

Fulfilment of Social Contract as Panacea for Conflict Over Natural Resources in Nigeria: An Analysis.

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Abstract.

Every country in the world possesses one form of Natural Resources, or the other be it land, water, mineral oil, ore, gold, diamond etc. History bears record of nations, states, communities, and the peoples who inhabit such country having battled to a point of fatality over natural resources. In Nigeria, agitations within the Niger-Delta Region over the oil resources in the region has drawn international attention particularly when viewed along the line of the provisions of United Nations Resolution 1803 of 1962 that recognizes Permanent Sovereignty Over Natural Resources and the Nigerian Constitution and other laws that vests mineral resources in the government of the Federation. While it is settled that there is indeed a link between natural resources and conflicts, some writers have predicated the conflict on some particular theories, especially the Malthusian theory of scarcity, perhaps on the notion that conflict over natural resources is as a result of scarcity. The aim of this study was then to take a turn from such predication, to assert that conflicts over natural resources arises from the failure of fulfilment of social contract and the lack of resource governance. Adopting the doctrinal methodology, this study used the Hobbesian concept of social contract theory and its analysis of man in a state of nature from his text titled 'Leviathan' to jurisprudentially analyse the cause of the present-day conflicts over natural resources. Relevant statutory and judicial authorities were appraised to consider an attempt at resolution. This study paid particular attention to conflicts over natural resources within Nigeria in view of oil in Niger Delta and the link between social contract and the said conflict. We found out that man's quest for self-preservation is what generally leads to conflict, while the social contract existing between the sovereign and the citizens, if sufficiently pursued in terms of the obligations it places on the sovereign, would eliminate conflict over natural resources. Consequently, this study recommends amongst other things, the vigorous pursuit of the substantial meeting of the obligations created under the social contract.

Keywords: Conflict, Natural Resources, Leviathan, Social Contract, Resource Governance, Niger-Delta.

Introduction.

Nigeria is endowed with natural resources. This is concretized by the finding that there is not a single state in Nigeria that is without one form of natural resources or the other¹. Although it is noted that the most prominent of all the resources and that which has brought about conflict the most is crude oil, available in abundance in the Niger Delta region of the country. The undercurrent of the conflict over the oil arises from the declarations and debate over ownership and control of the resources.

The most constant triggers of the conflicts include the concept of ownership of the natural resources in question and its difficulty arises from the structure of the state. As a result of this, the host communities of the natural resources demand either to be left in charge of the natural resources or perhaps be gloriously recognized and given adequate compensation from its exploration and

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¹ <https://nigerianfinder.com/natural-resources-in-nigeria-the-full-list-locations/> accessed 19th June 2022

production. The Constitution of the Federation of Nigeria has also been called into question by such communities² even in the face of its supremacy clause.³

When one talks of natural resources in Nigeria, one is essentially speaking about the oil and gas industry. This is because since independence in 1960, Nigeria has become increasingly dependent on oil and gas as the chief export and source of revenue.⁴ With regards to the conflicts over the mineral resource, several militia groups emerged in the Niger Delta region to raise terror against the government and the Multinational Companies by way of kidnaping, piracy, pipeline vandalization and general disruption of the economy. The Niger Delta Avengers, as the latest militia group to emerge in the Niger Delta having commenced operation in 2016, expresses a sort of lopsided agitation which led to more loss than gains for the country and invariably, for the region, since the environment wherein the agitations are carried out becomes worse off.

Being that natural resources goes beyond crude oil, the spate of conflict between farmers and nomadic herders in the country have also been identified to be due to challenges of (natural) resources caused by global climate change and the contending desertification and aridity that has reduced arable and grazing lands, forcing the pastoralists to move southwards in search of pasture for their livestock.⁵ The said conflict is also related to conflicts over natural resources as it involves conflict over land and destruction of agricultural produce.

Nigeria is a Federation as clearly stated in the Constitution of Federal Republic of Nigeria 1999 (CFRN)⁶. While the natural resources are located within various states, neither the government of the state nor the people of the states can exercise control over the resources. In other words, the sovereignty over the natural resources found in various parts of the country is vested in the federal government by law. This is aside from bare 'land' which this study also reckoned to be a natural resource.

While it is reckoned that there is indeed a causal link between the availability of natural resources and conflicts over the same, some authors have predicated the conflict on some particular theories most especially the Malthusian theory of scarcity, perhaps on the notion that conflict over natural resources is as a result of scarcity. The theory is easily negated on the basis of the fact that there are nations with limited or meager quantity of natural resources that are in better economic situation and with less friction emanating from the control of the resources.

This paper therefore takes a turn away from the predication of conflict over natural resources on scarcity but on resource governance hinged on the social contract theory. The Social contract theory drawn from the work of Thomas Hobbes titled 'the Leviathan' considers man in the state of nature and how man pursues his desires in order to attain pleasure and to avoid pain. It is in the light of the said theory that this paper jurisprudentially analyses the present-day conflicts over natural resources in Nigeria particularly in view of crude oil in Niger Delta and the link between social contract and the said conflict.

² This was clearly stated in the various declaration made by the various communities in Niger Delta including the Kaiama Declaration.

³ S.1 (3) CFRN, 1999 (as amended).

⁴ M.M. Gidado, *Petroleum Development contracts With Multinational Oil Firms: The Nigerian Experience* (Ed-Linform Services, 1999) p.31

⁵ C.K. Imo, 'The Demographic Implications of Nomadic Herdsmen and Farmers Clashes in Nigeria' (2017) 12 (1) *International Journal of Development and Management Review (INJODEMAR)*. p.48

⁶ CFRN, Section 2(2).

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It is observed that man's quest for self-preservation is what generally leads to conflict while the social contract existing between the sovereign and the citizens, if sufficiently pursued in terms of the obligations it places on the sovereign, would eliminate conflict over natural resources.

Contextual Analysis of key terms

Conflict

The term conflict is a loose word with several meanings and contextual applications. According to the Oxford Advanced Learners Dictionary, conflict is a situation in which people, groups or countries are involved in a serious disagreement or argument or a situation in which there are opposing ideas, opinions, feelings or wishes⁷. The disagreement or argument, opposing idea, wishes and feelings in this context is in respect of who should and how to manage the available natural resources. Also, the people or group or countries involved in the argument, disagreement etc. are the people in whose communities, states or countries serves either as hosts to the natural resources in question or those who desire to benefit from the natural resources.

Ayokhai, also contextualizes conflict in a way akin to that perceived by this paper. Though he tagged the conflict he analyzed as 'violent conflict'⁸, nevertheless, the word violent merely tends to amplify or exhibit the magnitude of the conflict. In Nigerian context, there has rightly been violent conflicts in respect of oil in the Niger-Delta with vandalizations carried out by the Niger Delta Avengers⁹, their violent and destructive activities and the Military counter measures taken by the government of Nigeria.

In justifying why conflict occur, Ayokhai noted that the human society is a collectivity of economic, social and political activities of individuals and this makes contact, interaction and interdependence not just a fact of life, but one which is universally constant and basic as group relations must necessarily entail conflict.¹⁰ The same view having been propagated by great philosophers in the field of sociological jurisprudence particularly Dean Roscoe Pound who reckoned that the society of man is characterized by variety of interests.¹¹

The nature of conflict under discussion is a culmination of legal, economic and political disagreements and arguments arising from various opinions, wishes and conflicting interests over available natural resources within Nigeria. Alao noted that conflict over natural resources occur at various levels: those among communities/groups within the state; those between communities across national borders; those between communities and central governments; those between communities and multinational corporations; and those between governments.¹² With regards to Nigeria, the overlap of the levels mostly occurs in regard to the conflicts between the communities and central government on the one hand and those between communities and multinational

⁷S. Wehmeier, (ed.) Oxford Advanced Learner's Dictionary (6th Edition, Oxford University Press, 2000) P.239

⁸F.E.F. Ayokhai, 'Natural Resource, Identity Politics and Violent Conflict in Post-Independence Nigeria' (2013) 5 (2) *African Journal of History and Culture*.P.33

⁹ A. Godwin, 'Niger Delta Avengers Threaten Return, Vow to Crash Economy', The Guardian, 27th June, 2021, available at <https://guardian.ng/news/niger-delta-avengers-threaten-to-return-vow-to-crash-economy/> accessed 19th June, 2022.

¹⁰ *Ibid.* p.33 - 34

¹¹ R. Pound, 'A Survey of Social Interest' *Harvard Law Review*, (1943) 57(99) pp.1-2

¹² A. Alao, *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (University of Rochester Press 2007).

corporations on the other hand owing to the nature of extraction of oil as the most pronounced natural resource in Nigeria.

Natural Resources

In the case of *Attorney-General of The Federation v. Attorney-General of Abia State & Ors.*¹³ The supreme Court adopted the definition of natural resources as stated in the 6th edition of Black's Law Dictionary which is thus:

Any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits, and other products of nature that have economic value. The cost of natural resources is subject to depletion. Often called wasting assets. (sic) The term includes not only timber, gas, oil, coals, minerals, lakes and submerged lands, but also, features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes.¹⁴

One limitation of the definition is its presupposition that natural resources have to be extracted. This is not particularly adequate going by the analysis provided by Alao. The author defined natural resources as:

...all non-artificial products situated on or beneath the soil, which can be extracted, harvested, or used, and whose extraction, harvest, or usage generates income or serves other functional purposes in benefiting mankind.¹⁵

While the definition by Alao is most preferred, it is important to state that the CFRN mentioned natural resources without defining same and the need for providing the meaning of natural resources arose from the question before the court in relation to section 162 of the CFRN wherein the Attorney General of Federation contended that the expression "principle of derivation" means the principle that revenue accruing to the Federation Account from any natural resources shall be deemed to have been derived from the State or territory where such resources are located.

Social Contract Theory

The Social Contract Theory streams from the work of Thomas Hobbes titled 'the Leviathan'¹⁶. To start with, chapter 13¹⁷ of the work discusses the issue of "the natural condition of mankind as concerning their felicity and misery" and buttresses that the nature of man was reckoned to be of war of everyone against everyone as they strive for different things. As a result of the natural condition of man, which constantly result in war, it is not in doubt that there would be constant fear as every man is an enemy to every man.¹⁸ Hobbes reckoned that the actuation of the enmity between men could result in loss of lives and properties thereby hampering development.

¹³ (2001) 11 NWLR (Pt.725)

¹⁴ (supra) Per Ogundare, J.S.C. (Pp. 64-65, paras. E-B)

¹⁵ A. Alao, *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (University of Rochester Press 2007). P.16

¹⁶ T. Hobbes, *Leviathan* (Penguin 1968).

¹⁷ Hobbes, *Op.cit.* p.86

¹⁸ Ibid p.88

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In order to escape from the existing horrible conditions, the sovereign (the Leviathan) was collectively created and men resorted to the means of a contract to establish a civil society.

The contract comprises of two pacts i.e. the '*pactum unionis*' and '*pactum subjectionis*'. By the first pact, the people sought to live together in peace and harmony while by the second, they elected to surrender their rights and obey a single authority.¹⁹ In other words, every man surrendered all their natural rights to a sovereign and thereby established the society, state and government, or commonwealth. This contract is made by 'each' with 'all' or with 'each' or 'each individual' with 'every other individual'. The surrendering of all their natural rights, except the right to self-preservation is the origin of the social contract theory.

In clearer terms, social contract as arising from the statement of Hobbes, is when man gives up his right to compete, for the good he hopes to get from the Sovereign which include security, social amenities, welfare and possibilities for achieving self-aspirations within legal limits. These obligations on the part of the government (Leviathan) are to be met sufficiently since as it is under the common law of contract, consideration need not be adequate but sufficient.²⁰

Legal framework for control over natural Resources

The consideration of the legal framework for the control of natural resources in Nigeria must start from the understanding that Nigeria operates a federal system of government whereby the federal government takes charge of some of the affairs of Nigeria while leaving some for the states.²¹ This is further buttressed by the provision of an exclusive legislative list and a concurrent legislative list²² which creates a clear dichotomy of issues that the Federal legislature can exclusively legislate upon on the one hand and the issues that the state legislature can share legislation upon alongside the Federal Legislature.

Natural resources is under the exclusive legislative list which means the states wherein the natural resources are located cannot enact laws in respect of the resources and therefore have limited say in how the natural resources are managed. In line with the definition proffered for natural resources, the national laws that clearly regulate the control and sovereignty over natural resources in Nigeria include the CFRN, The Mineral Act and Petroleum Act.

The control and sovereignty over natural resources were captured in past constitutions of Nigeria starting with the 1963 Republican Constitution.²³ The 1999 Constitution reiterated emphatically that:

Notwithstanding the foregoing provision of this Section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon territorial waters and the 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.²⁴

¹⁹ T. Mouritz, 'Comparing the Social Contracts of Hobbes and Locke' (2010) *The Western Australian Jurist* 1. P.125

²⁰ *Mohammed v. Mohammed & Anor* (2011) LPELR-3729(CA); *Thomas v Thomas* (1842) 2 QB 851; *Younis v Chidak* (1970) All N.L.R 188 SC; *Dunton v Dunton* (1892) 18 V.L.R 114 SC.

²¹ A.E. Obidimma and E.O.C. Obidimma 'Restructuring the Nigerian Federation for Proper Functioning of the Nigerian Federalism' *Public Policy and Administration Research* (2015) 5 (9). Pp.147 -157

²² Part 1 and part II, second Schedule to the CFRN 1999 (as amended)

²³ Item 25, Part 1, Schedule to the Constitution.

²⁴ Section 44(3)

By virtue of the above provision, the ownership of natural resources has been termed ‘totalitarian ownership’.²⁵ Professor Ajomo as captured by Aladeitan in support of the ownership of oil as a natural resource by the Federal Government to the effect that same is justified as a political symbol and that the Federal Government is the only authority that can successfully pursue, in collaboration with oil companies, a policy that will not adversely affect Nigeria’s foreign exchange position.²⁶ He rightly added that because of the strategic importance of oil in the twentieth century and its importance to national life, it was only natural for oil to be centrally controlled in the interest of the nation.²⁷

The Constitution by the proviso to section 162 (2) also stipulates to the effect that not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resource shall be payable to a State of the Federation from which such natural resources are derived.

The Minerals and Mining Act, No. 34 of 1999 takes a cue from the provision of the Constitution as section 1 of the Act provides that:

The entire property in and control of all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and watercourses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.

The Act Mineral and Mining Act specifically provided that all lands in which minerals have been found in commercial quantities shall, from the commencement of the Act, be acquired by the Government of the Federation in accordance with the provisions of the Land Use Act.²⁸ By virtue of the provisions of this Act, the Federal Government’s sovereignty over mineral and mineral resources in Nigeria was further entrenched.

The Petroleum Act promulgated in 1969 regulated the ownership of petroleum resources in Nigeria. It is reckoned that the Petroleum Act was promulgated as soon as it became apparent that oil and gas was assuming its pivotal position in the Nigerian economy.²⁹ The long title of the Act unambiguously stated that it is “an Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and off-shore revenue from petroleum resources derivable therefrom in the Federal Government”. In relation to the long title, the Act went further to state that:

The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.³⁰

This section applies to all land (including land covered by water) which-

²⁵L. Aladeitan, ‘Ownership and Control of Oil, Gas, and Mineral Resources in Nigeria: Between Legality and Legitimacy’ (2013) *Thurgood Marshall Law Review*. 38 (159). P.174

²⁶ Aladeitan, *Op.cit.* p.175

²⁷ *Ibid.*

²⁸ Section 1 (2)

²⁹ P.E. Agbonifo, ‘The Dilemma in Nigerian Petroleum Industry Regulations and Its Socioeconomic Impact on Rural Communities in the Niger Delta’ (2015) *International Journal of Management Science*. 2(5) p.88

³⁰ Petroleum Act, 1969. Section 1 (1)

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- a. is in Nigeria; or
- b. is under the territorial waters of Nigeria; or
- c. forms part of the continental shelf.
- d. forms part of the Exclusive Economic Zone of Nigeria.³¹

While the provision of section 1(1) of the Act may have stated that the petroleum is vested in the 'State', which might give a first impression that it meant states of the Federation, the Act in its interpretation section cleared such impression by stating that: "State", except in section 1 of this Act, means a State of the Federation.³² This axiomatically clears the possible notion that a state of the Federation can own or control petroleum resources.

In addition to the foregoing legal framework, should be mentioned that federal sovereignty over natural resources is also internationally entrenched. While many countries of the world were colonized and had their natural resources exploited, the will to reinforce the sovereignty of the said colonized countries upon gaining independence and, subsequently, the desire to secure the benefits of natural resource exploitation in their domain led to the adoption of the United Nations General Assembly (UNGA) Resolution on Permanent Sovereignty over Natural Resources³³ which was passed on 14th December 1962.

Prior to the 1962 resolution 1803, by resolution 1515 (XV) of 15th December 1960, it was recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected and consequent upon several other considerations, the General assembly resolved amongst others that the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned. It should be mentioned that though the UNGA resolutions uses the word 'people' and 'state' in terms of international law, it is the federal state that is applicable.

Advantages of Vesting the Control of Natural Resources in the Sovereign.

Having established with clarity that the national and international legal frameworks vests the control and sovereignty over natural resources on the Federal state, it is ideal to go further positing that it is advantageous to have all the available natural resources vested in the sovereign which, in the case of Nigeria, is the Federal Government. In addition to the fact that doing so aligns with the political philosophy propounded by Thomas Hobbes in Leviathan, such advantage of vesting control in the sovereign include the fact that the country can put up a united front in transacting with investors and multinational companies in the exploration and exploitation of the said resources. Also, the political weight of the nation is in the government representing it and that goes a long way in the bargaining process with the government of another sovereign nation.

Furthermore, the multinational company is not just regulated by terms of the contract between the government and the multinational company, but also regulated by the national laws which in most

³¹ Ibid. section 1 (2)

³² Petroleum Act, 1969. Section 15.

³³ Resolution 1803, 1962.

cases are favourable to the host country. Where the government takes responsibility for the control and management of the resources, it becomes easier to hold a single unit accountable for the benefit accruing from the resources.

Causal link between social contract theory and conflict over natural resources.

A cognizable fact is that man finds natural resources to be essential for his survival and consequently competes for it in order to attain self-preservation. The quest for self-preservation has led man to enter a unique kind of contract termed 'social contract' as found in 'the Leviathan' of Thomas Hobbes. The contract creates an obligation on the part of the Sovereign (the Leviathan), to make certain provisions in exchange for the surrender of the rights of man to compete for survival. Where the sovereign meets the obligation sufficiently, there perhaps would be no reason for man to compete for control or conflict over available resources since the sovereign would have made provisions sufficient enough for his survival. On the contrary, where the sovereign fails in fulfilling its part of the bargain in the social contract, conflict tends to be triggered.

In drawing the link between social contract and conflict, the word that Hobbes used poignantly in describing what is inherent in bringing man into war is 'desire'. Men are creatures of desires in the sense that pleasures are considered to be good and pains are considered bad. Hence, they seek to pursue and maximize their pleasures only to avoid pain. As a matter of fact, every individual thinks that it is his right to pursue his desires that promote pleasure. Not minding that this right affects the rights of others. In other words, every individual thinks that he alone legitimately possesses this right.³⁴

To put this 'desire' of man which is the basis of his wars into context, the oil in the Niger Delta of Nigeria which is the area of focus in the exposition of national conflicts over natural resources, has been a source of conflict because, as the indigenous people of the Niger Delta are expressing their desire over the oil, so is the Federal Government of Nigeria through the use of the multinational oil companies whose major aim is to maximize profit from the said oil.

Since the ultimate natural reason for war (conflict) is to avoid pain (Misery) and maximize pleasure (Felicity), it is presupposed that a regulation that can proffer constant assurance for pleasure and an elimination of pain, will be an harbinger for avoidance of war (conflict). Contextually, this means that man gives up his quest to compete over natural resources and in hope that the sovereign (government) would use the available natural resources to provide for his needs, perhaps sufficiently. The questions that then arises are: to what extent has the sovereign lived up to this contract? Has man truly given up his grip on his right to natural resources? If there is indeed a sovereign to whom certain rights have been conferred in expectation of some good, why are there still conflicts over natural resources?

To properly establish the link between the social contract and conflict over natural resources, it is ideal to foremost evaluate how natural resources brings about conflict. Alao noted that discussing natural resources as a cause of conflict, three interconnected considerations readily comes to bear. These are: the quantity and quality of availability; the politics of ownership, management, and control; and the process of extraction.³⁵

³⁴F.D. Weil, 'The Stranger, Prudence and Trust in Hobbes's Theory' (1986) *Theory and Society* 15 (5). P.766

³⁵ Alao, *Op.cit.* P.26

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From the foregoing, it is clear that a pivotal link between natural resources and conflict is the issue of 'natural resource governance'. This is considered as all the internal and external considerations that come to play in the management of natural resources and they include domestic laws, constitutional provisions, cultural practices, customary laws, neo-patrimonial practices, and all the international treaties and obligations that govern issues such as the ownership, management, extraction, revenue sharing, enforcement capacity and the procedures for addressing concerns and grievances over natural resources³⁶ which the government must take into account.

Furthermore, the resource governance is most poignant in connection to the social contract theory in the sense that irrespective of the quantity and quality of the natural resources, the role of government in the management of the available natural resources to ensure that there is no unfair treatment of any member or section of the community or state; to ensure that there is no mismanagement; to put in place adequate legal framework for the distribution of the proceeds of the resources and to respond as quickly as possible to any hint at conflict.

Fulfilling the Social Contract

Having said that the natural resources have been vested in the Federal Government as the sovereign, upon which the citizens of Nigeria including those of the Niger Delta should or must surrender their right to compete over natural resources, a question this paper attempts to address in the case of Niger Delta, is whether the government has fulfilled its part of the bargain of the social contract considering the allegation of neglect of the environment where the extraction and exploitation of oil occurs, the result of which is conflicts upon conflict arising from the perceived or actual failure of government to improve the lives of the populace nor provide sufficient consideration in return for the rights to ownership and control that was surrendered whether voluntarily or involuntarily. The question on the fulfilment stems from the assumption that the central government is alive to its developmental responsibilities to all parts of the country in a manner that demonstrates justice and equity.³⁷

In the case of Nigeria, the 'Fundamental Objectives and Directive Principles of State Policies' provided in Chapter Two of the CFRN seem to be a documentation of the part of the bargain to be fulfilled by the government for the benefit of the citizens.³⁸ While it is praiseworthy to have such documentation so as to keep welfare issues in the front burner and serve as a medium of silent social revolution,³⁹ the controversy is hinged on the general non-justiciability of the said provision.⁴⁰ In other words, the Constitution in itself restricts the power of the courts in entertaining suits arising from failure of performance with regards to the provisions of the said chapter two except otherwise provided.⁴¹

Poignantly, the Constitution, under the said non-justiciable chapter, requires the State to harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy so as to secure the maximum welfare, freedom and happiness of every citizen on the basis

³⁶ibid. P.31

³⁷ Ayokhai, *Op.cit.* p.36

³⁸ CFRN, 1999 (as amended) Sections 15-22

³⁹ S.I. Nwatu, 'Legal Framework for the Protection of Socio-economic Rights in Nigeria.' (2011-2012) *Nigerian Judicial Review* 10. P.33

⁴⁰ *Archbishop Anthony Okogie v. AG Lagos State* (1981) 2 NCLR 337 at 350

⁴¹ Section 6 (6) (c)

of social justice and equality of status and opportunity.⁴² In the same vein, it must be reckoned that under the same chapter, the State has the obligation to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria as an environmental objective.⁴³ The said environmental objective is also non-justiciable. It is in these regards that the social contract theory draws a link with the conflicts over natural resources in terms of failure to use the resources so harnessed to bring about better welfare.

This allegation hinting at the failure on the part of the government to fulfill its obligation under the social contract has come from different quarters, including the Community Court of Justice of Economic Community of West African States (ECOWAS) in a suit instituted by the Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) against the Federal Government of Nigeria and others.⁴⁴ In the said suit, SERAP amongst other reliefs, sought for “an order directing the Defendants to ensure the full enjoyment of the people of Niger Delta to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to clean and healthy environment; to socio and economic development; and the right to life and human security and dignity”.⁴⁵

Despite the defense put up by the Federal Government of Nigeria, the Court in its judgment condemned the Federal government for failing to protect the Niger Delta and its people from the international oil companies that have defiled the region.⁴⁶ It is further reckoned however, that it is not only the people of Niger Delta that are affected by the alleged breach on the part of government with regards to its part of the bargain as the entire nation is not better off in terms of social welfare⁴⁷ even though Nigeria is a mono-cultural economy wherein over ninety percent of the revenue of state is earned from the oil sector.⁴⁸

It is worthy of note that historically, resource control was given an accord that was supposedly appeasing to the people as the agitation for resource control by the Niger Delta ethnic minorities later stemmed primarily from the trajectories of the nation’s fiscal federalism arising from the oil boom. Between the 1940s and the mid-1970s, particularly before oil and gas became the dominant sources of revenue, the control of natural resources would seem to have been vested in the regional governments.⁴⁹ By twist of fate however, it is recounted that:

...though the 1963 Constitution did not provide for the ownership and control of mineral resources by the producing states, their entitlement to fifty percent of the proceed based on the provisions of the derivation principle, and a share in another 30 percent, with the Federal Government being entitled to only 20 percent made it almost impossible for the producing states to feel alienation, marginalized or unfairly treated in any form in the distribution of national wealth. From the mid-1970s, when oil

⁴² CFRN Section 16 (1) (a) and (b).

⁴³ *Ibid.* Section 20.

⁴⁴ General List No. ECW/CCJ/APP/08/09. Available at:

www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=177&Itemid=27 accessed 19th June, 2022.

⁴⁵ *Ibid.*

⁴⁶ ECW/CCJ/JUD/18/12. at Page 27. Available at:

www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=177&Itemid=27 accessed 19th June, 2022.

⁴⁷ S.A. Zuru, *The Nigeria’s Upstream Oil and Environmentalism: Government, The Niger-Delta and Multi-National Oil Industry* (Faith Printers Int’l 2009). P.309

⁴⁸ Ayokhai, *Op.cit.* P.36

⁴⁹ *Ibid.*

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and gas took the center stage as the nation's revenue earner, the prominence of the derivation principle did not only begin to recede, but also, natural resources became increasingly centrally controlled.⁵⁰

It must be said that this paper finds that the central control is not a problem in itself as that tend to align with the concept of social contract in that the individuals, communities, states, and regions surrender their right of control to the Central who takes the responsibility of usage of the resources to cater for the desires of each. However, in identifying the failure of resource governance in Nigeria, it must be brought to the fore that the term 'government' in Nigeria is at three tiers: the Federal, State and Local government. All three tiers hold certain degrees of responsibilities to the people under the social contract. Although it is clear that the Federal government is in charge of Natural resources, a good portion of the revenue arising therefrom is in accordance with Constitutional provision on revenue allocation handed down to the State Government which is expected to trickle down to the local communities through the local government council.

This presupposes that the issue of failure of governance cannot be attributable to the central government alone, considering the peculiarity of the structure of governance in Nigeria. This usually brings to the fore the issue of shifting of responsibility. The Federal Government may pride in having made effort at developing the Niger Delta. For instance in 2017, a Report submitted to the National Executive Council reveals that N423 billion has been spent on project in the Niger Delta region through the supervising Ministry between 2009 and 2015.⁵¹ This was out of a budgeted 700 billion for 427 contracts. The bane of the venture however is that the project experienced a meager 12 percent completion rate.⁵²

In the same vein, while attempting to distinguish between the responsibilities of the Multinational Oil Companies and those of the Nigerian Government, Zuru, noted in 2009 that the Niger Delta has suffered two wrongs: first is the degradation of the environment of the Niger Delta through oil operations and unintended consequences of environmentalism.⁵³ Second is the neglect of the region by successive governments during the last three decades, a situation that is largely responsible for the spate of unrest in the region.⁵⁴ Despite the situation, Zuru pointed out the various efforts taken by multinational oil companies at impacting the socio-economic sphere of the region in terms of health by providing hospitals; in terms of agriculture by providing planting material to farmers and in term of education by providing award of scholarships. The learned author also reckoned the role of government in owing huge responsibilities to both the Niger Delta and Nigeria as a whole being the supreme authority over the entire country.⁵⁵ The efforts put up by government through the creation of Oil Mineral Producing Areas Development Commission (OMPADEC) in 1998 to draw up a master plan for the accelerated socio-economic development of Niger Delta and later the Niger Delta Development Commission (NDDC) was also noted.⁵⁶ Aside from this, the Ministry of Niger Delta was created in 2008 to coordinate policies for the development and security of the Niger Delta

⁵⁰ *Ibid.*

⁵¹ E. Archibong, 'FG spends N423bn on Niger Delta Project- Report.' www.businessdayonline.com/fg-spends-n423bn-niger-delta-projects-report/ accessed 19th June, 2022

⁵² *Ibid.*

⁵³ Zuru, *Op.cit.* P.311

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* p.321

⁵⁶ Niger Delta Development Commission Act. Cap N86 LFN, 2004.

region.⁵⁷ The challenge with all of these, aside from the scourge of corruption, is the lack of political will to properly pursue these policies which are to play a key role in fulfilling the part of the bargain in the social contract and failure of which revives conflicts over natural resources.

The NDDC which replaced the failed⁵⁸ OMPADEC in 2000 had a 15 year master plan with \$50bn required for the project.⁵⁹ By 2017, the region had been provided with \$40bn within 10 years. Despite the provision, the then Managing Director and Chief Executive Officer of the Commission, Nsima Ekere stated that there is little evidence to show for the sums spent.⁶⁰ In the same narrative, the then General Manager, External Relations at the Shell Development Company, Mr. Igo Welu said contrary to insinuation that Shell was not paying what it should for the development of the region, it had so far paid N135 billion and \$1.1 billion.⁶¹

On the other side of the shift of responsibility, the then Head, Media and Public Affairs, NDDC, Ibitoye Abosedo, in August 2017, stated that the Federal Government owed NDDC N1.8 trillion since its inception 17 years ago and that the non-remittance of the backlog of statutory allocations had hampered accelerated development in the region.⁶²

Notwithstanding the above, the question of enforceability of the social contract remains the bane in its breach leading to conflict over natural resources. While there have been criticisms in relation to the effect of the non-justiciability clause in the Constitution⁶³ as it is reckoned to be responsible for lack of accountability⁶⁴ on the part of government, others have argued that it is justifiable to make the said Chapter non-justiciable as doing otherwise would lead to multiplicity of suit and thereby hinder the government from focusing on governance. The two sides of the argument notwithstanding, it is the resolve of this paper that lack of enforcement mechanism for the breach of the social contract is a key causal effect and until the right balance is found for its resolution leading to the consistent fulfilment of the social contract as a panacea for conflict, the recurrence of the conflict is inevitable.

Inland Basin Explorations: Lessons from Niger-Delta.

Despite the fact that Nigeria recurrently faces conflict over natural resources, and in the face of the foregoing analysis of resource governance and breach of the social contract, it is instructive to state that Nigeria must take lessons from the narrative of the Niger-Delta in the pursuit of oil exploration in the Sokoto, Nasarawa, and other basins. As at August 2023, it was reported that the Nigerian National Petroleum Corporation Limited (NNPCL) has finally spud an oil well in Nasarawa State while also reckoning that the Nigeria's former President, Muhammadu Buhari had listed assets

⁵⁷ www.gigerdelta.gov.ng/index.php/the-ministry/history-of-mnda accessed 19th June, 2022

⁵⁸ K.S. Mboho, and A.I. Inyang, 'Institutional Failures and Poverty in The Niger Delta Region: A Critical Appraisal of NDDC Projects in Ikot Abasi, Akwa Ibom State, Nigeria' (2011) *International Journal of Economic Development Research and Investment* 2(1). P.32

⁵⁹ O. Olaleye, 'NDDC MD: Despite \$40bn Expenditure, Commission failed to Realise 15-Year Master Plan' <https://www.google.com.ng/amp/s/www.thisdaylive.com/index.php/2017/02/05/nddc-md-despite-40bn-expenditure-commission-failed-to-realise-15-year-master-plan/amp/> accessed 19th June, 2022.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² <https://www.premiumtimesng.com/regional/south-south-regional/241888-nigerian-govt-owes-nddc-n1-8-trillion-official.html> accessed 19th June, 2022.

⁶³ T.A. Olaiya, 'Interrogating the Non-Justiciability of the Constitutional Directive Principles of State Policy Failure in Nigeria' (2015) *Journal of Politics and Law* 8 (3).

⁶⁴ G.N . Okeke and C. Okeke, 'The Justiciability of the Non-Justiciable Constitutional Policy of Governance in Nigeria.' (2013) *IOSR Journal of Humanities and Social Science.* 7(6). P.13

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which the nation intended to explore to include this in Chad Basin, Dahomey Basin, Anambra Platform, The Calabar Embankment, Sokoto Basin, Bida Basin, Benue Trough as well as the Ultra Deepwater Niger Delta.⁶⁵

These pursuit of more oil exploration goes to show that Nigeria does not suffer from scare resources but what is mostly lacking is resource governance. In order to avoid the incidences of conflict emanating from different armed or militia groups which might emerge in the inland basins where explorations are on-going, the Federal Government must be proactive in terms of providing efficient management of environmental pollution, rehabilitation of affected indigene, review of regulations over revenue derivation and most significantly, an exhibition of impactful provision of social amenities that gives the citizens of the state confidence to trust the government.

The foregoing is important because it is the lack of the social amenities and the failure to fulfill the social contracts stipulated in Chapter 2 of the Nigerian Constitution that formed the demands of the various groups that emerged from Niger-Delta. For instance, the First Niger Delta Indigenous Women's Conference for Women of Bayelsa State held at Yenagoa, 25th - 27th November 1999 demanded amongst other things, an immediate action plan for the development of Bayelsa State, i.e. building of grade A roads and telecommunications networks, tertiary institutions, hospitals, portable water, modern river transportation etc.⁶⁶ In the Ogoni Bill of Rights that was declared on the 26th of August 1990, the Ogoni people had demanded for the right to protect the Ogoni environment and ecology from further degradation.⁶⁷

It is worthy of note that it was in reaction of the clamour for certain rights that government reacted with efforts at making bodies such as OMPADEC and NNDC to become effective. As a corrective measure going forward, particularly with regards to the inland basin operations in the Benue Trough, Nasarawa and Sokoto, government must take the lessons of being proactive rather than being reactive so as to prevent the incidence of conflict.

Initiatives From the Petroleum Industry Act to Curb Conflict.

It is noteworthy that Multinational Oil Companies have always been caught in the middle of the conflict over natural resources despite the efforts they put into Corporate Social Responsibilities (CSR) as noted by Zuru. While it must not for once be considered that government should be shielded from responsibility, the Petroleum Industry Act 2021 introduces measures to make oil companies more obligated to the host communities while also making the host communities part of the managers of the proceeds of oil production from the said communities. First is the introduction of the Host Community Development Trust⁶⁸ (HCDT) which must be incorporated by operators within the Community. The operators that must establish such HCDT includes holders of Oil Prospecting License, Oil Mining Lease, holders of license to operate oil and natural gas transportation pipelines, bulk farms tanks, refineries, and gas processing plants. The HCDT is more appropriately to be registered as an Incorporated Trustee with the Corporate Affairs Commission while the operators are required to consult with the host communities in appointing the Board of Trustees which is to be responsible for the management of the affairs of the HCDT along with the

⁶⁵ E. Addeh, Report: NNPC Commences Drilling of Nasarawa Well, Four Months After Ceremony. Available at <https://www.arise.tv/trashed-44/> accessed September, 2023

⁶⁶ <http://www.laohamutuk.org/OilWeb/Bground/Africa/Nigeria/NDWJ/declarations.html> accessed April September, 2023

⁶⁷ *Ibid.*

⁶⁸ Section 235, Petroleum Industry Act, 2021.

Advisory Committee and Management Committee, although the operator shall oversee the funding and expenditure of the HCDT.⁶⁹

The HCDT is to be funded with 3% of the operator's annual operation expenditure of the preceding year for operations that are upstream while other sources can be from donations and grants. The funds are to be used exclusively for the development of the host communities and in compliance with the Host Community Development Plan which must have been designed by the operator and approved by the Nigerian Upstream Petroleum Regulatory Commission. In utilizing the fund, 75% must go to execution of projects, 20% to be reserved for investment, while not more than 5% is to be for administration of the HCDT.

While the operators can have their license revoked for failure to incorporate and manage the HCDT, the host communities are also made responsible in order to curb restiveness and in that regard, the host communities shall forfeit an entitlement under the HCDT which is equivalent to cost of repairs, where there is sabotage or vandalization of petroleum installations and facilities.⁷⁰

The foregoing innovations are no doubt well-thought out and can foster great harmony between the community and Multinational Oil Companies as the communities would perhaps now see themselves as stakeholders. That notwithstanding, multinational companies cannot take the place of government in terms of fulfilling the social contract and in addition to the fulfilment, there must be deliberate effort at enforcing the provisions of the Petroleum Industry Act particularly with regards to making the operators implement the provisions on the HCDT.

Recommendation.

Qualifying the Non-Justiciability of Chapter Two of Nigeria's Constitution.

Upon the finding that the Fundamental Objectives and Directive Principle of State Policies provided under Chapter two of the Constitution of Federal Republic of Nigeria 1999 is a form of Social Contract, however unenforceable owing to the legal limitation of it not being justiciable, it is recommended that such legal limitation which tend to breed lack of accountability should be qualified. For instance by directing the executive bodies of both the federation and the state as the Sovereign to tender before the National Assembly or State House of Assembly an annual report on compliance with the various objectives named in Chapter Two of the CFRN. In addition, the Attorney-General of the Federation in the case of the National Sovereign and the Attorneys-General of States in the case of state Sovereign should be empowered to within one month after the expiration of the stipulated period for the presentation of the report which the respective sovereign has failed to present, institute an action in a superior court to compel such sovereign to make the presentation.

The advantage of this is that the more the sovereign is aware of the fact that account shall be made, it would serve as a constant reminder of the need to meet up with the obligation of the sovereign under the social contract as captured in the Constitution.

⁶⁹ Ibid. section 234(4)

⁷⁰ Ibid. section 257 (2)

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Improvement of Political Will To Sufficiently Meet the Social Contract Obligations.

The sovereign at any point in time is made of human, and the political setting of Nigeria is quite dynamic. Judging by the efforts of the Federal Government in relation to the Niger Delta with the creation of NDDC; Ministry of Niger Delta; the Amnesty Programme; the efforts to clean Ogoni land; the constant revenue allocation amongst other things, one could say that the federal sovereign has played or is playing a huge part in fulfilling its part of the bargain. However, impending issues including corruption, lack of accountability and poor resource governance has continued to plague the effort of the sovereign. In this wise, there is need to improve the political will in ensuring that the strategies put in place have far reaching effect on the lives of the indigenes of the host communities of natural resources. This perhaps would speed up development which would engender the meeting of the obligation of the sovereign under the social contract and invariably prevent the communities from renewed conflict based on old causes.

Rigorous pursuit and Supervision of the HCDD

The HCDD as introduced by the Petroleum Industry Act is a laudable innovation and can foster a healthy relationship between host communities and the operators of oil licenses. Accordingly, government must see to the implementation of the HCDD especially in relation to the Inland Basin Operations in Nasarawa, Sokoto and other Basins.

Conclusion.

The discussion on natural resources in Nigeria needs to take a shift from the question of ownership and control as that is already settled in view of the national and international legal framework. Citizens including those of the Niger Delta must come to terms with the fact that it will be fool hardy for anyone to think that there will come a time when the central government relinquishes the control and ownership of natural resources to states or host communities. Consequently, the only realistic areas open for discussion and consideration are perhaps the re-negotiation of sharing formula for host states and a review of fulfilment of the obligations under the fundamental objectives and directive principle of state policies which if vigorously pursued can alleviate the pains and sufferings of the citizens. One other area open to discussion will be for the State to push for the national legislative framework on ownership and control to consider the participation of each state where a particular natural resource is found by way of harnessing, exploration and exploitation of the natural resource. The participation can be akin to the Joint Development Agreement entered between Nigeria and São Tomé and Príncipe which has been entered since 2001 and has proved to be successful. It is upon such participation that a derivation or allocation of revenue should be made to the state which is then required to redistribute to the citizens of the state. This type of relationship, if considered, would have the advantage of propelling the States to start exploring the natural resources within their states subject to the regulation and agreement made with Federal Government. It would also remove the heavy overreliance on oil to the abandonment of other resources. This would also mean that the revenue allocation to the state would be dependent on the Joint Development Agreement which has no bearing on the ownership or control which must be retained by the Federal Government.