are suffering serious economic alienation, neglect, and political inequality\(^12\). The State is no longer democratic but totalitarian, and dictatorial. For example revenue distribution formula is arbitrarily done and it no longer based on the principle of derivation or according to individual needs. The State has consistently excluded the Niger Delta people in the political process, thereby making itself a colonising authority\(^13\). The Nigerian political class have adopted the imperialist style of administration and have created institutions that manage economic and political affairs for the benefit of the State and the political elites. For example the transition from colonial to post-colonial still embraces the vestiges of British colonial administration. The civil service system, and social institutions created by the colonists have remained the same even after political independence. The adaptation of this unfamiliar system of administration has heightened the level of social injustice in the country.


\(^8\) See the U.S Energy Information Administration (eia) Independent Statistics and Analysis April 10 2012.


The poor funding of education has greatly affected the supply of manpower and productivity level. The country’s educational system has been consistently unstable because of incessant teachers’ strikes and universities shut down. The students’ unrest and cult activities are on the increased because of government bad educational policies. The social consequences of these problems are enormous. It has caused brain drain and migration problems. Many Nigerians travel abroad for quality education at the expense of high tuition fees. Nigeria has almost the highest number of immigrants in Europe and US. The reason is nothing but job opportunities and for safer environment. The situation in Nigeria presently is unsafe and unstable and this has discouraged Nigerians abroad to come home and develop their country. It is therefore difficult to say that Nigeria is a well-ordered society as Rawls stated in his theory of justice. A well-ordered society according Rawls is a situation where social conditions favours everyone and where citizens are able to able by principles of political cooperation. It is not a society where citizens are driven by hunger, insecurity and political instability.

Nigerian youths are frustrated and disillusioned because successive Nigerian government have failed to recognise the part youths play in developing societies. The Niger Delta youths over a long period of time have been neglected, and excluded from the main stream of economic and political issues. The region does not have a substantial say in the distribution process and allocation of the oil wealth derived from their region. For example, the youth have not been considered in the sharing of political positions and have not been economically empowered through employment opportunities. This social alienation has led the youth to engage in clandestine activities like oil theft, smuggling and wanton destruction of oil facilities, kidnapping of oil workers for ransom and extra-judicial killings. The social consequences of these criminal activities are currently plaguing the country in different areas.

The criminal activities, militia and ethnic conflicts and most significantly the current religious carnage caused by religious fundamentalist in the north is in fact devastating to the country's economy. Today the instability created by the Boko Haram\textsuperscript{14} religious sect has

\begin{footnotesize}
\begin{itemize}
\item Boko Haram is a religious sect in Nigeria. The sect calls its people committed to the propagation of the Prophet Mohammed teachings and jihad. Boko Haram is translated to mean Western education is sin for the group’s rejection to Western concepts such as evolution and big bang theory. Boko Haram is so diffuse that fighters associated with it don't necessarily follow Salafi doctrine. Many foot soldiers are drawn from impoverished, religiously uneducated youth. Today they sect have rising against the state and against Muslims, Christians and Foreigners in the State. They have killed many innocent Nigerians and have kidnapped about 270 school girls in Chibok Borno State. (See the Council on Foreign Relation Paper on
\end{itemize}
\end{footnotesize}

\textsuperscript{14}
resulted in stagnation and serious insecurity problems. Foreign investors are discouraged and have decided to invest in neighbouring countries because at present Nigeria is unattractive and unsafe. Shockingly, this trend has increased the unemployment rate in the country.

Apart from the problem of insecurity and instability in the country, substantial numbers of Nigerians lack decent accommodation and basic social amenities that make life worthwhile. The Niger Delta region that generates about 95 per cent of the country’s revenue, lack social structures and have remained underdeveloped\(^\text{15}\). The region lacks basic amenities like good schools, portable water, health centres, good roads, transportation systems, and above all functioning communication system. The consistent agitations by citizens of oil-rich Niger Delta region for equitable distribution process and economic empowerment have been fruitless and unheeded. The lack of a negotiated and agreed moral principles and paradigm of social justice has affected the entire social structure of the country.

Sadly, the successive Nigeria government have tried to solve these problems by setting up ad-hoc committees, organising constitutional conferences, creation of more states and mediation organisations to provide long-term solutions to these problems. These attempts have failed because government have continued to fashion out long-term solutions to the problems but to no avail. Apart from applying wrong approach to the problem, the government lack the political will to implement her policies. The complexity and intricate nature of the country's problems require a process that will take into account on how to bring an immediate improvement of tens of millions of Nigerian citizens who are impoverished and neglected. The absence of elaborate and articulate social contract principles and the dearth of a coherent political philosophy based on some form of public principles of justice that has the capacity to take care of the aggregate interests of the Niger Delta people in particular and Nigerians in general gives us a serious concern to ponder on the way forward.

This is why we have to present a detailed analysis of political and economic problems confronting the country presently and why attempts to solve these problems have

failed. We believe that it is only when we have a rich sense of the difficulty of coming to long-term solutions of all these problems that a reader can see that some other different approach is required. The different approach we mean here is the centre piece of this thesis. My different approach is that instead of looking for long-term solutions or solutions that are going to turn Nigeria into a healthy functioning modern State, we take for granted that it is a dysfunctional State and would remain a dysfunctional State at least in the short-term. And all attempts and efforts to a leap from dysfunctional State to a functional have not been fruitful. This leap is not possible because most successful countries did not become economic and political giant overnight.

The leap has to be from dysfunctional to medium functional State them to functional State. In view of these predicaments, I shall propose short-term solutions and solutions that will provide the immediate needs of tens of millions of pauperized and abandoned citizens of Nigeria, while the government continue to work on long-term solutions to our problems. However, we must understand that in the real sense of it, short-term solutions do not depend on long-term solutions being implemented. My point is, in the circumstances like those in Nigeria, it is reasonable and wise that we look for short-term solutions and as well as long-term solutions.

However, we are not arguing that the search for long-term solutions should be abandoned; rather we are simply arguing that the idea of searching for only long-term solutions to Nigeria problems is not the better option and should be rejected for now. Therefore, method I shall use in this thesis to produce these short-term solutions is the Rawlsian method. The Rawlsian method serves as the methodology and the centrepiece of this work. Here I shall make a distinction between Rawls own theory of justice which is produced by his method and his method. Rawls theory of justice is a long-term solution, so in this thesis we are not going to his theory because it does not provide us with what we are looking for in the discourse of Niger Delta oil crisis.

The reason why we are going to use the Rawlsian method as the bedrock of this thesis is that his method is designed to produce solutions that reasonable people cannot reasonably object. His solutions are based on the idea that reasonable people do agree on issues if they want to remain reasonable so as to advance their general good. This is why we are using Rawlsian method. We are using Rawlsian method because we believe it is the route to take in coming up with solutions that all the various parties with different interests and motivations would agree to if they simply behave reasonably. Other methods of
determining principles of justice are not based on the idea of hypothetical consent, maybe defensible, but because those principles are arrived in a different way, there is no guarantee that those principles of justice would be acceptable to people who think they can do better in other ways.

Given the focus of this thesis, the Rawlsian method, though not the only theory to use, we believe it best suit our research study because it plausible and defensible. The method has the ability to provide us with standard principles of justice that guarantees constitutional rights that protect basic rights and liberties, and guaranteeing fair equality of opportunity. There is, of course, probably no contemporary figure in political theory that has had more written about him than Rawls. But much written about Rawls concentrates mainly on his theory, not his method. Criticisms of his theory are not relevant here because we will not be using his theory, only his method (i.e. asking whether free and equal people in the Original Position behind a veil of ignorance would agree to the policies we propose).

In that respect, we are not going to go into details of all those criticism and defences of Rawls theory, or repeat all the arguments for and against Rawls. We will defend his method, not by arguing that it is the only method available, or that it is the only way to produce the just solutions, but simply because his method provides a plausible way of generating principles of justice that reasonable people could not reasonably reject. Unfortunately, other methods do not. And even here, my defence of the Rawlsian method will be brief. First because this is all that is necessary and moreover, many people have already defended the Rawlsian method at length. Second, because a full defence of the Rawlsian method would require a thesis in itself so it is essential for us to concentrates on what will enhance our argument and justification for using Rawls’ method and not his theory of justice.

Finally, because of the need to move forward with my argument, it become imperative to show that Rawls’s method is a rational way to go given that our objective is to produce policies to which reasonable people could not reasonably reject. Against this backdrop, this thesis is going to apply John Rawls’s method of justice to produce principles of justice that is designed to provide specific short-term justice that parties or representatives in the Niger Delta oil crisis cannot reasonably reject. The essence and justification of using Rawlsian method of justice is because it is not just a method, but one that is plausible and defensible that parties in the oil conflicts who are interested in advancing their general good cannot reasonably object.
2. RESEARCH METHODOLOGY

This thesis is primarily engaged in the expository analysis and presentation of the socio-economic and political conditions in the Nigeria’s Niger Delta region and the effects of the lack of proper, well-defined distributive process; lack of resource allocation formula governed by a public conception of justice or one based on social justice ideals, and lack of peaceful cooperation between the Niger Delta people, the foreign oil companies and the Nigerian government. The method clearly entails the presentation of salient issues about Niger Delta region in concise and unbiased terms. Such issues like the historical antecedents of the region, political marginalisation and economic disempowerment, moral decadence and social injustice among other things.

In order to understand the need to pursue short-term rather than ( or rather in addition to) long-term solutions to the Niger Delta crisis, it is necessary to have a rich understanding of the history of the conflict; and all the things that have been tried and failed, the large number of parties involved and the diversity of their interests. Only against this backdrop can we see why the search for long-term solutions is unlikely to be fruitful, and only with such knowledge can we see why there is a need for short-term solutions if people’s lives are to be improved while the difficult fight for long-term justice continues.

The methodology I shall adopt in this research is the Rawlsian method. This method will help us develop proposals for instating short-term justice to address issues of economic injustice, political marginalisation, and social conflicts that are prevalent in the Niger Delta discourse. Nothing about what I may be going to propose forecloses the continuing search for long-term solutions to Nigeria’s problems. I merely argue that we should not search only for long-term solutions. If we are going to improve the Nigerian situation, and create an atmosphere where long-term solutions might actually be able to be agreed and imposed, we need to focus on short-term justice as well.

Similarly, I shall also adopt a comparative and theoretical approach in evaluating Rawlsian methods. We will make argument in such a way that reveals our justification and appropriateness for choosing the Rawlsian method instead of other methods. It is therefore our utmost interest in this research to fully employ John Rawls method of justice to come up with some short-term recommendations for resolving the oil crisis in the Nigeria’s Niger
Delta. Our choice of John Rawls thought experiment as our methodology for the identification of principles of justice that will resolve both the economic and socio-political problems of Nigeria is the fact that it has the capacity to resolve principles and paradigms of social justice in a fair and just manner.

To achieve this, the thesis is structured into eight chapters.

3. RESEARCH QUESTIONS
The following fundamental questions are raised by this Thesis:

**First**, to what extent can we say that the colonial legacy and its attendant problems are responsible for the oil crisis that has plagued Nigeria for four decades or more?

**Second**, is the root-cause of economic injustice, social conflicts in Niger Delta that of revenue mismanagement, unfair oil-related legislation, environmental degradation or both?

**Third**, Can we use John Rawls’s method of justice to provide a set of short-term solutions to the socio-political and economic problems that has plagued the Nigeria’s Niger Delta region in terms of Oil Crisis?

To achieve this, the thesis is structured into eight chapters.

4. RESEARCH STRUCTURE

**Chapter one** examines the historical antecedent of Nigeria, her political and economic development. The chapter also carries out an analysis of pre-colonial economic and political development of Nigeria and then went further to discuss the institution of colonialism in Nigeria and analyse the common notion that the period of colonial rule inadvertently contributed to the present problems plaguing the country. The chapter draws the attention of the reader to the thinking and actions of colonial leaders during scramble and partition of the African continent. From this expose, we discovered that colonial cum imperialist administration was not after all in the interest of Nigerian people but really the economic and socio-political interests of the colonial regime.

The chapter discusses the era of oil discovery; the oil-related legislations, the defects and challenges of the legislation and how the legislations affected the economic and socio-political life of the Niger Delta people.

**Chapter two** focuses on two topics namely; the Land Use Act 1978 and the role of Nigerian courts in oil-related litigations. The core of the treatment of the topic, Land Use Act 1978 is to reveal whether the idea behind the promulgation of the Act conform to the conception of justice based on Rawlsian method of justice. While articulating this point, I
shall highlight the fact that the Act was not established in good faith and that the role of Nigerian courts and judges in oil litigations undermines Rawls’s idea of a just and well-ordered society. In this chapter therefore, I presented my perspective on the fundamental ideas underlying the application of Rawlsian method of justice in this research.

Chapter three focuses on the equity issues in relation to Nigeria political economy of oil. Here again, the suitability of the Rawlsian method of justice was used to address some equity issues like participation of the oil-producing states in the Nigeria oil economy, development issues, employment opportunities and other social justice matters that form the bases of using Rawlsian method in this research. The chapter proceed to discuss some of the fundamental issues that deal with Rawls conception of justice such issues are social rights and equal opportunities as it applies in a well-ordered and structured society. The chapter examines; distributive justice, the revenue allocation process, compensation imbroglio, minority question and other related matters that deals with Rawls principles of justice. The basis for this is to show how Nigeria situation fits into Rawls’s idea of justice.

Chapter four analyses; oil exploration and environmental degradation, social conflict and its root causes, and the social consequences of the oil conflicts in the Niger Delta region. The chapter maintained that the conditions in the Niger Delta region already provide the necessary template that can fulfil and justify the condition for the suitability of the use of Rawlsian method of justice in this research. The chapter argued that a well-entrenched environmental laws; a well constituted conflict resolution board is what the country needs to overcome her current environmental degradation and its social consequences. To achieve this virtue, Rawlsian concept of Original Position will be the route to take in providing short-term solutions to these social problems

Chapter five presented a general overview of John Rawls’s theory of justice and articulates how he uses his method to produce principles of justice that reasonable people cannot reasonably object. To achieve this purpose, the chapter was divided into three sections and each section addresses one key issue. The first section analyse Rawls theory of justice, the second section examines Rawlsian method while the third section articulates what he uses his method to generate. The essence of making these demarcations is to show the difference between Rawls’s theory of justice and Rawlsian method. His method is the tool and bases for our argument in this thesis.
Chapter six focuses on the criticisms of the Rawlsian method and some defences by and in favour of Rawls, and justification for Rawlsian method in my research. Many critics of Rawls have not been able to appreciate the distinction between Rawls theory and his method, and this has continued to raise controversies and criticisms. The chapter extensively highlighted this area in order to provide a concise understanding of Rawlsian method if not other theories. While doing this, the chapter discusses other theories like that of Thomas Franck theory, and the consequentialists’ theory. The essence of discussing other theories here is to show the appropriateness and suitability of every theory of justice that might be used in a research of this kind.

Chapter seven is the application of Rawlsian method to Nigerian situation. Here we used Rawlsian method to generate specific principles that provide short-term solutions to the Niger Delta oil crisis. The core discussion in this chapter is to produce specific short-term justice or measures with significant link to what Rawls called ‘Original Position and the veil of ignorance. The Original Position and the veil of ignorance is hypothetical thought experiment and the strategy here is to construct a method of reasoning that models abstract ideas of justice. The Original Position and the veil of ignorance focus on citizens who come together to choose principles of justice that will be fair and just to everyone. The chapter argues that the principles of justice generated by representatives in the Original Position behind the veil of ignorance will be one that reasonable people would not reasonably reject. The outcome of the thought experiment will assist us make concrete recommendations in our next chapter.

Chapter eight provides concrete recommendations and suggestions that link to the Rawlsian method of justice. Within the method itself, are conditions and steps that must be visible for the method to work. If we all agree that the conditions derived from Rawlsian method are hypothetical and non-historical, we can then conclude that Nigeria can achieve Rawlsian society if the concrete recommendations, suggestions, and proposals presented in this thesis are judiciously followed.
CHAPTER 1

THE HISTORICAL BACKGROUND AND OIL DISCOVERY IN NIGERIA

1.1 INTRODUCTION

The history of oil discovery in Nigeria and its exploration over the past four decades has immensely increased the wealth of the country, but not without burdens and frustrations. It is shocking how often countries with oil and other natural resource wealth have failed to grow or develop fast than countries without oil and other natural resources. Nigeria is no exception to this problem. This chapter therefore discusses the State of affairs before and after the discovery of oil in Nigeria. The chapter discusses salient issues like the pre-colonial period the colonial era and the post-colonial dispensation in Nigeria. The essence is to show the level of economic and socio-political development in Nigeria before and after political independence on October 1st 1960. The chapter analyses the economic life and political life of the Nigerian people and what it was like before the country came under imperialist government.

Turner argued that the Nigerian State was dominated by comprador officials who perform a kind of gatekeeper function by allowing the entry and exit of goods for the benefits of their masters\textsuperscript{16}. Turner’s view point is not far-fetched and I shall substantiate his argument in my analysis of colonial administration and the imperialist’s business involvement in Nigerian economy. The chapter went further to discuss the Land Use Act of 1978 and its social consequence of property ownership and land tenure system.

I shall show that the controlling role and overbearing economic interest of the colonial authority exerted tremendous influence on the Nigeria’s socio-economic development. For example, the colonial administration with overbearing economic interests resulted in the super-exploitation of Nigeria’s natural resources. The administration was inadvertently responsible for the hydra-headed problems that have persistently plagued the country at present. However, this does not preclude that economic and socio-political change is not possible. I shall proffer a reasonable and plausible method that will help us resolve the hydra-headed problems in a short-term course.

Therefore the historical explanation for the current development in Nigeria is one of the central analytical tasks in this chapter. The recommendations and suggestions I shall make at the end of my thesis will have the capacity to bring about positive changes to Nigerian State. First, I shall discuss the pre-colonial economy of Nigeria and show how it gained international currency in the early development of the country. Second, I shall discuss the colonial rule and its impacts and third I shall discuss the discovery of oil in Nigeria and its consequences on Niger Delta people and Nigeria as a whole.

1.2 THE PRE-COLONIAL ECONOMY.
Nigeria was largely an agrarian society\(^\text{17}\) and agriculture was the mainstay of the economy before oil became the chief source of revenue. Despite lack of modern farm implements which undermined the potential for large-scale production, Nigeria emerged in the first decades of her independence as a leading exporter of many agricultural commodities. For example, Nigeria exports cocoa, groundnuts cotton, palm oil, corn, rice, sorghum, millet, rubber etc. These agricultural products contributed immensely to the economic development of the country. The country was a leading exporter of palm kernel, and largest producer and exporter of palm oil and the second largest producer of cocoa in the world\(^\text{18}\).

This opened the shores of the country so much so that commercial activities increased and the country became centre of economic attraction to European traders. The market status of the country’s raw materials and trade openings were remarkable and high in demand. As a result of the country’s rich economy, it had no need to import food from foreign countries. It is worthy to note therefore, that the economic history of Nigeria was a prosperous one given its agricultural and other economic advantages that the country is endowed with. Before the country was colonised by the British government, the various nationality groups that currently make up Nigeria were largely an agricultural people\(^\text{19}\). The people were food self-sufficient and produced a variety of commodities that were exported overseas\(^\text{20}\).

Notwithstanding, the population boosted food production because more people were engaged in agriculture, handcrafts and artistic works and this helped the country to be develop economically at her own pace. For example, the indigenous craft technology was

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\(^{18}\) Ibid.


\(^{20}\) Ibid.
highly regarded and demanded in neighbouring countries and in Europe. The early crafts include leather works and pottery from Abuja and Oyo. Bronze casting and brass casting from Oyo and Benin generated enormous economic benefits to Nigeria. Ehinmore argues that apart from strong socio-political structure, economic strength, and abundant natural resources, that the handcrafts\textsuperscript{21} production made the country prosperous. But unfortunately, this situation did not last due to over dependence on oil.

The Niger Delta people specifically played a prominent role in agriculture and food production. The agricultural pedigree of the region was not in doubt because it was one of the major attractions of the European traders. The economy of the people rested squarely on farming, fishing, hunting, local industries and trading activities. The most outstanding physical features of the area are the two great swamps running northeast and southwest with a relatively highland between them\textsuperscript{22}. Geographically, the topography of region is flat due to annual flooding. Also, the geographical location gave the region the name of a natural capital of commerce. This is because of its numerous sea ports and untapped raw materials.

By the name natural capital of commerce we mean trade in agricultural products like salt, craft, cotton, groundnut and cocoa and not trade in human beings. Although trade in human beings had a harmful effect on the people, it was clear that when it was abolished, agriculture become the chief source of the country’s revenue. The influence of these agricultural products was substantial. It launched the region into successful economic activities. Trade and commerce flourished because the Niger Delta people predominantly serve as middle-men between the European merchants and the people of the Nigerian interior. As trade relationship was rapidly growing, the Niger Delta people continued to play middle-men role. It is worthy to note that the main commodity that came to replace the economic vacuum left by the trade in human beings was palm oil produce in the region. The palm oil produce gave the region its envious name; the Palm Oil rivers to the Niger Delta\textsuperscript{23}. The oil palm that produces the palm oil is an indigenous plant not only to the people of Niger Delta region of Nigeria, but also to all the people of tropical Africa\textsuperscript{24}. It is from the oil palm tree that palm oil is derived. It yields two distinct oils namely, palm oil and palm


\textsuperscript{22}Hubbard, J. W. (1948). The Sobo of the Niger Delta, Zaria, Nigeria, Gaskiya Corporations.


Before the British conquest and subsequent establishment of colonial rule in the region, the people within the Niger Delta area “were highly involved in the palm oil trade. The region, experimental plantations began early as 1932 while the first oil mill was established in 1949\textsuperscript{25}. The economic system of the Niger Delta people at the pre-colonial period revolved around the palm oil produce. With time in the history of Niger Delta people, it will be recalled that palm oil and palm kernel were the highest and earliest commodities exported. The volume of exportation was due to high demand of the commodity in Europe.

The demand for palm oil in Europe increased tremendously after the industrial revolution, and the development of the railway industries. For example, palm oil was used for the manufacturing of soap, candles, margarine and spreads\textsuperscript{26}, while in Europe; it was used for the manufacturing of pharmaceutical products\textsuperscript{27}, oleochemical products, textile, plastic and cosmetics\textsuperscript{28}. Between 1865 and 1910, the export of palm produce doubled from West Africa as Nigeria took the lead\textsuperscript{29}. By 1900, palm produce constituted 89 per cent of Nigeria’s total export. But this trend began to decline when British firms began to agitate against the role of middle-men. This agitation was heightened by the demand for palm oil for candles and as a lubricant for machinery. The British firms therefore argued that the middle-man role did not create enough room for them to meet up their targets in palm oil trade.

As time progresses, the British traders became agitated with the activities of the middle-men. According to them, this system of trading was unfavourable and unprofitable. They believed that the middle-men make undue profit and still deny them direct access to the farmers and the village communities. In 1884 for instance, British firms felt that King Jaja of Opobo\textsuperscript{30} middle-man role between the European merchants and the produce sellers in the interior\textsuperscript{31} was no longer productive. The British firms felt that Jaja was profiting unduly at their expenses\textsuperscript{32}. The British merchants thereafter came together and unilaterally

\begin{itemize}
  \item \textsuperscript{25} Ibid.
  \item \textsuperscript{28} See Malaysian Oil Palm Industry at PalmOilWorld.org Available at \url{http://www.palmoilworld.org/index.html} accessed 25/08/2014.
  \item \textsuperscript{29} Aghalino
  \item \textsuperscript{30} Judo Jubogba popularly known as Jaja of Opobo was born about 1821 in Amaigbo village in Eastern Nigeria. He was described as successful business man and accomplished entrepreneur in Africa. He started the palm oil business and played the middle-man role between the European merchants and the produce sellers in the interior. But he fall out with British firms and was over thrown by the British imperialist government.
  \item \textsuperscript{31} See the Journal of Pan African Studies Vol. 3 No.7 December 2008.
  \item \textsuperscript{32} Fajana, A., Briggs , A. J. (1976). "Nigeria in History". Ibadan, Longman.
\end{itemize}
fixed the price of produce but King Jaja retaliated by breaking into the export trade which was exclusively preserved for the European firms. Moreover, the trade depression in England from 1880s galvanised the British traders into assuming that their profits would increase phenomenally if they could checkmate Jaja’s middle-man’s role in the eastern Niger Delta. This thinking is exploitative, greed and selfish.

Consequent upon this development is the serious drastic measures made to dislodge the middle-men role in the trade relationship. And one of the tactics used by the merchants to break down the resistance of the local middle-men was the method of instigation. Arms and ammunition were given to one group to fight another. By so doing the two groups were maintained in a continual State of dispute and violence. This made it difficult for the people to form a common front against their common adversary.

In the midst of communal strife, the Niger Delta region was attacked by the British Navy and was consequently overtaken. The region’s successful traders were displaced and subjugated to the British economic policies. The conquest let to economic deprivation, elimination of the middle-men, corruption and the destruction of the social-cultural background of the Niger Delta people. It is therefore obvious that the colonial regime funded violence and sponsored inter-tribal wars in the Niger Delta region. The conflict paved way for the regime to exploit the people the more. And it is unfortunate to see that this ugly development has persisted even after political independence. For instance the Niger Delta region which is one of the major focuses of this research has remained marginalised and neglected in spite of numerous government committees on minority questions. Such committees are Willink Commission, Oil Mineral Producing Areas Development Commission (OMADEC), Niger Delta Development Commission (NNDC) and some others. Unfortunately these commissions have failed to solve the Niger Delta problems because they pursued long-term measures instead of short-term objectives. Again these bodies were established with underlying colonial political and economic undercurrent.

The needs and aspirations of the oil-producing communities remained unaddressed even when these commissions were formed. This situation incapacitated the economic progress in the Niger Delta region. For example, the devastating colonial conquest and quest for complete control of commercial activities in the region by British firms dealt a serious

33 Ibid.
34 Ibid.
36 Ibid. p. 20
blow to the development and economic progress of the people of Niger Delta. It is argued that from the very first time Nigeria signed the Protection Treaty Bill with the British imperialist government things began to fall apart. Initially, the Protection Treaty took off on friendly level and was cordially conducted.

The Treaty vigorously maintained existing trade relations with British government with underlying development objectives. For example, Article VI of the 1884 Treaty states that the subjects and citizens of all countries may freely carry on trade in every part of the territories of the Kings and Chiefs party hereto, and may have houses and factories. But the principles underlying the treaty were not upheld because of greed and corruption on the side of the British firms. When the treaty collapsed as result of overbearing economic interest perpetuated by the imperialist government, it led to boundary disputes, ethnic rivalry, claim and counter-claim of places like Warri, and Itsekiri and importantly economic deprivation. It is significant to note that the treaty disorganised the Nigerian polity and resulted in structural problems and political instability. In the face of these complex problems, it is clear that the Protection Treaty was promulgated in bad faith and biased in favour of British imperialists’ government.

Apart from agriculture and how industrious Nigerian people were, the geographical or to put it succinctly the conspicuous location of the Niger Delta people made production of staple food abundant in Nigeria. It is often said that in terms of investment, location is everything. The Niger Delta region has been a beehive of commercial activities because the area is blessed with abundant natural and mineral resources. For example, the sea ports, and viable palm oil produce made the region a centre of economic activity. The area attracted European traders, and immensely assisted the European-run plantation established in Central Africa and Southeast Asia and the world trade in palm oil. The value and the economic pedigree of the Niger Delta have remained consistently attractive. But unfortunately, the conquest and struggle for economic gain pursued by the European traders caused unprecedented hardship to the Niger Delta people.

The impacts of the conquest resulted in economic strangulation, frustration, and destruction of the traditional farming system of the Niger Delta region. It was unfortunate that Eurocentric scholars misinterpreted this important element of the pre-colonial economy

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of the people. They claimed that because of the household mode of production, the economy was therefore inefficient and that the main run of economic activities never realised their economic capacity; that labour was underutilized, technical means not fully engaged and natural resources left untapped\(^{39}\). This claim cast a shadow of itself and I shall attempt to discuss it in my subsequent chapters.

1.3 THE POLITICAL STRUCTURE

It is very difficult to isolate economic affairs from socio-political issues in Nigeria especially before colonial administration. Both of them no doubt were determining factors in the socio-economic and political development of Nigeria. Although one could say that the political structure of the country at the pre-colonial period was nascent, it can be argued that the pre-colonial structure created strong ties among regions until the colonial conquest of Nigeria. Certainly, before colonialism, Nigeria was an egalitarian society and communalistic in nature. By egalitarian we mean a society that recognises few differences in wealth, power, prestige and status (\textit{anthromorphenics})\(^{40}\). The Nigerian society was then based on the belief that everyone is equal and everyone exercises equal social, political and economic rights, and opportunities similar to what obtains in the classical socialist society\(^{41}\). Everyone accepts that they belong to the same community while the elders are seen as political representatives.

Again, the pre-colonial period was not static where all social and political systems existed in a finished and final form\(^{42}\). There were kingdoms, empires, stateless, principalities, city-states and acephalous societies\(^{43}\). This type of political arrangement falls within two broad categories namely the Centralised State and the Stateless Society. The Centralised State is characterised by the existence of one hereditary ruler. In some other societies this type of arrangement is called gerontocracy\(^{44}\) system of government. Gerontocracy political institutions shape the incentives that govern the conduct of the young. Whereas they may


\(^{41}\) Ibid.


\(^{43}\) Ibid.

\(^{44}\) Gerontocracy is most conceivably political phenomenon. In Western socio-political thought, gerontocracy is a political system, a form of oligarchical rule, whereby a small group of elderly individuals are in control of power. It became unpopular due to its peculiar nature; it is a system of rule by old men. It was a common political practice in the communist states, especially the then Soviet Union ( Gerner and Hedlund 1989. 346).
prefer to avoid their obligations, given the power of the elders, the young are unlikely to choose to do otherwise. So within a political gerontocracy, the elders control sufficient sanctions to make it in the interests of the young to keep their pledges. The dynamic feature of in respect of centralised states is best exemplified by the experience of the Hausa states because by the end of 19th century they had already developed Centralised State systems.

The Stateless society is characterised by no formal, elaborate and highly visible State structures and specific functions hence they are referred as stateless societies. Such societies were found among the Igbo, the Ibibio, the Idoma and Tiv people. The country’s democracy at this stage was still developing, yet it was promising, participatory and inclusive in nature. There was social cooperation devoid of ethnic cleavages. For example community leaders and village heads were people of integrity, honest, and knowledgeable in the socio-cultural demands of the people. The power to initiate political policies resides with the village heads and decisions were taken in an assembly of the entire community or by broadly representative Council. There was social cooperation and everyone exercise his or her basic rights and duties.

Overall, this section stressed the importance of agriculture to the independent development of Nigeria. In particular, the significance of palm oil industry to the people of Nigeria Delta cannot be overemphasised. Following the abolition of slave trade and the commencement of legitimate trade essentially in palm oil, agriculture production became increasingly oriented towards the satisfaction of external interests. The impacts of the external interests created diverse ethnic regions. Through middle-men and cordial inter-ethnic relations in a region that was as ethnically diverse then as it is now, the Niger Delta kingdoms on the coast ensured the supplies of the commodities from the hinterland. It is worthy to note that the trade relations though somewhat cordial, failed to ensure unity and

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48 Ibid.
peaceful ensure unity and that unity is still needed today for the development of the entire oil-producing region in Nigeria.

The pre-colonial political and economic structure was rapidly growing and favourable until it was destroyed by the overbearing economic interests of the European traders’ in particular British imperial business comparator. The structure encouraged social cooperation which according to John Rawls, ensures that individual needs are coordinated so that their activities are compatible with one another and they can all be carried through without anyone’s legitimate expectations being severely disappointed. This conception is realised through certain social institutions as represented in the case of Nigeria by the kingdoms, states, empires, and hierarchy of rulers. These social institutions exercised political and legal functions and assigned individual rights and liberties and define men’s right and duties. So the argument that Nigeria’s political structure was undemocratic and underdeveloped is unacceptable and does not justify the establishment of colonial rule in Africa and Nigeria in particular.

1.4 THE COLONIAL PERIOD
Colonialism is described by Young as forms of subjugation of a group of people in a geographical cohesion or by another group of people. This history conjures images of slavery, untold and unnumbered deaths from oppression or neglect, enforced migration of millions of Africans and Arabs, Asians, and Europeans, appropriation of territories and land, the institution of racism, destruction of cultures and superimposition of other socio-cultural values. Every colonised country in the world including Nigeria carries scars of these phenomena in varying degrees of violence, defiance, struggle, and suffering of individuals that represented values and ideas of communities, equality, self-determination and human dignity the fought for.

No doubt therefore, that the colonisation of Africa (Nigeria) by European countries was a monumental milestone in the development of Africa. We Africans consider the impact of colonisation on us to be perhaps the most important factor in understanding the present condition of our continent (Nigerian states), and of the African people. So, a close scrutiny of the phenomenon of colonialism is necessary to appreciate the degree to which it

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influenced not only the economic and political development of Africa but also the way we Africans perceived ourselves.

In our previous section, we discussed the pre-colonial period of Nigeria and how the country’s economic activities attracted European traders until the colonial administration overrun the entire country. In this section we are going to discuss colonialism and its socio-economic and political consequences. Suffice it to say that the consequence of colonial administration on Nigeria in particular, and Africa in general, is a subject of controversy. Opinion is divided on how to access the place of colonialism within the larger context of African history. Some scholars like P.C Lloyd\textsuperscript{54}, L. H. Gann and P. Duignan\textsuperscript{55} and M. Perham\textsuperscript{56} have assessed the impact of colonial rule on Africa as a blessing to the continent. On the contrary, Marxist scholars exemplified by Walter Rodney, considered the gains of colonialism as nil\textsuperscript{57}. Rodney viewed colonialism as a “one-arm bandit\textsuperscript{58}”. While other scholars like Walter Ofonagoro still see colonialism as a mixed blessing\textsuperscript{59}. Most of these generalizations were arrived at after the analyses of the consequences of colonial administration on the major Mega-states in Africa\textsuperscript{60}.

When colonial rule was formally established in Nigeria in 1900\textsuperscript{61}, many perceived it as mere trade relationship between the Europeans. As time progresses, its establishment was seen as part of British imperial expansion with ultimate focus on exploitation of raw materials, minerals, and foodstuffs important to western industrial development. The common notion that colonialism was a development intervention strategy and an enlightenment programme to develop Nigeria in particular and African in general, is a claim aimed at over-exaggerating the fact. Ali Mazrui’s three broad reasons for European exploration of the African continent support the claim that colonialism was not actually a development mission but virtually an exploitative mission.

\textsuperscript{56} Perham, M., Ed. (1948). \textit{Mining, Commerce and Finance in Nigeria}. London, Faber.
\textsuperscript{58} Ibid.
Mazrui maintained that colonialism was based on imperialism, the desire by European patriots to contribute to their country’s grandeur by laying claim to other countries in distant lands. For example, Imperial Germany’s Karl Peters’ adventures secured Tanganyika for his Kaiser. Britain’s Cecil John Rhodes’s exploits yielded a huge chunk of central Africa for his King. Henry Morton Stanley’s expedition to Africa paved the way for the Belgian’s King Leopold to acquire the Congo—which he ironically named “The Congo Free State.” The stereotypical picture presented by the colonialists was that African people were always fighting each other and tribes and kingdoms struggling to control resources and that the colonial government came to make things better. This statement cast a shadow itself because Nigeria was agricultural prosperous and her people lived a communal and egalitarian life until the colonial rule. Therefore, the claim that colonialism was a development strategy or an attempt to gather scientific knowledge about the unknown is rather too sweeping and extremely a distortion of facts.

As far as crucial political and structural development of the continent is concerned, Davidson described the decades of colonial rule in Africa as wasted. Davidson also averred that in every crucial field of life, the British had frozen the indigenous institutions while at the same time robbing colonised peoples of every scope and freedom for self-development Nigerian experience is no less an exception. Europeans domination, according to Chabal, broke up and reorganised in its own interest settled communities, in Africa with established rules and institutions for the organisation of their societies. In the imposed dispensations, power flowed without the process of autonomous traditional and indigenous evolution from generation to generation. These distortions have made the post-colonial Nigeria as backward as it is today.

For example, since the colonisers granted political independence to the country, there has been tribal sentiments, instability, and economic quagmire, and political wrangling among the Nigerian people. What used to be one indivisible country has gradually been disorganised disintegrated and has remained disunited. This is so because colonial rule introduced unfamiliar values and different morality and different philosophy of life. The Nigeria people imbibed these values and new ways of reasoning innocently without knowing

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that it was a ploy of the colonisers to further their drive for economic gains and political domination.

Ihuegbu is of the view that Karl Marx, Ernest Gellner and Jack Snyder’s\(^{65}\) theories paint a vivid picture of the Nigeria's colonial experience. For example in Karl Marx’s theory on domination and oppression executed through political systems, educational means are risks and dangers that young, immature countries face when they gamble on democracy\(^ {66} \). Nigeria actually gambled with the new democracy, especially when it was forcefully and pervasively imposed. In fact, it has been argued that many African countries embraced the new order with consequences they would not have wanted.

The colonial rule created arbitrary and illegitimate boundaries in the region\(^ {67} \) and these handicapped the socio-political progress of the country. Nigerians are not used to boundary disputes and boundaries have never been an issue for Nigerians. Prior to the colonial administration people lived a communitarian lifestyle and boundaries never developed. Also, no region asked for boundaries to be carved out from their geographical enclave. It was strange that the colonial administration drew the boundary between the Protectorate of North and the Southern Protectorate to serve administrative purposes.

Many criticised this process as undemocratic and an imposition of foreign culture on the Nigerian people. Examples of such critique are that the colonial process was not consultative, inclusive and comprehensive but exploitative. The aspirations and desires of the Nigeria people in terms of concrete development and economic empowerment were never taken into account when decisions are initiated. Policies and decisions were imposed on the people and where there are resistance military force was used to quell protests and demonstration. Critically also, the colonial rule did not favour the development of indigenous societies and as result it led to the unnecessary restructuring of localities, and ethnic disintegration. The imperialist arrangement created an administrative superstructure purposely to preserve law and order, serve British economic goals and ultimately become financially self-supporting\(^ {68} \). This development is still plaguing the post-colonial dispensation. The sad thing is that the colonial government was bold to justify their action by describing the process as a transition to better development and economic empowerment.

\(^{66}\) Ibid.
\(^{68}\) Falola, T. op. cit. p 28
Nigerians were quick to realise that the so called transformation process was in actual sense, harsh because it lumped together various autonomous societies to be administered under one political enclave. The whole rearrangement was counterproductive and disoriented the Nigeria people from their indigenous culture. The process lacks cohesion and democratic ideals. The process disempowered Nigeria people who had previously been governed by a people-oriented political and socio-economic structure. In all, this rearrangement process underdeveloped Nigerian society and this problem degenerated to a boiling point where many people are making claims and counter claims about revenue distribution and resource allocation.

1.5 COLONIALISM AND ITS POLITICAL STRUCTURE

Many have asked why the Europeans were so keen to acquire colonies and empires in Africa. Three reason stand out and these can be categorized as political cum strategic, cultural, and economic. The political motivation has to do with political rivalry among European states for dominance in the international system of the eighteenth century. These states believed that colonial possessions conferred prestige and status. Even today one can argue that possessions and wealth still bestow a great deal of status on those who have them. Large countries still compete for influence among small states.

The competition between the United States and the former Soviet Union in the so called Third World in the Cold War era rested in part on the drive for leadership and dominance in the world affairs. So colonisation is in part a drive for leadership and dominance in world order. Just imagine the pride and the psychological self-importance felt by tiny Belgium in acquiring the Democratic Republic of Congo, a country nearly 90 times the size of Belgium. Take the case of Britain which, at the zenith of its imperial power, controlled, in Africa alone, an area that was more than 40 times its own size. Therefore, acquisition of colonies and empires gives the colonisers more geopolitical advantage and huge economic gains. But it is not a justification to work in, seize the land, the person, the history of another, and then sit back and compose hymns of praise in his honour. To do that would amount to calling yourself a bandit. So what do you do? You construct very elaborate excuse for your action. You say, for instance that the man in question is worthless and quite

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70 Ibid.
71 Ibid.
72 Khapoya, V. B. (2009) op.cit
73 Ibid.
unfit to manage himself and his affairs\textsuperscript{74}. This was the mind-set of the colonisers when they came to Africa.

In the political sphere, the colonial State operated two tiers of government. At the central level a single colonial authority was imposed on the whole country\textsuperscript{75}. The central colonial authority was made up of the Governor, the advisory Council and later a Legislative Council, the bureaucracy, the judiciary, the police and a military contingent that was constantly in check of protesters and opposition groups\textsuperscript{76}.

The second tier of government was the provincial or otherwise called the regional government. This tier comprises the lieutenant –Governor, the regional bureaucracy the regional judiciary and a native police force and, the powerful provincial residents who is in charge of the administration of the provinces which were purportedly still under their traditional rulers\textsuperscript{77}. This arrangement was arbitrarily created and the operation of these two tiers of government was purposely for administrative convenience and for sheer economic interests of the colonisers. Looking at this political arrangement, it gives one the impression that Nigeria’s colonial relationship with Britain aptly reflects Marx’s theory of the dichotomy between the oppressor and the oppressed.

Geliner’s theory that domination and oppression is disseminated through education means and Snyder’s theory on the risks and dangers that young immature countries face when they gamble on democracy reflects the way Nigerians and many African countries were treated by colonial government. Geliner’s concept is applicable here in the sense that the colonial State used the constitutional development to legitimize their economic policies and political ideologies.

The Constitution refers to the framework or the composition of a government, the structure with regards to its organs, how power is allocated and the process by which power is exercised\textsuperscript{78}. The criterion which served as the basis for assigning political powers reflects the ethos of a given society. Nevertheless, it is conventional for the present day constitutions to reflect the composition of government and the relationships among these institutions. Second, a Constitution should provide for the distribution of governmental power over the


\textsuperscript{76} Ibid.

\textsuperscript{77} Ibid.

nation’s territory. Third, and more importantly, a Constitution should provide a compendium of fundamental rights and duties of citizens including their rights to participate in the institutions of government.

It will be recall that before European imperialism in Africa, the unlettered people of Africa had been governing their societies through unwritten constitutions derived from their cultures, customs and traditions. The constitutional history of Nigeria began with the conquest of Lagos in 1861 by the British. Following the declaration of Lagos as a Crown Colony or Settlement, the first colonial Constitution was established in 1922 in Nigeria. The Constitution introduced a Legislative Council comprising a Chief Justice, colonial Secretary and a senior military officer commending the imperial forces. The Legislative Council was charged with responsibility of advising the Governor on policies and on legislations that affects the new colony. This Constitution and the Council were not representative of the Nigerian people. It was instead established to protect the economic and political interests of the imperialist government. Moreover, the Constitution adopted the Westminster style of legislative process and promoted discrimination and racism. For example the indigenous people were discriminated against and racially alienated from key decisions that affect their wellbeing. As a result the pre-1922 Constitution failed to stand the true test of time in the annals of Nigerian political history.

The Legislative Council was lampooned because it was dominated by foreigners who are representatives of Colonial Office in Britain. The Council was also criticised because of its inherent defects. One major defects of the Council was that it excluded indigenous people of Nigeria. And the unofficial members in the Council played only advisory role. For instance the Nigerian representatives in the Council played only advisory role and it behoves on the Governor to accept or reject their advice and in most cases the Governor do reject such advice.

More importantly, the legislation by the Council was no more than a window dressing as no resolution passed by the Council could take any effect without the ratification

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of the Governor\textsuperscript{85}. Hence, in the real sense, both the Legislative Council and the Nigeria Council were created to pacify opposition of colonial rule. Both Councils were regarded as advisory boards to the Governor. It was shocking to note that the people for whom legislations were been enacted were not consulted or informed, and were least included in the legislative process. This fact questions the democratic thus whatever constitutions handed down by the British colonial government before 1922 violated the true principle of constitutionalism and democratic governance which places people at the centre of law\textsuperscript{86}. Ihuegbu argued that in fairness to the colonisers that the western-style constitutional process was at that nascent stage strange to Nigerians and required gradual learning and training\textsuperscript{87}.

The pre-1922 colonial legislations failed to promote good governance and equal social and political opportunities as profoundly maintained by John Rawls in his theory of justice. One major fact we must concede to the colonial administration was the fact that the introduction of Nigeria Council and Legislative Council shows that they are aware that there is need for public opinion. Moreover the Legislative Council made up of unofficial members; to some extent gave Nigerians the opportunity to participate in their domestic affairs. But we do know that their participation in their own domestic affairs was a palliative measure and attempt to tame opposition groups. Therefore, there is no gainsaying the fact that the earlier colonial legislative and Nigeria Council failed to realise desired objectives and the aspirations of the colonised people of Nigeria.

Having recognised the failure of the Legislative Council and the Nigerian Council, Sir Hugh Clifford proposed substitution of Nigeria Council with a new Legislative Council whose jurisdiction would at least covered the whole south\textsuperscript{88}. This proposal gave birth to Clifford Constitution of 1922. This Constitution introduces new legislative and executive Council. Unfortunately the Constitution did not legislate for northern provinces, but its sanction, signified by a resolution was necessary for all its expenditure out of the revenue of Nigeria in respect of those provinces\textsuperscript{89}.

One major provision of the Constitution was the establishment of elective principle and the right to vote and to be voted for in Nigeria elections. Another problem with the

\textsuperscript{85}Ihuegbu, N. (2002) op. cit. p.3
\textsuperscript{86}Ihuegbu, N. op. cit. p. 3
\textsuperscript{87}Ibid.
\textsuperscript{88}Tamuno, T. N. (1967). "Governor Clifford and Representative Government." Journal of Historical Society of Nigeria \textbf{IV, No 1}: p.120.
Constitution was that only Africans with minimum gross income of $100 a year were eligible to vote and be voted for. This political strategy de-enfranchised many eligible voters in Nigeria. This problem has continued to manifest in post-independence period. For example elections in Nigeria today are being hijacked by the rich politicians who bribes and entice electoral officers with money or promise plum jobs if they win election. This is one of the colonial legacies has made it possible for Nigeria to conduct a free and fair election.

Although the Clifford Constitution established an elective principle, however, it created a forum for unrestrained use of absolute power by the Governor. But the Nigeria people were still marginalised as a result the Constitution did not receive wide acceptance by the Nigerian nationalists’ movement. This caused a disaffection which subsequent led to the collapse of the Clifford Constitution. The Richard Constitution of 1946 came when Sir Arthur Richard became the new Governor of Nigeria. The Constitution was established following his proposal for a new Constitution. Apart from his proposal for a new Constitution, Nigerian nationalists and some educated southerners articulated an opinion for either self-government or more participation in government. The demand for self-government we must note galvanised the proposal for new Constitution. The Richard Constitution was distinguished when it introduced regionalism in Nigeria. Coleman argued that the inclusion of the principle of regionalism in the Constitution was a compromise between the radical region separatist who preferred three strong states and the federalists who wanted the native authority system linked with the central parliament.

It has been said that the introduction of regionalism favoured the British government because it would at least partially assuage the nationalist agitation for political independence and second, it would serve as defence against a possible seizure of central power by the educated minority in Lagos. Based on these two reasons, regionalism was favoured by the Colonial Office in Britain.

Although the Richard Constitution reduced the monetary requirement noticeable in Clifford’s Constitution in order not to disenfranchise eligible voters and contestants for political offices, the Constitution suffered tremendous criticism. The Constitution was opposed on two major pedestals. First was the manner and procedure by which the

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91 Coleman: (1986) op. cit. p. 276.
Constitution was introduced. Second and most importantly, were its weaknesses\textsuperscript{92}. The claim that the Constitution increased the participation of Nigerians was unfounded because majority of the unofficial members were nominated by the Governor and even in reality those nominated were traditional chiefs and community leaders who had problems communicating in English language\textsuperscript{93}. Third defect is that the elections of four unofficial members were limited to Lagos and Calabar. This problem affected the north and the eastern regions and invariably caused limited franchise to eligible voters in the two regions.

Probably, the worst criticism came from the educated nationalist who claimed that they were excluded and alienated from the process and that the Constitution was an imposition on the country. It should be noted that even though the Constitution’s claim of greater participation was not adequate, it nonetheless provided greater opportunity for discussion and debating of public opinion. Public opinion was inevitable giving the level of exclusion of Nigerians in participating in political affairs and in deciding their own future.

Not only that, the restriction of election to Lagos and Calabar was probably because the level of literacy in other part of country was still low. The numbers of the northerners in the parliament exceeded that of the southerners, this of course became reference point for the establishment of northern hegemony or domination of the country. The north was rule separately from other regions and this political strategy created disunity and distrust between the north and the South-East region. This strategy may have arisen out of the British coy to extend their stay in the country and this was testified by the northerner’s unwillingness to gain independence when they opposed the demand for self-government made by Anthony Enahoro in 1956\textsuperscript{94}.

The Macpherson Constitution replaced Richard Constitution and sought to impose a colonial hybrid arrangement which had the characteristics of both Federal and unitary legal framework, however, the Constitution did not escape from criticism from Nigerian nationalist. The Constitution was unsatisfactory to Nigeria people who vigorously campaigned for its sack. According to Late Obafemi Awolowo, the Macpherson Constitution, 1951 failed to satisfy the three criteria by which federalism and Unitarianism should be judged and concluded that


\textsuperscript{94} Ibid.
the Constitution was therefore a “wretched compromise between federalism and Unitarianism”95.

Against this backdrop, the Constitution was set aside and was replaced with Littleton Constitution, which laid the foundation for a classical Federation for Nigeria. The component units of Nigeria were separate yet united in their sub-economics, civil service, legislature and public services96. The Littleton Constitution set the pace for the political independence of the country. In general we can argue that the constitutional evolution of Nigeria started in concrete terms with the 1922 Clifford Constitution and then climaxed with the enactment of 1960 independence Constitution. The full participation of Nigerians in debating and contributing in their own affairs was granted in 1956 as result of the motion for self-government by a member of the Action Group party. This was a landmark in the political history of Nigeria. The motion was opposed by the northern representatives in the House of Representatives who argued that the north was unprepared for such sudden decision. Still this motion was not assailed by the colonial government, rather it galvanised agitation for political independence.

The 1960 Independence Constitution was fashioned after British Westminster style. Among its important provisions was the presence of the office of Governor-General who was the non-political Head of State, while the Prime Minister was the Head of government. Even when Nigeria became a republic in 1963, the Republican Constitution did not change this position but merely removed the constitutional umbilical cord binding Nigeria to Britain97.

The colonial administration did not only use Constitution drafting to consolidate imperial strategies, they also fashioned out political ideologies like Amalgamation policy, Indirect Rule System, and Warrant chiefs.

Amalgamation policy was administrative structure that was used by colonial authorities to create regions and subsequently merged them together contrary to the aspirations and wishes of the colonised people of Nigeria. It was an extension of the imperialist government put in place to propagate western economic and political interests in Nigeria. Lord Lugard who established the policy in 1894 was employed by British

96 See the Guardian, Lagos, June 16 1977.
companies with a mandate to transfer rents and mineral resources from Nigeria to Britain to help cushion the effect of the Industrial Revolution in Europe. Lurgard set out to achieve this mandate by forming the West African Frontier Force\(^98\) which was consistently used to force Nigerians to accept colonial rule.

The amalgamation came into force when it merged the northern and southern Protectorates together. Both regions assumed fundamentally two different forms of administration and underlying political and social structures\(^99\). The policy brought northern and Southern Nigeria under one central administrative enclave contrary to the wishes and aspirations of both regions. This system was evidently incongruous to political and economic lives of Nigerians. It was unpopular and vigorously criticised by the educated Lagos elite. In the north, the powerful emirates were opposed to it, as it was feared that a centralised administrative system would weaken their authority, which in fact depended on British rule.

In the south, it was feared that it would lead to the introduction of unpopular system of indirect rule and the curtailment of the few political rights that the Lagos-based educated elite enjoyed under Legislative Council system\(^100\). The amalgamation process sealed off the south from the north and allowed just minimum contact between them.

The dominant factor of the multi-cultural and multi-lingual background of Nigeria was disregarded, hence the superimposition of the amalgamation structure. The policy neglected kingdoms, and empires that had deep political, social, religious and linguistics differences\(^101\) and when these kingdoms and empires were invaded and conquered, a monstrous nation of political and economic and power rivalry was created\(^102\). Another visible consequence is that the new arrangements redefined the political enclave of Nigeria and triggered boundary disputes in the country. The amalgamation created disputes and conflicts between the major ethnic groups and the minority groups. These disputes are caused by land acquisition squabbles, unnecessary demarcation of boundaries and political

\(^98\) The West Africa Frontier Force was formed to fend off French intervention in African. It was a tool used to force Africans accept colonial rule. The Force was used in Nigeria to threaten opposition to colonial rule.


\(^100\) Dapo Fafowora.op.cit.


\(^102\) Ibid.
inequality. This development has continued to plague the political climate of Nigeria in the sense that it undermined the country’s cohesion and stability.

The Warrant Chiefs (WC) system was a strategic and a systematic tool used by the colonial government to control and exploit the natural and mineral resources found in Nigeria. The system unfortunately was marred by conflicts and disagreement because it was unfamiliar and politically incongruent with the aspirations of Nigerians. Although it recorded minimal success in the north, it was rejected in the Southern and Western region. The system failed because it did not take into account the heterogeneous and homogeneous nature of Nigeria.

The Warrant Chief system was rejected in the Southern and Western region due to the fact that organised system of democratic governance already exists in the two regions. It was not surprising that the Igbos in the Southeast and west rejected it owing to established egalitarian system of government. One crucial argument against the system is that it was anchored on the colonial Native Court of Equity, and owed its authority to its creator. Like the indirect rule system, the WC system came on board as a matter of necessity and for administrative convenience. The system was not actually created to protect the political and economic wellbeing, but to protect the interest of the colonial government and probably to elongate imperialistic regime.

The WC System was perceived as a local system of administration akin to British institutions and ideas. The system operates in such a manner that it excludes British institutions and Westminster style of administration while indirectly maintaining and satisfying the economic and political interests of colonial authority. The instructions and laws used to control the people were wholly colonial and imperialistic oriented. It was a system where attempt was made to rule through the indigenous institutions of the colonized peoples. The system instituted ethnicism and other societal vices that have continued to affect the unity in diversity of the country.

The WC was criticized because they were arbitrarily selected and appointed to carry out colonial economic interests. They were not transparent and were not answerable to people but to the colonial government that appointed them. They exhibited arrogance and overzealousness to the extent that people begin to see them as untouchables. The institution

perverted the course of justice and at the same time forcefully acquired peoples’ property and threatened them with police and Court actions.

Another major defects witnessed was that the colonialism rubbed off the traditional economic system of the country which operates a tax system that was indigenous and profitable to the Nigerian people. The indigenous tax system though varied was mainly used to raise revenue and appropriate surplus for chiefs and kings, their courts and for financing their wars. Some of these taxes were collected in kind or in exchange for food stuff. The tax system boosted shipping activities which generated optimal revenue from customs duties. Under this system the European traders were made to pay shipping taxes and duties on goods they import and export. But this tax system was dropped and replaced with a new tax system introduced by the colonial administration. The new tax system was harsh and structured in such a way that every adult male was forced to pay taxes to colonial administration. But sadly, the benefits and profits were not utilized for the development of the country, but were transferred abroad.

The imposition of heavy and unwarranted taxes, rents and royalties was resisted by the Nigeria people particularly the South-East region. When taxes were introduced in the eastern region especially among the Igbos, it was met with stiff resistance from the women. For instance in 1929, the British colonial authorities instructed the WC to impose taxes on every adult male in Aba town now Abia State, Nigeria. The women whose husbands pay these taxes were badly affected because their families could not afford two meals and good accommodation. There were also attempt to tax women, and properties. The situation degenerated to riots and protest that led to 1929 Aba Women’s riot in which thousands of peasant women revolted against the imposition of taxes. This made the WC more unpopular and irresponsible.

Again they forcefully seize people’s property, intimidated and molested some women. They perpetuated bribery and corruption and victimized those that opposed their illegal actions. These myriads of problems saw the demise of WC in the eastern region of Nigeria. The point has been made that right from the colonial period, Nigeria has had a plethora of constitutions. Starting from the 1914 initiative of Lord Lugard to the

106 The Aba Women’s Riot of 1929 was a protest against the Warrant Chiefs whom the women accused of restricting them their role in government. The women also accused the Warrant Chiefs of an attempt to tax them the widows. This sparked a non-violent protest. As a result of this protest the position of women in society was greatly improved while the Warrant Chiefs became popular and was dismantled in the Eastern part of Nigeria.

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Independence Constitution, the Nigerian people were hardly included or involved in the drafting of their constitutions. We opined that the colonial State without equivocation, used Constitution drafting to consolidate imperial strategies. The danger is that the post-independence period does not very promising but very gloomy and bleak. The post-colonial Nigeria until recently was dominated by the military who in a bid to earn legitimacy had drafted one form of Constitution or the other\textsuperscript{107}. For example the current 1999 Constitution is characterised by a number of deficiencies that have inevitably led to a clamour for its abrogation. This is one of the colonial legacies that have continued to plague the entire country.

Nonetheless, the British amalgamation policy, indirect rule and WC system in Nigeria were basically incongruous institutions that were used to strengthening the economic and political interests of the colonial administration. The institutions were used to propagate and consolidate colonial and imperialist hegemony. It explains the perilous situation Nigeria is facing today.

We therefore argued that colonialism was an era of cleavages, fragmentation of regions, political instability, violence, religious intolerance and fanaticism. It led to authoritarianism and affected the communitarian life style of the Nigerian people. It encouraged secession of regions and anarchist’s tendencies. Presently, the country is rapidly drifting to disintegration as a result of these complex problems. The political elite are so nonchalant and insensitive that they are yet to realise the danger of colonial administration and for the fact that political leaders are docile and weak, they continued to play second fiddle in the management of their own affairs and have allowed the colonisers to dominate and dictate how things should be run even when the country found oil in commercial quantity in 1956 in Olobiri, Niger Delta region.

1.6 THE PERIOD OF OIL DISCOVERY

All lands and natural resources (including mineral resources) within the Ijaw territory belong to the Ijaw communities and are the basis of our survival... We cease to recognise all undemocratic decrees that rob our people/communities of the right to ownership and control of our lives and resources, which were enacted without our participation and consent. These include the Land Use Decree and the Petroleum decree...’

-(Kaiama Declaration, 11 December 1998)

The section focuses on the emergence of oil and its burdens on the country’s socio-economic and political affairs. In focusing on the burdens caused by oil, it is noted that the huge wealth generated from oil resources has failed to reflect in the lives of the Nigerian people. The revenue has not been channelled back or managed properly to reflect the high expectations of developments and opportunities expressed by the Nigerians when exploration and production of oil started. The oil that ought to bring blessing has turned to a curse or what many termed as ‘oil curse’.

Nigeria’s wealth from oil is serving the few and staving many. It is like the man who is trying to wake up the sleeping elephant. If he pokes it with a needle, it will not feel it. In fact a million needles will not rouse it from sleep of three decades. ‘Ever since Nigeria was born, it has been sleeping grandly. So much so that , as I say, flies, ants, maggots and all such agents of corrupt have presumed it to be either dead or dying. To wake the big, bad beast from its stupor, a sledge hammer is needed'. In line with this statement, the contributions of oil companies in Nigeria are yet to be felt. Ali Mazrui articulates that the giant of Africa was in danger of becoming the midget of the world. Other scholars have described Nigeria as a “crippled giant” or “a giant with clay feet”.

The country discovered oil in 1956 when Shell-BP made the first commercial discovery of oil at Olibiri community in the Niger Delta. This discovery came with high expectations. For improvements, such as employment increase, infrastructure development and huge revenue yields. For example, in 1960, 562,000 tons of coal were produced for domestic purposes, while in the same year, 847,000 tons of crude oil were exported. Whether or not these expectations have been realised today is an issue that has generated tremendous disagreement, dissatisfaction and acrimony. For the people of the Niger Delta of Nigeria, the discovery of oil in their region was a curse and frustration. It is frustration because it generates huge wealth that has not been utilized to better the lives of Nigerians and it is curse because the benefits have turned to a burden. As exploration and production of oil began, huge revenue inflow from crude oil exports became a big boost.

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110 Adebajo, A. (2008). Hegemony on a Shoestring: Nigeria’s post-Cold War Foreign Policy, in Gulliver’s Trouble: Nigeria’s Foreign after the Cold War, University of KwaZulu-Natal Press, Pietermaritzburg
Government expenditure increased as did the importation of automobile and, foreign goods into the country. As a result, Shell-BP was encouraged to expand oil explorations in Nigeria because of the high grade status of Nigeria’s oil. Later in the year, Shell-BP made another promising oil discovery in Ogoniland, now Bayelsa State. This discovery started a great economic boom and launched Nigeria into the international oil market\(^\text{113}\). The oil boom continued till 1960 and Shell-BP held the equity share and paid rents and royalties to Nigeria government\(^\text{114}\). The equity share held by Shell-BP encouraged monopoly and discouraged competition in Nigeria’s oil industry. Moreover, the company’s joint venture agreement with Nigerian government to a large extent frustrated other oil prospecting companies from exploring or drilling oil in Nigeria\(^\text{115}\). For instance, Shell-BP was granted a licence to explore oil covering the entire territory of Nigeria\(^\text{116}\).

This problem caused tremendous imbalances in the country’s oil industry and led to monopoly and undue competition in the Nigeria oil industry. There was growing disenchantment over Shell-BP monopoly. This led to reduction of Shell-BP original exploration licence covering 357,000 sq. miles to an area of 58,000 sq. miles in southern Nigeria (Niger Delta)\(^\text{117}\) between 1955 and 1957 in subsequent years\(^\text{118}\). This paved the way for other oil competitors to bid for oil concession rights. But unfortunately, the choice of exploration areas, however, was limited and new competitors were forced into areas abandoned by Shell-BP. This practice was not favourable to newcomers but there was no opportunity for them to complain because both the judicial and socio-economic affairs were under the control of colonial government.

It is interesting to note that the Nigeria oil industry dominated by Shell-BP experienced certain imbalances and improper award of oil licenses to especially unregistered oil companies. This development encouraged corruption and fraudulent practices. There are two reasons to consider here. In the first place, Shell-BP has had considerable success in Nigeria’s oil industry. Secondly the high grade status of Nigeria’s oil i.e. low sulphur content and its high market demand was an encouraging factor. For example, Nigeria’s Bonny Light oil and Forcados, burn easily in the process of refining and

\(^{113}\) Ibid.
\(^{114}\) Ibid.
\(^{115}\) Ibid.
\(^{116}\) Ibid.
discharges minimum waste into the atmosphere\textsuperscript{119}. As a result, Nigerian oil has become highly sought after by refineries in Europe and the United States, where there are very strict rules guiding environmental pollution. Nigeria is Royal Dutch Shell’s third-biggest country of production after the United States and the United Kingdom\textsuperscript{120}.

The Shell-BP’s monopoly was broken when concessions were granted to a number of non-British oil companies. For example Socony-Vacuum-Mobil was granted an oil exploration licence in 1955, Tennesse also known as Tennesco obtained its first oil exploration licence in 1960, Chevron (Gulf Oil) 1961, American Overseas (Amoseas) 1961 Agip, 1962, Elf 1962, Phillips and Esso in 1965 respectively\textsuperscript{121}. In total, nine foreign oil companies were granted oil concession rights. Apart from that, Nigeria is a leading natural gas producer with reserves of 13.3 trillion cubic feet, 2.4 per cent of total world reserves\textsuperscript{122}. Four decades after commercial production in 1956, there were 17 foreign oil companies exploring and producing from the 150 oil fields. Ninety per cent of these fields are located in the Niger Delta\textsuperscript{123}. At this stage there was no indigenous oil company that was given oil concession. The reason is not less than Britain’s policy of divide and rule which has continued brew marginalisation of the minority groups in Nigeria.

Apart from huge oil revenue inflow, Nigeria’s active participation in the oil economy only started in 1971 with the establishment of Federal government owned Nigerian National Oil Corporation (NNOC)\textsuperscript{124}. This coincided with Nigeria’s membership of OPEC in 1971. In effect Nigeria adopted OPEC Resolution No XVI.90, which called for member countries to acquire 51 per cent of foreign equity interests and to participate more actively in all aspects of oil operations\textsuperscript{125}. In its drive to expand and develop the oil industry, the Indigenization of Foreign Enterprise Decree was established to force all expatriate oil companies to start operating joint ventures with NNOC\textsuperscript{126}. The indigenization policy followed with three distinct phases upon which Nigeria oil industry developed. The first

\textsuperscript{120} Ibid.
\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
\textsuperscript{124} The Nigeria National Oil Corporation (NNOC) was the first oil corporation formed by the Nigeria government to supervise and regulate the activities of oil companies. It was renamed Nigerian National Oil Corporation (NNPC) in 1977. The Corporation is today responsible for all oil activities and oil agreement between the Nigeria federal government and the multinational oil companies and other stakeholders in the oil industry. NNPC has come under serious criticism due its inefficiency and high level corruption of members.
\textsuperscript{126} Ibid.
phase extended from the colonial period through to the end of 1960s and it is marked by the State’s collection of rents with little direct participation in the oil industry.\textsuperscript{127} This phase saw the Nigeria government as passive rent collectors with little or no interest in the oil industry. The second phase saw the State move from passive rent collectors to direct authoritative intervention and equity participation in the oil industry.\textsuperscript{128}

This paradigm shift in policy was galvanised by both internal and external factors. The internal factor has to do with the need for more effective control of the Nigeria oil economy following the lesions caused by the abortive secession of the oil-rich South-Eastern region between 1967 and 1970.\textsuperscript{129} The attempted secession was as a result of economic, ethnic, religious tension among the various people of Nigeria and particularly the injustice and inequality meted on the South-Eastern region over the control of natural resources and revenue allocation formula under the Federal Government of Nigeria. The external factor is linked to Nigeria joining OPEC in 1971 and the Federal government’s implementation of the organisation’s resolutions, which encouraged nationalization and more State control of the oil industry.\textsuperscript{130} The third phase started as a post-structural adjustment which is more or less a backlash characterised by a down-grading and limitation of some of the early policies of State intervention, and provision of greater incentives for oil investments, especially for foreign investors. The third phase, which logically extends to the current period serve as a quick response to economic quagmire of the 1980s.

Overall, the development of Nigeria’s oil industry experienced turbulent times. The local communities were in constant agitation for a change in policies and the management of oil revenue by Nigerians not by foreigners. This followed intermittent confrontations and face-off between oil companies and local oil-bearing communities in Niger Delta. Again oil exploration activities which reside with the colonial State did not go down well with many Nigerians and so there was protest. The monopoly of Shell-BP in Nigeria oil industry was quite unbearable and threatening to Nigeria’s political economy. The formation of institutions like NNOC and NNPC failed to provide a supervisory and regulatory role of the activities of foreign oil companies. Both institutions compromised their responsibilities by allowing multinational oil companies to get away with their corrupt practices and environmental damage. The two institutions did not, in actual sense represent government

\textsuperscript{127} Ibid.
\textsuperscript{128} Ibid.
\textsuperscript{130} Khan, S. A op.cit.
oil interests but instead represented individual interests and the interest of foreign oil companies. The NNPC experienced constant shake ups because of the corrupt attitude of its members and the oil companies’ representatives.

The politics of who should control the oil wealth further heightened national instability and economic predicaments. The post-independence period we must make clear, is riddled with individualistic tendencies and the corrupt attitude of the political class. The colonial government we must reiterate here institutionalized individualism and ethnic bias and weakened the original egalitarian and communitarian society. It is worrisome that since the end of colonial administration, the present political elites and the inheritors of colonial government have acquired new the orientation of considering individual interests above general interests. This has promoted inequality, greed, neglect and capitalist tendencies that have made the Nigeria political economy of oil unworkable.

1.7 THE OIL-RELATED LEGISLATION AND ITS CONSEQUENCES

The early exploration of oil in Nigeria was subjected to obnoxious legislations that only serve the interest of foreign oil companies. The legislations were established to elongate the presence and absolute control of Nigeria’s oil economy and political affairs by the British imperial comprador.

The first oil legislation introduced by the colonial government was the Southern Nigeria Mining Regulation (Oil) Ordinance of 1907\(^{131}\). The drafting of this legislation was done by two individuals and was crafted along the lines of British oil policy. In addition the ordinance made the search for oil the exclusive right of British Oil Company. (Shell-BP). Whereas section 7 (2) of the Ordinance increased the size of concessions to 500 m², bigger than the 5 m² that was considered early in the drafting process of the ordinance, Section 15 of the ordinance specified that all members of the directorate of these companies should be British subjects\(^{132}\). This Ordinance was obviously discriminatory and racial in the sense that it excluded Nigerians from the mainstream of oil operations.


This Ordinance principally gave oil exploration monopoly to British oil companies\(^{133}\) and in pursuance of this legislation, the colonial government quickly granted Shell D’Arcy oil exploration licences covering the entire territory of Nigeria after two decades of oil exploration. In the views of Omeje, the exclusion of Nigeria is to further have absolute control of Nigeria oil economy so as to protect the economic interests of Shell and the British Empire. This fraudulent practice greatly affected other foreign oil competitors, notably American oil multinationals that were obviously interested in the Nigeria oil market\(^{134}\).

Experiences from oil-bearing communities in most colonial territories indicates that local communities and nationalist leaders are more likely to contest the ownership of any future oil wells based on the statutory provision and practice of customary laws in their communities. So it was not strange that the Mineral Ordinance Act was strongly criticised and opposed. Moreover, the existing customary laws which varied from one part of Nigeria to another were not considered. So when the Ordinance was introduced, it rendered the customary laws useless. The Ordinance instead leveraged Shell-BP and British multinational oil companies in Nigeria. The issue of access to land and the ownership right of local communities initially protected by the customary laws was now no longer in practice. This created confusion and conflicts over who should have access to land and the minerals underneath, but the colonial government in a quick twist resolved this conflict by making all minerals a Crown property through another ordinance, the Mineral Ordinance of 1945\(^{135}\). Section 1 of the 1945 Ordinance stipulates as follows:

*The entire property and control of all minerals and mineral oil, in, under, or upon any land in Nigeria, and of all rivers, stream, and water courses throughout Nigeria, is and shall be vested in the Crown.*\(^{136}\)

The Ordinance exclusively vested the ownership of all mineral resources in the British Crown and further stipulated that the owner of the land where oil was found would be paid compensation for the economic crops only, and not for the land or the minerals\(^{137}\). The disturbing aspect of this Ordinance was that the colonial government acting in the interest of


\(^{135}\) Ibid.


\(^{137}\) Ibid.
the colonial State or in the interest of multinational oil companies (MNOCs) could willingly or at liberty expropriate any lands rich in mineral resources from different colonial areas and local communities at little or no cost. Another implication was that the colonial government was no longer subjected to the modalities and procedures of land acquisition and they can bypass the community heads to acquire land. They could pay only for the economic trees, crops and not the minerals found in the land. This irked the local communities and particularly land owners. The Ordinance was repeatedly termed unjust by the leading nationalist politicians who vigorously criticised the Ordinance. Again, the Ordinance did not provide the terms and conditions of oil operations. These terms and conditions were indiscriminately fixed and attached to oil licences issued by the colonial government. There were three types of licences: the Oil Exploration Licence (OEL), the Oil Prospecting Licence (OPL), and the Oil Mining Lease (OML).

In addition to the three licences, there was the Oil Pipeline Act 1956 under which oil companies had to apply separately to build oil pipeline. In fact, the three types of oil licences favoured Shell-BP and British oil policy. Whereas the OEL and OPLs prescribed the rights to explore, search and drill for oil, the oil mining licence provided the exclusive privilege to produce oil for a period of 30 years in land areas and territorial waters and for 40 years in the Niger Delta and the Continental Shelf. Apart from that, the process and clauses for acquiring oil licences were amended in favour of Shell-BP. For instance, in the early 1950s, Shell-BP’s OPL was increased by the colonial government while this gesture was not extended to non-British oil companies. In fact the whole exercise of oil licenses bid and granting of lease was not transparently executed.

The exercise was a watershed and smacked of double standard. For example Bergheim a British businessman convinced the Colonial Office and the Government of Southern Nigeria that oil existed in Southern Nigeria and that he should be allowed to search and explore it. This request was granted without due process or any stringent measure that were the case for other potential oil companies. Mr Bergheim also influenced the redrafting of mining legislation which was later renamed as Southern Nigeria Mining Regulation (Oil Ordinance) of 1907. His corporation was provided with a loan to support its

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139 Ibid.
140 Ibid.
search for petroleum\textsuperscript{141}. This gesture was not extended either to non-British oil companies or indigenous oil companies were financially handicapped to explore oil.

The conceived effort made by the Nigerian nationalists to bring change in the oil industry eventually was dealt a devastating blow when Parliamentary democracy was finally introduced in the country. Parliamentary democracy was supposed to bring sanity and fair play in the oil industry but unfortunately it was abused by those Nigerian nationalists who were clamouring for change in the Nigerian oil economy. For instance, some frontline politicians who were appointed legislators at the national and regional parliament capitalize on this opportunity to pursue individual interests.

First of all the appointment of these frontline politicians did not favour the minority group and the oil-producing states and as such there was tension and anxiety over who should have exclusive control of the oil economy at the exit of the British government. Some scholars have argued that in contemporary times, the struggle for scarce resources has become the real stuff of African politics\textsuperscript{142}. This is evident in the fact that most tension and conflict tent to take place around resource-rich region\textsuperscript{143}.

This tension started with a debate on which region should successor to the British Crown. Surprisingly, the nationalist members who are the leading politicians in the succession debate started to agitate for what would better their individual regions instead of what would favour all Nigerians. Some nationalists who had earlier opposed the imposition of mineral ordinance, suddenly favoured the Ordinance because they saw themselves as possible successor to the new government and ‘ipso facto’ inheritors of the oil resources in the impending dispensation\textsuperscript{144}.

The reality is that the opposition expressed against the mineral ordinance by the Nigerian nationalists was based on the fact that the control of resource revenue will better their region in terms of development and political power. Hence when they became inheritors and successors of the oil economy, the heavily criticised ordinance were not abrogated instead it was used by the same nationalist to control the mineral resources and the revenue that accrues from it. What this significantly entails was that the nationalists

\textsuperscript{141} See Obasi., Opt..cit.
supported the mineral ordinance when they became the inheritors and successor to the oil economy so as to have economic and political power in the country. They operated the ordinance to satisfying their selfish interest. This mentality has continued to be the attitude of contemporary Nigerian leaders and this attitude has overtime led to materialistic, individualistic and egocentric tendencies that have made the social structure weak and retrogressive.

1.8. DEFECTS OF THE OIL-RELATED LEGISLATIONS.

There is no gainsaying the fact that the oil-related legislation were bound to collapse because inherent problems and imbalances it created in the Nigerian oil economy. These problems and inadequacies of the legislation are not unconnected with the colonial legacies. First the Ordinance discriminated against non-British oil companies and controls the statutory rights to land and property which in effect change old bonds, old allegiances and virtually the village communities’ third class citizens in their own region. It allowed foreign oil companies excessive power of control of the country’s oil industry.

It made land acquisition the exclusive right of the colonial authority. This means that land could be acquired without prior collective bargaining process, unlike in the pre-colonial period when land could be acquired through community leaders or village heads. According to the provisions of customary law, this usually involved consultations, and bargaining between community leaders and prospective agents. This process was replaced with the mineral ordinance and the traditional customary law which allowed land owners to exercise absolute control of their land and their minerals underneath was then rendered ineffective. In Ayodele’s comments, ‘the customary powers of the traditional title holders to regulate the use of natural resources, as they did with water, forest, and farmland, was stifled.145

In effect therefore, this made the acquisition of land by the Federal government on behalf of the international oil companies very easy.

The Ordinance was not drafted to develop Nigeria oil industry or to bring economic empowerment to the landowners in South-South region (Niger Delta people). The Ordinance was rather established to favour the foreign oil companies. In effect, the Ordinance rendered the customary law useless which it to play limited role in oil-related matters. This situation left the oil-bearing communities with no breathing space, no hope and no future.

At independence, one would have thought that Nigerian leaders would replace the anachronistic laws, the orchestrated economic and the political policies of the colonial regime. But sadly, this did not happen. The same Nigerians, who criticised and resented Crown/State ownership rights over mineral oils, became proponents of the Oil Ordinances. The place of customary law in respect of oil, land tenure system remained practically unresolved. So it was not strange that the country still experience problems in her legal systems. The current legislations further strengthened the control of the Federal government over oil resources. For example, Federal government made radical structural and statutorily changes that directly and indirectly gave them exclusive control of oil resources.

The government first abolished the old regional structure with the creation of 12 states in 1967 and secondly altered the revenue allocation formula in the Federation. This alteration decisively favoured the government and the MNOCs. The Federal government did not want to be involved in the vortex of conflicts from the local communities in the Niger Delta whose land and minerals underneath had been coercively acquired hence the alteration of oil-related legislations. Again the alteration of the revenue allocation formula was done by the Federal military government by decrees and this created no room for litigants to challenge change government on issues concerning land acquisition.

The establishment of the Petroleum Act No. 5, 1969 metamorphosed into the Petroleum Decree and the Petroleum (Drilling and Production) Regulations. The two complimentary legislations merely updated and replaced the colonial Mineral Oil Ordinance of 1945. The two legislations just scratched the surface of the problem while the major problems remained unsettled. The Petroleum Act was the most supportive legal framework for oil operations in the post-independence phase because it solidified and consolidated the existing Ordinance of 1945.

**The Act stipulates as follows:**

> The entire ownership and control of all oil and gas in place within any land in Nigeria, under its territorial waters and continental shelf is vested in the Federal Government of Nigeria.\(^{146}\)

This section vested in the Federal government the exclusive control of oil and minerals within any land in Nigeria. The Act further emphasised the entire ownership rights and control of all oil and minerals in sections 40(3) and section 44(3) of the 1979 and 1999

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Nigerian Constitution respectively. So the promulgation of Oil Pipeline Act 1956 and the Petroleum Act (1969) came to strengthen the existing Ordinances. The two Acts specifically empowered the government to compulsorily acquire land for oil companies under what is known as *power of eminent domain*\(^{147}\) as long as compensation was paid to the land owners\(^{148}\). The amount of compensation was never considered to be important. This gave room to compensation problems. The landowners were not paid adequate compensations and when money is given to community heads and oil company representatives for compensation payment such monies were not paid promptly or administered properly.

The Petroleum Production and Distribution Anti-Sabotage Decree No 35 of 1975 were established to consolidate the military government control of the oil minerals. This decree specifies trial of arrested suspects by special military tribunal and a death penalty or a long-term of imprisonment of 21 years, if convicted of the offence\(^{149}\). This is precisely the same problem the country experienced at the hands of colonial government when the country was flooded with too many oil legislations. The signing into law of the bill abrogating the onshore/Offshore Oil Dichotomy in the sharing of the 13 per cent derivation fund to oil-bearing states elicited mixed reactions from different groups in the country. To some interests groups the signing into law abolishing the onshore/offshore dichotomy holds the key to the violence in the Niger Delta and the problem of marginalisation of the minority groups in the country, while many Nigerians perceived it as the beginning of the fight for economic emancipation and political equality.

Ojamereuaye came close to explaining the tension surrounding onshore/offshore dichotomy. He opined that if the 60% of Nigeria’s oil is currently produced onshore, 30 per cent at less than 200m depth isobaths and only 10 per cent at more than 200m depth isobaths, then if total projected oil revenue in 2004 is ₦1,000 billion, the derivation money from onshore oil will be ₦78billion (i.e. 13 of 60 per cent of N1,000 b) while the derivation money from shallow offshore oil will be N39billion (13% of 30 of ₦1,000 billion). Thus the

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\(^{147}\) The power of eminent domain is the power possessed by the state over all property with the state. The Nigeria government used this tool to appropriate property for a public use without just compensation. Initially, the owner any appropriated land is entitled to reasonable compensation and value. But under military regime, lands are appropriated without attempts to negotiate or consultation to purchase the property for fair value. This process led to resistance and opposition from local communities.


littoral states will be richer\textsuperscript{150} than before. Again the revenue from deep offshore oil production (1,000 billion, i.e. 10 per cent of ₦1,000b) will not be subjected to derivation. Thus the total derivation fund will be ₦117 billion while the balance 883 billion oil revenue will be shared among the three tiers of government in accordance with the current revenue allocation formula\textsuperscript{151}.

The above calculation sounds very logical and economically plausible. But the northern states have refused to shift ground because they wield the political power and also have the largest population in the country. These two factors have continued to play in their advantage. And their opposition and domination of the minority groups elucidates what their position was when the motion for self-government was moved in the House of Representatives in 1950s. The north has always taken sides with the colonial government. The political leaders from the north have consistently used colonial oil legislations because it favoured them. As such their opposition to onshore/offshore oil dichotomy has made Nigeria oil economy a very volatile one.

The onshore/Offshore bill was necessitated by the Supreme Court ruling to the effect that the 13 per cent oil resource derivation revenue paid to the oil-producing states from the federation account should not be limited to onshore resources but be extended to part of offshore resources\textsuperscript{152}. The Court held that derivation revenues should include revenues accruing from natural resources derived from the ‘low-water mark of the land surface’… of seaward boundaries of littoral states.\textsuperscript{153} The phrase ‘low-water mark of the land surface’ used by the Supreme Court is a legal ambiguity which the Federal government has subsequently exploited and manipulated in crafting the new Act\textsuperscript{154}. This development explains the insincerity and insensitivity of Nigerian government towards the sufferings of the oil-bearing states in the country.

Prior to this judgement the Federal government had originally proposed to calculate the offshore oil revenue based on the 24 nautical miles contiguous zone. This proposal was persistently rejected by the littoral states who had been insisting on the use of the 200

\textsuperscript{151} Ibid.
nautical miles continental shelf. It galvanised tension and some state governors from the north argued that revenue from oil wells within 200 kilometres of the continental shelf ought to be for everybody and should not go to the littoral states. To them it is unjust and unacceptable even when the country’s apex Court had given a ruling on the matter.

It is therefore obvious that the discovery of oil in Nigeria experienced a plethora of oil legislations, economic and political policies that caused serious burden to the entire country. The legislations both the ones established by the colonisers and the ones established by Nigerians themselves caused violent conflicts in Nigeria. The legislations affected land tenure system, ownership rights and allowed the Nigeria government excessive power to control and determine who benefits from oil revenue. But there gleam of hope that if Petroleum Industry Bill is eventually signed, it will seek to ensure that management and allocation of petroleum resources in Nigeria and their derivatives are conducted in accordance with the principles of good governance, transparency and sustainable development in Nigeria. The problem with Nigeria does not actually depend solely on constitutions or how many constitutions the country was able to establish. The problem lies on what type of social justice and economics polices the country adopts. The constitutions were not democratic and lack basic tenets of principles of justice. The Nigerian people under colonial regime were subjugated, oppressed and basic rights and liberties denied. This is why this thesis followed a different approach from other researches done in this area of study.

**CONCLUSION**

It is obvious that Nigeria is falling apart in the midst of abundant natural resources and huge revenue accruing to the country. The truth is Nigeria has not been able to make considerable progress even after political independence due to poor policies of successive Nigeria government. Some have blamed the country’s woes on colonialism. We believe that this position is rather pedestrian and a lazy approach to our problems. It may satisfy some people who argued that the problem that plagued the country currently has nothing to do with Nigerians. This rather missed the point. It is like ‘passing the buck’. For example colonialism would not have been successful without the collaboration of the Nigeria political elites who capitalized on the opportunity to exploit their people. This I think is not the best way to approach these problems.

The question that is begging for answer is for how long can we continue to blame our problems on the colonial administration? Indeed, the country’s woes may not be solved
if we continue to argue and debate on who is to blame. This will not in any way solve the problem. And for Nigeria to remain together and one indivisible entity the problem of resource distribution, power sharing with associated imbalances, injustices, biases and other social problems should be amicably addressed. The solution to these problems will not happen overnight. And it is not going to happen with the calibre of greedy and corrupt politicians in government at present. However, it does not preclude that these problems cannot possibly be solved. The truth is we need the right mind-set and the right approach to solve our problems.

It will be foolhardy to apply long-term justice in a society like Nigeria where people make claims and counter claims on how government affairs should be managed. Thus the complexity and intractable nature of Nigeria’s problems makes it very unreasonable and unwise to apply long-term solution alone. It must be made clear that this thesis is not geared towards solving all Nigeria’s problem through short-term measures. The short-term and long-term course will have to work in parallel so as to bring immediate improvement to the sufferings of Nigeria people. Otherwise if we continue to work on how to solve all Nigeria problems in one go, many Nigerians will be dead before their problems are permanently solved.

Nigeria need a principle of justice that will have the ability to cash out and address such problems like economic injustice, political ostracism, insecurity problems and poverty. This is why in this thesis Rawlsian method of justice is applied to produce principles of justice that reasonable people who wish to advance their own good would not reasonable reject even if all our problems were not solved in one go. Those principle will be able to provide us with specific short-term solutions to our problems and equally give the Nigerian government the opportunity to continue working on how to the rest our problems in the long-term course.
CHAPTER 2
THE LAND USE ACT AND THE ROLE OF NIGERIAN COURTS IN OIL-RELATED LITIGATIONS

2.1. INTRODUCTION

“Every person requires land for his support, preservation and self-actualization within the general ideals of the society. Land is the foundation of shelter, food and employment. Man lives on land during his life and upon his demise, his remains are kept in it permanently. Even where the remains are cremated, the ashes eventually settle on land. It is therefore crucial to the existence of the individual and the society. It is inseparable from the concept of the society. Man has been aptly described as a land animal.\(^{155}\)

From the above statement, it is obvious that the life of man and that of the society revolves around land and its resources. But it is not true that man’s fulfilment of his potentials in life depends largely on his relationship with land. Rather, global recognition of the relevance of land to life of man can be gleaned from the proceedings at the United Nations Conference on Human Settlement (Habitat II) 1996 where many countries committed themselves to “promoting optimal use of productive land in urban and rural areas and protecting fragile ecosystem and environmentally vulnerable areas from the negative impacts of human settlements, inter alia, through developing and supporting the implementation of improved land management practices that deal comprehensively with potentially competing land requirements for agriculture, industry, transport, urban development, green space, protected areas and other vital needs.\(^{156}\)

This chapter therefore, discusses the Land Use Act 1978 and how it has been used to exclude and alienate the Niger Delta people from participating in the oil operations discovered in their region. The Land Use Act is an oil-related legislation in the hands of successive Nigerian government to acquire land illegally and forcefully. At the end of this chapter it will be evident to readers that the Act institutionalized the anti-locals bias, corruption, economic injustice, and unfair acquisition of property. The Act did not solve the problem it was promulgated for and as a result of that it came under serious attack that led to its subsequent reform and overhaul. This chapter discusses the impacts of the Act, and other


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related issues like oil and land related litigations and how these litigations were handled by the Nigerian courts.

2.2 THE LAND USE ACT OF 1978

Prior to gaining political independence, a uniform land tenure system did not exist in Nigeria. In the southern region of the federation, states practiced a dual land tenure system, which was in accordance with a customary land tenure system and that inherited from the English legal system. This system varied between communities and, through this arrangement, landowners enjoyed complete control of their territory and the resources found thereon. In contrast, the people in the northern region practiced the traditional system of ‘public ownership’\(^{157}\) of land, as established by the colonial administration. These popular practices were managed both democratically and appropriately. Usually, the acquisition processes were approved by the traditional headman or community leaders, while the decision to sell land resided exclusively with the joint owners, who comprised landowners, families and communities.

Furthermore, prior to 1978, a direct relationship was enjoyed between indigenous landowners and foreign oil companies. At that time, it was accepted practice that foreign oil companies would make contact with the indigenous owners in order to rent or purchase their land. Therefore, from a legal perspective, oil companies were obliged to pay compensation to landowners for any changes they make; for example, the destruction of property, or damage caused to crops and other resources. This practice continued until Nigeria’s economy transformed from being an agro-economy to one that is dependent on the oil industry. Consequently, the previously harmonious relationship between the local communities and the oil companies deteriorated due to the scarcity of land for agricultural and personal use. Indeed, the oil companies began gradually to acquire more land through the government and other illegal means. These developments are not unconnected to the commercial discovery of oil in the Niger Delta region.

Family and community lands were acquired on an arbitrary basis. The Land Use Act of 1978, which was promulgated by the federal military government, facilitated the state governor’s control and management of the land and its natural resources. The government claimed that this piece of legislation was passed in order to neutralize the traditional legal

\(^{157}\) The concept of public ownership of land was established by the colonial government. The term “public ownership” means that all land and property within the northern states of the federation become public property, in contrast to southern Nigeria, where the community owned the land.
impediments to land acquisition; thereby providing free land for oil-based activities, in addition to industrial and agricultural development purposes\textsuperscript{158}.

According to Justice Nnamani, the need for the promulgation of the Land Use Act was borne out of the necessity to harmonize the land tenure system in the country, the problem of land speculation and the difficulty of government or individual in obtaining land for development purposes.\textsuperscript{159} However, at present time, these objectives are no longer realisable rather what is going on now is that the government acquires lands on behalf of MNOCs for oil operation purposes without adequate compensation. This we must note was not the usual practice prior to the time oil was discovered. The purpose and intention of the Act probably was viable, but in practice the Act worked in favour of the government and the oil companies.

It makes land a property of the State and vests its allocation and administration in the state governors\textsuperscript{160}. In other words, the Act conferred on the state governors the custodian right to issue certificate of occupancy for land holder in their states but left out the majority already with possessory rights to their land. The government position is that the Land Use Decree of 1978\textsuperscript{161} came into force to harmonize and streamline the problem of land tenure system and property rights. This need as claimed by the Nigeria government gave birth to the provision of section 1 of the Land Use Act which stipulates that:

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'Subject to the provision of the Act, all land comprised in the territory of each State in the Federation are vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of Nigerians in accordance with the provision of this Act'
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As vague and controversial as this section sounds, there is no agreement on the interpretation of this section. The views expressed in this provision did not represent the views of the majority but that of the diversity and views of the military dictators that promulgated the Act. By the tenor of this Section 1, individuals and communities of oil-bearing states have been divested or disposed of their ownership rights over land without


\textsuperscript{160} See FGN (1978) ‘The Land Use Decree No. 6 Federal Government of Nigeria Gazette Supplement. March

\textsuperscript{161} The Land Use Act was promulgated by the military government. The Decree, indicates all land situated in each is vested in the Governor of the state and gives the Governor the power to grant statutory certificate of Occupancy (C of O) The effect of this Decree include dispossessing the ethnic minority communities their natural and deep interest in their land.

transferring it to anyone, save that the Governor is made ‘trustee of it’\textsuperscript{163}. This creates a serious lacuna and it was very difficult to know where ownership lies or whether there is now any kind of ownership of lands that still existing\textsuperscript{164}.

This provision has been criticised by many because the Act disposed landowners of their lands and in turn gave the Nigeria government the exclusive right of control and management of the natural resources discovered underneath them. This provision signalled the death knell of private property rights and nationalized all lands in the country by vesting the ownership of it in the State via the Governor. The Act also unilaterally legitimized the transfer of oil and gas minerals to the Federal government. In theory, the land is held in trust by the military Governors and administered for the use and common benefit of all citizens of Nigeria. In practice the military Governors exclusively manage the land and resources derived underneath it for their own selfish interest and economic interest of the oil companies. The problem was not really control and management of the natural resources by the Nigerian State but rather the problem illegal acquisition of land, lack of transparency in the management of oil resources.

Prior to 1978, local communities and individual land owners have right to challenge or question compulsory land acquisition in the Niger Delta states. But the establishment of Land Use Act changed the process of land acquisition. This development created acrimony and serious disagreement between the military government and the local communities. The local communities (landowners) became tenants on their lands and its mineral resources. The Act caused families unnecessary hardship in finding suitable land to farm. What is however clear here is that while the oil resources derived underneath the land of the Niger Delta people yields billions of dollars, legislations was created to appropriate and deprive the region of the benefits of the wealth derived from their region.

The Act became part of 1979 and 1999 constitutions respectively, but its attempt to bring the land tenure system of north and south together led to further imbalances in the social structure. For instance the Act did not bring a holistic approach to the problem of land acquisition under customary laws; rather it touched the surface of the problem while traditional impediment was left untouched.

The problem of dispossession, deprivation and the philosophical foundations of English land law doctrines were not expunged and other legislation established in relation to

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\textsuperscript{164} Ibid.
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land and allied matters were rather discriminatory and retrogressive. The reason why the government did not expunge those legislations left behind by colonial administration was because it gave them absolute control of the natural resources and the wealth it generates. Other West African countries like Ghana, Zimbabwe and Botswana that were also colonised at one point expunged all elements colonial legacies. Zimbabwe under Robert Mugabe particular purged the system of colonial system of land tenure and since then land ownership rights were returned to the indigenous people. Land acquisition difficulties in Zimbabwe and Ghana are almost non-existent now and both countries are basking in the euphoria of good governance, transparency and economic development. Nigeria is yet to drop colonial institutions and legislations because the political elites benefit from the continued existence of those legislations.

In another perspective, rights to land and natural resources have received considerable attention in the standard-setting activities of the UN and some UN specialized agencies, including aid agencies like World Bank. The Africa Charter on Human and People’ Rights, also protects the land and natural resources rights of indigenous people. Going by the above provisions it follows that the position of international law is clear on the ownership of land and resources by indigenous peoples and this can be found in International Labour Organisation (ILO) Convention, No 107 and 169, of 1959. The first Convention (No.107, 1957) recognises communal ownership of indigenous lands as well as customary land tenure systems and provides for the payment of compensation in the case of land acquired by the national or central government for development purposes. Nigeria is a member of both ILO and UN and by virtue of that is legally bound to respect these rights. But these rights have been flagrantly violated and abused by the government. This violation in fact signalled the collapse of ownership rights and indigenous rights of the Niger Delta people. We must remark that Nigeria’s domestic laws on the issue of ownership rights and indigenous rights were not in conformity with the relevant international instrument and as it is glaring therefore that Nigeria domestic laws violates the rights to land and the natural resources rights of the Niger Delta people.

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166 Ibid.
167 Ibid.
168 Ibid.
2.3 SOCIAL CONSEQUENCES OF THE ACT

Before the promulgation of the Land Use Act of 1978, multinational oil companies that had earlier obtained oil licences rights and lease rights from the Federal military government usually approached oil-bearing land-owning communities for a right of access to the land for oil operations. The access was granted in an amicable way and the relationship between the local communities and multinational oil companies was quiet cordial and peaceful. The process was participatory and inclusive. It allows landowners and communities to have a say in matters concerning land acquisition for public purposes or oil operations in the area. In effect, the communities had substantial say in the bargaining process and oil operation contracts. Legally, the landowners received compensation for granting access and for any damage to land and any surface rights thereon. This was the grand norm until the promulgation of the Act 1978. The Act came into force immediately after the civil war.

The end of civil war in 1970 had a tremendous impact on the minority groups in Nigeria. These impacts includes: ‘the increased transfer and centralisation of the control of oil revenues from their region to the Federal military government, the transfer of the ownership of land from local communities to the Federal (and State) governments, and the vast expansion in local oil production and its impact on the fragile Niger Delta environment.’

The above impediments were the reinforcing factors that have caused anti-oil protests and clamour for the abrogation of the Land Use Act of 1978. For example, in the case of Ereku v. the military Governor of Mid-Western States, the Itsekiri Communal Land Trustees and representatives of neighbouring communities filed a case against the Nigeria government for expropriation of land on behalf of McDermott Overseas, an oil company sub-contractor. The Nigerian government had compulsorily acquired 50 acres of land on behalf of McDermott Overseas for public purposes and granted 99 years lease to the company. At the first hearing of the case, the community lost but won on appeal at the Supreme Court. The lawyer for the company argued that the community had benefited from McDermott by employing great number of Nigerian people. This claim sounds more good than true.

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169 Ebeku: (2000. 2.)
170 Ibid.
But the Court was not influenced by this argument but maintained that the government was not legally empowered to acquire land for McDermott even if the company had the good intentions to serve the Nigeria public. The notice for acquisition was therefore rejected. This case was a milestone development in the evolution of oil legislations and the development of Nigeria oil industry. For example all land which has already been developed remained the property of the person in whom it was vested before the promulgation of the Land Use Act 1978 Act. Thus, the obstacle associated with land acquisition process was rather superficial due to the greedy attitude of the military government.

Another significant defect of the Act was that it transferred the right of communities and land owners to the state governors. In turn the Governors used such powers to give consent to assignment or mortgaging as a means raising revenue for the states. The revenue generated through the imposition of heavy charges for granting such consent were never utilized for the benefit of the local people who owns the land. The Act failed equity test because it only favoured the oil companies and disfavoured the land owners. For example it gave room for easy acquisition of land and denied the land owners adequate compensation payment. It gave state governors the power to grant right of occupancy to oil companies and abolishes all existing rights on the land. The Act turned prior owners of land into tenants with limited, ascertainable, determinable and defeasible rights to the land. The Act further instigated protests concerning the composition of the community land representatives, who negotiate informal oil deals with foreign oil companies without the participation of the local people. Obi argued that the manner of the expropriation of their land left the local people poor and underdeveloped. 173.

2.4 THE ATTITUDE OF NIGERIAN COURTS TO OIL-RELATED LITIGATIONS.

There has been a great increase in litigations between oil companies and those affected by oil activities since when the Nigerian courts tend to protect the interests of the government and oil companies while the plaintiff victims are discriminated against and disfavoured. There is evidence that the violent conflicts witnessed in 1970s and 1980s were directly connected to the attitude of Nigerian courts in deciding cases of land disputes and compensation payment. The courts consider the economic benefits of oil to the Nigerian government and to oil companies rather than the devastating effects of oil exploration

activities on local communities. This attitude has frustrated litigants and many have decided not to pursue any land related cases due to the appalling and corrupt attitude of some Nigerian judges. The victims of land disputes or compensation disputes usually go to Court to seek redress, but the outcome scarcely favoured litigants. The courts and trial judges reject injunctions on the basis of economic disadvantage to the country and to oil companies and not the damage suffered by plaintiff victims as a result of loss of livelihood and inadequate compensation payment to loss of land, buildings and property. These challenges faced by litigants give one the impression that the principle of tort law cannot provide a remedy to individuals, families and communities affected by oil operations.

The principle of tort law refers to duty and the breach of that duty causes damages which must be compensated. It includes all negligence cases as well as intentional wrongs which results in injury or harm. The harm and injury suffered by one party are legally compensated either in cash or in kind but Nigerian courts does not consider the wrongful acts of the oil companies instead they consider the benefits and the huge oil wealth.

From a another perspective, the burdens of proof with respect to causation have been extensively used by Nigeria courts to deny plaintiff compensation for loss of lands, building, crops and property. What happen is that plaintiffs are subjected to rigorous process of establishing that oil explorations have caused damage to their farmland, fishing boats and fishing ponds but the oil companies are not subjected to the same tests. The question is, if litigants are legally required to proof that oil operations causes pollution and spills, why do the courts exempt oil companies from the same burden of proof? And even when litigants or claimants prove their cases and damages are awarded, they do not get fair and adequate compensation at all. Moreover, the compensation payment takes a long period of time and sometimes claimants die while waiting for compensation payment. Okonmah concludes: where he, a claimant succeeds in discharging this burden, the amount of damages awarded by the courts is inadequate to assuage his losses. This kind of problem has made litigants prefer out of courts settlement rather than instituting a law suit that is expensive and uncertain.

With regard to oil operations in Nigeria, injunctions have more often been sought by the plaintiffs and claimants. But only four out of 15 of such injunctions have been granted and the rest have been rejected on the ground of lack of proof. In the case of Allar irou v.

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Shell-BP Development Company (Nig) Ltd\textsuperscript{175} the High Court delivered judgement in favour of the oil company on the ground that the interest of third party is sacrosanct. The trial judge stated that the interest of a third party (the oil company) must be considered especially where the injunction would cause stoppage of trade or cause a large number people out of work. ‘The Court ruled that ‘nothing should be done to disturb the operations of the oil industry which is the main source of this country’s revenue\textsuperscript{176}. The trial judge did not consider the hardship, harm and injury suffered by plaintiff victims and claimant through oil exploration activities. The paternalistic attitudes of judges and how oil matters are handled in Nigerian courts makes a mockery of the Nigerian justice system, so we must question why Nigeria judges are biased in favour of oil companies and the Nigeria government. The answer is that the judges are appointed by the State and the courts belong to the government. The judges are therefore appointed to protect the interest of the State. So the Nigerian judges are appointed to do wish and the bidding of the State and the oil companies. What this entail is that the Nigerian judges and courts are not independent. It is equally frustrating that the economic interest of the oil companies appeared to be paramount for the judges over the wellbeing of Nigerians. This trend of events does not hold any hope for future improvement in the country.

(i) **CORRUPTION IN THE JUDICIARY**

The judicial system is replete with allegation of judicial corruption and miscarriage of justice. It is said that the socio-economic effects of such corruption is more dangerous than the other forms of official corruption\textsuperscript{177}. The Court all over the world usually is the last hope of the common man but in Nigeria it is not so. The Nigeria judiciary is a disaster because some judges are corrupt and are government stooges. Some judges are inefficient and have lost track of current realities of the country.

\textsuperscript{175} See Alar Irou v. Shell-BP Development Company (Nig.) Ltd (Unreported suit. N0. W/89/71. Warri High Court. Judgement delivered on 26 November 1973. The plaintiff instituted a lawsuit against Shell-BP for damage suffered against oil spillage. The lawsuit was in negligence and the plaintiff relied on the doctrine of *Res Ipsa loquitur*, i.e. The facts speaks for themselves that there was oil spill on his fish pond. But the judge refused o the prayer for injunction on the grounds of likely impacts of such order on the national economy and the interest of the third party. The judge failed to realize that sustainable economic development can be compatible with environmental conservation. The matter was decided in favour of the third party, the Shell BP.


Litigations are usually between rural farmers or illiterate farmers and oil multinational company (Shell or Chevron). What happen is that when a rural farmer sues a multinational oil company for damages, a government judge usually handles the case. The government judges delivers judgement in favour of oil companies who more often get induced by the oil companies for oil contracts and monetary compensation. This has worsened the relationship between the local communities and the oil companies. According to Oronto Douglas, an Ijaw Youth Council Activist, ‘no single piece of legislation in the country has robbed, in a more vicious manner, the people of the oil-bearing Niger Delta communities of their humanity than the Land Use Act of 1978’\(^{178}\) Corruption in the judiciary is worrisome and frustrating to litigants. For example in the period of 1981-86, 24 compensation claims against Shell went to Court in Nigeria\(^{179}\), whereas in early 1998 Shell was reportedly involved in over 500 pending Court cases in Nigeria mostly on oil spills, and other damages from oil operations, contracts disagreements, employment disputes and taxation\(^{180}\) evasion cases. These pending cases takes months and years before they are heard and decided. Yet the government is unperturbed and has allowed the oil companies get away with these offences.

\( i \) \hspace{0.5cm} \textbf{TIME CONSTRAINTS}

Apart from political corruption perpetuated by the Nigerian leaders and the political class, the activities of the Nigeria courts have come under serious scrutiny in relation to their roles in oil-related litigations. The time constraints are one of the ways the Nigerian courts have used to frustrate litigants in oil-related matters and claimants of compensation payments. This legal barrier goes to suggest that Nigerian courts are biased in favour of oil companies. The judges act as protector of the government oil interests and not an impartial arbiter.

In most common law countries, lawsuits must be instituted within the statute of limitation of time. What this mean is that the plaintiff must bring law action within certain time frame and establish the causation between the harm and the defendant’s conduct. Emiri said that where a case of damage is established, a litigant can also be caught with the


technical question of timing of action\textsuperscript{181}. The opposing counsel can, in this case, raise the defence that the action is statute-barred under the Limitation Law to defeat the claim of the plaintiff and remove the rights of action, the right of enforcement, the right of relief and leave the plaintiff with a bare and empty cause of action which he cannot enforce\textsuperscript{182}. One of the major problems with the statute of limitation is that it gives the plaintiff no room to file lawsuits. The Limitation Law process has been applied to frustrate peasant farmers and illiterate fishermen who do not have the means of gathering relevant information or evidence to their cases unlike the powerful oil companies who have the sophisticated technology and the financial strength to gather relevant information for any kind of litigation. The peasant farmers lack the financial power to fund legal action and the land where they make a living is being taken from them or destroyed by spills and pollution.

The plaintiffs contend with the cost of instituting lawsuits, the time factor and the possibility of losing their cases. This particularly affects rural farmers and victims with little or no financial power. Thus, under the Limitation Law\textsuperscript{183} an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued\textsuperscript{184}. So Limitation Law statute is one of the most fundamental factors hindering plaintiff access to justice. This problem has heightened confrontation between the oil-bearing communities and the oil companies

\section*{(i) COMPENSATION CLAIMS}

Compensation is an important measure for equity or fairness and is associated with the issue of participation in which the ‘local communities share in the benefits from development and are fully involved in generating those benefits’\textsuperscript{185}. Compensation as a general rule is making amends for any loss and injury suffered otherwise known as \textit{restitution in intergrum}\textsuperscript{186}. However, this does not mean that restitution for damage to land

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\item \textsuperscript{186} \textit{Restitutio in intergrum} is a legal doctrine (Latin maxim) which restores the plaintiff to the position plaintiff would have been in had he not suffered any loss or injury. The fundamental issue is that the plaintiff in an action for negligence is entitled to a sum of damages which as a basic rule the court must grant to return the plaintiff to the original position and money is capable of doing this. The compensation must be adequate enough to return the injured person to the original positions before the loss.
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is unnecessary. The essence of compensation is to recompense for breach or damage done to property, lands, building and personal goods. Therefore it would be unfair not to recompense a party who has suffered lose caused by the negligent act of another party.

The quantum of compensation which victims claim is sometimes fixed or unfixed. For instance in oil and gas operations the quantum of compensation is unfixed, but sometimes Nigerian courts and judges decide otherwise. This attitude was exemplified in the case of *R.Mon & anor v. Shell-BP*.187 The plaintiff was unable to lead evidence for a specific negligent act, but was able to show the fact of their losses as a result of an oil spill from the defendant company188. The trial judge admitted that the plaintiff’s fish pond has been destroyed by the negligent act of the defendant but said that ‘there is no evidence of what it would cost them or what it would have cost had they to pay for it to be dug189. At the end of the judgement the judge awarded a paltry sum of £5.00 (₦200) to the plaintiff. This award shows how biased Nigerian courts are in handling oil litigations. As a result of this attitude, litigants prefer to settle out of courts rather than waste money and time in filling lawsuits. It is only in Nigeria you find judges awarding compensations that are far below the damage committed. In the Ghanaian Diamond Industry for instance, landowners were paid royalties, which were in proportion to the net profit accruing from mining concessions190. In Ghana too, landowners are paid adequate compensation if their lands are acquired for public purposes, but this is not the case in Nigeria.

Under Nigerian law, judges are supposed to ensure that claimants or victims receive just and adequate compensations for any loss suffered. In practice, the judges do the bidding of the State and the MNOCs in return for monetary gain. Apart from awarding inadequate and unjust compensation, the judges do not to consider the financial capacity of both victim and defendant company. In terms of bearing the cost and loss caused by oil exploration, it is usually the victims that bear the cost and loss more rather than the MNOCs. In other words, the cost and loss suffered is heavier on the claimant than on the oil companies. But Nigerian judges tend to consider the economic interest of the oil companies and not the heavy loss suffered by victims and claimants. In developed countries like US and UK, the case is different. For example, affected victims are assured of just and adequate compensation and

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189 Ibid.
compensation is determined after the independent assessors or risk assessment bodies have concluded investigation and the findings and recommendations of assessment bodies are what the courts use to award compensation to victims. However in Nigeria the State and the oil companies decide what they pay to victims.

After the blowout of BP’s deep-water Macondo well off the coast of Louisiana in April 2010\textsuperscript{191} the accidents triggered hundreds of lawsuits against BP. What BP did was to quickly reach a settlement with the private plaintiffs before a trial on liability for the incident began. The settlement resolved economic loss claims for multiple classes of businesses and property owners in Louisiana, Alabama, and Mississippi and in parts of Texas and Florida. The Court appointed claims administrators to implement settlement agreement as directed by the Court. The claims administrator had to ensure that monies were dispensed to victims with genuine claims so as to avoid fictitious payments or non-existent losses. The claim administrators ensured that payments were made timely and in an expeditious manner. The Court ensured that BP stayed by the settlement it negotiated with victims and plaintiffs. In this case, BP spent more than $25 billion for clean-up and compensation. It compensated both private plaintiffs and lawsuits fillings on other liabilities. From its economic-damages fund it also paid $7.8 million.

In Nigeria however, the Court does not demarcate those who have suffered direct loss from those who have suffered indirect loss. The courts does not appoint claims administrator to make sure that genuine claims or loss are adequately compensated. Also Nigerian courts are less concerned if payments are timely or made in an expeditious manner. At the level of disbursing the compensation funds, it has been observed that communities and individual families are under paid and this practice has continuously jeopardized the relationship between oil companies and the village communities in the Niger Delta. It has also elongated the settlement of land disputes between communities and has disrupted peaceful co-existence of the people in the area.

Another thing is that the Nigerian courts tend not to demarcate the financial status of plaintiffs from that of the oil companies. In the lawsuit between \textit{R. Mon & Anor v. Shell-BP}, the trial judge did not consider the financial standing of Shell-BP, and the financial capabilities of R. Mon & Anor. Shell no doubt is the biggest and possibly the richest

multinational oil company in the world. It can afford to dole out billions of dollars for compensation payments and still make huge profits unlike the plaintiff that bore the heavy loss of livelihood forever. It is therefore a res ipsa loquitur case that Shell will bear losses of oil spills better than the victims. If judges are mindful of these facts one expects that morally and legitimately, Shell-BP should be made always to pay substantial sum of compensation to plaintiffs and victims so that it will be a warning signal to them or others in future. Surely the Court should take the cost of litigation into account, but this is not the case.

Also they are unmindful of the fact that oil companies usually insure their activities and will be generously indemnified in case of accident or damage etc. Whereas the oil companies can afford to take out an insurance policy for their oil operations, the plaintiffs cannot afford to insure their lands, economic trees, crops and medicinal plants because these items are non-insurable. The crucial question therefore is if the U.S Court of Appeal could compel Shell-BP to pay adequate and just compensations based on the settlement agreement they negotiated with the plaintiffs (in developed countries) why should Nigeria courts and judges protect or prevent Shell and other oil companies from paying adequate and just compensation on the basis of the settlement agreement negotiated with plaintiffs or victims of oil spills? Shell and other oil companies should also be compelled to treat plaintiffs in Nigeria the same way they treat plaintiffs in their home countries. If this happens, the equity issue would be settled and the many victims would have no cause for grievance.

A similar problem has to do with the way and manner the courts awards compensation to plaintiffs. The oil companies are let off lightly and sometimes required to pay a paltry sum as compensation. This attitude has raised transparency and accountability question. The paltry sum of £5.00(₦200) in the previously quoted case, makes a mockery of the judicial system. Apart from that, the oil companies have not been adequately held accountable for acts of negligence and have not adequately compensated victims of environmental damage, and this can be compared to the amount of money they take away from the country. Many have argued that the oil companies are not to be blamed but the government. It is the responsibility of the Nigeria government to ensure that environmental damage is adequately compensated but instead they protect the MNOCs. Similarly, courts and judges award ridiculous compensation to victims without actually ascertaining the level of damaged suffered. This apparently means that the Court is no longer the last hope of the common man. If judges awards substantial sum to victims, it would serve as a deterrent to
oil companies and the reckless activities of oil companies and eventually, adequate and just compensation claims will then become a reality.

In another similar case, *Nvogoro v. Shell-BP*[^192] , the oil company constructed a road in the middle of a farm belonging to the plaintiff. It was reported that while the plaintiff was away, his illiterate brother bargained with Shell-BP for the sale of land. At the end of the bargaining process the brother of the plaintiff claimed compensation for three banana trees and some bamboo trees. He claimed five shillings for each banana tree and 20 shillings for bamboo trees but instead settled for 17 shillings. He also claimed £30 for empty barn, but was only paid £3 by Shell-BP. When the plaintiff learnt about the amount of compensation, he instituted a lawsuit against Shell-BP. At the hearing Shell-BP presented the receipt of payment, a thumb-printed by the plaintiff’s illiterate brother as evidence. The Court decided in favour of Shell-BP and averred that the defendant had previously paid compensation on the land in question.

In the above case we cannot say that the mandatory provision for the case has been followed in deciding the case and if the mandatory provision for the case has not been followed, the trial judge should declare the case null and void *ab initio* because the capacity of the parties to the contract are unequal. If one party to the contract is uneducated he would be unable to understand the technicalities of the contract in question and this condition invalidates the contract or the negotiation. In this respect, the courts failed to take adequate steps to safeguard the property rights of victims, and to ensure that oil company observe or respect these rights.

The Court also failed to recognise that the title of the land in question does not rest with the illiterate brother of the plaintiff and that Shell-BP would have used fraudulent means and superior bargaining power to get consent and subsequent acceptance of compensation payment by the illiterate negotiator. The above case exemplifies the attitude of Nigeria judges and how the Court system works.

This is in sharp contrast to what is obtainable in the UK, Norway, US and Netherlands where oil contracts and negotiations are transparent and credible. The above case demonstrates that oil contracts and negotiation process between oil-bearing communities and oil companies are more often not transparent and completely unsatisfactory.

Negotiation is a consensual bargaining process, without a third party intervention whereby the parties to a dispute attempt to reach agreement on a disputed or potentially

[^192]: (1972) 2 RELR 1.
disputed matter. It also involves discussion on dealings about an issue with a view to reconciling differences and establishing areas of agreement, settlement or compromise that would be mutually beneficial to the parties or that would satisfy the aspirations of each party to the negotiation. But in the case of Nigeria, oil contracts and negotiations have not been transparent and do not represent the aspirations of victims that have suffered loss and damage.

Another fundamental problem in the compensation saga is that the courts and the oil companies unilaterally and arbitrarily fix the compensation amount to be paid to victims of environmental damage. The convention in every contract agreement is that the oil company makes the offer to the victim. If the offer by the oil company is accepted, the amount agreed as compensation will be paid to the victim or claimant. If the offer is rejected further negotiation may commence until the aggrieved party is satisfied, but the courts and oil companies decides unilaterally and arbitrarily who should get compensation, and the amount of compensation to be paid. This is not good practice because it alienates the victims from the oil contract negotiations and infringes on the victims’ rights to property.

Article 21 (2) of the African Charter on Human and Peoples’ Rights provides that ‘all peoples’ who are disposed of their wealth and natural resources shall have the right to the lawful recovery of its property as well as to an adequate compensation.’ Also Article 21 (5) maintained that states parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practised by international monopolies so as to enable their people to fully benefit from the advantages derived from their national resources. Nigeria is a signatory to this Charter but it is questionable if the country complies or respects its dictates. Moreover, the enforcement of this provision of the Charter is either politicised or abandoned on the basis that the provision is incongruent with government oil policies.

Consequently, it is usually difficult for the litigants to argue that the oil company was unreasonably negligent or did not adopt good oilfields practice during its oil operations. As a result Nigeria courts rely on this leverage to decide cases in favour of oil firms. This leaves the local oil-bearing communities in a more vulnerable position because they cannot claim damages unless they are able to show that their economic interests have been affected

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194 Ibid.
195 See Article 21, (2) and (5) of African Charter on Human and Peoples Rights.
or ruined by oil operations in their regions. The burden of proof is usually on the plaintiff and the Court makes it difficult for litigants by looking at the legal technicalities of every case.

In *Chinda v. Shell-BP*


196 case, the plaintiffs alleged that due to the defendant’s negligence in the control and management of their flare site located very close to the plaintiffs’ village, a lot of damages was done to the economic trees, crops and buildings of the plaintiff. The trial judge rejected the request and averred that “The Statement of Claim demands an order that defendants (Shell-BP) refrain from operating a similar flare stack within five miles of plaintiffs’ village, an absurdly and needlessly wide demand”. The judge held that the plaintiff did not provide enough evidence to show that the action of the defendants amounts to negligence and subsequently quashed the action and decline compensation. This ruling is one of the travesties of justice that has prolonged cases of compensation claims. The Nigerian courts does not consider the fact that the village communities have limited knowledge of oil drilling and as such may not be in a good position to know the danger of oil exploration. The courts apply a rule of law which requires indigenous communities of the Niger Delta that are pitched in legal battles against multinational oil companies to prove that these oil companies have been negligent, but in fact does not incorporate justice and fairness. This is obviously unfair to the exploited people of the Niger Delta.

In *Seismograph Service Ltd. v. Etedgbere Onokpasa*


197, the respondent instituted a lawsuit against the appellant oil prospecting company for causing serious damage to his building and household goods through shooting operations and blow out. The courts put the burden of proof on the plaintiff in a negligence claim. He was unable to proof the negligence of appellant oil company to the “satisfaction of the Court of Appeal as a result of the preponderance of the appellants’ expert witness”. The courts admitted the scientific evidence provided by the oil companies, but refused and often rejected the expert evidence (seismograph) of the plaintiffs on the lame excuse that seismographer was not qualified. In cases of this nature, it is usually difficult for plaintiffs to acquire scientific evidence to prove their cases unlike the oil companies that have the financial power and all the sophisticated technology to get whatever information they need. This in fact, gives the

196 (1974) 2 RELR 1
197 (1972) 4 S.C . 123
oil companies the leeway to prosecute and institute appeals of any kind whereas the plaintiffs do not have the financial power to obtain the scientific evidence or even to bribe judges for favourable judgement.

In another case; Seismograph Services v Akporuovo\textsuperscript{199}, the plaintiff claimed that the oil activities of the defendant caused damage to his house and personal effects. A trial judge in a lower Court awarded damages accordingly to the plaintiff. Consequently, the defendant instituted an appeal at the Supreme Court. The Supreme Court overturned the decision of the lower Court because there was conflict of evidence as to whether the house was really damaged. Subsequently, the case was struck out on basis of proof and conflict of evidence. No compensation was paid and the plaintiff was frustrated.

In Tony Canyon Disaster\textsuperscript{200} case, Keeton argued that those who suffer loss from pollution, oil spills must be relieved of the extremely difficult task of establishing negligence as a condition precedent to securing redress and also of the crippling effect of the foreseeability rule of tort and that the risk of potentialities of escaping oil must be borne by those enterprises who profit by its transport\textsuperscript{201}. In other words, oil companies should be held responsible and answerable to those who suffer damage as a result of negligent or accident that occurred in the course of oil operations. This is not the system that operates in Nigeria. The oil companies do whatever they like because the oil legislations were ineffective, weak and easily to manipulate. In fact, the Nigeria government has completely failed to compel Shell and other oil firms to invest in proper safety systems of the kind that are required in developed countries if they want to continue oil operations in the country. And since oil companies have refused to invest in proper safety systems they should be ready to pay for their acts of negligence.

Apart from domestic lawsuits, the Niger Delta has in fact moved a step further in their fight against environmental injustice and economic deprivation. The Niger Delta has now often filed lawsuits against oil companies like Shell (SPDC) and Chevron at the

\textsuperscript{199} (1974) 6.SC.119
\textsuperscript{200} The Torrey Canyon was a supertanker transporting oil from Kuwait National Petroleum Company refinery at Mina Al-Ahmadi to the oil refinery in Milford Havens, Wales. Torrey Canyon struck Pollard’s Rock on Seven Stones reef between the Cornish mainland and the Scilly Isles causing up to 36 million gallons of oil spill into the sea which caused major contamination of about 50 miles of French coastline and 120 miles of Cornwall’s. The Torrey Canyon Disaster killed about 15,000 seabirds. The Torrey Canyon is seen as the first worst oil spill ever in history which was disastrously handled, leaving the ecosystem plagued for decades.\textsuperscript{201}

International Court of Justice at The Hague and London’s High Court. This has given oil litigations between local communities in Niger Delta and oil companies an international dimension. This action indicates how bad and complex the Nigeria oil crisis has become over a long period of time. It also indicates the loss of confidence in the country’s judicial system and the level of decay of the socio-economic structure. The case of Bodo Community in Ogoniland v Shell in 2008 oil spill exemplifies the level Niger Delta people have gone to get justice and equity for the loss of farmland and fishing trade. At present Shell is negotiating with the Bodo Community in Ogoniland on the amount of compensation payment to be paid and other clean-up arrangements.

The Niger Delta people have also been denied justice either on a basis of lack of proof or on the ground of oil sabotage (local people attempting to extract oil for illegal refineries or other purposes). The lawsuit filed by four Nigerian farmers co-sponsored by the International Green Campaigning Group, Friends of the Earth involved five allegations of oil spills against Shell at the Dutch Court in the Netherlands typifies the kind of obstacles the Niger Delta people face in accessing justice. Shell was accused of widespread oil spills in the regions of Niger Delta and was dragged to The Hague.

The Dutch Court quashed four of the allegations on the ground of sabotage, but on the fifth allegation, Shell was found guilty and ordered to pay compensation to be negotiated between Shell and the affected parties. The outcome of this case has two important lessons that both the international community and the Nigerian people must learn. First, the fact that the Dutch Court dismissed the four allegations of widespread spills in Ogoniland and Akwa Ibom State brought against Shell underscores the very serious and huge obstacles people of Niger Delta region face in accessing justice and equity. The second lesson is that it has been made clear and open that Shell and other oil companies in the region can be held responsible and liable for environmental damage in the region. The decision of the Dutch Court also underscored the fact that Shell was negligent and has failed to take proper safety measures to stop beforehand acts of sabotage.

Although it is not a landslide victory, it is a precedent and a key test case that shows that the Niger Delta oil crisis is huge and complex. This small victory has once again shown

202 See Shell acquitted of Nigeria Pollution Charges: The Guardian. Wednesday 30 January 2013. at www.guardian.co.uk/Environmental/OilSpills. Last visited 04/04/2013
to the international community the real-world challenges and impediments victims of environmental destruction, economic damage and human right abuses caused by the multinational oil companies in the Niger Delta region. While many people commended the Dutch Court ruling, this development has exposed the double standard of Shell in treating spill incidents in Nigeria differently from pollution in their home countries, Europe and North America. Nigerians especially the Niger Delta people, perceived this case as a landmark victory suggesting that the end of ‘‘business as usual’’ for the oil companies in Nigeria is pretty close. It is also a promising and encouraging development for more communities in Niger Delta to step up to seek justice.

In summary, readers would want to know how Land Use Act of 1978 and the attitude of Nigeria courts have enhanced my arguments for short-term measure to the Niger Delta oil crisis. The Land Use Act of 1979 and the bias of the Nigerian courts have enhanced my arguments in the sense that they are part of the problems that has plagued the country for decades. Therefore it is important to mention them in this work to tell the reader what the problems are and why solutions to these problems have been unsuccessful. So the Land Use Act of 1978 and the unfair role of the Nigeria courts towards land disputes between local communities and oil companies have continued to cause disagreement between the local communities and oil companies in one hand and between the Nigerian government and the oil-bearing states on the other hand.

The Act made it very difficult for compensations to be paid to victims whose lands has been ruined or acquired by the government. It also denied litigants access to justice, and equally gave the state governors unlimited power to expropriate land without fair and just compensation. The Act entrenches neo-patrimonial perspectives of the oil companies and the government and the problem of land acquisition has not been eliminated. It has also strained the relationship between the State and the local communities. Above all, the Land Use Act in the real sense was not promulgated to harmonize land tenure system and property rights in Nigeria. It was primarily created to give multinational oil companies and military generals easy access to land for oil exploration and for personal use.

CONCLUSION

There is no gainsaying the fact that the Land Use Act and the courts system have failed to solve the problem of land acquisition in relation to oil operation in the Niger Delta region. These problems may have proved intractable but not unresolvable. The challenges
and weakness in solving these problems have much to do with the insincerity and lack of focus by the Nigerian government. The insincerity of the government is a big problem and it has made some people resort to sabotage and other acts that are detrimental to public order. Resorting to violence is one option the Niger Delta people have used to express their disappointment with the Nigerian government. Although this is not the best option, the Niger Delta people believe that this is the only way they can make foreign oil companies pay compensation for environmental destruction of their region so that it will be a big lesson to others. One of the cardinal issues this research set out to achieve is to provide short-term justice to the Niger Delta oil crisis. This means that this thesis shall apply a method of justice that has the capacity to produce principles of justice that reasonable people who are determined to advance their collective interest cannot reasonably reject. This method of justice is plausible and defensible. This in fact shows how bad and complex Nigeria problem has become. James Baldwin, an African-American novelist, a social critic, and a poet during the time of freedom movement in the US said: ‘for how long am l going to wait for change and justice to come? This question also applies to Nigeria. That Niger Delta people have consistently asked the same question to their state governors and Federal government but have only got empty promises. The effects of these unfulfilled promises have not only reflected the complex and intractable nature of the country’s problems. For example the insecurity problems caused by aggrieved Niger Delta youths and the religious fanaticism of the Boko Haram group, oil theft and kidnapping of oil workers and innocent citizens for ransom, paints graphic and worrisome pictures of the country’s problems. These ugly scenarios have damaged the country’s image at the international level. It is therefore important to mention that the country’s problems are not unresolvable. The fundamental issue that we think is the greatest challenge is what practical approach and rational solution can be used to resolve them. If certain solutions have been unsuccessful, the question is why have those solutions failed. It is too late to blame anybody for these problems because recrimination will not solve the problems and we need to take action now.

James Baldwin (August 2, 1924- December 1st, 1987) an African-American, was a prolific writer, novelist, poet and as well as a civil rights activist in America in 1950 and 60s. His became disgusted on the amount of biasness and prejudicial against blacks and homosexuals in the United States. He was influenced by the situation of blacks in his country and his personal experience of poverty while he lived in Harlem, New York. James Baldwin is one of the most prominent figures of Civil Rights Movement against oppression, neglect, racism, injustice and discrimination against homosexuals in the United States.
CHAPTER 3
THE EQUITY ISSUE AND THE POLITICS OF NIGERIA OIL ECONOMY

The Nigerian State benefits from oil royalties by permitting exploitation of mineral resources that clearly results in pollution and the disruption of farmlands and fishing ports... There is certainly a need to evaluate the national benefits of oil production against community concern and welfare.

-Ikein 204

Equity has become a central concern in sustainable development. Countries, local communities, private sector firms, non-governmental organisations and consumers have all become concerned about how the costs and benefits of sustainable development will be allocated. For perhaps the first time, these constituencies all view environmental costs and benefits as central to the equity debate.

-Edith Brown Weiss 205

3.1 INTRODUCTION

Apart from the problem of oil legislations and its concomitant effects on the Niger Delta region and the hindrances it caused to the development of the Nigeria oil industry, the Niger Delta people have complained about how the huge revenue Nigeria derives annually from oil operations have not been used to improve their living conditions or used to develop their regions. They have continuously alleged that their region has been excluded, marginalised, deprived and have remained underdeveloped for decades in spite of enormous oil wealth.

The equity issue and the politics of resource control and revenue allocation have been central in the Niger Delta oil crisis. Niger Delta people have raised serious equity issues that include: lack of participation in the oil economy, lack of development, absence of employment opportunities, distribution process, revenue allocation formula, environmental damage of their pre-existing farming and fishing economy, economic deprivation, and political marginalisation. This chapter is divided into two sections. The first section investigates the equity issues involved in oil explorations in the region. The key argument here is to determine in what ways if any, have the oil operations in the region been beneficial (or are still beneficial) to the Niger Delta people in particular and Nigeria in general. To achieve this goal, the issues involved will be discussed on the basis of equity,

participation, compensation imbroglios, minority problem, development problems and access to oil wealth or revenue allocation issues.

The second section chapter discusses the politics of resource control and revenue distribution and allocation formula. The Niger Delta oil crisis hinges mainly on these equity issues that have not been adequately and effectively addressed since oil operations stated in 1956. Moreover, the complaints, demands, (political and economic demands,) expressed through conflicts, protests by the people in relation to resource control and other equity issues oil shall be critically examined. Before we proceed it is essential to explicate the term equity as it is used in this research.

3.2 WHAT IS THE TERM ‘EQUITY’

The term equity refers to the quality, State or ideal of being just and fair. It is the act of being impartial or reasonable and showing fair conduct. Equity is said to have its origin in English legal system, at the time when the strictness of the common law was said to occasion injustice in many cases. Equity developed to ameliorate the harshness of the law and thereby assist the law to attain its ultimate goal: that is dispensation of justice. This implies that the central focus of equity is the attainment of justice and fair conduct. Equity therefore has a long history in every human society. It is employed to achieve various purposes like the allocation of revenue and distribution of wealth. But in Nigeria the story is completely different. The Nigerian Court of Appeal re-stated the importance of equity as the correction of the law in the part where it is defective. It does not envisage sharp practices and undue advantage of a situation and a refusal to honour reciprocal liability arising therefrom. It is because equity frowns at the unconscionable use of a person’s right that it generally acts on conscience. The affirmation of the importance of equity by Nigerian Court, did not reflect in the way oil revenue are distributed neither did it reflect in the manner development programmes are allotted to various states in Nigeria.


208 See FDB Financial Services Ltd v. Adesola (2000) 8 NWLR (Pt.668) 170, at 187, per Aderemi JCA. The Case was an attempt by the defendant/appellant to deny liability by insisting on a strict application of the law in Ebeku op. cit. p. 254 (2000)
Significantly, the principles of equity remain one of the building blocks of international law and have been applied by international tribunals\(^{209}\) to decide cases that concerns human rights violation and distribution of resource revenue. According to Weiss, international law has a long tradition of invoking principles of equity to reach just decisions\(^{210}\). An important principle of equity is that under domestic law it applies between a person and a person, an individual or a group and the State, while under international law it applies between subjects of a State and international law. Equity is being invoked to reflect equitable standards for allocation and sharing of resources and benefits\(^{211}\). In effect, the international human right law emphasises the right to equal access to benefits of development\(^{212}\). But in Nigeria development programmes are not equitably distributed. The Niger Delta people that suffers great environmental destruction from oil exploitation have been neglected. In short, equity is used here to showcase Nigeria’s socio-economic predicaments with special regard to distribution of the costs and benefits of oil operation in the Niger Delta region\(^{213}\).

Equity in this context is used to gauge the level of fairness in the allocation of revenue accruing from Nigeria’s oil and gas exports. Also, equity is used in this research to determine how oil benefits and oil burdens are shared. But the fact still remains that the principles of equity have not been observed in the allocation of oil revenue and in the sharing of oil burden. The Niger Delta people have not been equitably treated since oil operations started in their region. Moreover, the burden the region suffers from oil exploration has not been accounted for or considered in the distribution of oil wealth. The development of the area is at the lowest ebb. The victims of environmental destruction and those that have lost their livelihood have not been adequately compensated. The situation in the region is pathetic, and frustrating. For example, unemployment rate in the region is terribly high. The region has been excluded and marginalized in the distribution and allocation of oil wealth. These are the equity issues that have immensely contributed to the age-long oil crisis in the region.

\(^{209}\) See Per Judge Hudson in Meuse Case (Netherland v. Belgium) (1937) (PCIJ Ser. A/B No 70.
\(^{211}\) Ibid.
\(^{212}\) Ibid.
\(^{213}\) Ibid.
The physical location of the Niger Delta region is a significant factor to consider because it made the area strategically and economically important to Nigeria and European traders and merchants. But the location of the region has not been considered when oil revenue allocation and development programmes are decided. No doubt, the geographical location, landmass and the population of the region largely have political and economic undercurrents yet the Nigerian have not deemed it essential to consider the region on the basis of environmental destruction and loss of livelihood prevalent in the area. No matter how we look at it the Niger Delta is categorised as one of the world’s major wetlands, with one of the largest mangrove ecosystems. The region is a virgin land, fertile for agriculture and untapped natural and mineral resources.

This explains why the inhabitants of the area are primarily farmers and fishermen. Many believe that one day the region will become economic world power and independent of other regions in Nigeria. This notion no doubt is borne out of, hatred, greed and envy. This attitude is common with the political leaders’ northern part of the country. Based on this perspective, many authors have painted conflicting pictures and have presented distorted information about the region. The region has been geographically been defined in such a way that people will perceive the region as rich in order to deny them their political and economic rights.

It has been argued that the definition given to Niger Delta region is one of those inimical and sinister moves of the Nigerian government and Northern leaders to denying the region its political relevance and economic place in the country. Many have said that the definition is over exaggerated and distorted with political and economic undercurrent. The definition in our own opinion contributed to part of the problems plaguing the region presently. The definition tends to put the area at disadvantaged position on the assumption that the region is rich and could become economic umpire in the nearest future. The truth of the matter is that the region is economically deprived and underdeveloped. For example the region receives less revenue allocation and low infrastructural development.

Historically, the Niger Delta has its apex at a place called Aboh. It is assumed that below this point that river Niger bifurcates into two main distributaries i.e. River Nun and
the Forcados\textsuperscript{215}. Further investigation shows that the southernmost tip of the delta is at Palm Point, south of Akassa, and at the estuary of the River Nun\textsuperscript{216}

Dike clearly described the Niger Delta region as follows:

\textit{From Lagos to the Cameroon lies the low country of the Nigeria Coastal plain. The Niger delta occupies the greater part of this lowland Belt and may be described as the region bounded by the Benin River on The west and the Cross river (and Imo river) in the east, including the Coastal area where the Cameroon Mountain dip into the sea} \textsuperscript{217}

Apart from Dike’s definition of the area, one conspicuous characteristics of Niger Delta is its network of rivers, swampy mash land and creeks. It has been described as a floodplain build up by accumulation of sedimentary deposits washed down the rivers Niger and Benue, some 40-50 million years ago.\textsuperscript{218} In terms of landmass, the total land area of the region is approximately 25, 900 km or approximately 2.8 per cent of Nigeria’s total land area.\textsuperscript{219}

From this brief geographical definition of the region, the Niger Delta is referred to as a region that comprises of land, territory, and people encompassed in rivers, Bayelsa and the Delta states of Nigeria\textsuperscript{220}. To reduce the role of the Niger Delta people in Nigerian political and economic development merely to violent agitators for environmental and natural resources rights, amounts to acknowledging only the negative aspects of the region's contributions.\textsuperscript{221} There were political contributions as important as the physical and petroleum resources of the Niger Delta\textsuperscript{222}

Having explained equity issues, it is imperative for us in this thesis to consider equity indications in relation to oil operations which will help us to determine whether the oil operations have been beneficial to the Niger Delta people and Nigerian in general. And if the Niger Delta people have benefited, we will show whether the Nigerian government have employed equity indicators or principles of equity in the distribution process, citing of development projects, and social services to the Niger Delta people. To elucidate these issues, we are going to examine principles like participation, compensation, development, and revenue allocation formula.

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\textsuperscript{216} See \textit{The Niger Delta Environmental Survey} (1997), Vol.1. No 4 (NDES).
\textsuperscript{218} NDES. (1997.4).
\textsuperscript{219} See the World Bank: Defining an Environmental Development Strategy for the Niger Delta, 1995
\textsuperscript{220} See \textit{Ebeku, K. S. A.,} (2005. 19).
\textsuperscript{222} Ibid.
3.3 PARTICIPATION IN THE OIL OPERATION

The concept of participation in relation to oil exploitation in the Niger Delta region is a broad spectrum that has generated equity considerations in the Nigeria political economy of oil. According to Hitchcock, ‘participation can mean the right to make decisions about development action, and the process whereby local communities and individuals take part in defining their own needs and coming up with solutions to meet those needs. He further add that participation can refer to situations in which local communities share in the benefits from development projects and are fully involved in generating those benefits’. He sums that participations given here can be usefully applied can be said to mean simply putting people first. From the forgoing, the various meanings of participation given here can be usefully applied.

Remarkably, participation is now increasingly being used as one major factor of justice and fairness particularly in the context of the minority rights of indigenous people of Niger Delta. For example, Article 7(1) of the ILO Convention 169 provides, in part, that indigenous peoples shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly. Similarly, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, emphasises the rights of minorities to participate effectively in cultural, religious, social, economic and public life. But this is not the case in Nigeria. The present situation now is that the indigenous people of Niger Delta are still excluded from the management of the oil resources found in their region. They are neglected and deprived of the right to a substantial share of the oil wealth.

In addition, Article 15(1) of the ILO Convention 169 states that the rights of indigenous peoples to the natural resources pertaining to their lands shall be specially safeguarded, and these include their right to participate in the use, management and conservation of these resources.

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226 See also Principle 23 of the World Charter for Nature 1982; All persons, in accordance with their national legislation, shall the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has
Many people have argued that the above international instruments are not binding on member states. But the issue here is not whether they are binding on member states or not. On the contrary, it should be noted that the international instruments illustrate the measure of equity, the need for inclusiveness, and participation of indigenous people in the decision-making process, right to their natural resources and management of rents accruing thereof. This is the basic tenets of equity.

But under the Nigerian law, the ownership of oil is constitutionally and statutorily vested in the State. By virtue of this provision, the State exercises exclusive right to grant oil concession rights or issue oil licences or grant oil lease rights for oil operations to foreign oil companies. Also by virtue of the exclusive ownership of oil, the State is constitutionally entitled to royalties, rents and other revenue accruing from oil operations. The import of this provision is that the land owners or land occupiers do not have a right to participate in land acquisition process or entitled to compensation, royalties or other revenues from oil operation. Human Rights Watch (HRW) has succinctly said that ‘since oil is Federal property (in Nigeria) land occupiers are entitled to no royalties for oil extracted from their land’.

Nonetheless, evidence indicates that before the establishment of the Land Use Act, 1978, the Niger Delta people participate in the oil operations and in the land acquisition process. Land acquisition was negotiated by community heads and then with the individual land owners. The multinational oil companies approach the community heads after receiving concessions from the Federal government for access to land. In the process, they concluded agreements for compensation (annual rent) for the use of the land and for damage to any surface rights thereon. But when oil legislations were introduced, the participation of the Niger Delta people with regards to oil exploration was denied.

The equity issue here therefore is that the Niger Delta people is being excluded and denied access to revenues accruing from oil. They have not participated in the management of the natural resources that customarily belong to them. As a result, oil operations in their region have not been beneficial and still not beneficial to them or Nigerians in generals. Also they have not participated in the land acquisition process, the revenue allocation process or in the management of the rent, or royalties accruing from oil exploration activities in their land. The equity issue therefore is one of the major herculean problems suffered damage or degradation; IUCN Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources, Art 10 (UN Doc. A/CONF.15/PC/WG.111/4 (1991).

that have plagued Nigeria. It is possible that if the equity issue remains the same there will be consistent tension and ethnic mistrust in Nigeria.

3.4 DEVELOPMENT OF THE NIGER DELTA REGION

Another equity indicator that the Niger Delta people have complained about is the development issue in relation to oil operation in their region. Giro Harlem Bruntland, observed that the environment is where we all live, and development is what we all do in attempting to improve our lot within that abode\textsuperscript{228}. He also defined development as a planned process that involves a progressive transformation of economy and society. Adinkrah describe it as the conscious process of a country to seek a better life for its citizens\textsuperscript{229}. He said that it is the process which involves the steady expansion of a large number of non-revenue yielding services such as schools, hospitals, and communication systems, which are very important for long-run development\textsuperscript{230}. Similarly, Seidman in his own contribution said that development is the conscious process of a country to seek an improvement in the standard of living of its citizens\textsuperscript{231}.

From the forgoing, the Niger Delta people are not against development in other areas of the country, what they are against is the attitude of government towards their plight. For them therefore, it is inequitable and unjust that their regions are neglected and infrastructurally underdeveloped whereas other parts of the country are continuously developed. What is correct and equitable they have complained is that development ought to start from the regions that ‘lay the golden eggs’ before it is spread to areas of the country.

The fundamental question therefore is: how or to what extent can oil operation be beneficial to the Niger Delta people and the Niger Delta region in terms of the drivers and indicators of development we have stated above- especially with reference to huge oil revenues the Nigerian State derives and the huge oil profits the MNOCs make from the region? The answers to this question are not far-fetched.

\textsuperscript{228} See World Commission on Environment and Development. (WCED) 1978 .xi by Gro Harlem Bruntland at \url{www.un-documents.net/our-common-future.pdf}. Last visited. 08/10/2013


Firstly, study after study has revealed consistent neglect that supports the allegation of the dearth of social infrastructure in the region. The underdevelopment level and the destitution of the region has been long-standing whereas the Federal and State governments and the MNOCs have done little or nothing to compensate for the despoliation of the peasants’ natural ecosystem by oil operations. The peasant communities bordering the abundant oil resources are deprived of the basic social amenities like electricity, accommodation, clean water, health facilities etc. It is clear that the oil boom era financed a series of capital-intensive projects ranging from expansion of road networks, good schools and hospitals and of course the new capital city, Abuja. It is sad to note that most of these developments took place in the non-oil-producing regions. For example, the north has the best road network system, good hospitals, communication systems, constant power supply and better social amenities than the South-South region that generates 90 per cent of the country’s annual revenue. The oil-producing regions were and still are the least developed in the country.

Secondly, Nigerian’s investigation index reveals that in Ogoniland in particular is the poorest area due to lack of social amenities. The area is neglected and has witnessed serious environmental destructions for over 30 years. Not less than 200,000 barrel of best grade oil is lifted every day from Ogoniland which stood at $18 per barrel and this earns the country about $36,000,000 every day\textsuperscript{232}. Yet the people do not have electricity, hospitals, and school whereas development in the North has continued to increase.

Significantly, both Federal and State governments and MNOCs accept the fact that the Niger Delta is poor, backward and marginalized. A former Nigerian President who disapproved of the way the Niger Delta people are treated said that: ‘it is unfair for South-South (Niger Delta) states to be the producers of the nation’s wealth to languish in penury while the resources are used to develop other parts of the country\textsuperscript{233}. The importance of this statement is that it gives support to the cry of injustice and neglect the region had been subjected for more than four decades now.

The crucial question many ask is why has the Niger Delta people remained politically marginalized and socially deprived? And why has the huge oil resources derived

\begin{itemize}
\item \textsuperscript{232} See the Catholic Herald (Lagos), 16 September 1993. The Roman Catholic Archbishop of Lagos, Olabunmi Okogie, described the suffering conditions of the Niger Delta people as an ‘international disgrace’. He noted that the Niger Delta people have inalienable right to make use of their land first for personal development, but instead the federal and state government have denied the people their rights. See further details in Ebeku (2006: 284)
\item \textsuperscript{233} See ThisDay, 10 September 2002 noted in Ebeku (2006: 286)
\end{itemize}
from their land have not been utilized properly to develop the area? The answers to these
questions are nothing but political corruption and mismanagement of rent from oil. 
Unfortunately the Nigeria Federal and State government have blamed the problem on youths’
restiveness and militia activities in the area. They have accused the youth of oil theft,
pipeline vandalization, kidnapping of oil workers for ransom and other anti-oil activities. 
The MNOCs on another side, have blamed both the community leaders and the youth for the
problems. But no matter how anybody may look at it, the Niger Delta people hold both the
Nigerian Federal /State governments and the MNOCs responsible for their woes. Their
position supports our argument that the Nigerian Federal, State and the MNOCs have failed
in their responsibilities. The Nigerian government have concentrated only on long-term
measures as the solution to our problems. This has made the matter more complicated and
cumbersome to solve. The Nigerian problems have remained complex because our leaders
have failed to use the right approach. The fact that they do not dispute evidence that the
Niger Delta people are poor, backward and neglected is not enough. They have to do
something urgent about the present situation. The oil companies have failed in their
corporate social responsibilities and have failed to obey environmental laws of the country.

It is therefore submitted that oil operations in the Niger Delta unlike the case in some
other regions of the world, such as Shetland234, have not yet resulted in any appreciable
benefits to the region and its indigenous inhabitants235. In Shetland the negative
environmental impacts of from oil terminals and oil development have been relatively minor
due to precautions taken236. However in Nigeria the negative environmental impacts are
colossal and harmful to the Niger Delta people. If we view what is happening in the region
from the purview of international law, the situation in the Niger Delta violates Article 2(3)
of the UN Declaration on the Right to Development which provides that states have the
right and duty to formulate appropriate national development policies that aim at fair
distribution of the benefits’ resulting from development.

From the forgoing there is no atom of fair distribution of oil-related benefits in terms
of development of the Niger Delta people. Development is one of the major equity issues
raised by the Niger Delta in relation to oil exploitation in their region. The Nigeria
government and the MNOCs have been abysmally insensitive to the plight of the indigenous

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234 See Blackadder, Shetland and the impacts of Oil Development. At

235 Ebeku, K. S. A. (2006). Oil and The Niger Delta People in International Law: Resources Rights,
Environmental and Equity issues., Rudiger Koppe Verlag, Germany.

236 Ibid.
inhabitants of the region despite the huge oil revenues and profits both derive from the region. However, the problems are complex and huge and may not be solved in one thesis. Also the Federal /State governments will not be able to solve the problems overnight. Giving the longstanding nature of the problems, the question many ask is why have the Nigerian government been unsuccessful in solving these problems.

3.5. EMPLOYMENT AS EQUITY INDICATOR

The non-development of the Niger Delta region where huge oil revenues accrues to the Nigerian government annually and huge oil profits to the MNOCs is not the only equity issues raised by the local communities in South-South region of the country. O’Faircheallaigh declared that “mineral exploitation has the potential to provide an important source of employment and income for the indigenous people” where it is derived.

In other countries like Canada, and Australia, the common notion in favour of mining development in the local communities is that mining projects will generate enough employment for the existing resident population, particularly aboriginal/indigenous peoples. In fact, similar arguments would appear appropriate to Nigeria. Statutory provisions in the country recognise the need for oil operations to provide economic benefits in terms of employment and social inclusion in the main stream of Nigeria’s socio-political activities. But unfortunately the majority of the Niger Delta people live on the margins due to unemployment and loss of livelihood. The problem is not that the people are unemployable or there is no work for them, rather it is their exclusion and marginalisation by the Nigerian government and the MNOCs in the region.

Under the Regulation 26 of the Petroleum (Drilling and Production) Regulation 1969 oil companies (MNOCs) are obliged to recruit and train Nigerians for employment in the oil industry. Regulation provides that the training of Nigeria citizens in all phases of oil operation shall be the responsibility of the MNOCs whether by direct lease or through agents and contractors. Also Paragraph 37 of the First Schedule to the Petroleum Act provides that holders of an Oil Mining Lease (MNOCs) within ten years from the grant of his lease shall ensure that Nigeria citizens are employed at the managerial, professional and supervisory grades and that 60 out of 75 per cent of number of persons employed in those

239 Ibid.
240 Ibid.
grade, shall be Nigerian citizens\textsuperscript{241}. Similarly the same Paragraph provides that all skilled, semi-skilled and unskilled workers are to be citizens of Nigeria. Shell Oil Company has published statistics showing compliance of statutory provisions of the Petroleum Regulation of 1969. Shell states it employs 40,000 people and well above 95 per cent of them are Nigerians\textsuperscript{242}. The company also said that Nigerians hold 50 per cent of the top managerial positions and 100 Nigerian on overseas assignments in other Shell companies\textsuperscript{243}.

It is important to mention that the said statutory provisions of 1969 did not mention specifically that oil companies should employ Nigerians from which area or region. There was no mention of Niger Delta region or South-South region or north/west region. Given the fact that there was not specific reference to any particular region, it implies that Nigerians from any part of the country could be employed. This probably explains why Shell’s published employment statistics do not disclose how many of the Nigerians employed hail from which regions or areas. In particular Shell did not disclose the number of Nigerians who come from the actual oil-producing states.

However, there is glaring evidence that Shell recognises the need to employ local people who hail from the area of its operation in other countries. This is the practice in most oil-producing nations. Importantly, the principle of local content is undisputed in many oil-producing countries. It is part of the corporate social responsibilities of MNOCs in African countries such as Ghana, Sudan, Algeria, Botswana, Uganda and other part of the world like, Norway, UK, Italy, and Netherlands. In Ghana, Tullow Oil Company’s local content package not only employ Ghanaians but they help local business to grow, helping young journalist and championing anti-bribery and corruption. In Uganda, Tullow Oil Plc. have helped the Ugandan government fight corruption and ensure transparency publishing of payments to all major stakeholder groups in Uganda\textsuperscript{244}. But in Nigeria, Shell and other oil companies’ concentrate on how to maximise profit and take the profits away for the development of Europe.

Currently, there is no evidence to dispute or contradict Shell’s claim about the number of Nigerians in its workforce but it is submitted that most Nigerians in the companies’


\textsuperscript{242} Ebeku, K. S. A. (2006). Oil and The Niger Delta People in International Law: Resources Rights, Environmental and Equity issues., Rudiger Koppe Verlag, Germany.

\textsuperscript{243} Ibid.

\textsuperscript{244} See Tullow Oil PlC: Case studies 2009-2013 at www.tullowoil.com>Home>Corporate Responsibility>Case studies. Last visited 10/10/2013
workforce are from areas outside the oil companies’ area of operation. In Port Harcourt, the Capital City of Rivers State of Niger Delta, a Human Right Watch investigation discovered that unemployment rate is alarmingly high at least 30 per cent. Available evidence has revealed that the Niger Delta population has been restless and relentless in demanding employment in multinational oil companies in their areas. Study after study have shown that the employable are denied opportunities on a whimsical excuse that they are not qualified or lack the skills needed for oil operations. Presently, what the MNOCs do is to import foreign labour and manpower from UK, US, Italy, France and China, whereas the local communities get nothing (not even manual jobs).

To sum up, the unemployment rate in the Niger Delta is part of the economic injustice the people of Niger delta have been subjected. It is as well a violation of Article 8 of the Declaration of the Rights to Development. The unemployment problem is demeaning and generates pervasive poverty and destitution. However, this problem has also received little or no attention from the Nigeria government and local people have continuously been denied employment opportunities. This has led to the blowing up oil installations and kidnapping oil workers for ransom. The regions have not been accorded the status of oil stakeholders in the oil economy but stake-holding is not aimed at dispensing hands-out to those communities, but at allocating an appreciable percentage of revenue on a particular oil well to be managed by the community so that proceeds or dividends will come straight to them. In addition, the local content package of the stake-holding process should eliminate abject poverty, neglect and deprivation. It should give the Niger Delta people political power, economic relevance and their rightful place in the redistribution of the resource wealth. The government can achieve these objectives only if it starts now to lay more emphasis on short-term measures that have the capacity to address and account for all the immediate needs of the Niger Delta people, otherwise Nigeria will continue to be backward, stagnant, poor, and insecure and all other efforts will be a wide goose chase.

The equity issue is directly linked with the Niger Delta region clamour for substantial say in the revenue derived from their land and a fair share of the wealth from oil. In our next

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245 See SPDC, Shell Recruitment Information.
247 See Declaration of the Rights of Development, Article 8 1986
section we are going to examine the politics of Nigeria oil economy and the way it affects the Niger Delta people.

3.6 THE POLITICS OF RESOURCE CONTROL AND REVENUE ALLOCATION

Resource control is a basic political theory grounded on the fact that land, labour; capital and entrepreneurship are factors of production owned by individuals, and should therefore be controlled by them. In so doing, the reward derived from such factors of production should be passed to those who own them.

*Adam Smith: Wealth of Nations 1776* ²⁴⁹

Rent is a return for the use of the original and indestructible properties of soil. Whoever owns land expects some form of compensation from those hiring this very important factor of production. The clamour for resource control is a clamour for adequate compensation, a cry for redistribution of the revenue allocation formula, and nothing more. The only a government should do is to impose tax to be used for the welfare of the community.

*David Dafinone:* ²⁵⁰

One pronounced outcome of social injustice in the Nigerian society is the issue of distribution of resources and it allocation according to need. And the resource which some scholars have described as a ‘curse’ is crude oil and it is derived from the Niger Delta region ²⁵¹. In our last chapter we discussed equity issues and how the Niger Delta people has been neglected, economically deprived and politically ostracized. In this section our main intention is to discuss the politics of resource control, revenue allocation problems associated with resource distribution and rent management. In discussing these contentious issues, we shall examine crucial related topics like federalism and fiscal federalism. These related topics have failed to sort out the imbroglio surrounding the resource control and allocation formula in Nigeria.

Therefore the crucial questions addressed in this chapter are; why Nigeria is plagued by the problem of resource control and derivative principle; why is that attempts by Nigerian government to resolve the problem have failed and what rational solutions can be applied to eliminate the tension created by both issues (resource control and derivative principle)? These fundamental questions are addressed objectively and systematically in this chapter.

3.7 THEORIES OF NATURAL RESOURCES AND ITS APPLICATION TO NIGERIA SITUATION

Going by the debates surrounding natural resources property rights, this thesis emphasises on the question of justice and equity that have been the crux of the Niger Delta oil crisis. The question of justice raised by natural resources property rights is so pressing that those who lack access to natural resource wealth have resorted to violent means to make the government address their grievances. However, Natural resources such as oil, natural gas, diamond, minerals, forests and water are often a major source of national income, and are also a major cause of conflict and instability if mismanaged or shared unfairly. Countries with weak institutions (Nigeria) often struggle to handle the potentially destructive force of injustice and the attempts by various actors to capture the wealth generated by natural resources.

In the case of Nigeria, the control and management of natural resources and the sharing of its benefits has often been the chief motivator of ethnic or identity based conflicts. These problems are visible because Nigeria is a Federal State and not a decentralized system. Under these circumstances, we can say that the problems the country is experiencing now are due to the framework for the governing and management of natural resources and the wealth it generates. The country, in fact, has weak institutions and experiences the potentially destructive force of corruption and various actors’ desperation to capture the wealth generated from these natural resources.

The two theories of natural resources is significant to this kind of research and also to show which one best suits the special circumstances of Nigeria and which one Nigeria is practising now. In defining the two theories therefore, it will help us to advocate for equal distribution of resources and also consider how the principle of equal distribution can be justly implemented. But before we begin to define the two theories of natural resources, it is imperative to start with the terms “natural” and “resources”.

To term a resource “natural” means it has not been created or significantly altered by human beings. Land, water and oil in pristine conditions are all examples of natural resources.

253 Ibid.
resources. Wild animals like fish in the sea are also natural resources, but human bodies and any parts thereof are not. The second term is the ‘resources’ and it refers to anything that is useful for the attainment of human goals. The term includes physical objects as well as ideas e.g. intellectual resources.

The first theory states that natural resources belong to whoever happens to own them i.e. the land which is the founder. This theory means that the owner of the land where it is discovered is the owner and owns both the minerals and oil found therefrom. This theory is compelling in the sense that the landowner has absolute control of the minerals, fossil fuel, and gas found in his land. The owner decides who shares and who should benefit from it. The problem of sharing benefits does not arise. The management of the revenue remains the responsibility of the owner of the land or communities that jointly owes the land. In other words the management and control propensity of resource wealth resides with the person who owns the land and not with the State unless otherwise stated.

The second theory provides that the natural resources belong to everyone and for the benefit of all. This theory gives the governing and ownership of natural resources to be managed by the State for the benefit and welfare of everyone. The argument in support of the second theory is that it allows everyone and not just people who happen to own a particular land that resources are on to share in the wealth those resources created. This theory has always been an emotional issue that requires balancing between the government and the oil-producing states. This is the theory Nigeria and some other African countries are practicing currently. Sadly, this theory has failed to benefit everyone in Nigeria. The claims of private ownership, communal and customary rights and State ownership in Nigeria have not been properly addressed. It has not been addressed or handled in a more amicable way because the country has no strong institutions and none of the strict legislation that regulates revenue distribution like we see in countries like Ghana, Botswana and Norway has been effective.

The reason behind State control of the natural resources is to make sure that all population benefits but in Nigeria nobody has benefited and not even the Niger Delta people who ‘lays the golden eggs’. So the fundamental question is if nobody has benefited except
corrupt politicians and government officials who get pay-offs from the multinational oil companies, how can we reconcile or accept that the oil belongs to everyone? The claim that everybody owns the oil sounds too good to be true in Nigeria. The situation now is whereas one section could have benefited if they have control of the resources, it is rather a situation where the population do not benefit. And as result, the country is poor and backward even with her stupendous oil wealth. It is the corrupt politicians and those that have strong connections with oil companies that benefit. Since the population do not benefit, the next question is who benefits and how is the revenue accruing from oil resources distributed and allocated?

3.8 THE NIGER DELTA AND REVENUE DISTRIBUTION

One of the perennial problems which has not only defied all past attempts at permanent solution, but also has a tendency for evoking high emotions on the part of all concerned each time it is brought forth for discussion is the issue of equitable revenue distribution in Nigeria. It is an issue which has been politicised by successive administrations in Nigeria both military and civilian regimes. The competition over sharing common wealth in the context of a plural society like Nigeria has overtime, generated a lot of contradictions and conflicts despite various commissions and committees set up to find lasting solutions to the problem. The State’s roles in these contradictions and conflicts have made it difficult for the country to fashion out an acceptable sharing and distributive formula for oil revenue.

By an acceptable formula we mean one that would foster a more balanced development and harmonious fiscal policy among the components groups in the country, but overtime, there has been a constant decline of sharing the oil revenue. For instance revenue sharing has declined from 100 per cent in 1953 to 50 per cent in 1960, 45 per cent in 1969, to 20 per cent 1975, 1.5 per cent in 1982, 1.0 per cent in 1990 and to the current 13 per cent which was fixed by section 162 (2) of 1999 Constitution. This gradual decline triggered tension and violent protest so much so that the economic growth of the country is now under serious threat. As a result the resource distribution squabbles has continued to remain the ideological bases of the youth struggle in the Niger Delta. Whereas the crisis lingers on, the government response has been haphazard and insincere. The government response typically included the creation of development boards, pacification, and creation of states.

259 Ibid
The challenges of revenue distribution and the sharing formula inconsistencies calls for higher level government policy than mere development boards, pacification and creation of states. Again the way the Niger Delta region has been factored into the benefit sharing equation calls for a sincere and people-oriented approach from government. The big question is how does the Niger Delta region benefits from the distribution of the oil wealth derived at the back of their houses? What investment plans and development programme have the Federal Government of Nigeria (FGN) carried out in these regions with peculiar terrain devastated by extensive oil exploration and finally how can we say that government oil wealth distribution and allocation is fair and just to the Niger Delta people?

Going by the country’s public spending priorities the investment in infrastructure both physical and social is one of the topmost on the government budget. Investment in infrastructure handled by the Federal government happens to gulp large chunk of the oil revenue. It is with the oil and lately gas resources from the Niger Delta region that important government projects are executed. For example the Third Mainland Bridge in Lagos (south-west), the building of a new multi-billion dollar Federal Capital Territory and the Kaduna Refinery. Moreover, the headquarters of most oil multinationals are sited in far away Lagos State which means the companies pay tax to Lagos State and not to oil-bearing states in the South-South region. For example ExxonMobil and NNPC headquarters are situated in Lagos State and their taxes go to Lagos State and not to the oil-bearing states. Sadly, this significant contribution to national revenue by the oil-bearing communities in the Niger Delta region has not meant anything in terms of socio-economic and physical development. The question is what is the place of the Niger Delta people in government’s infrastructural development?

Given the magnitude of the revenue distribution anomaly, the Willink Commission report of 1958 compared the current State of the region to other regions of the country. The Commission averred that “the Niger Delta is poor, backward and neglected”. In support of this view, Umoh stated that in terms of poverty head count, available statistics in Akwa-Ibom State alone show that 72.3 per cent of its population is poor, neglected and underdeveloped. These statistics and the percentage of poverty, we must confess is

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261 Ibid.

262 Ibid.

slightly higher than the Nigeria average of 70.7 per cent poverty rate. The World Bank report 1995 gave credence to the poverty level of the region and further reported that the ecological devastation unleashed on the region is life-threatening\textsuperscript{264}. These reports and statistics were not exaggerated and did not come from Niger Delta indigenes, but from independent bodies. The crucial issue is that the Federal government’s investment in social infrastructural in Niger Delta is abysmally little. In effect therefore, it is crystal clear that the oil-bearing communities in Niger Delta have been excluded in the Federal government’s investment in infrastructure and other developmental plan of the government.

In another development, the inflow of oil revenue in the early 1970s further led to an unprecedented boom in the economy and created an opportunity for the State to pursue indigenization policy in the economy by introducing limiting quotas for expatriates, minimum purchase requirements of Nigeria goods, increase Nigeria ownership among other criteria\textsuperscript{265}. Public wages increased sharply and living conditions improved greatly. For example in 1975 alone average public wages in Nigeria were doubled in an attempt by government to buy political support from key stakeholders.\textsuperscript{266} Where did these huge investments and public spending go and who benefited most and why did some people benefit most and others did not at all? Whereas major investment in infrastructure in public spending went to the most major ethnic groups in the country, the oil-bearing communities in Niger Delta were left uncared for, and marginalised in investment activities and other development projects in the country.

3.9 THE POLITICS OF DEVELOPMENT INSTITUTIONS AND REVENUE ALLOCATION

Another crucial issue pertaining to oil benefits distribution is the politics surrounding oil development institutions and the revenue sharing process. The role of oil development agencies is to ensure that the oil wealth is distribution equitably and according to the principles of derivation. But this is not so. Instead, the Nigerian government has manipulated these agencies to their own advantage. The government rendered the oil


development institutions ineffective through discriminatory laws and ill-conceived oil policies. This particular problem left the Niger Delta people more frustrated and disillusioned. The government visibly use these agencies to siphon money abroad and funds that would have been used to better the deplorable conditions of the Niger Delta people.

Considering the peculiar environmental problems in the Niger Delta problem, the region attracted the developmental attention of colonial government. This led to the establishment of oil development institutions and commission to address development problems, and the neglect of oil producing states in Nigeria. The Willink Commission for instance, was given the mandate to fashion out the best strategies for the development of the region which has the most difficult terrain in the country.

The commission did not escape the political influences of those that established it. Such influences affected the deliberations and biased the minds of members against the people Niger Delta region. The Commission among other things recommended special developmental attention for the area and also that the Nigerian government make a special budget every year for the development of the region. This was before crude oil became the chief source of revenue for the country. This recommendation gave birth to the Niger Delta Development Board (NNDB)\textsuperscript{267}. This board was a development intervention agency. The agency was to cater for the development problems of the region but the board performed miserably low because it lack executive powers and was underfunded. Although the recommendations of this board contained good development plans for the region, it was sad to realise that both the military and the civilian government merely use this board to waste resources and play tricks on the Niger Delta region where the huge oil wealth is derived. Some important recommendations made by Willink’s Commission that would have reduced the developmental needs and the poverty in the region were flagrantly dropped. This triggered vociferous agitations and ethnic mistrust.

\textsuperscript{267} The Niger Delta Development Board (NDDB) was formed following the reports of the Willink’s Commission of 1958. The Board was established 1961 under the Tafawa Belewa regime then Prime Minister. The Board made little impact on the Niger Delta region’s development problems due its lack of executive powers and poor funding. The Board was renamed Niger Delta Basin Development (NDBDA) The Board also performed miserably and lost its objective as a development intervention board. (See Okechukwu Ukaga, Ukoha ,O.O Ikiwo, Ihaba Samuel Ihaba. Natural Resources, Conflict, and Sustainable Development: Lesson from the Niger Delta: 2012 p. 11. At www.books.google.co.uk/books?isbn=0415806917. Last visited on 04/11/2013
The contentious agitation for the restoration of Willink’s Commission led to the establishment of presidential Task Force. The Task Force devoted 1.5 per cent of the Federation Account to the development of the Niger Delta region. Unfortunately the impact of this Task Force on the developmental programme of the Niger Delta region was minimal and ineffective. The Task Force could not withstand the increased demand and the restiveness of the region for developmental needs. For example the environmental devastation in Ogoniland was so huge that the inhabitants have lost land, waters, creeks and other means of existence. Here again is another colossal failure on the side of the FGN. The Task Force could not settle the growing restiveness in the region and could not meet up with the developmental concerns of the region which the FGN acknowledges were horrific and unprecedented.

The crucial question activists and well-meaning Nigerians have asked was, where is the distributive equity in the sharing of the huge oil wealth derived from the region? How has the government efforts through institutional responses been reflected in the living condition of the Niger Delta people? The series of commissions and task forces were in fact, merely a decoy set up by the FGN to show the international community that they were doing something about the developmental needs of the region that generates approximately 95 per cent revenue to the country and about 2.1 per cent oil supply to the world. The inadequacy of these responses from the commissions and task forces established by the FGN may not be unconnected with the political influences, corruption, greed and unrepresentativeness of other Commission and other underlying structural problems that rendered them cosmetic and superfluous.

In fact, the Willink Commission came out with laudable recommendations, but sadly the recommendations were politicised and never implemented. This no doubt is part of the long-term measures the Nigerian government has used and failed. To say that these


269 See The Niger Delta Development Commission (NNDC) 2001 was a body established by the Federal Government of Nigeria given the sole mandate of developing the oil-rich Niger Delta region of the Southern Nigeria. The body operates under the mandate of improving the social infrastructure and environmental conditions of the area which the FGN acknowledges as horrific and catastrophic. But this body has come under serious attack and scrutiny to the extent that many has generally regarded the body as a vehicle of corruption and government way of wasting the oil wealth.

commissions and committees have delivered the goals and objectives of government would be an overstatement. A developed or developing Nigerian State that is autonomous and productive, rather than rent-seeking, coupled with the good governance at all levels, is required to engage the problem of the Niger Delta adequately. But this is not the situation on the ground.

Moreover, the agitation for development of the Niger Delta region did not stop with the formation of the Task Force and other fact finding committees. It is speculated that agitation will stop with the establishment of committees and task forces, but instead agitation has dramatically increased. Agitations will only be reduced when the Nigerian State begin to do those things that every rational person will have every course to accept as just and fair. For example, the development strategy of the country has to be treated with all sincerity and commitments. The deluge of commissions and committees has been unable to face the developmental challenges of the Niger Delta region. The development intervention of some agencies was incapacitated due to lack of funds and lack of executive power to carry out their responsibilities.

The Oil Mineral Producing Area Development Commission (OMPADEC) was established in 1999 to act as a mediator and to administer the monthly sums from the allocation of the Federal account in accordance with the confirmed oil-production ratio in each State. But contrary to expectations, the Commission performed miserably and perpetuated the highest level of corruption in the country. Apart from its miserable performance and official corruption, the activities of the Commission lack autonomy, suffered high level meddlesomeness from the FGN and the eventual politicisation of its activities. The inadequate funding from the FGN and inherent wastefulness and mismanagement problems contributed largely to collapse of the Commission. For example out of N41 billion ($250158.57 current rate) due to the Commission, the FGN could only release N20 billion (125079.29 current rate) in the six years it really functioned.

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271 Ibid.
272 The Oil Minerals Producing Area Development Commission (OMPADEC) was another body set up by successive Nigeria government as response to the peculiar development and environmental problems of the Niger Delta region. Huge amount of money was earmarked for the commission for rehabilitation and development of the oil-mineral producing areas and also to tackle ecological problems that have arisen from extensive oil exploration in the area. Contrary to expectations, this commission performed miserable. The commission entrenched the highest level of corruption.
From the OMPADEC to the NDDC still change did not come to the Niger Delta region. The NDDC came as a rescue Commission for the ecological and developmental needs of the region. Sadly the Commission did not do anything fantastic or anything different from its predecessors. First, the Commission was heavily criticised by Deltans who accused the government of not consulting the beneficiaries of the Commission. Sadly, the Commission was not in the real sense a rescuer or a ‘messiah’ as the government would want many to believe. The Commission was strongly lampooned as being irresponsible to the plight of the region, inefficient and corrupt.

Presently the NDDC is still in existence, wobbling and struggling, with huge sums released to it for developmental programmes and for the alleviation of environmental degradation. The issue to consider here is not really the failure of the all various responses of the government. The issue to consider is to what extent the various commissions and task forces set up by the FGN (with the huge oil revenue from Niger Delta) changed the living conditions of the Niger Delta people? What is the development level of the oil-rich Niger Delta region if not a manifestation of squalor, epitomized by infrastructural decay, the escalation of ethnic militias, and an attendant environmental apocalypse? The fact is distributive equity is non-existent and the sincerity and commitments of the government in solving the deplorable conditions of the Niger Delta regions has left much to be desired. The assessments of government responses to the plight of the beneficiaries of all the development plans smack of unseriousness, and wasteful spending of funds that would have reduced the widespread hunger, health-related problems and the horrific State of the region.

The general frame of our argument still bores down to the fact the country is a complex entity surrounded by intricate problems and too many competing interests. The government has experimented and carried out various methods but have failed to achieve its desired objectives. The reason is that the government has concentrated so much only on long-term measures and have abandoned short-term justice that would bring immediate improvement to the enslaved and oppressed people of Niger Delta. Also the Nigerian government’s efforts have failed because the institutional responses to complex and intractable problems of the country have been weak, uncoordinated, and counterproductive. No doubt the revenue distribution system and the sharing formula under the exclusive control of the FGN have continued to spell more doom. Against this backdrop, Ryszard
Kapuscinski\textsuperscript{274} stated that oil creates the illusion of a completely changed life, life without work, life for free... the concept of oil expresses perfectly the eternal human dream of wealth achieved through lucky accident... In this sense oil is a fairy tale and, like every fairy tale, a bit of a lie.

3.10 FISCAL FEDERALISM IN NIGERIA

In a State, the public and private sectors play different roles for the purpose of providing the framework or services that would be acceptable as the proper role of the State in the economy. Both the public and private sectors work together to contribute to the social and economic progress of the State. But if the State is oppressive and arrogates itself unnecessary power, the chance is that other levels of government will not be efficient and effective in discharging assigned responsibilities to its constituents optimally. But if there is proper power distribution and fiscal decentralization, each tiers of government will be result-oriented and efficiently discharge assigned roles.

This is cardinal and gives rise to the assertion that, in a true Federal arrangement no level of government is subordinate to the other, but rather all tiers of government are coordinated, one with another.\textsuperscript{275} Therefore, the philosophy of true federalism is based on the fact that government institutions and structures are established to see that there is fair and just distribution of government powers and revenue accruing to the State. Financial subordination, which can only exist in the absence of resource control, makes a mockery of federalism no matter how carefully the legal forms may be preserved.\textsuperscript{276} It is against this backdrop that we argued that the basic foundation of good governance is not only providing essential services to citizens or formulating laudable policies, but also the ability of government to work within the parameter of law such that policies and responsibilities are executed and implemented in a satisfactory manner. The question therefore is what vital roles a State can play to ensure that policies and responsibilities are carried out in a satisfactory manner?

The State within its framework, play three vital roles for her citizens and these vital roles include the ability of government sector to correct various forms of inequality in the sharing and distribution of revenue, seeking to maintain stability in the macro-economy at

full employment level and stable prices. At this stage, the State will be adjudged responsible and responsive to the yelling of the masses. But in Nigeria for instance, government institutions scarcely perform their essential roles in a satisfactory manner. The problem of political inequality and ill-conceived economic policies tends to mar the functions of government. These problems have been responsible for the collapse of fiscal federalism, socio-economic instability and lack of sustainable development.

Thus the agitation for true federalism by Nigerians is because they believe it will be a panacea to the myriads of problems confronting the country. Moreover it has over the years become the song of every progressive politicians, activists and revolutionaries alike. The question is what true federalism is and does it mean the same thing to these categories of people, social forces and social formation. Does true federalism mean the same thing to militia groups in the Niger Delta whose lands are exploited and while the utilization of the proceeds from their lands does not benefit them. What is true federalism to activists and citizens in the country? On local government governance, progressives politicians have been united with their conservatives counterparts on rejection of what is referred to in popular discourse as ‘local government autonomy’. These groups of people insist on the fiscal autonomy of the local governments and believe that everything that has to do with the running of local government should be exclusively left to the states to manage. On the substance of this, the argument is reasonable and makes sound sense but in reality common sense is not always common and what sound common-sensical is not usually factual. What do we mean? Nigeria operates a Federation and a Federal Constitution which significantly mean that the component federating units are created by the central government; but they do not have their own constitutions and do not have fiscal autonomy.

This arrangement is so polarized that the local governments go to the Federal government for their share of the revenue allocation. This in actual sense is a dysfunctional Federation and Federal system which negates the ideals and incentives of true federalism. In other words the prerequisites or favourable condition for true federalism will not be realised under inequalities between states, and local government. The desire to be independent from

foreign power and the hope for economic advantage that precipitated the practice of Federal structure may no longer be feasible under this arrangement.

True federalism would have been ideal for the country given her heterogeneous make up. Nigeria would have been a Utopian nation of unity in diversity. Unfortunately the practice of true federalism in the country today is rather ill-conceived, half-hearted and leaves much unaccounted for. The constitutional developments in Nigeria from 1922-1959 were a gradual but systematic sedimentation and ossification of regionalism in Nigeria with each of the dominant ethnic groups holding sway in each of the regions; no doubt has contributed to the myriads of problems the country is experiencing now. To breakaway for the shackles of the past is not really the problem of federalism or true federalism but how federalism is applied and practised. Therefore the need to overcome the inequalities, unfair treatment of those who generate over 95% of the country’s revenue, but do not share effectively from its utilization and the need to reinvent Nigerian federalism is not a ‘dinner party’.

Nigeria does not have the charismatic leadership to stir people’s consciousness of the desirability of a union. Some Nigerian leaders lack the political will and the ingenuity to ensure that all competing interests are addressed equally and amicably which is the cardinal principles of true federalism. True federalism thrives in an environment where there is common union, transparency, accountability and faith in the judicial system. The issue of revenue distribution and fair sharing of resources cannot work where there is absence of transparency, accountability, and common front. For instance in the United States and many other western countries, it is the tradition that the owner of the land also owns the mineral resources found thereof. Where he or she lacks the resources to explore and exploit the minerals, a third party company is allowed by the owner to come in to lease the land and then pays to the land owner royalties of 1/8 or 1/16 of the profits derived from the sale of the minerals which could be oil, coal, bitumen, gold diamond etc., but in Nigeria, the Federal government owns the land and the resources found thereof and pays whatever compensation it deems fit. The question is how can Nigeria claim to practise true federalism when the interests of the minorities are not taken care of and the resources generated from their region do not benefit them?

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This unfortunate scenario put the country on the brink of a precipice and the intervention of the military regime that came to salvage the situation further exacerbated the Federal structure of the country. The military incursion into politics not only abrogated the Constitution and the revenue distribution principle, it entrenched military dictatorship which helped to eclipse federalism. The current foundation in Nigeria and the principles on which the Constitution operates, particularly since the inception of democratic rule suggests that in no way has Nigeria practised genuine federalism let alone practising true federalism. Again not only can we say that Nigeria operates quasi-federalism or unitary-Federal system, it is also correct that the present dispensation in the country may not be suitable for true federalism to work because there is no cohesion, major ethnic groups dominates the minorities, and the germane ingredients that make true federalism worthwhile are in shortfall.

The case of *Attorney General of Lagos State v. Attorney General of the Federation*\(^{280}\) is a typical example of where the Federal government had refused to allocate funds to the local government Council in Lagos State because the State Governor created new local governments and repealed the old ones and also conducted local government elections in those new local governments which the Federal government claimed to be in violation of the 1999 Constitution. This particular case raises constitutional questions in relation to the fiscal policy of the country. It also calls into question what the country can gain from true federalism. The position of the Federal government is that as a trustee of the Federation Account and local government matters, it has a right to allocate funds to the three tiers of government recognised by the Constitution and that it will be unconstitutional to allocate funds to local government councils not recognised by the Constitution.

The Federal government also insisted that the State government has proprietary right to create new local government areas from 20 to 57 local government councils and that by

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\(^{280}\) The state governors of Lagos, Ebonyi, Katsina, Nasarawa and Niger created new local government council and also conducted elections in those local government areas. The federal government of Nigeria did not recognize the new local government and such withheld allocation from the Federation Account to Lagos state. The federal government of Nigeria represented by the Attorney General of the federation maintained that it was unconstitutional for Lagos state government to create new local government council from the existing 20 recognized by the constitution. It submitted that creating 57 local government councils out of 20 existing signifies that the old one has been brought to extinction and as such the Federal government has no obligation under the constitution to pay the statutory allocation from the Federation Account to the local government councils. See the S.C 70/2004, *Attorney General of Lagos state v. Attorney General of the Federation*, All N. W. L. R. 2004
creating 57 local government councils they replaced and abolished the existing 20 local
government Council that were constitutionally recognised. This argument sounds logical but
the question is how it solves Nigeria’s problems. The country is undergoing series of
problems and the creation of more local government areas should not be the priority of
Federal and State government.

The priority of Nigerian government should be how to solve the problem of resource
distribution and inequality. The Nigerian state has concentrated only on long-term solutions
of our problems while tens of millions of Nigerians suffer abject poverty. Since political
independence successive Nigerian government have continued to play tricks with the
process of revenue and sharing formula. Unfortunately the country’s show no sign of
improvement. Nigerian government have in the past experimented on fiscal federalism and
tru federalism when the country lacks the basic structures that make true federalism
realisable. In a pragmatic sense, there is no section of the 1999 Constitution that gives the
President the power to stop distribution and allocation of funds to other tiers of government.
In Azaiki’s view, the Nigeria Federal structure can only take cognizance of mutuality of its
federating units where responsibilities, obligations and commitments are shared amicably.281
Contrary to this opinion, the existing Federal structure falls short of mutual cooperation and
has entrenched inequality in the sharing of responsibilities and revenue distribution.

Apart from the arbitrariness often exhibited by the Nigerian government, there are
instances where power sharing problems relating to the collection of taxes, and authority to
issue licences, maintenance of infrastructure like roads and edifices, etc. has dragged the
central government and the State government into a battle over whose power should prevail.
Such cases have not been constitutional solved rather, a political solutions has been sort. For
example the constitutions of 1970-1999 vested the minerals rights to the executive reserve
of the Federal Government, but more often than not there are cases of infringement on the
subjects allocated to the State by the Federal government. The funds meant for the State
governments and local government have been withheld on flimsy excuses. The revenue
meant for the development of the region that generates 95 per cent of the country’s annual
revenue has been withheld on the basis that state governors from oil-producing regions
could not account for the 13 per cent allocation given to them by the Federal government.
No matter how persuasive and logical this argument may sound, it is the responsibility of

Restiveness, Nigeria, Treasure Communication Resource Ltd.
the Federal government to develop the region that generates the funds that it uses to carry out development projects in other parts of the country. This does not exclude the fact that state governors of oil-producing areas should be answerable for their corrupt practices.

If the state governors have mismanaged or misappropriated funds meant for the development of oil-producing regions, it is the responsibility of the Federal government to see that those state governors are made to account for their stewardship. But this is not so. The Federal government and the judiciary are insensitive and because they are corrupt they lack the moral right to punish those who are corrupt. Most people do wrong when they know they will get away with their wrongs. Corruption in the country has remained unpunished because the corrupt ones know that will get away with it. This attitude is damaging to the ideals of true federalism. True federalism may not work (and has not worked) under the present social structure, insecurity problems, and violent protests in almost all parts of the country over power distribution and the revenue distribution formula.

The insecurity problems and controversies generated by recent attempts to reduce the 13 per cent to a 10 per cent share of the oil revenue to the oil-bearing communities in the South-South region is an indication that reveal the lack of any framework to ensure fairness in the distribution of gains derived from the exploitation of oil and gas and other natural resources in the country.\(^{282}\) It is argued that the principal goal of federalism is aimed at bringing about national integration and cohesion which takes cognizance of our sectional heterogeneity and the principle of unity in diversity but to what extents have Nigeria realised these objectives? It is also true that the numerous states created in Nigeria are intended to take care of this diversity issue while all the constitutions since 1979 equally defined the relationship between the states and the Federal government. These constitutions we must note created the division of powers between the Federal and Regional governments. In effect, the powers of government were departmentalized under three heading: the exclusive list, the concurrent list and the residual list. The exclusive lists contain issues like foreign relations, currency, defence, immigration which the Federal government only can legislate. The concurrent list contain subjects that both the states and the Federal government can legislate while subjects not included either in the exclusive lists or in the concurrent lists were allocated to the regional power or State powers. But in case of

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conflicts between the State and the Federal, the power of the Federal overrides the power of the State.

With this arrangement the states were not to interfere in the affairs of the Federal government and the Federal government were not to meddle in the affairs of the State. In this wise, there is separation of powers and responsibilities. But this is just on the surface not in practice. Intergovernmental relations are endangered and hampered because the Federal government want more power and more revenue allocation, leading to interference on the affairs of the State government. Intergovernmental relations would have been an improvement to the country’s problems, but it has rubbed off and the states and local government cannot independently develop at their own pace because of the constant interference and meddling of the Federal government. Based on this friction, true federalism has failed to function and the contentious issue of injustice, and inequity that characterises the distribution of national resources, particularly oil revenue has continued.

The Federal Character and quota system are Federal government policies that were intended to restore equality in the Federal civil service, which some parts of the country had claimed of disfranchising them from enjoying Federal appointments. The policy is aimed at maintaining equilibrium and transparency in the appointment of government officials, tertiary enrolment into Federal institutions, balanced military recruitment. Among other things, it ensures that educationally less disadvantaged regions are given priority over and above other major ethnic groups in areas like job opportunities, admission into universities and in the distribution of political power and economic development.

The Federal Character principle was initiated for the sake of nationalism and political integration. The principle is a laudable national policy and has the capacity to correct the imbalances in public services. It is also seen as a principle that is capable of cushioning the effect of ethnic mistrust and the ethnic alignment problem that had existed over a decade. But instead of stemming the tide of ethnic mistrust and imbalances in public services, Federal Character principle has exacerbated the problem by propagating marginalisation of the ethnic minorities groups in the country. It has relegated professionalism while mediocrity is celebrated. Qualified and employable citizens of the country stand no chance of job opportunities because they do not belong to the Federal Character zone. This kind of social and political arrangement gave justification for our choosing Rawlsian method of justice because it has the capacity to address social justice issues in society.
CONCLUSION

To sum up, the contentious issues of revenue distribution and the resource allocation process have remained unresolved, thereby leaving room for palpable tension and friction in the country. Nigeria had a much more balanced economy before it became dominated by oil and this has culminated in disastrous consequence. The trouble with Nigeria is not who controls the oil resources but the rent management and how revenue is to be distributed. There is no gain saying that states should manage or control the resources when the endemic problem of political inequality and social injustice is deep rooted both in the State and at Federal level. It makes no sense to allow states and oil-producing communities control the resources when Niger Delta state governors are corrupt and launder the money abroad. (See Diepreye Alamieyeseigha v. United Kingdom Metropolitan Police.2005). The government attitude to this problem has been lackadaisical and nonchalant. The common understanding of most people is that natural and mineral resources belong to the State and that its proceeds should be used to better the lives of citizens but this is not the case here. Sustainable development and economic empowerment do not thrive in an unjust society. The Nigeria social structure is lopsided because political leaders and government officials have diverted funds meant for social infrastructure and development projects to private purse. The derogation of the local government autonomy and the inequality in the revenue distribution has failed to be solved by political principles. The revenue sharing formula has not favoured the oil-bearing states in the country and government efforts to fashion out a robust policy that will account for the competing interests of every group have failed.
CHAPTER 4
OIL EXPLORATION AND ENVIRONMENTAL RELATED CONFLICTS

‘Shell has promised us several things, but has not done any. Apart from that, there is issue of environmental devastation that is still threatening us. Two major spills have occurred between 1991 and 1999 and Shell refuses to clean spills from our lands and rivers and pay compensation to us’ - Louis Nwachukwu, Chairman Umusia community Development Committee (CDC)

4.1 INTRODUCTION

The discovery and extraction of natural resources has brought different consequences to countries that are endowed with such resources. While some of these nations have become economically and politically strong and self-sustaining, others have been drawn into serious hardship and conflicts. Proponents of the resource curse project believed that the citizens of these countries rather suffer from pauperization, neglect, marginalisation, economic deprivation, environmental damages, pollution, diseases, illiteracy and score abysmally low on the United Nations’ Human Development Index.

This chapter therefore, focuses on the environmental damages of oil exploration; violent conflicts and socio-economic consequences in the coastal region of the Niger Delta. The chapter argued that environmental degradation is one of the major drivers of oil conflicts in Niger Delta. The chapter also argued that the rapid growing of environmental destruction and the inability of the oil companies to carry out substantial clean-up of oil polluted areas in the region, has not only caused loss of livelihood, but has also become a life-threatening health-related issue. The chapter reveals that Nigeria’s weak environmental laws and institutional failure contributes to the flagrant abuse of environmental laws by the multinational oil companies. Importantly also, the chapter articulates the root causes of conflicts; the role of militant groups and the socio-economic implications of the conflicts.

Meanwhile, Nigeria is probably the sixth or seventh largest oil producer, and contributes nearly two million barrels of crude oil to the world oil market. This generates huge wealth to the country. The wealth oil generates has not been properly utilized let alone use the funds to cushion the effects environmental damage in the Niger Delta region.

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284 See the UNDP Report 2006.
most oil-producing countries like Norway, Ukraine, Russia and Venezuela, environmental issues are not compromised for economic gains unlike in Nigeria. The UNDP report showed that more than 60 per cent of the people in the region depend on the natural environment for their livelihood. This report also revealed that environmental destruction in the region is not adequately being address to the world environmental standard. The report urged the Nigerian government to step up effort in ensuring that the environment inhabited be man is clean and adequately protected. But shockingly, nothing has changed instead environmental destruction of residential areas in the Niger Delta region is rather on the increase everyday.

Against this backdrop, I shall devote time to articulate the economic and social implications of the conflicts on the Niger Delta people and on the Nigeria’s oil economy. The chapter concludes with recommendations and suggestions that will go a long way in finding adequate perspective to addressing the livelihood; oil-related conflicts; perceived environmental consequences, and power plant emission on the health of local residents of Niger Delta.

4.2 THE CURRENT ENVIRONMENT TREND:
The current environmental trend in the Niger Delta is pathetic and life-threatening. The communities around Niger Delta region have limited access to fishing and agricultural activities and this has caused loss of livelihood and poverty.

*If you want to go fishing, you have to paddle for about four hours through several rivers before you can get to where you can catch fish and the spill is lesser... some of the fishes we catch, when you open the stomach, it smells of crude oil.*

The above statement typifies the kind of suffering the Niger Delta fishermen are experiencing in the region and a testimony to the fact that Niger Delta is facing serious environmental destruction. The dearth of fish and other marine organisms is impacting of the sources of food and fish industries in the region are gradually going out of business. For example, fish, prawn, snails and other marine organisms that generate money to the region are scarce or extinct. While this situation is decreasing productivity, the situation is as well increasing unemployment, crime and youth restiveness in the region.

Granted that oil is environmentally destructive wherever it is produced, however, there are some industrial precautionary measures that helps to avoid the harmful effects of oil spills,

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and pollution of different forms. But it is sad that these industrial precautions have been conspicuously absent and have not been observed by the oil companies and the Nigerian government is insensitive to these problems.

Most fishermen have lost their means of livelihood, while others have their land destroyed by oil operations. For example the Bodo people were predominantly fishermen and are popularly called the ‘fish basket’ of Gokana Community before oil exploration started in 1956. Presently, the people have lost the fishing occupation and fishing industries in the region are gradually folding up. Whereas the problem has consistently remained unabated, the Nigerian government and the oil companies are busy making excessive profits and forcefully acquiring more lands. Some have argued that since the shipment of the first consignment of crude oil to Europe in 1958, activities in Nigeria’s oil industry have witnessed a dramatic increase in terms of extensive oil operation activities and destruction of property. For example in 2008 Two oil spills caused by Shell caused the 69,000 people of Bodo community serious health problems and in Bodo today the air stinks, the water are polluted, contaminated and even the fish and crabs caught in Bodo creek smells of pure “sweet bonny” light crude oil and unhealthy for consumption.

The environmental situation in the region is bad because regulatory bodies and enforcement institutions are weak and have performed abysmally low in terms enforcing environmental laws and environmental standards. Oil companies have not been properly monitored or made to observe environmental regulations owing to compromises and fraudulent practices of institutions vested with the power to ensure environmental standards. Moreover, the country’s legal system is so weak that litigation for environmental damage is frustrating and as a result victims hardly get justice at the law Court.

According to the 1995 World Bank report on environment, the Niger Delta region is under serious threat of environmental destruction ranging from coastal and riverbank erosion, agricultural land degradation to forest degradation and biodiversity loss. These problems causes low crop yields and renders most land useless for decades. Significantly, food production has been adversely affected, and poverty rate is on the increase to the extent that people can hardly afford one meal a day.

290 Ibid.
It is argued that mineral resources extraction across the world, particularly, in the developing economies, shows that the history of resource extraction is the history of resource appropriation, reckless exploitation with serious threat to the people, environment and livelihood. Since oil has become the concern of Nigerian government and a vital ingredient of their politics and a crucial factor in their political strategies, the environment inhabited by people are destroyed and rendered uninhabitable and sterile for agricultural purposes. These problems not only affect the ecosystems, but also living marine resources and the environment we all lived in.

The Niger Delta region, where Nigeria current large oil and gas resources are located has remained a source of global interest and economic concern. With openness to the Atlantic Ocean and watercourse with access to the sea, creeks and rivers such as Benue and River Niger, the Niger Delta thus embodies some of the major coastal upwelling sub-ecosystems of the world. The region is an important centre of marine biodiversity and marine food production ranked among the most productive coastal and offshore waters in the world today.

However, oil spills, pipeline leakages, pollution from domestic and industry sources, excessive oil exploitation and poorly planned and managed environmental regulations, poorly planned and managed communities and coastal developments and other oil-related activities are resulting in a rapid degradation of farming land and offshore habitats. This situation is putting the economies and health of the populace at serious risk. One major causes of environmental devastation in the Niger Delta region today is oil spills and pipeline leakages.

4.3 OIL SPILLS/PIPELINE LEAKAGE.

The Niger Delta region has experienced colossal environmental damages since Shell and other oil companies started oil exploration in 1956. The environmental damages ranges from pipeline sabotage from oil theft to poorly maintained, aging pipelines, equipment failures etc. This has caused oil spills, pollution and gas flaring. The oil spills have resulted in land, air, and water pollution, severely affecting surrounding villages by decreasing fish stocks and contaminating water supplies and arable land. Oil spill and carbon particles in the rivers, land and air from CO2 emissions from oil extraction and power plants has made it difficult for fishing and farming activities in the area.
Significantly, oil spill incidents have occurred in various parts and at different times along the coastal region of Niger Delta. Some major spills in the coastal zone are the GOCON’s Escravos spill in 1978 of about 300,000 barrels, SPDC’s Forcados Terminal tank failure in 1978 of about 580,000 barrels and Texaco Funiwa-5 blowout in 1980 of about 4000,000 barrels. Other oil spill incidents are those of the Abudu pipe line in 1992 of about 18,818 barrels, The Jesse Fire Incident which claimed about a thousand lives and the Idaho Oil Spill of January 1998 of about 40,000 barrels. The most publicised of all oil spills in Nigeria occurred in January 17 1980 when a total of 37.0 million litres of crude oil got spilled into the environment. This spilled occurred as result of a blowout at Funiwa five offshore station. Nigeria’s largest spill was an offshore well-blow out in 1980 when an estimated 200,000 barrels of oil (8.4 million US gallons) spilled into the Atlantic Ocean from an oil industry facility and that damaged 340 hectares of mangrove. According to Department of Petroleum Resources (DPR), between 1976 and 1996 a total of 4647 incidents resulted in the spill of approximately 2,369, 470 barrels of oil into the environment.

Thousands of barrels of oil have been split into our environment through oil pipeline and tanks in the country. This spillage is as a result of regular maintenance of the pipelines and storage tank. Some of these facilities and installations have been in use for decades without replacement.

Although we blame the oil companies for lack of regular maintenance, sabotage is another serious cause of oil spillage in our country today. Some of the culprits in collaboration with people from other countries engage in oil theft and bunkering activities. They damage and destroy oil pipelines in their effort to steal oil from pipelines. SPDC claimed that in 1996 alone that act of sabotage accounts for more than 60 percent of all oil spill at its facilities in Nigeria. But one school of thought argued that SPDC should be blamed for any act of vandalism and sabotage of oil pipeline in our country. The SPDC have

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292 Ibid.
293 Ibid.
294 Ibid.
295 The Department of Petroleum Resources in the Federal Ministry of Mines and power handles the statutory supervision and control of the oil industry in Nigeria. The body is the arrowhead with regard to regulating and monitory oil and gas activities in Nigeria, in order to ensure standards, compliance and best international industry practices. But overtime, the DPR has failed to ensure accountability and transparency in the Nigeria oil industry. With PIB if signed into law, the activities of the DPR will be shared among the various regulatory bodies like NNPC and PPPRA/ (Petroleum Product Pricing Regulatory Agency. (The Vanguard April 11 2011: Redefining DPR’s Role in Nigeria Oil, gas Sector).
296 Peter and Nwilo: op cit. p. 5
denied the employable indigenes of the oil-producing states employment and have failed to replace corrosive and aged pipeline in the oil-producing communities.

Our argument is that the people who engaged in oil bunkering or oil theft would not have done so if they were provided with employment and clean environment. In order the local people are frustrated with the activities of oil companies in their communities because they suffer environmental damages, unemployment and abject poverty.

**Figure 1:** Evidence of oil Pipeline leakage belonging to Agip Oil Company at Kalaba in Bayelsa State of Niger Delta.
Figure 2. Oil Spill site in Niger Delta Region.

These poverty stricken men are scooping oil from oil pipeline leakage in Bodo Community.

Figure 3: Evidence of Oil Spill in Niger Delta region.

A man covers his hands in crude oil during a protest against Shell’s oil spill in Niger Delta.
Figure 4: Report by Amnesty International on oil spill in Niger Delta.

This photo was taken by Amnesty International delegates to investigate oil spills in Niger Delta. The findings showed that Shell do not carry thorough clean-up work during and after oil spills. The photography revealed that the oil spill in Ikarama in Bayelsa state have not cleaned by Shell.
Figure 5: Abundant dry Fish supply (the Fish Basket of Gokana community but today fish is extinct in the region due to oil spill.

Bodo people in the Niger Delta used to be locally known as the ‘‘fish basket’’ of Gokana Community. Currently the people believe that the few fish still living in the Creek have become too polluted. Today the people of Bodo are substantially struggling and suffering from scarcity of fish and damaged farm land as a result of oil spills and pollution.

Shell claim it was an act of sabotage by youths of the Bodo Community. Amnesty International and a local NGO, went on a fact finding mission. Their investigations backed by video footage revealed inconsistencies in Shell’s claim. Experts have examined evidence from the latest oil spill as a result of Shell’s poorly maintained pipelines in the Bodo creek area and confirmed that it strongly indicates that the leak was due to corrosion of the pipeline. However, Shell appears to be ignoring the evidence of corrosion\(^{297}\) and has done nothing tangible to stop oil spills in the Niger Delta.

The harmful effects of oil spill on the environment are enormous. Oil kills plants and animals in the estuarine zone. Oil settles on beaches and kills organisms that live on beaches. Oil poisons algae, disrupts major food chains and decreases the yield of edible crustaceans. It also coats birds, impairing their flight or reducing the insulative property of their feathers.

thus making the birds more vulnerable to cold. Oil harm fish hatches in coastal waters and as well the flesh of commercially valuable fish.

Nigeria’s coastal environment is a very large area of mangrove ecosystem and when there oil spills, it destroys the mangrove ecosystem. The mangrove serves as a source of both fuel woods for the indigenous people and a habitat for the area’s biodiversity. Unfortunately now, the mangrove ecosystem has been adversely affected and unable to survive the toxicity of its habitat.

4.4. GAS FLARING

Gas flaring no doubt is a major environment predicament facing the entire globe today. The environmental, health and climate change effects of flaring has ignited concerted global efforts aimed at effectively tackling flaring in order to lower CO2 emission from flaring while opening economic opportunities through gas utilization\(^298\). Available records show that Nigeria is the second largest gas flaring nation in the world resulting in significant environmental and health impacts on the oil-producing communities as well as massive economic loss for the country despite several futile government efforts to curb this trend\(^299\).

The Energetic Solution Conference in the year 2000 estimates that the Niger Delta region has about 123 gas flaring sites\(^300\). Agbola and Olurin stated that about 45.8 billion kilo watts of heat is discharged into the atmosphere from 1.8 billion cubic feet of gas daily in the Niger Delta region, leading to temperatures that render large areas inhabitable\(^301\).

Complete utilization of produced associated gas, reduction of flaring and production greenhouse gas is one of the policies that oil companies ought to comply, with complete stoppage of gas flaring by 2004 or 2008. Shockingly, 84.60 per cent of total gas produced is still flared with impunity, with 14. 86 per cent being used locally\(^302\).

From 1970-1986 Awosika reported that a total of 125.5 cubic metres approximately of gas was produced in the Niger Delta region, 102.3 (81.7 per cent) million cubic metres was


\(^{299}\) Ibid.

\(^{300}\) See The Energetic Solution Conference (200)


flared, 2.6 million cubic metre was used as fuel by the oil companies and about 14.6 million cubic metres was domestically consumed\(^3\).

According to the National Oceanic and Atmospheric Administration (NOAA) definition, gas flaring is waste of energy and an added load of carbon emission to the atmosphere\(^4\). A gas flaring is composed of toxic gases such as sulphur dioxide, nitrogen dioxide, benzapryene, toluene, xylene, and hydrogen sulphide\(^5\). Actually Nigeria flares 17.2 to 20 billion m\(^3\) of natural gas per year in relation to the exploitation of crude oil in the Niger Delta region.

The negative environmental consequences of gas flaring are huge. First, gas flaring in Nigeria hampers economic activities and has caused serious health-related problems. It contributes to climate change, which has serious environmental implications for world. The burning of fossil fuel, mainly oil and gas have produced greenhouse gases that have led to global warming which is projected to get much worse during the 21\(^{st}\) century according to the intergovernmental panel on climate change (IPCC)\(^6\). Gas flaring on agriculture gives rise to atmospheric contaminants. These contaminants include oxides of nitrogen carbon and hydrocarbons and these substances acidify soil leading to the depletion of the soil nutrients.

In 2004, Nigeria Liquefied Natural gas pipeline traversing through Kala-Akama Okrika in Niger delta mangrove forest leaked and set ablaze and burnt for three days. The local plants within the areas were destroyed and animals killed.

It is sad to note that the Nigeria government do not consider ecological implications of oil spills but economic benefits derived from oil production. This is as a result of institutional failure (regulatory agencies) and the problem of anachronistic laws that needs urgent reform. Our environmental laws need urgent overhaul because it awards little or no penalties to defaulter and those perpetrators are let off lightly. However, the penalties prescribed by these laws lacks political will to implement and enforce them. Oil-producing companies deemed it less expensive to pay minimal fines than to re-inject gas. And as oil

production generate substantial profits inflow into the pockets of oil companies, yet they have refused to pay fine for negligence cases against them. The average limit of gas flaring in the world is 4 per cent but Nigeria flares well above this limit. (See Figure 8 & 9).

**Figure 6**: The World record of volume of Gas Flared by Countries.

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**Flaring and venting per barrel of oil reveals some large utilization capacities**

Volume of gas flared and vented, 2003

<table>
<thead>
<tr>
<th>Country</th>
<th>Billions of cubic meters</th>
<th>Cubic meters per barrel of oil produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nigeria</td>
<td>20</td>
<td>70</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>16</td>
<td>60</td>
</tr>
<tr>
<td>Iraq</td>
<td>12</td>
<td>50</td>
</tr>
<tr>
<td>Iran, Isl. Rep.</td>
<td>8</td>
<td>40</td>
</tr>
<tr>
<td>Algeria</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>Angola</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>United States</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>Cameroon</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>Gabon</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>Australia</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>0.5</td>
<td>5</td>
</tr>
<tr>
<td>Norway</td>
<td>0.5</td>
<td>5</td>
</tr>
</tbody>
</table>

Source: World Bank data.

*Source: World Bank Data.*
Figure 7: Shell’s Gas Flaring site in Niger Delta area.

This photo shows the nature of gas flaring in the Niger Delta region.
Figure 8: Shell flares gas at the back of residential area in Warri, Niger Delta region

This is a graphic picture is one of Shell’s oil installations at residential areas in Iwhrekan community. This picture depicts the kind of environmental hazards the Niger Delta people are subjected to by the oil companies, in their various communities.
4.5 ACID RAIN IN THE NIGER DELTA REGION.

Acid rain phenomenon in the Niger Delta region of Nigeria has caused serious economic, biodiversity and public health concern. Gas flares are the direct causes of acid mist and this has damaged crops, plants, freshwater forests and aquatic ecosystems. Acid rain acidifies lakes and streams and damages vegetation and this occurs frequently in the Niger Delta area. It harms public health and has resulted in skin lesions, cancer, accidents due to poor visibility, and there are recent reports of malignant lymphomas in the Niger Delta region.\(^{307}\)

In a survey carried out by group of organic chemists, a rainwater samples were collected in two different locations in the Niger Delta region (Warri and Port Harcourt) while another sample was collected from non-oil-producing states in the country (Onitsha and Nnewi in Anambra State). The rainwater was sampled between April-October 2005 and 2006 respectively. The samples were filtered to determine the acidity levels of the rainwater. The results showed that the pH of rain samples from two cities in the Niger Delta were

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acidic when compared with those of (Onitsha and Nnewi) non-oil-producing communities in the country\textsuperscript{308}.

**Figure 10**: Acid Rain on Fresh Water forest, and on aquatic ecosystems.

![Image of Acid Rain](image)

4.6 HUMAN RIGHT ABUSE

According to the UN Humanitarian Watch and News Network, IRIN, it was reported that gas flaring happens 24 hours a day, i.e. seven days a week in the Niger Delta, causing enormous environmental damage and human rights abuse to the local inhabitants. The process of burning-off gas that comes from crude oil is harmful and illegal in oil-producing countries. This practice does not exist in Nigeria due to compromises and lack of transparency on the part of regulatory and monitory institutions. Human Rights observers have disclosed that this practice violates the human rights principle of right to clean environment. IRIN reported that approximately $2.5 billion of gas is wasted each year, while less than half of Nigerians have access to electricity\textsuperscript{309}.

Oil spill and gas flaring have killed living organisms, in the water and animals. Human life has also been affected such that infant mortality and miscarriages are on the

\textsuperscript{308} Ibid.

increase, leading to abuse of right to life, right to clean environment and right to movement. This has soiled Nigerians image and investors are no longer motivated to invest in Nigeria economy due to instability and health-related issues particularly in Niger Delta region.

To sum up, environmental destruction of our environment is going unchecked and inadequately legislated for. For instance, the inability of the Nigeria government to ensure that both environmental regulations are strict observed by the foreign oil have in no small contributed to the environmental catastrophe in the Niger Delta region. Evidence of such environmental destruction has been shown in the graphic pictures above. The international oil companies violate the law with impunity because they have the protection of the government. Therefore, there is urgent need to reform environmental laws and reengineer and re-organise oil regulatory and monitory agencies in the country to international standard. This will bring sanity and efficiency in our oil industry.

Also the Nigerian government should initiate strict laws that place heavy penalties and fines to violators of environmental laws. The oil policy of environmental destruction need to be improved and rebranded to be able to face current environmental challenges especially this time there is national and international consciousness towards climate change and global warming in the 21st century.

4.7 THE ERA OF OIL CONFLICTS IN NIGER DELTA REGION

This section evaluates the oil conflicts and its socio-economic and political implications in the Nigeria’s Niger Delta. The section highlights the role of the Nigerian government and the multinational oil companies (MNOCs) in the conflicts and how their responses aggravated the conflict. The militia groups have been perceived as freedom fighters in one sense while in another sense some saw their activities in the oil conflict as counterproductive because of the approach they took to express their frustrations and grievances against the oil companies. This section among other issues articulates the root causes of the conflict and how the part played by each actors influenced the conflagration of conflict in the Niger Delta.

Agbola and Alabi averred that the development of oil resources in Nigeria is a joint responsibility of the State, multinational corporations, multilateral organisations and local elites. Oil resources development, according to these actors, means economic growth. Implicit in their actions is the justification of the prevalent neo-liberal belief that economic
growth is absolutely good and that its benefits ultimately trickle down to everyone. This assertion is not the case in the Niger Delta. Instead of three principal actors or more, we have just two de facto actors who absolutely control the development of oil resources in Niger Delta. The State actor and the multinational corporations have continued to play the role of umpire in the development of oil resources in Niger Delta region. This action alienates and excludes other actors from participating and benefiting from the oil resources, leading to violent resistance, kidnapping, hostage-taking and destruction of life and property in the region where oil is derived.

It has been argued that economic deprivation, unemployment, alienation, exclusion of the local elites and lack of sustainable development in the Niger Delta region are the drivers of violent conflicts that have beleaguered the region for more than four decades. My unremitting focus here is not only to evaluate the oil violent in the Niger Delta but also to proffer plausible and achievable short-term solutions to the problem under discussion so that the aggrieved Niger Delta indigenes will stop resorting to violence and sabotage as a way of registering their grievances against the oil companies and the Nigerian government. The section conclude that violent conflicts in the Niger Delta region can be avoided if the State pay sincere attention to the deep yearning among the people to be respected, recognised and acknowledged not only for their ownership of the resources but for bearing the brunt of its exploitation. It is our believe that if this happens, then the local people will rekindle hopes in the government, otherwise efforts to provide long-term solution will continue to be a sheer waste of resources and heightening of conflicts.

Conflicts in the Niger Delta typifies exactly into Peter Coleman’s notion that conflicts have an extensive past, a turbulent present and a murky future. The import of this assertion is that the Niger Delta people had suffered extensive exploitation of their resources and have not benefited. They have experienced long history of neglect, deprivation, unemployment, loss of livelihood and environmental destruction of their lands without anything to show for it or compensate them for the huge loss. They are hopeless, humiliated, oppressed and politically marginalised. The future for them is murky and completely unrealistic. As a result, the Niger Delta people believed that their frustrations and neglect can be eliminated if and only if they continue to resist the oil exploitation and

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production on their lands, either through violence means or peaceful means. Their objectives and goals revolve around economic, political and social-cultural issues. Priority

It is therefore true that the oil conflict in the Niger Delta is multi-dimensional and multi-faceted because conflicts are dynamic social phenomena. To put issues in a proper perspective, the oil conflict in the Niger Delta is ideological and a struggle for resource control, emancipation, self-determination and survival of the oppressed people of Niger Delta. The ideological struggle for resource control, self-determination and survival of the Niger Delta region people started in 1966 with Isaac Jasper Adaka Boro, a celebrated Niger Delta indigene, a nationalist and a Nigeria civil war hero. He was the first to mobilise Niger Delta youths against a regime of oppression, domination, subjugation and marginalisation. He awakened the consciousness of Niger Delta youth to demand for resource rights and better treatment.

Adaka Boro pioneered the Niger Delta Revolution Movement and used the movement to resist the Federal military government's oppression, domination, and subjugation. With the above incisive and persuasive words, Boro mobilised the Ijaws under the name Niger Delta Volunteer Service (NDVS)\(^{312}\). Under this front, he declared an independent Niger Delta People's Republic, (NDPR) and fought against the socio-economic enslavement of his people. The NDVS\(^{313}\) was also used to muster support for the emancipation of the Niger Delta people.

Ken Saro-Wiwa\(^{314}\) a play writer and an environmentalist from Ogoniland, located in the north zone of the Niger Delta, came and energized the struggle by mobilising the Ogoni people from 1980 through to 1990s. The Ogoni case generated tremendous public outcry considering the level of injustice and deprivation the region had suffered since oil was first discovered in their region. Following these problems, the Movement for the Survival of Ogoni People (MOSOP)\(^{315}\) under the leadership of Ken Saro-Wiwa was formed. The group

\(^{312}\) The Niger Delta Volunteer Service (NDVS) was established on 23\(^{rd}\) February 1966 by the Ijaw youths under the leadership of Isaac Jasper Adaka Boro. The group’s objective is to fight the brazen oppression of the minority Ijaws in the eastern region of the country specifically in terms of the underdevelopment problems of the region.

\(^{313}\) The Niger Delta Volunteer Service (NDVS) was established on 23\(^{rd}\) February 1966 by the Ijaw youths under the leadership of Isaac Jasper Adaka Boro. The group’s objective is to fight the brazen oppression of the minority Ijaws in the eastern region of the country specifically in terms of the underdevelopment problems of the region.

\(^{314}\) Ken Saro-Wiwa is a novelist and play writer from Ogoni in River State of Nigeria. He strongly defended the rights of the Ogoni people and criticized the government’s oil policy with Royal Dutch/Shell. He did this by forming the Movement for the Survival of Ogoni People (MOSOP).

\(^{315}\) The Movement for the Survival of Ogoni People (MOSOP) was the first organized and most nonviolent opposition to governments neglect of the oil-bearing Niger Delta region, in particular the long-suffering Ogoni inhabitants whose interests it tried to represent. Ken-Saro-Wiwa, an internationally known environmentalist was the leader of MOSOP until he was killed in 1995 the by the military dictator Gen. Sani Abacha (Late)
started as a nonviolent remonstration group with its primary objective; to make oil companies comply with environmental laws and regulations and to make them pay for environmental damage. This objective was vigorously pursued through dialogue, mediation and adjudicatory means. The idea of nonviolent movement was informed by the failure of Adaka Boro’s led revolution in 1966. But for the fact that the Adaka Boro’s revolution failed did not mean the end agitation for economic justice and social rights of the Niger Delta people.

Einstein’s position on how to achieve peace was a rallying philosophy of the MOSOP group at the earlier stage of the struggle. Einstein was of the view that we cannot get peace by force and that peace can only be achieved by understanding. He maintained that one cannot subjugate a nation, or a community, unless he or she wipe out every man, woman, and child and that unless we wish to use such drastic measures, we must find a way of settling our disputes without resort to arms.\textsuperscript{316}

MOSOP therefore was to some degree a more radical youth movement to pursue the ideological principle of resource rights and a clean environment for the indigenes of the area where oil is derived. The group was reputable for their radical movement and have engaged in sabotage against Shell and other oil companies in Ogoniland. Shell/BP stopped operation in Ogoniland in 1993 as a result of consistent threats and ultimatum by MOSOP. The Niger Delta region would have been relatively peaceful and quiet if the youths were not alienated. Shell/BP and other oil companies would have continued oil operation in the region if the region had benefited from the oil resources. But this did not happen, instead government and the oil companies were adamant and insensitive to the deep yearning among the people of Niger Delta.

The responses of the government to the activities of MOSOP and other militant groups raised the stake of conflicts in the region. For example the orchestrated arrest by the military regime of Ken-Saro-Wiwa and eight others for the death of some elders in Ogoniland drew national sympathy for the group and exposed the Nigerian government to sharp criticisms. The consequent trial and killing of Ken-Saro-Wiwa and eight Ogoni youths triggered violent conflict in Ogoniland. Since the hanging of Ken-Saro-Wiwa, MOSOP leader, violent conflicts have remained a recurring problem that will take time to end.

Apart from the role played by non-State actors, represented by the militants’ youths, there is fluidity in the identity of parties and issues in the conflict in the Niger Delta\textsuperscript{317}. This fluidity in the identity of parties and issues contributed in making the conflict complex and complicated to handle. Before colonialism, the people of Niger Delta wanted to be able to play the role of middle-man in the trade transactions with Europeans. At another time they wanted to trade directly with the international companies in Liverpool\textsuperscript{318}. At other times the issues fluctuated from restructuring Nigeria’s federalism to self-determination to resource control\textsuperscript{319}. This lack of articulate position also applies to the actors in the conflict and parties in the Niger Delta. There seem to be no consensus among the parties as to what is going on and what is to be done. For example an oil company executive once lamented that the problem in the Niger Delta is that of proliferation of ammunitions\textsuperscript{320}.

This problem gave impetus to the proliferation of groups and associations that represent different interests be it economic, political or social-cultural. Similarly, Augustin Ikelegbe identified close to one hundred different associations that are parties to the conflict in Niger Delta. The implication of this is that there are about one hundred viewpoints, entry points and exit points. And more importantly this implies one hundred different constituencies to engage with. The point must be made that the proliferation and the fluidity in the identity of parties and issues is the strategy engineered by the oil companies and supported by the Nigeria government along the line of divide and rule principle.

The oil companies were selective and racial when it comes to monetary settlement and development purposes. These gave rise to lack of consensus on how to resolve sensitive issues like resource control, developments projects, and leadership tussles among different groups. The hierarchy of conflicts in the Niger Delta present a good insight on the nature of each conflict. The conflicts are not the same but one has a linkage to the other. For example without understanding and resolving the various land disputes, it will almost be impossible to address the chieftaincy disputes.

This is because it is only when the issue of who owns the land is settled that of who governs it will make sense. The same applies to the issue of leadership of Community Development Association (CDA). Disagreement between elders and youth revolve around

\textsuperscript{318} Ibid.
\textsuperscript{319} Ibid.
\textsuperscript{320} This statement was made at one of the stakeholder’s Workshop held in 2002 in Port-Harcourt Rivers State of Niger Delta. The name of the executive shall remain anonymous for security reasons and fear of reprisal. (See Austin Onuoha: 2005: 120)
the issue of representation. This is directly related to the issues of oil spills, gas flaring and pollution of fishing ponds and farm land. Oil spills and pollution incident have a monumental direct effect on land, lives, compensation and leadership issue.

The point is that most interventions and mediation process have lumped the conflicts as one or identified the issues and parties as one. This has caused more conflicts and parties have continued to make conflicting demands at different settlement levels. The role of elders has been questioned in terms of representation and mediation between the local communities and the oil companies. The agitation against neglect and poverty is an indication that the leaders are weak and puppets in the hands of multinational companies. They bow to influences and pressures mounted them by the oil companies. They collect monetary gratification and overlook the suffering of the people they represent. The need to fill the gap created by the failure of our leaders and elders gave rise to the establishment of various militia groups in the Niger Delta. It is therefore argued that militia groups were formed to defend the rights of the Niger Delta. Others have argued that the militia groups was formed because the elders and leaders have failed in their responsibilities, they have deviated and have betrayed the trust reposed on them by their communities.

The hierarchy of conflicts in the Niger Delta are ranked as follows:

1. Self-determination
2. Resource control
3. Citing of development projects
4. Oil spills/pollution/compensation issues
5. Conflict between elders and youths
6. Leadership tussle in association
7. Land dispute.

The above seven type of conflicts in the Niger Delta reveal the category of every conflict in Niger Delta region. The Nigerian government and the oil companies have lumped them together at different intervention levels and as a result this has made resolution of them cumbersome. Therefore the essence of categorizing these conflicts is to make illuminate our discussion and to provide easy understanding of different conflicts. By so doing, proposed interventions and mediation process at all level will be put in proper context for easy settlement.
4.8 CAUSES OF NIGER DELTA OIL CONFLICTS

There is an oil well in my community, Bonny, in Rivers State. Yet we the youth lack basic amenities and any source of livelihood. Since there was oil in my locality and youths were bursting pipelines to survive, I joined them. From there I joined the armory house for security._

(Quote from an Ex-Militant, Delta State 321)

The ethnic militia groups emerged in 1990 when the country was under the torments and oppressive rule of military government. The ethnic militia is described as youth based groups primarily formed for the purpose of dislodging oppression, subjugation, neglect and poverty in various oil-bearing communities. Ethnic militia groups in the Nigerian context are the movement of emancipation, economic empowerment, political equality, environmental peace, social justice and sustainable development.

The inability of government to accommodate and tolerate the activities of militia groups, have resulted in the conflagration of terror-violence in the region. The Niger Delta people have equally resisted the government and the oil companies resulting in diverse groups agitating for better treatment and economic empowerment. The region has also demanded to be liberated from internal colonialism they are subjected to by the Nigerian State and oil multinationals 322.

In effect, this has given rise to the ideological issue of self-determination struggle and a separate entity. This ideological principle is described as the choice of ethnic origin to live together in their own way, determine its own political fate, conduct their own affairs and develop themselves or even democratize as it deem fit 323.

Based on this understanding, it is the right of the Niger Delta people to fight oppression, domination, internal colonialism and to even form a separate entity. This right is guaranteed The United Nations Charter and the African Charter of Human Rights guaranteed this right, to all cultural, religious and linguistic minorities and peoples, as the part of the struggle for liberations 324.

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The question many have asked is whether these rights exist in Nigeria and do government respect and recognise these rights being a member and a signatory to these international legal framework? The truth is that these rights exit merely on paper but not in practice. The Nigerian have refused to respect these rights as a result the region has continued to remained grossly oppressed, socio-economically dependent, persistently deprived, disempowered, politically marginalised and psychologically frustrated.

Therefore, the question to be addressed are what are those grievances that caused incessant violent conflicts and why efforts made to solve have failed to achieve desired results. I think it is essential to address these grievances so as to have a grasp of the problems and then proffer reasonable solutions that will stop people from resorting to violent and any act that will cause more harm than good. However, we remind that this work this work is not going to mention all the problems or set out to solve all Nigeria’s problems. That could be done in some other research of different scope and time frame. Our primary interest here is to look are those critical problems that has been responsible for the violent conflicts in the Niger Delta area.

Thus some of these grievances are as follows:

- Social structure imbalances/undemocratic system
- Failure to develop the region/social injustice
- Mis-government/bad leadership towards the region/poor resource inflow
- Majority ethnic domination/Minority question/marginalisation
- Corruption /Empty promises of government /oil companies
- Unemployment
- Faulty Constitution/implementation crisis
- Lack of an effective youth programme
- Environmental problems

There is no overstating the fact that the country’s social structure is in a comatose and at the brink of total collapse and disintegration. The expectations of Nigerians at the dawn of political independence were that indigenous government will deliver the country from the shackles of oppression and eliminate colonial legacies. This dream has fizzle out and unrealisable because the social structure is built on a shaky foundation, weak Constitution that is easily manipulated by strong central government.

The system of governance and political positions has been dominated and controlled by a particular ethnic region that contributes little or nothing to the economic development
of the country. whereas the area that generates the wealth of the nation remains economically deprived, politically marginalised and environmentally underdeveloped, the area that contributes nothing little or nothing to the economy receives more revenue allocation. The government’s development plan and funds meant for social development have not been equitably distributed and people that are dire need of these social developments have been denied. Available evidence reveals that before 1997, Shell Petroleum Development Corporation (SPDC) allocates 2 million dollars a year for Community Development Project but later increased the amount to 32 million dollars between 1994 and 1997\textsuperscript{325}, whereas Mobil budgets eight million dollars for Community Development Project, Elf on its own contribution five million dollars on Community Development Project\textsuperscript{326}. These monies either get diverted to private pockets or misused.

In spite of the huge expenditure on social infrastructure and development, the Niger Delta region hardly gets much to take care of infrastructural development. What happens is that government officials and community representatives have misappropriated these funds. For example out of 36 states created in Nigeria, the north has 19 states, South-South ten states, the west have six while Abuja remains the Capital Territory. The Niger Delta (South-South) covers nine states out of 36 states and 185 out of 774 local government areas but still remains the most neglected and marginalised people in the country. The region generates the revenue that sustains the entire country, yet government presence and physical development in the area is abysmally poor. The youth’s restiveness in the region is nothing but a way of expressing their frustration and disillusionment against the political class that have diverted funds that would have benefited everyone in the region.

The resort to violence by the militia groups is something the youths would not have participated or indulged in if they were gainful employed. According to them, the struggle is not to make the Niger Delta area perfect and powerful, but rather to create an environment that will benefit everyone and at least good enough that the international community will begin to reckon with Nigeria. The youths regard the elites and elders as weak, fearful and ineffective, and myopic. This according to the youths have affected their participation in the politics of oil. This is why the youths are at the forefront agitating for a change and have decided to take their own destinies into their own hands by mobilising, organising and


\textsuperscript{326} Ibid.
engaging the State and MNOCs. The attitude of majority ethnic groups towards the ethnic minority groups (Niger Delta) have resulted in disunity, tribal clashes and strained relationship. The youths perceived this kind of attitude as another stage of internal colonialism and subjugation. The region has sacrificed their land and their fishing occupation for oil exploration yet they are marginalised and alienated. This kind of injustice has lingered on for years and attempts to address these injustices have been thwarted and rubbished by northern leaders. So, the militia groups perceived this problem as unjust, hence they the struggle for the survival of the Niger Delta people. It is completely unfair to deny people the benefits of resources that was derived from their soil having suffered serious environmental damage. Some indigenes of the area have said that the Nigerian government exploits the region to death and takes the resources to other part of the country, leaving the region destitute and underdeveloped.

The oil company’s empty promises have been frustrating and de-humanizing. The promises of employments, compensations and better development have not been satisfactorily fulfilled by oil companies and those fulfilled were done to satisfy few corrupt politicians that have connections with the oil companies. For example, there are many uncompleted schools, abandoned borehole projects, abandoned roads and uncompleted rural electrification schemes in the village communities. The funds meant for these projects were diverted or embezzled. This situation has not only undermined relationship between the oil-bearing communities and multinational oil companies, it has caused serious disagreement and mistrust. For example, the Memorandum of Understanding between oil companies and host communities aimed at uplifting the quality of life of Niger Delta people only make meaning on paper but not in practice. For example the agreement reached on scholarship and training to be given to the children of families that have suffered environmental disaster and subsequent loss of livelihood have been politicised and such opportunities given to children of the rich and the highly connected government officials.

The promise of oil contracts has not been fulfilled and all oil contracts were awarded to foreign companies and those who have strong link with political leaders. The level of resource scarcity in the region is currently on the increase because of environmental degradation caused by extensive oil extraction in the region. The number of fresh portable water has drastically reduced and the natural habitat of fish has been destroyed while in

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most communities it is extinct.. For example, a man killed his father over a missing piece of fish in Tuomo in Bomadi Local Government Area of Niger Delta\textsuperscript{328}. The man, Opukeme George will spend 20 years of his life in a bug and cockroach infested prison. This unfortunate incident illuminates the frustration, anger, loss of self-esteem and the level of poverty and impoverishment in the region. The youths whose future depend on what they can get from their land and their waters, seas, creeks etc, perceived this scenario as hurting and frustrating. However, the youths have maintained that they are not fighting for the present generation but fighting for the future generation and this attitude explains the international support the region have enjoyed in recent times.

There are no enlightenment programmes to rehabilitate the youths or absorb them into the mainstream of society. Instead much money is spent on importation of arms and ammunition to fight the militia groups and suppress youths’ restiveness in the Niger Delta region. The chain reaction has been more negative than positive. It has made the youths more determined, militarized, and vindictive in their struggle. To many Nigerians, this is not how to achieve nationhood. Nigeria cannot achieve its political and economic objectives if conflicts continue to escalate and many killed. We cannot solve our problems by adopting the wrong method or using non-practical approach. The pragmatists believe that truth is what works in practice.

The country’s problems will not be solved in a peaceless and disorderly environment. The violent conflicts resulting from resource distribution inequality, religious intolerance, political power sharing imbalances, will not abate if we fail to design a principle that everyone will accept as fair and just even though they still demand more to be done them. Of course human beings are insatiable homo-sapiens on earth. Nigeria cannot afford the present breakdown of law and order and the social decay that has made conflicts inevitable. The ostentatious lifestyle of Niger Delta state governors has equally infuriated the youths who at the vanguard of the struggle against internal colonialism and alienation. Some Nigerians have vehemently opposed agitations for more revenue allocation to oil-producing states.

The reason is that oil-producing states have received 11 trillion Naira ( £43984940579.94) from derivation and other special funds since 1999, yet there is nothing to show it. Opponents to another remittance of 10% of net profit of oil companies to host

communities argued that it will be unfair to put another burden on the Nigeria people for the sake of Niger Delta. The statistics show that for the ‘last 13 years, Niger Delta region has received N7.3 trillion in derivation funds: N2.7 trillion as appropriation for the Niger Delta Development Commission (NNDC) for over 10 years: N50 billion for the Ministry of Niger Delta between 2007 and 2012; N250 billion for the Amnesty Programme from 2009 till date; and N72 billion from the Special Presidential Initiative Fund. The truth of the matter is that these funds have not been properly utilized instead the funds have been diverted to private accounts in Switzerland and UK bank accounts. In addition, this has increased the frustration and anger of the Niger Delta youths.

The poor level of education and the learning environment have not been a promising one in the region. The education level of most militia groups terminates at secondary school level and probably two out of ten completed tertiary education while many did not have formal education at all. Poor education and lack of opportunity are believed to have significant influence on the willingness to participate in each of the civil unrest. What this mean is that wiliness to join militia groups and civil unrest is increasingly high because youths believed that is the only way they could win back their loss of self-esteem and dignity. They also believed by joining militia groups and civil unrest they would become socially and politically relevant. Apart from lack of education opportunities, a few schools available are poorly maintained and underfunded while school located at Shell quarters and residential areas are well equipped, well-funded with all facilities and at peaceful environment. The picture below differentiates schools attended by pupils of the Niger Delta and the one attended located at Shell quarters at Ogunu, Niger Delta.

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329 Alike, O. O. E. (2013). Row in Senate as Northern Lawmakers Oppose PIB. Thisday online. Lagos, ThisDay Publishers Ltd.
Figure 11: Poor State of education in Ogoniland, Niger Delta

A typical Class room in one of the school in Ogoniland, Niger Delta

Figure 12: A Typical School located at Shell quarters in OgunuNiger Delta.
Poor earnings of those employed by the oil companies have aggravated participation in low-level violence and oil-related criminality in the region. Earnings have to do with the monthly income class of people employed. The reality is that six income classes were examined and the first income class of people employed is lower than N7,000 (about US$50), the second is for all incomes greater than N7,000 but lower than N15,000 and third is for incomes that are higher than N15,000 but less than N30,000 and fourth is for incomes greater than N30,000 but lower than N60,000 and fifth is for incomes that are higher than N60,000 but lower than N90,000 while six is for incomes above N90,000 (about US$643). This state of affairs in not encouraging to workers while those involved in militant activities collect more dividends from oil companies. In other words, Nigeria economic policy needs urgent reformation and restructuring otherwise our problems will be more complex and unsolved. The Federal government should overhaul its oil policies and ensure that oil money is channelled back to communities and not via State and its bureaucracy.

The emergence of the Movement for the Emancipation of the Niger Delta (MEND) introduced a more devastating level of violent conflict in the oil crisis. Among other militia groups, MEND has proved to be more organised, better equipped, and more determined. The group emerged to continue the struggle where MOSOP and other militias groups stopped. The group have not deviated from the ideological struggle of self-determination and economic empowerment of the Niger Delta people. The resolve of the group to the struggle to logical conclusion through violence means have many to criticise them. They have been discredited as a terrorist group by the government and oil companies. Some think that this criticism is unreasonable and inappropriate especially on the side of the government. It is argued that people that categorized MEND as terrorist organisation do so to discredit the group and mostly to win international support particularly to give credence to the global war against terrorism or what we call in local parlance as “giving a dog a bad to hang it”.

Although the activities of MEND may have caused political instability and economic loss, the fact remains that the corrupt leaders and comprador capitalists’ benefits from the crisis and have provided arms and ammunition to the group at one point or the others. This haphazard approach to these problems tends to elongate the frustrations of the people in the

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area. The common knowledge that people would do different things under free choice situation seems logical in some sense. But we think that what people do may be influenced by many exogenous factors. For example the participation in protest, riot, or other extreme form of violence, like militarized struggle, may be pressured, or coerced.

We are not justifying violent conflict in any way, we are saying that the government and oil companies have not done things rightly and that they should be held responsible for the increased number of violence conflicts in Niger Delta region. They are not transparent neither are they accountable to the people. They favour one group and disfavour another thereby causing more crisis and instability in Niger Delta. There are more divisions and factions among the group than when oil has not been discovered in the region. And protest and peaceful demonstration from the local people have been disproportionately suppressed or repelled with military and police force. The global oil and energy crisis caused by MEND and other militants group would have been avoided if the State and the oil companies had resorted to dialogue or mediation processes than using military might to subdue the anti-oil movements.

The MEND and other militants groups were representatives of the local people and they are defending and fighting for the survival and emancipation of the Niger Delta people who have been economically deprived and politically marginalised since oil was discovered in their region. People should understand that whatever pushed the Niger Delta youth to challenge and mobilise against the oil companies did not start today. It is nothing but years of economic injustice, environmental damages, and long period of political neglect suffered during colonial rule and post-independence regime. The youth involvement in the conflict is the fault of the Nigerian State and not necessarily the fault of the youth. The sharing of political positions since post-independence had remained the prerogative of the political elites and community leaders which in no small way has excluded and alienated the oil-producing states in Nigeria. The whole government affairs have remained with the same corrupt and dishonest individuals who have used their positions to influence government policies to the advantage of their families and cronies.

The only problem in this fight is that MEND and other militant groups have also ‘crossed the red line’. They are termed terrorist group because they kidnap, and take oil workers hostage for ransom. They attack innocent citizens who have no connection with oil companies or with the State. This approach is not the philosophy of freedom fighters in the strict sense of it. However, in all sense of decency, the sectarian attacks on oil facilities,
kidnapping of oil workers hostage-taking and all forms of malicious destruction is completely not the best option rather it will escalate more violence and rather counterproductive. This situation has caused socio-economic and political instability and insecurity problems in the country

**Figure 13: A well-armed Niger Delta Militia Group**

Kidnapped oil workers by the Militants in the Niger Delta region being ferried to unknown destination

**Figure 14:**

Kidnapped oil worker being ferried to the militant’s base in Niger Delta
Foreign oil workers at the hostage camp in the creek located in Niger Delta.
4.9 THE EFFECTS OF VIOLENT CONFLICT ON SOCIO-ECONOMIC STRUCTURE OF NIGERIA

During the period of the crisis many people could not trade as expected. Some people who used to go to the market to sell had to close their shops. If they opened, the shop could be looted. As a result industry closed down and other people that had the capacity to establish industries were afraid to do so for fear of destruction (Man. Ondo/Edo) 331

It started with the men and later involved every member of the community—women and youths alike. Everyone within the community was affected as destruction and loss of lives and properties were the order of the day. The conflict devastated the economy base of the Ijaws and caused an unforgettable disconnected among old friends and even divided extended families connected by marriage with conflicting three ethnic tribes.....

(Religious Leaders, Delta State.) 332

There is no overstating the fact that oil-related violent conflicts in the Niger Delta have had serious adverse effect on the economy and on the people. It is very easy to destroy but very difficult to rebuild. The conflicts have caused loss of lives and destruction of houses, and led to kidnapping oil workers, and innocent citizens who have nothing to do with oil exploration in the region. For example the Nigeria’s Niger Delta oil conflict has claimed about 50,000 lives since 1999. The UNDP report on Human Development situation in the region shows that contentious issue in the Delta region did not only show decades of neglect and poverty, underdevelopment, but also the painful feeling among the people that, they ought to have better lives given the enormous resources flowing from their region 333.

4.10 THE SOCIAL AND ECONOMIC CONSEQUENCES.

The social and economic consequences of the oil conflicts in Niger Delta have been significant and devastating. First, it has crumbled social activities in the region. Social life and show business is declining due to communal clashes and militia confrontations with Nigeria Joint Task force. The conflict impacts the social fabric of societies and weakens social relations 334. It has caused social dislocation and strain of business ties between

332 Ibid.
333 See UNDP recent report on Human Development situation in the Delta region (36-37)
communities and neighbouring states. It has disrupted social capital and social capital and has destroyed the norms and values that underlie cooperation.\textsuperscript{335}

The Nigeria government relies solely on the earnings from oil sales and revenue to execute projects and other financial obligations. But since the oil crisis began in the 1990s, there has been supply disruptions and shut-in production. The Nigeria government have lost about 800, 000 barrels of oil per day.\textsuperscript{336} This situation is threatening the economy and the Nigeria government is under serious pressure to increase production to four to five million bpd by 2010-2015. Unfortunately this is not possible as the militia group have continued to wage serious resistance against oil companies in their region. Other social consequences are that in some communities, the conflict has constrained relationship between the elders and the militia groups. It led to communal clashes and inter-tribal uprising.

Politically, it has paralyzed government activities in the area. For example, the 2007 election was not held or boycotted in some parts of Ogoniland. The conflict has caused restriction of people moving freely for the daily activities. This has affected economic activities and restricted movement of agricultural products from they are produce to where they are needed.\textsuperscript{337} Also there are incidence of breakdown of peace and stability of community life, lawlessness and lack of respect for elders and leaders and general decay of social ethics are presently the hallmark in oil-bearing communities. Apart from that, our investigation reveal that communities are turned into warzones of armed insurgent, acrimony, disintegration, lack of unity within and between local communities.

Though youths are at the forefront of the oil conflicts they have not been exempted from the social consequences and the economic impacts of the conflict. The impacts have both been positive and negative. The youths are today politically and socially relevant in the scheme of things. It has increased youth restiveness, and made a greater number of youth irresponsible, lazy, aggressive, antagonistic to elders and political leaders, violent and bellicose. For instance youth in the region no longer believe or cherish hard work or in Karl Marx’s dictum ‘Labour creates man’ but seek easy way to wealth. The conflict has caused untimely deaths of youth and killing of innocent civilian citizens, loss of jobs and caused more dropouts.

\textsuperscript{335} Ibid.
The conflict has impacted on security and criminality in the area. The rate of crime has increased dramatically and insecurity to lives and property is unbearable. The law on illegal possession of arms is no longer because people arms easily and through various illegitimate means. Fourth, on human toll, the violent conflict resulted in loss of life, disablement, rape and sexual violence against women and molestations of Niger Delta women both by expatriates and militants group. The conflict has caused community displacement and forced migration\textsuperscript{338}, scarcity and famine, ethnic cleansing, and health-related diseases such as Cholera, Typhoid fever and HIV/AIDS scourge in the region. It has forced the people to seek alternative livelihoods, including criminality, and prostitution. It has caused many businesses to relocate, and people moving away from their ancestral homes to cities and neighbouring communities where they live as refugees and third class citizens.

Finally, violent conflict has resulted in large-scale human rights abuse in the region. There was large-scale destruction of lives and property. Some people who are cut up in the cross fire of violent conflict were arrested and hauled into prison without fair trial. Many incidences of extra-judicial killings have gone unreported, causing more insecurity problems in the region. Notwithstanding the impacts of violent conflict in Niger Delta region, there seem to be some gains on the political front. The conflict has created a new awareness on the political scene and many people are aware of vicissitudes and dynamics of Niger Delta oil-related conflict. It has also created economic and social awareness in the region and it has made the Niger Delta people to fully understand what oil exploration entails and its impacts on society and environment.

The militia activities have raised people’s hopes and expectations high. The governmental attention to the grievances of the oppressed and neglected people is gathering momentum gradually. There are poverty alleviation Commission and ad-hoc agencies, presence of non-governmental organisation helping local communities and at the same time putting pressure on the government to improve standard of living of people. For example the government grant of Amnesty to militants group in the region has raised some hopes and expectations that steps are being taking to addressing the grievances of the people. Although the violent conflict impact negatively on the lives of the people, the inhabitants of the area believe that the struggle will be positive and will liberate them some day.

\textsuperscript{338} See Governance, Social Development, Humanitarian-Conflict Chapter 1, and Understanding Violent Conflict Retrieved from \url{www.gsdrc.org/index.cfm?objectid=4F4F6106}. Last visited 20/03/2013.
Lund opined that conflicts prevention are actions, political procedures of institutions undertaken in particularly venerable places and times in order to avoid the threat or use of armed forces and related forms of coercion by states or groups, as the way to settle the political disputes that can arise from the destabilizing effects of economics, social, political and international change. It is no longer in doubt that the crisis is of monumental proportions and need to be resolved urgently because of its economic, political, and socio-cultural consequences.

CONCLUSION

To sum up, we can see that the Niger Delta oil-related violent conflict is huge, complicated and all efforts to solve it have not yielded any reasonable results. This is as result of bad approach and the insincerity of government to solve this problem. The fact that the problems are huge and complicated does not mean the problems cannot be solved. It can definitely be solved if the Nigeria government is committed and serious. But has happened is that more emphasis on long-term measures have contributed largely in elongated the problems and have equally heightened people’s frustrations and dissatisfaction against successive Nigeria government. So to solve these problems with long-term goals may not sound rational and sensible. It is our submission that the immensity and complexity of our problems are enough reason not to try long-term solution exclusively.

Based on the present situation in Nigeria, it is the primary focus of this thesis to proffer short-term principles that people cannot reasonably reject even if they keep on disagreeing on how best to solve these problems. The short-term principles will leads us to the next chapter where extensive attempts were made to generate principles that will help us deal with the special circumstances of Niger Delta oil crisis with short-term goals. The short-term measure is essential considering the nature and origin of the problems and the number of actors involved. In this respect therefore, we need a theory that will allow us provide specific short-term measures to the age-long oil crisis in the Niger Delta region. This is why we borrow John Rawls theory of justice as one of the suitable theories to produce specific short-term justice that will bring immediate improvement to the suffering and deprived people of Niger Delta. However, we maintained that some steps taken by the Nigerian governments are long-term solutions that would provide the immediate needs of tens of millions of impoverished citizens of Niger Delta region.

CHAPTER 5

GENERAL OVERVIEW OF JOHN RAWLS THEORY OF JUSTICE

5.1 INTRODUCTION.

The focus of this chapter is to analyse the general overview of John Rawls theory of justice and elucidates how he uses his method to produce principles of justice that reasonable people who are determined to advance their welfare cannot reasonably reject. To achieve this objective, this chapter is divided into three key sections. The first section shall discuss John Rawls theory of justice. The second section analysis his method and the third section explain what he uses his method to generate. The essence of dividing this chapter into three key areas is to show the demarcation between Rawls theory of justice and his method of justice. It is also important to elucidate in this chapter the Rawls moral reasoning and to show that his political philosophy has basic elements that will help us develop a solution to the complex and intractable problems of distributive justice that has plagued Nigeria for a long period of time.

The whole idea of using Rawls is that it gives us the room to come up with proposals that will help us solve problems that has to do with distributive justice, social imbalances and instability in society. For example, his method produces exactly what we will assist us to generate specific principles that will provide short-term solutions to the Niger Delta oil crisis. In order words, Rawlsian method produces proposals that are suitable solutions to the problems of justice and social cooperation in society. Thus, the proposals produced by the Rawlsian method are not something people can reasonably reject and if people are committed to advance their own welfare they will reasonable agree to those proposals because the proposals provide alternative ways of solving their problems.

We believe that his theory of justice and his method of justice will help to cash out Nigeria’s social structure problems, political instability and economic predicaments. The Rawls theory has generated both a lot of support and a lot of criticism, this chapter will not engage in either criticism or defence of Rawls. There are plenty of books on criticisms and in defence of John Rawls theory of justice. In this thesis, we assume that Rawls

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340 See, the bibliography of The Cambridge Companion to Rawls and J.H Wellbank e al on John Rawls and His Critics, Annotated Bibliography.

341 The principle that Rawls uses his method to generate revolves around the two fundamental principles of justice which would in turn promote just society and social cooperation. The first principle protects and promotes the rights of every
method is at least a plausible way to arriving at principles that satisfy the requirements of distributive justice and believed that his method can be usefully applied to the Niger Delta oil crisis. Rawlsian method is ideal in the sense that it tells us whether people will reasonably agree to the proposals it generate or reject it.

Of course, the Rawlsian method can be used to generate various kinds of principles of justice: Rawls uses it to generate principles of justice that govern the design of the basic institutions of society, but Rawls method is independent of the principles it generates. We will be using it not to generate basic principles, but to generate specific principles of short-term justice that will help us deal with the Niger Delta crisis. It is believed that the incompatible but yet reasonable pluralism of Nigeria is properly explained in the Rawlsian method and also in his method of moral reasoning. Our primary focus is to use the Rawlsian method to remove all obstacles which have prevented the country from establishing political justice, economic progress, social welfare, cultural relationships, and religious tolerance and then construct a set of principles the affected parties cannot reasonably reject.

5.2 THE RAWLSIAN METHOD

Rawls intuition was that we know that something is just if people agree to it. This of course is a general intuition. Rawls begins with this intuition and presses on but on a second thought he realises that there are many reasons why people out in the real world might agree to an exchange that was in fact, substantially, unjust. So, in the real world, this intuition is not actually true and there are people with unequal bargaining power, unequal skills, and unequal information over what they are bargaining, and unequal starting positions. Again, people are generally trying to maximise their self-interest in bargaining situations. Therefore, even if they agree to something it does not necessarily mean that is fair. In effect, the people have to possess equal starting positions, equal bargaining skills, equal bargaining power and equal information over what they are bargaining for the fact of agreement to have moral force.

Rawls argued that it is not always the case that people’s actual agreement means the agreement is unfair because there are all sorts of reasons why people might agree to what are patently unjust and unfair. In other words, people are not generally trying to arrive at a
bargain that is fair and just, but a bargain that is as lopsided as possible in favour of their own interests. By this we mean that people tend to agree to things that will benefit them and not things that will benefit everyone, and they are able to do this because they have unequal bargaining power, skill, unequal starting positions, and they have different information about what they are bargaining. Rawls said that the bargaining of real people in real distributive situations can be very lopsided if people are not free and equal. In other to have a bargaining that is necessarily fair, everybody has to be free and equal. Only if everyone were equal in their bargaining abilities, bargaining power, in their starting positions, and have equal amount of information about whatever they were bargaining over, that we can say that such agreement reached under this condition will be fair and just to everyone.

But if it is an agreement between free unequal persons and unfree unequal persons, such agreement will cease to carry moral force and we cannot trust the outcome of such agreement. So free and equal persons are more likely to agree on principles that are fair and just, while an agreement by a free unequal person and unfree unequal persons may lead people agreeing on principles that advantage one group over another group. "More powerful parties rely on knowledge of their threat advantage to extract favourable terms from those in less advantaged positions". 344

Rawls therefore stated that if the procedure is fair, and the participants in the bargaining situation are free equal persons, then the outcome of their agreement will be fair and just too. For example, in the process of dividing a cake between four persons, we might beforehand inform them that one who divides the cake will pick last while others pick first. This way, the person dividing the cake has an incentive to divide the cake equally, since he will be left with smaller slice if he divides it into unequal sizes. The idea is that if the procedure of sharing the cake is fair and just, we can assume that the outcome of the agreement reached by participants in the sharing of the cake will be fair too. In the same vein, the distribution process will be just if everyone that is affected by it would agree to it. So the person sharing the cake will have to ensure he slices the cake as equally as possible so that it will be fair to everyone and to himself when others must have taken their portion. This is the method John Rawls in order to arrive at principles of justice that will set up a situation where our choice for a principle that will guide us make rational choice procedure is fair.

5.3. THE ORIGINAL POSITION AND THE VEIL OF IGNORANCE

John Rawls’ method is not based on utilitarian beliefs and does not rely heavily on arguments from tradition. His method is based on the Original Position behind the veil of ignorance. He refers the Original Position as favoured philosophical interpretation of the initial situation. Rawls intends to show that our intuition about the rules that guide the choice of principles do agree with the set-up of the initial situation. In this situation, Rawls stated that his principles of justice are the ones that the participants in the Original Position would choose at the end of the day. The participants would choose Rawls’ principle because it has the ability to provide principles of justice that reasonable people cannot reject.

Again, let us imagine ourselves as members of the Original Position. And we are all self-interested rational persons and we stand behind the “veil of ignorance”. To say we are self-interested rational persons is to say that we are motivated to select, in an informed and enlightened way, whatever benefits our interests or whatever is advantageous to us. But we must bear in mind that the Original Position is a purely hypothetical situation. Nothing resembling it need ever take place, although we can by deliberately following the constraints it expresses simulate the reflections of the parties. The conception of the Original Position is not intended to explain human conduct except insofar as it tries to account for our moral judgements and helps to explain our having a sense of justice.

But to say we are behind the “Veil of ignorance” is to say we do not know our social status, race, sex, political affiliation, physical handicaps, our generation and our religion. But we must mention here that the self-interested rational persons are not ignorant of the general types of possible situations in which humans can find themselves. Let us imagine that self-interested rational persons are given a task of choosing the principles that will advance their interests or that shall govern actual world (not hypothetical world). Because of the fairness of the procedure Rawls believes that the principle that would be chosen by means of this procedure would be fair principles.

The self-interested rational persons behind the “Veil of ignorance” would not want to belong to a race or gender or sexual orientation that turns out to be discriminated against or racially neglected. Such a person would not want to be handicapped person in a society where handicapped are treated without respect. So the principle that would be chosen is one

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346 Rawls: 1971. Op Cit. p. 120
348 Ibid.120
that condemns discrimination, neglect, marginalisation and deprivation. Likewise, the self-interested rational persons would not want to belong to a generation or social class which has been allocated a lower resources or less revenue than average quantity of resources. In endorsing any principle the parties in the initial situation would want each generation to be allocated with roughly equal resources or that each generation should leave to the next at least as many resources as they possessed at the start. The corollary of this thought experiment is that in all fairness, all generations have the same rights to resources, the same rights to the revenue the resources generates, each generations should have future as well as present. It is our uttermost believe that if we plant this thought process at the centre of the Niger Delta oil crisis, we would be able to produce specific principles of justice that will assist us provide short-term measures to the suffering and poverty stricken people of Niger Delta.

This is what Rawlsian method epitomizes through the thought experiment of Original Position behind the veil of ignorance. Based on these ideals we borrow his method because we assume that is plausible and defensible.

Similarly, Rawls started by constructing a hypothetical decision situation and went ahead to place the bargainers in the Original Position. First let us address the question of what is the Original Position? The Original Position is a position where principles of justice have not yet been selected, so that everyone is starting from the same place. The Original Position is the position everybody was in before a principle of justice was chosen or the position of the parties before they decide on anything. The Original Position is simply the position everybody was in before society adopt any principles of justice (the appropriate initial situation of man). In the Original Position, the parties assumed that they have not agreed on any principles yet and that everyone is equal.

Thus, the Original Position is the inauguration of a system or procedure that is fair for construction of principles of justice, so that at the end of deliberations, principles of justice agreed on will be just and thus carries moral force that confers cooperation and anticipated justification, obedience and acceptance. There could be dissenting views on what principle is right, but it does not mean that people cannot go ahead and agree on principles or rules that would regulate their institutions or principles that can lead to social justice, political stability and equal distribution of resources. Here also, the Original Position

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is seen as hypothetical and representatives in the Original Position should be seen as hypothetical parties who act as trustees and or guardians given the citizen’s most assets, which are their interests. Second, Rawls introduces what he called the veil of ignorance. In this situation, Rawls put these parties behind a veil of ignorance designed to deprive each of the knowledge of who they are, or their relative place in society, for without such knowledge, they would have no basis on which to seek an agreement that would be biased in their favour.\textsuperscript{351}

In the veil of ignorance parties are without information that enables them to tailor the principles of justice that favours their personal circumstances.\textsuperscript{352} The veil of ignorance is the second component of our hypothetical bargaining situation that is designed to ensure that our bargainers are free and equal and without basis to be biased. The veil of ignorance deprives the parties of all information and knowledge of particular facts about themselves, about one another, and even about their political history and those characteristics that will bias them in choosing the principles of justice that will bring the rational solution to societal problems. The veil of ignorance deprives the parties the knowledge of their race, sex, age talents, physical attributes and their capabilities. The “Veil of ignorance” is constructed in such a way that it helps parties choose that principles of justice that is fair and just to everyone. The parties therefore do not know the part or role they will play in future political dispensation or the role they will play in the society. So they must design the society “behind the veil of ignorance”. So for the fact that the parties do not know the type of society they will belong to, its culture, its political, and its economic situations, it is therefore necessary for them to operate behind the veil of ignorance to come up with a fair and rational programme that will favour everyone.

The essence of introducing the “Veil of ignorance” is ‘to remove the consideration of certain particular facts, the knowledge of which might lead people in the Original Position to favour principles which are not just and fair. For this reason, Rawls argued that people in the Original Position behind the “Veil of ignorance” do not know their natural or acquired traits or abilities, what conceptions of the good, they have nor what their particular goals are.\textsuperscript{353} Thus, in the Original Position behind the veil of ignorance position people are deprived of knowledge of their social class, political affiliations, capabilities, their sex, the


society they belong to and the kinds of things that will lead them to self-bias. In this case, parties in the Original Position behind the veil of ignorance do not know any particular characteristics or facts about themselves, but it is assumed they all have the same general information made available to them.

The next question is what Rawls do with both the Original Position and the veil of ignorance. Rawls uses the Original Position and the veil of ignorance to generate the two general principles of justice. The first principle of justice he generates was the principle of equal rights and basic liberty. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. The second is that social and economic inequalities are to be arranged so that they are both reasonably expected to be everyone’s advantage, and attached to positions and offices open to all. The first principle specifies an equality of access to basic liberties and the second refers to a form of recognition of prudential concerns and openness of government offices and political appointment made open to all. According to Rawls, these principles are arranged in serial order with the first taking priority over the second. This ordering, Rawls argued means that a departure from the institutions of equal liberty required by the first principle cannot be justified by, or compensated for, by greater social and economic advantage.

So the question Rawls puts forward is what principles of justice would be people in the Original Position behind the veil of ignorance would agree to if they are free and equal? The people in the Original Position behind the veil of ignorance will choose principles or rules that will withstand the strains of commitment. This is the third test. This test suggests that the principles the people in the Original Position behind the veil of ignorance would agree to must be one that people will see as fair and just, but before they choose principles that will be fair and just to everyone, we have to define what they know and what they do not know. Rawls said that the people in the Original Position know everything but except their own position in the society. They do know of certain fundamental interests they all have, plus general facts about psychology, biology, economics, politics, and legal systems and other social and natural sciences. The question is how will the parties in the Original Position behind the veil of ignorance the choose principles of justice that will advance the interests of everyone?

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355 Ibid.
Let us assume that the parties are presented with a list of the main conceptions of justice drawn from the tradition of social and political issues and are assigned the task of choosing from among these alternatives, the conceptions of justice that best advances their interests in establishing conditions that enable them to effectively pursue their final ends and fundamental interests. It is therefore assumed that we have free equal persons in their Original Position behind the veil of ignorance that deprive them the knowledge of their race, sex, social status and capabilities and all the kinds of things that typically biased people. The thought being that if they do not know which special characteristics they have, then they would argue for a solution that will privileged those special characteristics. In fact, they are going to assume that they might be one of the people that do not have those special characteristics. Therefore, the parties will argue for an agreement which seems like is going to be fair to everybody because that is going to be the best option for them otherwise they risk agreeing on something that will end up disadvantaging them.

The first is to choose the principles that are to govern the basic structure of society, and second is to choose the principles that are to apply to individuals. First, if the procedure for choosing these two principles are fair and just the outcome will be fair too, and the society cannot reasonably reject such agreement. Second, if the principles will advance the interests of everyone then the outcomes will be one that will not disadvantaged anyone then they would agree to it. However, the list of principles that every citizen must choose is a limited list.

This limited list from which parties should choose the principles of justice must be fair and just. But if the process set up for people to choose is unfair and unjust, the whole point of choosing would be useless and meaningless and in order to ensure that this limited list is fair and just, Rawls construct two important criteria this list must fulfil. First, the principles must fulfil what Rawls calls the formal constraints to the right and second, the principle must be chosen behind the veil of ignorance. Rawls assume that the principles people in the Original Position would select behind the veil of ignorance is based on what they are supposed to want and on what they are supposed to know and not know.

*No one knows his or her place in society; no one knows her or his class position or social status; no one knows what abilities or handicaps he or she will have; and no one knows her or his conception of the good or his or her psychological tendencies*.

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357 Rawls 1971, p. 454.
However, people will want to know why parties in the Original Position are denied the specific contingencies or fundamental information that may help them make fair decisions. The reason is that such basic information put men at odds and pushes them to exploit social and economic circumstances to their own advantage. Again men and women are naturally inclined to maximise their own self-interest and self-respect. In any case, this circumstance affects the society and policy-makers are likely to be influenced by such basic information. Since this problem exists there is need to decide which information will be excluded and to exclude the basic information, Rawls uses the veil of ignorance. 

Having clarified the task free equal persons in the Original Position are presented with and the restrictions placed on their choice of principles that will sustain their social cooperation and the constraints of the veil of ignorance, Rawls turns to the subject of rationality of the parties. The rationality of the parties is essential and helps them decide which principles to choose. The principles people would end up choosing will be rational and reasonable for all to accept.

The rationality of the parties helps in the evaluation of the conception of the principles of justices because any decision the parties end up with would have been one given rational considerations by them. The decision agreed upon in the Original Position behind the veil of ignorance must be a decision that satisfies the stipulated formal constraints. To say that a certain conception of justice would be chosen in the Original Position behind the veil of ignorance is equivalent to saying that rational deliberations satisfying certain conditions and restrictions would reach a certain conclusion.\textsuperscript{358} Therefore, a rational solution is one that people cannot reasonably reject.

Our argument is that the deliberations of the people in the Original Position behind the veil of ignorance must be similar and no one should be allowed to hold out others unless on a consensus opinion of others, and even if one of the parties threatens to hold out others, how does one know which political and economic policies that are special one’s own favour? So the parties would favour those principles of distributive justice that seek to promote equal benefits and equal opportunities in society.

The same applies to the formation of groups or coalition. Now if a group were to decide how to tailor principles to the disadvantage of other members of the civil society, they would hardly know how to favour themselves in the choice of principles. The reason is that no one knows his situation in society or his natural assets. If they could get everyone to

accept their preposition they would have no assurance that it was to their own interest since they do not know their identity and cannot describe themselves by name. Thus, whatever our position is ‘each is forced to choose for everyone’. 359.

Overall, the Rawlsian method is an attempt by rational persons in the Original Position behind the veil of ignorance to choose or reject in a rational and plausible process, the principle or rules that should govern the actual world. Rawls therefore believes that he has set up an inherently fair procedure that will lead to just solution to social and economic inequalities in society. Because of the fairness of the procedure which Rawls described in his method, principles, or rules that would be chosen by means of this procedure would be fair and just. In other words, rational persons and free equal persons behind the veil of ignorance would not want to belong to a race or gender or sexual orientation, or that group of people that turns out to be discriminated against or that would be disadvantaged. Such persons or groups would not choose the principle or method that would end up depriving people of economic benefits and political opportunities. So in any case people would adopt the principles that oppose discrimination, oppression, marginalisation, and corruption practices.

Likewise in the case of self-interested rational person, he or she would not want to belong to a generation which has been allocated a lower than average quantity of income and resources. So he or she would embrace and endorse the principle that says ‘‘each generation should have roughly equal resources’’ or ‘‘each generation should leave to the next at least as many resources as they possessed at the start’’. 360

In effect, the Rawlsian method, sort out through the idea of the Original Position and behind the veil of ignorance is an effort guided by a number of moral, political, and social intuitions that concern the welfare of mankind generally and the disapproval of arbitrariness, inequality and other social ills. But we must note that our argument in this work is not set out to defend the Rawls rather we are going to borrow the Rawlsian method to come up with principles that free equal and rational persons would agree given their desires and aspirations. The Rawlsian solution can only work for people who are reasonable and people who are looking for a just solution but if people are looking for personal power, the only solution for those people is violence.

In this hypothetical condition, people (representatives) choose the first principles of justice that are to guide or regulate them settle their problems or sort out criticisms and reform institutions that have failed to function properly, but while making these choices, parties are denied those kinds of things that bias people. In making these choices, no one knows his place in society, his political status, his position, his religion, tribe or his natural capabilities and assets, his intelligent, strength, weakness, etc. In the members are mutually disinterested in the issues as they do not have interest in other person’s interest, they are not self-centred, individualistic and egoistic. They are neither, greedy, envy nor bear any negative emotion against other people. Their primary duty is to choose the best principle of justice or rules that are best enough to promote good governance, and political stability as in the social contract.
CHAPTER 6

A DEFENCE OF RAWLSIAN METHOD IN THE SEARCH FOR A THEORY OF SHORT-TERM JUSTICE

6.1 INTRODUCTION

This chapter is aimed at presenting some of the criticisms of the Rawlsian method and raising some defences by and in favour of Rawls and my choice to use his method in my research. The essence of doing this is to create a better understanding of Rawls theory of justice and Rawlsian method of justice. Many critics of Rawls have not been able to draw this demarcation and this has continued to cause controversies and criticisms. Therefore, this chapter is divided into four sections. The first section clarifies the distinction between Rawls theory of justice and his method of justice. The second section acknowledges Rawls’ criticism, responses and defences to his criticisms. The third section explains the theory of consequentialism, and Tom Franck’s theory of fairness. The reason is to show that Rawls’s method is plausible and defensible method that can help us solve societal injustices that make social cohesion and economic empowerment cumbersome. The Rawlsian method therefore is design to provide us with a theory that people would agree to especially if we are going to persuade people to agree to it or demand they give consent to that theory.

The chapter concludes with salient reasons for choosing Rawlsian methods instead of other theories like that of Tom Franck, the consequentialists’ theory or Amartya Sen’s. Theory of Development as Freedom.

In this thesis, we are not just seeking a theory of justice, but a theory of justice that people cannot reasonably reject. While there are many methods of developing a theory of justice, the best (and indeed only) method of developing a theory designed to be one that people cannot reasonably reject is the Rawlsian methods, for that method is based on hypothetical consent. For instance, the Niger Delta oil crisis is intractable and complex. The complexity of the problem therefore requires a theory that will convince and appeal to parties in the Niger Delta oil crisis. A theory of justice that is not based on hypothetical consent has no hope of being acceptable to the parties. Any theory of justice we intend to use is this thesis must be one that takes into account consent and agreement otherwise the

likelihood of it being acceptable to the people is not assured. Therefore, a theory of justice that depends on hypothetical consent and takes into account agreement is what we need because it will help us in the project in which we are engaged. We also believe that a theory of justice based on hypothetical consent would consider all the interests of various parties involved in the Niger Delta oil crisis and the outcome of their consent would go a long way in solving the problem we are engaged in a short-term course.

6.2. CLARIFICATION BETWEEN RAWLS THEORY AND HIS METHOD OF JUSTICE

It is essential to my approach to show the difference between Rawls’s theory of justice and his method of justice. We shall show what theory he uses his method to arrive at in his work. In this instance we are not interested in his theory but the method which he used to come up with his theory of justice. His method is to ask what people would agree to in the hypothetical Original Position behind a veil of ignorance. His theory (the theory that he argues his method produce) is that of justice as fairness. The reason we are not interested in applying his theory but only adopting his method is that his theory will not help us in the project in which we are engaged-his theory is a theory of long-term justice, designed to apply only to the basic institutions of society. In contrast, we are looking for a theory of short-term justice designed to apply to some very specific problems that are omnipresent in the Nigerian situation. We are not interested in developing a theory that will tell us how to reform Nigeria in general and make it a just society or ideal society. Rather we are interested in determining what justice requires we do to stop the suffering and make people’s lives more tolerable while they continue their struggle to establish long-term justice.

The follow up question therefore is why Rawls method not some other persons method? John Rawls’ method is not based on utilitarian theory and does not make his arguments from tradition. His method is based on Original Position and the veil of ignorance. He refers them as favoured philosophical interpretation of the initial situation\textsuperscript{362}. Let us imagine ourselves in what Rawls calls the Original Position. And we are all self-interested rational persons and we stand behind the “veil of ignorance”. To say we are self-interested rational persons is to say that we are motivated to select , in an informed and enlightened way, whatever benefits our interests or whatever is advantageous to us. But we must bear in mind that the Original Position is a purely hypothetical situation. Nothing resembling it need ever take place, although we can by deliberately following the constraints

it expresses simulate the reflections of the parties. The conception of the Original Position of the Original Position is not intended to explain human conduct except insofar as it tries to account for our moral judgements and helps to explain our having a sense of justice.

But to say we are behind the veil of ignorance is to say we do not know our social status, race, sex, political affiliation, physical handicaps, our generation and our religion. But we must mention here that the self-interested rational persons are not ignorant of the general types of possible situations in which humans can find themselves. Let us imagine that the self-interested rational persons are given a task of choosing the principles that will advance their interests or that shall govern actual world (not hypothetical world). Rawls believes that due to the inherent fair procedure and because of the fairness of the procedure he believes that the principle that would be chosen by means of this procedure would be fair principles.

This is because, the self-interested rational persons behind the veil of ignorance would not want to belong to a race or gender or sexual orientation that turns out to be discriminated against or racially neglected. Such a person would not want to be handicapped person in a society where handicapped are treated without respect. So the principle that would be chosen is one that opposes discrimination, neglect, marginalisation and deprivation. Likewise, the self-interested rational persons would not want to belong to a generation or social class which has been allocated a lower resources or revenue than average quantity of resources. In endorsing any principle he or she would want each generation to be allocated with roughly equal resources or that each generation should leave to the next a least as many resources as they possessed at the start. The corollary of this thought experiment is that in all fairness, all generations have the same rights to resources, the same rights to the revenue the resources generates, each generations should have future as well as present. It is our uttermost believe that if we plant this thought process at the centre of the Niger Delta oil crisis, we would be able to produce specific principles of justice that will assist us provide short-term measures to the suffering and poverty stricken people of Niger Delta.

This is what Rawlsian method epitomizes. Through the thought experiment of Original Position behind the veil of ignorance Rawls establishes democratic equality. For example the representatives in the Original Position are free and equal persons who are to

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363 Ibid. p.120
364 Ibid..120
choose the principles of justice behind the veil of ignorance. The process of choosing is effective and just. It aims at demonstrating that social and economic inequalities, against a background of equal basic liberties and fair equality of opportunity, should be evaluated in terms of how well-off they leave the worst-off and not in of how much they increase the general or average welfare or equalize the situation of at any price. Based on these ideals we borrow his method because we assume that is plausible and defensible.

Our justification for choosing Rawlsian method is that it has several implications for development in Nigeria. In the first place, his vision of a society where nobody is left behind or where no members are disadvantaged is a call to duty for all Nigerians. Also, we used Rawlsian method in this work because it gives us leeway of developing theories of justice that people cannot reasonably reject. This is our main concern here because we want to have a theory that is persuasive and plausible so that if presented to people that hold diverse group of views it would convince them that they should support it. This is what Rawlsian method is designed to do. Other methods are not designed to do that. And even if we want to use other method it is obvious that we are going to run it on whatever it has to produce through the Rawlsian argument, if we are going to try to persuade people to agree to something. The merit of Rawlsian method is that it is based and depends on consent and the argument is that people would agree to this because what we want them to agree to depend on consent. Other methods do not depend on whether people would agree to it or not.

So, regardless of what they produce, people are not likely to agree to it, and if the method produces something that does not depend on consent people are not going to follow it. So this would not do society any good instead it will delay the process of reaching an agreement through a reasonable and a plausible method. In any case, to persuade people to follow a particular line of argument, we have to argue that they should agree to something and to argue in this way we again going to use Rawlsian method. This method of reasoning is what distinguishes Rawlsian method from other method we can think of using in a research of this kind.

Apart from that, in society where people disagree on something and at the same time make claims and counter claims it is essential to present a proposal that is plausible and persuasive so that they would but accept such proposals. To accept such proposals it is therefore necessary that such proposals should be something that depends on consent. This

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164
therefore is the whole idea of using Rawlsian method in a research of this kind. People have to consent to something before they can follow it and then go ahead to do what they have agreed to. The argument is that since the theory is persuasive and plausible people would agree to it. This is the process of Rawlsian method of reasoning. The Rawlsian method is design to develop principles of justice that reasonable cannot reasonable reject. The method takes into consideration about agreement and people’s consent. But other theories may produce principles justices or produce arguments. But unfortunately they do not depend on consent and does not care about agreements, while Rawlsian methods care about agreement. For that reason people would not be persuaded to agree to it and no matter what theory they produce people are not likely to follow it. And because other methods do not take into account about consent and agreement, it is difficult to convince anybody that disagrees with any proposals produced by other theories if we subjected to this rigorous thought experiment.

In Rawlsian method there is a chance that people who disagrees with proposals produced from his thought experiment can be convinced and if they are convinced it means that they would give their consent and if they give their consent it means that the proposals appeals to them. Moreover, society would always prefer to go for an agreement that is convincing and plausible than one that is not convincing, or agreement that do not depend on consent. To appreciate the point Rawls is making in his method, let us imagine a war-ravaged society with no Constitution and basic means of sustaining life and property. It will be hard if not impossible to live and socialize in such a society. In his method of justice therefore, he adopts the social contract approach which requires that individuals give their consent to constitutional arrangements and other major social institutions. This in effect is consistent with Rawls conception of justice as fairness. On this basis, Rawls distinguishes between justice and fairness, though they share a fundamental element in common which he calls reciprocity. The major difference is that in justice we have no option whether to engage in it or not, and one must play his part but in fairness there is an option and one may decline the invitation. In his method therefore he gives an indication that people would readily offer their consent to outcomes of their deliberation before the agreement would be reached for it to be valid.

Although Rawls theory of justice applies to what we are doing in this research, it has come under serious attack by the Libertarians, Communitarian, Marxist and utilitarian school. However, Rawls and followers have strongly defended his theory which we shall attempt to present in our next section.

6.3 THE ORIGINAL POSITION: A CRITIQUE AND DEFENCES

In this section we examine attacks on the Original Position and the way Rawls and others reacted to those criticisms. The criticisms on the Original Position came after Rawls published his book, and was partly due to him. It is true that there is no way we can use Rawls’s theory in a research of this kind without showing some of the controversies and criticisms his theory of justice has generated. In this section we are not interested in elucidating all the criticism his work has been subjected to, rather our area of interest here is the criticisms of the Original Position and his humbly responses to those criticisms. Whereas John Rawls’s theory of justice has been criticised, it has extensively been defended. In this research we are not going to concern ourselves with gamut of his criticisms but the criticisms of the Original Position which is the bedrock of his method. No matter the level of criticisms his theory has generated, we are going to assume it does indeed provide a way of coming up with solutions that reasonable persons cannot reasonably reject. The essence is to presenting his criticisms here it to demonstrate our justification for choosing his theory instead of other theories. In discussing Rawls’s criticism it must be understood that in this research we are not defending Rawls because to do that will not be a good use of space to make arguments for his method.

To start with, John Rawls recognises that the social institutions distort our views by sometimes generating envy, resentment, alienation, or false consciousness and also bias matters in their favour\(^{367}\). Rawls also believe that social institutions indoctrinate and habitually affect those who grew under them\(^{368}\). As a result we intuitively go for things that better our interests and not the interest of everyone in society. It was against this standpoint that Rawls saw the need for a justificatory device that would give use critical distance from them. The Original Position is the fulcrum point Rawls uses to obtain critical leverage. The Original Position is a thought experiment social-contract theory that answers the question of

\(^{368}\) Ibid.
what principles of social justice would be chosen by parties thoroughly knowledgeable about human affairs in general but wholly deprived by the veil of ignorance of basic information about the particular person or persons they represent. In effect, the Original Position is meant to enshrine the idea of an initial position of equality\textsuperscript{369}. It is from this equality that the principles of justice are to be chosen, with the proviso that free and rational persons are concerned to further their own interests\textsuperscript{370}. One point to understand here is that contract necessarily means fairness and that the terms of an agreement presupposes fairness\textsuperscript{371}. But critics of Rawls like Sandel argued that this not true. He averred that two people going into contract does not confer fairness on them automatically\textsuperscript{372}. So many factors may come into the issues at this point which may include advantages of one party against the other that may not be obvious to the disadvantaged party\textsuperscript{373}. Habermas also supported this line of thinking and argued that Rawls did not consider nature in politics and human affairs\textsuperscript{374}. He added that Rawls’s Original Position did not achieve the desired goals of the State of nature theory and teaching because in the Original Position of Rawls, there is nothing that corresponds with the real nature of man including the fear of death as the primary motive for going into the contract\textsuperscript{375}. In response to this criticism, Rawls argued that the contractees are assumed to be equal, free and no one has any hidden intellectual or negotiating skill more than the others. And that since they are free and equal persons in this contract, the agreement they end up with would have moral force and thus carry the kind of force that confers cooperation and anticipated justification, obedience and acceptance. Apart from that, the nature of man necessitates elements in our society that will still opposed and rejects these principles of justice agreed by free and equal persons in society. This however we must add does not mean that because of elements in society or dissenting nature of the society, the majority of members of society cannot go ahead and agree on principles and theories that would regulate their institutions and their social relations which would lead to social cohesion, justice, and political order. The contractees may argue that Rawls kind of abreaction gives them the critical leverage to separate themselves from the relativity and subjectivity of

\textsuperscript{370} Ibid.
\textsuperscript{373} Ibid.
\textsuperscript{375} Ibid.
moral beliefs and helps them to construct political morality in a better and clearer manner. What some critics of Rawls did not get right is that they hold tenaciously the view that the parties in the Original Position are real people. It must be emphasised that parties in Original Position behind the veil of ignorance are artificial-hypothetical parties, meaning they are distinct from existing humans. This misconception would continue ad infinitum if some critics did not desist from treating these persons as real people.

**ARGUMENT FROM MAXIMIN**

The Original Position has also come under sharp attacked by John C. Harsanyi who presented his argument along the line of irrationality of these agents who are to choose principles of justice on behalf of others. Harsanyi argued that it would be irrational of these agents to use anything other than subjective expected utility maximisation. Harsanyi’s argument is that decision-making process in the Original Position was based on uncertainty, is somewhat awkward. But if we should look at Harsanyi’s argument under the purview of classic definition of decision-making, we will see that decision-making under uncertainty obtains when the probabilities of outcomes are completely unknown or are not even meaningful.

Let us imagine John live in New York City and was offered two jobs at the same time. One is a tedious and badly paid job in New York City itself, while the other is very interesting and well-paid job in Chicago. But the catch is that, if John wanted the Chicago job, he would have to take a plane from New York to Chicago because this would have to be taken up the next day. Therefore, there would be a very small but positive probability that John might be killed in a plane accident. According to Harsanyi John should order alternative according to their worst possible outcomes. Since Harsanyi argued that dying in a plane crash is worse than anything that could happen in the street of New York, so maximin reasoning favours staying in New York.

Harsanyi based his attack on this scenario. He argued that maximin reasoning can be highly irrational because no matter how unlikely a plane crash or how much we desire the Chicago job, maximin reasoning still obliges us to take job in New York. “The basic trouble with maximin principle is that it violates an important continuity requirement. It is highly irrational to make your behaviour wholly dependent on some highly unlikely unfavourable

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contingences regardless of how little probability you are assign to them.” Frankly speaking this does not sound like decision-making under uncertainty at all, since the relevant probabilities are assumed to be both meaningful and known. And if the probability of a plane crash in Harsanyi’s example is known and negligibly low, it is uncontroversial enough that the Chicago job is the better choice. So since Harsanyi’s example appears to be an illustration of decision-making under risk, it fail to show that maximin reasoning must have paradoxical consequences under conditions of uncertainty. In that case, it is quite possible to term Harsanyi’s attack on the Original Position awkward and we can possibly deny that agents in the Original Position are rationally compelled to assign determinate probabilities to states.

In response to this criticism, some followers of Rawls have argued that there are conditions under which it is rationally permissible to have indeterminate probabilities and utilities, and to let choice be guided by some form of the maximin criterion rather than by expected utility maximisation. In Rawls view, the maximin reasoning in the Original Position is not only rational, but uniquely rational. A rational agent would use a maximin rule. This Rawls suggests that we should conduct the following thought experiment to avoid source of partiality. We should consider which institutional arrangement we would prefer if we were given the opportunity to make the decision without knowing what position we will occupy under each arrangement. Rawls then argues that we should all agree on a social outcome based on the principle of rational choice called maximin. And by maximin Rawls implies the above procedure. For him, maximin is so called because it maximises the minimum outcome. The maximin rule tells us to rank alternatives by their worst possible outcomes: we are to adopt the alternatives the worse outcome of which is superior to the worst outcomes of the others. We can also see that this analogue represents the Original Position rather better. Rawls makes it explicit when he said that the veil of ignorance excludes all knowledge of likelihoods. Moreover, maximin is usually presented as a rule for decision-making under uncertainty alone. In support, Erik Angner

377 Ibid.
380 Ibid.
posits that no one has seriously suggested subsisting the maximin principle for the principle of maximising expected utility under conditions of risk for instance when probabilities are known yet Harsanyi argues that maximin reasoning is irrational. So we can see that this argument has not been able to present a strong attack on Rawls theory of justice and as such should obviate the relevance of Rawls theory of justice to modern society.

The Original Position plays a crucial role in Rawls’ theory. Its purpose is to make vivid to ourselves the restrictions it seems reasonable to impose on arguments for principles of justice, and therefore on these principles. Rawls showed that our intuition about laws that should guide the choice of principles do agree with the standard requirement of the Original Position and that this will make the assembly choose his principles of justice because it guarantees equality, fairness and impartiality in society. The Original Position therefore is a situation of equality and the behind the veil of ignorance the principle of justice that will end being chosen are regarded as preferable to utilitarian, perfectionist, libertarian and pluralist conceptions of justice.

The Original Position develops the basic idea underlying the liberal and democratic social contract and states that just laws, constitutions or principles are those that could or would be agreed to among free persons from a position of equal right while the veil of ignorance has the effect of requiring the parties to make a strictly impartial choice, one that does not favour persons in their position. At this stage Rawls calls his conception of justice as fairness. His idea is that the fairness of the Original Position transfers to the principles agreed to within it and thus the principles agreed to should also be fair.

But some critics of Rawls’ Original Position claim that parties are not fairly and impartially situated by the veil of ignorance and other conditions of Rawls’s social contract. For example libertarians like Robert Nozick objected that there is nothing fair about a contract that forces people to choose redistributive principles that jeopardize their pre-existing property rights. Nozick assumes like other libertarians that property rights are pre-social and that distributive justice is established by non-cooperative principles; the idea of a social contract carries little, if any weight in their thinking.

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386 Ibid. p. 572.
388 Ibid.
In response to this criticism, Rawls sees property as a social institution, and regards principles of justice as needed to decide how this and other basic institutions ought to specify and distribute rights and liberties, powers and opportunities, and income and wealth. Again the principles of justice are designed to regulate the basic structure of a society of persons who are free and equal at all level. Then the suitable way to derive principles that will be agreed is according to Rawls through fair agreement among all the representatives themselves, “where each is given an opportunity to accept or reject the principles”390.

Further, Rawls has been criticised on why his social contract is hypothetical and not real. We do know that hypothetical agreements are features of the social contract tradition and it is the stock in trade of Hobbes’s and Locke’s social contract theory. Whereas Locke’s and Hobbes’s social contract takes place in hypothetical State of nature, Rawls social contract takes place in the hypothetical Original Position. For Rawls and others the social contract serves as a test or criterion for morally assessing currently existing constitutions, governments, and laws, and deciding our duties of justice391. Based on these purposes, it is immaterial to the justification of principles that they have been or justification of the principles the parties actually agreed by anyone in the real world.

Here Ronald Dworkin and others object that hypothetical contracts cannot create moral obligations; only real contract do392. For instance, the fact that I would promise to give my wallet were to save my life surely does not mean that I have an obligation now to give my wallet, because I have not made any actual promise. Similarly some critics have argued that it would seem that the fact that people would agree to the principles of justice in the Original Position cannot commit us either, since we have not actually made any such agreement.

In defence, Rawls argued that the Original Position is a device of representation, or alternatively, a thought experiment for the purpose of public- and self-clarification393. This means that its purpose is not to impose an obligation on us that we do not already have. Its purpose is to elucidate the reasons behind our considered convictions of justice394, in order to see what principles of justice our sincere moral convictions, considered in light of the best reasons, already commit us to accept.

393 Rawls, J. (2001). P 17
In other words, we all are committed to these principles by what Rawls call our considered convictions and the best reasons, and not by any actual agreement. Freemen also responded by saying that the fact that an agreement or other event is hypothetical surely cannot imply that it has no probative value. For example Freeman said that most fundamental advances in inquiry are based on thought experiments regarding the behaviour of individuals or objects in hypothetical situations that are not practically possible. i.e. conditions of perfect competition in price theory, motion in a vacuum in Newtonian physics etc.\(^3\) What Freeman mean is that just as hypothetical situation can be used to State fundamental laws of physics or economic, they should be helpful in philosophy in discovering or justifying basic moral principles\(^3\). The Original Position in all intents and purposes is not a free-floating philosophical discussion in which the representatives reason \textit{ab initio} and then went ahead to design principles that are to regulate their social cooperation. Many critics have followed this line of thinking by arguing that parties in the Original Position are engaged in extensive philosophical rigour and deliberations and thereby acquire the skill or beliefs that lead them to choose some other principles of justice. For example the utilitarian have argued that parties would choose the principle of utility because it will maximise the interests of the greatest number of people in society. But this speculation is not in line with the Original Position set up by Rawls. The cosmopolitans miscalculated by saying that the parties in the Original Position would choose global principles of justice. Here again, this speculation misinterpreted and misrepresented the Original Position Rawls established. The Original Position Rawls established was to forestall speculations and thinking of these kind.

Conversely, some critics have said that Rawls ‘stacks the deck’\(^3\), meaning that the Original Position and all the assumptions were in Rawls favour thereby leading only to his principles of justice. But Freeman who has presented both the criticism of Rawls and his responses, argued that whether making assumption in the Original Position were in Rawls’s or not there is no defect in that rather it should be seen as a virtue of the theory of justice. Again he maintained that as long as these assumptions are not arbitrary and really do capture better than any alternatives our considered convictions about reasonable restrictions

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\(^3\) Freeman: (2007), 145.
\(^3\) Ibid. 145
\(^3\) This means that everything Rawls about the Original Position was done in his favour. He was attacked for making assumptions in the Original Position that lead only to his principles of justice. The question is why this should be a defect so long as it did not lead to arbitrariness and coercion of parties in the Original Position.
on arguments for principles of justice. In English criminal law, it is the practice that the past life of the offender is not revealed to the jury. This is to avoid any information that will make disfavour or favour the accused. This practice is not different from what Rawls tried to achieve when he set up the Original Position.

To conclude, it is obvious fact that Rawlsian method has come under serious attack by the libertarians, utilitarians, communitarians, but we know that criticisms of Rawls was borne out of misconceptions and misinterpretations of his theory of justice. The persons in the Original Position have life prospect and have their individual plan of life. Bearing this in mind they are to decide what is good for them. In case where a person’s reason is impaired by one weakness or the other, the principle of paternalism may come into the picture. Paternalism is the practice of governing or controlling people in a father-like manner, though not a common system of government. Therefore people in interested in justice and also in advancing their welfare know that they have a duty to themselves and others. Effemini stated that if by chance or accident any person is disabled, others are to act for the person according to his or her preferences. If it is not possible because of their limited knowledge of the preferences of the person concerned, they are to act for the person as if they are acting for themselves. In fact the practice of paternalism attempts to create a humane Original Position. In this respect Vinit Haksar was satisfied with Rawls’s Original Position and stated

One of the charms of Rawls’s model is that it tries to ensure that all human beings, including weak ones, get a fair deal. He constructs an imaginary or hypothetical social contract, which assumes that every human being is due equal respect, hence Rawls process of impartial negotiation in the Original Position.

The Original Position behind the veil of ignorance is hypothetical device for moral and political deliberation. It is not a free-floating philosophical deliberations and arguments of justice. It is by way to combine a perspicuous manner the many reasonable assumptions that justify a conception of justice. The Original Position (OP) is a selection device where free and equal persons are presented with list of principles and moral conception they are to

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400 Ibid.
403 Freeman (2007). 145
choose from, draw up from the tradition of moral and political philosophy. The representatives are to choose once and for all—no second chance. They are to choose once and for all the standards which are to govern their life prospect and in choosing those principles, they choose others. Rawls maintains that there is element of irrevocability in this contractual agreement which generates constraints to the parties’ reasoning in the OP. Because each party knows his selection cannot be made over again, he knows he must select only those principles which he is sure he can always honour and keep no matter how their consistent application might affect him. Rawls was determined to make this selection as straightforward as ever in order to present the parties with definable and decidable problems, hence the conception of the OP which he derived with his method of justice.

6.4 THE CONSEQUENTIALISTS POSITION

Consequentialism is controversial and because of that there is no standard form in the theory and no precise theory we can associate it. There are various versions of consequentialism and when people take the consequentialist view it is difficult to understand which among the various strands of consequentialism view they profess. Consequentialism view is that morality is all about producing the right kinds of overall consequences. According to Freeman, consequentialism involves two basic principles. The first principle demand to know what is right and just to do, whether via individual action or general rules and institutions, is to take the most effective means to realise ultimate good consequences. These ultimate good consequences include means that are cheapest, simple, most probable, requiring the least time and effort. The second principle is one that suggest that we give available means and resources, we are to create the greatest sum total of good consequences.

The problem with consequentialism is that it did not say clearly what kind of consequences is good. For example if Albert happens to be in charge of setting speed limits, Albert might be thinking that a bad result is a death: the fewer deaths, the better. But the people who die in accidents were all going to die eventually anyway, so a fatal accident does not mean there are more deaths than there otherwise would have been. Perhaps, then, what counts as a good result is the amount of life that the action adds or subtracts in the world? That would explain why fatal accidents are bad, since an early death means less life.

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But if quantity of life were the only kind of good result, then a long happy life would be no better than a long unhappy life. The only popular idea of consequentialism is that the only kind of result that is good in itself is happiness. In contrast, my research is not seeking to provide happiness as utilitarians and hedonists attempt to achieve. The main intention of my work is to use Rawlsian method to develop a principle of justice that will provide short-term basic principles that will help to solve societal vices in Nigeria. This is why we did not borrow the views of the consequentialist in a research of this kind.

Another problem with consequentialism is that it is really based on factual predictions and it requires us to compare two possible states of the world. In comparing two states of world we are compelled to pick the one that is better. But in describing these states of the world, we usually make a lot of predictions about what will cause us what. It tells us what consequences each action will result and good effects of choosing a particular line of action. But these predictions are controversial and ambiguous to pick out. So, one of the problems why we did not use consequentialist theory is that it puts people in a complicated and uncomfortable position that makes it difficult to extricate oneself. It puts people in debase on what action will cause what consequence. Nigeria is a complex country already and to use a complicated theory in a research of this kind will be inappropriate. Therefore the advantage of using Rawlsian method is that it takes into accounts the problem of getting everyone to agree and solutions which depend on disputed empirical claims will be rejected. This is why Rawlsian method is superior to consequentialism and the idea of using Rawlsian method in my thesis is not because Rawls has made a huge impact on modern society but because it is better in terms of what I intend to achieve in this thesis.

6.5 THOMAS FRANCK THEORY OF FAIRNESS

Having said that let us take Thomas Franck theory of fairness in international law and run it through and see if it will produce principles that people would agree to. First and foremost Franck’s theory did not produce any method and therefore we cannot refer it as a method. Second, it is not the kind of theory about what we are trying to develop or about how we should distribute benefits and burdens with reference to a particular society. It is rather a theory on how international law should develop. Also, Franck argues that before fairness discourse can take place at all there must be a moderate scarcity of the good(s) to be

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distributed, and that distribute fairness can only be discussed when there is a sense of community characterising the system\textsuperscript{408}. By moderate scarcity, Franck means that the good(s) to be distributed must not be in such an abundant supply and that no contentious questions regarding their allocation can arise\textsuperscript{409}. Fairness is only an issue when there is not enough of a given good to satisfy everyone completely, and that good must be shared out\textsuperscript{410}.

Going by these assertions there is nothing in Franck’s theory that will allow us for example decides how we should distribute oil revenues or how we should distribute compensation or pay compensation for environmental degradations in the Niger Delta region. What Franck is discussing in his work is about how other nations should treat each other. There is nothing in Franck’s work that has anything to do with we doing in this research because we are not doing a thesis that deals with how international law should develop or how other nations should treat each other. Moreover, there is no moderate scarcity or scarcity issue in the Niger Delta. The scarcity is artificially created by few corrupt individuals and political leaders in Nigeria. To clarify our confusion, whereas Thomas Franck work on fairness in international law and institutions, deals with international law and international institutions, Rawls theory deals with principles of justice that will produce specific short-term solutions to the Niger Delta oil crisis.

\textbf{6.6 RAWLS THEORY OF JUSTICE: A JUSTIFICATION}

Raised within the Anglo-American analytic tradition in philosophy, Rawls was mainly reacting to issues thrown up by moral and political philosophies from the time of Thomas Hobbes, Lock and Kant. In many ways and respect, we can say that his philosophy sought to engage and critically come to terms with issues on moral and political philosophy raised by Plato and Aristotle. Rawls’ main platform upon which he built his theory was objection to theory of justice in utilitarianism. On the surface, it is easy to support the theory of utilitarianism as it depicts the very nature of humans.

The justification we shall show in choosing John Rawls’ theory of justice is that it provides a plausible and defensible way of coming up with a theory of justice that reasonable people cannot reasonably object. Other people like Tom Franck, come up with specific proposals but these are not based on a method of moral reasoning that people could


\textsuperscript{410} Ibid.
not reasonable reject. And while some criticised the Rawlsian method, it has been defended extensively and so we are going to assume it does indeed provide a way of coming up with solutions that others could not reasonably reject. There is scarcely a page in his book _A theory of justice_ which has not been criticised: there are utilitarian, feminist, conservative, libertarian, catholic, communitarian, Marxist and Green critiques of Rawls’s work.

Nevertheless, Rawls’ theory was able to stand the test of time and has formed part of fruitful debate in American politics. His theory revolves around how the major social institutions distribute fundamental rights and duties and how economic benefits should be to everyone’s advantage. These basic principles are very concrete, morally acceptable and if planted at the centre stage of Nigeria’s social, political and economic imbalances can be key solutions to the oil crisis that have plagued the country for decades. Tom Franck’s work is very interesting and easy to read but I did not use it and did not find it really concrete to my work and his perspective on fairness did not really advocate or provide the key points on how to resolved the Niger Delta oil crisis.

His theory deals with how states should deal with each other in developing international law. It is not a theory of justice, and it is not a theory of how to solve problems like those that arise in the Niger Delta. Indeed, Franck relies on something like the Rawlsian method to cash out what he means by fairness and this typifies what he meant when he refers to the social contract theory.

Again Rawls has made huge contribution to the world than we can imagine unlike Tom Franck whose contribution in international law is also very interesting. Rawls has been criticised, I still see his theory as plausible and concrete but not the only concrete or plausible theory ever propounded. His criticism does not really matter because it is not part of my work. However, it does not preclude that I should overlook his criticism in this work; rather I shall present his criticism in my subsequent chapters, particularly the problem with the OP. We acknowledge the fact that there are criticism of the OP and questions about its universal applications, I felt that Rawls theory of justice is appropriate and properly suit and have the capacity to provide amicable and short-term solutions to the Nigeria’s socio-economic and political problems.

But Rawls was not interested in utilitarian principles because according to him its tenets create a premise for questions of justice to be raised at every stage in human society. As such would not provide us with the principles of justice that will solve the problems we see in the Niger Delta oil crisis. The utilitarian theory postulates that actions are right when
they lead to utility, happiness or pleasure and if they reduce our pain. Anything that reduces
our pain to a rational man is attractive. Actions are therefore wrong if they negate the above
ends and increase our pain. His theory represents an attempt to formulate a general theory of
justice in which he conceives the primary subject of justice to be basic structure of society,
or more precisely, how major social institutions distribute fundamental rights and duties and
determine the division of advantages from cooperation of every member of society\textsuperscript{411}.

The key point and foundation of this thought system is that actions are right or
wrong in relation to their ability to enhance happiness and wrong in relation to their
tendency to negate this\textsuperscript{412}. Mill’s idea could represent an attempt to merge individual rights
with utilitarian philosophy. The problem with this idea is that in our contemporary times
human life goes beyond happiness and pleasure, though we cannot overlook the fact that
man generally would prefer pleasure and happiness to pain.

That notwithstanding, utilitarianism did not consider the distinctiveness of persons,
or the sanctity of human personality and the rights of individuals, but rather it reduced
everything to only the feature of pain and pleasure. Rawls may have objected or discarded
utilitarianism; however we see it as not part of our focus in this thesis. But we mentioned it
here to show different themes and streams of moral and political philosophy that will not be
able to provide us with those basic principles that will help us solve societal ills and cries in
a short-term course as replicated in the Niger Delta oil crisis.
The theory of justice therefore, is that principle of justice for the basic structure of society
which free and rational persons concerned to further their own interests would accept in an
initial position of equality as defining the fundamental terms of their association\textsuperscript{413}. This
theory envisions a society of free citizens holding equal basic rights cooperating within an
egalitarian economic system. Egalitarian economic principle is where social and economic
rights are open to all. It is a situation where principles of justice are principles to regulate
rights, freedom and duties of everyone in society.

These principles are to regulate all further agreements; they specify the kinds of
social cooperation that can be entered into and the forms of government that can be
established\textsuperscript{414}. Rawls explain this as a situation where every member of the society is

dent & Sons Ltd.
\textsuperscript{414} Ibid.
willing to accept reasonable and fair decisions that will enhance corporate existence in society and most importantly accepts those decisions that will benefit the most disadvantaged in society\textsuperscript{415}. For example a just institution is one where every individual member of the society exercises their rights, and opportunities open to everyone and economic benefits fairly distributed. In other words, the idea of equality and fairness in the distribution of opportunities essentially promotes social justice and encourages citizens to share responsibilities. Rawls’ argument here is that a just and fair society depends on how social institutions are structured\textsuperscript{416}.

His two principles of justice in our understanding is his contribution to the body of knowledge in relation to moral, social and political philosophy in structuring society to achieve social justice and political stability. The two principles are to direct and regulate public institutions in such that individual liberties, basic rights opportunities are exercised by everyone in society. This conception of justice was aimed at assisting citizens understand the workings of society and at the same time regulate and formulate their social and political institutions through a moral and political values.

The Nigerian society is replete with social, economic and political problems. The theory of Rawls advocates for strict compliance for the benefit of social reforms. This notion is applicable in ideal society. However, if we take Rawls ideas as a perfect theory for society then the theory seems unrealistic, utopia and not practical as no such society exist in our planet earth. On the other hand, if Rawls theory is born out of the need to solve societal ills, which we assume is Rawls’ intention, then the element of imperfect conditions as epitomizes in Nigeria society, becomes very relevant and germane to the discourse of Niger Delta oil crisis. Nigeria is non-ideal society and therefore, the theory of Rawls can be relevant to Nigeria only if we take it from the perspective of it being interpreted as a non-ideal theory, meaning that it is meant for non-ideal or imperfect society like Nigeria. Rawls depict this treatment of his theory as follows:

\textit{The intuitive idea is to split the theory of justice into two parts. The first or ideal part assumes strict compliance and works out the principles that characterise a well-ordered society under favourable circumstances. It develops the conception of persons under fixed constraints of human life. My main concern is with this part of the theory. Non-ideal theory,}

\textsuperscript{415} Ibid.  
\textsuperscript{416} Ibid.
the second part is worked out after an ideal conception of justice has been chosen; only then do the parties ask which principles to adopt under less happy conditions

In a broader perspective, interpreting Rawls theory as ideal and non-ideal does not necessarily matter rather, we are interested in what it intended to achieve by the end of the day. The categorization of Rawls’ theory was less patronizing and does not solve societal problems. Philip argued that theories that work for ideal situations can equally work for non-ideal ones provided the necessary conditions are pursued.

Our primary interest here is to extrapolate those principles of justice emphasised in Rawls theory of justice that hold the key to the enthronement of a regime of social rights and redistribution of economic benefits to everyone in society such that will have the capacity to see that no abandoned and neglected member by the State or no member left in disadvantaged position. These challenges informed our justification for choosing Rawls theory of justice among other theories of justice. This is because many people in the country today are poor and lack basic amenities of life. The basic institutions as constituted in Nigeria at present have no commitment to the view of Rawls first principle of justice, that each individual has an inviolability founded on justice that should not be abused and violated not even for the purpose of achieving the wellbeing of the entire population except in cases of punishment for crimes committed against the State. But this is not.

The commitment of the Nigerian State to the welfare of the Niger Delta people has been exploitative and lackadaisical. The commitment lacks social mobility and mobilisation ideals. Rawls posits that the mobilisation of society necessarily rests on the back of the feeling by members that they are stake holders in the social cooperation or social union and the only way to do this is to enshrine their personal liberty, rights and duties in the institutions in the society represented by the basic structure. This point is very germane because, the Niger Delta people have not been seen as stakeholders in the oil industry and in the sharing of the huge revenue accrued to the State. They have been abandoned, marginalised and pauperized. As a result social cooperation or social union of people of Niger Delta people has appeared to be something very difficult to realise.

417 Rawls: 1971: 216
Efemini\textsuperscript{421} and Ouma\textsuperscript{422} therefore maintained that if a society endeavours to respect and promote the basic and general welfare of all members of society, then it is poised to get their support and loyalty bearing in mind that social mobilisation is a necessary ingredient for the attainment of sustainable development in society. If a people are not mobilised then they cannot give their best in terms of their material and human resources\textsuperscript{423}. This position being canvassed is based on the belief that: Development is not a project but a process. Development is the process by which people create and recreate themselves and their life circumstances to realise higher levels of civilization in accordance with their own choice and values\textsuperscript{424}.

Development is about what people can do for themselves with or without support from government or from others. But the government have not been able to provide that enable environment that people can use to support or develop themselves. The Nigeria society is not a well-ordered society and social union and cooperation is not realisable due to government’s inability to promote the welfare of all citizens. So Rawls emphasises on the relationship between well-ordered society and the public conception of justice is what Nigeria need to get back on track in order to win the people’s social union and loyalty. This will create a sense of justice that generates stronger social stability to the extent that is more likely to override disruptive inclinations, hatred, greedy that has bedevilled the Nigerian polity. Efemini further opined that State managers in Nigeria need to note the fact that without commitment to the search for justice, peace and stability will continue to elude the country\textsuperscript{425}. The numerous social tension, insecurity problems, extreme poverty and instability are some of the unjust social orders created by the State, which Rawls emphasises in his theory of justice. Rawls takes for granted that people should be provided the means to successfully pursue their plan of life, but in Nigeria this is not so. We all must appreciate that society is only possible if people give implicit consent to the sustenance of the system otherwise the State will continue to be at loggerheads with her citizens. In fact there is no way we can demand the continued loyalty of people to a system that relegates their welfare to the background. There is no way we can achieve cohesion and stability in a system where

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\textsuperscript{422}Ouma, S. (2009). "A Rawlsian Prospect of Political Liberalism in the post-colonial setting.".
\textsuperscript{423}Ibid.
\end{flushleft}
there is injustice in the allocation of economic benefits and political rights. The people need their basic rights to be able to develop and pledge their loyalty to the State. The distribution process ought to be in the interest of everyone and economic opportunities need to be shared equally and according to need.

To achieve these noble conditions, we need a principle of justice that provides social contract theory that will properly cash out economic and political matters in a more rational and fair process. Therefore, this is why Rawls’ theory of justice is relevant and has serious positive implications for development in Nigeria. These ideals as extrapolated from Rawls’s method of justice give us the justification for choosing this method. Moreover, it is one of the plausible means that we can employ to provide those basic principles that will help us solve our problems in the short-term course. The OP is another relevant process that has serious implications for development, peace, justice and equality in the social structure of Nigeria. In the first instance it reminds us that there is urgent need to enter a proper social contract that will be fair to all the parties giving different voices and different conflicting demands in Nigeria today.

According to Rawls’ the system that we seek to develop should not produce winners and losers. The fact is that certain qualities need to be established in the bargaining process. These have been identified to include; impartiality, mutual disinterestedness, sufficient understanding of economic and political matters, and rationality. Impartiality is one the vital role of the veil of ignorance and should remind us of Rawls’ strict commitment to impartiality. If people do not know what they will become after leaving the OP then there is a tendency that they will strive to build a system that protects everybody not identically but with strict commitment to equal dignity for all men.

428 Ibid.
CHAPTER 7
BORROWING FROM JOHN RAWLS: TOWARDS A SHORT-TERM SOLUTION TO THE NIGER DELTA OIL CRISIS

7.1 INTRODUCTION

The more fair a contract is, the more likely everyone will agree to sign it.\(^{429}\)

- Brett Trout, Attorney.

The main focus of this chapter is to use John Rawlsian method to generate specific principles that provide short-term solutions to the Niger Delta oil crisis. In our previous chapters we addressed; Rawls theory of justice and his method, his criticisms and his defences, and our justification for using Rawlsian method in a research of this kind. In a research of this kind, we do know the substantial connection between the economic needs and political needs of the people and both have a constructive aspect as well. Therefore it is essential that methods like Rawlsian method and probably that of Tom Franck and Amartya Sen could be of great value. But we choose John Rawls method of justice because it is designed to provide proposals which people cannot reasonable reject if they are committed to advance the welfare of everyone.

In this work we are using Rawlsian method to develop a theory of justice. Rawls use that method to develop his theory. But we are not going to use his theory; rather we are going to use his method in developing my own theory because his own theory does not distinguish between long–term and short-term justice. So for the benefit of this research, we want a theory that distinguishes between long-term and short-term justice. In that case we cannot just use Rawlsian theory out of the box when it is not going to help us in research of this kind. But his method will help us in a research to produce specific short-term justice that will help us solve the Niger Delta oil crisis. Although criticisms of his theory, that does not matter because we are not using his theory. There could be criticism of his method, but we are not seeking out here to defend Rawls. There are a lot of literature and libraries full of arguments about whether the Rawlsian method is what it professes to be. Even though there are criticisms of Rawls, there are huge amounts defences of his work. The purpose of thesis is that we are simply going to assume that it does provide a plausible and just method for developing principles of justice that will help us produce specific short-term measures for solving the Niger Delta oil crisis.

\(^{429}\) See Brett Trout, Anttoney. On Performance Contracts.
7.2 THE APPLICATION OF RAWLSIAN METHOD: THE NIGERIAN EXPERIENCE.

In our previous section we explained the Rawlsian method, and how he uses the OP and the veil of ignorance to generate specific general principles of justice. However, we must note that Rawls’ principles of justice are general principles of long-term justice designed to describe the basic institutions of society. His principles are laudable basic principles of justice and we have no cause to disagree with Rawls on these basic institutions of society because they are great long-term general principles. But these principles not our primary concern in this research. We are looking for short-term various specific principles that will help us cash out intricate problems in society. So the actual principles Rawls get out of the OP is not going to help us here, we will back to the OP and see if the principles the OP generate can give us the kind of short-term specific principles that we need in solving the age-long oil crisis in Nigeria. In this section therefore, our aim is to explain and identify who these people are, who they represent, what are their competing interests, what do they know and what they do not know.

First, these people are members of various interest groups in Nigeria. They are the landowners who have lost resources and livelihood, oil workers who has been kidnapped, the political elites, government office holders, militia groups whose members has been killed, the local community, the traditional rulers, multinational oil companies, the law enforcements agents, and stakeholders in the oil industry. But each group has different competing interests to protect and will always do all to protect their interests. So what information do they know or what information do the parties have about Nigeria?

The parties know about Nigeria and its history, its colonial experiences and the legacies of foreign rule and its effects. They know about the problem of bad policies, and rent mismanagement, political instability, economic predicaments. They know that corruption is endemic in the Nigerian system coupled with the overbearing economic power of the rich and the staggering profit margin of the multinational oil companies. The parties know that the legal system is bad and the Nigeria Constitution is not in tandem with the aspirations and desires of Nigeria peoples. They know who all the parties are and the hostilities between these parties.

The parties also possess general knowledge about politics, economics, and socio-cultural affairs (sociology) and they know that circumstances of injustice and high level abuse of human rights, conflicting demands and conflicts in society spells doom for
everyone if nothing is done to abate the possible conflagration of violence. The representatives equally know the wide gap between the rich and the poor. Abiola and Olaopa (2008) argued that the “scourge of poverty in Nigeria today is an incontrovertible fact, which results in hunger, ignorance, malnutrition, disease, unemployment, poor access to credit facilities, and low life expectancy as well as a general level of human hopelessness”. But people in the original do not know is which group they represent. They know that they represent one of the groups, but they do not know which one they represent, and since they do not know which one they represent, they are more likely to seek or agree on a principle of justice that reasonable people cannot reasonably object and that principle of justice is one that will produce short-term solution to the problems. The process of agreeing on principles of justice is usually free and fair to everyone member of the assembly. This is what give their agreement moral force and the fact that people do not know which interest group they represent and do not know who to be biased against or in favour of, the representatives will agree on principles that will not disadvantage anyone even if they decides to change their mind.

The reason why they do not know which group they represent is because they are denied incentives of being corrupt, biased, and unjust and prejudice in their decisions making process. For example, if all Nigeria citizens do not know how he or she will end up in his or her conceived community, he or she will not favour any act that would benefit the interest of one particular community. They will work together and choose principles that will favour every ethnic origin in the country. They do this because there are free equal persons with equal opportunities. Supposing they agree to bias solutions to the problems, there are chances that everyone will be disadvantaged by it when things get worse and as a result parties would agree to the principles of justice that treats everyone equal and just. Rawls claim that those in the OP will all adopt a maximum strategy which would maximise the prospect of the least well-off means that if the procedure is fair and the participants in the bargaining situation are free equal persons, the outcome of their agreement will carry moral force too.

Now, what are the competing interests that the parties in the OP set out to solve? Are they political, economic, legal or socio-cultural or are they personal demands or collective

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demands? Let us assume that the causes of hostilities are environmental degradation, unfair distribution of revenue and lack of adequate compensation to victims of environmental damage. So one of the things we are going to do with Rawlsian method is that we are going to come up with a bunch of rules and principles of things we should do. Such principles are the principle of no veto, special compensation for special burdens, the environment has to be respected, profit should be reasonable, but not excessive, a principle requiring a special Court for oil-related matters etc.

These are substantive rules that should make things optimally better for everyone. In fact, there is no point to come up with a bunch of principles if they will not be fairly enforced or implemented. It will be a mockery and a sheer waste of time, and since everybody in the OP knows that the Nigerian system is totally corrupt, the parties are more likely to agree to the non-corrupt system. They also know that merely coming up with the right principles or rules may not be enough. So they will have to come up with a system of enforcing these principles that people would believe and in fact seen to be free of corruption. Again, to turn a corrupt Nigerian system into a non-corrupt system overnight is not something that will happen very easy. In fact, it is actually a long-term problem. We therefore, to solve this problem, we have to concentrate on short-term measures and how to create ways of enforcing the principles or rules agreed by the people in the OP behind the veil of ignorance. The short-term measure will be one that is transparent and non-corrupt.

In Rawls structure therefore, he uses the OP and the veil of ignorance to generate these general principles of justice.

Having said that, we know what the OP is and who is in the OP and we know the kind of information they have and the type of information that is unavailable to them. Therefore, we will propose series of principles and run through them to see whether people would agree to them or reject them.

7.3 THE PRINCIPLE OF NO VETO

The question is would people in the OP insist on each group being given a veto over proposals coming out of their meeting, or would they agree to a principle of no veto? Certainly, the representatives in the OP would not agree to give any group veto. They would not accept that any group could veto any principle of short-term justice that arises out of their deliberations. The argument that they would agree to a principle of no veto while in the OP is very strong here. Reasonable people would want to obtain the agreement of other
reasonable people, and if any one group were to have a right of veto then one group could prevent any proposal from moving forward. Since the parties do not know who they represent, however, they do know whether they would turn out to be the ones trying to assert a veto after the veil of ignorance is lifted or be the ones whose proposals were being stymied by it. Since they are motivated to ensure there is ultimately an agreement, everyone would therefore agree to the principle of no veto from OP. So the principle of no veto is significant because it will help us generate a method of resolving disagreement and the problem of others holding the entire system up. So they people in the OP would accept the principle of no veto and reject the right to veto.

Let us look at the principle of no veto in more detail. The question is what would the parties in the OP behind the veil of ignorance think about this principle? For the fact that they do not know who they represent and have no knowledge of their position in the society, they would agree to the principles that will benefit everyone. We can view their choice in the OP from the standpoint of one person selecting at random. This means that if anyone after due consideration prefers a conception of justice to another, then they all do and for everyone else. For example, if we do not know whether we are black or white, and do not know whether we like rules that favours black or white people, we would therefore agree to neutral rules because we are not sure which society we will fall into when the veil of ignorance is lifted.

The parties in the OP behind the veil of ignorance would, of course not agree to grant veto because they do not know whether they are going to be the parties that would benefit from it or be disadvantaged by it. Moreover, if the parties agree to give everyone veto, the problem they are trying to solve will be defeated. If this happens, it will make mockery of their effort and this leaves everyone worse-off. In this respect, they would agree to this principle as a method of resolving their problems and the reason being that nobody is likely to know how things will turn out or the society they will fall into if things get worse. They would choose the principle of no veto and reject the right of anybody to veto the agreements of others because doing that will be detrimental not only to society, but also to the decision-making process.

They would not agree to give any group veto because if they do the whole idea of coming together to agree on something reasonable will be defeated. At this stage representatives would not grant veto because it contradicts the principle of justice and the whole idea of solving problems in short-term course will not be realised. The presence of
veto will lead to intransigent opinions and such intransigent opinion would delay the process of bargaining and reaching an enduring agreement. To allow this situation to continue will be irrational and an unreasonable. In this respect, the people in the OP will accept the principle of no veto because it they do many people will be alienated and marginalised in the distribution process.

The principle of no veto is important because it will cash out the problem of land ownership rights and resource control imbroglio. The merit of no veto is that it puts everyone on equal status and allows everyone equal opportunity. This means that no veto principle gives everyone the right to participate and contribute in the affairs of the State and if this happens the decision-making process will be quick and also the implementation of agreements reached will be fast-tracked. So the people in the OP behind the veil of ignorance would not agree to give anyone veto because if they do, people will use it to exploit others or use it to get things done for themselves. In this light, the people in the OP would agree to a decision that is fair and just to everyone and not principles that would disadvantaged people.

Therefore, they would reject the principle of veto as a method of settling disputes. The parties would instead vote for a proposal that seeks that oil resources and the revenue it creates are owned collectively and for the benefit of all. The parties would not endorse principles that would give one group veto to control and determine how oil wealth is to be distributed because doing this they do not know if they will be among those that will not benefit from the sharing of oil wealth. In other, words they would reject the power of veto.

One important thing worth noting is that the principle of no veto is necessarily not for efficiency purposes, but for fairness purposes. Therefore it will not be fair for one group to exercise veto. If this happens decisions will be unnecessarily delayed and agreements stalemated. One of the things that each of these conflicting parties would want is veto if they knew who they are and they who they represent. In this case, they are denied of the information that bias people. This will make them choose a principle that is neutral and just to everyone.

Again, under the present circumstances of things, it will be counterproductive to grant anyone veto. There are competing interests and hostilities among the people. This is why the parties in the original given would not agree to a decision that will favour some and disfavour others. The question is why would one group have veto if not another group? So
the people in the OP will not grant veto because they do not know how the society will turn out and if things get worse, they do not know if they will benefit from it or be the set of people that will lose out when the veil of ignorance is lifted. In this vein, they will choose fair principles that will enhance the wellbeing of everyone because they are denied of information that bias people. In the real world, therefore, the power of veto will hold things up and delay decision-making process. It is a common fact that if people see themselves as free equal persons, they are more likely to avoid areas of disagreement and conflicts. They would want to interests resulting either from distribution of revenue or power sharing. And it is possible that people will agree to those principles that will be fair and just to everyone. And such fair and just agreement will have moral force because it is an agreement reached by persons who are free and equal.

In the real world, why would one group decide who should get oil allocation and how oil wealth should be distributed when all the groups have equally right to the natural resources? By allowing one group the right of veto, the people in the OP will end up escalating the problem and such would exude unnecessary pressure and influences. Therefore, people in the OP will not accept principles that will disfavour some and favour others but a principle that benefit everyone. Another danger is that the group that has veto could use it to disadvantaged others or to hold everyone up. This position will delay things and the system will remain backward. To solve this problem, the parties in the OP behind the veil of ignorance would not agree to grant veto to anyone because if they do, things may get worse. As such, they would agree to principles that will be fair to them and everyone in the society.

The principle of no veto work in such a way that everybody is allowed equal opportunity and no group is allowed to have more opportunity than others. This free and equal opportunity reflects in the revenue sharing formula and allocation of resources. But if we allowed one group veto or if everyone is allowed veto, agreement would be delayed and people will end up not getting things done. Therefore, the absence of veto will prevent the intransigent process of reaching an agreement. It has the capacity to make policies and decisions to be reached smoothly and peacefully.

The wisdom in adopting the principle of no veto in the short-term course is that it will provide the means where things will be done without hindrance or delay in relation to what people agree and do not agree. The no veto principle chosen by people in the OP will ensure that nobody gets more revenue than others. They choose this principle behind the
veil of ignorance, which denies them the information, that bias and prejudice people. In other words, this principle was chosen under no influence or pressure from any group. The parties where denied the information of who they are and they do not know who they represent even though they represent one group.

It is therefore argued that the absence of veto is significant in solving the political and economic problems Nigeria is experiencing at present. It will discourage undemocratic decisions and make opportunities open to everyone. The manoeuvrings and politicisation of issues by government and by those that have links by oil companies will be reduced if nobody is allowed veto. The removal of veto in the decision-making process will make people come to a compromise or an agreement that will enhance general good. It will make everyone participate in the affairs of the State unlike when one group exercises power of veto and hold others up.

Another consideration is that the abundant natural resources needs to be tapped and explored and people needs to agree for it to be tapped. But if people continue to disrupt oil operations such actions will amount to economic loss and will not do any group any good. And if the oil companies were sacked or prevented from exploring oil such action will be counterproductive because there will be no money to distribute and no resources to control. This will increase the level of poverty and deprivation in the area. However, the entire community will be worst-off and nobody will benefit. This is why the people in the OP will not agree to give veto to any group.

So people have to freely and rationally agree on how these abundant resources should be explored and managed so that the general public will benefit. People should be willing to negotiate and dialogue things rather than doing things that will not benefit anyone. But Nigeria cannot achieve this objective if we allow some people veto the agreement of others. If this happens more people will be disillusioned and frustrated. The country’s economy and the political process will remain stagnated. Therefore, if we adopt the principle of no veto, the decision-making process and policy formulation will be easy to reach and the outcome will be favourable to everyone. The problem of disagreement and intransigent opinion that has delayed sustainable development and democratic process will be eliminated in the short-term course, while government will continue to work out on how to make things far better for everyone.
For the fact that Nigeria does not have an environmental protection regime that is strong to address the colossal environmental destruction in the Niger Delta region, there is urgent need therefore to establish a non-corrupt and transparent environmental laws and environmental institution that will be insulated from government manipulations and political influences. The question is would the people in the OP behind the veil agree to adopt this principle knowing everything about the Nigerian system but except information about who they are, their position in the society and who they represent?

The people in the OP know that the environmental destruction in Nigeria is huge and bad. They also know that the government and the oil companies have been nonchalant and insensitive to the social consequences of environmental destruction in the country and that the Nigeria’s environmental laws are weak and the institutions vested with the responsibility of monitoring and regulating oil production activities are corrupt and inefficient. Therefore the question is what would people in the OP behind the veil of ignorance agree to knowing that things are hopeless and bad in terms of getting anything pass by legislature and the judiciary and even if it get passed, it has been hard to be enforced. They know that the mere fact of coming up with the right environmental rules or guidelines is not going to be enough because the system for enforcing these rules are weak and non-transparent. Therefore how do we deal with this kind of problem and how do enforce the rules and guidelines concerning environmental problems. So considering how bad things are in Nigeria, the kind of environmental laws and institutions that the people in the OP behind the veil of ignorance would agree to will be one that is insulated from Nigeria government influences. Therefore they would have to come up with a system of enforcing these rules that people would accept and see as fair and just.

Indeed, everybody in the OP behind the veil of ignorance is aware that the Nigeria environmental laws are weak and the institutions are corrupt. These problems cannot be solved overnight. This is of course a long-term problem and can only be solved at the luxury of time. Therefore, it strike us that the best way to deal with these problems will be to borrow environmental laws and environmental institutions of developed countries which seem to be effective and non-crupt to resolve the environmental problems in the short-term course pending when the Nigeria government can come up with a more elaborate environmental regime that is stricter and effective. To this end they would not agree to environmental laws made by Nigerians or environment institutions constituted by Nigerians
because they are inefficient and cannot be trusted. So by borrowing the environmental rules and institutions possibly from China, UK, US, Italy Norway and Russia, the oil companies will have no course to complain or disobey the rules and guidelines because it is the same law they obey in their home countries that is borrowed and apply in our own country.

These laws and institutions borrowed will be a way of dealing with the environmental problems in the short-term course and this measure will go a long way in reducing the oil-environmental problems, while we continue to work on how to remove corruption and non-transparent institutions out of Nigeria system. This is the kind of principles that people cannot reasonably reject given the poor State of things in Nigeria. Clearly, we should not see the idea of borrowing foreign structures such as environmental laws as a legal transplant process because the essence is to use those structures to correct societal problems in the interim while we continue to work on how to transit from dysfunctional stage to medium functional stage then move to full functional stage.

7.5 THE PRINCIPLE ESTABLISHING THE REJECTION OF VIOLENCE

One of the fundamental issues we must understand here is that the Rawlsian solution can only work for people who are reasonable and people who are looking for a just solution. But if people are looking for personal power, the only solution to deal with this kind of people is violence. So the Rawlsian solution is there to convince reasonable people to behave themselves. So we assume that everybody is going to be reasonable to and willing to accept fair and just solutions to problems. Therefore, these principles we are recommending will help us to generate methods of resolving violence and conflicts. The issue to consider here is whether everybody in the OP behind the veil of ignorance will agree to reject violence as a method of resolution.

The people in the OP know that people have fighting each other, destroying things, kidnapping for ransom and taking oil workers hostage. They know that Nigeria government and the oil companies have not responded maturely to these problems. Indeed, they everything about Nigeria but except who they represent and their position in the society. What would they think about this principle knowing that the Nigerian system is weak and totally corrupt? For example supposing we decide to go to war or carry out a revolution against the government and the oil companies.

We could decide that the group that wins the war forms the government. And if we say the last man standing is the winner. This may be a plausible solution and many people
are doing that now in Nigeria. Supposing the proposal of going to war is presented before the people in the OP behind the veil of ignorance to decide. The question is would everybody in the OP behind the veil of ignorance reject violent as a resolution strategy? The answer seems obviously no because most people would not survive the war and only one person would be the last man standing. Nobody is going to be sure if they are likely to be the last man standing or not. Therefore they would reject that principle as a method of resolving things. They would not use this method as a way of resolving their grievances because nobody is sure how things will turn out and if things turn out bad they do not which society they will fall into or what will their position in the society. Of course they are going to reject violence because they do not know if they are going to benefit from it or be killed by it. And the reason why they would reject violence is because some people could get killed or have their property destroyed. However, violence is morally unreasonable and counterproductive and has not been able to solve problems since many people resorted to it.

Therefore how do we deal with this kind of problem? And to agree to something that will not be fairly implemented or enforced is like not agreeing to anything at all. It will just be some sort of mockery and unfair to Nigerian people. So the people know that merely establishing a strong and effective dispute resolution board is not a guarantee. If the implementation machinery and enforcement system is non-existent, the problem we are trying to solve will still remain unresolved. Therefore, we would have to come up with a method of enforcing these decisions and principles that people will trust and see as just and free from government influences and corruption. And since we cannot make the existing conflict resolution Commission to become effective and free from government influences overnight, so the short-term issue is how we eliminate this problem. People would want to know how we create a system that will start enforcing the right decisions and the right rules that would be seen as free from government influences and just.

In view of the fact that, the Nigeria’s conflict resolution agencies and its members are susceptible to monetary inducement, complacent, incorrigible and we cannot continue to wait until the long-term programmes of the Nigerian government begin to materialise. Therefore, the best option will be to go outside and borrow an adjudicative body in the short-term course to solve our immediate problems until the time Nigerian government will establish a credible and trusted conflict resolution board. Such adjudicative body could possibly be the UN specialized agencies or other non-governmental organisation like Amnesty International. We will borrow these agencies because they have the incentive of
not being biased, corrupt or influenced by the politicians and oil companies. They have the incentive of taking independent decisions on issues presented before them for adjudication and ensure that people-oriented policies and right rules are implemented and enforced. Such agencies will also perform mediatory, adjudicatory and play reconciliatory role in resolving problems that have proved intractable for 50 years in Nigeria system. For example, the Amnesty or State pardon granted to the militants in the Niger Delta as a reconciliatory and mediatory role collapsed due to lack of political will and uncoordinated policies. The militants have not been reabsorbed neither have they been rehabilitated. The Nigerian government have remained insensitive and nonchalant to these problems. But under UN specialized agencies, these problems will be mitigated because agreed decisions and recommendations will be implemented and enforced by a neutral and impartial body.

However, the Specialized Agencies will act in the interim as conflict resolution group and peacebuilding agencies, while the Nigeria government continue to work on how to establish credible and transparent conflict resolution agencies that people can trust and see as reliable and just. Therefore, the parties in the OP behind the veil of ignorance would not accept any decision that requires them to use the corrupt and non-transparent agencies to implement any decision they reached. It will make mockery of their efforts and if things become worse, their decisions and agreement will go down the drain like previous ones. They would only agree and insist that their decisions be implemented and enforced by a neutral and impartial body. This is the only the meaningful way we could have the agreement reached implemented and enforced. In effect, the people’s confidence and trust in the system will be rekindled and people will feel that at least they will get justice and fair treatment from the Specialized Agencies, unlike when things were left in the hands of corrupt Nigerian government.

Of course, the UN Special agencies could still have Nigerians as nominal members, but major decisions will not be made by Nigerians. There will be a separate body that will formulate policies and another separate body that will enforce and implement the decisions reached the UN Special Agencies. This ideal is to insulate them from political and monetary influences of the government and the oil companies. The Special Agencies will continue to function as a short-term measure while the government work on how to establish a conflict resolution board that is transparent and non-corrupt and good enough that people cannot reasonably object.
7.6 THE PRINCIPLE OF SPECIAL COMPENSATION FOR SPECIAL BURDEN

This is a principle that people in the OP behind the veil of ignorance will propose to use in solving the controversy surrounding compensation payment in Nigeria. The issue to consider is whether everyone in the OP behind the veil of ignorance would accept or reject the idea not just that people should be compensated, but that those who suffer more should be compensated more.

Surely, the parties know that compensation issue have not been properly addressed and they know that the government and the oil companies have responded nonchalantly to the demand for special compensation for those who suffer more. As a result, there have been conflicts between the oil companies and the local communities in the Niger Delta. Therefore the representatives would choose a principle that favours everyone but they would be restricted of information that would make them bias in favour of one proposal. Any proposal reached would be one that reasonable people would not reasonably reject. And to see that their proposals are enforced they would want different set of people who they can trust and would enforce their decisions accordingly. The representatives know that the Nigeria government is weak and corrupt and so they are not sure that their proposals will be enforced. To solve this problem, the parties would propose outside assistance because their track record of transparency and accountability. And since the existing Compensation Board is weak and lacks the political will to enforce proper procedure for compensation payment the representatives would opt for a transparent international organisation to administer their proposals on compensation matters.

The essence of seeking outside assistance is to ensure that those that have suffered more are separated from those that have suffered less. In the past, that Nigerian government have lumped everyone together and that is how the oil companies pay compensations to those that suffered environmental damage. There is no consideration whether Mr Tom suffers more or Mr Jerry suffers less. This procedure shows no element of fairness because people who bear the brunt of oil spill more end up getting no compensation at all.

This is the reason why representatives would borrow the UN Compensation Commission because they are neutral and have no special interest in the compensation

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431 The United Nations Compensation Commission (UNCC) was established in 1991 as a subsidiary organ of the UN Security Council. Its mandate is to process claims brought to it and payment of compensations for losses and damage. Such losses and damage could be as a direct result of war, environmental destruction and personal injuries.
money. The UN Compensation Commission is a credible institution and will be able to supervise claims-processing and payments of compensation losses and damage. The Commission ensures that compensation is paid to a successful claimant from a special fund. Compensation payment could be losses and damage suffered as a direct result of war, or illegal occupation of a territory. In the case of Nigeria, the parties would borrow this Commission to ensure that successful claimants receive adequate compensation for losses and damage suffered as a direct result of environmental destruction and personal injuries. The Commission will provide short-term solution to the problem of compensation payments.

The UN Compensation Commission will ensure that funds set aside for compensation is used for what it was meant for and distributed to the right individuals. They will ensure prudent use of compensation funds. The ideal of inviting external body to administer compensation payments is to check corruption and political influences from oil companies. The Commission will be an independent body that will enforce and implement decisions reached on compensation payments to victims that have lost their means of livelihoods. Among other things, the Commission will oversee the prompt payments and administration of compensation funds to real individuals that have directly suffered loss. The Commission will set standards of payments and also fix compensation amount to be paid to those that have suffered special burden. They will ensure this standard is adhered to by oil companies and the Nigerian government. The Commission will replace the existing ones in the meantime while the government continue to work out a strong and transparent compensation Commission that people will believe as fair and non-corrupt.

However, this measure will restore hope and people who have lost lands and resources will feel that this short-term measure is fair and just even if they did not receive all their compensation claims at least they get something. The oil companies will therefore have no reason to complain about the decisions of the Commission because the compensation laws or policies they obey in their home country is substituted in the host country (Nigeria). The oil companies also will not have the opportunity to bribe members of the Commission because they do not have any stake or any link with oil operations in Nigeria. There is nothing wrong in having few credible Nigerians on the Commission especially transparent judges and financial experts as members. The bottomline of my argument in recommending the principle of special compensation for special burden is based on the principle of equity and justice. The argument here is not that people that have suffered environmental destruction should be given special compensation outside the
purview of tort law. My position here is that people that have suffered loss or damage should be paid compensation. But the situation now is that those people gets nothing or the amount they are given are ridiculously low which does not reflect on accurate injury they have suffered.

Again here we are not suggesting that compensation should be different from what tort law prescribes as in negligence cases. Of course every act or omission to leads to negligence must be fully and reasonably compensated in tort law and the injured parties must be adequately compensated. Apart from that, there is need to determine the degree of damage and the commensurate compensation to be paid to injured persons.

The idea of special compensation for special burden is to ensure that those that have lost means of livelihood are adequately compensation that is commensurate to the degree of damage or loss they have suffered. But in the case of Niger Delta compensation has not been paid proportionate to the amount of damage suffered. Presently, people are undercompensated or get no compensation at all. The crux of the matter is that people with special burdens in the sense like oil spill occur on their land will definitely have special burden. Given that everybody will have a special burden in the sense that the environment is degraded but the person who bears the heavy loss or direct burden is not adequately compensated.

Clearly, we are not suggesting that people should get special compensation or that people should get more than the damage they have suffered, we are saying that people have not compensated equivalent to the amount of damage they have incurred. We differ from the generalized form of compensation where everyone gets something and if this is done, the principle of justice as fairness will make no meaning at all. This practice for instance will not be fair on some people that have suffered direct burden. Some people have suffered more than others and should be given full compensation to the amount of damage or loss they have suffered. So since people cannot veto the agreement of others, they would like to have an independent body or non-governmental organisation that will ensure that those negatively affected by the oil operations are adequately compensated. To this end, people will stop holding the country up and also avoid the resort to violence.
7.6 THE PRINCIPLE OF USING SPECIAL COURTS TO DECIDE OIL-RELATED MATTERS

The issue here is whether the parties would agree to the principle of special courts as a method of settling conflicts. The question is what would people in the OP behind the veil of ignorance who knows everything about Nigeria except who they represent think about this method? The argument is that they would agree to this principle because the Nigeria courts have been monetized and politicised and compensation claims have been decided in favour of the oil companies. They know that problem of oil-related litigations has generated serious disenchantment and disagreement between the oil companies and the oil-bearing communities in Niger Delta. Also everybody in the OP behind the veil of ignorance knows that the Nigerian courts are not transparent and do not have independent opinion on issues submitted for adjudication. The Court system has been monetized and politicised and compensation claims made by litigants have always been decided in favour of the oil companies. They know that merely coming up with the right rules or laws is not a guarantee that such rule and laws will be enforced or implemented.

To solve this problem therefore, the parties will have to come up with a method that will ensure that whatever decisions or agreements they reached are enforce and implemented. Such laws and rules will be seen by people as fair and in fact free from government and oil companies influences. But since we cannot change the non-transparent system to a transparent system overnight, we have to look for a short-term measure to deal with these problems. To change the Nigerian system overnight is a long time project which the country have tried for many years and failed. Now, we have to create a system that will enforce and implement the laws and rules that in the short-term course can be seen as transparent and reliable.

The only way to solve this problem is to establish special courts that will be constituted by non-governmental agencies of other countries which people will see as credible and non-corrupt. Members of these agencies will be individuals that have no stake in the oil industry and cannot be influenced or bribed by the oil companies. We will use them to resolve these issues since the Nigerian system is completely insincere and non-transparent. The special courts members will adjudicate between the oil companies and compensation claimants and will ensure that claimants get unbiased judgement and prompt
payment. It will ensure that oil companies comply with their rules and laws. In the past, military tribunals have been used to decide civil matters and this has hampered justice delivery. They have used decrees to decide civil actions instead of constitutional and administrative laws. This practice is inappropriate and has often led to miscarriage of justice. Giving this scenario, the people in the OP behind the veil of ignorance would want their rules and decisions enforced and implemented because it will be a mockery to make laws that would not be enforced. Since the parties know that the existing institutions will not enforce or implement their decisions and agreements, they would bypass them because they want their principles to be enforced in an unbiased way. They would agree to this because they have gone through rigorous means to come up with these principles. So they would see that their agreements and right rules are completely enforced by special apparatus that is transparent, credible and reliable.

The merit of this special apparatus (special courts) is that it will be easily accessible to everybody and judgement will not be based on legal technicalities but on public interest or general good. If this happens, people will stop submitting their disputes to the ordinary courts because the special Court is borne out of a procedure that is fair and just and has the capability of delivering impartial judgements. Meanwhile, in the real world, people would want to know why they should agree to the special courts if it did not give them all what they want. But we think that people should agree to this principle and even if this principle did not give them everything they want, they should agree to it, because the procedure is fair and if the procedure is fair, it will produce principles that are fair and people should be willing to recognise these principles as a method of solving their problems. So the special courts are one of the short-term specific principles that we will help us solve the complex problems of Nigeria while the government continue to work out ways of establishing credible and people-oriented courts that everyone will believe to be fair and just to the extent that people will stop resorting to violence and actions that will make everyone worse-off.

7.7 THE PRINCIPLE AGAINST EXCESSIVE PROFIT
One of the rules we are going to come up with in this principle is that the oil companies are entitled to a reasonable profit but not excessive profit. The primary issue here is how we share the profit and how do we regulate profit maximisation. The idea here is that reasonable profit should be allowed while excessive profit should be prohibited.
To enforce this rule we have to figure out what profit is reasonable and what profits are excessive. We need a principle to determine the difference and it is when we have done this that we can know what level of profit is reasonable and what level of profit is excessive. To determine this, we are going to use the principle of cost of production plus reasonable profit. It is argued when profits are in excess; such profits received should be shared with everyone who contributes to creating it in proportion to his or her relative contributions. But in practical sense, this is not so because people are naturally egoistic and would instead want more profits than share the profits with everyone who contributed to creating it.

The people in the OP know that the excessive profit making have not favoured the people. They know that there is no accountability and transparency in the sharing and distribution process. They also know that the oil companies do not publish what profit they make from oil operations. They know that oil companies receive more than twice the cost of production. They know that the oil companies have failed to use the excessive profit to better the lives of those that contribute to the creating of the profits (workers, and landowners). The parties know that policies and laws requiring oil companies to show what profit they make is not working. The issue here is whether everyone in the OP would reject the principle of excessive profit as a method of resolution. Of course the people in the OP behind the veil of ignorance would reject this principle knowing that the Nigerian system is bad and cannot be trusted. They would reject this principle because they do not know if they would benefit from it or be disfavoured by it. Therefore the parties would need an independent body to apply the principle of cost of production plus reasonable profit borrowed from Mark Reiff’s book *Exploitation and Economic Justice in the Liberal Capitalist*. This principle suggests that in every transaction we have some limitations on what profits are and that limitation is related to the cost of production.

The principle contend that a seller must know what it has cost him to produce his product, regardless of what this product is: otherwise, he cannot know whether he should continue this activity or abandon it. By so doing he will be able to know how the profits he receives should be shared out. According to Reiff’s principle, it seems to say that the maximum profit should be 100 per cent over the cost of production. The oil companies make excessive profit and equally imposing the cost of production on the people which the people are not supposed to pay for. It may be the case that the price on petroleum products

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433 Ibid.
or the price on the finished product is just but the problem is that they are not paying the cost. They are imposing the cost on the local people in the form of they have to suffer oil pollution and spills without paying the cost of cleaning it up. This is part of production and the oil companies should pay for the cost of cleaning up the pollution that the production of oil creates.

The cost of production includes paying wages, compensation for property damaged, and compensation for people injured on the job. These are cost of production and oil companies should pay but they are not paying. They made incentive to carry out oil operations, but should be necessary because they need that to be in business. Above this such incentive is excessive and that is why we have a principle to tell us when it is excessive and we agree to construct an independent body to apply this principle.

To solve this problem therefore, the parties in the OP behind the veil of ignorance would need the assistance of an independent body to apply this principle to be sure this principle remains in practice. This independent body cannot be Nigerians because institutions vested with the responsibility to implement transparent administration of compensation payment to aggrieved individuals have compromised their positions. Therefore we have to borrow a non-corrupt and transparent body like the UN economic and financial watch or non-governmental organisation of other countries that is working and effective to enforce and implement this principle in the short-term course while we continue to work on how to remove corruption and ineptitude in the Nigerian system.

7.8 THE PRINCIPLE OF REVERSED COLONIALISM

In fact, all the principles we have recommended here should not be misconstrued as a re-introduction of colonialism or an argument in favour of colonial hegemony. In all intent and purposes, this is not the goal of this research. The principles we recommend here should not been seen as a ploy to take Nigeria backward to her horrible experience of oppression and exploitative rule. Many would argue in this way while others who are reasonable would agree with proposals. This is not so and without mincing words, we are not advocating for colonial power again in Nigeria but a reversed colonialism.

The notion of reversed colonialism is distinct from colonialism. Colonialism is when a foreign country imposes her power or her institutions on a colony. Colonialism denotes forceful imposition of political leaders and economic policies favourable to the colonists.
On other hand, the reversed colonialism is when a sovereign country borrows institutions from the foreign power to make her internal operation better. In reversed colonialism there is no imposition of political intuitions and political leaders, rather we are at liberty to drop it or refuse to use it at any time. The institutions or the agencies we borrowed will only last as long as we it to last. In other words, the borrowed institutions and the environmental laws will not last forever. They will only function as a short-term measure until the Nigerian State fashion out comprehensive and non-corrupt institutions that people can trust and rely on for their problems.

Although we know that part of the problems plaguing the country today were directly or indirectly linked to colonialism, it is not true that everything about colonialism is bad. In effect, it is our proposal in this research that there is need to borrow the better part of colonial ideology to fix our internal problems in the short-term course, while we continue to work on how to make things optimally better for the population. It makes no sense if we continue to argue and debate on which solutions to use in resolving our complex problems that has plagued the country for over four decades. Nigerians cannot continue to wait until everything becomes perfect because that is not the rational or plausible thing to do now. The reasonable thing to do for the suffering masse is to look outside for immediate solutions to the social problems that have made life unbearable for the population. So the earlier we borrow a system that is working, trusted, tested and non-corrupt the better for everyone.

The reason why it is necessary to introduce reversed colonialism in the present circumstances of Nigeria is that we are pretty sure that the outcome will be credible and transparent. The end product of the reversed colonialism will guarantee fairness, and accountability. It has the capacity to solve our immediate problems in the short-term course. In this light, people should not misconstrue reversed colonialism as a re-invitation of colonialism and further subjugation of the Nigerian people. But if we painstakingly implement the proposals, rules and laws that originate from the reversed colonialism, our complex problems would be less complex if not reduced to the barest level. In fact, it is against this backdrop, that we opted for outside solution to our problems since Nigerian system is not transparent and corrupt. We are not saying that because Nigeria is the only corrupt and non-transparent country in the world and we are not introducing reversed colonialism because Nigerians cannot initiate a credible and people-oriented policy. Our major concern is the level of social decay and the degree of corruption in the country.
Another important reason in support of reversed colonialism is that it creates institutions that will produce independent decisions and be free from political influences, monetary influences and pressures from oil companies. In the past, political influences and monetary inducement from government and oil companies have made it difficult for our institutions to function properly. Such influences have affected good governance and social development in our country. Under the reversed colonial regime, social institutions will function properly and enforcement of rules and regulations will be done without bias in favour of one group against another group. However, we are pretty certain that things will return to normal and people’s immediate problems will be solved in the short-term process until the time the Nigeria government come up with enduring solutions to our problems.

Therefore, it is worth noting that this is not an inversed colonialism or re-institution of colonialism or imperialism. It is not another way of inviting the colonists to take over the reins of power from our indigenous leaders. Reversed The idea of borrowing institutions that are transparent and non-corruption and use them in the meantime is to give the government the opportunity to create non-corrupt institutions and organisations that will be able to enforce and implement every agreements and decisions reached by the policy-makers. For example since the existing institutions cannot implement our environmental laws, it behoves on the government to borrow environmental laws and institutions of other countries (Netherland Canada) pending when a strong and strict environmental policies and laws will be made. What this means is that, we are at liberty to continue using it or drop it whenever we choose unlike when it is imposed on us. This is different compared to when foreign hegemony imposed their laws, institutions and their values on us. So reversed colonialism is not an invitation or re-introduction of foreign rule in our country, but a way of remedying our immediate problems. This is not a transplant of foreign systems, values, legal system into Nigeria. It is not an imposition per se, but a system we have to borrow in the meantime to solve our problems in the short-term course while we continue to work on how to fashion out long-term solutions to our problems.

Therefore, the people in the OP would agree to these proposals because they know that the executive and judiciary are corrupt and there is no guarantee that they would enforce these proposals in the nearest future. . And if there is corruption, it does not matter what the rules are because the people in the OP would want their rules to be implemented since those rules and proposals have the capacity to advance the wellbeing of everyone. In effect representatives in the OP would favour those principles of justice and rules that will
promote equity and social rights. The representatives would want the rules and proposals they make to be enforced because it was decided by reasonable people who not influenced by their social status, political affiliation and ethnic background. We assume that the people are reasonable and therefore should accept our recommendations and of course if they are not reasonable people they are not going to accept anything anywhere and we doubt if there is any theory of justice that would convince them. So, reasonable people simply need to defeat unreasonable people for society to move forward. The reasonable should always stand up against corruption, and social injustice. For example, the representatives would agree that whatever rules or principles they come up with would not be enforced or implemented by the Nigerian government because the Nigerian government cannot be trusted. Therefore they would agree that to seek the help of a neutral body like the UN organisations because they trusted institutions that work in practice.

Our proposal here is to the extent that every group have a reasonable ground or reasonable basis for whatever grievances they have against the Nigerian government. We also believe that all grievances and complaints were made by reasonable people. Therefore if that is the case, we strongly believe they should agree to solutions which we derived from the Rawlsian method. However, some people might reject some proposals made in this research and if this happens, it is of course an indication that those who disagree with our proposals are just being fastidious and unreasonable. But we cannot do anything about that because no theory of justice is going to convince people who are adamantly unreasonable and no principle of justice is likely to stop them from being indulging in corrupt practices, and ethically low in society. Against this backdrop, the thesis went further to make concrete recommendations and suggestions that ought to be enforced and implemented because it was made by reasonable people who are interested to project the good of everyone in society and not the selfish interest of the few.
CHAPTER 8

CONCLUSIONS, SUGGESTIONS, RECOMMENDATIONS AND THE WAY FORWARD

This research examined most major problems that plagued Nigeria presently and also analysed how the country have tried for 50 years to solve these problems and failed. The research articulated reasons why Nigeria has been unable to solve her problems. In particular, chapter 7 of this research made considerable effort to use Rawlsian method of justice to tackle most of the problems identified so far in this research. The thesis explained that the delayed in solving Nigeria’s huge problems have been responsible for the socio-economic instability, political corruption and development problems the country is grappling with presently. In order to ensure that Nigeria’s huge and complex problems are mitigated, this thesis made the following recommendations.

Participation and control of resources

Perhaps one of the disturbing and contentious issues in the Niger Delta oil crisis is the 13 per cent derivation that is allocated to the oil-producing states from the Federation Account. Many people and even the international community see this paltry allocation as an injustice and capable of elongating oil-related violence in Nigeria if the issue is not addressed now.

The Niger Delta region generates 95 per cent of the country annual revenue from oil derived from their soil. They lack basic necessities of life and at the same time undergoing serious environmental damage and underdevelopment problems. Against this backdrop the Niger Delta people have consistently demanded for 50 per cent revenue allocation that has been the original revenue formula enshrined in the 1979 Constitution. In order words, the Niger Delta people and critics of government have suggested that a reverse to the old derivation principle is the key to the oil crisis.

Therefore, since government is reluctant to grant this request, we therefore recommend 25 per cent increase in the revenue distribution and allocation process. This will help to rekindle people’s hope once again and it will give them the assurance that government is sensitive and at the same time working hard to make things better. In addition, the Nigerian government should establish equitable derivative formula or in the alternative reverse to old system of derivation. Again, government should ensure that the distribution and allocation process is not reduced to unnecessary protocol or bureaucracy that could lead to more frustration and hostilities from the Niger Delta people. Allocation of funds for
development and social services should be prompt and treated as a matter of urgency. This particular recommendation will also stop people from resorting to acts that are counterproductive that will hamper development and restoration of enduring peace in the Niger Delta region. This proposal or recommendation is what parties in the OP would agree to because the proposal would benefit everyone because the people in the original know that the Nigerian government is corrupt.

The repel of unfair and contentious legislations
There is urgent need to repeal those laws that stifles property right. The Land Use Act of 1978 has made the land use system in Niger Delta a harrowing experience. There is need to overhaul the Act so that land owners will get good reward and adequate rents for their land. The Petroleum Act of 1969 and 1991 are retrogressive and repugnant because they gave the Federal government absolute power over mineral resources in the country. The Petroleum Act only provided cosmetics solution to the onshore/offshore conflict between the states and the Federal government. In that case, we recommend urgent reform of the Petroleum Act to take on board the new realities facing Nigeria’s oil industry. The law that vested in the Federal government exclusive right over oil and minerals should be changed in a way that it will allow the oil-producing states a substantial say both in the sharing and allocation of oil revenue. By so doing State should be allowed to receive substantial part of what they are endowed with. For example the repeal of the Land Use Act and the Petroleum Act will remove the incidence of land acquisition and problems of inadequate compensation payment to landowners. The removal of the unfair laws will give Nigeria people the opportunity to discuss issues that affect their existence. Therefore all other constitutions that tend to alienate the minority ethnic group (South-South) from benefiting from the oil wealth derived from their region should be reformed or be repealed.

Employment of Local people by Oil Companies
The problem of unemployment and youth restiveness is the concomitant consequences of oil exploration in Niger Delta. It is glaring that the unemployment rate has contributed largely to the escalation of sectarian violence. The oil companies, as a matter of policy employ foreign expatriates and have refused to comply with the local content law which stipulates that the oil companies should employ and provide training to citizens of Nigeria to acquire skills that will make them employable in the oil industry. The inability of oil companies to comply with this law, no doubt have contributed in youth restiveness in the oil-producing
states. This development has led to growing insurgence activities and violent conflicts in the region.

In view of the fact that the local content law has been relegated, crime rate and unemployment rate is increasingly high. Therefore we recommend that the local content law be strengthened and that the government should compel oil companies to implement this law or alternatively impose heavy penalties so as to serve as a lesson to others. This will minimise the social implications of unemployment because if youths are employed and engaged in trade they will be out of crime and be able to contribute meaningfully to the society. This option will benefit oil companies the more because they will have qualified individuals to employ which will reduce the cost of importing foreign labour. The individual persons trained would gain job experience and will enhance his own wellbeing and the wellbeing of society unlike when there are merely paid off.

The idea of favouring one militia group against the other by oil companies has dramatically affected the resolution of the oil-crisis. In other words, the divide and rule system is big for divide and rule system. So it is recommended that the youths especially people from Niger Delta region should be given more job opportunities and the constitutional provision of local content should be restructured in a way that youths from oil-producing states are employed by the multinational oil companies. But if the oil companies continued to engage the youth is monetary gratification they stand to lose because the youths will use the money to acquire more sophisticated weapons and arms, drugs, and alcohol and other inimical means of holding the oil companies by the jugular.

Therefore, there is also urgent need to strengthen the structure of the Nigerian State through constitutional means. This will ensure and restore satisfactory regional interest and adequate representation of the minority groups. In other words, the political structure should be separated from the colonial structure bequeathed to us by the colonists. The political climate of the country should be designed to take into account the interests and aspirations of every citizen of the country. By so doing, ethnic rivalry, minority-majority disagreement, religious unrest and marginalisation issues will be eliminated. This way we can achieve nationhood.

**The Judiciary Reform** Apart from the restructuring of the political system, the country’s legal system needs drastic reform. The Nigeria legal system still has the cleavages of the colonial government and has failed to live up to the present realities of Nigeria problems. The legal challenges resulting from oil-related cases and the problem created by
Land Use Act 1978 is so much that the present legal system cannot handle the country’s complicated legal issues. The judicial system has failed to carry out independent functions because of government interference. The courts have been under serious pressure from the Nigerian government and oil companies. This has made Nigeria courts and the judicial system ineffective. This undermines the process of rending justice to the common man. Therefore, to mitigate this problem the Nigeria Legal System should be restructured and reformed so as to be independent and strong to face current legal challenges facing the country at present. The appointment of judges and ministers of justice should be based on merits and not on quota system. The retirement age of judges should be slashed from 78-65 years to give room for fresh ideas and vibrant individual in the judiciary. The corrupt and unqualified one should be removed and replaced with credible and transparent ones. This will bring sanity and discipline in the judiciary and restores Nigerians soil image for human rights abuse issues.

Adequate recognition of corporate social responsibilities (CSR)
It is obvious that CSR have been abandoned by the MNOCs. By law corporate social responsibility is unnegotiable and must be adhered to by multinational oil companies. But in Nigeria this law is have been disobeyed by companies extracting oil in the Niger’a’s Niger Delta region thereby leading to monumental environmental destruction. Instead conducting their oil operation activities according to environmental standard and showing evidence of their CSR they have made bogus claims to have spent billions of dollars on the local communities. But independent bodies like Amnesty International investigations revealed that Shell’s claims are just propaganda and falsehood. Nigeria has strived on falsehood and this has given the oil companies the leverage to make spurious claims that its authenticity has always been in doubt. We recommend that law on CSR be strengthened and monitoring of the activities of the MNOCs should be taken as a matter of urgency. The MNOCs should be compelled by law to do more where they are lacking. All the activities of oil companies and the corporate social responsibility record should be published quarterly or annually to verify claims and to know their level of assistance in their host communities. (Niger Delta region)

Development agency and participation of the Niger delta people
One of the major problems confronting the country at present is that the development agencies have grossly excluded the Niger Delta people in the mainstream of government activities. It is argued that the crucial issue that has triggered conflicts is that government
development have alienated and excluded the local communities, in particular youth is the region. To eliminate this problem, government, and oil stakeholders in the country should include the youths and if possible create an interim body that will prepare the youths for leadership roles.

We recommend that the actors and development agency must recognise the need for dialogue and adjudication as the most effective and rational way in the resolution of the age-long crisis in the region. The Nigeria-State, the multinational oil companies, community leaders, and regional militia groups as well as civil society organisations should embrace dialogue, diplomacy and virtue at the local and national level. Both actors should articulate just and fair policies that will restore peace and tranquillity, as well as equity and good governance. In line with the principle of inclusiveness and participation of the Niger Delta people in the oil industry we recommend that oil companies should sublet some of its contracts to local people. In terms of negotiations and bargaining process, the oil companies should always ensure that they deal directly with local people instead of going through the Nigerian government that hapless and incompetent. The inclusion of the area in the development plan is likely to reduce hostility visited on the oil companies.

Participation of youths in the region will restore constrained relationship and trust between the local communities and oil companies. The youth restiveness in Ogoniland Niger Delta would have been avoided if the development plan and participation of the local people was robust and favourable. Therefore government should strive to incorporate the role and place of the youths in society. To ensure that there the government development agency functions properly, transparent and credible individuals should be given the power to implement government oil policies. We also recommend that the Niger Delta people should be consulted before any developmental project is carried out in the region. This will establish sense concern and sense of between the oil companies and the oil-bearing states.

**The enforcement of revenue allocation principles**

The government enforcement of the revenue allocation principles has been politicised and rendered ineffective and weak. This is because of greed and desperation of the government to control the wealth from oil. As a result distribution and allocation principles have been wrongly applied. We therefore recommend that the bastardized revenue allocation principles should be restructured to be strong enough to address the problem associated with distribution, and allocation of resources. The judiciary should be empowered to ensure the revenue allocation principles are complied with by states and oil stakeholders in country.
The enforcement should be uniformly enforced to avoid ethnic tension and possibly violent conflicts.

**Leadership education and enlightenment programmes**

It is obvious that literacy level in Nigeria is low. This means that illiteracy level is very high specifically in the Niger Delta. And since the oil crisis started in the area government does not have a enlightenment programmes that will concretize the harmful effects or health-related issue associated with oil exploitation and production. To solve this problem, we recommend that the government should ensure that community leaders and local people are properly educated on sensitive issues like oil exploration and its health-related impacts. Government should carry out a comprehensive enlightenment campaign to various oil-bearing communities in the Niger Delta region. Oil disasters, oil spill and dangers of carbon dioxide emission other consequences of oil should be given adequate publicity.

The Nigerian government should increase educational budget and stop indiscriminate importation of arms and ammunitions. Education is the driver of economic, political and socio-cultural development. We recommend that government should change its education policies to embrace the leadership challenges Nigeria is experiencing now. The government education should make compulsory and afford to everyone.

**Improved Agriculture and food production:**

Instead of over dependence on foreign aid and borrowing too much money from World Bank, IMF, and the Paris Club, Nigeria government should revitalize agriculture policy. Environmental Rights Action/ Friends of the Earth Nigeria and Friends of the Earth International warns thus: “It is time African Governments stop bowing to corporate donors and instead put farmers in the driver's seat. They must focus on funding ecological methods and preserving local seeds. Africa can feed itself with ecological agriculture and it is small farmers themselves who are the most important investors in farming.

Through the Alliance for a Green Revolution in Africa (AGRA), multinational corporations are trying to control our seeds, land, food and then our lives. AGRA is not in the best interest of Africans, it is a Trojan horse for agribusiness,” says Mariann Bassey

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434 Alliance for a Green Revolution in Africa (AGRA) is an organization that monitors and questions the gates foundation participation. It finds approach to political, environmental and social and ethnic problems. It aims to seek support of socially and ecologically appropriate agricultural practices in Africa. It supports African initiatives and programmes that foster’s farmers self-determination at [http://www.seattleglobaljustice.org/agra-watch/](http://www.seattleglobaljustice.org/agra-watch/) last visited 13/11/2013.
from Friends of the Earth Nigeria. The policy should be forward-looking by way of supporting peasant farmers and indigenous manufacturing companies through funding and other necessary assistance. Small scale farmers should be given a robust allocation so that Nigeria will again grow its food locally than importing heavily on refined or processed food items. The economy must be diversified to reduce over dependence on oil.

**Foreign Companies should invest in Social projects**

Here we recommend that companies particularly the multinational oil companies should invest in social projects so as to help reduce unemployment rate and prevent too much leaving the shores of the country. This will also help the Nigerian government initiate result-oriented economic planning since the companies investing in social projects will take care of those economic issues that are not in the government agenda.

Finally, this thesis did not set out to solve all Nigeria’s problems. That could be done in another research. The thesis made conceived contribution to knowledge by revealing the nature and scope of Nigeria’s problems and how it all started. Although these problems were complex and intractable, we can say that greater effort was make to single out the most salient and crucial problems which we addressed in a systematic way to allow readers form an opinion about Nigeria. The thesis is full of details and equally made uses graphic photograph to communication important information. Irrespective of what have been said and the complexities and paradoxes involved, we believe that there is ‘light at the end of the tunnel’ for Nigeria.

On that note, we believe that Nigeria can become the giant of Africa again, if solutions and recommendations made in this thesis are seen as a mechanism and as guiding principles to the complex problems of Nigeria. It is our uttermost conviction that police-formulators, decision makers, stakeholders, and the civil society will leverage on these principles and recommendations to come up with reasonable ways of solving the political, economic, social, legal and cultural problems that have plagued the country for many decades. By so doing, it is our understanding that everyone will be able to benefit both in the long-term and short-term course and the resort to violence and counter claims will be minimally reduced.

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Appendix 1. The Map of Niger Delta Oil-Producing States.

The above map is showing the Nigeria’s Niger Delta and its composites nine states.
Appendix 2: An illegal oil refinery near River Nun in Niger Delta of Bayelsa State.

A typical example of the consequences of an illegal oil refinery in a creek near river Nun in Bayelsa on December 6, 2012. This practice causes oil spills and pollution. It has been estimated that, a fifth of Nigeria’s two million barrel a day production is lost to oil theft last year according to the finance ministry. (Reuters)
Appendix 3: Oil Pipeline Explosion caused by oil theft at Arepo Village, in Niger Delta.

A man in the Creek of Niger Delta paddles a canoe through a swamp after an oil pipeline explosion caused by oil theft at Arepo village, just outside Nigeria's former commercial capital Lagos, on January 13, 2013. (Reuters)
A warning sign belonging to the Royal Dutch Shell Company is seen along the Nembe creek in Bayelsa State, Nigeria, on December 2, 2012. (Reuters). Most of the high pressure pipelines are located very close to public roads and in most cases residential and farm lands with no proper health and safety measures in place.
A young girl named Akpomene, coated in oil stains as she sits in a canoe near river Nun in Bayelsa State, Nigeria, on November 27, 2012. Akpomene fishes in the creek and sells the fish to help her family. But extensive oil spills and pollution has killed, marine organisms like fish, crab in her region. Akpomene is one of those people that have lost fishing occupation and other means of livelihood in the Niger Delta region.

Ebiowei, 48, carries refined oil in buckets near the river Nun in Bayelsa State, on November 27, 2012. (Reuters). Ebiowei have lost his farm to oil companies and adequate compensation was not paid to me. This is why he engaged in illegal oil refinery and oil smuggling in the Niger Delta region. Ebiowei when interviewed argued that he would not have engaged in illegal oil refinery if his farmland and fishing occupation have not been destroyed by oil spills and oil pollution in his community.
Appendix 7: A complete site of illegal oil refinery operated by unemployed youths at Bayelsa State, Niger Delta

Unemployed Youths at an illegal oil refinery site near river Nun in Bayelsa State, November 27, 2012. (Reuters). The youths would not have engaged in illegal oil refinery or oil theft if they were gainfully employed by the oil companies or if their fishing occupation and farmlands were not ruined by oil spill and pollution.
Appendix 8: A typical example of polluted water caused by oil spill in Niger Delta

A man collects polluted water at an illegal oil refinery site near river Nun in Bayelsa State, on November 27, 2012. (Reuters) This man is forced to fetch water from oil polluted stream because he has no other source of portable water in the area.
Appendix 9: Another illegal oil refinery site in Niger Delta

A man named Godswill works at an illegal oil refinery site, where steam rises from pipes carrying refined oil from a burner into broken containers, in Bayelsa State, on November 27, 2012. (Reuters). Godswill was forced to join illegal oil refinery because his farmland was destroyed and no adequate compensation paid to him to take care of his family. This is the kind of problem plaguing the Niger Delta people since oil was discovered in their land.
Appendix 10: This is a crude oil site where it is refined and then to be smuggled out for sale to foreign buyers at the border.

A Niger Delta indigene pours crude oil into a locally made burner using a funnel at an illegal oil refinery in Bayelsa State, on November 25, 2012. (Reuters). The crude is refined locally and sold at a very cheap price. The youth who engaged in these illegal activities do so out of frustration and disillusionment caused by the Nigerian government and the foreign oil companies.
Appendix 11: Security Officers looking for the oil criminals in the Creek of Niger Delta

The Nigeria security officials' move through a swamp as smoke rises after an oil pipeline explosion caused by people who tried to steal fuel at Arepo village, just outside Lagos, on January 13, 2013. At least three people were seen dead, according to a Reuters witness. (Reuters) The security officials have failed to secure oil installations because the militants have sophisticated weapons than the government security agents. Moreover some security agents collude with oil thieves to vandalize oil pipelines, because the perpetuators give them share of the loot from the oil sale.
Appendix 12: Oil Explosion incident caused by pipeline vandalization/Oil theft.

A body lies in a polluted, burned swamp area after oil pipeline explosion caused by people who tried to steal fuel at Arepo village, Nigeria, on January 13, 2013. At least three or more people were seen dead, according to a Reuters witness. (Reuters). This is another government and oil compliancy insensitive attitude to the oil-producing area. The dead body in the picture is caused by oil pipeline explosion and the man was consumed by fire while scooping oil from burst pipeline. This indicates the level of poverty and lack of enlightenment programme neglected by the Nigerian government and the international oil companies in the Niger Delta region.
Appendix 13: A typical method of oil smuggling in barges/Canoe

A locally made boat containing crude oil is manned through a creek near river Nun in Bayelsa State, Nigeria, on December 6, 2012. (Reuters)
Appendix 14. Oil Storage pit constructed by oil smugglers

Here again the disillusioned Godswill collects crude oil from a small storage pit filled with oil, which is waiting to be refined at an illegal refinery site near the river Nun in Nigeria's oil State of Bayelsa, on November 27, 2012. (Reuters). His parents cannot pay his school fees because they have lost their means of livelihood and to feign for their wards is very difficult.