

THE EXTRACTION INDUSTRY IN
THE NIGER DELTA AND THE
ENVIRONMENT.

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1. Introduction

The original topic of this Lecture, was “The Extraction Industry in the NIGER DELTA and the Limits of International and National Law”. In the process of my research towards the preparation of this paper, the materials that emerged, took on a life of their own and led me to a modification of the original topic. Consequently, the current title of the Lecture is “The Extraction Industry in the Niger Delta and the Environment”

By the term “extraction industry”, I have assumed that the organizers of the Lecture meant the petroleum industry and I have prepared this paper on that basis.

The Niger Delta, the main oil (and gas) producing area of Nigeria has been described as one of the world’s largest wetlands. It covers an area of about 70,000 square kilometers and consists of four distinct ecological zones which are characteristic of a large delta in a tropical region; namely, coastal ridge barriers, mangroves, fresh water swamp forests, and low land rain forests¹.

The area is therefore generally inhospitable, and difficult to develop². The Communities which inhabit this area are made up mainly of fishermen and women in the purely riverine areas and farmers, in the drier areas. They also had some local industries based on the mangrove and the surrounding swamp waters, e.g. local salt industry, mat making etc.

The Niger Delta Communities are to be found in Delta, Bayelsa, Rivers and Akwa Ibom States. Oil is also produced in Ondo, Edo, Abia, Imo and Cross River States. Politically, Edo and Cross River States are Niger Delta or South South States.

Oil was first discovered in commercial quantities in Oloibiri, in the present Bayelsa State in 1956. Today it is produced across States in Southern Nigeria and is

¹ See Niger Delta Environmental Survey: Briefing Note 2, p.4.

² See Generally The Price of Oil, a publication of Human Rights Watch, New York, (1999), pp. 53 – et seq.

responsible for about 80% of Nigeria's total revenue and 95% of export earnings. Oil has been vital in financing the country's economic growth and development in the last 30 years. Oil fuels state power and activity in Nigeria. Government activity will grind to a halt, if oil money is not available to it.

Since Shell – BP discovered oil in commercial quantities in 1956, other Petroleum Companies have joined in the extraction process. These include Mobil, Gulf (now taken over by Chevron), Texaco, Elf, Agip, Pan Ocean and of course the Nigerian indigenous companies like Dubril, Summit and Consolidated Oil.

From the modest rate of 6000 barrels of oil extracted per day in 1956, we now have an average production of 2 million barrels per day, with all the attendant consequences.

The delicate, fragile and precarious condition of the Niger Delta environment was eloquently revealed in the phase one Report of the Niger Delta Environmental Survey, which contained the following findings³.

“Some of the high priority environmental problems includes silting, incursion of exotic species (water hyacinth), erosion, flooding and land subsidence. Oil industry related problems generally arise from exploration, development and production activities, oil terminal operation, refining processes, oil transportation, construction and dredging. Such problems include: land degradation, soil fertility loss, agricultural yield decline, shortened fallow, intensive deforestation, bio-diversity depletion, fisheries decline, oil spillage, gas flaring, sewage and water pollution, and other industrial contamination. Oil-related high priority social problems arising from traditional practices and modern industrial activities are strictly non-environmental as such, but nonetheless interface with environmental functions and processes. These include: various forms of oil-related conflicts – community – oil company/conflict – Government/intra/inter community conflicts; decaying social-cultural values and practices, crime, population displacement, poor transportation, housing and infrastructural decay, poverty and unemployment, inadequate compensation and high cost of fuel, among others.”

3. Taken from Dr. Gramaliel Onosode's Paper entitled “Environmental Management and Sustainable Development in the Niger Delta, in Environmental Problems of the Niger Delta, Edited, by Osuntokun, published by Friedrich Ebert Foundation, 2000.

The general disorientation, distortion and disruption which the petroleum industry has introduced into the life of the peoples of the Niger Delta and their environment is openly admitted by the foreign oil companies and their officials.

Thus in a paper presented at a forum on “Community Relations and Sustainable Development” in April, 1997, the Deputy Managing Director of Shell Petroleum Development Company of Nigeria (SPDC), Mr. E.U. Imomoh admitted that the Company’s operations had had grave disruptive effects on the socio-economic life of the peoples of the Niger-Delta. According to him, as a result of the operations of oil companies, which acquire large tracts of land, for their purposes, there was increasing scarcity of farmland.

“Crop yields are dropping, farmers are migrating to marginal land. Increasing numbers of fishermen are catching more collectively than ever before but, crucially, less individually. This coupled with a social infrastructure that is not delivering the services required, high unemployment, a stagnant economy and a rising frustration among oil-producing communities who feel they have not had a fair share of the wealth beneath their land has brought a highly political atmosphere and the oil industry finds itself involved in a whole range of issues whether or not these are a consequence of its activities.”

In an earlier publication the Shell Company in responding to accusations of causing environmental devastation in the Niger Delta, admitted that “there are environmental problems associated with its operations and it is committed to dealing with them, but these problems do not add up to devastation⁴.”

However, what constitutes ‘devastation’ is a matter of objective judgment which shall be made in this paper.

2. Pervasiveness and Impact of the Petroleum Industry

The presence and operations of the petroleum companies is pervasive, invasive and almost suffocating, in the Niger Delta. It controls and curtails the lives and survival options of the peoples of that region.

⁴ The Environment, part of SPDC’s Nigeria Brief Series – 1994.

Luckily, in its vigorous defense against accusations of being an insensitive destroyer of the Niger Delta environment, the SPDC has been compelled to publish statistics of its operations and they are an intimidating confirmation of these very accusations. SPDC (i.e., NNPC, Agip, and Elf joint venture with Shell, the latter being the overwhelmingly dominating partner and sole operator) operates oil mining leases (OMLS) covering an area over 31,000 square kilometers (about half the area of the Niger Delta). It has an extensive network of about 900 producing wells, 6,300 kilometres of oil and gas pipelines (i.e., more than the distance from Lagos to London) about 100 flow station/gas plants, and two main terminals at Forcados and Bonny⁵.

Since the SPDC or Shell produces about 50% of the 2 million barrels of oil daily produced in Nigeria, it can be reasonably assumed that the other 5 international oil conglomerates are jointly using up territory and space, equivalent to that used by Shell. Thus the entire Niger Delta attests unreservedly to a pervasive and ceaseless presence of petroleum operations.

The following table shows the 6 major international oil companies that dominate the Nigerian petroleum industry.

Company	Shareholders	Operators	National ⁶ Production
Shell Petroleum Development Company (SPDC)	NNPC – 55% Shell – 30% Elf – 10% Agip – 5%	Shell	42.0%
Mobil Producing Nigeria	NNPC – 50% Mobil – 42%	Mobil	21.0%
Chevron Nigeria	NNPC – 60% Chevron – 40%	Chevron	19.0%
Nigeria Agip Oil	NNPC – 60% Agip – 40%	Agip	7.5%

⁵ Imomoh and The Environment, *ibid*.

⁶ Source: Human Ecosystems of the Niger Delta, Nick Ashton – Jones with Susi Arnot and Oronto Douglas – A publication of Environmental Rights Action, 1998, p. 136.

Elf Petroleum Nigeria	NNPC _ 60% Elf _ 40%	Elf	2.6%
Texaco Overseas (Nigeria) Petroleum	NNPC _ 60% Texaco - 20% Chevron - 20%	Texaco	1.7%

Although every column shows the NNPC as a major share holder, the truth is that the NNPC is a 'sleeping partner', and the foreign conglomerate is the sole operator in every case.

The causes of adverse environmental impact in the petroleum industry can be summarized as follows⁷.

SEISMIC PROSPECTING ONSHORE

- Surveying and clearing paths for the receiver cables,
- Laying the receiver cables and retrieving them,
- Boring 3 – 6m holes for the seismogelite explosive shots, and
- Detonating the explosives.

DRILLING ONSHORE

- Sealing the drilling site,
- Construction of the 50m derrick,
- Mixing and use of drilling fluids,
- Drilling operations,
- Disposal of drilling wastes,
- Installation of well casing, and
- Generation of industrial wastes.

OIL PRODUCTION

- Provision of access to sites by land and/or water
- Maintenance of a well head,
- Flow lines,
- Separation of oil, water and gas at the flow station,

⁷ Ibid

- Disposal of waste water,
- Disposal of gas, by re-injection, flaring or further processing,
- Transport of processed crude oil by the oil terminal, and generation of industrial wastes.

GAS PROCESSING

- Pipelines,
- Gathering stations and
- Liquefaction plants.

All these phases of petroleum exploration and production have grave environmental effects. In the course of exploration, drill cuttings, drill mud and fluid which are used, contain toxic elements such as barites and bentonic clays that retard and stunt the growth of flora and fauna and other renewable resources. Ground water is equally polluted by such materials in addition, to spills from storage tanks, pipelines, abandoned wells, etc.

These and other facts led a group of researchers to the conclusion that: the oil industry has a significantly adverse environmental impact upon the human environment of the Niger Delta. It's activities not only exacerbate other environmental problems but create unique problems which are worse than they need be because the industry as a whole is corrupt and careless and clearly does not operate to the standards which are exacted elsewhere in the world.⁸

In terms of costs and benefits, the great majority of the local people bear all the environmental costs and receive no economic benefits. When the oil reserves have been exhausted in 29 years the human environment will have been unnecessarily degraded and the local people will be worse off than they would have been had there been no oil industry. The primary beneficiaries will be the shareholders of the oil companies, the highly paid technical and managerial staff and, most of all, the plethora of corrupt officials, politicians and military personnel. The wealth generated by the oil industry which has been concentrated in very few hands criminalized the political life of the state to a degree where civil society is collapsing.

⁸ Report in Human Ecosystems of the Niger Delta, p. 149

In 1995, the World Bank in its Report identified nine specific problems associated with the activities of oil companies in Nigeria, particularly, canalization⁹ as follows:

- A destruction of fishing grounds;
- Changes in soil salinity with negative effects on forest vegetation;
- Changes in water flow patterns, disturbing patterns of erosion and sediment deposition;
- Dredging temporarily increases muddiness and reduces the water's oxygen content - this harms fish stocks;
- During the rainy season dredging spoils can erode, making water muddy and sometimes poisonous;
- A short-term increase in the biochemical oxygen demand because of dredging material and waste from houseboats;
- Reduced farm yields because of toxic substances in the dredging spoil;
- Reduced farm yields because of flooding; and destruction of mangrove and fresh water swamp forests.

As a result of increasing domestic, unrest, particularly MOSOP activism and international outcry, the official supervisor of the petroleum industry, the Department of Petroleum Resources (DPR) of the Ministry of Petroleum Resources, reluctantly issued detailed rules for petroleum operations entitled, Environmental Guidelines and Standards for the Petroleum Industry in Nigeria in 1991. At that late stage, the Government Agency finally realized, in their own words that:

“The continued development of the oil industry in Nigeria, has revealed a need to plan, protect and enhance prudently the environmental resources in the areas of its operation for a better environment for man.

Studies in the country have indicated that subtle changes, occurring in our aquatic and terrestrial ecosystems correlate with petroleum activities and that cultural and historical resources are also affected. These need to be protected and

⁹ Ibid., pp. 150-1.

preserved. It is therefore necessary to have a government programme that attempts to restore and/or clean up the environment to an acceptable level. Government must also control new installations or projects that may degrade the environment.”

3. **Petroleum Production and Environmental Degradation**

1. Pollution

The Federal Environmental Protection Agency (FEPA) Decree¹⁰ defines pollution as “man-made or man-aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to that environment beyond acceptable limits”¹¹. The earlier definition given by the United Nations Group of Experts on Scientific Aspects of Marine Pollution (GESMP) in 1974 is more comprehensive, although the over all meaning is similar.

“Pollution is the introduction by man, directly or indirectly, of substance or energy into the marine environment (including estuaries) resulting in such deleterious effects as

- harm to living resources
- hazard to human health
- hinderances to marine activities including fishing
- impairment of use of sea water and
- reduction of amenities.

As one Writer has correctly observed, it is obvious from this definition that “impact on the environment” per se is not the issue, but the “impact that causes deterious effects”¹². Similarly, it can also be said with regard to the definition of pollution in the FEPA Decree, that it is not merely the alteration of then quality of the

¹⁰ Decree No. 58 of 1988.

¹¹ See section 38.

¹² See E.C. Odogwu “Economic and Social Impacts of Environmental Regulations on the Petroleum Industry in Nigeria”, in The Petroleum Industry and the Nigerian Environment (1981) – A book of seminar proceedings, p. 49.

environment that is of significance, but only such alteration “that is detrimental to the environment”.

Oil production activities are the major source and cause of pollution in the oil producing communities.

The detrimental effect or indeed the devastating consequences of pollution on the environment are well known, to the oil industry, and all those concerned with it or are affected by it. The major cause of pollution arising from oil production operations are oil spills and these could themselves arise from several causes including (i) blow outs, (ii) equipment failure, (iii) operator/maintenance failure, (iv) sabotage, (v) sand cut (erosion) and of course (vi) accidents.¹³

Apart from oil spills which is a peculiar form of pollution associated with the oil industry, the normal operations of the machines and engines used in the production, refining and transportation/transmission of oil, pollute the environment in common with other industries. Thus the air is adversely affected by emissions from turbines, engines, gas sweetening and sulphur recovery plants and surface water can be polluted from discharges of saline produced water oil and floating solids, whilst ground water can be contaminated by saline stored in unlined pits, improperly abandoned wells and improperly designed and hazardous waste land fills.¹⁴

The victim, usually at the receiving end of such environmental pollution is the oil producing community.

When a serious oil spillage occurs, the land covered by the spillage is rendered not only useless for gainful activity, e.g. farming, but is actually dangerous to the health and lives of all living things. When streams and rivers are also polluted, that means the elimination of fishing activities. Thus whole communities are not merely deprived of their means of livelihood but are also confronted with the danger of hunger and starvation. In some cases, whole villages could be overwhelmed with oil pools, rendering the people homeless and displaced. Periodic over flow of crude oil in the Niger Delta area of oil operations result in the destruction of thousands of hectares of

¹³ See Soga A Awobajo, "An Analysis of Oil Spill Incidents in Nigeria. 1976 - 1980" in The Petroleum Industry and the Nigerian Environment. Op.cit, p.57 at 59.

¹⁴ See Odogwu, Ibid, p. 50.

mangrove swamps, pollution of rivers and streams, and the elimination of marine creatures, like fishes, crabs, mudskippers, Oysters Shell fishes etc.¹⁵

An expert has correctly summarized the effects of pollution in the following terms:

"The nation has been treated to reports of deaths and destruction of property. While villages have been reported to have been evacuated and their population rendered homeless; sea life has been destroyed, good drinking water polluted; peoples standard of living had fallen as their sources of income have been destroyed."¹⁶

One of the most devastating forms of pollution, is of course pollution by gas flaring. Before the NLNG gas plant went into production in October 1999, 95% of the gas produced along with oil, known as associated gas, was flared after separation from the oil. In volume this came to two billion standard cubic feet of gas, which was flared into the Nigerian environment everyday.¹⁷ Apart of the enormous economic loss this represents to the Nation, the cost in the degradation of the environment and to the health of the people of the oil communities is incalculable. Unburnt carbon is transported into their homes and working areas, all vegetation around is destroyed, the soil is rendered completely infertile and the tremendous heat creates unceasing hardship and discomfort.

Shell Producing and Development Company, the greatest culprit in this regard has reluctantly admitted that "flaring wastes a valuable resource and is environmentally damaging"¹⁸ According to Shell, the energy available from Nigeria's flared gas is prodigious and is equivalent to one quarter of France's gas requirements.

As some experts have noted, flaring in Nigeria contributes a measurable

¹⁵ See the Book of Proceedings Petroleum Industry and the Nigerian Environment, for papers scientifically describing the effects of oil pollution.

¹⁶ F.O. Mc Oliver "Legislating Environmental Protection; cost Benefit Analysis, "in The Petroleum Industry Op.Cit. P. 43

¹⁷ See G.E. Omene (former Deputy Managing Director, Shell Petroleum Development Company) in The Nigerian oil and Gas Industry (The Shell Experience). NIIA 27/2/97. See also The Environment, Nigeria Brief No. 2, by the SPDC in 1995

¹⁸ See Harnessing gas, a briefing document produced by shell in 1996

percentage of the world's total emission of green house gases.¹⁹

The greatest cause of pollution is of course oil spills. The frequency of oil spills in Nigeria has increased tremendously in recent years. In a recent study, the following revealing statistics were given²⁰.

"According to the official estimates of the Nigerian National Petroleum Corporation (NNPC), based on the quantities reported by the operating companies, approximately 2,300,000 cubic meters of oil are spilled in 300 separate incidents annually. It can be safely assumed that, due to under-reporting, the real figure is substantially higher: conservative estimates place it at up to ten times higher.²¹ Statistics from the Department of Petroleum Resources indicate that between 1976 and 1996 a total of 4,835 incidents resulted in the spillage of at least 2,446,322 barrels (102.7 million U.S. gallons), of which an estimated 1, 896,930 barrels (79.7 million U.S. gallons; 77 percent) were lost to the environment. Another calculation, based on oil industry sources, estimates that more than 1.07 million barrels (45 million U.S. gallons) of oil were spilled in Nigeria from 1960 to 1997. Nigeria's largest spill was an offshore well blowout in January 1980, when at least 200,000 barrels of oil (8.4 million U.S. gallons), according to oil industry sources, spewed into the Atlantic Ocean from a Texaco facility and destroyed 340 hectares of mangroves. DPR estimates were that more than 400,000 barrels (16.8 million U.S.gallons) were spilled in this incident. Mangrove forest is particularly vulnerable to oil spills, because the soil soaks up the oil like a sponge and re-releases it every rainy season.

Two serious spills took place in early 1998. On January 12, 1998, a major spill of more than 40,000 barrels of crude Oil (1.7 million U.S. gallons) leaked from the pipeline linking Mobil's Idoho platform with its Qua Iboe on shore terminal in Akwa Ibom State. Mobil estimated that more than 90 per cent

¹⁹ See *The Price of Oil* (1999) Op. Cit, P. 72

²⁰ Ibid, PP. 59-60

²¹ Moffat and Linden, "Perception and Reality," p. 532.

of the oil had dispersed or evaporated naturally, though the spill travelled "hundreds of kilometers farther than expected," and some 500 barrels (21,000 U.S. gallons) washed ashore. By the end of February 1998, about 14,000 claims for compensation had been submitted from individuals or groups, totaling an estimated U.S.\$100 million."

The September 1999 oil spillage disaster in Ekakpramre village, near Ughelli in Delta State, not only destroyed rivers and a wide expanse of agricultural lands, but has rendered the people in many villages homeless and created a new surge of displaced persons in the Niger Delta.

According to the accounts of the leaders of the affected communities, aquatic life was destroyed wells and fish ponds were polluted and farmlands completely covered by the spillage. Altogether 500 hectares of land spanning 6 communities in Ughelli South Local Government area were destroyed.

It is obvious that the oil field practice of oil companies operating in Nigeria, is well below the minimum international standard, and that this low standard of operations, and the aging and ill maintained equipment, pipes etc. of the oil companies, rather than sabotage, are largely responsible for the oil spillage.

Dr. J. Nwankwo, a chemical analyst and former deputy head of the Department of Petroleum Affairs (DPR) explained the long term catastrophic effects of oil pollutions thus:

"Sludge blankets containing organic solids will undergo progressive decomposition resulting in oxygen depletion and the production of noxious gases. The addition of heat to surface waters may have deleterious effects. A temperature increase may cause a decrease in the waste assimilative capacity of surface waters, by depletion of dissolved oxygen and aerobic bacteria.

Some heavy metals at concentrations beyond tolerable limits have been implicated in some metabolic malfunctions in humans. These metals viz: cadmium, chromium, mercury, and lead are contained in refinery effluents. They can be taken up, either directly by drinking

untreated water or indirectly by eating contaminated marine organisms, the so-called bioaccumulation process. Fish, for example, is able to store up mercury in its brain without metabolizing the metal. Man in turn could eat such contaminated fish as happened in Japan – the Minamata disease.

In the case of oil spills there could be serious damages to marine life and vast destruction of the environment. The most serious aspect of oil pollution is the possibility of the contamination of rivers and other inland waters that serve as sources of drinking water. There have been many incidents in this country where drinking water supplies were contaminated by oil. Heavy contamination of water bodies by oil will cause the death of fish directly or more probably, indirectly by interference with food or oxygen supplies. For example, after the Funiwa-5 oil well blowout in January 1980, fish were reported dead and mangrove trees in the impacted areas have since died. The ecological impacts of spilled oil are well documented, but there is a paucity of data in the impact of oil spills in tropical marine environments. Of particular interest is the impact of saline discharges on fresh water organisms, in view of the current methods being used by some oil companies in disposing produced formation water in fresh water environments. Introduction of oil-field brine into water aquifers or nearby streams has been shown to eliminate their use as sources of water of good quality. The question is what sort of ecological effects will result when oil-field brine is discharged into fresh water environment?”²²

In a conference of scientists and experts on the Niger Delta environment held in 1999, one of the participants gave a detailed account of the sources of pollution, the types of pollution and the effects of pollution, brought about by petroleum operations in the Niger Delta.

²² “Problems of Environmental Pollution and Control in the Nigerian Petroleum Industry”, in The Petroleum Industry and the Nigerian Environment Op. Cit, p. 102.

The account of the professional scientist²³ is so compelling that it is necessary to quote him in great detail.

“Gas flaring is another major cause of the environmental degradation of the Niger Delta. Gas is a by product of crude oil but in Nigeria about 80 per cent of the gas associated with oil exploration is flared. It is estimated that two billion standard feet of gas is flared in Nigeria per day which is enough to provide electricity for the whole of West Africa. Gas flaring means the release of huge quantities of carbon dioxide into the atmosphere. This causes acid rain and also contributes to global warming. The flame from the flaring itself destroys crops and when it is put off, very thick smoke emanates which causes air pollution.

There is also the pollutive impact of the incidents of blowouts and oil spillage. This is a very rampant feature of oil exploration and production in Nigeria. In a period of four years, from 1976 to 1980, about 800 incidents of oil spillage were reported, and from 1980 to 1990 about 2,000 incidents occurred. From 1990 to 1995 about 700 other cases of spillage were said to have occurred. In all, from 1976 to 1995 there were more than 3,500 incidents of oil spillage resulting in the discharge of more than 2 million barrels of crude oil into the land, swamps and offshore environments. This figure is huge by any standard and the impact of this on the environment and the rural economy of the people of the Niger Delta has been devastating. To appreciate the deleterious impact of oil spillage it would be instructive to consider some specific examples of the incidents of spillage in the Niger Delta.

One of the most celebrated cases of oil spillage in the Niger Delta was the Texaco's Funiwa No. 5 oil blow out which occurred on 17 January, 1980. The spillage went on for the thirteen days until it burst into flames. About 250,000 barrels of oil was discharged, polluting and devastating everything on its track. Four villages became uninhabitable and the Sagama river became fouled excessively with fish and other marine life destroyed. Additionally, 350

²³ David Aworawo, “The Impact of Environmental Degradation on the Rural Economy of the Niger Delta” - Osuntokun, *Op. Cit.*, pp. 151 - 152

hectares of mangrove was left dead and for a long time the people who inhabited the area around the fish town of Funiwa subsisted on food and water provided by the Nigerian National Petroleum Company in the form of relief. This is just one example and as has been noted some 3500 of such incidents occurred from 1976 to 1995.”

Perhaps, the most disturbing and annoying type of pollution is pollution by gas flaring, because it was avoidable. It was a policy deliberately embarked upon by the oil companies and their Federal Partners because it was cheaper to do so on the short run, regardless of the grave environmental consequences of that policy. It is admitted, even by Shell that the Nigerian, particularly the Niger Delta environment, has been and is being subjected to the most intense bombardment by gas flaring in the whole world. Shell admits this fact, but prefers unacceptable excuses as usual²⁴.

“Nigeria produces almost two million barrels of oil a day from its oil fields in the Niger Delta area. Most of the oil comes from reservoirs containing gas, which is produced with the oil. This associated gas is separated from the oil at flowstations and more than 95 per cent of it is flared. Currently a total of some two million standard cubic feet per day (scf/d), which is estimated to be about a quarter of the gas the world flares and vents.

The energy available from Nigeria’s flared gas is prodigious, equivalent to one quarter of France’s gas requirements.

The company recognizes that flaring wastes a valuable resource and is environmentally damaging. It aims to stop unnecessary flaring as soon as possible through a series of projects to harness or conserve this gas.

Several gas gathering and conservation projects are already underway in response to emerging markets while other plans await new markets.

The company is committed to reduce gas flaring as soon as is feasible to the minimum needed to maintain safe operations. But why

²⁴ See SPDC Publication, Harnessing Gas 1996, 0. 2

are solutions being found only now? Why has Nigeria been at the crux of the debate about Nigeria and gas flaring and the answers, which continue to have a major impact on associated gas development today, are rooted in history, economics and geography.”

This subtle reference to history, economics and geography is a reference to the negative role of the Federal Government in the whole gas flaring tragedy.

The comparative statistics of gas flaring world wide, shows that Nigeria is by far the greatest victim of this crime. A 1995 World Bank Report revealed the following disturbing information²⁵

Nigeria	76%
Saudi Arabia	20%
Iran	19%
Mexico	5%
Britain	4.3%
Algeria	4%
Ex-USSR	1.5%
USA	0.6%
The Netherlands	0%

This clearly shows that whilst 76% of all the gas (including non-associated gas) produced in petroleum operations in Nigeria is flared, in The Netherlands, the home state of Shell, flaring is zero. In the U.S.A., the percentage is 0.6%, U.K. 4.3%, Iran 19%, Saudi Arabia, 20%. The conclusion is obvious, that whilst pollution is prohibited in the Western developed world, it is permissible in the underdeveloped countries where human lives are less valuable.

On the effect of gas flaring, another scientist and environmentalist notes as follows:²⁶

“The gas flaring in the Niger Delta area has caused untold environmental devastation and health hazards. The emission of gaseous industrial pollutants such as sulphur oxides, nitrogen oxides, carbon monoxides and carbon dioxides gives one

²⁵ Taken from Human Ecosystems of the Niger Delta, Op. Cit p. 144

²⁶ Segun Ogunlaye, “Pollution Environmental Malediction in the Niger Delta” in Osuntokun, Op.Cit p. 38.

great concern. The burning of fossil fuels is mainly emitted as the gas sulphur dioxide, which is toxic. Petroleum products are hydrocarbons and the products of hydrocarbon combustion are water and carbon dioxide. These two substances are Green House gases, which cause increase in temperature of the environment. Acids are also formed by various hydrocarbons that are released especially carbon acid which substantially impairs the richness of the Niger Delta land. Acid rain has been reported in the area of as a result of the reaction of sulphur dioxide with rain water to give dilute sulphuric acid whose corrosive action is well known. Farmlands and crops have been destroyed as a result of incidence of acid rain.”

Professor S. Okecha, another expert in environmental scientist summarizes the impact of gas flaring on the Niger Delta as follows as follows:²⁷

- Atmospheric pollution by combustion contaminants.
- Thermal pollution of air, water and land.
- Destruction of vegetation.
- Destruction of wildlife.
- Damage of buildings and other structures by acid rain.
- Ceaseless light glare night and day, which oil-producing communities find nauseating.
- Loss of sources of livelihood.
- Severe discomfort and misery caused when wind carries fumes and odours to different locations.
- Human illness.
- Enforced modification of residential buildings to screen out some of the glare.
- Enforced re-location of abode to a place out of sight of the glare.

Gas flaring not only has grave health and agricultural implications, but is also a colossal waste of valuable resources. On the environmental side, the consequences are in fact world wide. This was extensively noted by a group of scientists at a conference on the Niger Delta Environment who estimated that about 3 billion barrels of the total petroleum output (19 billion barrels) had been

²⁷ “Environmental Problems of the Niger Delta and their Consequences”, in Osuntokun Op. Cit., p. 53-4.

flared away, resulting in a cost of about 20% of our oil revenue. This flared oil is made up of 5000 billion cubic metres of gases been flared. The cost of this money terms is incalculable. Gas flaring produces high amounts of carbondioxide into the atmosphere. Continuing the scientists disclosed that carbon dioxide is one of the green house gases, whose concentration has been increasing over the years, thereby threatening climate change, a concept called global warming. “This has led to the melting of polar ice and subsequent rise in sea level which will eventually lead to frequent flooding of some of the world’s large coastal cities with major effects on agriculture and human habitat.”²⁸

From what has been stated so far, it can now be asserted with every accuracy that the effect of petroleum operations in the Niger Delta has not only been devastating to that region, it has in fact been catastrophic.

4. Federal Government/Petroleum Conglomerate Orientation

As will be demonstrated later, the extremely devastating effect of petroleum production operations being experienced in the Niger Delta are not inevitable. Indeed, and on the contrary, a well managed oil field can have a much less damaging impact than a large mono-crop plantation. The major cause of environmental degradation and devastation associated with petroleum production in Nigeria, is the orientation of both the remote and absent Federal Government which has usurped the right of the Niger Delta to its petroleum resources and its partners, the foreign oil companies who believe in fast cheap and crude methods of production. This orientation of quick, cheap, crude exploitation was accurately summarized in a research report in the following terms:²⁹

“Nigeria has an undemocratic and corrupt political process. The willingness with which mining companies tend to exploit this process, springs from the historical entrenched culture of the Western oil companies in their relationships

²⁸ See Haruna Musa, Dr. R.J. Kolo and Dr. S.L. Lamai, “An Overview of the Petroleum Industry and Associated Environmental Issues: The case of Niger Delta of Nigeria” in Osuntokun Op. Cit p. 229 – 230.

²⁹ Human Ecosystems of the Niger Delta, ibid, Nick Ashton – Jones, pp. 130-1

with third world countries. **This oil industry culture is founded on five assumptions:**

- That profit maximization is the only basis upon which a company can be run, so that any expenditure beyond what is required to get out the oil is resisted;
- That a “deal” can be made with governments only, regardless of the government’s legality or morality, and regardless also of the wishes or needs of the Local People;
- That once an arrangement has been made with a government; a mining company can be do what it likes – in fact, to act as if it is a government agency;
- That the “market” (i.e., the industrialized world) has a right to have the resources it wants, at the lowest possible price, and regardless of the costs to the Local People who are obliged to play host to mining companies; and
- That “we”, the mining companies, know best and are acting responsibly.

Generally, neither the companies nor the governments with whom they associate, (from both the first and the third worlds) are willing to accept any divergence from this culture which is re-enforced with a mixture of cynical public relations and intimidation. It is fair to say that the adverse impacts of mining upon the lives of host communities (and, for that matter, the extravagant use of mineral resources by the industrialized world) arises more from this immoral culture (this wickedness) than from anything else. Thus, until there is a culture shift by mining companies towards an acceptance of some of the moral responsibility for the injustices that the host communities suffer, mining will continue to be an activity that is at best unwelcomed and in most cases feared by Local People. This fear is especially the case in countries where governments are able to act with impunity against the interests of their own citizens.”

Thus the joint language of the Federal Government and the Oil Companies, is money money and more money, faster from the dying goose that lays the golden

egg. Until the late eighties, there was not a single Government policy document which considered the environmental impact of the petroleum extraction process. The sole objective of the Federal Government was increased production and therefore higher income from the Niger Delta's oil.

This attitude is well illustrated by an NNPC publication in 1992 entitled The Nigerian Oil Industry: The Babangida Era in which it is stated that:³⁰

The administration's major policy position in the upstream sector is to increase Nigeria's reserves of crude oil from 16 billion barrels in 1985 to about 25 billion barrels in 1995. The rationale for this policy objective is quite clear in the administration's thinking. As President Babangida himself explained,

The prime place of petroleum in the economy of Nigeria has for long remained unchallenged. But we must also appreciate that, to maintain our capacity, existing reserves must continue to be managed properly and replaced as they are depleted by continuous production. The effort to look for new petroleum reserves in the country is imperative and unrelenting.

A little later, the officials revealed the contents of the Federal Government's draft petroleum policy as:

- To increase the oil reserves base in the country through vigorous exploration;
- Judicious exploitation of oil reserves to ensure long term benefit;
- Increase private sector participation (indigenous and foreign) in all facets of the industry through attractive fiscal measures;
- Acquisition of reasonable market shares for the various types of hydrocarbons and their derivatives;
- Expansion and utilization of natural gas, thus freeing some refined product for export.

³⁰ At p. 74

No where is there a single reference to the protection of the environment and the interest of the producing communities.

In crowing about its achievements in the petroleum industry during the period August 1985 – January 1993, the NNPC listed 22 “achievements”. Only one (successful experiment on a gas powered car) had implications for a cleaner environment, and it was never implemented. The remaining 21 were all related to squeezing more dollars from the polluted Niger Delta. The publication is reproduced immediately below.

- Signing of Memorandum of Understanding (MOU)
- Signing Of Joint Operating Agreement (JOA)
- Increase in Exploration Activities
- Increase in known oil reserves by 4 billion barrels
- Admission of Indigenous Companies to invest in exploration
- Abolition of Third Party Marketing of Nigerian Crude
- Investment in Overseas refineries
- Expansion of refining capacity from 300,000 – 445,000 barrels per day
- Commissioning of Port Harcourt Export Refinery
- Accelerated Work on the LGN Project
- Introduction of Butanisation Programme
- Securing of Overseas Markets for Nigeria’s LGN
- Acquisition of 4 Vessels for LGN Transportation
- Development of Oso Condensate Field
- Initiating Work on New Products Pipelines linking all refineries in the country
- Reduction of subsidy on Petroleum Products
- Completion of the Escravos-to-Lagos Gas Pipeline
- Successful Experiment on the Gas-Powered car
- Completion of Phase 1 of the Petrochemicals programme
- Completion of National Oil Policy
- Reorganization of NNPC into 12 Subsidiaries
- Commercialization³¹

³¹ Nigerian Petroleum Industry, p. 80.

The Federal Government's Partners have also always responded appropriately. The reason why the Nigerian environment and atmosphere has to be darkened with soot and poisonous gases from flaring activities, is that it would be too expensive to process it for use. The explanation of Shell or SPDC is basically, that the Nigerian environment is not worth spending the extra dollars on in order to protect it.³²

“When most of SPDC's production facilities were built there was no significant market for Nigerian gas nationally or internationally. As a result, no system was built to collect associated gas which is produced along with the oil, as a by-product.

There is still only limited demand in Nigeria because of reduced industrial activity and because the low domestic oil prices make gas an unattractive alternative energy source given the high costs of collection and treatment.

Despite this, SPDC is the major Nigerian supplier of commercial gas accounting for 95 per cent of demand – some 400 million standard cubic feet a day (scf/d) (11.4 million cubic metres a day). Most of this gas is unassociated, produced from reservoirs containing only gas. This is high pressure gas and less expensive to harness for industry, whereas associated gas is usually at low pressure and not only needs treatment and compression, but also requires an extensive collection network. Consequently, almost all SPDC's associated gas is flared – some 1,000 million scf/d (28.6 million m³/d).

Projects to conserve gas currently being flared are complex and expensive. They will take years to develop and depend on the creation of markets for gas. There are no instant solutions.

It must be recognized that allowance for these costs will need to be made in oil operating agreements and fiscal and gas pricing policies. One of

³² The Environment, an SPDC Publication, p.8 (1994).

the largest constraints is the national energy policy which favours the use of oil energy.”

The crass materialism and hostility or at least indifference to the environment of the Niger Delta exhibited by the Federal Government and major oil companies, has been the subject matter of considerable comment and criticism by experts on the environment and other matters concerning the Niger Delta.

Thus Dr. G.O. Onosode, Chairman of the Niger Delta Environmental Survey, has decried the attitude of the Federal Government and its Oil Company Partners in the following statement.³³

Despite the enormity of its natural and human resources base, however, the region's great potential for sustainable development has remained unfulfilled. Additionally, its future is increasingly threatened by acute environmental degradation and fast deteriorating socio-economic condition and conflict ineffectively addressed by past and present national policies and actions. Thus, although crude oil of some two (2) mbd and currently indeterminate volume of gas from the Delta account for over 90% of Nigeria's total export earnings, quality of life in host communities has continued to be in extremely parlous condition. Indeed, over four decades of exploration and development has brought very little benefit to that enclave of disaster. Rather, resource-use decisions and environmental management policies have largely been driven by increasing interest in accelerated hydro-carbon production for maximum petro-dollar accumulation and dissipation, relative to low national commitment to effective environmental protection and management as well as socio-economic and human resource development. In consequence, pervasive poverty and acute deprivation, poor health conditions, stagnant agricultural activity, limited urban opportunities, widespread paucity and dilapidation of infrastructure, scanty social amenities, squalid urban conditions and tenuous property rights, among others, continuously characterize the region's social environment.

In 1992, when the Nigerian state, oil companies and a majority of Nigerians were still least concerned about the pervasive deleterious effects of oil exploration and production on environment and social life in the delta, a perceptive leader [Ken Saro Wiwa (1992), Genocide in Nigeria] portrayed the prevailing grim situation as, “an

³³ Environmental Management and Sustainable Development in the Niger Delta, in Osuntokun, Op. Cit. p..12.

ecological war in which no blood is (apparently) spilled, no bones are (seemingly) broken, no one is (assumed) maimed; but men, women and children die, flora, fauna and fish perish; air, soil and water are poisoned; and finally, the land and its inhabitants die.”

Another expert on the environment of the Niger Delta, Innocent Ojefia, made the following comment in his paper at the 1999 Conference on “Environmental Problems of the Niger Delta”³⁴

“From all indications neither the Nigerian State nor the various multinational oil companies have shown any serious concern towards the environmental question within the mineral oil producing communities of the Niger Delta. Primitive accumulation is employed in the exploitation of mineral oil, force is readily deployed by the oil prospecting companies through the State. Though Hutchful’s position is that violence in the peripheral state is inherent in its role in organizing counter balancing factors to the fall in the rate of profit. But with mineral oil production, the aim of the Nigerian State is not solely to counter balance the fall in rate profit, but to protect and preserve the only means of wealth available to the ruling elite. Thus the state intervenes violently whenever any question threatens the prospecting and production of mineral oil. The aim of the state always is to protect the multi-national oil corporations in order to facilitate the production of surplus for appropriation by those in positions of the state power.

Hence, even with the rising environmental consciousness among the people of the Niger Delta and the international outrage, the Nigerian State and Shell, remain unrepentant and belligerent. At the same time consciousness and resentment continues to rise in the oil producing communities. We are therefore, looking forward to a more bizarre and frightening scenario and frightening novelty of the accumulation of terror. And unless something is done, there would be strife and they would be far more catastrophic.”

³⁴ “The Nigerian State and the Environmental Question”, in Osuntokun Op. Cit., p. 270

5. Federal Government Oppressive Legal Regime Over Niger Delta Petroleum Resources

The policy of squeezing maximum production from the Niger Delta at the expense of its environment and future was not an accident or based on ignorance. It is a deliberate policy which has been complemented by a harsh and oppressive petroleum legal regime.

Thus, by the Petroleum Decree (No. 51) of 1969, the Federal Military Government declared that the entire ownership and control of all petroleum resources in, under or upon any lands in Nigeria was vested in itself. Section one spells out in detail, for the avoidance of any doubt, the type of territory covered by this exclusive Federal Government ownership. These are, all lands in Nigeria (including land covered by water), and under Nigerian territorial sea and land forming part of our continental shelf. Ownership of minerals by the Federal Government is, thus, absolute. Not only are individuals on or under whose land minerals are found denied any right to them, so too are mineral producing communities, local government areas and states. What could be the basis and justification for this wholesale expropriation of the properties of peoples, communities and state governments?

It should be noted that the Federal Government's assumption of absolute ownership of all minerals in Nigeria's land and maritime territory was progressive. The claim to absolute and total ownership of all minerals, no matter where found or located only reached its climax in 1971. Thus, by section 140(6) of the 1963 Constitution, all minerals, both solid and oil, found in the continental shelf of a region of Nigeria, belonged exclusively to that region. For the purposes of exploitation of minerals, including mineral oil, the continental shelf of a region was deemed to be a part of that region. But by the off-shore oil Revenue Decree 1971 (No.9 of 1971), the rights of the regions (states) in the minerals in their continental shelves were abrogated, and ownership and title to the territorial waters, continental shelf as well as royalties, rents and other revenues derived from or relating to the exploration, prospecting, or searching for, winning or working of petroleum from the seaward appurtenances of the states became vested in the Federal Government.

This has been repeated in all subsequent constitutions. Thus, in section 40(3) of the 1979 Constitution (repeated in section 44(3) of the 1999 Constitution), it is stated as follows:

“Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oil and natural gas, under or upon the territorial waters and the exclusive economic zone shall rest in the Government of the Federation and shall be managed in such a manner as may be prescribed by the National Assembly”.

The Shagari Government (1979-83) initially ‘conceded’ 1.5 per cent of oil proceeds as against 50 percent in the negotiated Independence and Republican Constitutions, to the oil producing states. Later, this was increased to 3.0 percent by the Babangida Government which established the Oil Mineral Producing Areas Development Commission (OMPADEC) which was the product of the increasing agitation from the exploited people of the devastated oil producing areas. The objectives of OMPADEC are, inter alia as follows:

- “.... To receive and administer the monthly sums from the allocation of the Federation Account in accordance with confirmed ratio of oil production in each state, for the rehabilitation and development of oil mineral producing areas, and for tackling ecological problems that have arisen from the exploration of oil minerals.
- “to determine and identify, through the Commission and the respective oil mineral producing states, the actual oil mineral producing areas and embark on the development of projects properly agreed upon with the local communities of the oil minerals producing areas.
- “to consult with the relevant Federal and State Government authorities on the control and effective methods of tackling the problem of oil pollution and spillages.
- “to liaise with the various oil companies on matters of pollution control.
- “to obtain from the Nigerian National Petroleum Corporation the proper formula for actual oil mineral production of each State, Local Government Area and community and to ensure the fair and equitable distribution of projects, services and employment of personnel in accordance with recognized percentage production.

- “to consult with the Federal Government through the Presidency, the State, Local Governments and oil mineral producing communities regarding projects, services and all other requirements relating to the special fund.
- “to liaise with the oil producing companies regarding the proper number, location and other relevant data regarding oil mineral producing areas and
- “to execute other works and perform such other functions which in the opinion of the Commission is geared towards the development of the oil mineral producing areas”

Only 3.0 per cent of the oil revenue was allocated to OMPADEC. It is conceded, of course, that section 162(2) of the 1999 Constitution makes provision for at least 13 per cent of the proceeds derived from natural resources being paid to the producing states.

However, 13 percent cannot be compared with 50 percent and a proportion of another 30 percent to which mineral producing states were entitled under the 1960 and 1963 Constitutions. Moreover, the so-called 13 percent was paid with effect from January 2000 rather than from 29th May 1999, and the proceeds from off-shore production has been illegally excluded from the 13 per cent.

Even a superficial political analysis of the situation, will reveal that the fate of the mineral resources of the Niger-Delta minorities, particularly the trend from derivation to Federal Government absolutism, is itself a function of majority control of the Federal Government apparatus. In 1960, there were no petroleum resources of any significance. The main income earning exports were cocoa (Yoruba West) groundnuts, cotton, and hides and skin (Hausa/Fulani) and palm oil (Ibo East). Therefore, it was convenient for these majority groups usually in control of the Federal Government to emphasise derivation, hence its strong showing in the 1960/63 Constitutions.

However, by 1967 and certainly by 1969, petroleum, particularly the mineral oil, was becoming the major resource in terms of total income and foreign exchange earnings in the country. It was, therefore, not difficult for the majority groups in the Federal Government to reverse the basis of revenue allocation with regard to petroleum resources from derivation to Federal Government exclusive ownership. They were in control of the Federal Government and their control of the mineral resources by virtue of that fact effectively means that the resources of the Niger-Delta

were being transferred to the majority group in control of the Federal Government at any point in time.

As has already been noted above, when Nigeria attained independence in 1960, the formula for sharing the revenue from mineral resources, recognized the basic principle that the people from whose land the minerals were extracted were the owners of their natural resources. Accordingly, 50 percent of all the proceeds of mineral resources went to the region (state) from which they were extracted. When the military seized power, this recognition of the rights of producing states and their communities was progressively eliminated as the table below shows;

Federal – State Percentage share in Petroleum Proceeds

Years	Producing State	Federal Government	Distribution Pool
1960 – 67	50	20	30
1967 – 69	50	50	-
1969 – 71	45	55	-
1971 – 75	45 minus off-shore proceeds	55 plus off-shore proceeds	-
1975 – 79	20 minus off-shore proceeds	80 plus off-shore proceeds	-
1979 – 81	-	100	-
1982 – 92	1 and half minus off-shore proceeds	98 and half plus off-shore proceed	-
1992 – 99	3% minus off-shore proceeds	97 plus off-shore	-
1999 -	13% minus off-shore proceeds	87 plus off-shore proceeds	-

Even the so-called OMPADEC was a hoax, essentially, a cruel joke on the oil producing states. Figures provided by the first Chairman of OMPADEC, Chief A.K. Horsfall during the three year period he was in office (1992 – 1995) show that the

Commission, going by the 3.0 percent derivation formula was supposed to have received N72 billion. In fact it only received N11 billion. In the period 1995 – 96, when Professor Eric Opa was in office, the Commission received just over 2 billion. By contrast, during the three year period of 1994 – 1997, the Petroleum (Special Trust Fund) (PTF) jocularly referred to as the ‘Northern OMPADEC’ received N346 billion. The following major pieces of legislation, enacted during the period 1969 to 1999, show how oppressive these laws made under rulership of the majority ethnic nationalities in Nigeria deprived and marginalized the minorities who own the petroleum resources of this country.

- i) Petroleum Decree (51) 1969 – expropriated all petroleum resources from the producing states and placed them under total Federal Government ownership.
- ii) Off-shore Oil Revenue Decree (No. 9 of 1971) – all the minerals in the continental shelves of coastal states were expropriated by the Federal Government. In order to fully appreciate the blatantly oppressive nature of this decree on the minority oil producing states and the utter contempt Federal Government has for them, the relevant part of the decree may be reproduced as follows:
“Section 140 (6) of the Constitution of the Federation (which provides that the continental shelf of a State shall be deemed to be part of that State is hereby repealed. Accordingly, the ownership of, and the title to, the territorial waters and the continental shelf shall vest in the Federal Military Government; and all royalties, rents and other revenues derived from or relating to the exploration prospecting or searching for or winning or working of petroleum (as defined in the Petroleum Decree 1969) in the territorial waters and the continental shelf shall accrue to the Federal Military Government.”
- iii) The Land Use Act, 1978 transferred ownership of land from communities to the State Governors without compensation.
- iv) Section 40(3), 42(3) and 44(3) of the 1979, 1989 and 1999 Constitutions respectively, re-state the exclusive Federal Government ownership of the mineral resources of the mineral producing communities.

Although the Oil Pipeline Act 1965, Petroleum Drilling and Production Regulations 1969, and the Petroleum Decree 1969 make provisions for compensation in cases of leakage, spillage, damage to surface rights or their compulsory acquisition thereof, in reality, these communities are left on their own without protection to bargain with the oil companies, who exploit their weak economic and legal positions to extort their consent to paltry compensation for lost land and other natural resources.

The devastating consequences of the Federal Government's illegal expropriation of the resources of the people of the Niger Delta, go beyond environmental degradation. The psychology, personality and social outlook of the people are also dangerously wounded. A scholar in sociology has commented extensively on this latter phenomenon as follows:

“Both for the State and industry, there is a tendency to underplay pervading unjust pattern of resource relation and appropriation by pushing problems that could be linked to inherent unjust structures to the background, ascribing them to inhibiting traditional attitudes and social norms of the people, internal difference and conflicts within, and between communities, without emphasizing community disempowerment, social dislocations and cumulative historical socio-economic stress created by lack of access to resource. For communities, there is a lack of sense of belonging and loss of identity as they have no inputs into resource exploitation activities and the changes taking place within their immediate community. This eliminates altogether any local attachment to oil activities or even commitment to resource conservation and oil facilities protection, creating net adverse negative effects on the productivity of companies and quality of the environment. A person without access to, and control over his or her local milieu (not having deliberately ceded it), would no doubt feel conquered by an external force, more so, if such a resource is bringing great blessings to others while offering them marginal opportunities.

This explains why people recalled with a great deal of resentment the Land Use Decree and the Petroleum Act and the gradual erosion of

the principle of derivation from 100% in the 1950s to a mere 3% in the 1990s. These were seen as instruments and means of changing relations to their surrounding environment which forms an integral part of their historical existence, yet from which they are largely alienated by State rules. Humanistically, a community environment enfolds and engulfs man rather than separates. This is why any form of social and physical separation affects the quality and value of human existence. There is in fact, some fulfillment where people are able to take responsibility for their environment, even for the loss and degradation of natural resources. No wonder in some communities people were emphatic that much more would be gained environmentally and socio-economically through the withdrawal of oil operations because so far what they see are manifestations of unfair structures of relations which support resource outflow”.³⁵

Again, these oppressive measures are not the results of accidents or errors, they are deliberate acts of policy implementation founded in the belief that the owners of the petroleum resources being minorities can be deprived of their resources without any consequences. This is the attitude and mentality that led a senior Federal Permanent Secretary in a memorandum concerning Federal expropriation of the resources of the Niger Delta to make the following Freudian slip, some years ago:

“Given however the small size and population of oil producing areas, it is not cynical to observe that even if the resentments of the oil producing states continued, they cannot threaten the stability of the country, nor affect its continued development”.

To further buttress the fact that the oppression of the Niger Delta by the Federal Government and at times the majority nationalities is a deliberate and long standing phenomenon, reference may be made to the fate of the Niger Delta Development Board. It will be recalled that in its submission to the Willink Commission the Niger Delta Peoples, particularly the Ijaws, made a strong case that their territory was swampy, hostile, difficult, and neglected and that their difficulties were not appreciated

³⁵ Dr. B.A. Choker, “Appraising the Structural Aspect of the Crisis of Community Development and Environmental Degradation in the Niger Delta.” In Osuntokun Op. Cit., pp. 72 - 73

or understood by the majority groups (Ibo in the East and Yoruba in the West) who controlled the Regional Governments at Enugu and Ibadan.

It is common knowledge that inspite of the innumerable reasons put forward by it, the Willink Commission did not recommend the creation of a single new state but rather naively recommend the inclusion of human rights provisions in the 1960 Constitution as a solution to the fear of the minority ethnic groups. On the issue of minorities in the Niger-Delta specifically, the Commission refused to recommend the creation of a new state although it recognized the peculiar problems of that part of the country. It recommend instead the establishment of a special Board by the Federal Government with representatives from the Eastern and Western Regional Governments to deal with the development problems of the area. The relevant portion of the Report states as follows:

“We were impressed, in both the Western and Eastern Regions, with the special position of the people, mainly Ijaw, in the swampy country along the coast between Opobo and the mouth of the Benin River. We were confronted, first, with their own almost universal view that their difficulties were not understood at headquarters in the interior, where those responsible thought of the problems in quite different physical forms from those they assumed in those riverain areas; secondly, with the widespread desire of the Ijaws on either side of the main stream of the Niger to be united. We cannot recommend political arrangements which would unite in one political unit the whole body of Ijaws; we do, however, consider that their belief that their problems are not understood could be largely met without the creation of a separate state which we have rejected for the reasons mentioned elsewhere.

“This is a matter which requires special efforts and the co-operation of the Federal, Eastern and Western Governments; it does not concern one Region only. Not only because the area involves two Regions, but because it is poor, backward and neglected, the whole of Nigeria is concerned. We suggest that there should be a Federal Board appointed to consider the problems of the area of the Niger Delta. In this, we would include the Rivers Province without Ahoada or Port Harcourt and would add the Western Ijaw Division”.

“We suggest that there should be a Chairman and Vice-Chairman appointed by the Federal Government, one representative of the Eastern Region

Government and one of the Western Region Government, preferably Ijaws, together with four representative of the people of the areas, who might conveniently be one from the Western Ijaws and three from the Eastern Ijaws, who would be chosen by local bodies. We think that the members of this Board should appointed for, say, five years in the first place. It should be concerned to direct the development of these areas into channels which would meet their peculiar problems.”³⁶

As is well known, a Niger-Delta Development Authority with headquarters in Port Harcourt, was subsequently set-up. The body achieved nothing because the Federal Government did not give it the funding and powers necessary to do its job.

Typical of the ploy of the majority ethnic groups that control the Federal Government, the Federal Military Government, of General Obasanjo, defeated, the purpose of the Niger-Delta Development Board (NDDDB) in 1976, when a River Basin Authority was constituted for every stream in every nook and corner of the country. These became avenues for greedy politicians to share the annual allocations of these River Basins amongst themselves, without any attempt at disguising their action. At the end, there was no special area anymore. Every area was special. Another dream of the peoples of the Niger-Delta had died.

This point has been effectively made in the following passage from an article by E.T.B.A. Bristol – Alagbariga:³⁷

“On the other hand, while stressing the reasons for the failure of the Board, A.K. Horsfall , the first Chairman and Chief Executive Officer of the Oil Mineral Producing Areas Development Commission (OMPADEC), asserts as follows “... *the Niger Delta Development Board (NDDDB) was established as part of the independence package creating the independent State of Nigeria. The Board was sabotaged by the very persons and political institutions which were given the responsibility to nurture it. Eventually, it was ‘murdered’ in 1976 when ten River Basin Authorities were created and the NDDDB was relegated to the background as a powerless and resource-less organ*”. Similarly, the Commissioner of Administration in the Administrative and Personnel

³⁶ See The Willink Commission Report (1958) p. 94-4.

³⁷ “Oil Companies Partnering the Development of Host Communities”, delivered at a 1999 Conference, p. 8.

Directorate of OMPADEC, G.A. Ogar, has this to say about the NDDB. According to him, “... *it turned out that the creation of the Niger Delta Development Board (NDDDB) following the report of the Willink Commission was a half hearted attempt to scratch the problem on the surface. The Board was given series of instructions, rather than powers, to merely investigate development possibilities, make plans and then to recommend. It had no funds nor powers to execute any thing. From its beginning, it never enjoyed the full co-operation or support of one or another of the governments to which it was to report its findings and from which it should have, naturally, expected to draw patronage. Rather, it received open or sub-terrain political hostility from those who should have fostered its activities. In the end, it was dealt a crippling political blow when in 1976 ten other River Basin Development Authorities were created by the Federal Government and the eleventh, the former NDDDB, now styled Niger Delta River Basin Authority (NDRBA) was reduced in status and in resource compared to the other ten. By its lower funding and grading, it was naturally reduced to a second rate non effective development organ. In the end, the NDDDB which was founded on some good vision but without executive power had been sabotaged and then politically destroyed. Thus, the physical and economic development of the sub-region recommended by WILLINK had been effectively stunted by 1976.* ”

6. **Anti-Pollution Laws**

1. International

There have been many international conventions dealing with pollution in the high seas. Very few of these are relevant to the Niger Delta specifically. Perhaps, the most relevant from Nigeria's point of view, was the International Convention for the Prevention of Pollution at sea, which was held in London in 1954. It has been amended from time to time. The objective of the Convention was to deal with the problem of pollution at sea, within 50 miles of land. Basically it prohibits oil tankers from discharging oil or oily mixture of a certain concentration, 50 miles from any coast.

Nigeria implemented this convention by promulgating the Oil on Navigable Waters Act, 1968. Under the Act certain seas, including Nigerian seas are designated prohibited zones into which vessels and facilities are forbidden from discharging crude oil, fuel oil, lubricating oil, heavy diesel oil or any mixture containing not less than one hundred per cent parts of oil.

Offences under the Act include:

- a) failing to equip Nigerian ships with approved pollution prevention equipment.
- b) Nigerian ships failing to keep records of all discharges, leakages and escapes.
- c) Failing to report the discharge of oil or oil mixtures into Nigerian waters.³⁸

However, various provisions limit the effectiveness of the Act. For example, it is a good defense to a charge under the Act, that the culprit discharged the oil for the purpose of securing the safety of the vessel³⁹ or in order to save lives. It is also a good defense that the oil escaped as a result of damage to the vessel⁴⁰. Several other exceptions are contained in the Act. The Act applies only to Nigerian ships. The exclusion of foreign ships from its scope, is a major limitation.

Other International Conventions in pollution at sea include, (i) International Convention on Civil Liability for Oil Pollution Damage, (1971), (ii) Convention on the Prevention of Marine Pollution by Dumping of Waste and other matters (1972).

The first convention and its amendments are intended to supplement the 1969 Convention on Civil Liability for Oil Pollution Damage. The 1976 Convention establishes an oil pollution compensation fund for any victims of oil pollution, who did not receive full compensation under the terms of the 1969 convention⁴¹.

³⁸ See Sections 3, 5, 7 and 12, See Yinka Omorogbe “Regulation of Oil Industry Pollution in Nigeria” in New Frontiers in Law (1993) p. 147

³⁹ S. 4.

⁴⁰ Ibid

⁴¹ See generally, O.A. Akanle, “Pollution Control Regulation in the Nigerian Oil Industry,” NIIA publication 1991, and Olusoga Olapade, “Reflections on some International Treaties on Oil Pollution”, in Finance and

The Kyoto Protocol

As a follow up to the Rio de Janeiro Conference on climate change, in 1992, a Conference was held in Berlin in 1995. This was followed up by a legally binding Protocol concluded in Kyoto Japan in December 1997. The major objective of the Kyoto Protocol was to cut down the emission of green house gases in order to slow down earth warming.

Although developing countries were not required to undertake specific a reduction of their emission levels to specific minimum levels, like the developed countries, they, the developing countries were however bound to prepare national inventories of green house gases, and to implement national programmes to reduce global warming.⁴²

Although some legal and institutional frameworks and policies have been established, in this country, Nigeria is yet to commence the actual gas reduction programmes. Thus what have been set up include the Federal Environmental Protection Agency, a National Committee on Climate Change, a Climate Change Office and a National policy on the environment.

Although the Federal Government is fond of issuing comforting statements like, “strategies are in the process of being adopted” and “actions that are already being taken which – directly or indirectly will have effect of reducing Nigeria’s emissions”, our fulfillment of our obligations under the Kyoto Protocol is still at the planning rather than operational stage.

Thus harmful emissions from gas flaring (in the petroleum industry) bush burning, motor vehicles, cooking fuel, continue unchecked, whilst these strategies for their reduction remain on the drawing board.

What emerges therefore is clear lack of commitment to our international obligations to control of pollution whether by oil or by gas flaring. Moreover, domestic legislation on pollution is even weaker than our commitments under international conventions.

⁴² Investment Law Vol 5, No. 1, 2001, p.59
See Generally Margaret T. Okorodudu Fubara, Law Environmental Protection Caltop. Publications, 1998, pp. 547-52

2. Domestic Laws

Much has been written about Nigerian domestic laws intended to control pollution caused by the petroleum industry and all the Writers have reached one conclusion, namely, gross inadequacy of such laws, almost amounting to irrelevance to the problem.

The DPR itself, lists the pollution control regulations in the oil and gas industry as follows:

- i) The Petroleum (Drilling and Production) Regulations, 1969 (Section 35 and 36)
- ii) The Mineral Oil Safety Regulations (1963), part III Section 7 and part IV, Sections 14 and 45;
- iii) The Petroleum Regulations, 1967,
- iv) The Oil in Navigable Waters Act (1968) and its Regulations,
- v) The Oil Pipeline Ordinance, Cap 145 of 1956 as amended by the Oil Pipeline Act, 1965, section 17(3) and
- vi) The Petroleum Refining Regulations, 1974, Section, 43.⁴³

Most experts in Petroleum Law agree with this list, but some add the 1988 Federal Environmental Protection Agency Act⁴⁴. In addition to the DPR list, O. Omorogbe adds the following: (i) The oil terminal Dues Act, 1969 and the Associated Gas Reinjection Decree, 1979.⁴⁵ In her analysis of the various Laws, Omorogbe discusses identical; or similar sections of the various Acts, Decrees and Regulations together. This approach is clearly preferable to any other because it avoids repetition and promotes lucid analysis. This is followed in this paper.

According to Section 8 (i) (b) (iii) of the Petroleum Act, 1969:

The Minister may make regulations:

⁴³ See The D.P.R.'s publication, Environmental Guideliness and Standards for the Petroleum Industry in Nigeria (1991), p. 1.,

⁴⁴ CAP. 131, 1990 Laws of the Federation.

⁴⁵ Oluyinka Omorogbe, "Regulation of Oil Industry Pollution in Nigeria". in New Frontiers in Law. Ed. By Epiphany Azinge, Olez Publishers, 1993, p. 147.

- a) prescribing anything requiring to be prescribed for the purpose of this Act;
- b) providing generally for matters relating to licenses and leases granted under this Act including –
- c) the prevention of pollution of water courses and the atmosphere

According to Regulation 36 of the Petroleum Regulations, 1969:

The licensee shall maintain all apparatus and appliances in use in his operations, and all boreholes and wells capable of producing petroleum, in good repair and condition, and shall carry out all his operations in a proper and workman like manner in accordance with these and other relevant regulations and methods and practices accepted by the Head of the petroleum Inspectorate as good oil field practices; and without prejudice to the generality of the foregoing, shall, in accordance with these practices, take all steps practicable:

- a) to control the flow and to prevent the escape or avoidable waste of petroleum discovered in or obtained from the relevant area;
- b) to prevent damage to adjoining petroleum bearing strata;
- c) except for the purpose of secondary recovery as authorized by the Head of the Petroleum Inspectorate to prevent the entrance of water through borehole and wells to petroleum bearing strata;
- d) to prevent the escape of petroleum into any water, well, spring, stream, river, lake, reservoir, estuary or harbours; and
- e) to cause as little damage as possible to the surface of the relevant area and to the trees, crops, buildings, structures and other property thereon.

Again, Omorogbe⁴⁶ is right in querying these provisions because of their vagueness. Thus terms like “workmanlike manner’ and “all steps practicable” are not defined. They are left in that general, vague and unverifiable manner.

⁴⁶ Omorogbe Op. Cit at p. 150

Regulation 25 of the Petroleum Regulations 1969 suffers from the same defect. It provides that:

“The licensee or lessee shall adopt all practicable precautions, including the provision of up-to-date equipment approved by the Chief Petroleum Engineer, to prevent the pollution of inland waters, rivers, water courses, the territorial water of Nigeria or the High Seas by oil, or other fluids or substances which might contaminate the water banks or shore line or which might cause harm or destruction to fresh water or marine life and where any such pollution occurs or has occurred, shall take prompt steps to control it and, if possible, end it.”

Again the terms used are so general that they inhibit monitoring and supervision. Terms like “practicable precautions”, “up to date equipment” and “prompt steps” are not defined nor is any guide provided to assist the DPR to determine their scope and effects.

Perhaps the greatest disservice done to Nigeria generally and the Niger Delta particularly, is the pretence at making laws and regulations governing gas flaring.

In the first place the Federal Government was not bothered by of the devastating effects of gas flaring until 1979, 23 years after oil production commenced at Oloibiri. When it finally made laws, these were not enforced, and what’s worse they were progressively weakened by amendments to please the Oil Companies until they became useless. No one asked Shell why it was able to have zero flare in its home country, the Netherlands, whilst creating a world record of 95% flaring of associated gas in Nigeria.

By this Decree the Associated Gas Reinjection Decree 1979 all companies producing oil and gas in Nigeria were to submit not later than 1 April 1980 a preliminary programme for:

- a) schemes for the viable utilization of all associated gas produced from a field or group of fields;
- b) project or projects to reinject all gas produced in association with oil but not utilized in an industrial project.⁴⁷

⁴⁷ See section 1.

No later than 1 October 1980 all companies producing oil and gas in Nigeria were to submit to the Commissioner detailed programmes concerning the implementation of programmes relating to reinjection or utilization of all produced associated gas.⁴⁸ No company was to flare gas after 1 January 1985 without the permission in writing of the Commissioner,⁴⁹ but section 3(2) stipulates that:

... where the Commissioner is satisfied after 1st January 1984 that utilization or re-injection of the produced gas is not appropriate or feasible in particular field or fields, he shall issue a certificate in that respect specifying such terms and conditions for the continued flaring of gas in the particular field or fields as he may at his discretion choose to impose.

The penalty imposed for flaring was the forfeiture of all concessions granted in respect of the particular field or fields in which the offence was committed. In addition 'the Commissioner may order the withholding of all or part of any entitlements of any offending person towards the cost of completion or implementation of a desirable re-injection scheme, or the repair or restoration of any reservoir in the field in accordance with good oilfield practice'.⁵⁰

The law was tough in appearance, but was never enforced. Omorogbe explains why:

"Since the promulgation of this Law, however, the official attitude seems to have eased off once more and the deadline was moved forward twice, first to 1 April 1984 and then 1 January 1985.

Several factors which still pertain were responsible for this. First, hardly any infrastructure exists for associated gas. There are hardly any pipelines available to transport gas. There was still until recently only one gas injection plant owned by Mobil Producing Nigeria, and which was commissioned in 1978. The plan to establish a Liquefied Natural Gas (NLG) Project which has been in the offing for some years has yet to get off the ground.

⁴⁸ Section 2.
⁴⁹ Section 3(1).
⁵⁰ Section 4(2).

Secondly, there was the problem of finance. When speaking of oil company ventures in Nigeria, it must be borne in mind that the concessions are all owned jointly by the foreign oil company and the NNPC (Nigerian National Petroleum Company), with the latter being the majority equity shareholder. Therefore, NNPC was liable for its own share in the concessions. The NNPC was unable initially to meet its share of the cost of installing reinjection facilities due to the nation's shortage of foreign reserves, and finally could not do so on the scale previously envisaged.⁵¹

Thus once again, when it came to spending some money, or earning slightly less money, in order to protect the environment of the area that produces that money, the Federal Government balked and allowed the oil companies to carry on as before.

At the end of May 1984, the Minister for Petroleum Resources made further Regulations (The Associated Gas Reinjection (Continued Flaring of Gas) Regulations, 1984, which as its name suggests, actually encouraged the oil companies to continue flaring.

Under these Regulations exemption from the general ban on flaring may be given in the following circumstances:

- a) where more than 75% of the produced gas is effectively utilized or conserved.
- b) Where the produced gas contains more than 75% impurities, rendering it unsuitable for industrial purposes.
- c) Where an ongoing utilization programme is interrupted by equipment failure.
- d) Where the ratio of the volume of gas produced per day to the distance from the nearest gas line or possible utilization point is less than 50,000 scf/km: provided that the gas to oil ratio of the field is less than 3,500 scf/bbl, and that it is not technically advisable to re-inject the gas in that field.⁵²

⁵¹ An Appraisal of Nigeria's National Gas Legislation in Oil Gas, vol. 4, Issue 2 1985/86, p. 52.

⁵² This sub-section basically means that gas may be flared if the volume of gas produced is small in relation to the distance to a possible utilization point, and it is not technically advisable to re-inject the gas into the

- e) Where the minister, in appropriate cases as he may deem fit, orders the production of oil from a field that does not satisfy any of the conditions specified in these Regulations.

Again I agree with Omorogbe's query of this surrender to the oil companies.

"While one can see economic reasons for allowing flaring of gas unsuitable for industrial purposes, or in the instances enumerated (c) and (d), it is not clear why an operator who has conserved at least 75 per cent of the produced gas is allowed to flare the remaining amount. It is also not clear what gas may be flared simply because the government has ordered production from a particular field which would otherwise not be exempted from the provision of the Decree.

According to *Petroleum Economist* these clauses have exempted 55 out of 84 Shell fields, 10 out of Mobil's 15, 4 out of Agip's 22, 7 out of Gulf's 17, 3 out of Texaco's 5, 4 out of Elf's 6, 1 out of Ashland's 3, and 1 each for Terneco and Pan Ocean. A total of 86 out of 155 oil-fields are thereby unaffected by this Decree, and the particular oil-fields exempted amount to roughly two-thirds of current associated gas output. The remaining 69 oil-fields are, however, subject to a penalty of 2.5 American cents per, 1,000 cubic feet of gas flared, which has already been effected. But for which – apparently – no formal legal basis exists. This penalty is the liability of the operating company, and NNPC will not contribute."⁵³

The downhill trend in weakening anti-pollution laws, continued with the Associated Gas Re-injection (Amendment) Decree, 1985. This Decree further empowers the Minister to exempt Oil Companies from their obligations to reinject associated gas that they cannot put into productive use, if he (the Minister is 'satisfied' that "'utilization' or re-injection of the produced gas is not 'appropriate' or 'feasible' in a particular field or fields".

Commenting on the state of Nigeria's anti-flaring laws and Regulations, a group of scientists have demonstrated the role of lobbying and corruption in the progressive lowering of the anti-flaring bar, to the present law level which allows oil companies to choke the Niger Delta environment with as much flared gas as they like.⁵⁴

reservoir.

⁵³ See Omorogbe's excellent article, "An Appraisal of Nigeria's Natural Gas Legislation," Oil and Gas, pp. 51 - 53

⁵⁴ Human Ecosystems of the Niger Delta, Nick-Ashton Jones with Susi Arnott and Ononto Douglass, 1998, p. 144.

“Regulation 42 of the Drilling and Production Regulations, legally enforceable since 1969, requires oil-mining companies to set up facilities to utilize the gas extracts arising from oil extraction within five years of the commencement of operation. This was ignored for ten years so that it was enforced by the Associated Gas Re-injection Act of 1979 which banned gas flaring. Here, it was required that by April 1st all the oil companies should have developed plans for gas re-injection projects.

Still the oil companies ignored the law, instead lobbying for a partial exemption which was finally decreed in 1985, under the 1979 Act (the democratic, albeit hopelessly corrupt, Shagari government having been overthrown by Major General Muhammadu Buhari on the 31st December 1983). This military decree enabled the following associated gas flaring activities:

Flaring of up to 25% of all associated gas;

Flaring of gas with more than 15% impurities, which makes it unsuitable for industrial purposes;

Flaring during the time that technical problems preclude the utilization of the gas; and Flaring where the volume of gas is less than 50 thousand Standard Cubic Feet (SCF).

Obviously this allows a very wide interpretation and, in any event, monitoring by government agency is non-existent. The oil companies can do what they like. And what they like, is to ignore the regulations so that Nigeria flares more gas than any other country. Thanks to successful lobbying the oil companies can today flare as much as they like by obtaining an exemption certificate and by paying a derisory fine for each cubic metre flared.”

It is therefore clear that our anti-pollution laws and Regulation for controlling pollution in the oil industry are paper tigers. The Niger Delta and its peoples are totally exposed to uncontrolled pollution and environmental degradation by the oil companies.

It is however fair to recognize the efforts of the DPR at establishing Environmental Guidelines and Standards for the petroleum industry in Nigeria in 1991. The objectives of the Guidelines were as follows:

- a) Establish Guidelines and Standards for the Environmental Quality Control of the Petroleum Industry taking into account existing local conditions and planned monitoring programme.
- b) Provide, in one volume for the operator and other interested persons a comprehensive and integrated document on pollution abatement technology, guidelines and standards for the Nigerian Petroleum Industry.
- c) Standardize the environmental pollution abatement and monitoring procedures, including, the analytical methods for various parameters.

The problem however has been that of implementation. Does the DPR have the will, capacity and freedom to enforce the hundreds of rules and regulations in its 400 page Guidelines and Standards? There has been no evidence of this so far.

In concluding this section, there is need to state that the exclusion of the FEPA Act from consideration under the Section was deliberate. The FEPA Act is of less than tangential relevance to oil and gas pollution. It is directed at general environmental pollution, and in any case, the Agency has neither been given the resources nor the power and capacity to operate as the policeman of the Nigerian environment.

7. Health and Social Problems Associated With Petroleum Production

a) Health Problems

Petroleum production has been associated with some very serious health problems being experienced by the people of the Niger Delta. Nick Ashton Jones has commented extensively on this in his book on the Human Ecosystems of the Niger Delta.

Although the table produced by Ashton-Jones on the effect of oil pollution on the health of populations within the affected environment, relates specifically to an English population (Pembrokeshire 16/2 to 16/3 1996) it gives a comparative insight on what is happening to the peoples of the Niger Delta.⁵⁵

⁵⁵ At pp. 152 - 3

“A subsequent impact of oil spillage is human health and especially mental health. In areas of intensive oil industry activity, local people often complain of increased physical and psychological symptoms which they blame on the presence of oil in their ecosystems. These symptoms are generally dismissed as exaggeration or as downright lies, made in an attempt to win sympathy and compensation.

However it is interesting that a report to the Dyfed Powys Health Authority of Wales on the effects of the Sea Empress oil spill on the health of the South Pembrokeshire, England population indicated increased symptoms and diagnoses similar to those complained of by local people in the Niger Delta.”

HEALTH COMPLAINTS DURING OIL SPILLAGE FROM THE SEA EMPRESS OIL TANKER THE PEMBROKESHIRE COAST, 16/2 TO 16/3 1996			
SYMPTOM/ DIAGNOSIS	PREVALENCE IN CONTROLS	PREVALENCE IN EXPOSED	SIGNIFICANCE
Generally ill	7.3%	23.2%	Yes
Headache	12.0%	32.5%	Yes
Nausea	5.8%	12.6%	Yes
Vomiting	2.5%	2.8%	No
Diarrhoea	4.5%	7.6%	Yes
Sore Eyes	4.9%	15.6%	Yes
Runny Nose	11.3%	18.5%	Yes
Cough	9.6%	19.1%	Yes
Itching Skin	4.7%	10.45	Yes
Skin Rashes	2.9%	6.7%	Yes
Blisters	0.4%	1.1%	Yes
Short Breath	4.4%	10.4%	No
Weakness	12.7%	21.7%	Yes

It should be noted that this alarming increase in existing diseases and emergence of new ones in the Pembrokeshire case is as a result of a single oil spill.

Nigeria experiences more than 300 oil spills in a year and there are areas of the Niger Delta which are subjected to continuous pollution by oil and gas (flaring) decade after decade. It does not take much imagination to appreciate the degree of suffering of the local people.

The gruesome environmentally induced hazard of the Niger Delta has been summarized by Ekpo as follows:⁵⁶

“The high incidence of respiratory disorders, cancer, asthma, and birth deformity in many Nigeria’s oil-producing communities has been attributed to oil pollution. Life expectancy in one community is 45 years compared to Nigeria’s nationwide rate of 57 years. A report on the Finiwa 5 blowout blamed the resultant oil spill for the death of 180 persons in one of the affected villages two months after the spill.

The plight of the communities whose vocation lies squarely on farming and fishing, is that neither the air, land nor their water is free from pollution associated with petroleum activities. Therefore, their very survival and future is simply bleak.”

b) Socio- Economic Dimension

The social dimension of the adverse effects of Petroleum Production activities are equally terrifying. Dr. Choker’s report after extensive field research is most revealing and disturbing.

“The traditional base of economic activities which supported the people is gradually eroded, the modern oil economy is not integrated to the traditional while channels and structures for its operation and appropriation, for example, Joint Venture arrangements, are tied to that of the central government. Thus the structures that inform operations and interaction amongst stakeholders, including rules, are entirely alien with no real input from the local people. Yet, there is also another sense in which resource outflow is environmentally induced through the operation of companies. Oil companies have opened up hitherto inaccessible areas through canals and pipeline networks leading to

⁵⁶

Osuntokun, p. 144

ecological changes following salt water intrusion into freshwater community areas; in the process vast lands and natural areas from which they derived a range of raw materials for the local economy are lost or converted to less usable, degraded salt water swamps. This is a kind of dual loss in which the people are not only denied the benefit of oil resource but their livelihood is deeply impacted and threatened, especially since the natural environmental resource base is intricately interwoven with the social, religious lives and economic activities of rural communities. Prostitution and teenage pregnancy which have become prevalent in producing communities and the onset of other negative social transformations and vices in part reflect the erosion, through oil activities, of both the natural resource base for production and the humane cultural norms established by the forefathers. There is increasingly an emergent and critical dependence of impoverished communities on 'handouts' from oil sector operatives who parade wealth and affluence in a setting in which the people have become socially and economically vulnerable in face of externally determined rules for wealth creation and appropriation; they are constrained to scramble for the crumbs that fall from the master's table."⁵⁷

This tallies with the findings of two other experts, who have thoroughly studied the social and cultural impact of petroleum extraction on the peoples of the Niger Delta.

"Most oil industrial projects are potential sources of pollution and the impacts of these fall in three categories: environmental, health and social (human ecology). Although these impacts are not mutually exclusive, we shall nevertheless concentrate more on the human ecology aspect. The first major social impact of oil companies projects in communities is obviously the influx of different categories of people to the area of operation. Migrants include those from within the Niger Delta itself; those outside it; and expatriates from other countries. Therefore the first major social problem is an increase in population that the local people were not accustomed to. As population increases so also social vices: emergence of squatter settlements, pressure on existing social

⁵⁷ In Osuntokun, *Op. Cit.*, p.71.

amenities, introduction of new life-style, increase in drug use, and the overall disruption of social order. Teenage girls who were not exposed to the unfolding life-style are lured into premarital sex resulting in the increase in sexually transmitted diseases and unwanted pregnancies. Such pregnancies, usually owned by non-natives and expatriates end up producing “fatherless” children thereby upsetting traditional family structure.

Consequently upon the influx of immigrants, activities of oil companies also create social stratification in the community. The workers live in comparative luxury, leisure, and affluence with the provision of electricity, portable drinking water and communication facilities in well laid out estates or site camps. In contrast, natives of the host communities remain in conditions that are strikingly deplorable. This inequality in settlement pattern and life style is usually a source of constant tension. This charged atmosphere and the resultant resentment of the original inhabitants usually lead to the aggressive attack on oil companies’ workers. This situation is usually aggravated due to mass unemployment in the community resulting from the destruction of major sources of livelihood (mainly fishing and farming) by pollution as a result of oil extraction activities in the area. It was estimated that between 1976 and 1991 the Niger Delta witnessed no less than 2,976 spills (Guardian 1993). Deprivation of inhabitants’ livelihood and the non-employment of majority of the youths due to lack of relevant skills and qualifications, the communities become areas of intense hatred and bitterness.⁵⁸

Other socio-economic consequences of the operations of petroleum companies include dramatic income inequality, unequal access to facilities and social discontent.

This is one of the most difficult impacts to access because so much political subjectively can creep into the assessment processes. There are four social and political consequences.

“Because most people in the Niger Delta have very low or no disposable income while workers in the oil industry receive comparatively high incomes. For instance a flow station supervisor may receive up to N80,000 a month

⁵⁸ Asakitikpi & Philip Oyelaran “Oil Extraction and the Socio-Cultural Impacts on the People of the Niger Delta”, in Osuntokun, p. 180-1.

(about US\$8000 in 1997) compared with a well paid security guard who gets about N4000 or a University lecturer, about N6000. Civil servants are particularly badly paid compared to oil industry workers, which encourages corruption.”⁵⁹

8. Conclusions and Recommendation

My conclusions have already been made for me by the many knowledgeable and perceptive Writers who have done a lot of work on the impact of Petroleum Production activities in the Niger Delta.

In his well researched paper on “the Impact of Environmental Degradation on the Rural Economy of the Niger Delta”, David Awowaro concluded as follows:⁶⁰

“The environmental devastation of the Niger Delta is very closely linked with the activities of the petroleum exploration and producing companies, as well as other manufacturing companies in the area. Therefore, for the environmental problem of the area to be redressed, there is the need to undertake a reappraisal of the operational procedure and the attitude of the companies. Here, much responsibility lies with the government. The fact is that the environmental hazard that oil exploration poses often comes up against the interest of the huge income that accrues to the government from the companies operations.

It is common knowledge that the basic requirements for oil exploration according to international standards are not met by the oil producing companies in Nigeria. The government knows it and the companies know it too. But the government lacks the will to compel the companies to comply with the basic requirements. This is an area that needs urgent attention. If the companies operate with the utmost concern for the environment and the people according to international standards, there would be a gradual regeneration of the environment and both the health and the rural economy of the people would be enhanced. It is foolish to operate without care and devastate the environment,

⁵⁹ Human Ecosystems of the Niger Delta, p. 153, NICK Ashton Jones.

⁶⁰ In Osuntokun, Op. Cit, p. 158

and then pay token compensations which in any case often comes too little, too late.

The generality of the people too need to be sensitized towards recognizing the need to make the government to realize the need for a healthy environment. In most parts of Europe and America, impact of environmental issues have become part of strategic thinking. The impact of environmental consideration on the result of many polls in the last few years have compelled many governments to pay sedulous attention to environmental issues. In Nigeria, by the time a politician recognizes that his victory in an election depends on how much attention he pays to environmental excellence, it would become very easy to address the numerous environmental problems facing the Niger Delta and indeed of the whole country. Then concern for the environment would have become everybody's business. “

In otherwords, the solution of the marginalization of the peoples of the Niger Delta, resulting in the total indifference to their rights in their resources and their environment, is political. The establishment of a core of minimum interests of the Niger Delta, and the setting up if a political organization to enforce the recognition and observance of those interests, is essential.

At the highly successful conference on the Environmental Problems of the Niger Delta, from which this paper has benefited hugely, very pertinent recommendations were made by individual scholars, based on their very rigorous research on the subject matter. These recommendations are directed at alleviating the tragic condition of the Niger Delta and its peoples and at least bringing them out of their present marginal existence. Dr. Onosode for example made the following amongst other recommendations⁶¹.

- Massively developing and sustaining social infrastructure and amenities, and ensuring their easy accessibility and affordability in various communities in the context of well – articulated regional planning and development of the entire Niger Delta.

⁶¹ “Environmental Management and Sustainable Development in the Niger Delta”, Osuntokun, p. 24.

- Increasing the developmental and environmental management responsibilities of oil companies, with a corresponding adjustment of the fiscal regime under which they operate, and simultaneously enforcing international standards in all operations and activities of these companies.
- Reforming or completely abrogating existing unjust unsustainable environmental and control laws and regulations, including particularly those directly dealing with land acquisition and compensation.
- Professionalising, reforming and empowering control agencies with greater autonomy, finding and the right incentives to implement programmes and assure quality monitoring and enforcement.
- Creating a most conducive social, economic and political environment at the macro-level of the Nigerian society for the attainment of sustainable development in the Niger Delta along the following lines.
 - a) unconditional release of Niger Delta citizens detained in relation to oil-induced crisis in the region;
 - b) release of the bodies of youths who lost their lives in various community-government/oil company face-offs; and
 - c) provision of adequate compensation for individuals, families and communities who were casualties of government's command interventions in oil-related communal conflicts, as well as victims of the Jesse inferno.
- Mobilising and organizing the citizens throughout the oil-bearing states of the Niger Delta, to foster cohesion, stability and consensus on common sustainable development action.
- Enlisting fully government-led sustainable Niger Delta Development and Management movement, with sustainable commitment of the oil companies and stakeholding communities.

Choker's equally comprehensive set of recommendations are directly relevant and indispensable in any resolution of the Niger Delta problem.⁶²

⁶² Choker, Op Cit at pp. 76-77

- Establishing resource rights that recognize communities as stakeholders and partners in resource exploitation and development;
- Establishing Memorandum of Understanding (MOU) through a transparent, participatory and democratic process of representation of stakeholders to work out the acceptable rules, norms and structures of relationship;
- Streamlining resource control, management and environmental laws that impact negatively on the quality of community relations and create grossly differential access to local resource between external multinational companies, the State and communities;
- Building terrain and community social interests into capital gains from oil activities and reinvesting in community socio-economy harmony for oil production. This should embrace:
 - Reforming local community institutions to secure fair representation in decisions and implementation of programmes;
 - Reducing environmental degradation by proper environmental assessment of the social and economic costs of all activities and compensating previous environmental and social losses;
 - Developing infrastructure and human capital in the region, to sustain long-term development;
 - Allocating an enhanced 'Derivation Fund' on the basis of 50% directly to reformed Community Development Committees and Trust Funds based on production quotas to define and provide own facilities and infrastructure and allow for community-based control and sense of ownership of project in oil producing areas; and 50% to governments of producing areas with clearly legally defined rules and criteria for projects and pattern of expenditure in producing communities;

Whilst fully endorsing these recommendations and adopting them as my own also, it is nevertheless clear that the problem behind the travails of the Niger Delta is a political one and the final solution has to be political.

In a presentation made by the Centre for Advanced Social Science to the Oputa Commission entitled Report on Research on Human Rights Violations in the South South Zone, the Centre made the following revealing submission, which

objectively confirms the imperative for the control and management by the peoples of the Niger-Delta of their own resources.

“The South-South zone covered in this Report, unlike other zones of the federation, has this contradictory peculiarity. The Niger Delta, which is the homeland of the peoples now so politically constituted into 6 states of the South South is the economic life support of the Nigerian federation. The nation depends maximally on its oil and gas despite the annual ritual budgetary pronouncements of intent, by various ruling regimes, to diversify the national economy. Given the mono-cultural character of the economy of the nation, the South South bears the brunt of being the goose that must lay the golden eggs. However, as a result of decades of marginalisation and obnoxious regulations, the people of the area are not involved in the production processes in the area. The cumulative effects of the Petroleum Law, Land Use Act, etc. are alienation, disempowerment, pauperization and immiscrization of the people against the spirit of ‘the Fundamental Objectives and Directive Principles of State Policy’ which stipulate *inter alia* that “the exploitation of human or natural resources in any form whatever for reasons, other than the good of the community, shall be prevented”. It is common knowledge that the environment of the South South has been so degraded that it is already endangering livelihoods and health of the people in several communities. Indeed, this is matter that requires urgent scientific documentation using participatory methodologies that involve the Niger-Delta communities. It appears to us that there is a collaborative amnesia by the Nigerian state and the oil companies over the hazards which ongoing pollution, arising from gas flares, oil spillages, etc. pose to the health of the people. Today, the right to a clean and safe environment and the right to life are being negated by the destruction of the environment and the forceful alienation of communal lands. Fishermen spend more hours in the high sea without any catch because countless species of seafood are now extinct as a result of the deleterious effects of oil exploration in the marine eco-system. In the place of communities where anti-social vices were the exception we now have such monstrosities as ‘Ashawo’ villages and hellish ghettos where rampaging youths decapitate traditional rulers as they struggle for crumbs of manipulated compensations while members of the ruling class cart away *petro-*

dollars. Attempts by the peoples of the area to protest their marginalisation in the power matrix and political economy of Nigeria have been repressed by the combined monstrous might of the state, multinational corporations and the ruling classes. In this respect the tales from Jesse. Odi, Kaiama, Umuechem and Ogoniland are still fresh in our minds.

Indeed, judging from the impunity with which a succession of ruling regimes in our recent history, have misappropriated the oil and gas wealth, it would appear that the strident official state advocacy of national unity is merely an expedient ploy to ensure that there is a centralized, united treasury to loot. When corrupt regimes without any developmental agenda, nonetheless, proclaim Nigeria to be “our great nation”, and the multinationals concur with such conceit, it is their appetite for the vast natural wealth of the Niger Delta that fuels such flattery.”

The Centre for Advanced Social Science, therefore finds that only true Federalism and zonal autonomy can provide a solution to the problems of the Niger Delta.”

A little later, the Center continued thus:

“Despite this huge economic significance, the Niger Delta or South South is a zone of minority ethnic nationalities. Their incorporation into the Nigerian state by the colonizer, not only meant a loss of political sovereignty, but also automatically conferred on them a minority status – “southern minorities”. This minority status contradicts the zones’s fundamental economic significance and has proved to be a formidable disability in the Nigerian political process.

In a federal system colonially crafted to be dominated by the politics of the big three nationalities, the minority nationalities have had considerable difficulty in *inserting* their zonal interests in the “central” agenda. Without the possibility of effectively projecting vital concerns of the zone as integral constituents of the “national” agenda, many of the leading politicians have had to adopt the self advancement strategy of appending themselves to politicians and parties promoted by the big three. As things stand now, unless there is a thorough-

going *democratic* restructuring of the federal polity it is difficult to see how minority nationalities can emerge peacefully from the grip of marginalisation.”

Therefore, arising from the politically recognized six-zonal arrangement in contemporary Nigeria, a Niger-Delta zone, made up of the South South States of Edo, Delta, Bayelsa, Rivers, Akwa-Ibom and Cross River have come into political existence. Although there is no law backing up such an arrangement, the states are territorially contiguous, and are united by culture, history and common exploitation and marginalisation by the Federal Government and the majority ethnic groups in Nigeria. **It is therefore absolutely necessary for the people of the six southern minority states to establish some common political, economic and social structures on the ground, through which to plan for the political future of their area within Nigeria, or if necessary, without Nigeria.** One paramount condition for continued willing participation in the on-going Nigerian project must be the total ownership and control by the people of the South South of their God-given natural resources, or at the very least, a resort to the provisions of the 1960 Constitution on revenue allocation, particularly the proceeds of minerals resources, plus decisive involvement in the management and control of their resources. Only when the people of the Niger Delta have a decisive input in petroleum operations in their territory, will they be in a position to protect their environment.

As an instrument for the peaceful realization of these legitimate objectives, and the recovery of ownership of the resources seized from them by the powerful majority groups and the Federal Government, the South South should support the convening of a National Conference to discuss the basis of future political, economic and social association and co-existence between the ethnic nationalities of this country. However as an indispensable condition, we must create an environment for the unity of the fractious and quarrelling ethnic nationalities of the Niger-Delta. We cannot struggle successfully for our rights in an aggressively exploitative country, without the strength derivable from unity and mutual solidarity. We must stop carrying on tragically like Professor Ayandele’s “atomistic society perpetually at war with itself”⁶³ Otherwise we shall have no future.

⁶³ This is a term Professor Ayandele, former Vice-Chancellor of the University of Calabar, used in describing the fractious communities of the old Cross River State (including the present Akwa Ibom State), but which seems more appropriate to the South South as a whole, particularly Delta State.