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The Politics of the Petroleum Industry Bill in Nigeria: The Petroleum Host Community Fund Perspective

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Abstract:

This study, 'the politics of the Petroleum Industry Bill (PIB): the petroleum host community fund perspective', is conducted to examine the effectiveness or otherwise of the petroleum host community fund in ameliorating the increasing incident of crises, agitations, militancy and the general state of insecurity in the Niger Delta which have made oil production difficult and the astronomical cost of maintaining security by the oil companies, particularly, in the face of rising opposition and intense politics against the inclusion of the petroleum host community fund in the PIB from the northern states governors' forum. To clearly demonstrate the central issue involved, an hypothesis was formulated in the null form, thus: there is no significant relationship between the 'petroleum host community fund' as is provided in the 2012 PIB and the increasing incident of crises, militancy and a general state of insecurity in the petroleum host communities. To generate necessary data on the subject matter, the study adopted the secondary method of data collection and analysis from relevant literature in the field over a period of time. The data generated were subjected to qualitative analysis within the purview of Marxist/Leninist Dialectical/Materialist political economy which defines the nature of reality as being dynamic and conflictual, and maintains that 'the proper resolution of economic conflict would put an end to political conflict'. Findings from the study show that the hypothesis is not true. Therefore, the study concludes that the provision for the petroleum host community fund, as provided in the PIB, is a step in the right direction. For example, two strands of argument that have been among the major sources of agitations in the Niger Delta, i.e. ownership and participation have been, according to analysis, taken care of by the provision of petroleum host community fund. The PHCF has the capacity to enhance security in the Niger Delta, despite opposition from NSGF.

Keywords: politics, PIB, petroleum industry bill, marginalization, militancy, petroleum, agitation, ownership, Nigeria, oil producing communities, Niger-delta

1. Introduction

1.1. Background to the Study

Oil is a global commodity. It is the most all-round source of energy available in the world today; and incontestably a resource of tremendous economic potentials. Its ownership is capable of changing the fortunes of a nation – its owners, and thus, the most political of all resources. The desire for oil is worldwide, and can make countries go to war. A likely example is the attempt to annex Kuwait by Iraq. By the same token, the petroleum industry is a unique one (Addax, 2009), with equally unique characteristics. The oil and gas industry is the only industry which can truly be called international, in that operators compete for exploration and production rights all over the world and sovereign governments that have the resources in their sphere also compete for investments all over the world. Oil is the lifeblood, not only to the producer-country, but also to the consumer-country; developed, industrialized, as well as the underdeveloped nations of the world. It provides readily accessible power and heat, including 'a vast array of consumer, commercial and industrial products' (Silva- Calderon, 2003). Countries commercially endowed with the commodity stand out among comity of nations and scarcely escape the entrapment of politics, be it at the domestic front or at the international scene. In Nigeria, for example, since the economy, including the political environment principally hinge on oil, any matter related to oil generates the highest level of sentiments, interests and politics.

Oil was discovered in commercial quantities in Oloibiri, a town in Bayelsa state of Nigeria in 1956, and this marked a milestone in the country's march to greatness. With the discovery of more oil, Nigeria began the exportation of oil in 1958 and became the sixth exporter in OPEC. However, exports of significant quantities only began to flow from 1965 when a terminal was completed in Bonny Island, on the Atlantic coast, and pipelines to feed the terminal (Manby, 1999). Although production dropped between 1967 and 1970 following the civil war, it rapidly rose again in 1970, by 1974 oil revenues constituted over eighty (80) percent of total federal revenues and over ninety (90) percent of export earnings and accounted for more than forty (40) percent of Gross Domestic Product (Khan, 1994).

Nigeria has an oil reserves which is estimated to range from 26 billion to 32 billion barrels (Forest, 1995). Most of this oil is found in small fields in the coastal areas of the Niger Delta. According to the Ministry of Resources, there are 159 oil

fields, producing from 1,481 wells (Niger Delta Environmental Survey, September, 1997). Nigerian crude oil is classified as 'light' and 'sweet', with low sulphur content, similar in quality to North Sea varieties and its price is linked to the price of Brent. Manby (1999) puts the production of crude oil in Nigerian at an average of 2.37 million barrels per day.

The ownership of oil in Nigeria is the exclusive preserve of the federal government of Nigeria. The federal government controls every aspect of the industry – from prospecting, mining, production, marketing and distribution. According to the Nigerian constitution (1999 as amended), the entire property including all minerals, mineral oils and natural gas in, under or upon, any land in Nigeria or in, under or upon, the territorial waters and the Exclusive Economic Zone in Nigeria belong to the federal government (Article 44(3)).

The oil industry in Nigeria is dominated by foreign oil companies which include Shell Petroleum Development Company of Nigeria Limited (SPDC), ExxonMobil, formerly known as Mobil Producing Nigeria Unlimited; Nigerian Agip Oil Company Limited (NAOC); Elf Petroleum Nigeria Limited (EPNL); Texaco Overseas Petroleum Company of Nigeria (TOPCON); and Chevron Nigeria Limited (CNL), formerly, Gulf oil. The contractual agreements guiding their activities and operations in the industry as well as equity sharing, taxes and royalties, and the general relationship with the Nigerian government are determined by the petroleum policies and regulations enacted by the federal government of Nigeria.

The Nigerian petroleum industry has witness series of regulatory changes from the colonial period when crude oil was discovered till today. These changes were necessitated partly by events in the global oil system and partly due to observed lapses in the administration of the petroleum industry, locally, such as poor policy implementation that oftentimes led to social, economic, and political upheavals (Onwe, 2012)..

The first oil related legislation was promulgated in 1914 by the colonial government. It was christened 'the Colonial Mineral Ordinance' (Khan, 1994), enacted, mainly to protect the interest of Shell D' Arcy company, a company jointly owned by Shell and the British Petroleum (BP), by giving the company an exclusive exploration and production rights in 1937 (Duru, 2010), until 1955 when Mobil, a United States based company was granted concession, and further in 1962, Gulf Oil was also granted concession, up till when other companies, such as Elf and Agip joined in oil exploration and production, under the same colonial rule.

In the military era, a number of regulations were enacted in Nigeria. The 1968 Companies Decree which forced all companies operating in Nigeria to become Nigerian corporations. This was when government increased its shares in all foreign companies; the 1969 Petroleum Decree further increased government control of the oil industry, which remains the basis for the regulatory system in operation today. There were other petroleum industry regulations, such as the partial nationalization of the industry in 1970, as the government of Nigeria took an equity stake in the oil industry and raised its participation in most companies. However, in all the petroleum industry regulations before the PIB, none had taken into account the interest of the petroleum host communities, where oil production takes place, despite incessant agitations by these communities against environmental pollutions and degradation that accompanied oil production activities in the areas.

Late President Musa Yar'Adua in 2007 inaugurated the oil and gas sector reform implementation committee (OIGC), under the chairmanship of the late Dr Rilwanu Lukman. The committee was charged with the responsibility of repositioning the oil and gas industry, which is the major source of revenue to the Federation account for greater efficiency, openness, and competitiveness, built on corporate governance as obtained in other resource-rich nations (Hogan Lovells, 2012). It was the recommendations of this committee that formed the basis of the official version of the Petroleum Industry Bill (PIB) that was introduced and submitted to the National Assembly in 2008. However, the 2008 PIB was bedeviled with controversies until President Goodluck Ebele Jonathan, laid on the floor of the National Assembly in July 2012 another petroleum industry bill (PIB), nevertheless, with no noticeable difference, herein referred to as the 'Petroleum Industry Bill 2012'. The focus of this study is mainly on the 2012 petroleum industry bill (PIB).

1.2. Statement of Problem

It is not an exaggeration to state that the Nigerian economic and political environment largely anchor on oil. It is the mainstay of the economy. The petroleum industry, according to official records of the Federal Budget Office, accounted for about 29.1 percent of GDP and 78 percent of total government revenues in 2012 fiscal year. Thus, over the years, petroleum has been at the centre of the unending political struggles and other related crises in Nigeria. In the Niger-Delta region of the country, where oil is produced, oil-related crises occur regularly. Such as the movement for the survival of Ogoni People (MOSOP) crisis, the resource control campaign, Niger-Delta militancy, onshore-offshore oil dichotomy issue, derivation, fuel subsidy, environmental crisis and many others are rooted in the politics of oil.

Nigeria drills most of its oil from the Niger-Delta region of the country and the people there live in abject poverty. The area is highly polluted and the environment equally degraded. Consequently, oil community protests and repression have become common feature and trend in the area. A typical example is the campaign by the 'Movement for the Survival of the Ogoni People' and other known but lesser attempts by the local oil producing communities to obtain compensations, either from the federal government or oil companies for incidents like oil spillage, lands affected by seismic and pipelines work, and hazards associated with gas flaring within the neighbourhood communities around oil operations areas.

The Movement for the Survival of the Ogoni People (MOSOP), founded in 1990 by Ogoni ethnic leaders, including Ken Saro-Wiwa adopted an 'Ogoni Bill of Rights' which listed the grievances of the Ogoni people and sent it to the then Head of state and military president, General Ibrahim Babangida (Manby, 1999), the oil companies operating in their land (Shell and Chevron) and the NNPC. Protests and mass rallies organized by MOSOP to put across their grievances eventually led to the arrest and execution of Ken Saro-Wiwa and other Ogoni leaders by the federal military government of General Sanni Abacha (Manby, 1999).

As a result of this brutality, marginalization and a very unfriendly relationship between the federal government, the oil companies and the petroleum host communities, militant activities took over the region. Expatriate oil workers were kidnapped, oil installations were attacked, wellheads were blown off, production lines were shut down, oil operations were obstructed, and the oil producing areas were no longer safe for operations, thus drastically reducing oil and gas production. As a corollary to militant activities were the issue of sabotage, crude oil theft, illegal refining and other accompanying vices that became commonplace and equally posed significant challenges to, not only the petroleum industry, but the Nigerian economy in general.

The petroleum industry bill (PIB) was an effort by the Federal Government of Nigeria (FGN) to address, among other things, the oil producing community-related grievances, such as: agitations from the oil producing communities, militancy, and other matters. In other words, one of the provisions of the PIB was the petroleum host community fund aimed at mitigating the pains suffered by the petroleum host communities as a result of oil production activities in the area and by making the oil-producing communities part of the Nigerian economic agenda through infrastructure development, investments and businesses; and more equitable spread of the oil wealth.

The problematic of this study is basically the opposition from different sections of the country, particularly, the northern states, to the provision of petroleum host community fund in the 2012 petroleum industry bill (PIB). Section 116 of the PIB provides for the establishment of a fund for the petroleum host communities. The bill provides that upstream petroleum operating companies should pay 'a sum equaling 10 percent of their net profit, and should utilize the funds for the development of the economic and social infrastructure of communities within the petroleum producing areas.' The northern states of the country – elites, groups and, even members of the Senate from the north – vehemently opposed the provision

This opposition seems to gain currency by the day. A situation many think could threaten, not only the smooth and speedy passage of the bill, but could lead to the expunction of the said 'petroleum host community fund' as provided in the PIB. This study is set out to examine whether or not the petroleum host community fund as provided in the PIB 2012 is a step in the right direction, could assuage the incessant crises in the petroleum host communities, pacify them of the agony and pains inflicted on them and their lands through the activities associated with oil productions, and thereby ameliorate the security situation in the petroleum producing communities. It is against this background that I undertake a study of *'The petroleum industry bill (PIB): the petroleum host community fund perspective'* and hope the study will provide an answer to the research question below.

1.3. Research Question

For the purpose of this study, a research question is posed below:

Can the petroleum host community fund as provided in the 2012 PIB proffer solutions to the increasing incident of agitations, militancy and a general state of insecurity in the petroleum host communities?

1.4. Objective of Study

The main objective of this work is to evaluate the relationship between the petroleum host community fund as provided in the 2012 PIB in Nigeria; and the increasing incident of crises, militancy and a general state of insecurity in the petroleum host communities.

1.5. Hypothesis

To ease the investigation of the research and the achievement of the stated objective, the hypothesis below will be tested theoretically, and the hypothesis is stated in a null form.

- H_0 There is no significant relationship between the 'petroleum host community fund' as is provided in the 2012 PIB and the increasing incident of crises, militancy and a general state of insecurity in the petroleum host communities.

1.6. Conceptual Clarifications

In this section, I shall attempt an operational definition or meaning of the keyword, 'politics' as it applies to the work.

1.6.1. Politics

Harold Lasswell (1936) in defining politics outlined two underlying factors: 'value' which he described as desired goal and 'power' which he said is the ability to produce intended effects on other people. He then said politics is 'who gets what, when and how'. This description is relevant to this study, *the politics of the petroleum industry bill: the petroleum host community fund perspective*, in that, the process of including in the bill the petroleum host community fund has to do with 'who gets what...' We can also describe 'politics' here in the Merriam Webster context: as 'activities that relate to influencing the actions and policies of a government...' This has to do with the opposition of the northern states to the petroleum host community fund; or in the Marxian description which sees politics as 'a sphere of social activity in which at least two social classes, whose objective interests are mutually antagonistic, engage in a struggle for control' (Evans, 1975).

2. Literature Review and Theoretical Framework

2.1. Literature Review

Because of the central position oil have occupied in the economy of nations, the world over, many writers have written on different aspects of the commodity, including its industry, politics, control regulation and so on. In this work we shall only focus on politics, that is, politics of the PIB; the petroleum host community fund perspective.

Spero and Hart (2010), in their article titled the politics of oil, state that countries, over the years 'have sought to gain control of petroleum resources and to manage the use of those resources for their own political, military, and economic benefit.' In the same vein, in their quest for industrialization and development, countries have allowed their foreign policies as well as economic fortunes of states to be widely influenced by the politics of oil. There is the politics involving both petroleum producing and exporting countries and those importing. But suffice it to say that the *politics of the petroleum industry bill in Nigeria; the petroleum host community fund perspective*, though may have some distant relevance with other titles like politics of oil, or politics of oil in Nigeria, is an entirely new entry that has never been researched into, they are not connected in any way.

2.2. Theoretical Framework

In this work, the Dialectical/Materialist political economy approach shall be employed. The Marxist/Leninist political economy is rooted in Karl Marx's idea of Dialectical Materialism and economic determinism which defines the nature of reality as being dynamic and conflictual. As Gilpin (1987) explains, social disequilibria and consequent change are due to the class struggle and the working out of contradictions inherent in social and political phenomena. According to Marx, as presented by Evans (1975), no one should talk of inherent social harmony, for there is none. Secondly, the material approach to history, which is interpreted by Gilpin (1987) to mean that 'productive forces and economic activities are central to historical change and operates through class struggle over the distribution of the social products (benefits)'. George and Thomas as cited in Bariledum (2013) postulate that 'societal changes and the direction of the changes are product of economic factors'. The import of this, however, is that, 'the proper resolution of economic conflict would put an end to political conflict' (Staniland, 1985). In Karl Marx's thinking, according to Staniland (1985), 'the mechanism that takes society from one stage to another is inherent in the internal contradictions of the stage itself'. Putting it the other way round, each new mode of production grew out of contradictions of its predecessor.

The central issue in Marxist theory is that of transition. Change involves tension between emerging forces of development and the extant social relations which becomes redundant as the former expands and alters. For example, the introduction of the petroleum host community fund is the emerging forces of development, meant to correct the extant state of deprivation, human rights abuses and marginalization. It is the role of the state to provide the political and coercive conditions or regulatory framework necessary for the maintenance of the mode of production as in the case of petroleum industry bill (PIB) and the petroleum industry in Nigeria. However, since politics is the medium through which the ruling class exercise and legitimized its control, politics is also the channel through which contradictions are expressed and resolved. Groups whose attitude and interests are ostensibly at odds with others should be able to discern the shifting historical boundary between personal interests, impersonal constrains and the terrain open to political actions (Staniland, 1985). This is relevant to *the politics of petroleum industry bill PIB: the petroleum host community fund perspective*

3. Research Methodology

In this chapter we shall be focusing on the methods of conducting the research, that is, this section gives a systematic explanation to what will be the nature of the research or research design. It gives a profile of the structure of the study.

3.1. Research Design

Research design here refers to a detailed outline of how this study shall be conducted. It prescribes what information is needed and what method to be used in collecting this information as well as the methods of data analysis, and how all of this is going to answer the research questions. In this study, we shall only use design logic applicable to it, which is the trend research design. A trend research design is well suited to a study of dynamic processes, in other words if the problem being studied is likely to change or the attitude of the people about the phenomenon is likely to change over time – the focus is change over time.

3.2. Methods of Data Collection

The data collection method used in this study is the qualitative method or secondary source of data collection. This includes both official and unofficial documents, such as government publications and records, journals, articles, textbooks, Newspapers, magazines, internet and others.

3.3. Methods of Data Analysis

Equally, the qualitative method of analysis is used in this study. Qualitative data collection and analysis are complementary to each other, because it produces a higher synthesis than the one analysed. In this study we shall use review and appraisal methods of analysis in analyzing the data derived mainly from the 2012 PIB and any other relevant document in answering the research question stated in section 1.3

4. Petroleum Industry in Nigeria and the Petroleum Host Communities

4.1. Petroleum Industry in Nigeria

Before Nigeria became independent in 1960, the petroleum industry had already been established in the country. The industry began with the search for petroleum, which began in 1908, by a German company called, Bitumen Corporation (Afe, 2008), the commencement of the first geological survey of Nigeria by the British colonial government after she made Nigeria a legal entity (Akanegbu, 2014), and the great entry into the oil exploration scene in 1937 by Shell 'D' Arcy, which later became Shell BP Petroleum Development Company of Nigeria Limited. The first deep exploration well was drilled at Ihuo in the present Ikeduru Local Government Area of Imo State (Duru, 2010, but no oil was found' (Bamigbo, 2009). Oil was later discovered at Akata well, which was drilled in 1953 but was suspended in 1954 due to its few quantity (Paul, 2015). Finally, crude oil was discovered in commercial quantity in January, 1956, at Oloibiri in Bayelsa State by Shell BP (Fregene, 1998), and later in the same year, a second discovery was made at Afam in Rivers State.

4.2. Oil and Gas in Nigeria

When the first Cargo of crude oil left Nigeria in February 1958, at a production level of 6,000 barrels per day, revenue worth of about ₦122 million (Paul, 2015) was hauled in, which represents 0.08 percent of National revenue, Nigeria was launched into the league of oil producers and exporters. This invariably changed the economic structure of the country which hitherto was dominated by agriculture that accounted for the largest part of the foreign exchange of the country.

Nigeria's proven oil reserve stands at nearly 37.2 billion barrels, the tenth largest reserves in the world (OPEC, 2014). Nigeria is a member of OPEC since 1971 and subject to OPEC quota policy, Nigeria produces an average of over two million barrels of oil daily and has the capacity to increase her production to three million barrels per day. Crude oil production had largely been in the increase since it was produced in commercial quantity. The Nigerian petroleum industry occupies a strategic position in the structure of the Nigerian economy. It is currently described as the largest contributor to the economy, among all industries in the country. It becomes a major source of revenues to the government, major foreign exchange earner, and the major contributor to GDP.

Another important product from exploration and production, a sub sector of the petroleum industry in Nigeria is gas. Gas is fast becoming the most preferred choice of energy in the world; consequently there is a growing demand for it. The Directorate of Petroleum Resources (DPR) data reveals that Nigeria currently has gas reserves of 182.8 trillion standard cubic feet (SCF) - Associated Gas (AG), 92.6 trillion SCF; and Non-Associated Gas, 90.2 trillion SCF. The data also revealed that total gas production averaged 8.0 billion cubic feet per day (BCFD): out of which Associated Gas (AG), that is, gas produced along with crude oil amounts to 5.20 BCFD, while Non-Associated Gas (NAG) is 2.80 billion cubic feet per day. The gas sector has not been fully developed. In a bid to tackle this underdevelopment, the federal government prepared a Gas Master Plan in 2008, the implementation of which is currently underway. The initiative is geared at promoting natural gas production, and encouraging the supply of natural gas to domestic power stations so as to alleviate the country's energy shortage.

The gas sub-sector of the petroleum industry has contributed immensely to the Nigerian economy. According to the 2014 Nigerian National Petroleum Corporation data shown in tables 1 below, Nigeria produce 1.32 million metric tons and exports 1.27 million metric tons of three different types of natural gas liquid (NGL) under Mobil and NNPC joint venture in 2014. This contributes hugely in terms of foreign earnings to the Nigerian economy. In addition to these, Nigeria has a US\$3.4 billion liquefied natural gas (LNG) project in Bonny Island, Rivers State of Nigeria. According to the project plan, the plant has six LNG trains currently operational with a total annual capacity of 31 billion cubic meters (bcm/y) (Ajayi, Salami & Babem, 2014). Nigeria LNG (NLNG) has become an increasingly important supplier of liquefied natural gas (LNG) to European buyers. The LNG facility is currently supplied natural gas from dedicated gas fields. Nigeria LNG Limited is a consortium jointly owned by NNPC (49 percent), Shell (25.6 percent), Elf (15 percent), and Agip (10.4 percent) The operating company is Nigeria Liquefied Natural Gas (NLNG). Nigeria is having a world market share of LNG exports of 8 percent.

There are close to thirty-four (34) oil companies operating in Nigeria (NNPC Statistical Bulletin, 2014), but only five of these companies produce more than 70 percent of the total oil production, and in a joint venture operational agreement with the federal government as follows: Shell with 55 percent to the federal government, 30 percent to shell and 10 percent to Elf and 5 percent to Agip; ExxonMobil has a joint venture of 60 percent to the federal government, 40 percent to ExxonMobil, but holds a production sharing contract of 50 – 50 with federal government of Nigeria; Chevron has a joint venture equity participation with the federal government having 60 percent equity shares and Chevron, 40 percent; Agip joint venture with the federal government is 60 percent to the federal government, 20 percent to Agip and 20 percent to Phillips petroleum; and Elf joint venture with the federal government is 60 percent to the federal government and 40 percent to Elf.

Type	Production			Lifting		
	Mobil	NNPC	Total	Mobil	NNPC	Total
Propane	261,622	251,363	512,985	269,292	216,542	485,834
Butane	230,065	221,047	451,112	235,210	191,676	426,885
Pentane	184,843	177,594	362,437	175,019	184,919	359,338
Total	676,530	650,004	1,326,534	679,521	592,537	1,272,058

Table 1: Nigeria Natural Gas Liquid (NGL) Production and Export (Metric Tons)

Source: 2014 NNPC Annual Statistical Bulletin

4.2. The Petroleum Host Community

Oil exploration and production have caused the communities of the Niger Delta, hosting the oil companies and their operations, untold hardship. The trillions of dollars made from oil and gas to sustain the economy of Nigeria comes from these communities. Yet, the federal government of Nigeria that has majority equity in all the production of oil and the producing companies appear not to do enough to help the communities (UNEP report on Ogoni, 2018). The environment and the traditional source of livelihood of the people of the oil producing communities are seriously damaged. The Niger Delta has large wetlands encompasses mangrove forest, and 'high biodiversity typical of extensive swamp and forest areas, with many unique species of plants and animals' (Manby, 1999). When oil spills, which are common feature in an oil production environment, particularly, where effective safety standards are not followed, its effects on the environment become damaging. There are occasional incidents of oil spills arising from the activities of oil companies, which kill fish, destroy farm lands and products or agricultural crops, as well as pollute drinking water sources, with devastating effects on the communities and families so affected. Oftentimes than not, no compensations are paid for the spillages, and when compensations are paid they may be grossly inadequate. And cleaning up the hydrocarbon and chemical spills from site of the spillage to restore it to original state has always been an issue. Example is the Ogoni oil spill of 2008. The UNEP report, 2018 indicted both Shell and the federal government of Nigeria, and Amnesty International said it would cost Shell \$1 billion to start the clean-up.

Another area of environmental pollution from oil and gas production activities is gas flaring. 'Nigeria flares more gas than any other country in the world' (Human Right Watch, 1999, p72), and 'flaring in Nigeria contributes a measurable percentage of the world's total emissions of greenhouse gases; due to the low efficiency of many of the flares, much of the gas is released as methane (which has a high warming potential), rather than carbon dioxide' (Khan, Nigeria, 1996, p.162). The general belief in the Niger Delta communities is that flaring of gas is the cause of acid rain which corrodes the metal roofing sheets used for roofing in the communities. However, oil companies operating in the Niger Delta tend to dispute this claim. But a study of flares conducted in the Niger Delta, according to Human Rights Watch (1999), 'found that air, leaf and soil temperature were increased up to eighty or one hundred meters from the stack, and species composition of vegetation was affected in the same area'.

On the whole, according to the Niger Delta Environmental Survey Final Report Phase 1, Volume 1, p.234 by Environmental Resource Managers Ltd., and geologist meeting at a conference organized by United Nations Environmental, Scientific, and Cultural Organisation (UNESCO) in Ghana, all cited by Human Right Watch (1999), the problems caused by oil exploration and production in the Niger Delta have been identified to include: 'flooding and coastal erosion, sedimentation and siltation, degradation and depletion of water and coastal resources, land degradation, oil pollution, air pollution, land subsidence, biodiversity depletion, noise and light pollution, health problems, and low agricultural production, as well as socio-economic problems, lack of community participation and weak and non-existing laws and regulations'. Oil exploration and production that was expected to bring blessing, happiness and development to communities where the oil was found is becoming a source of crises, pains, bitterness, repressions (as in the case of Ogoni where Ken Saro-Wiwa and other Ogoni leaders were executed by the federal military government of General Sani Abacha (Manby,1999)), loss and grief, to say the least.

As a result of the foregoing, militant activities took over the Niger Delta region. Oil production installations were attacked, flow stations were closed, expatriate oil workers were kidnapped, well heads were blown off, and a general state of insecurity ensued. Consequently, crude oil production drastically dropped.

5. The PIB Provision for the Petroleum Host Communities Fund and the Politics

5.1. The PIB Provision for the Petroleum Host Communities Fund

Section 116, subsection (1) of the 2012 petroleum industry bill (PIB) states: There shall be established a fund to be known as the Petroleum Host Communities Fund (the 'PHC Fund'). And Section 117, subsection (1) states: The PHC Fund shall be utilized for the development of the economic and social infrastructure of the communities within the petroleum producing communities (PIB, 2012). The Fund provides for each of the upstream operating companies to remit 10 percent of net profit on a monthly basis to the Fund as stipulated by the Bill. Thus, profits from onshore oil operations and offshore shallow water areas are to be remitted directly into the Fund, while all remittance from profits from deep water oil operations shall go directly and equally to each State Government of the eight littoral states of the Federal Republic of Nigeria (PIB, 2012)..

According to the bill, remittances are credited directly to the Fund instead of payment to government. This makes the payment different to what had been obtaining in the past and a unique kind of tax, call it 'stand alone' or 'net neutral tax'. Rather than link it to either royalty or other form of extant tax, oil companies are made to pay directly to the Fund.

The Petroleum Host Community Fund is made monthly and on the basis of percentage profits. This means the Fund is tight to a daily production and price levels, which also means the oil producing communities directly identify with what is happening at their 'backyard' by directly sharing in the loss and benefits of oil operations in their communities. This means an increase in the production and price of oil will correspondingly increase the funds to the communities and vice versa, creating a symbiotic relationship between the host communities and the producing companies.

5.2. *The Politics*

Initially, it was like the provision of the petroleum host community fund as stipulated in the 2012 PIB was a welcome thing to all Nigerians. No one expected dissensions from any part of the country. Yet, it must have been an unfounded expectation for one to imagine oil money could be allocated to any part of the country, particularly, the Niger Delta region, without some other people making politics of it. However, in this section, we shall discuss the main strand of the study, i.e. the politics of the PIB: the petroleum host community fund perspective. We shall as well review the dissenting voices. Are the oppositions in the interests of the nation, or are they propelled by group, sectional or personal interest? Can these interests be harnessed to facilitate a safe landing for the bill, such that national interest becomes the denominating factor?

5.2.1. Northern States Governors' Forum

When the 2012 PIB was laid before the National Assembly, public hearings were organized by the committees of the NASS. The first opposition to the PHCF came from the Northern States Governors Forum, an association of the nineteen governors from northern states of Nigeria. In a memorandum signed by its chairman, Governor Aliyu Babangida of Niger State, and submitted to the House of Representatives Ad-hoc Committee on PIB on the 4th April, 2014, the forum said the most controversial provision of the 2012 PIB was the introduction of the petroleum host community fund which they described as 'creating a fourth tier of government in the sharing of the revenue of the federation' (NSGF, 2014). The forum totally rejected the allocation of 10 percent of the nation's petroleum income to host communities.

5.2.2. The Northern States Senators of the National Assembly

It was like the members of the National Assembly were waiting for signals from their states (constituencies). The Northern States Governors' Forum (NSGF)'s memo submitted to the Ad hoc committee of the House of Representatives on the Petroleum Industry Bill almost simultaneously set the tone for position taking in the NASS. The Senate was immediately divided. Senators from the northern states towed the line of their governors. They vehemently opposed the 10 percent provision of the PIB to the Petroleum Host Communities (ThisDay, 2014). They argued that the PIB is structured to give the oil producing states advantage over them. At the end, the oil-bearing communities will be earning between 35 and 40 percent derivation to the disadvantage of the northern states. They gave the condition that the 10 percent provision of the PIB must be extended to all the regions; otherwise, the bill, they threatened, would not be passed (ThisDay, 2014). Other groups from the north spoke in unison against the petroleum host community fund.

5.2.3. Niger Delta and Others

In reaction several other groups from either the Niger Delta or States from the south took a swipe at the northern states mouthpieces, elevating the context of their argument to include resource ownership. (1) Senator Its Enang, a Senator from the Niger Delta (Akwa Ibom) revealed that, although oil was found in the Niger Delta, 83 percent of the oil blocks were owned by northerners. This stirred further the politics.

(2) The Ijaw, Isoko and Itsekiri Leaders Forum of Delta South Senatorial District of Delta State, host to Chevron/Texaco Escravos Tank Farm, the Escravos Gas to Liquid (EGTL) project in Escravos and the Forcados Terminal at Burutu, presented their position paper to the NASS Joint Committee on PIB. The forum, on resource ownership, disagreed with the PIB, which in line with the Constitution of the Federal Republic of Nigeria vests the sovereign ownership of petroleum within Nigeria on the federal government. In declaring their position they stated that the provision as contained in the PIB should rather vest the sovereign ownership of petroleum within Nigeria, its territorial waters, the continental shelf, the Exclusive Economic Zone and the extended continental shelf in the States in which petroleum is found and produced in Nigeria in trust for the Communities where petroleum is found and produced (Ijaw, Isoko and Itsekiri, 2009, p.4).

(3) Niger Delta Budget Monitoring Group (NDEBUMOG), in a 'Public Hearing' of the Joint Committee of the National Assembly on the petroleum industry bill (PIB), the group covering the six states of the Niger Delta, and a member of the Coalition for Accountability and Transparency in Extractive industries, Forestry and Fisheries of Nigeria (CATEIFFN), submitted a Memorandum to the Joint Committee of the National Assembly, contending that communities should be allowed to take ownership of extractive resources and pay taxes to the centre. They accordingly recommend that the constitution should be amended to give communities that are blessed with resources to have the right to participate and control their resources. In that same manner, host communities should have shares of the Extractive industry Companies (EICs) and should be qualified under such entities (EICs - JVPs) to participate in bidding processes (NDEBUMOG, 2009).

(4) The Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN) submitted a Memorandum in contribution to the public debate on the PIB 2012. They contended that the vesting of ownership and control of all petroleum resources in Nigeria on government of the federation as proposed in Section 2 of the PIB 2012 was a 'misnomer' in a country with a federal system of government. ERA says it has consulted widely and that it is a general

consensus amongst 'stakeholders' that true ownership must involve all Nigerians, especially communities from where these resources are extracted and who directly bear the resultant impacts of environmental degradation over the past decades of exploration and exploitation of petroleum (ERA, 2013).

The group recommended that Section 2 of the PIB 2012 should be amended by replacing the phrase 'is vested in the government of the federation' with 'is vested in the People of the Federal Republic of Nigeria'. Accordingly, Section 2 should now read 'the entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters, or which forms part of its continental shelf and the exclusive economic zone, is vested in the people of the Federal Republic of Nigeria' (ERA, 2013, p.4).

(5) The Nigeria Extractive Industries Transparency Initiative (NEITI) in its contribution on petroleum resources ownership states in its memo that it took a tour of other oil producing countries and drew an analogy of how ownership of mineral and petroleum resources are treated in those countries. According to NEITI (2013) the provisions of the constitutions of the five countries listed below ascribe ownership of petroleum resources as follow: Indonesia and Iraq – the people; UAE – the sovereign state; Russia – a hybrid; Canada – individuals. NEITI, concluded that, notwithstanding the existence of the constitutional provision, the vesting of the petroleum resources in the country should be in the citizens of Nigeria to give them a true sense of belonging, and make the executive know that it would be held accountable for the utilization of the revenues derivable from the petroleum resources. (NEITI, 2013, p.30). Many scholars agree with this and add that with it the practice where sitting presidents issue oil blocks only to their cronies will be checked.

6. Presentation, Analysis and Discussion of Findings

6.1. Resource Ownership and Petroleum Host Community Funds

Resource ownership of petroleum has been an issue in contention in Nigeria from the colonial period. Sections 2 of 2012 PIB states that: 'The entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters, or which forms part of its Continental shelf and Exclusive Economic Zone, is vested in the Government of the Federation'. (PIB, 2012, S. 2). This section is, however, in conformity with 'Section 44(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)' which states that 'the entire property in and control of all minerals, mineral oils and natural gas, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly'. There are provisions like that in Section 1(1) of the 'Petroleum Act, 1969', Section 1(1) of the 'Minerals and Mining Act, 2007', under the 'Exclusive Economic Zone Act of 1978' and the Land Use Act 1978 that vests 'all land in the territory of each state in the federation in the Governor of that state to be held in trust and administered for the use and common benefit of all Nigerians'. As a result of the combined effect of the Legislative provisions mentioned above, 'all minerals, petroleum and natural gas are absolutely vested in the FGN and cannot be the subject of ownership by individuals, families or communities' (Songi, 2014, p.5 & 6), citing the case of: 'Attorney General of the Federal Republic of Nigeria, versus Attorney General of Abia State & Ors (2002) 6 N. W. L. R (Pt. 764) 542'.

The average Nigerian has a very strong tie with ownership of land. In actual fact, he owes his existence to it. This means his economic life, activity and development revolve and draw meaning on the land he owns, or does not own. 'Yet in an attempt to strengthen its ownership of mineral rights, the FGN enacted the Land Use Act 1978' (Songi, 2014, p.5). This attachment combined with the general feeling of deprivation by the Niger Delta people has been the primary source of grievance, agitations and conflicts. Especially when the wealth flowing 'from oil exploitation in the region has hardly benefited the people of the area', who continue to bear the burdens of oil mining activities, such as environmental degradation, human rights violations, exclusionary laws, etc. This age long bitterness, demands and agitations among the Niger Delta people culminated in the formation of ethnic-based organizations such as the 'Movement for the Survival of the Ogoni People (MOSOP)' and the 'Ijaw Youth Council (IYC)', and later militant groups like the 'Movement for the Emancipation of the Niger Delta (MEND)', which engage in extreme cases of hostage taking, vandalism of petroleum installations and disruption of the operational activities of oil companies.

In fact, the Niger Delta has not given up on the agitation against ceding their lands and resources to the federal government. When the Northern States Governors Forum (NSGF) and the Northern States Senators in the National Assembly began to make politics of the petroleum host community fund, it was like reminding them of the age long bitterness they were trying hard to forget. This prompted the reactions of the groups from the Niger Delta, such as:- The Ijaw, Isoko and Itsekiri, The Niger Delta Budget Monitoring Group (NDEBUMOG)', 'Environmental Rights Action/Friends of the Earth Nigeria (ERA/FoEN)', and others discussed in section 5.2.3 above.

There are two lines of argument to be deciphered from the submissions of the Niger Delta people above: they are 'ownership and participation'. While many support the vesting of ownership of petroleum resources in the country in the citizens of Nigeria, others argue that the petroleum host communities should be allowed to participate in the affairs of oil exploration and production within their communities. In the view of Michael Bunter (2005), 'to solve the problems associated with the dislocation of the host community by the federal government and in order to promote sustainable development, there should be a pooling of authority over the petroleum licensing process to the extent that government and IOCs take into account the views of the host communities to secure IOCs' title' (Bunter, 2005, p9).

Perhaps, it is in response to the participation argument that the PIB, 2012, S.116 provide for establishment of the Petroleum Host Community Fund: Section 117 states the purpose of the PHC Fund, which is 'for the development of the economic and social infrastructure of the communities within the petroleum producing areas'; and Section 118 specifies what the communities would benefit from the fund. Specifically, the PIB provision requires every petroleum company in

the upstream to pay 10 percent of its net profits directly to the fund, based on the locations they operate. While profits from 'onshore and shallow water go to the oil bearing communities, profits from deepwater areas are made to the Fund for the oil producing littoral states'. Many see this as indirect participation of the host communities in the affairs of oil production, because sharing profits means sharing ownership of all exploratory and oil production activities. The bottom line of all businesses is profit.

Findings from various analyses show that the protest against section 2 of the PIB 2012 'are all about the involvement and participation of the oil producing communities in all that concern oil and gas exploration and production in their areas'. Even those who say resource ownership should be vested in the states where oil is found, still agree that the federal government should produce it in trust for them. In his study, Songi (2014) analyzes the provisions of the PIB 2012 with respect to the ownership rights of host communities with a 'view to ascertaining whether the PIB currently before the National Assembly offers any hope to host communities regarding ownership, participation and management'. In likening the damage done to the Niger Delta people through oil exploitation to Yermin (1991)'s narration of 'the adverse effects of natural resource exploitation on the social, cultural and economic life of the people of Beaumont in Texas when crude oil was discovered in 1901', Songi (2014) concludes that the things Yermin (1991) described as adverse effects, which included 'high cost of living, high cost of leases and land, high crime rate and other social vices, an exponential growth in population, etc., were non-issues when compared to the havoc done to the Niger Delta in Nigeria'. Songi (2014, p.13), in agreement with Bunter (2005), postulates that 'the participation of the people of Niger Delta in oil and gas affairs is the solution to the agitation, conflicts and the accompanying security problems now facing the IOCs and the federal government in the area'.

Orogun (2014, pp.2-3), in his contribution to the 'participation theory' makes reference to the 'Economic Commission for Africa (ECA)', which he says 'provides some guidance for improving community participation in the sustainable development of mineral resources in Africa', cited some instances which include:

- The 'Papua New Guinea Act of 1992', 'which stipulates that a minimum of 20 percent of royalties received by the government, should be paid to land owning communities of the mining lease area, whereby mining companies pay royalties directly to the agreed beneficiaries and then reconciled to central government for audit'.
- 'Special Support Grants (also in Papua New Guinea)' in which 'about one per cent of the gross value of mineral sales of companies operating in the said province is required to be paid to a given provincial government'.
- 'Preferred Area Status (also in Papua New Guinea)', 'which requires companies to provide preferential treatment in terms of employment, education and training and business development assistance to communities located in the area in which the companies carry out their mining activities'.
- The 'holding of mineral rights to platinum and other resources in the Merensky Reef in Northwest South Africa by the baFokeng tribe. The tribe holds equity shares in the Impala Platinum Holdings Ltd, which is the second largest producer of platinum in the western world'.

Orogun (2014) is using these instances to illustrate the fact that ownership rights of host communities can be converted to participation rights by host communities in the oil and gas affairs so as to create peaceful and enabling environment for oil exploration and production to thrive.

There are those who liken the PHCF to the Nigerian way of domesticating the conversion of ownership to participation as is obtainable elsewhere. To this group of thinkers, the PHCF is another way of allowing the oil communities 'participate in the exploration and production of the petroleum resources found under their soil'. But the Northern States Governors forum and the Northern States Senators are thinking differently. To them the PIB provisions in Sections 116 - 118 is the 'most controversial provision of the PIB 2012' and the most uncharitable thing that should be rejected outright.

The Petroleum Host Communities fund as stipulated in Sections 116-118 of the PIB 2012 have been acclaimed the major pioneering provisions of the PIB 2012 that seek to address the lacuna of community involvement in the petroleum industry, representing an opportunity for addressing the developmental and infrastructural deficit in the oil bearing communities. To ERA, the PIB must clearly define the term host communities and state the criteria of beneficiary communities as well as have in place a mechanism to add or remove beneficiaries as the need arises. Equally important, the host communities by the incidence of their 10 percent equity holding, should be deemed shareholders and be accorded all the rights and privileges accruable to shareholders including the rights of participation in decision making (ERA, 2013). The PHCF is described as a panacea to the security challenges in the Niger Delta area. Many see the PHCF as 'a step in the right direction' in enhancing peace and stability in the area. It is only in an atmosphere of peace and stability that 'both the Federal Government of Nigeria (FGN) and the International Oil Companies (IOCs)' would realize their objective of uninterrupted production. If the communities directly profit from production, there will be peace, and when there is peace in the area, production will increase, which directly will result in increase of fund to the PHCF - a symbiotic relationship where the loss or benefit of one affect the other directly. Moreover, it is expected that 'the net effect of the PHCF should be an increase in revenues to the government and the oil companies as a result of less likely disruption (or outright stoppage) of operations'

The PHCF, some argue, promises to be the magic cure to restiveness in the oil producing areas as well as enhancing smooth and stable operations of the oil companies and more importantly, many believe, the frequent disruptions and closure of oil production lines as a result of disputes between the communities and oil companies will stop. Diminas (2013), in his evaluation of the PHCF, agreed that it may likely promote peace and stability in the Niger Delta if the communities directly share in the benefits of oil exploration in their areas.

Another worrisome problem that PHCF is expected to solve is the bloated security spending by oil companies in the Niger Delta, nay Nigeria. The oil companies have been incurring massive security bills occasioned by state of insecurity in their area of operations. Using Shell Petroleum Development Company (SPDC) as a case study, Diminas (2013) stated that Shell spent about \$383 million on security between 2007 and 2009 in Nigeria. The amount spent by Shell in 2008 alone on security in the Niger Delta region of Nigeria is more than what is spent in the Americas, European Union (EU) and Russia combined. This is the reason why the proposal made in the PIB 2012 on the PHCF is welcomed by almost everybody with the candid believe that peace and stability would return in the Niger Delta region, and this would greatly reduce security cost for oil producing companies.

As shown in Figure 1 below, Shell global security spending in 2007 was about \$240,000,000. Out of this amount, about \$100,000,000 was spent on security in Nigeria, representing 41.6 percent. And in 2008, out of global security spending of about \$340,000,000, about \$140,000,000 of the sum was spent in Nigeria, equally representing a little above 41 percent, while Shell's global security spending for 2009 stood at about \$410,000,000, with Nigeria alone taking about \$140,000,000 of this amount or about 34 percent of the total world security spending that Shell incurred in that year. Putting the whole together, it means that between 2007 and 2009, Shell spent about \$990,000,000 on security, globally, out of which Nigeria alone took \$380,000,000 of that amount.

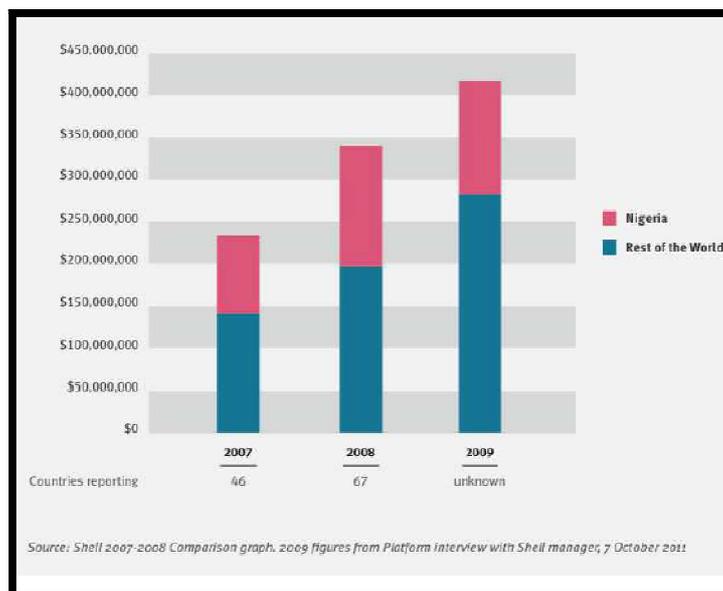


Figure 1: Shell Global Security Spending 2007 - 2009

Source: Shell 2007 – 2009 (comparison graph) adopted from Westpaq

Findings from various analyses reveal that the PHCF has the potential of solving the security crisis in the Niger Delta (Diminas, 2013), encourage host community participation (Orogun, 2014), (Bunter, 2005) and (Songi, 2014), and enhance peace and stability in the area. According to Diminas (2013):

Our report concludes that the Petroleum Host Community Fund (PHCF) is a useful tool aimed at enhancing the smooth operations of the oil companies while providing direct financial benefits to host communities; it makes good business sense if properly managed. It could lead to a long-term reduction in production downtime from disputes between communities and oil companies, reduction in the massive security bills of the Oil companies, which in turn would enhance cumulative profit. The PHCF will enhance peace and stability, which would greatly reduce security cost for oil producing companies while also enabling stable production in the Niger Delta. However, while it is true that the PHCF would not be a silver bullet to eliminate all security or community/ oil and gas company dispute in the Niger Delta, it would be a positive step towards addressing some level of dissatisfaction felt by host communities (Diminas, 2013, pp.3&8):

The case of high spending on security among the IOCs is not limited only to Shell; it also applies to all other international oil companies operating in Nigeria. And this clearly shows how burdensome and colossal the cost of maintaining security in the Nigerian petroleum industry has been since the Niger Delta security crisis erupted. The PHCF is a proposal well suited to take away this burden, enhance production and promote foreign investment.

Findings indicate that the provision of the PHCF in the PIB has the capacity to address the Niger Delta issues. In the words of Hembe (2016, p.1), 'the Petroleum Host Community Fund (PHCF) as envisaged in the PIB is an antidote for wrangling and bitterness in the Niger Delta region of the country between the oil producing communities, the IOCs and the Federal Government given the immense support for the proposal in the country's oil producing regions of the Niger Delta'. Orogun (2014) observes that:

lawmakers from the northern states have consistently rejected the 10 per cent Petroleum Host Communities Fund, a provision contained in the PIB, 2012, that was meant to bring Nigeria's host community relations in line with international best practice, allocate benefits from mining to local communities; promote peace and stability in the region, thereby increasing production and in the process, increase national revenue as well as the profit level of IOCs, and in

addition, the PHCF was primarily meant to atone for the many infractions of the land rights of host communities where extractive industries are active (Orogun, 2014, p.4).

6.1.1. Summary of the Analyses

The whole essence of the bill, especially, the host community fund one could say, was for the betterment of the petroleum industry in Nigeria, and by extension, the condition of life of the petroleum host communities, since the primary source of revenue to government is petroleum, or better still, the political economy of the country critically anchors on oil.

7. Conclusion and Recommendations

7.1. Conclusion

The purpose of this study was to evaluate the relationship between the petroleum host community fund and the incessant crises, agitations militancy and general state of insecurity in the petroleum host communities. Therefore document review, appraisal or analytical approach in analyzing the data derived mainly from the PIB, 2012, and other relevant document, as well as conclusions from past studies were used in examining the research question. It has been revealed that the petroleum host community fund has the capacity to address the crises situation in the Niger Delta.

On the contentions about resource ownership, findings from different analyses reveal that the participation of the host communities in the exploration and production of oil found in their area is the solution to the struggle for ownership. In the case of the PHCF, irrespective of the contentions of the NSGF and Senators from the northern states, all the document review and analyses within reach have the conclusions that PHCF is a step in the right direction, at least for peace and stability to return to the oil producing areas, because it will enhance the security of the area, increase production and correspondently revenue accruable to the government and oil companies.

7.2. Recommendations

Werecommend that since politics is the medium through which the ruling class exercise and legitimized its control, politics is also the channel through which contradictions are expressed and resolved. Groups whose interests are ostensibly at odds with the petroleum host community fund should be able to discern the shifting historical boundary between personal interests and impersonal constrains and allow the PHCF to succeed in the overall interest of the nation.

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