HUMAN RIGHTS, JUSTICE AND THE NIGER DELTA : ISSUES AND CHALLENGES

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1. Introduction

1.0.1 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 forests[1].

The area is therefore generally inhospitable, and difficult to develop[2]. 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.

1.0.2 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.

In its vigorous defense against accusations of conducting a deadly and insensitive assault on 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, 6,300 kilometres of oil and gas pipelines (i.e., more than the

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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.

distance from Lagos to London) about 100 flow station/gas plants, and two main terminals at Forcados and Bonny. All the oil companies have a combined total of 280 flow stations, 240 producing fields and over 600 wells. The daily production is about 2 million barrels a day.

Since the SPDC or Shell until recently was responsible for about 50% of the 2 million barrels of oil daily produced in Nigeria, it can reasonably be 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.

1.0.3 This is an audience that is familiar with the consequences of petroleum operations. I think the summary of the travails of the peoples of the Niger Delta, as presented to the former President by the South South Peoples Conference in 2003 will suffice.[3]

> "With the increase of the downstream and upstream activities of the Oil/Gas companies, the pollution of the Niger Delta has reached a dangerous dimension. It is immaterial whether the pollution arises from off-shore activities. The negative impact on the Niger Delta is the same. Cases in point are the Funiwa blow out in 1981 and the Mobile Oil producing Spill in the year 2000 both of which occurred off-shore but had devastating consequences on the lands, waters, forests and peoples of the coastal States. Years of Petroleum production in the Coastal States have rendered lands, unproductive, poisoned the waters and forests, while gas flaring has rendered the environment generally inhabitable. The health hazards to which the peoples of the Coastal States are subjected to as a result of Oil/Gas activities cannot be fully documented in this paper."

[3] Meeting the President on 8th January 2003.

1.0.4 Indeed, the Niger-Delta territory and environment provides the highest number, concentration and intensity of gas flaring in the world. The statistics of economic loss and injury brought about by gas flaring is mind boggling. The following figures speak for themselves.

1.0.5 **NIGERIA'S GAS CAPACITY**.

- Nigeria has a gas reserve officially estimated at 165 trillion Standard Cubic Feet
- This quantity in energy terms is equivalent to about 29 billion barrels of crude oil, enough to last for about 35 years
- This is comparable to the nation's oil reserve of about 35 billion barrels.

1.0.6 **GAS UTILIZATION AND WASTAGE**

- Nigeria produces about 5.5 billion standard cubic feet (scf) of gas per day
- About 2.25 scf or 40% is utilized, although about 75% of associated gas is still being flared into the atmosphere.
- The remaining 3.3 scf or 60% is wasted through flaring
- The value of the Wasted gas per day amounts to $ 6 million (about N 760 Million)
- The annual value of the wasted gas is about $ 2 billion(N 260 Billion); enough to build five refineries.
- Nigeria flares about 28 percent of the world total gas flare but is the world's sixth oil producing country.
- The wasted gas is enough to generate electricity for the whole West Africa Region, but Bayelsa State, until very recently, was not even connected to the national grid.

1.0.7 **EFFECTS OF GAS FLARING**

- Acid rain, which facilitates the process of rusting and also reduces soil productivity
- Excessive heating of the environment
- Gas Flaring Contributes to Ozone Layer Depletion which causes:

- Skin damage in form of sunburns and 'suntans'
- Destruction of the natural ability to fight skin cancer
- Damages to the eye and reduces clarity of vision and even causes blindness
- Permanent clouding of the lens of the eye
- Affects the natural immune system with an increased potential for infections.

1.0.8 Effects of Ozone Depletion on the Ecosystem

- Restriction of tree growth
- Delay in flowering
- Adverse changes in leaf structure
- Adverse changes in plant's metabolism
- Dramatic shift in plant populations and in biodiversity
- Adverse effects on animals especially in vulnerable, early stages of life such as larvae or the eggs of frogs in shallow water.

2. The Central Issue in Resource Control

2.0.1 Many commentators who write about resource control and the public at large labour under the mistaken belief that the concept is all about receiving increased revenue from the proceeds of our natural resources. Although resource control ought to result in much increased revenue for the owners of the resources from their proceeds, that is the less significant aspect of the concept.

2.0.2 The really vital aspect of the concept, is involvement in the actual control and management of the resource. 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, including sales of the resources. It

is those who live with the devastating consequences of greedy, cheap, crude, reckless and irresponsible exploitation practices and procedures, 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 will 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.

2.0.3 The unfolding tragedy of the Niger-Delta, is that those who control, manage and exploit its petroleum resources, i.e., the oil companies and those in control of the Federal Government, live far away from the Niger-Delta. There is a conflict of interest between the Oil Companies and the Federal Government on the one hand, and the peoples and territory of the Niger Delta on the other hand. Whilst the interest of the Federal Government/Oil Majors combination, is fast cheap and necessarily crude methods of production for profit maximization, the interest of the Niger Delta Communities lies in a controlled, environmentally friendly and clean mode of production, which may infact mean a lower level of production. This orientation of quick, cheap, crude exploitation is accurately summarized in a research Report in the following passage.[4] **The 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;

[4] Nick Ashton – Jones with Susi Arnot and Oronto Douglas Human Ecosystems of the Niger Delta- A publication of the Environmental Rights Action, 1998, pp. 130-1.

- That once an arrangement has been made with a government; a mining company can be do what it likes – in fact, it can 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.”

2.0.4 Therefore, when in another 28 years, as has been confirmed by experts, the Niger-Delta oil reserves are finally exhausted, the Oil Companies and the Federal Government, will pull out, lock, stock and barrel, to look for new hunting grounds, leaving the people of the Niger-Delta to sink in the toxic 'sewage' they have created and left behind. This is the current fate of Oloibiri, in which oil was first found in commercial quantities in 1956.

2.0.5 The struggle for resource control therefore, is not merely one for increased revenue, from the proceeds of one's resources, but more importantly it is a move by the people of the Niger-Delta to take their destinies into their own hands in order to ensure the environmental protection and restoration of the Niger-Delta territory to a productive and living one, and to insist on environmentally friendly and best oil fields practice in the oil and gas extraction process. It is a programme to work for the re-investment of proceeds of petroleum sales in infrastructural development, environmentally sensitive industries, and in agriculture and, aquaculture. It is a campaign for the re-forestation, renewal, detoxification and restoration of the lands and waters of the Niger-Delta and the introduction and development of renewable resources.

Thus resource control has as part of its primary objective, how to ensure life and a good livelihood for the people of the Niger-Delta, long after the exhaustion of its petroleum reserves.

2.0.6 Therefore to achieve sustainable development, and build infrastructure such as roads and bridges in our hostile environment, we need as much of our resources as possible. It costs ten times more to build one kilometer of road in the riverine areas of the Niger Delta, than in the upland areas of this country. God who knows this, put the resources there as compensation. Man knows this, but carts away all the proceeds to build a paradise called Abuja in addition to establishing private accounts in off shore banks.

2.0.7 From data collected from the Federal Ministry of Works, we have the following revealing statistics about the cost of road infrastructure in the different zones of this country.

Per Unit Cost of Building Roads

Road	Amount	Length	Cost per KM
1) Mararaba-Bali Rd. **Taraba** Contract No. 5105, Federal Ministry of Works	5.73bn	110km	N52,120m
2) Sokoto-Goroyo Dan Rd. **Sokoto State**. Contract No. 4982 Federal Ministry of Works.	2.846bn	95km	N29.960m
3) Ogoni-Andoni-Opobo Rd. **Rivers State**. (Swamp Niger Delta) Project.	13.800bn	33.5km	N411.940m
4) Tombia-Amassome Rd. **Bayelsa State.**	7.5bn	22km	N340.909m
5) Sagbama-Boluo-Orua-Angalabiri Rd. **Bayelsa State**.	2.3bn	7km	N328.571m
6) Bodo-Boni Rd. Federal Ministry of Works. Contract No. 5662. **Rivers State.**	24.045bn	39km	N616.45m

You can see that the Niger Delta does need its own resources for its own development.

3. An Oppressive Legal Regime

3.0.1 The oppression of the Niger Delta Peoples, otherwise known as the Southern Minorities, is amply reflected in the army of legislation eliminating their rights over their land and maritime territory and resources.

3.0.2 When, in the 1950s and early 1960s, groundnuts (North), cocoa (West), rubber, timber, palm oil and palm kernels (Mid-West), coal, palm oil and palm kernel (East) were the main foreign exchange earners in Nigeria, the laws and constitutions enthroned the derivation principle. Section 134(1) of the 1960 (Independence) Constitution, for example, provides with regard to minerals that:

"(1) There shall be paid by the Federation to each Region a sum equal to fifty per cent of –

"(a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that region…"

Subsection (5) of that section defines "minerals" to include mineral oil.

The provisions of this section are in pari materia with the provisions of section 140(1)(a) of the 1963 (Republican) Constitution.

When petroleum was discovered, first at Oloibiri, in 1956, and later in other parts of the Niger Delta in commercial quantities, the tenor of our laws and constitution began to change.

(i) **The Petroleum Decree, 1969** (now the Petroleum Contract Act, Cap. 351, (Laws of the Federation of Nigeria, 1990) fired the first salvo. This obnoxious statute expropriated the Petroleum resources of the Niger Delta, by proclaiming the Federal Government a sort of domestic colonial government over Niger Delta resources with the declaration that the Federal Government is owner of all petroleum resources on land and water.

(ii) By item 39 of the Exclusive Legislative List of the 1999 Constitution, Petroleum is confirmed as being under the exclusive control of the Federal Government. The list includes, Mines, Minerals including Oil Fields, Oil Mining, Geological Surveys and Natural Gas. This issue is presently the most contentious and explosive in the national political agenda. Having been dispossessed their rights over their natural resources, the nationalities of the Niger-Delta are now demanding those rights back. Obviously, this item (39 on the Exclusive Legislative list) sections 44(3) and 62(2) have to be radically modified or re-interpreted if there is to be unity, progress and justice in Nigeria.

(iii) Sovereignty over Natural Resources. As has already been pointed out, item 39 of the exclusive Legislative List, gives the Federal Government the sole and exclusive power to legislate on mines, minerals including oil fields, oil mining, natural gas etc.

Ironically, this is confirmed under section 44(3) which itself is contained in the Chapter four, the chapter on Human Rights. After providing in Section 44(i) that no property shall be compulsorily acquired in any part of Nigeria except in a manner and for the purposes prescribed by a law that requires prompt payment of compensation and gives the owner of the property right of access to court for the determination his interest in the property and the amount of compensation he is entitled to, the Constitution immediately contradicts itself by excluding the human and property rights of the minerals producing areas (especially the Niger Delta and its Petroleum resources) in their natural resources, by stating that, notwithstanding the human and property rights provisions of sub-sections 44(i) and (ii), the entire properties in and control of minerals, mineral oils and natural gas in under or upon land, upon and under territorial waters and Exclusive Economic Zone of Nigeria, is vested in the Federal Government. This provision under the Human Rights Chapter, expropriates the properties of the mineral producing areas, a 100%. This subsection is a most insensitive and contemptuous disregard for the rights of the people of the oil producing States in their own natural resources.

(iv) **The Exclusive Economic Zone Act, Cap. 116 (LFN, 1990)** delimited the exclusive economic zone of Nigeria to "an area extending up to 200 nautical miles seawards from the coast of Nigeria …" and vested in the Federal Government sovereign rights to exploit the mineral wealth of that maritime area abutting on the sea.

(v) **The Land Use Act Cap. 202 (LFN, 1990)** recognizes only the surface rights of the statutory occupier and subjects the rights of such occupier to

the right of the Federal Government to extract minerals from his land, without let or hindrance. Yet, it is trite law, expressed in the popular Latin maxim **"Quicquid Plantatur solo solo cedit**", that what is attached to or beneath the land belongs to the owner of the land. This ancient principle was discarded in order to give the Federal Government unimpeded access to Niger Delta's petroleum resources.

(vi) By the Off-shore Oil Revenue Decree (No. 9 of 1971) – all the minerals in the continental shelf of coastal States were expropriated by the Federal Government.

By this Decree, the Federal Military Government, under General Yakubu Gowon, repealed section 140 (6) of the 1963 (Republican) Constitution, which provided that "the continental shelf of a region shall be deemed to be part of that region"

3.0.3 In order to fully appreciate the blatantly oppressive nature of this Decree on the minority oil producing States, and the utter contempt which the majority controlled Federal Government had for them, the relevant part of the Decree m ay be reproduced as follows:

1. **Section 140(6) of the Constitution of the Federation** (which provides that the continental shelf of a State shall be deemed to be part o that State) was repealed.
2. Accordingly -
   (a) the ownership of and the title to the territorial waters and the continental shelf shall vest in the Federal Military Government; and
   (b) all royalties, rents and other revenues derived from or relating to the exploration, prospecting or searching for or the 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.

Thus with one stroke of the pen, the Niger Delta's right to 50% derivation in its continental shelf was wiped out.

3.0.4 **Other suppressive and offensive laws in the series** include:-

(vi) Minerals and Mining Act. No. 34, 1999

(vii) Lands (Title Vested, etc.) Act

This Act, better known as Lands (Title Vesting, etc.) Decree or Decree No. 52 of 1993, was made by General Babangida on 21st July 1993 but was backdated to 1st January 1975. The highlights, of this Decree in which the Federal Government attempted to expropriate States' waterfront territory are as follows::

(a) The tile to **all the lands within 100 metres of the 1967 shoreline of the Atlantic Ocean from the border with Benin Republic to Bakasi, and**

(b) **any other land reclaimed from any lagoon, sea or ocean, on or before 1975, was to be vested in the Federal Government, notwithstanding anything to the contrary contained in the Constitution or any enactment, law or vesting instrument."**

4. <u>The On-shore Off-Shore Crisis</u>

4.0.1 Perhaps, no event has exposed or revealed the great lack for regard of the peoples of the Niger Delta, than the conduct and statements of the former President in the course of the controversy over his refusal to sign the Bill abrogating the dichotomy, created by Gowon, on the application of the principle of derivation from resources derived on-shore and those derived off-shore.

Whilst the National Assembly was considering a bill, which extended the Niger Delta's rights of derivation throughout the CONTINENTAL SHELF, the President hurriedly forwarded them his version, which limited the Niger Delta's derivation rights to the contiguous zone. The difference between the two is contained in my release published in the Vanguard in September 2002, as follows:

4.0.2 "Let me raise an alarm immediately, that as presently worded, this bill is a Trojan horse, a Greek gift, and a real pandora's box. Only an incorrigibly and abysmally ignorant person or an equally mischievous one will substitute the word Contiguous zone for Continental shelf. The Contiguous Zone is a twelve mile belt of Sea (Water) after the twelve mile belt of territorial Sea. In other words the contiguous zone at its farthest limit from land is only 24 miles. The Contiguous Zone is established in international law for only four purposes, customs, fiscal, immigration and sanitary regulations and operations. Thus article 33 of the 1982 Law of the Sea Convention provides for the Contiguous Zone as follows:

1. In a zone contiguous to its territorial sea, described as the Contiguous Zone, the coastal State may exercise the control necessary to:

   (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;

   (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

2. The Contiguous Zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial seas is measured.

Some fundamental facts must be emphasized:

1. The Contiguous Zone, is made up of only sea water. There are no natural resources in it apart from fishes. What this bill is proposing is that the Niger- Delta States will be paid 13% of any revenue received by the Federal Government from fishing and use of Sea Water!

2. The Contiguous Zone ends only twenty-four miles from land.

3. The Continental Shelf, which is the real subject matter of derivation and natural resources is 200 miles from the shore (land). It is land i.e the seabed and subsoil under the Sea. A natural and legal prolongation of the Land of the Coastal State.

4. It is the Continental Shelf that contains minerals i.e oil, gas and other solid minerals like copper, zinc, magnesium etc.

5. It is the Continental Shelf that was the subject matter of the Resource Control case between the Federal Government and the Coastal or Litoral States. There was NEVER any dispute about the Contiguous Zone.

6. It is the unjust outcome of the judgment that was supposed to be corrected first by presidential action under section 315 of the Constitution and by Legislation, which is what this bill represents.

7. Indeed the provision which was intended to be restored was the one in Section 140(6) of the 1963 Constitution which stated that "for the purpose of derivation, the Continental Shelf of a region shall be deemed to be part of that Region".

4.0.3 It is therefore unimaginable that some persons can conspire in 2002 to clandestinely substitute the useless contiguous zone for the vital and indispensable Continental Shelf. Are the people of the Niger Delta so ignorant and despised that they can be deprived of 200 miles of their minerals, particularly

oil and gas and given 24 miles of Sea Water? Has the contempt for these oppressed peoples gone so deep?"

4.0.4 When this fraud was exposed, the Presidency then descended into regrettable statements of deceit and falsehood, intended to hoodwink the apparently grossly ignorant people of the Niger Delta. These included the false claim that we could create conflict with imaginary neighbours if we declared a continental shelf of 200 nautical miles,

In the first place, it is not necessary top declare and establish a continental shelf of 200 miles. This is automatically conferred on all coastal states by the 1982 International Convention on the Law of the sea.

4.0.5 To buttress the above statement, I refer to article 76 if the United Nations Conference on the Law of the Sea of 1982, which provides that every Coastal State is automatically entitled to a continental shelf of 200 nautical miles. I refer specifically to paragraph 2 of article 77, which provides as follows:

"The rights referred to in paragraph 1 are exclusive in the sense that if the Coastal State does not explore the continental shelf or exploit its natural resources no one may undertake these activities without the express consent of the Coastal State".

I state further that by Article 77 paragraph 3 of the Convention the rights of the Coastal States over the Continental Shelf do not <u>depend on occupation, effective or notional or on any express proclamation</u>.

4.0.6 It is obvious therefore, that even if the Federal Government had not proclaimed and established Nigeria's Continental Shelf it enures to Nigeria all the same.

Let me state that however that the Federal Government did in fact enact a law in 1978 (Cap. 116, 1990 Laws of Nigeria) under Obansanjo's tenure as Head of

State, claiming 200 Nautical miles of the superadjacent sea, sea bed and subsoil. The latter two are none other than the Continental Shelf.

In deed so comprehensive is the scope of this Act that the Federal Government extended Nigerian Criminal Jurisdiction to cover all installations and designated areas within the 200 nautical miles, deeming any offence committed within that zone as an offence committed on Nigerian Soil.

5. Isobath

5.0.1 The last ploy of the Presidency under Obasanjo, was to introduce something called “200 Metres Isobath”. Inspite of all the confusing cacophony of marine geology and other technical terms, used with the intention of confusing and bamboozling the peoples of the Niger Delta, the obscure and deliberately profuse language and terms, can be demystified and decoded.

To those who have some basic knowledge of the Law of the Sea, the meaning was clear enough. What was uncertain was its implication, when applied to the Coastal States of Nigeria. An Isobath is a line representing t he 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 peoples of the Niger Delta are being told that all they deserve from derivation, are 13% of proceeds exploited under archaic technology that was in existence in 1958 when the Geneva Convention on the continental shelf, 1958 was concluded. For 200 metres was thought to be the limit to technological capacity then, and this was put into the Convention. What the former President meant therefore inspite of all the verbosity of his new Bill, now an Act, is that the

Niger Delta is to be denied all the fruits from the development of technology in the last 45 years. We have been consigned the dark ages of human existence.

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.

A few points are therefore clear from this analysis:

(i) The On-shore/Off-shore dichotomy was **NOT** abolished by the Act, but was merely reduced, by, (as will soon be demonstrated), an insignificant fraction.

(ii) Since the Off-shore derivation zone of a state is based on the 200 metres Isobath line, each coastal state will have a different breath of sea for derivation purposes. Thus a coastal state whose sea bed plunges sharply into the sea immediately after the shore line or low water mark, will have a narrow belt of sea for derivation purposes because its sea beds gets to the 200 metre depth very soon after the shore line. On the other hand, a coastal state with a gently sloping sea bed will have a wider derivation belt because its sea bed will not reach the 200 metre depth, until it has covered a considerable distance. To that extent, the 200 metres Isobath concept is inequitable and unfair, since some coastal states will have short derivation zones while others will have relatively longer ones.

If a 200 metre Isobath line is drawn from Lagos State in the west to Cross River State in the east, the injustice of the concept becomes obvious because whilst

the sea bed off Lagos is deep, that of Bayelsa, Rivers, Akwa Ibom and Cross River States is relatively shallow, sloping down very gently.

My own layman's interpretation of the relevant charts (with modifications based on data from the D-G National Boundary Commission) indicates that the Off-shore derivation belts or zones of the coastal states works out roughly as follows: Lagos 3 miles (5.5km); Ogun 5 miles (9km); Ondo 27.7 miles (50km); Delta 33 miles (60km); Bayelsa 38.8 miles (70km); Rivers 38.8 miles (70km); Akwa Ibom 44.4 miles (80km)and Cross River 44.4 miles(80km). What emerges from this analysis is that Akwa Ibom and Cross River States have a 200 metre Isobath derivation zone three times the breath of Lagos and Ogun States.

6. Wealth in the Deep Sea Bed

6.0.1 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.For example, 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.

6.0.2 What is more disturbing is 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 exploitations lies in the deep off-shore outside the derivation zone granted to the coastal states, under the 200 metres Isobath Act. Indeed, the NDDC states in its master plan that current investment in exploration is concentrated in the off-shore deep water zone of the Niger Delta including Bonga and Agbani fields located in about 1000 metres of water. In the light of the above it is not yet Uhuru for the Niger Delta States.

7. RECOMMENDATION

7.0.1 General Involvement of States, Local Governments and Communities

The starting point of any proposal is the implementation of the recommendation of the 2005 National Conference on Political Reform, that the petroleum producing communities should no longer be by scanders as their patrimony is being exploited by the oil multinationals under Federal Government licence. Rather the various mineral resources should be controlled managed by the Government of the Federation through an arrangement which involves Oil Producing States and Communities; in particular, the rights and privileges which the Mineral and Mining Act of 1999 confers on States, Local Governments, Communities and land owners should equally be extended to the case of petroleum resources;

The derivation principle should be given greater prominence than as at now in the distribution of the Federation Account;

7.0.2 Section 36 of the Land Use Act, provides that with regard to land not in an urban area which was immediately before the commencement of the Act, held or occupied by any person.

"Any **occupier or holder** of such land whether under customary rights **or otherwise howsoever**, shall if that land was on the commencement of the Act being used for agricultural purposes continue to be **entitled to possession of the land for agricultural purposes** as if a customary right of occupancy had been granted to the **occupier or holder** thereof" by the appropriate Local Government ……." (The emphasis added)[5]

7.0.3 With that background, the following further recommendations are proferred. It is necessary to adopt a policy, backed by the amendment of the Petroleum Act, to involve the deemed holders of the right of occupancy (the local community) in the negotiation before the grant of licences by the Minister, and above all, to involve them in the course of implementation of the oil mining or exploration projects.

In Tanzania, where the main natural resource is gold, while the Mining Policy adopted in 1997 does not place any duty on the government to consult the local communities on issues of mining, it nevertheless requires the government to "ensure that there is greater involvement and participation of local communities in the implementation of mining projects."

Recently a Tanzanian professor, of Law Chris Maina Peter, in his contribution to the need for full involvement of local communities in mining of minerals gave instances of mining policies in some countries which are more equitable than those prevailing in Nigeria and Tanzania. He wrote:

[5] Proposals Numbers 7.0.2 and 7.0.4 are the original ideas of Chief George Uwechie, SAN. This writer is grateful for Chief Uwechie's generosity in making his extremely practical and implementable ideas available

"Best practices from other countries with similar resources provides a completely different picture. There is a lot that we can learn from them – albeit rather late. For instance, in Papua New Ginea, mining leases must be negotiated with the national and provisional government as well as with customary land owners. Also, in the Philippines, the mining benefits are divided into three parts. These go to the national government, the local government and to other Filipinos."

7.0.4 The Petroleum Act should be amended by the addition of provision that will;

(a) involve the States and Local Governments and Communities in whose territory the resources to be mined or searched for, are situated at the negotiation stage, before the grant of any licence,

(b) require the holder of any licence granted by the Minister, before taking any steps that would involve entry into any land, to meet and discuss with the local communities comprising, in each case the deemed holders of customary right of occupancy and in possession of the lands, the entry into which without their consent, would otherwise be a trespass.

7.0.5 The Proviso in Section 162(2) of the 1999 Constitution states: "Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen <u>percent</u> of revenue accruing to the Federation Account directly from natural resources.

The implication of this provision is that the National Assembly can pass a bill raising the derivation percentage to an acceptable level. The Niger Delta Delegates at the National Conference demanded an immediate increase to 25% and an annual increase of 5%, to bring the derivation percentage to a maximum of 50% within 5 years. I would recommend this as part of my proposals. This brings the maximum to tally with what was

agreed by the Constitutional Conferences of the fifties culminating in the Independence Constitution, which made it a Constitutional provision and one of the agreed basis for Nigerian communities for federating together as one country.

7.0.6 In a similar vein, the Act purporting to 'abolish' the Onshore- Offshore dichotomy should be amended and in place of the isobath of 200 metres, the 'Continental Shelf' should substituted, in line with the original Bill which President Obasanjo refused to sign into law. This will extend the derivation principle throughout the 200 nautical mile-breathe of the continental shelf or to any greater width that may be approved by the UN for Nigeria. Also this is consistent with the 1960, Independence Constitution and the Agreement of Nigeria's Founding Fathers.

7.0.7 In line with above proposals all oil and gas producing communities should be paid 5% of their net proceeds of what the lift from the community.

7.0.8 Currently 75% of associated gas is being flared into the atmosphere. As part of the effort to stem this criminal waste, save the environment from destruction and compensate the victims of the intolerable situation, homesteds in all the villages in the Niger Delta should be connected by pipe lines to the associated gas sources and conveyed directly to these villages for their domestic use. This will also save the mangrove forest and other trees and in the Niger Delta swamps from further destruction.

7.1.0 <u>Infrastructure</u>

<u>Pari Passu</u> with the above developments, I recommend the establishment of a **Ministry of the Niger Delta**, whose main pre-occupation will be:

(i) development of infrastructure in the Niger Delta

– Road, bridges, opening up the Niger Delta to modern facilities, industries, schools, health institute ions, etc.

- power/electricity in every village and hamlet
- Pipe borne water in every compound
- Communication facilities, telephones, etc
- Turning the Niger Delta in terms of facilities and infrastructure into a modern developed society.

(ii) <u>Environmental resuscitation</u>

Cleaning up the soils, waters, forests, lands and air of the Niger Delta to enable them to become agriculturally productive once more.

(iii) Laying the foundation for introducing re-newable resources in place of oil and gas which are wasting assets, and therefore preparing the basis for life and sustainable development, long after the petroleum resources would have been exhausted. We must avoid the fate of Olobiri being foisted on the rest of the Niger Delta.

(iv) The Ministry of the Niger Delta, will give the Niger Delta, an automatic seat in the Federal Executive Council and therefore access to attention and resources at the highest level.

Thank you.