

**ATTAH ON RESOURCE CONTROL**

**A Review By**

**Professor I.E. Sagay, SAN.**

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## **ATTAH ON RESOURCE CONTROL**

### **A REVIEW**

By Professor I.E. Sagay, SAN.

This small book of just over 100 pages is a collection of Papers, Speeches and Interviews given by His Excellency, Obong Victor Attah, Governor of Akwa-Ibom State, between June 2001 and February 2004 and compiled and edited by Samuel Ajayi. Although given and delivered on different occasions and dates, there is one strong thread running through all of them, namely, 'Resource Control', which is now the generic term for a group of concepts that have developed around the exploitation, allocation, operations and management of petroleum resources in Nigeria. The term is now freely used in the following contexts:

1. (i) Ownership (ii) Management of petroleum resources
2. Allocation of oil blocs
3. Share of proceeds from the sale of petroleum resources, i.e., derivation
4. The Onshore - Offshore Controversy
5. Environmental degradation of the Niger Delta Territory

All of these aspects of that umbrella term 'resource control' have received the informative and clarifying attention of Governor Attah in these series of lectures speeches and interviews. Attah, as the Governor of the state most devastated by the On-shore/Off-shore dichotomy instituted by the present Federal Government, had no other choice or option, but to mount an intensive and sustained struggle for the reversal of the oppressive policy - a struggle which is reminiscent of Churchill's famous declaration in the British House of Commons on 13 May 1940, to wit, "I have nothing to offer but blood, toil, tears and sweat". Indeed he had no choice, for as he stated in his first public reaction to the judgment of the Supreme Court in the Resource Control (On-shore/Off Shore Dichotomy) case, Akwa Ibom State, was now to bear all the burdens

and devastating effects of petroleum operations in its territory and on its peoples, without any benefit whatsoever.

“The effect of this new law is to suggest that even though the Department of Petroleum Resources (DPR) has declared Akwa Ibom State the largest oil producer, because all of its production (100%) is Off-shore, the State shall get no direct benefit from derivation. Instead the total value of its oil production will be paid into the Federation Account. So Akwa Ibom State is left with the pollution, the degradation of its environment, the destruction of its Fishing industry, the health problems, but with no benefit at all from Derivation. Can that be considered a just Law!!

We always knew that the law was an ass but we did not expect that in Nigeria, it would be turned into something so vilely repugnant to the social conscience.

Please let the impression not be given that, after we had formed ourselves into the matrix that binds the belligerent majority tribes of Nigeria into one country, the only reason we are wanted in the Union is so that we can be raped and all of our resources carted away in a manner that even the worst external colonialist could not have contemplated.”

The speeches of Governor Attah as recorded in this book are not limited to Resource Control but go beyond it to raise fundamental questions on such issues as political Federalism, fiscal federalism, ownership of the Nigerian maritime territory, and other Constitutional and International Law issues.

Let me at this stage acknowledge the obvious fact that Governor Attah has not been a lone voice crying in the wilderness on the subject of resource control. He has had worthy comrades in arms in the persons of Governors James Ibori of Delta State,

D.S.P. Alamieyeseigha of Bayelsa State and Lucky Igbenedion of Edo State, in the struggle.

At every stage throughout his speeches our eminent Author has progressively defined what he means by 'resource control' and at times, and equally importantly, what he does NOT mean by that term. For example he insists again and again that the concept does not mean or imply that all the resources found in a state must be retained and used exclusively by that state. In a paper delivered on 15 November 2002 to mark the birthday of the Governor of Bayelsa State, Attah declared that the struggle for resource control will continue even after a satisfactory resolution of the On-shore/Off-shore dichotomy dispute "until the states and people endowed with natural resources receive a fair share of the revenue derived there from, and also participate in the process of exploiting, such resource(s). There is, therefore the need, not only to put in place a revenue sharing formula that weighs heavily in favour of derivation, but also to restructure the processes and ownership pattern. This demand is not new; rather it has been a constant refrain Nigeria's history. When agricultural resources had the largest contribution to national revenue, derivation's share was 50%. Therefore, the existing regions at that time had enough revenue and control to address planning and development within their jurisdictions."

The Niger Delta region which is underdeveloped needs a fair share of the revenue derived from its resources to ensure sustainable growth and development.

Thus resource control was used in the context of the share of the proceeds of their resources, namely, oil and gas, received by the Niger Delta States. The term is also used in this book in reference to the unjust, oppressive and provocative declaration in the Constitution that all the Niger Delta's petroleum resources are owned by the Federal Government.

This petroleum regime was an instrument introduced by the British Colonial Government in 1946 for the expropriation of the wealth of the oppressed and colonized

peoples. It is an irony of our political history that the Federal Government of Nigeria has now assumed the mantle of oppression from the British colonial master with a mandate to continue this exploitation in a rare form of internal colonialism.

Governor Attah reminds us in this book that what the Founding Fathers of this country agreed as the basis of the foundation of Nigeria as a state, was true federalism including fiscal federalism and that the present Constitution constitutes a fundamental aberration and a violation of the basis of our association as Nigerians.

In a surprisingly dispassionate analysis of political and fiscal federalism with special reference to Nigeria, our eminent Author, made the following observations.

“A cardinal principle and essential ingredient of federalism is that no level of Government is subordinate one to another, though there must be a central government. For this exercise, some important features of federalism are seen as:

- (i) Division of powers among levels of Government;
- (ii) Coordinate Supremacy of each level of Government regarding its respective functions;
- (iii) Financial autonomy of each level of Government,

He continues:

The fact that all tiers of Government are coordinate, implies that if State Authorities, for example find that the services allotted to them are too expensive for them to perform, and if they have to call upon the Federal Authority for grants and subsidy to assist them, then they are no longer coordinate with the Federal Government but subordinate to it. Consequently, financial subordination makes a mockery of federalism no matter how carefully the legal forms may be preserved. Each unit must have power to tax, borrow for financing its own services and harness its

resources. It is important to stress that federalism is not merely a technique of organizing a governmental system, but is also a philosophy of opportunity. The component units of the federation must be encouraged to control some of their affairs in their own way with their own resources.

In a federal arrangement, revenue flows from the federating units to the centre. It follows, as a cardinal principle of federalism therefore that the component units must control their resources, develop themselves to the best of their ability, and contribute as appropriate to the maintenance of the centre. In Nigeria, the opposite is the case.

It is my belief that the challenge of sustainable economic growth and development as a basis for viable democracy calls for the urgent need to restructure our fiscal federalism anchored in the diverse strengths and weaknesses of our federating units.”

Throughout these speeches, Governor Attah reminds us of our political history and the conditions precedent for the establishment of the Nigerian State as enshrined in the 1960 Constitution which he calls Nigeria’s social contract, a reminder of the philosophy of Locke and Rousseau and indirectly of the American Declaration of Independence.

One point Obong Attah frequently makes is that the real owners of the petroleum resources, need it desperately, not only because it is fair, just and equitable and that as owners they should enjoy a considerable proportion of its proceeds, but even more importantly because the proceeds are desperately needed to neutralize or reduce the devastating effect of petroleum operations, and to commence the process of investing in renewable resources in order to ensure the continued survival of the oil producing communities, after the known oil reserves on land have been exhausted in another 30 years or less.

Emerging clearly from Obong Attah's speeches therefore, is clear link between resource control, environmental degradation and pollution, and sustainable development of Akwa Ibom and other oil producing States.

According to the Governor, for more that three decades the people of the Niger Delta had been engaged in a struggle for self-determination, true federalism, resource control and sustainable development.

“The agitation stems from the fact that inspite of the region's resource endowment, its contributions to the overall development of Nigeria, its immense potential for economic growth and sustainable development, the region remains increasingly under threat from rapidly deteriorating economic and environmental conditions as well as social tension which past and present policies have not addressed.”

Resource control should naturally result in increased revenue from the proceeds of the resource for the owners or producers of the resource, i.e., the States and Communities. But that is not the only significant aspect of resource control. Central to the struggle for resource control is the right of the States and Communities most directly concerned (that is the producing States and Communities) to have a direct and decisive role in the exploration for, the exploitation and disposal of, including sales of the 'harvested' resources. It is those who live with the devastating consequences of greedy, cheap, crude, reckless and irresponsible exploitation practices and procedures, who suffer the pains and affliction of such processes, who must control the mode and management of commercial production in order to ensure an environmentally friendly production, process, elimination of pollution, and the protection of the lands, forests, rivers and atmosphere. It is they who must insist on planned and controlled production to ensure

the progressive replacement of the non-renewable resource, by a renewable product that is free of pollution and other environmental hazards.

Mere increase in revenue without control and management is short sighted, and deadly and it condemns the peoples of the Niger-Delta to a present without a future.

At this stage it is necessary to point out a fact of major significance which tends to be completely overlooked in the endless debate about the Niger Delta and its oil boom which has become a doom. That is the fact that there is a clear divergence of interest between the Federal Government and the oil companies on the one hand, and the oil producing or host communities on the other hand. Whilst the Federal Government and Oil Companies are only interested in pumping of more and more oil over shorter and shorter periods of time, regardless of the consequences on the peoples of the Niger Delta, by contrast the interest of the people of the Niger Delta, lies in responsible, clean and good oil fields practice that will guarantee a safe and productive environment. This will definitely mean less than the fastest rate of maximum extraction which the Federal Government/Oil Companies complex are committed to achieving.

Based on all the above factors, the development of the Niger Delta, says the Governor, will only begin when the people take complete control and responsibility for the formation of policies, strategies and programmes for development. According to Attah:

“The development of the Niger Delta cannot be imposed by the central government or self-interested multinational companies. It cannot be imposed by the World Bank and the IMF, it must be crafted by the Niger Delta people. The sustainable development of the Niger Delta must be built upon the existing human, material and natural resources with which the Niger Delta is endowed.”



The contribution of the Supreme Court's judgment in the On-shore/Off-shore dichotomy case better known as the 'Resource Control Case' did not escape the scathing scrutiny and analysis of the Author. Describing the judgment as an unsuccessful attempt to argue towards a pre-determined federal Government's position, the Governor proceeded to demolish the judgment systematically, in a statement issued a few days after it was delivered. He pointed out that our 1960 and 1963 Constitutions (the founding Constitutions) expressly provided that for the purpose of revenue allocation, the continental shelf was deemed to be part of that Region. "While there were regions, no one could talk about on-shore/off-shore dichotomy because then the Regions were big and powerful and no one could trifle with their rights. The issue of dichotomy only arose, when the owners of the main economic resources were the weak minorities."

And yet the basis of the court's convoluted and irrational decision was torn to shreds by Obong Attah's simple logic. It will be recalled that the Supreme Court held that Nigeria's territorial sea, exclusive economic zone and continental shelf belonged to the Federal Government. He points out that when Western Cameroon voted in a plebiscite in 1961 to leave Nigeria and join Eastern Cameroon, they left Nigeria together with their maritime territory, i.e., territorial sea, and continental shelf. The Federal Government did not protest that its maritime territory was being taken away. This was because maritime territory belongs to the coastal states. "If Biafra had succeeded would you be talking about Nigerian territorial waters today? The waters belong to the States in the first instance and then to the country that the States are part of. So if territorial waters don't belong to the [Coastal] States they cannot belong to Nigeria" In other words, Nigeria is a coastal state because of the presence of the nine coastal States, as Cross Rivers, Akwa Ibom, Rivers, Bayelsa, Delta, Edo, Ondo, Ogun and Lagos, as part of Nigeria. If these States were to leave Nigeria, then what is left of Nigeria, including the Federal Government, would be a landlocked State. The only territory in Nigeria owned by the Federal Government is Abuja Capital Territory, which is itself landlocked.

To further buttress his submissions on this point, which would have made a Lawyer green with envy, Obong Attah refers to section 2(2) of the Constitution which provides

that Nigeria shall be a federation consisting of States and the Federal Capital Territory. Very clearly therefore since the Federal Capital Territory is the only territory owned by the Federal Government, it is obvious that the coastal states own their territorial seas, continental shelves and so on, otherwise, even by our own Constitution they cannot be part of Nigeria in any other way. This is repeated in part one of schedule one of the same Constitution.

In the light of these provisions, the alleged action by 22 Northern and South Western States challenging the partial abrogation of the on-shore/off-shore dichotomy is to say the least provocative. The Niger Delta States must in addition to their defense, file a counter claim claiming entitlement to 50% of the proceeds of their petroleum resources from their land territories to the outer edge of their continental shelf. This is the fundamental basis on which the Federal Republic of Nigeria was founded as clearly expressed in our founding Constitutions.

As the Author also points out, every part of Nigeria is endowed with natural resources and these predator states have turned backs on their own natural resources because of the cheap and easy money from the oppressed Niger Delta. If the petroleum resources had been found in the states above the Niger-Benue confluence, resource control would not have been in doubt.

One other issue of vital importance frequently raised by Obong Attah in this book, is the refusal of the oil multinationals to locate their headquarters in the host communities. This robs these states and communities of income taxes of the oil workers, ground rent for their physical structures, the multiplier effect of their presence in terms of employment, increased economic activities and direct investment in the physical, and social infrastructure of the petroleum producing States and communities. Referring to what he calls, "politics of location" Governor Attah continues thus:

“ Mobil Producing Nigeria, (now EXXONMobil) which started operations in Akwa Ibom State in 1971, has only been able to site a tank farm in he

state in its 30 years of operation. Meanwhile, the headquarters of this multinational corporation is in Lagos where it does not drill a drop of crude oil. This injustice has two implications. The first is that Mobil Producing Nigeria, under an over bearing policy coverage of the Federal Government and its control of fiscal resources have only made Akwa Ibom State a conduit through which her naturally endowed resources are taken away leaving behind only environmental degradation.

Second, the location of its administrative headquarters in Lagos ensures that Mobil Producing Nigeria pays all taxes, including VAT to Lagos State, while Akwa Ibom State which suffers the environmental impact of oil activity is dispossessed of what should be her share in the harvest. It is therefore, natural that this deplorable structural and administrative abnormalities should generate dissatisfaction among the people. The headquarters of EXXON Mobil must be re-located to Akwa Ibom State as a matter of urgency.”

Even in a man who has pursued the struggle for resource control in such a single minded and committed manner, one or two critical comments can be made about his views on State/Federal relations. First is the Governor’s complaint against the President for failing to invite him (the Governor) to accompany him (the President) on his foreign trips. There is a clear inconsistency here about the Governor’s well informed analysis of federalism, and his desire to be part of the entourage of the Head of another Government in the Federation. A State Governor who is a true advocate of federalism should organize his own foreign trips and should shun being an appendage of another head of government’s entourage. There is no circumstance in which Chief Awolowo would have agreed to be part of Alhaji Abubakar Tafawa Balewa’s entourage on a foreign visit. The same legal and political principles apply to the Federal/State relations in the First Republic as in the present one.

Secondly, the title of the last chapter of this work, which is entitled “Now the Battle is over” could be misleading. The On-shore/Off-shore Dichotomy Abrogation Act of 20<sup>th</sup> February 2004 has not abolished the said dichotomy. The Act merely reduced the area by about one-quarter.

To those of us who have some basic knowledge of the Law of the Sea, the meaning and implications of the Act were clear enough. An Isobath is a line representing the horizontal contour of the sea bed at a given depth. So a 200 metres Isobath, means a line representing the horizontal contour of the sea bed at 200 metres depth. In other words the 200 metres Isobath off the Nigerian Coast is a line joining all points off the coast of Nigeria (from Lagos to the boundary with Cameroon) where the sea is 200 metres deep.

The implication of this new Act is that the derivation principle only applies to those areas between this 200 metre depth line and the Nigerian coast or low water mark. Any part of the Nigerian Continental Shelf, deeper than 200 metres, is outside the derivation zone and proceeds of resources in this area of the sea will go straight to the Federation account. Coastal States derive nothing from this vast area. The area concerned could be as narrow as 5 miles in the Lagos and Western coastal areas, reaching a maximum belt of about 40 miles in the Akwa Ibom area in the East.

This is a far cry from the 200 miles of the continental shelf of the Niger Delta States as stipulated in the founding Constitutions of Nigeria and Article 76 of the 1982 Convention on the Law of the Sea.

By far the most disturbing consequence of the Coastal States’ limitation to a 200 metre depth belt for derivation purposes, is that all the major off-shore oil and gas finds are now in the deep off-shore zone between 1000 and 2500 metres as against the 200 metre limitation for coastal states. There are currently about sixty deep sea blocks available for allocation to oil companies. Moreover, some gigantic oil and gas fields have been discovered in the deep sea bed since 1996. These include Bonga, 1996;

Bosi, 1996/7; Abo, 1997; Agbami, 1998; Erha, 1999; Akpo, 1999 and Bonga-SW 2001. Many others are in the process of discovery or test drilling. Available information indicates that at the end of 2003, one hundred and ten (110) wells had been drilled in the deep off-shore; the shallowest, Okpok-1, being 1,260 metres deep and the deepest Aje-1, had a depth of 5,800 metres. It was drilled by Yinka Folawiyo and Co. These drilling operations have resulted in 4 billion barrels of recoverable oil reserves whilst gas reserves are estimated at 25 trillion cubic feet. The Nigerian Coastal States off whose shores these tremendous findings are being made, will not enjoy ANY derivative rights in these deep sea areas, since derivation is limited to 200 metres.

In fact, only as recently as Monday, September 6 2004, the Guardian Newspaper reported the following statement by Dr. Edmund Daukoru, Presidential Adviser on Petroleum and Energy Matters.

“The Federal Government has concluded plans to put on offer about 27 oil blocs in the next international competitive bidding process in the nation’s deepwater basin.

“The next phase is expected to begin with a new bidding round towards year-end or early next year. It will involve a total of 27 blocs with an average of size per block of 2,400 sq.km, in water depth of 2000-3000 metres,” Daukoru stated.

According to him, the Nigerian deep off-shore is defined to extend from 200 metres to 3,000 metres water depth, and was opened first to exploration in 1990, with a non-exclusive, speculative seismic survey that drew subscriptions from the five majors, i.e. Shell, Mobil (now ExxonMobil), Chevron (now Chevron Texaco), Elf (Total) and Agip (ENI)”

It is therefore clear that the deep Off-shore will progressively bring an increasing proportion of Nigerian oil and gas. As the land and shallow Off-shore (200 metres)

reserves are getting exhausted, the deep off-shore reserves beyond 200 metres will keep on increasing. In short, the future of the Nigerian oil and gas exploration and exploitation lies in the deep off-shore outside the derivation zone granted to the coastal states, under the 200 metres Isobath Act.

In the light of all the above, the 200 metre Isobath Act has not brought Uhuru to the Niger Delta States: I believe we should continue the struggle for the restoration of our rights over the whole of the Continental Shelf.

But these are relatively minor issues in comparison with what this book documents about the great life struggles of Governor Attah for resource control and for the salvation of his people. He is a latter day Moses who will not relent, will not rest, will not sleep, and will not give up, until he has led his people out of slavery and oppression. Indeed, Attah has nothing to offer, but blood, sweat, toil and tears for the people of the Niger Delta, until justice is done.