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Akpan, Wilson and Dawood, Mamoon

4 December 2017

Online at <https://mpra.ub.uni-muenchen.de/83099/>  
MPRA Paper No. 83099, posted 04 Dec 2017 07:25 UTC

# When Foreign Interventions in Domestic Economy Leads to Exploitation: A Case Study of Oil Production in Nigeria's Niger Delta

*By*

Wilson Akpan

And

Dawood Mamoon

## **ABSTRACT**

This paper examines the logic of environmental racism (and its ethnic variant) and places it against some of the main issues in the Niger Delta resistance. Relying on primary ethnographic data obtained in the Niger Delta in 2003 as well as on a close examination of the framework for oil exploitation in Nigeria, and some (recent) actions of the Nigerian government, the paper argues that while environmental 'recklessness', poor social remediation, and other 'excesses' have been undeniable concomitants of oil production in the Niger Delta, environmental racism provides only a tangential explanation for these problems, if at all. Environmental racism arguments neglect the underlying issue of a dysfunctional state-dictated framework for oil operations, whose devastating impact is felt not just in the Niger Delta, but across the broader Nigerian social fabric, as well as by the state and the multinational oil companies. The paper revisits John Rawls' concept of 'background institutions' in explaining the environmental and social consequences of oil exploration and the Niger Delta crisis.

## **Introduction**

The last decade has seen a rushing wave of local and international scholarly interest in the Niger Delta<sup>1</sup> resistance. Much of this interest has been instigated by the immense grassroots mobilization championed by the MOSOP (Movement for the Survival of Ogoni People) leader, Ken Saro Wiwa, and the circumstances surrounding his execution by the military regime of Sani Abacha. Although the Nigerian leadership has changed twice since Saro Wiwa's demise, and there is now a democratically elected government in the country, oppositional activities in the oil-rich province has probably only gained in momentum, and the region's 'drift towards anarchy' (to use President Obasanjo's words) continues unabated.

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<sup>1</sup> This phrase is commonly used to describe the oil-rich region of Nigeria. Politically, it is comprised of nine states in the Southern sector of Nigeria, although in the strict geographical sense only probably four states would be subsumed under that phrase. In this essay, Niger Delta means simply 'oil producing province' of Nigeria.

The Niger Delta resistance is indicated by unrelenting demand for local resource rights, calls for the repeal of laws vesting ownership and control of land and mineral resources in the national government, calls for a national conference to work out new terms of association for country's ethnic nationalities, demand for 'fair and equitable' access of the oil communities to the country's oil revenues, as well for adequate systems to deal with the social and environmental problems attendant to oil production in the province. These demands have largely met with rebuff in government circles, and today, nearly five decades after commercial oil deposits were struck in Nigeria, the oil region, and indeed the entire country, remains prostrate economically. Worst, Nigeria's brand of petro-capitalism is unequalled in terms of corruption, opportunism and a near-total lack of commitment to community and national development.

Generally, research – both scholarly and journalistic – has focused on social and environmental concomitants of oil production in the area, and increasingly analyses are emerging that connect the lingering crisis to some dominant social science discourses. In this paper, I try to demonstrate that much social science literature on the Niger Delta 'crisis' is mired by what one might term the 'civic-ethnic paradigm', and that an environmental perspective – which could very well have been a refreshing departure from the convention - is showing signs of veering into the ethnic analytical comfort zone. Probably nowhere else is this point more evident than in Agbola and Alabi's (2003) concept of 'selective victimization', which contrasts the debilitating environmental maladies in the deprived Niger Delta region with what the authors describe as a 'healthy environmental setting' in the non-oil producing areas. In the view of these authors, Nigeria's non-oil regions are the principal beneficiaries of the Niger Delta's deprivation.

Applied to an ethnically (rather than racially) diverse society, the concept of selective victimization is the heuristic corollary of environmental racism - a widely used catch phrase in Western environmental justice circles. Agbola and Alabi use it to further push the core environmental racism position that economically and politically dominant social groups deliberately ignore or actively promote environmental catastrophes in the neighbourhoods of weak and powerless minorities. While this argument does have the potential of bringing out a critical dimension of the Niger Delta problem, namely, poor social and environmental remediation – indeed the lack of development – one has to be cautious with the premise that the driving force of the Niger Delta's neglect is ethnicity.

As I argue in this paper, environmental racism arguments neglect the underlying issue of a dysfunctional state-dictated framework for oil operations and decadent governance ethos, whose devastating impacts are felt across the entire Nigerian society.

The paper is divided into five sections. The section immediately following looks at some of the scholarly work done on the Niger Delta, specifically those adopting a 'social science' perspective, and seeking to 'define' the struggle. The section brings out the scholarly mindset underpinning conventional (ethnic) characterizations of the Niger Delta resistance. This is intended to serve as a background against which to appraise the ethnicization of environmental racism, as well as the wider implications of the emerging narrative. Section three explores the environmental justice paradigm, focusing specifically on the discourse on environmental racism and selective victimization. Section four interrogates, based on Rawls' idea of 'background institutions', the legal framework for oil production in Nigeria and highlights some social and environmental excesses that have become a norm in the Niger Delta, arguably as a result of the lapses and weaknesses in this framework. The section also looks at how the ethos of governance over the years has served to perpetuate these lapses and weaknesses, for the benefit of a predatory ruling elite rather than necessarily for the development of entire ethnic regions. The last section is reserved for concluding remarks.

### **The Niger Delta Resistance: A Traditional View**

As hinted earlier, a decade of international interest in the disturbances in the Niger Delta has led to a situation where today, problems in the volatile region are no longer just issues for placard-waving protesters, topics for media speculation or issues around which tapestries of partisan politics are woven. Scholars are trying to make sense of Nigeria's single most confounding paradox: the juxtaposition of gruelling poverty, unemployment, environmental devastation and socio-economic retardation in the communities that yield the country's lifeline resource - oil. One sticking point seems to be the quest to understand what drives popular resistance in the oil province, and, no doubt, some analysts are eager to invoke 'better-established' paradigms in their search for answers. Among such paradigms, the ethnic perspective enjoys unassailed prominence.

Consider, for example, Ikelegbe's (2001:21-22) characterization of the Niger Delta struggle as the 'pursuit of an ethnic agenda' and a rampaging threat to Nigeria's 'nascent

democracy and fragile unity'. In the study in question, the Ijaw Youth Congress, a community-based organization widely known to be in the forefront of the Niger Delta mobilization, is held out as a prime example of what the author describes as 'perverse' civil society. The study utilizes a binary view of civil society ('ethnic' and 'ideal'), and employs a string of stinging adjectives ('criminal', 'sectional', 'anarchic', 'parochial', and 'centrifugal') to describe 'ethnic' civil society. It would, of course, be tenuous to justify such characterizations on the basis of the occasional violence that has become a known element of the Niger Delta mobilization, for although a group may occasionally resort to militant antics (and one is not here referring to unlawful, insurrectionary or terrorist activities), such activities need not be an *intrinsic* component of a group's operational ethos, nor need they be an indication of a natural predilection. What makes sense is to begin by viewing violence as an epiphenomenon, whose roots may lie in, say, 'unjust state institutions and in a decadent governance ethos.

In their account of 'Alienation and Militancy in Nigeria's Niger Delta', Cezarz *et al* (2003) adopt a framework of analysis not substantially different from what we saw above, except that in their account the resistance is supposedly driven by 'bigger ambitions' and 'better capacities'. Local groups are said to have metamorphosed from 'a loosely organized ethnic, sporadic movement' into something of an 'armed ethnic militia' capable of derailing the country's new-found democracy, or at best extracting 'compromise' from the Nigerian state. The authors acknowledge that the struggle has *of recent* departed from *earlier patterns* of focusing only on 'local concerns', and now focus more on *national* issues such as flaws in electoral processes and 'most notably inequities in the national formula for allocation of oil wealth' (Cezarz *et al* 2003:2). But the argument raises an important question: can one seriously separate so-called 'local concerns' from 'national' issues in the Niger Delta struggle?

In what is in every sense a spirited response to the article referred to above, Douglas *et al* (2003:2) have repudiated the alarmist allusion to so-called militia tendencies of local groups: such characterization misrepresents the essence of the struggle. According to them:

even as Ijaw leaders have worked to address pressing problems in their immediate locality - the Niger Delta - their focus has always been national... [I]they framed their grievances in terms of the national arena as the audience and site of struggle. Such issues as flaws in the electoral process, resentment of Nigeria's national

Army, and inequities in the allocation of oil receipts have engaged the attention of Ijaw leaders since the late 1950s. (Douglas *et al* 2003:4)

What shakes the veracity of this argument, or, indeed, betrays the inadequacy of the framework used, it would seem, is the suggestion that there is now in existence an alliance linking 'Nigeria's hitherto excluded oil communities in a *bulwark against* the ethnic majorities' (Douglas 2003:3 – emphasis mine). This would seem an oversimplification, for the simple fact that although there is an increasing tendency towards coalition formation across communities in the oil province, such efforts and emerging structures do not necessarily constitute a 'bulwark against' the country's non-oil producing ethnic groups. The notion of bulwark portrays Nigeria as a society where groups must perpetually 'defend themselves' against neutralizing tidal waves from 'outside', and as a fractious entity where *networking* across ethnic lines (on issues touching on the very survival of the nation) is impossible.

Given the multiethnic composition of Nigeria and its unfortunate history of failed (and unattempted) development, it is almost automatic for analysts to accentuate the 'ethnic backdrop' of socio-political processes (especially conflict) in the country, and discountenance other criteria of appraisal - good governance, for example. For example, although acknowledging that:

- a) 'billions of dollars' in oil income have 'disappeared into the national economy and/or private hands without satisfactory accounting, and without perceptible benefits to most Nigerians';
- b) 'the distant state cannot be trusted to understand or act effectively on grassroots priorities';
- c) the Nigerian government 'may be more a predator than servant' and an 'agent of exploitation rather than protection';

Welch (1995:636) would rather not focus his analysis of the Niger Delta resistance on dysfunctional state structures and decay in the ethos of governance. Rather, he dips his hands into history to assess the country's origins and the growth of the ethnic germ. Nigeria as an entity, he maintains, 'came into being long before a substantial number of its residents felt themselves to be "Nigerians"'. For him:

Cut throat competition for economic and political power encourages persons to turn to the primordial sentiments of kinship. By stigmatising the outsider and exalting the insider, the ambitious can create powerful movements – within the confines of the group itself... For Nigeria... the problem is especially intense. (Welch 1995:645-646)

If the above account of ‘ethnic-feeling’ is offered as a uniquely African phenomenon, then it is, indeed, misleading. Are not human beings embodiments of multiple, crosscutting identities – the assertion of which is always shifting and a matter of the social context?

For Agiobenebo and Azibaolanari (2001:413-455), ‘the ethnic minorities of the Niger Delta are treated as objects (property) *owned by the majority groups to be dealt with according to their whims and caprices* [emphasis mine].’ But, according to popular playwright and Nobel Laureate, Wole Soyinka, this depiction is probably truer of the Nigerian ruling elite’s treatment of Nigerian citizens as a whole. Emphasizing the predatory and destructive ethos of governance and politics in Nigeria, Soyinka remarks that Nigerians have been turned into ‘prostrate preys, subject to the whims and caprices of jungle lords’ - an anomalous condition which he and other well known Nigerian activists have recently formed a Citizens Forum to fight (Ugah, 2004).

The social and environmental perturbations in the Niger Delta are also given meaning in what Watt (2001:2-11) calls the ‘shock’ of ‘petrolic-modernization’. The argument here is that although the struggle is woven around ‘a recognizably modern set of political demands’, it has but one central ‘ideological reference point’, namely ethnicity. It would seem intriguing that having gone to great lengths to describe the wide-ranging deprivation in Nigeria’s oil producing communities – Ogoniland, for example – and the political and governance structures sustaining it, the author goes ahead to single out ethnicity as the *fixed* organizing principle behind the struggle for remediation. But with such a framework, it becomes easy to draw a parallel, as the author does, between the Niger Delta crisis and what happened in the Northern Nigerian city of Kano in the early 1980s.<sup>2</sup>

What is clearly intriguing in the foregoing brief sketch is that even those writers who acknowledge that the issues in the Niger Delta resistance is not just a ‘we/them’ affair, still go ahead to invoke the ethnic paradigm in putting forward their analysis. How does one explain this intellectual tendency – which, as we shall see shortly, has also been deployed in giving a ‘local angle’ to the environmental racism discourse?

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<sup>2</sup> In December 1980 a fringe Islamic group, purporting to champion the cause of Northern Nigeria’s urban underclass, mobilized adherents in what was to become one of the bloodiest riots in Nigerian history. Between the 18<sup>th</sup> and 29<sup>th</sup> December alone, violent confrontations between the Maitatsine followers and state security forces led to the death of four thousand people.

Needless to say, this attitude owes its origins to the copious insights provided by colonial ethnographers, administrators, travellers and missionaries. Indeed, even African social scientists who find it difficult to go beyond this paradigm, nonetheless, recognize it as a bequeathal of colonial anthropology, which portrayed Africa as a hideous collage of antagonistic tribes, and Africans as people incapable of mobilizing except in furtherance of communal or tribal interests – people chronically incapable of building inclusive, democratic and progressive societies.

So much is left unexplained - so much is glossed over - each time ethnicity is employed to explain development dynamics (including conflict and resistance) in Africa (See Ake 2000, Mamdani 1996, Adesina 2002) What is more, so much unwholesome knowledge finds its way, through an unwholesome paradigm, into the public policy arena. It is against this background that alternative analytical models become important.

### **An Environmental Justice View**

The global environmental justice movement has during the last few decades brought to the fore of public discourse the environmental dimensions of 'unjust' and discriminatory state policies and corporate practices. Tracing its roots to the 1960s' civil rights struggles championed by Martin Luther King, Jr., the movement adopts an environmental view to the social inequities that seem to be the common currency of contemporary societies. The central tenet of this paradigm is that the very environmental practices that have brought gains to particular segments of society, have achieved that goal by deliberately making victims of specific groups in the same society. According to Bullard (1994:xv):

Some individuals, groups, and communities receive less protection than others because of their geographic location, race, and economic status. [For example], environmental problems in suburban areas pose far fewer public health threats than do those in urban or rural areas. Moreover, low-income communities and communities of color bear a disproportionate burden of ... pollution problems.

Bullard's assertion is corroborated by several studies done in the United States of America, which reveal that the residential, recreational and work neighbourhoods of poor, powerless and voiceless groups (such as people of colour, migrants and low income workers) are readily chosen as dumping sites for toxic wastes or even as sites for hazardous industrial plants (Brant 1995, Stretesky and Hogan 1998, Bullard 1994).

The environmental woes of America's so-called 'black belts' – or what Austin and Schill (1994) call 'black, brown, red and poisoned' communities – often follow discernible patterns. For example, as socio-economic conditions improve for white jobholders, they relocate from residential areas neighbouring the hazardous industrial plants in which they work – thus creating vacant homes which low-income people of colour are only too willing to move into. Besides, polluting industrial neighbourhoods are sources of cheap residential land, and these are often prime housing sites for the poor – in most cases African-Americans, Hispanics, Native Americans, Asians, migrants and other 'disempowered' people. Furthermore, there seems to be a straightforward economic reason for the locating of polluting industrial plants (like incinerators) in 'black, brown and red' neighbourhoods: where better to site an incinerator than where you have the hugest supply of waste? (Austin and Schill 1994:53-54) The deliberate and unconscionable victimization of the poor and powerless thus fuels the fire of protests and resistance. The social justice emphasis has, thus, continued to assure the environmental justice movement a measure of acclaim, even when mainstream environmentalism is being attacked for 'degenerating' into narrow-minded demagoguery and fundamentalist moralising (on its pet themes of resource depletion, global warming, deforestation, etc.).

With the contours of environmental racism so graphically drawn based on the American experience, a potent heuristic device was created that would help to explain not merely 'unjust environmental processes' but specific dynamics of power sustaining them. All that remained, it seemed, was for commentators and advocates in other lands to look around their societies for evidence of a similar malaise, and then import the concept to explain it. In the case of the Niger Delta this seems to have been done with little attention to the complexities of the crisis.

Possibly to extend the frontiers of environmental justice discourse, and demonstrate its applicability even in an equatorial African society (in this case Nigeria), the concept of environmental racism has been literally, albeit disingenuously, deployed to explain the Niger Delta resistance. One approach has been in the creation of a 'racial scenario', with 'white' (multinational) oil corporations on the one hand and Nigeria (the 'black belt') on the other. The Niger Delta resistance is explained from the point of view of local

rejection of a racist corporate practice in which oil companies perpetrate in Nigeria (Niger Delta) environmental abuses that they would never contemplate in their 'home' countries. This is evident in the following remarks:

Given the care they [oil companies] take to protect the environment in their home countries, the devastation of the Niger Delta is a conscious policy on their part for several reasons. One, there is a colonial mentality that a third world environment does not deserve good care. This attitude means that the oil companies do not have any sense of responsibility towards Nigeria or any other third world country for that matter. All they care is to exploit the resources (Ekoriko 1997).

In a despatch addressed to the World Conference on Racism in Durban, South Africa, Olukoya (2001) quoted Teresa Turner as saying that the oppressive environmental practices perpetrated by Western oil companies in Nigeria amounted to environmental racism and *could not* be pursued by them in the Northern hemisphere. She also reportedly accused the oil companies of using creative but deceptive public relations tactics to blind the West from seeing their anti-community and anti-environment practices in the Niger Delta and thus forcing that region to continue to consume oil that was in every sense 'mixed with blood'.

The above remarks, while understandable from the standpoint of the long history of ideological conflict between the global north and the global south, nonetheless, go against the grain of what has long been known as the 'logic of capital' - the fact that private companies are about profits. Many corporations have been known to resort to 'irresponsible' practices (bending accounting rules, exploiting societal ignorance, taking advantage of lax or nonexistent legislation, or even compromising a corruptible and weak bureaucracy) just to achieve corporate financial aims. This does not have to be a 'white-black', 'North-South' issue, as companies (even those operating in home soils) hardly of their own accord act to 'protect' the environment - except of course such 'protection' is in their immediate or long-term economic interest. This is not to imply that companies are absolved from responsibility<sup>3</sup>, but the reality is that they often exploit existing loopholes in a particular society to further their aims. It is the primary responsibility of government to (through appropriate legislation, scrupulous enforcement of relevant laws, and, above all, a transparent determination to put people first) force companies to not only act in the public interest but also get used to acting that way. To assume, therefore,

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<sup>3</sup> The present author is part of a global social accountability network whose advocacy focus is holding states and business corporations accountable for their policies and actions.

that the Niger Delta's resistance is fundamentally a resistance against corporate double standards is to oversimplify the issue and divert attention away from other important explanations as to why the oil companies behave the way they do in Nigeria. But I will return to this later.

Allegations of 'racially motivated double standards' have led some writers to advocate a transfer of oil production technology to Nigerians as a way of heralding a new era of community- and environment-friendly oil operations in the country. Indeed, Abe and Ayodele's (1986:95) conviction is that '[a]s long as aliens control the technology of oil production, equipment, etc. so shall our environmental problems arising therefrom remain with us' – which is quite a grim picture, especially since it does not seem Nigeria is wresting 'control' of this technology from the 'aliens' anytime soon. Indeed, if there is anything to learn from the resurgent oil exploration frenzy in countries like Liberia, Sierra Leone, Tanzania, Kenya, Chad, Sudan, Niger – and in Nigeria's north-eastern sector – it is that the ruling elites of most present and potential oil-rich African countries are more interested in easy incomes from oil than in the acquisition of oil production technology.

But it is probably in Agbola and Alabi (2003) that one finds one of the most dramatic applications of environmental justice narrative to the Niger Delta resistance. It is encapsulated in the concepts 'selective victimization' and 'peripheralization'. One considers it dramatic in the sense that it gives the concept of environmental racism a local ambience, by connecting it to the well-worn 'ethnic' narrative briefly reviewed earlier. The writers make a determined effort to document the social and environmental woes of the Niger Delta, even acknowledging that they are 'linked directly to the unsustainable mode of petroleum resources extraction in Nigeria' and to state 'policies and actions'. But rather than make 'mode of extraction' as well as 'state policies and actions' – or indeed what Transparency International (2004) calls 'political corruption' - a central issue in their analysis, what one finds are strong, unsustainable inter-ethnic comparisons:

With selective victimization, the Niger Delta region is losing critical resources as well as a healthy environment, thereby exposing residents to hazardous environmental conditions, *while the non-oil producing which receive the lion's share of the oil revenue are free to live in a healthy setting* (Agbola and Alabi 2003:270 – emphasis mine).

To start with, oil is a territorial resource, which is often developed where it is found. It is different from, for example, the deliberate siting of a polluting incinerating plant or a brewery in an economically disempowered area. Historically, oil prospecting in Nigeria began not in the minority province of the Niger Delta but in the Yoruba-speaking Western sector – specifically in the Ijebu Ode and Araromi communities (Soremekun and Obi 1993). This was prior to World War I, and commercial reserves were struck in the Niger Delta only in 1956. Since 1987 the search for oil has been extended to as far north as the Lake Chad Basin, and it is unlikely that the futility of the search so far will discourage further exploration activities there or elsewhere in the country, at least in the foreseeable future (See Lawal *et al* 2004, Lawal 2003), especially in the light of what has been described as a new ‘frenetic scramble for black gold on the [African] continent’ (*Thisday* 2004:18). We have no way of knowing, for now at least, what would have been the prevailing ‘mode of extraction’ or state ‘actions and policies’ – or indeed the depth of political corruption - had oil been found in locations other than the Niger Delta. What we do know is that the ruling framework for oil operations in Nigeria governs *Nigeria’s* petroculturalism, and will subsist for *any* oil-producing region or community in the country.

One Niger Delta activist’s remark about existing ‘mode’ of oil production in Nigeria is quite instructive: ‘we want oil to be found elsewhere so that others will know that given the present framework, the nearer you are to oil wealth, the farther away you’re from the benefits’ (In-depth Interview, November 20, 2003). What is more, this same framework – and the selfish and morally bankrupt politics it provokes, or perhaps that provokes it - has been attacked by virtually all layers of the Nigerian society - from organized labour to organized religion, from the student movement to the media, and from professional groups to senior citizens. Even the oil companies, although often exploiting it to their own advantage, have on occasion expressed frustration with the framework (See SPDC 2001:25). In other words, opposition to it does not come only from the Niger Delta, because it is an issue that has implications for natural resource development everywhere in Nigeria. This is probably why an online survey conducted in 2003 by one of Nigeria’s most authoritative dailies recorded a ninety-five per cent support for the ‘restructuring’ of Nigeria’s polity (*The Guardian* 2003)<sup>4</sup>. The Niger Delta neglect is but a tip of the iceberg of government’s attitude towards the broader Nigerian environment. Yet

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<sup>4</sup> This was the result of the poll as at 1854 GMT when this writer accessed *The Guardian* website.

Nigeria's oil production framework has yet to be made the main explanatory factor in the Niger Delta resistance, or at least it has not been done with the same force as ethnicity has.

Even in the United States, the problem of environmental racism – after which the Niger Delta 'selective victimization' discourse is modeled – is seen as fundamentally emanating from poor legislation, or broadly speaking, policy failure. According to former U.S. Congressman John Lewis (1994:viii), 'reaching the goal of environmental justice would require action on the part of the federal government. [The goal] could best be achieved through federal legislation'.

If the problem is with the oil production framework – in other words, with the 'background institutions' that define the boundaries of state and corporate commitment to the community and the environment - then the concept of 'selective victimization' is simply gratuitous. Environmental justice discourse makes sense in the Nigerian context if it emphasizes the need for communities to, by law, play an active and non-subordinate role – alongside government and other stakeholders – in determining how environmental resources are exploited and utilized. Such a paradigm emphasizes the imperative of accountability, which, helped along by strong and transparent public institutions, ensures that in the quest for development through natural resource exploitation, the very principles of human welfare and the common good are not undermined. The ethos of governance must also be a central concern if one is to differentiate between predatory socio-political governance and deliberate victimization.

Granted, decades of oil production, amidst permissive environmental controls, can be likened to an ecologic rape. But nowhere in Nigeria does one find a scrupulous, people-centred environmental regime capable of creating the sort of 'healthy setting' romanticized by proponents of selective victimization. The rot is evident in the north, south, east and west. Lagos, Nigeria's congested and chaotic 'commercial and industrial capital', for example, is characterized by collapsed social infrastructure and has remained for many years one of the world's dirtiest cities. Abuja, the only 'planned' city in the country, now appears caught in the contradictions of its status as Nigeria's seat of government: the scramble for building sites and sundry business spaces (amidst inept urban management and poor infrastructure) has made Abuja one of the world's fastest

decaying newly-built cities. In the far-northern sector - Nigeria's 'dry belt' - government effort to combat desertification has traditionally been in the form of a dubious once-a-year tree-planting ritual by bureaucrats and politicians, the result being that about fifty percent of a state like Yobe has already been lost under the Sahara desert (Raufu 2004). In the Western Nigerian traditional capital city of Ibadan, local residents of a particular neighbourhood have once been reported as falling tipsy after drinking well water that had been contaminated underground by effluents from a nearby beer factory. In recent years, the Kainji Dam<sup>5</sup> has become notorious for unleashing its contents on its host communities (spread across Niger, Kogi and Kwara States), causing floods that have devastated homes and farmlands. Indeed, communal agonies resulting from dam failures have given rise to a Niger Delta-like coalition and resistance, under the aegis of Hydroelectric Power Producing Communities (HYPPADEC). In none of these cases have there yet been effective and popularly accepted remedial measures (reparation, resettlement, and compensation for property lost or damaged) from the government or from the private and public enterprises concerned.

While environmental problems in the non-oil producing areas may pale in significance when compared to gas flaring, oil spills (which destroy forests, farmlands and fishing grounds) and underground water pollution in the Niger Delta, there is at least one string that binds them all in the same pack: the absence of effective response and remedial mechanisms. At the very least, it does suggest that while there is considerable environmental damage in the Niger Delta, other regions of Nigeria are not necessarily sparkling with virginal splendour, or cuddled like precious jewels by the Nigerian government. The Niger Delta is probably only a hyperbolic case of how the Nigerian state treats its citizens. This point should serve to highlight the emancipatory significance of the Niger Delta struggle – the fact that, in a very practical sense, it does represent what Edward Shils (1992:1-15) would call a 'solicitation for the interest of the whole society'.

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<sup>5</sup> Measuring 66 metres in height and 550 metres in width, the Kainji Dam is the largest dam on the Niger River. Built between 1964 and 1968, it generates electricity for the country, eases river navigation, and controls the flow of the Niger, thus making it possible to construct a road across the river. The dam's waters also serve irrigation and fishing purposes (Encyclopedia Britannica 2002).

### **An Idea of ‘Background Institutions’**

In the context of this paper, ‘framework for oil operations’ refers to the principles and guidelines for upstream oil business as contained in the relevant laws of Nigeria. It represents efforts by the Nigerian state to define the relationship between people and the environment, as reflected in such issues as ownership and control of oil resources as well as relationships among the state, oil enterprises and oil communities. It sets the boundaries within which oil companies and relevant state regulatory and enforcement agencies carry out their functions. The aim of this section, therefore, is to show that Nigeria’s oil production framework provides a more fundamental basis for appraising questions of ‘fairness’, and hence of citizen discontent or otherwise, not only in the Niger Delta but also in the broader Nigerian society. One is guided here by John Rawls’ concept of ‘background institutions’. In his influential work, *A Theory of Justice*, Rawls’ (1971:275) suggested that societies must design their distributive systems in such a way as to make social justice an automatic outcome. As he put it, ‘without the proper arrangement of [...] background institutions the outcome of the distributive process will not be just’.

The history of the legal framework for petro-capitalism in Nigeria’s goes back to legislation in the colonial era, and in particular the Mineral Oil Act of 1914. This Act was abolished in the late 1960s, apparently following complaints by the ruling elites of immediate post-independence Nigeria that it gave unfair privileges to Britain and British companies, and smacked of neo-colonialism. In its place came Decree 51 of 1969 (Petroleum Act), which, among other ‘achievements’, transferred the rights of ownership and control of oil everywhere and anywhere in the Nigerian territory to the Nigerian government - rights initially vested in Britain. In theory it opened the doors to the participation of Nigerian companies and Nigerian citizens in the oil enterprise and gave the state the freedom to promote an operating and policy environment that would best serve the interest of Nigerians. Thus, existing joint venture and other agreements between the Nigerian government (through the Nigerian National Petroleum Corporation, who is senior partner in the agreements) and multinational oil companies are, in principle, agreements *on behalf* of Nigerians. The oil companies are the ‘operators’ in the various partnerships.

But in reality, unfair privileges merely found new beneficiaries in the multinational oil companies, political entrepreneurs, oil bureaucrats, all manner of opportunistic

middlemen, an incoherent, 'comprador' state, and, in recent years, a well-coordinated syndicate of oil thieves known in local parlance as 'oil bunkerers'<sup>6</sup>. In terms of the Petroleum Act, no oil community is entitled to royalties; all revenues (rent, royalties, petroleum profit taxes, etc) go to the 'owner' of the resource, namely the Federal Republic of Nigeria. Even on matters of direct compensation to a community for rural land acquired for oil production activities, only the 'disturbance of surface rights' is provided for in the Act, although no benchmarks are spelt out as to issues of 'fairness' of adequacy of compensation. On these matters, affected communities (in reality subsistence farmers and fishermen) must engage directly with the oil companies. Even so, according to Frynas (2000:77) 'no court has the jurisdiction to inquire into any question concerning the adequacy of compensation paid to land owners.

Over the years, companies have been known to rely on compensation rates that the government itself uses when it disturbs 'surface rights' in the course of carrying out public interest land development (building of airports, roads and sports stadia, etc). It is interesting to note that when an oil company pays less than seven American cents for a mango tree (an important 'economic' crop in Nigeria) destroyed in the course of oil exploration, that is considered in oil enterprise circles as 'a little higher than' what the Nigerian government would pay for a similar 'disturbance' (Indepth Interview, 10 April, 2003). On one of his field trips, this author was confronted with documentary evidence that attempts by oil companies to substantially review some of its 'hand-outs' to affected communities were not favourably received by the government, who even threatened that any 'unapproved' spending would have to be borne by the operator (In-depth Interview, 10 April, 2003). In the event of oil spills, there are no clearly spelt out or legally binding procedures and criteria for determining extent of spill and amount of compensation payable. Accordingly, oil companies have been known to 'preside' over these processes (*The Guardian*, April 13, 1998:21), because at any rate, in their business philosophy

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<sup>6</sup> The term 'bunkering', which means to 'fill a ship's bunker with coal or oil', is used in Nigeria to refer to the criminal diversion of oil for illegal export. Between 50,000 to 100,000 barrels of oil are reportedly stolen daily in this way (some of the oil sourced through pipeline vandalism, deliberate tampering with well-heads and outright diversion of shiploads of oil meant for legal export). In the past, prescribed punishments for this crime varied from revocation of oil licences and confiscation of assets, to the death penalty (see for instance Decree No. 20 of 1984), although there is hardly a record of culprits who suffered these stiff penalties. The persistence of illegal oil bunkering in Nigeria is partly due to the fact that it is a 'business' that allegedly involves 'highly placed people' both within and outside the oil industry, and even in government. According to one writer, with increasing restiveness in the Niger Delta, oil companies have deliberately talked up the problem of illegal bunkering as a way of 'demonising and diabolising' local resistance, and thus justifying the continued repression of the oil communities (Braide, 2003).

(consistent with the logic of capital), oils spills are ‘industrial accidents’ for which they deserve, not pressure for compensation, but sympathy (Haastrup 1996). It takes a responsible government to enforce rules that impresses on business corporations that ‘industrial accidents’ that directly become a health issue for the broader community of citizens must be *adequately* paid for as one of the costs of doing business. And since, in this case, the government is a ‘senior partner’ in the business, it takes responsible agencies of state to ensure that the environment and the community do not bear the brunt of business operations.

The 1969 Petroleum Decree provides the basic context for all subsequent legislation governing oil operations in Nigeria. Following fears that a poor regime of compensation to oil communities could trigger widespread unrest in the Niger Delta, and thus disrupt the flow of government’s budget funds, the government responded not by tackling the roots of discontent, but by reducing the ‘economic territory’ upon which local residents could legitimately seek entitlement. This it did through Decree 9 of 1971, which created a dichotomy between ‘onshore’ and ‘offshore’ oil, thus putting all ‘offshore oil resources’ entirely in ‘Federal territory’ so that, thenceforth, local claims could only be based on oil drilled on land and in shallow waters close to settlements. The socio-economic impact of this law was to become particularly felt in those states (like present-day Akwa Ibom and Ondo), whose oil reserves are mainly ‘offshore’, that is, in ‘Federal’ economic territory. In 2004, after more than two decades of opposition to this legal regime, the law has been ‘abrogated’, as a new law has been enacted granting Nigeria’s littoral states rights of claim on resources lying within a water depth of 200 metres.

In March 1978 the government enacted the Land Use Decree (Land Use Act), ostensibly to make the country’s land tenure systems more developmental by, for example, giving the state unrestricted access to land for ‘public interest’ activities (like petroleum development). However, the Act has had the single most controversial effect of creating conditions in which the Nigerian ruling elite treats land as a mere ‘economic’ commodity rather than as a source of community identity that it is. The land user suddenly found that land was no longer what it used to be; individual, family or communal right to it became redefined as ‘improvements to land’ or the right to economic and food crops, and man-made structures (houses, shrines and graves). Land itself (and everything flowing under it) changed hands, and every citizen – even a rural citizen who has never

ventured out of his ancestral village or his immediate community – became a hapless tenant on state property (Uchendu, V.C. 1979:62-74). According to Human Rights Watch (1999:77):

Land is acquired by the oil companies for oil operations from the Nigerian government under these laws, which in practice allow the government to expropriate land for the oil industry with no effective due process protections for those whose livelihoods may be destroyed by the confiscation of their land... In practice, the decision as to the land that will be expropriated and the determination of such compensation as will be paid appears to be made by the oil industry itself.

Besides, by so broadly altering the status of land, the state made it easier for Western individualistic attitudes towards land to predominate in resource exploitation practices throughout the country. In the deep swamps of the Niger Delta, for example, oil companies seem to exercise the prerogative of defining what constitutes a ‘community’, a ‘settlement’, a ‘pipeline community’, an ‘oil well community’, a ‘landlord community’, etc., and thus who are ‘settlers’, ‘squatters’, and ‘legitimate’ community members (In-depth Interview, 16 May, 2003). This is their idea of a ‘fair’ yardstick for dispensing social philanthropy in the oil communities, as there are no statutorily binding criteria for corporate investment in the sensitive activity of ‘community development’. This strategic and deliberate ‘partitioning’ of communities for purposes of ‘community development’, which the state has largely abandoned anyway, is one of the principal sources of the intra and inter-community squabbles that are so ubiquitous in analyses of the Niger Delta crisis.

One argument often put up by proponents of environmental racism and selective victimization, especially in Nigeria, is that by operating recklessly in the Niger Delta, the oil companies are violating ‘international standards’. Although it is often not stated what these are, they possibly refer to the flexible and voluntary principles and guidelines that have shaped up over the years following demands by international environmental pressure groups, as well as from the environmental codebooks of oil producing countries, American Petroleum Institute, International Standards Organization (ISO), the World Bank<sup>7</sup>, and declarations of United Nations agencies, among others. The fact that these guidelines are constitute non-legally binding ‘best practices’ is often overlooked.

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<sup>7</sup> An example of this would be the *World Bank's Pollution Prevention and Abatement Handbook 1998: Toward Cleaner Production*.

Indeed, so ‘soft’ (in legal terms) are these guidelines that the Australian Petroleum Production and Exploration Association (APPEA) accompanies its code of environmental practice with the following disclaimer:

APPEA does not accept any responsibility or liability for any person’s use of or reliance on, or for any consequences of such use or reliance. *The guidelines have not been approved by government bodies or regulators and do not have legal force or effect. Therefore, compliance with the Guidelines will not necessarily mean compliance with legal obligations.* Each person accessing the Guidelines must acquaint itself with its own legal obligations (Quoted in Wawryk, undated – Emphasis mine).

Thus, while an oil company spokesperson might refer to so-called internationally recognized standards as the ‘the Bible’<sup>8</sup> of our company [which we] follow... as strictly as we can’ (Haastrup 1996), it would be lame for a country to expect such a company to behave as though these standards were treaties. But as indicated earlier, balancing environmental concerns against corporate profits is not usually as easy it seems. States must, through appropriate national legislation and proper enforcement (which should include the setting up of effective environment courts) and a transparent commitment to community well-being, extract compliance from business enterprises. So far in Nigeria, an important planning tool such as environmental impact assessments are carried out through very fraudulent processes. It is believed that all a project proponent (and this is not only in the oil sector) needs do is instruct his consultant to prepare a report that is more or less silent on adverse impacts, and then dole out bribes to officers in the relevant government agency for the report to be approved.

Environmental abuses are rife in Nigeria, in both the oil and non-oil sector, within and beyond the Niger Delta, and are perpetrated by companies in the private and public sectors, and by enterprises large and small. Construction companies, quarry operators, breweries and many other categories of industrial operators have been reported to exploit the country’s permissive, weak and corrupt institutional systems at the expense of the Nigerian masses. Abuses in the oil sector come more under public scrutiny because of the grip oil has on the country’s economy and politics; oil is Nigeria’s most ‘conspicuous’ commodity.

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<sup>8</sup> This is a reference to Chevron’s *Policy 530: Protecting People and the Environment*.

Certainly, an exhaustive exploration of Nigeria's oil production framework is impossible in a project of this scope. Yet, the foregoing sketch does at least highlight one point, and that is that although often appearing like a scheme to 'victimize' minority peoples, there is no region in Nigeria that has become *developed* (in any real technological, economic or infrastructural sense) as a result of being a selectively 'favoured' beneficiary of Nigeria's oil wealth. If anything, the Northern sector that has produced all but four of Nigeria's ten leaders (military dictators and elected civilians combined) since independence not only harbours the country's poorest people but is also the least 'developed' region in the country. Nigeria as a whole continues to be a country not because of lack of resources but because the bulk of the nation's oil wealth is in private coffers. One clear proof of the anti-developmental nature of the existing framework for oil operations is the level of corruption, opportunism and unethical politics it has inspired in the country, besides the fact that the very idea of *ownership and control* of vast oil and gas reserves has beguiled the national government into totally neglecting agriculture, a sector that sustained the country up to the mid-1960s and still holds the key to Nigeria's economic emancipation. It is even possible, as has recently been acknowledged by the Nigerian government, that as a result of crosscutting personal interests and corruption, it is impossible to know how much oil Nigeria actually produces or what it earns from the production figures commonly paraded (See *ThisDay* 2003a, *ThisDay* 2003b).

Many Nigerians, for good reason, hold the view that oil is the main clog in the wheels of Nigeria's development, and that the entire country (not just the Niger Delta) stands to benefit from a resource exploitation framework that puts the community at the centre, as that will spur interest in the diversification of the nation's economy. The existing framework cannot but inspire social and environmental abuses and recklessness by all stakeholders, but especially the state and the oil corporations. Besides, Obasanjo's frantic search for a 'Plan B' for Nigeria's economic growth (by way of investment in tourism and agriculture) seems to be informed by the fact that oil has fuelled a level of public corruption that will make it impossible for Nigeria to develop. What is doubtful, though, is if a 'Plan B' can succeed in a context where the ruling elite's attitude towards oil and governance remains unchanged.

Clearly, it is no longer inspiring to discuss the Niger Delta resistance (or indeed many such struggles in Africa) using emotive, polarizing metaphors like ‘selective victimization’, ‘peripheralization’, or using heuristic tools that merely disguise our fixation with the ethnic paradigm. On the other hand, metaphors like ‘background institutions’, ‘background fairness’, and ‘ethos of governance’, cut through the haze of symptoms and reach to the hidden dimensions of the trouble with Nigeria.

### **Conclusion**

This paper began with an examination of the traditional, *ethnic way* of looking at the Niger Delta resistance, and pointed out that this paradigm, so dominant in social scientific analyses of conflict and resistance in Sub-Saharan Africa, seems to have found its way into local environmental justice narratives on the Niger Delta problem. This is evident in the polarizing metaphor of selective victimization. Based on a fairly detailed review of the concept of environmental racism, the paper argued that the Nigerian application of this concept was misleading, as it seemed to suggest that ‘international standards’ were an effective, if not sufficient, check on the actions of multinational oil enterprises operating outside their ‘home’ environments. The paper then looked at some critical loopholes in the institutional framework for oil operations in Nigeria and suggested that emphasis on background institutions and ethos of governance could be a more holistic and intuitive start to accessing the ‘hidden’ dimensions of the Niger Delta crisis.

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