THE RIGHT OF THE NIGER DELTA PEOPLE OF NIGERIA TO RESOURCE CONTROL

MASTER’S THESIS IN GLOBAL POLITICAL STUDIES

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BY

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ABSTRACT

The Niger Delta region of Nigeria has in recent years been a hotbed of conflict. The region has been embroiled in turmoil over the struggle for the control of the vast resources of the region. There has arisen a controversy over the cause of the struggle. Closely associated with this controversy is the confusion over the terms ‘resource control’ and ‘increase in revenue’.

Though the Supreme Court, the apex court in Nigeria has delivered a landmark judgment on the issue of resource control, the last is yet to be heard on the matter. There is a lacuna in the law as an appropriate revenue allocation formula is yet to be fixed for Nigeria.

This work examines whether the people of the Niger Delta region of Nigeria are entitled to the right to resource control. It will examine the Supreme Court’s decision in A.G. Federation v. A.G. Abia & 35 ors. and discuss on the possibility of fashioning out an acceptable revenue allocation formula for Nigeria.

KEY WORDS - Resource Control Revenue Allocation Niger Delta Nigerian Supreme Court
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# ABBREVIATIONS

<table>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>A.G</td>
<td>Attorney General</td>
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<tr>
<td>ALL ER</td>
<td>All England Law Report</td>
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<td>J.S.C</td>
<td>Justice of the Supreme Court</td>
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<td>MOSOP</td>
<td>Movement for the Emancipation of the Niger Delta</td>
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<td>NNPC</td>
<td>Nigerian National Petroleum Corporation</td>
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1.1 INTRODUCTION

The issue of resource control has been one of the burning issues in Nigeria today. The Niger Delta region of Nigeria which is made up of minority ethnic tribes accounts for a great percentage of the nation’s wealth. The region which is endowed with abundance of resources is greatly impoverished. The region has also been under great turmoil in recent times. There have been violent conflicts in the region as a result of the struggle for the control of the vast oil wells existing in the area. (Okpeh 2004:21).

Much has been written on the subject of resource control in the Niger Delta region of Nigeria but there has been a great confusion of the terms resource control and increase in revenue. Resource control goes beyond increase in revenue. It is the right of the real owners of the resources (indigenous communities) to control and play an active role in the exploration of resources in their communities. This involves active participation in the negotiation and sale of their resources. The indigenes of the Niger Delta region of Nigeria have continuously tried to make this distinction between increase in revenue and resource control. This is because without doing this, the struggle for resource control would be seen as one of those unreasonable demands by a group of disgruntled minority communities for increase in their own ‘share of the national cake’ (share of the nation’s wealth). This would make nonsense of the whole struggle which goes beyond mere increase in revenue but focuses on deep-rooted problems in the Nigerian polity.

Such issues include ethnicity, marginalization of the minorities, equity in sharing of national revenue, fixing an adequate revenue allocation formula for the country, treatment of minority ethnic groups, developmental policies of the government, corruption, pollution, activities of multinational companies and their corporate social responsibility, growing militancy of the youths of the Niger delta region, violence and breakdown of law and order in
the Niger delta region and the relevance of the continued unity of the Nigerian nation state. There is a litany of problems that would be addressed if the issue of resource control is properly addressed by the relevant authorities in Nigeria. The people of the Niger delta do not want to be seen as ‘going cap in hand’ to beg for more revenue. They resent the way they have been presented by the Nigerian government as greedy, poor and disgruntled militants and criminals in the world media. They see themselves as the proverbial ‘goose that laid the golden egg’. However in their own case, this goose has been greatly ill-treated, vilified and made to face opprobrium. The people of Niger Delta have had their rights twisted, trampled upon and thrown into an abysmal abyss of abeyance and even oblivion (ibid.).

The Nigerian government has not demonstrated a sincere and total commitment to address the resource control issue. This has been demonstrated in many ways. These include the continued refusal of the federal government to fix an adequate revenue sharing formula for the nation despite the supreme court’s decision on the matter, the continued neglect of the Niger delta region in terms of developmental policies and the campaign of calumny carried out in the local and international media against the people of the Niger delta region by the federal government. The people of the Niger delta region demand for their right to resource control. Mere increase in the revenue allocated to the people of the Niger Delta would seem more like a palliative measure. The indigenes of the Niger Delta region of Nigeria have been trying to make their voice heard. There has been serious activism in the region.
1.2 PURPOSE AND RESEARCH QUESTIONS

The overarching aim of this thesis is to search for an understanding of the true meaning of resource control. More specifically, the purpose of this thesis is to discuss the issue of revenue allocation and the possibility of fashioning out an acceptable revenue allocation formula for Nigeria.

The paper will also examine the Supreme Court’s decision in A.G. Federation v. A.G. Abia state & 35 ors. Wherein the issues of resource control and revenue allocation were decided upon.

Furthermore, this thesis aims at unraveling the puzzle behind the perennial crises in the Niger Delta region of Nigeria, why oil has not been a blessing to the people of the Niger Delta, with a view to finding a lasting solution to the crises.

THE FOLLOWING QUESTIONS ARE POSED

- Is the issue of resource control merely a struggle for increase in revenue or the control of the resources of the Niger Delta?

- Is resource control the panacea to the perennial crises in the region?

- Is there an acceptable revenue allocation formula for Nigeria?
1.3 METHODOLOGY

The methodology I adopted in this research work is the single case study method because it focused mainly on one case, which is that of the Niger Delta people. This method is usually employed when the phenomenon under study is not readily distinguishable from its context. Such a phenomenon may be a project or program in an evaluation study. (Yin 2003: 4). It usually involves contextual analysis of a limited number of events. Robert K. Yin (1984:23) defines it as “an empirical enquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident, and in which multiple sources of evidence are used”. This makes the case study method quite appropriate for the subject matter of this thesis, the right of the Niger Delta people of Nigeria to resource control. This subject is a contemporary problem. The method is usually used to analyze real life situations as the one this thesis is considering. The advantage of this method is that it allows the writer enough room to make an in-depth analysis of the subject matter. It allows for systematic analysis that allows one to have a clear understanding of the subject matter of the enquiry.

Critics of this method however criticize it on grounds of reliability. They maintain that the analysis of a small number of cases can offer no grounds for reliability. They also maintain that such limited cases cannot offer generality of findings.

The work is expository, analytic and synthetic. It is expository because I went historical, looking at the history of the struggle for resource control, the history of revenue allocation and revenue allocation formula in Nigeria. However the disadvantage of the methodology adopted in this research is that the writer does not have enough generalizing power. This is one of the limitations of this thesis.
It is analytic because I analyze the issue of revenue allocation and revenue allocation formula in Nigeria, revealing the cause of the discontent by the indigenes of the Niger Delta over the revenue sharing patterns and formulae instituted by successive administrations in Nigeria. I went further to critically analyze the Nigerian Supreme court’s decision on resource control and the implication this has on the Nigerian polity and the overall unity and peaceful existence of the nation.

It is synthetic because I proffered some solutions that can ensure lasting peace in the Niger Delta region.

This thesis also adopted the qualitative approach of analysis. This method is used in the study of individuals and groups in the formal political arena. It can be used when studying the political attitudes and behavior of people (Marsh & Stocker 1995: 197). It is also used where the goal of the research is to explore people’s subjective experiences and the meanings they attach to those experiences. It is thus appropriate for this thesis as the paper seeks to understand not only the meaning of resource control but also tries to find out the reason behind the perennial conflict in the Niger Delta, the violent and confrontational attitude of many people in the area especially the youth militants and why oil has not been considered a blessing by the people.

The materials I used are mainly secondary literature. They were mostly found in the library. None of the materials in this research was obtained in the field. I relied heavily on such books as, where Vultures Feast; Shell, Human Right and oil by Ike Okonta and Oronto Douglas and Crude World: The violent Twilight of Oil by Peter Maass. I also relied heavily on constitutional documents of the Federal republic of Nigeria. I cited copiously and also made in depth analysis from the Supreme Court’s decision in A.G. Federation v. A.G. Abia state & 35 ors.
CHAPTER TWO: BACKGROUND OF STUDY AND SCHOLARS’ PERSPECTIVES

2.1 RESOURCE CONTROL IN THE NIGER DELTA REGION OF NIGERIA

This chapter focuses on various scholar’s views and perspectives on resource control especially concerning revenue allocation and revenue allocation formula. This chapter is relevant because it brings to the fore the divergent views about resource control and revenue allocation. The chapter traces the history of revenue allocation and revenue allocation formula from pre colonial, colonial, military interregnum era to the civilian era in the Nigerian history. This will help make the subject of resource control more perspicacious to the reader. It offers a good background of the study of resource control in the Niger Delta region of Nigeria. The main aim of the chapter is to distinguish between resource control and increase in revenue. It is to show that resource control is not just a creation borne out of recent discontent by the people of Niger Delta but a subject that had been in the Nigerian political lexicon and even recognized by past Nigerian constitutions but conveniently forgotten by subsequent administrations due to ethnic politics. The history of revenue allocation, based on derivation principles is also discussed in this chapter. This is a prelude to subsequent chapters touching this subject. It gives an insight to the problem of fashioning out an appropriate revenue allocation formula for Nigeria.

Nigeria is the most populated country in Africa. It is the highest producer of oil in the African continent. It is also the 11th largest producer and 8th largest exporter of oil in the world. The country’s oil production is currently estimated to be about 2.45million barrels per day. About two third of the production is onshore while the remainder is explored offshore from the continental shelf in shallow and deep water. (Watts 2008:40).

Oil is almost exclusively in the Niger Delta. The region covers about 70,000km. Majority of the inhabitants of this region live in Rivers, Delta and Bayelsa states. These states
own 80% of the region. The other occupants of the Niger Delta are scattered among other states like Cross River, Akwa Ibom, Abia, Imo and Ondo states (Okonta & Douglas 2003:18). Edo state from which Delta state was carved out from is also a part of the Niger Delta region. Going by the current geopolitical delineation, the region is made up of nine of the 36 states of Nigeria and 185 Local Government Councils. The region covers a surface area of approximately 112,110sq.-1% of Nigeria’s territory. In 2007 the population of this region was estimated to be 28million. An overwhelming majority of the people of this region is poor and live in rural communities. The core states of the region which are Bayelsa, Delta, Rivers, and Akwa Ibom cover 45,000sq.km, accounting for half of the population of the region and for more than three-quarters of onshore oil production. There are at least 40 different ethnic groups in the region, speaking about 250 languages and dialects with the Ijaw tribe as the majority (ibid.40).

Much of what has been written on the Niger delta region of Nigeria has been on the conflict that had arisen as a result of the clamor for resource control by the people of the Niger Delta region of Nigeria. The focus has also been on the devastating consequences of pollution of the Niger Delta region by the activities of multinational companies. The conflicts in most cases arise from the fact that resources like oil are limited in supply and can be exhausted (Sagay 2001:1).

Authors like Michael Klare have written on resource wars. Klare sees oil as a major factor that would generate wars in the world. He also talks about oil being a resource that is limited in supply. Though Klare discusses oil in his book, Resource wars: The New landscape of Global conflict (2000), his book is very wide in scope and covers many resources like precious gems such as gold and diamond. It also covers resources like water and timber. This is wider than the scope of this paper which is mainly on the right of the Niger Delta people of Nigeria to control their resources. The major resources (for the scope of this work) here are oil and gas. Klare maintains that conflict over valuable resources has posed and will continue to pose a serious threat to peace and stability in many parts of the world. Klare (2000:82) looks at the control of resources from the perspective of countries and not just ethnic communities like the Niger Delta communities of Nigeria. His book throws more light on the conflict over resources in the world in general. It is wider in scope than the issue of resource control in the Niger Delta region of Nigeria. It is however relevant because it underscores the great importance of resources in global, regional and even local politics. The author in this book does not make serious moral judgments or normative suggestions like the subject of the rights
of the Niger Delta people of Nigeria to resource control which has a normative undertone. Klare’s book sees the world as it is today, a world where countries have shifted their focus from issues like ideology to control of resources.

He takes a leap into the future to predict that future wars would be fought based on resources. Klare substantiates the claims in his book with lots of data from reliable sources like books, journals and vital documents from security operatives. Events in different parts of the world can confirm Klare’s view. It has been argued that the underlying cause of the first gulf war was the huge resources in the borders of Kuwait and Iraq. The war in Sierra Leone was a war over diamonds. The incessant conflicts in the Niger delta region of Nigeria between the militant youth of the region and the Nigerian military has been over the control of the oil wells in the region. The militant youth of the region under the aegis of The Movement for The Emancipation of The Niger Delta Region (MEND) and other splinter militant groups and factions have gained global notoriety by disrupting exploration of oil in the Niger delta region. The leaders of the militants like Asari Dokubo, and Ateke have continuously demanded for a greater control and say in the business of the downstream oil sector in Nigeria. This is what the late environmental activist Ken Saro-wiwa fought for during his life time. The late activist had brought serious attention to the struggle for resource control.

Ken Saro-Wiwa brought the world’s attention to the environmental degradation and pollution in the Niger delta by multinational companies like shell. He was made to face a politically motivated trial under a military tribunal during the reign of the late military dictator, Gen. Sanni Abacha and subsequently hanged. His trial and execution sparked outrage and widespread condemnation by the international community. Nigeria was subsequently banned for three years by the Commonwealth of Nations and treated as a pariah nation by the whole international community for a long time.
2.2 RESOURCE CONTROL AND REVENUE ALLOCATION

Central to the discussion of resource control in Nigeria and the Niger Delta in particular are the twin issues of revenue allocation and revenue allocation formula. This subject has in many cases not been treated with much clarity. Increase in revenue is only a part of resource control (Sagay 2001:1). It is an inevitable consequence of resource control. The resource control issue is what has been described as the ‘Niger Delta question’.

Writing on this subject, Ejibowah (2000:29) in his article, *who owns the oil? The politics of Ethnicity in the Niger Delta of Nigeria* describes it as the conflict arising from the federal government’s control of oil resources and the distribution of their revenue among the constituent states of the federation, and oil communities’ ownership claims to the resources. Ejibowah, in his article maintains that conflict over issues of federal revenue allocation has been a part of Nigeria’s political history. The writer traces it back to the debates in the mid 1940s, Arthur Richards Legislative council that resulted in the appointment of the Sydney Philipson commission. The Arthur Richard’s legislative council is named after Arthur Richard, the Governor General appointed by the British colonial administration in Nigeria in 1946. The constitution in Nigeria in 1946 like other Nigerian constitutions of the colonial era was named after the Governor General at that time.

The Richard’s constitution put in place the legislative council of Nigeria. This comprised of 26 members to be nominated. This council drafted the constitution which was the first to define the protectorate of Nigeria in terms of regions. The council also dealt extensively with the issues of revenue allocation. There was lack of consultation during the constitution making process. This was not appreciated by the Nigerian people. An important innovation of the constitution was the fact that the legislative council included members from all the regions of the country (Adamolekun 1986:42).
Ejibowah looks at the various commissions that were set up by successive administrations in Nigeria to fashion out an acceptable revenue allocation formula for the country. The writer in his article gives an accurate account of the history of revenue allocation in Nigeria. The article brings to the fore the issues of ethnicity and tribalism as key motivating factors for the leaders that engaged in fixing the revenue allocation formula for the country. He reveals the politics and shenanigans of the politicians especially those from the majority ethnic tribes who control the apparatus of government. The same author points out that the principle of ‘derivation’ recommended by Louis Chick was adopted in the sharing of revenue prior to Nigeria’s independence and during a few years of post colonialism when the Northern and Western states of Nigeria who are majority ethnic tribes were the major producers of the resources of Nigeria (Ejibowah 2000:32). The Louis Chick commission was set up during the nationalist struggle for independence for Nigeria. It was preceded by two constitutional conferences of August 1953 and February 1954. The 1954 constitutional conference created the Chick commission which was named after Sir Louis Chick the British head of the commission.

The commission adopted the derivative principle of revenue allocation. Under this principle, priority is given to the area under which the resources that generate wealth are exploited or derived from (Ekpo 2004:5). Ejibowah in his article goes further to state that in the 1960s when crude oil was discovered in the Eastern and Midwestern region (areas that cover the Niger Delta region under the present geopolitical delineation), the revenue allocation formula was changed to 50% (ibid::42).

Dibua (2005:9) corroborates this fact in his article, *Citizens and resource control in Nigeria: The case of minority communities in the Niger Delta*. He states that the issue of the control of the wealth derived from natural resources and the manner of resource allocation has been contentious right from colonial period, particularly with the emergence of the federal system of government. The writer discusses the weight attached to the principle of ‘derivation’ in the revenue allocation formula. To him, “derivation is seen as the primary vehicle through which the people from whose resources wealth is generated would exercise control over a significant portion of their wealth”. Dibua’s article gives a detailed historical account of the long history of the issue of revenue allocation in Nigeria. Like Ejibowah, the writer goes back to the pre independence history. He looks at the various revenue allocation commissions set up by successive administrations in Nigeria. Dibua looks at the Philipson commission which accompanied the Richard’s constitution and also the Chicks Commission,
all of which have been discussed in the preceding pages of this paper. He also looked at the Hicks-Philipson Commission of 1951 and the Raisman commission of 1958. The Hicks-Philipson commission recommended a compromise solution based on independent revenue, need, national interest, and special grant (Abubakar 2005:85).

The Raisman commission was set up to correct some of the shortcomings of the Louis Chick commission earlier discussed. It was a fiscal revenue review commission under the chairmanship of Sir Jeremy Raisman. Dibua in his article also looks at the post colonial era. He clearly reiterates the point made by Ejibowah that over the years, the various commissions had approved 100% revenue allocation to the states of the federation where resources were located. He states that the 1954 and 1958 commissions had reduced the percentage of revenue allocated to the states to 50%. The post colonial republican constitution, he stated, equally granted 50% to derivation (Dibua 2005:12).

He identifies the point at which the degree of control which constituent units of the federation had over resources became greatly undermined. He traces this to the advent of military rule in Nigeria in 1966. He maintained that the military in line with their centralized command structure centralized Nigeria’s federalism. The writer explains why the revenue allocation formula was changed. He puts it the way no author has done. He posits that the leaders of the majority ethnic groups in Nigeria had changed the formula and ensured that the central federal government had more control over the revenues of the federation for purely selfish reasons. He maintains that crude oil which had become a major source of foreign exchange earning was obtained from the minority ethnic groups. It was therefore in the interest of the leaders of government who were indigenes of the majority ethnic groups to change the formula to reflect central control to protect their own interest and avoid a shift of economic power to the minority ethnic groups who now had oil (Dibua 2005:15).

Dibua’s article puts the political issues surrounding revenue allocation in Nigeria in proper perspective and makes the issues more perspicacious to the reader. However he lays so much emphasis on the concept of citizenship as the underlying basis of the politics surrounding revenue allocation in Nigeria. He views the clamor for resource control as a shift in allegiance from national to ethnic allegiance. He calls it ‘ethnic citizenship.’ He makes an interesting point when he notes that it is debatable whether increasing the amount of revenue allocated to the government of a particular region or state through derivation actually translates to the control by the ordinary people over the wealth generated from the
exploitation of their natural resources. This is one of the key points of the subject of resource control. It is the fact that increasing revenue to any tier of government, (however close its proximity to the host communities) without members of these communities having a direct say in the business of the downstream oil sector will yield very minimal results.

Dibua (2005:28) like most authors does not go in-depth to distinguish the difference between resource control and mere increase in revenue which is just a part of resource control. He writes with passion and uses some emotive languages. He describes the neglect of the oil producing communities in very strong language. For instance he describes the treatment of Bayelsa state, one of the states in the Niger Delta region as ‘pathetic’ and the overall neglect of the region as ‘unconscionable’.

Caroline Ifeka a field researcher on Niger Delta in her article, *Oil, NGOs & Youths: Struggles for Resource Control in the Niger Delta*, discussed the issue of resource control but from a different perspective. She maintains that there has always existed a tripartite relationship in the Niger Delta region of Nigeria when discussing trade or resource control. She goes back to history to discuss this issue. The writer states that disputes over the ownership and distribution of natural resources are embedded in the Niger Delta history. According to her, trade between the indigenes of the Niger Delta and their European counterparts was always done under a tripartite arrangement, with the indigenous traders on the one hand, their European counterparts on the other and the local chiefs as intermediaries to broker the trade deals. Local coastal chiefs were intermediaries between inland producers and expatriate company (buyers) in their off-shore ‘hulks’ (Ife ka 2001:101). She writes further that in the post-1960s era of fuel oil, the same tripartite structure obtained.

The writer maintained that since the 1980s, the same tripartite relationship exists. She stated that there are minor differences though the same structure exists. The intermediary today is the Nigerian National petroleum Corporation (N.N.P.C.) or the president’s special adviser on petroleum. Another difference, she stated, is that in the pre-colonial era and the early 1960s, the communities exercised far more control over the exploitation process. She states that crude oil today is produced by indigenous and expatriate labor from natural resources owned by a non-local national government, exploited by foreign capital / technology, and guarded by detachments of the Federal Nigerian Army and Navy or by the mobile police. She succinctly puts it thus, “Today’s local communities exercise no control
over production of oil extracted from their territories, and in their view benefit is minimal, if that” (Ifeka 2001:102).

Ifeka gives an in-depth analysis of the level of environmental degradation and pollution in the Niger Delta region of Nigeria. She writes with firsthand knowledge, based on her experience during her field work in the region with an NGO. She had been involved with an NGO in the forest of cross river (in the Niger Delta region) for a number of years to investigate the feasibility of linking participatory community development to conflict resolution in the coastal Ijaw speaking communities which face off-shore oil blocks. Her research is carried out more from a developmental perspective. She writes as one who is quite familiar with the terrain, the region of the Niger Delta.

However her account of the revenue allocation formula which is quite germane to my research is inaccurate. Her position is that “the Federal government of Nigeria and oil companies shares a common interest in exploiting revenues between themselves on a 60/ 40 % pro rata basis” (Ifeka 2001:100). This is a misrepresentation of the revenue allocation formula in Nigeria. It is quite surprising coming from a field researcher like Ifeka. At no time in the history of Nigeria has there been a revenue allocation formula that gives 60% of the dollar sales of oil to the Nigerian Federal government and 40% to the oil companies.

Cyril Obi, a researcher at Nordic Africa Institute, Uppsala in Sweden in his academic essay, Resource Control in Nigeria’s Niger Delta, on the reasons why oil has not brought wealth to Nigeria’s people gives an accurate account of the various formulas that had been implemented by successive administrations in Nigeria. He states that the revenue allocation formula had started with the constituent units of the Nigerian federation having 100% revenue based on the ‘derivation’ principle. It was later reduced to 50% earnings for the units and 50% to the federal government. The share of the revenue allotted to the units of the Nigerian federation further fell from 50% in 1966 to 1.5% in the mid 1990s. It then rose to 13% in 1999 in response to international campaigns and local protests by the minorities and the strategy of the new democratic regime to win legitimacy by attending to the grievances of the oil –producing communities (Obi 2007:1).

The recent Supreme Court decision in the case of A.G of the Federation V. A.G of Abia State and others (S.C. 2001:28) has created a lacuna in the Nigerian polity because it directed that a suitable revenue allocation formula be fashioned out for the Nigerian federation without stating how this was to be done nor what was to be done in the interim. This is like going back
full circle. In this case the Nigerian Supreme court, the apex court in Nigeria dealt extensively with issues of revenue allocation. The primary issue however was the determination of the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue to the Federation Account directly from any natural resources derived from that state pursuant to section 162(2) of the constitution of the Federal Republic of Nigeria 1999.

In this case, the issue of on-shore and off-shore oil revenue derivation dichotomy was hotly contested. There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the southern for seaward) boundary of each of these States (A.G. Fed. V. A.G. Abia & 35 0rs.). The federal government contended that oil exploited in the offshore part of the Niger delta (territorial waters) was not a property of the host states and communities but that of the nation as a whole and so revenue derived there from belonged ‘ipso facto’ to the federal government.

The states on the other hand argued that they were entitled to the revenue derived from such exploitation. The territorial sea is the water area starting from the baseline and moving towards the sea. This is an area that is usually contested by states. A breadth of between 5 to 12 miles is what most maritime states accept as the proper boundary. The baseline is the coastal belt. The International court of justice (ICJ) however recommends the straight baseline rule followed by countries like Norway. This is based on the principle that the belt of territorial waters must follow the direction of the coast. The Supreme court of Nigeria decided in favor of the federal government in the substantive suit but failed to decide on an appropriate revenue allocation formula. (ibid.)

David Dafinone (2001:1), a Nigerian senator wrote in Resource control: The Economic and Political Dimensions that, the clamor for resource control is a clamor for adequate compensation, a cry for redistribution of the revenue allocation formula and nothing more. With due respect, Dafinone’s analysis of the subject of resource control does not cover all aspect of resource control which includes the control of the exploitation and exploration of the resources by the communities, the sale of oil, increase in revenue which involves the changing of the present revenue allocation formula, control of oil-field practices which pertains to issues of environmental pollution.
Dafinone’s article does not give an accurate picture of the subject of resource control. He calls the struggle, the clamor for “adequate compensation”. He writes more like a politician than an academic that he once was. His historical account of the issue of revenue allocation and revenue allocation formula in Nigeria is quite shallow. In his article, Dafinone posits that resource control is based on the theory that land, labor and capital are factors of production and so attract some form of payment.’ He cites Adam Smith the famous Economist to buttress his point. The writer states that just as the price of labor is wages, capital has interest; Entrepreneurship is driven by profit while rent and royalties are rewards for land ownership. To him, rent is a form of payment for the use of the original and indestructible properties of the soil. He drives home his point tersely thus: “Whoever owns a land expects some form of compensation from those hiring this very important factor of production” (ibid).

His analysis is quite an interesting one in this respect. His economic allusion in discussing resource control is quite pungent and intelligent. His argument is in line with the inexorable Latin legal maxim, *quid quid plantatur solo solo cedit* which means what is affixed to a land belongs to the land. This is a strong argument for the indigenes of the Niger Delta region of Nigeria to control the resources discovered in their land. (Grace Chiadi v. Deborah Aggo & ors. 2003:1)

This chapter which forms the background of study has so far looked at the views of other scholars on the subject of resource control. The different authors have given their perspectives on the subject. The chapter has focused mainly on the issue of revenue allocation and revenue allocation formula. Many of the scholars have recounted the tortuous history of revenue allocation and revenue allocation formula in Nigeria. They have also given their accounts of the formulas used over the years. Some have also gone ahead to give their views and perspectives on the resource control saga and their understanding of the subject. Despite whatever differences may exist in their account, one fact remains that the history of revenue allocation and revenue allocation formula in Nigeria has been highly politicized (Ekpo 2004:23).

The various views have helped to throw more light on the subject under discussion. I have however found the views of Ejibowah, J. and that of Cyril Obi, the researcher at Nordic Africa Institute in Uppsala, Sweden quite useful in discussing the subject of resource control, the history of revenue allocation and revenue allocation formula in Nigeria. In my view the authors’ accounts of the history of revenue allocation and revenue allocation formula in
Nigeria have been very accurate. I have also found Professor Sagay’s analysis of the real meaning of resource control most appealing and useful. Professor Sagay who is a justice of the Nigerian Supreme court and an indigene of one of the communities in the Niger Delta, clearly explains the meaning of resource control and goes further to distinguish between resource control and increase in revenue. I therefore side with him.

CHAPTER THREE: THEORETICAL FRAMEWORK

3.1 Martha Nussbaum’s Capability Approach

This thesis will adopt the capability approach advocated by Martha Nussbaum as a theoretical basis of study. The theory focuses on human rights in terms of the capabilities of people. It does not look at the function alone but on what a person can do and the opportunities that are made available to the person. It also looks at what a person can be (Nussbaum 2000:16).

The theory presents a philosophical approach to morality and rights fulfillment. Though Nussbaum uses this theory to discuss women’s lesser opportunities globally, the theory can also be used in the discussion of the rights of the Niger Delta people to resource control.

Nussbaum adopts a universalistic approach to her argument. She argues that notwithstanding the diversity of cultures in the world, the human capabilities cuts across cultures. Thus, irrespective of the nationality, color, gender, ethnic background or culture of the individual, there must be a basic standard of life that an individual must not be allowed to fall below. This is what Nussbaum calls a ‘threshold’. According to her, a hungry stomach would be a hungry stomach anywhere in the world no matter the culture (ibid.18).

She draws up a list of capabilities. Every human being should be able to have a decent meal, protection against bodily harm, sexual abuse wherever he or she is. The person should also be able to use the senses, be able to have emotional attachments, affiliations, be able to reason, live and enjoy his environment. He should be to live with concerns for and in relation to animals and the world in general (ibid 41). Groups of impoverished people like those in the
Niger Delta region of Nigeria are entitled to these rights their ‘locus situ’ (place of location) notwithstanding. However this is not the case.

The theory is a good model of measuring the standard and quality of living of a people and their level of development. It also considers the adaptive preferences of the individual (ibid.57). This is because a person’s expectation in life is largely shaped by what he or she is used to having.

In measuring the quality of life of the individual, the person’s expectations should not be the final word. This is because the individual’s reasoning may have been conditioned by the vagaries and vicissitudes of life. The choices people make are largely dependent upon the opportunities and resources available to them. People can be inured to pains and misery and hence lower their expectations in life. People get contented and settle for less based on the wrong reasons. They adapt to their circumstances even when they are unfairly treated.

Nussbaum’s theory provides a more substantive approach to social justice focusing on the basic minimum that an individual is entitled to have. She maintains that the list of central capabilities drawn up by her though not complete, underlines a decent social minimum which can provide human functioning. (Nussbaum 2008:75). The threshold or social minimum is adopted to make her theory more practicable and achievable in human society. The social minimum is a set of basic capabilities that must be secured for each individual in the society by social and political institutions so as to ensure a decent life and well-being worthy of the human being (ibid.71). She pointed out that the list of basic minimum is to act as a guide to policy makers and governments. She thus noted that it is open-ended and subject to revisions as it suits any particular society (ibid.296). She goes further to state that the list is “to provide a philosophical underpinning for an account of core human entitlements that should be respected and implemented by governments of all nations” (ibid.71).

In making her approach perspicuous, Nussbaum presents a two-fold intuitive idea as a foundation for the capability. She maintained thus;

*The intuitive idea behind the approach is two-fold: that certain functions are particularly central in human life, in the sense that their presence or absence is typically understood to be a mark of the presence or absence of human life and second, that is what Marx found in Aristotle- that there is something that is to do*
with these functioning in a truly human way, not merely on animal way

(Nussbaum 2008:3).

In the second part of the intuitive idea, Nussbaum deals with “the good life” which talks about human flourishing. She cites Aristotle who maintained that the ultimate end of human life is *eudaimonia* which he says is the state of living well.

Nussbaum writes that “we believe that human life is worth living only if a good life can be secured by the efforts and if the relevant sort of life lies within the capabilities of most people” (Nussbaum 1986:6) Writing on this issue in his Nicomachean Ethics, Aristotle maintained that to attain *eudaimonia*, resources are required. The availability of resources is a sine qua non for the attainment of a good life. He succinctly puts the issue thus;

“It is evident that eudaimonia stands in need of good things from outside for it is impossible or difficult to do fine things without resources” (Nicomachean Ethics, 1099 31-39.

The second part deals with human dignity. In discussing this, Nussbaum writes tersely thus;

“the core idea is that of human as a dignified ,free individual who shapes his or her own life in co-operation and reciprocity with others, rather than being passively shaped or pushed around by the world in the manner of a flock or an animal” (Nussbaum 2008:72).

She goes on to describe a life of indignity thus;

“We judge, frequently enough, that a life has been so impoverished that it is not worthy of the dignity of the human being, that is a life which one goes on living, but more or less like an animal, unable to develop and realize one’s human power” (ibid).

On the whole what the theory seeks to achieve is to build a society in which each individual is treated with dignity, and in which each one is put in a state in which he really lives humanly (ibid.74).
3.2 PRACTICAL RELEVANCE OF THE THEORY

The theory has been used to investigate poverty, social-injustice, economic and distributive justice, gender, inequality, health, *inter alia*. It has also been adapted to security and human rights discourse. As a normative theory, it is useful in explaining rights fulfillment.

Nussbaum’s capability theory is also of practical relevance in our modern day world. It can serve as a useful tool in measuring the poverty and well-being of the individual. Economists and others who deal with human development have often times relied heavily on the gross domestic product (G.D.P.) in assessing the level of development.

While this may be a good way of measuring the standard of living of people in a particular place, this may not be adequate in all cases because there are certain things in life that cannot be quantified or measured easily. For instance, it is not easy to measure happiness or reveal the capabilities of individuals in a society or the opportunities available to the individual. The potentials of the individual cannot be known using the GDP as a measure of human development index since the GDP concentrates mainly on income.

The theory is quite useful in explaining the situation in the Niger Delta. The people of the region have been made to live below the social minimum in Nigeria. They have also been made to adapt their preferences based on the opportunities available to them. They have been inured to pain and misery and so have adjusted and reduced their expectations in life. This explains why it is not uncommon in the region to see more than five people sharing a single room or ten or more people sharing the same latrine toilet. Power failure is not unexpected as
It is a common phenomenon. People don’t expect constant electric power supply or clean pipe borne water (Watts 2008:44). Many of the youth in the region do not expect to find employment irrespective of their level of education and many would never be opportune to attend college notwithstanding their level of brilliance. This is due to the dearth of schools and the general poor level of development of the region (ibid.). Hence they are easily tempted to join militant groups in the hope of earning a living.

3.3.1 OTHER THEORIES OF RESOURCE CONTROL

3.3.2 THEORY OF RESOURCE CURSE

This theory is also known as the paradox of plenty. It refers to the paradox that countries and areas that are richly blessed with an abundance of resources, especially non-renewable natural resources like oil and gas, turn out to have poor economic growth than countries and regions with fewer natural resources. The theory also maintains that abundance in natural resources especially oil, encourages violent conflicts. It hypothesizes that natural resources boosts and in fact constitutes an incentive to conflict and instability. This theory fits the case under consideration in this thesis, which is the Niger Delta because the region and indeed Nigeria after the discovery and subsequent exploration of oil have not experienced the desired and even anticipated technological and economic development it thought it would experience.

Nigeria has had a checkered history but the advent of oil rather than strengthen its economy has rather witnessed increased poverty, an economy in tatters, which has been burdened by debt over the years, weak state capacity with poor democratic institutions. It has also witnessed great violence and conflicts, corruption and a myriad of problems that would lead to the inevitable conclusion that oil has not been a blessing to Nigeria but rather a curse. It has ironically brought impoverishment and untold hardship on the generality of the Nigerian populace especially those in the Niger Delta region from which the oil is exploited. This theory aptly describes the situation in the Niger Delta. Hence their applications in
discussing the subject of resource control. One of the leading experts in the hybrid field, Paul Collier, an economist, who for a long time was with the World Bank joined in a study of 160 countries and 73 wars since 1960. In the report titled “Greed and Grievance in civil wars”, he writes that;

“dependence on primary commodities substantially increases the risk of conflict...In a country with no primary commodity exports at all; the risk is about one percent in a five year period. In a country with high dependence on primary commodities, which means about 30% of its national income comes from primary commodities, the risk is about 23%”

(Cited in Maass 2009:55). Proponents of this theory state that, abundance of resources rather than stimulate economic development can act as an impediment to it. The reasons adduced for this negative relationship between resources and underdevelopment and conflict include corruption, decline in the competitiveness of other sectors, overdependence on one source of income (the natural resource), mismanagement of resources etc.

This theory is more of an empirical than an economic theory. To many economists, the tendency for countries that are greatly endowed with natural resources to experience poor economic growth is a conceptual puzzle (papyrakis & Gerlagh 2004: 181). Economists consider natural resources to be a potential source of income part of which can be saved and converted into capital for future benefit (ibid). The income, royalties or rents generated by the sale of natural resources can be used for developmental purposes. They can be used to provide infrastructures like good roads, good telecommunications network, educational and health care systems. Countries like the United States of America had experienced this.

However, a vast majority of countries with an abundance of natural resources experience underdevelopment and even retrogression. Over the last century, countries that are richly endowed with natural resources tend to experience low economic and developmental growth. Countries like Venezuela, Russia and Nigeria have experienced low economic growth while countries like Korea, Japan, Singapore and Switzerland who are not as endowed as the former have experienced high economic growth. Countries whose economies are dependent on natural resources turn out to be examples of developmental failures (Sachs and Warner 1995).

The idea that natural resources might constitute more of a curse than a source of blessing began to emerge in the 1980s. Richard Auty an erudite scholar first used the term in 1993 to describe how countries that are greatly endowed with natural resources were unable to utilize
that wealth to boost their economies and how these countries had lower economic growth than countries without an abundance of resources (Auty 1993:1).

Studies have shown that there is a correlation between an abundance of resources and poor economic growth. Research carried out by researchers like Jeffrey Sachs and Andrew Warner (1995), Auty Richard (1993), Gylfason (2001) and recently by Papyrakis and Gerlagh (2004) all point to this. Sachs and Warner in their working paper on *Natural Resource Abundance and Economic growth* (19959), write that “despite the potentially beneficial impact of natural resource wealth on economic prosperity, natural resource abundant economies tend to grow at a slower pace”. This is in fact the grim and sad reality in many parts of the world today. A good example is in the Niger Delta region of Nigeria where the discovery and subsequent exploration of oil and gas in the region has led to ecological degradation and impoverishment of the people of the region. In his book *Crude World: The violent Twilight of oil*, Peter Maass, gives a vivid picture of the state of most oil rich countries. He writes thus;

“I was flummoxed by the differing fates of countries that lived off oil. In one there was invasion. In another, poverty. Nearby, fundamentalism…Across an ocean, pollution. In the distance, anarchy. Over the border, civil war” (2009:3). The author went further to state that today you don’t need to be a Marxist to be interested in the role of natural resources in political conflicts.

In his insightful book, the author who has carried out extensive research in many countries across the world states that one of the ironies of oil-rich countries is that most are not rich, that their oil brings trouble to them rather than prosperity (ibid.1). He corroborates the resource curse theory thus;

*I lived in Asia for several years and wondered, if oil was such a blessing to* 
*Countries possessing it, how South Korea, which has no oil, became an economic* 
*Tiger, as well as Japan, whose oil reserves was minuscule. Their prosperity in the last* 
*Fifty years was in contrast to oil exporters like Iraq, Iran and Nigeria, which did not have* 
*the profiles of winners. Among their humiliations, the most absurd is that they have* 
*Shortages of gasoline. They are examples of what economists call the ‘the resource*
Curse’ (ibid.3).

It is pertinent to note that the discovery of natural resources in a country or region usually brings with it increase in income to the government. However the kernel of the resource curse hypothesis is that this increase in income in most cases never translates into concrete development and improvement of the lives of the people in that region. Rather, the reverse is usually the case. Sachs and Warner state that at the discovery of a natural resource, the resulting increase in revenue may lead to a sloth and less emphasis for sound economic management and for institutional quality. The discovery and boom may also create a false sense of security which may weaken the need for investment and growth-promoting strategies (ibid.). This false sense of security breeds apathy and a laissez fair attitude by the governments of resource-rich countries over investment in education and technological advancement. The resultant effect is inevitable decay and rot of these sectors.

Another serious problem these countries face is inflation. The discovery of a large chunk of natural resources in a country usually results in a boom of the local economy albeit temporarily. The sale of the resources abroad increases the foreign exchange earnings of the country during this period. Nigeria experienced this during the famous oil boom era of the 1980s and during the first gulf war in the early 1990s. The influx of the foreign currency into an exporter’s economy usually causes the local currency to appreciate. This in turn makes foreign products to become cheaper in comparison with the locally made goods. The domestic goods become more expensive for foreigners to buy. The export of this country is thus harmed by the appreciation of the local currency, for example through the inflationary pressure which comes from increased domestic demand (Sachs and Warner 1995). The industrial and agricultural sectors also lose customers, both local and foreign.

The impact of the inflation may not be realized immediately until the end of the boom period. The agricultural and industrial sectors are left in tatters, in a decrepit state. This is known in economics as the ‘Dutch disease’, named after the decline of Dutch industry in the 1960s during the period of increased revenue from the sale of North Sea natural gas. This is the sad story of a country like Nigeria that had abandoned its growing agricultural sector to rely on revenues from oil. Gone are the days of the groundnut pyramid in the Northern part of Nigeria, an era when the country was exporting tons of groundnut from the Northern region and palm oil from the southern part of the country. Even countries like Malaysia that took palm fruits and seedlings from Nigeria produce more palm oil today than Nigeria.
Papyrakis and Gerlagh make an in-depth study of this subject. They examine empirically the direct and indirect effects of natural resources abundance on economic growth. According to them, natural resources have a negative impact on growth if considered in isolation but a positive direct impact on growth if other explanatory variables, such as corruption, investment, openness, terms of trade and schooling, are considered. They study the transmission channels, that is, the effect of natural resources on other explanatory variables, and calculate the indirect effect of natural resources on growth for each transmission channel. The negative indirect effects of natural resources on growth are shown to outweigh the positive direct effect by a reasonable order of magnitude. (ibid 181). Taking account of the relationship between natural resources and other indices used for growth regressions, they highlight the curse of natural resources. They maintain further that if the governments of resource-rich nations were to succeed in preventing the occurrence of the indirect negative phenomena like corruption, they would benefit from their natural wealth. They cite the cases of countries like Ecuador, the United States of America and Britain that experienced boom as a result of managing their natural resources as well as tackling other indirect negative variables. A recent example cited by the duo is the case of Norway which manages its natural resources well and converts it into economic prosperity. They state thus:'

Although Norway did experience a recession for several years, the way in which its present and future wealth is exploited provides an example of carefully planned development. Almost 80% of the oil rents are collected through taxes and fees and then invested in foreign securities to protect the economy from abrupt and large income increase so that a fair division of oil rents between generations is achieved. (Gylfason 2001, cited in Papyrakis and Garlegh, ibid.).

It is high time many resource-rich nations give more than a cursory look at the state of their economies to ascertain whether indeed their resources have been a curse or a blessing indeed. It is time they take a cue from countries like Norway that have skillfully and intelligently managed their resources and economies to ensure prosperity for their people. Research has shown that from 1965-1998, the gross national product (GNP) in OPEC countries has decreased on average by 1.3%, while in the rest of the developing world, per capita growth was on average 2.2% (Gylfason 2001). Some of the ways of avoiding the evil that comes with overdependence on revenue from natural resources include diversification of the economy through investment in agriculture and technology, the investment in foreign stocks and bonds and tackling of corruption. Countries like Norway have successfully done
this. China has also invested heavily on stocks and bonds from the United States of America. On this issue Peter Maass (2009:181) writes thus;

*One remedy, economists have realized, is to “sterilize” oil revenues by keeping them offshore, investing a chunk of them in foreign stocks and bonds, for example. But a government that is mismanaged, greedy, or just in desperate need of funds will let the money rush in. The Dutch economy recovered, but others have not been so fortunate.*

The above statement reveals the situation of most resource-rich countries. Their resources rather than bring blessings have turned out to be a curse. Many in these countries have lost faith in the hope of a better life with the discovery of resources in their country. Observations of the trend in many resource-rich countries have made some to make pessimistic comments after the discovery of resources in their countries. Juan Pablo Perez Alfonzo, a Venezuelan politician recently said, “ten years from now, twenty years from now, you will see. Oil will bring us ruin…oil is the devil’s excrement” (Fortune Magazine, 11th June, 2009). In the Niger Delta region of Nigeria, the advent of oil ushered in an era of ecological degradation, conflict, impoverishment and misery to the people of the region. A region that once boasted of fertile farmland, clean waters with abundant aquatic creatures, today is in a sorry state, with polluted waters, destroyed farmland from oil spillage. Poverty, diseases and conflict is the reward the region has had for possessing oil and gas. Hence the question arises, has the resources in the Niger Delta a blessing or a curse?
3.4 THE LAW OF PETROPOLITICS

Closely related with the resource curse theory is the law of petropolitics. This law was propounded by Thomas Friedman, author and New York Times columnist. It states that there is a negative correlation between the price of oil and pace of freedom. Friedman maintained that there is a negative relationship between the price of oil and the pace, scope and sustainability of political freedoms and economic reforms in ‘petrolist states. (Foreign Policy magazine, April 25, 2006).

This theory though not a very well known theory is very useful in analyzing the subject of resource control in Nigeria. As has been stated earlier, the advent of oil has witnessed the weakening of democratic institutions in Nigeria. There is also continued reluctance by the government to carry out economic and political reforms in the country. The persistent calls by many in the country for a Sovereign national conference have fallen on deaf ears. The military whose primary responsibility in any country is the defense of the country has been tempted over the years to seize power because of the lure of the wealth from oil. It has ruled the country longer than even the civilian politicians. The advent of oil had witnessed the corresponding advent of despotic rule and subsequent disappearance of freedom in Nigeria. The institutions of government have been weak and in many cases moribund or completely incapacitated.
According to Friedman, the rising price of crude oil is certain to be a major factor shaping international relations in the near future. It is thus necessary to understand the connections it has with the character and direction of global politics. By ‘pace of freedom’, Friedman means, the development of the elements of a democratic government, such as free speech, freedom of the press, free and fair election, independent political parties, an independent judiciary, supremacy of the law and general rule of law (ibid.).

Friedman applies this law to “petrolist states,” which he describes as “states that are both dependent on oil production for the bulk of their exports or GDP and have weak institutions or outright authoritarian governments”. Examples of such states are Nigeria, Venezuela, Sudan, Egypt, Russia, Saudi Arabia and Iran.

The law of petropolitics seems reasonable, plausible and logical for a number of reasons. As the price of crude oil rises and much money enters into the coffers of the state, petrolist governments become financial strengthened. They gain more clout in their relationship with the international community. They become less interested in maintaining positive diplomatic and trade relationships with other countries who are dependent on the natural resources they provide. Free from external encumbrances and pressures they have the latitude to do what they like within their country. Friedman puts the issue succinctly thus;

Suddenly, regimes such as those in Iran, Nigeria, Russia, and Venezuela are retreating from what once seemed like an unstoppable process of democratization, with elected autocrats in each country using their sudden oil windfalls to ensconce themselves in power, buy up opponents and supporters, and extend their state’s chokehold into the private sector (ibid.).

After oil was discovered in Mongolia, a local leader pronounced: “We do not want to become another Nigeria” (ibid.44).

The above quoted statement is quite revealing. It shows palpable fear of the ordinary citizens of an oil rich nation over the imminent loss of their freedom as a result of the discovery of oil in their country. The people in many oil rich nations have come to associate oil with loss of liberty and emasculation and infraction on their human rights.
CHAPTER FOUR: THE AGITATION FOR RESOURCE CONTROL

4.1 Historical perspective of the struggle for resource control

As has already been stated, the Niger Delta region remains one of the most impoverished regions of Nigeria despite the huge resources it possesses. Poverty, malnutrition and diseases are endemic in the various communities in the region. This had been the case right from the advent of the discovery and subsequent exploration of oil in Nigeria, this is still the case today. This is why the people of the Niger Delta had decided to take their fate in their hands to fight for resource control. The struggle for resource control dates back more than four decades. Though the agitation for the control of resources by the people of the Niger Delta began some years after the advent of oil exploration in the region, the seeds of discord in the Nigerian polity were sown long before that time by the colonial imperialists.

The amalgamation of the Southern and Northern protectorates of Nigeria in 1914 by the British colonial government was an experiment whose consequences, both intended and unintended still reverberates till date. The amalgamation which was done mainly for administrative convenience turned out to be the albatross of the created federation. Two distinct, heterogeneous geographical entities with inhabitants who possessed separate and distinct cultural, religious and socio economic background were arbitrarily lumped together to form a federation. This contraption called Nigeria has continuously tottered at the brink of a precipice. This ‘marriage of convenience’ never truly proved to be peaceful let alone
successful (Azaiki 2003: 4). Even Sir, Frederick Laggard the then Governor General of the Northern protectorate and the chief architect of this experiment acknowledged this when he wrote to his counterpart in Lagos, Sir, William McGregor. He tacitly acknowledged the anomaly when he wrote thus:

I venture to remind your Excellency that though, in my opinion, it matters little where the exact frontier is placed, since both protectorates are British, since before long it is your hope and mine that they will become still more closely connected, and I have the good fortune to have succeeded in working in co-operation and harmony with your Excellency, still I have an obligation no less than that which you so strongly feel yourself to safeguard the traditional and just rights of the chiefs within my administration (Nigerian Muse, January 4, 2009).

The above speech clearly reveals the nature of the amalgamation arrangement. The reasons for the arrangement can also be gleaned from this speech. It was a hasty one, a ‘child of necessity’ conceived purely for the interest of the British administration. Serious attention was not paid to weighty issues like geographical boundaries, historical antecedents, and congruence of the two protectorates *inter alia*. This created tension and room for tribal and ethnic sentiments which culminated in incessant conflicts in the polity. It also set the tone for the advent of ethnic politics, where allegiance is paid more to ethnic groups than the federation, political patrimony, tribalism and nepotism. Even revenue was allocated on this basis rather than on derivation principle as is done in most countries with natural resources. Hence the grievance of the people of the rich Niger Delta in the Southern Nigeria who felt cheated. An erudite scholar, Tamuno Tekena tersely puts it thus, “the fulcrum of the core issues involved in revenue allocation were laid in the evolution of Nigeria as a nation after the amalgamation of 1914” (Tamuno 1998:64).

The above statement gives a clear picture of the foundation of the crisis in the Niger Delta which was a seed sown at amalgamation, nurtured over the years by ethnicity, nepotism, corruption, neglect and marginalization. The author who is an indigene of Niger Delta, went on to state that the 1914 amalgamation rested on considerations which were more economic than political. There was an arrangement by the British administration to use resources from the wealthier Southern protectorate to administer a less economically viable Northern Nigeria. This is the genesis of the imbalances that have characterized federalism in Nigeria (Azaiki 2003:1660).
Years of victimization, marginalization, exploitation and neglect provoked the people to agitation. This initially took the form of non violent protests but later metamorphosed into full blown conflict when the Nigerian government adopted repressive tactics to forcefully suppress the agitation with its military strength. The Niger Delta people, having been ‘pushed to the wall’ resorted to violence as a last resort to press home their demands for fair treatment, economic and social justice which are vital elements of the concepts of justice and equality, the twin concepts that hold any federation peacefully together. This is a sine qua non for peace in any federation. The violence involved sabotage, vandalization of oil installations and disruption of oil production. This corroborates the resource curse theory and the law of Petropolitics. The discovery of oil in the Niger Delta region of Nigeria rather than bring prosperity to the region brought hardship, institutionalized corruption and exacerbated greed and conflict in the region (ibid.).

In 1966 Isaac Adaka Boro, an indigene of the Niger Delta and a major in the Nigerian army took up the gauntlet and the mantle to fight for the rights of the people of the region. He became the first celebrated Niger Delta nationalist. He firmly believed in distributive and economic justice. He strongly believed that the people of the region deserved a better share from the proceeds accruing from the sale of oil.

On February 23, 1966, Isaac Boro declared the Niger Delta Republic and led a revolution that was crushed by the Nigerian military after 12 days. In his famous speech at the declaration of the revolution he stated;

*Today is a great day, not only in your lives, but also in the history of the Niger Delta... because we are going to demonstrate to the world what and how we feel about oppression... Remember your 70 year old grandmother who still farms before she eats, remember also your poverty-stricken people, remember your petroleum which is being pumped out daily from your veins., and fight for your freedom*(Anayochukwu Agbo in Tell Magazine, 2008:12).

Isaac Boro was jailed after the foiled revolution. He was later granted amnesty but however, was subsequently killed in mysterious circumstances while fighting in the Nigerian civil war.

Decades later another agitation for resource control was led by the charismatic poet, novelist, politician, civil and environmental activist, Ken Saro-wiwa. This time the protest took a different dimension. Ken Saro-wiwa adopted a nonviolent approach in his activism. He
led a movement called Movement for the survival of the Ogoni people (MOSOP), during the reign of the late military dictator, General Sani Abacha. He was arrested by the military junta, tried under a sham of a tribunal widely condemned by the international community and executed by hanging.

Some years later there was a resurgence of agitation, but this time in a more ferocious dimension than had hitherto ever been experienced. Without the charismatic leadership of the likes of Isaac Boro and Ken Saro-wiwa, amorphous and splinter militant groups led by warlords like Tamuno Tampolo, Asari Dokubo and Ateke Tom high jacked the struggle and led the region into an avoidable calamitous descent into violence and anomie. The warlords later coalesced under the aegis of the movement for the emancipation of the Niger Delta (MEND) in 2005 (ibid.38). The Nigerian government under the administration of late Shehu Musa Yar’ Adua granted amnesty to the militants who in turn unilaterally declared a ceasefire and decided to lay down weapons and dialogue with the government. The amnesty program appeared destined for failure right from inception as there was no structure to support it. The new found peace was merely the ‘peace of the graveyard’, arranged without an adequate and properly planned developmental strategy that would enhance the capabilities of the militants nor that of the entire people of the Niger Delta as Nussbaum’s theory earlier on discussed suggests.
4.2 THE IMPACT OF OIL EXPLORATION IN THE NIGER DELTA

Oil exploration in the Niger Delta region of Nigeria covers a wide expanse of land, forest, mangrove swamps, fresh water and even the continental shelf. The enormity of the impact of oil exploration in the Niger Delta cannot be easily comprehended by having a cursory look at the region. Oil exploration involves “cadastral and seismic surveys, transportation of men and materials on creeks, rivers and by roads and air, dredging of creeks and rivers, drilling of oil wells and associated activities like gas flaring/venting and discharge of effluent into creeks/rivers” (Nnamani 2004:72). Most of the activities mentioned above are inimical not only to the environment but to the inhabitants of the region. Virtually every facet of life and every part of the region has been impacted directly or indirectly through exploratory activities of the oil industry or through neglect by the industry.

Oil exploration had brought some level of development into the Niger Delta region no doubt. A few communities like Warri in Delta state, Eket in Akwa Ibom state and cities like Port-Harcourt have benefitted from the oil industry. The economies of these places have been boosted over the years by the presence of oil companies and the location of refineries. Employment opportunities have also been created by the oil companies and other oil servicing
firms. Even allied industries and petty businesses have sprouted in the region due to the presence of oil companies in the region. The oil companies have in some way carried out developmental projects like tarring of roads, building of schools and sinking of boreholes albeit on a limited scope. It can thus safely be said that the impact of oil exploration in the Niger Delta region of Nigeria has not been all negative.

Despite the positive impact of oil exploration highlighted above, the negative impact of oil exploration far outweigh whatever benefit the Niger Delta region has received over the years. Oil has brought untold hardship and misery to the Niger Delta. It has also brought violence and a dying ecosystem. The indigenes of the region live below the poverty line, even below the national average due to the fact that they had been dislodged from their traditional professions like fishing, farming and hunting due to environmental pollution caused by gas flaring, oil spillage and other exploratory activities of oil companies. There is massive degradation of the environment, serious deforestation including the destruction of wild lives, contamination of rivers and destruction of aquatic creature without adequate compensation to the people. This has led to the impoverishment of the people. (Okonta Douglas, 49).

This supports the resource curse theory that the discovery of oil in many developing countries rather than bring prosperity to the country usually delivers the opposite. The people of the Niger Delta region have been ill treated. They are not allowed to enjoy the basic capabilities as suggested by Martha Nussbaum (2000:41). The author maintains that the lists of human capabilities are all of central importance. She further states that all are distinct in quality and of “irreducible plurality” (ibid.). The items on the list are related to one another in many complex ways. Based on this, it would be safe to conclude that the Nigerian government and the multinational oil companies in Nigeria have done a great disservice to the people of Niger Delta by ignoring human, capital and infrastructural development in the region.

A look at the Niger Delta region would reveal communities in decay. The pictures are indeed dismal and the stories behind them both pathetic and appalling. There are a litany of woes, a plethora of cases that would not all be cited in this paper due to paucity of space. Suffice it to say that this is a region that is slowly dying, rotting and decaying. Alice Martin, a BBC journalist visited the region in 1995 and had this to say:

*The story of the devastation of villagers’ lands and livelihood is terrible.*
The fishes have died in the creeks and rivers because of the mixing of fresh-and salt water, and it takes fishermen two or three days to “pull out” to good fishing grounds now. Even children no longer catch “small fry” for their mothers because of the danger of strong currents and pollution of the water. Crops have died and great stretches have become infertile due to water-logging caused by high muddy banks along the sides of the channel. Above all, the water is polluted, “sometimes purely green, sometimes, sometimes purely blue” (ibid.82).

The above report gives a good picture of the level of degradation of the Niger Delta region as a result of oil exploration. An Environmental Rights Action team (ERA) recently condemned the ecological damage caused by the activities of oil companies in the region. There is a high concentration of sulfur in the region, a substance highly corrosive to the roofing sheets and even to the human skin. This has resulted in acid rain (ibid.).

The degree of ecological damage and environmental pollution in the Niger Delta is amazing. By conservative oil-industry estimates there were almost 7,000 oil spills between 1970 and 2000, more than one a day. (Okonta & Douglas, ibid.) Oil spillage like other hazardous occurrences associated with oil exploration in the Niger Delta has been a recurrent thing. Two serious spills took place in early 1998. On January 12, 1998, a major spill of more than 40,000 barrels of crude oil (1.7 U.S. gallons) leaked at Mobil terminal in Ibeno Akwa Ibom State. 90% of the oil is estimated to have dispersed or evaporated. The spill travelled farther than expected. It is further reported that about 500 barrels was washed ashore. (The price of oil, Human rights watch, 1998).

Gas flaring is also rampant in the region. The term gas flaring refers to the releasing of excess gas, liquids associated with oil and gas production pipelines and refineries along with any other by-products into the atmosphere in order to protect the pipelines and infrastructure from over pressuring. Gas flaring has been an ongoing daily occurrence in the region in the last four decades. Due to this, Nigeria has been reported to be more responsible for greenhouse gas emission than the combined oil fields of the rest of the world (ibid.). It is surprising that this was overlooked at the last climate change conference in Copenhagen.
Perhaps the world is yet to pay more than lips service to tackling environmental issues. This may be to the peril of humanity. “World bank estimates that 87% of all associated gas is flared in the Niger Delta atmosphere by oil companies operating in Nigeria, compared to 21% in Libya and 0.6% in the United States…80 billion cubic feet of gas is flared in the Niger Delta yearly” (ibid.67).

When oil is brought to the surface, natural gas rises too. This is called “associated gas”. Oil companies usually have several options for dealing with flaring. They include; transporting it to customers elsewhere, reinjection into the earth or burning it off. Oil companies avoid the environmentally safer options like reinjection due to the huge cost associated with them (Mass Peter 2009:59). Writing on this subject Peter Maas succinctly states:

*Flaring is the cheapest way to deal with the problem, though its environmental and health costs are colossal. The carcinogens that flaring releases include benzene, Benzopyrene and toluene. The metals emitted include mercury, arsenic and chromium (the contaminant that was publicized by Erin Brockvich in California). The released Greenhouse gases, which cause global warming, include carbon dioxide and Methane. Emissions of sulphur dioxide and nitrogen oxide are so severe in the delta that acid rain eats through sheet-metal roofs. This does not happen in developed countries, where oil firms are obligated to invest in technology and infrastructure that reduce flaring to almost nothing.* (ibid)

The above observation by Peter Maas, a researcher who had carried out an on-the-spot assessment of the Niger Delta region of Nigeria clearly describes the situation in the region. The oil companies operating in the region do not carry out good oil-field practices. They ignore most safety rules concerning oil exploration because Nigeria like most developing nations lacks strong institutional structures for enforcing rules. The government also lacks the political will to instill sanity in the downstream oil sector.

In terms of socio-economic development, Niger Delta is a calamity. The United Nations estimates that between 1996 and 2002 the Human Development indices fell in the core oil-
producing states. The region has barely 40% literacy rate. According to a Niger Delta Environmental Survey (NDES), the proportion of primary children enrolled is 39%. Even with that, the few schools lack basic facilities like toilets, desk, books and astonishingly roofs in some cases, in a region known to have high rainfall. (Watt 2008:44). Ibeanu and Luckham, distinguished researchers after conducting study of the region wrote thus:

Only about 27% of households in the Niger Delta have access to safe drinking Water and 30% to electricity, both below the national average. There are 82,000 people per doctor, rising to 132,000 in some areas, more than three times the national average of 40,000. While 76% of Nigerian children attend primary school, only 30-40% attends in some parts of the Niger Delta (Ibeanu & Luckham 2006:27).

On the whole it can be said that the Niger Delta region has lost more than it has gained from the discovery of oil in the region. The impact of exploration has been devastating."What is in offer in the name of development is the catastrophic failure of secular nationalist development. It is sometimes hard to grasp the contours of such a claim. From the vantage point of the Niger Delta…oil development is a pathetic and cruel joke” (ibid.). Hence the agitations for resource control by the people of Niger Delta to enable the people have a say in oil exploratory activities in their region.
4.3 THE AMNESTY PROGRAM OF THE NIGERIAN GOVERNMENT

The Niger Delta has over the years stood and still stands at the epicenter of a violent economy of extraction (ibid.70). It would not be superfluous to reiterate the point made earlier that the region has suffered untold hardship as a result of oil exploration. This is a clear case of disaster capitalism. It is a case of exploitation of the masses stretched to the point of absurdity. The capitalist multinational companies have over the years exploited and abandoned communities that had oil to rot to a pitiable state of decrepitness.

The Niger Delta is one of the world’s largest wetlands. The region which once had a beautiful picturesque ecosystem is now a sorry sight. The story of Oloibiri, the community where oil was first discovered in the region reveals a lot about the region. The community has been described as a useless cast-away snail shell after its meat has been extracted and eaten by the government and Shell Petroleum Development Company (ibid.37). A British engineer having visited the community stated; “I have explored for oil in Venezuela and…Kuwait…but I have never seen an oil-rich town as impoverished as Oloibiri” (ibid.). Everywhere in the region is the palpable, tale-tale sign of greed and exploitation. Karl Marx writing on this exploitation by the capitalists stated thus; “in one word, for exploitation… it
has substituted naked, shameless, direct, brutal exploitation” (Marx & Engels 1967:53). Marx’s statement clearly describes the exploitative attitude of the capitalist oil companies backed by the collaborating Nigerian government.

The situation in the Niger Delta smacks of capability failure, ineptitude, insensitivity and callousness on the part of the government and the multinational oil companies. As has been stated earlier, the region lags behind in terms of infrastructural development; it is educationally disadvantaged, with a great majority of its inhabitants unable to afford education. A great part of the region still lack basic amenities like portable water, electricity, good roads, shelter and good Medicare. These items though not directly mentioned by Nussbaum are implied by her list of human capabilities. According to Nussbaum (ibid.), if any of these capabilities is lacking in the society, all others are lacking because the absence of one compromises all. In the case study here, the Niger Delta region, there is a complete lack of consideration of the capability of the people. Hence the struggle over the years for resource control which has culminated into a violent struggle. This has disrupted oil production in Nigeria.

The government of Nigeria under the administration of late president Umaru Musa Yar’Adua worried about the conflict in the region and the continuous decline of the country’s revenue due to disruption of oil production decided to enter into dialogue with the militants in the Niger Delta. It set up the amnesty program. In 2009, it granted amnesty to all militants in the region and urged them to lay down their arms. It is pertinent to note that the government did not consider the core issues surrounding the struggle for resource control while making its amnesty arrangement.

The Ogoni Bill of Rights written by MOSOP (Movement for The Survival of Ogoni People), the earliest and most organized social movement in the region stated;

That the Shell Petroleum Development Company of Nigeria Limited does not employ Ogoni people at a meaningful or at any level at all...That the search for oil has caused severe land and food shortages in Ogoni, one of the most densely populated areas of Africa...That Ogoni people lack education, health and other social facilities. That it is intolerable that one of the richest areas of Nigeria should wallow in
The above statement from the Ogoni Bill of rights reveals the core issues and grievances behind the struggle for resource control and the reason behind the conflict in the first place. The root cause of the problem has to be genuinely addressed through institution and capacity building as well as through sustainable development and general transformation of the political space and landscape. This has to be done as a matter of urgency because of the seriousness of the issue and to avoid further deterioration of the situation in the region. Calling a few militants to lay down their arms with a promise of a few “carrots” and “peanuts” in the name of monthly allowances is not a viable solution to the conflict. This arrangement will only implode in the long run and will further exacerbate the conflict. A monstrous industry of conflict has been inadvertently created by this “cash-for-arms” arrangement called amnesty program. Politicians, corrupt chiefs, the militants and various power houses in Nigeria prefer the status quo because under this atmosphere of conflict and anomie, oil bunkering (illegal exploration and sale of crude oil), and other illegal and nefarious activities are easily perpetrated.

The amnesty program as it stands presently is bound to have little success. It is more of a palliative measure, a quick-fix that has no long term goal of permanently bringing peace to the Niger Delta. The foundation is porous. As Lord Denning, one of the brightest legal minds that ever came out of Britain once said, in the case of \textit{U.A.C v. Mac Foy} “You cannot put something on nothing and expect it to stand” (1961, 3 All E.R. 1169). Lord Denning’s statement particularly applies to the amnesty arrangement in the Niger Delta.

On this issue Wills Connors and Spencer Swartz, columnists with the Wall street Journal wrote; “Nigerian state governors, analysts, and the militants themselves have criticized the plan because it does little to address the core causes of the militancy and criminality that have plagued the Niger Delta for decades, such as the lack of education, jobs and basic services” (The Wall Street Journal, Thursday August 6, 2009). The went further to state that the governors within the Niger Delta region have threatened to withdraw from the arrangement because it lacked a definite post-amnesty plan arrangement for the region (ibid.).

The above observation by the governors is quite true. The region needs more than an ill-planned amnesty program but a thoroughly planned program geared towards tackling deep-rooted problems in the polity. Issues such as poverty that has become endemic, corruption, development, need to be seriously put into consideration if the amnesty program is to succeed.
The youth in the region have to be educated and employed to discourage them from taking arms. Without this, the much talked about peace will still be nothing but a mirage.

CHAPTER FIVE: FIXING AN APPROPRIATE REVENUE ALLOCATION FORMULA FOR NIGERIA: THE SUPREME COURT’S JUDGMENT

5.1 Examining the decision of the Supreme Court in A.G. Federation v. A.G. Abia & 35 Ors.

Nigeria has a system of government organized under the cardinal principle of separation of powers. The government is organized under the tripod of executive, legislature and judiciary, with all the arms of government playing complimentary roles to each other. The powers of each arm of government are designated by the constitution of the Federal Republic of Nigeria 1999. The legislature makes laws; the executive executes the laws while the judiciary is saddled with adjudicatory function. It interprets the laws. Under the said constitution, the judiciary has the responsibility of determining:

All matters between persons or between government and authority and to
any person in Nigeria and to all actions and proceedings relating thereto for the
determination of any question as to the civil rights and obligations of that person
(Section 6, Nigerian constitution, 1999).
The judiciary is seen as the last hope of the common man. In Nigeria it has consistently taken giant strides in the restoration of confidence in the courts and consolidation of the democratic process (Okeola, 2007: 18). It is the judiciary that has helped to avoid the total collapse of Nigeria’s nascent democracy after a long period of military rule from 1984-1999. Hence the belief by majority of Nigerians that the Niger Delta debacle and the vexing issues of resource control, revenue allocation and revenue allocation formula would be resolved by the judiciary.

However, the decision in the case of A.G. Federation v. A.G. Abia & 35 ors. Seem not to have inspired much hope in the generality of the populace, particularly among the inhabitants of the Niger Delta region. This is because certain issues were left unanswered. For instance the court did not fix an appropriate revenue allocation formula for Nigeria. It did not also settle properly the issue of onshore/offshore oil dichotomy and the issue of who had the right to the oil in the continental shelf in line with available judicial precedent.

In the above case, the Attorney General of the federation and minister of justice took out a writ of summons praying the Supreme Court for:

\[
A \text{ determination of the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federal Account directly from any natural resources derived from that state pursuant to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 (S.C. 2001:28).}
\]

There arose a dispute between the Federal Government, on the one hand, and the eight littoral States of Akwa Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the southern for seaward) boundary of each of these States (ibid.). The federal government contended that oil exploited in the offshore part of the Niger delta (territorial waters) was not a property of the host states and communities but that of the nation as a whole and so revenue derived there from belonged ‘ipso facto’ to the federal government.

The states on the other hand argued that they were entitled to the revenue derived from such exploitation. The territorial sea is the water area starting from the baseline and moving
towards the sea. This is an area that is usually contested by states. A breadth of between 5 to 12 miles is what most maritime states accept as the proper boundary. The baseline is the coastal belt. The International court of justice (ICJ) however recommends the straight baseline rule followed by countries like Norway. This is based on the principle that the belt of territorial waters must follow the direction of the coast. The Supreme Court of Nigeria decided in favor of the federal government in the substantive suit but failed to decide on an appropriate revenue allocation formula. (Ibid.)

In resolving the conflict, the court relied on the American case of United States v. State of California (67 U.S reporter, 1658-1661). The court also relied on certain colonial orders in council. The orders include, The colony of Nigeria (Boundaries) Order in council 1913, The Nigerian protectorate Order in council 1992, The Lagos Local Government (Delimitation of the Town and Division into Wards) Order in council 1950, the 1951 (Nigerian constitution) Order in council, No.1172 and The Northern Region, Western and Eastern Region (Definition of Boundaries) proclamation 1954 made under the 1951 Order in council. This Order of 1951 introduced into Nigeria a Federal system of government (Per Ogundare JSC, in A.G. Federation v. A.G. Abia & 35 ors. Ibid.726).

The Supreme Court of Nigeria in this case was faced with a novel situation and so this case is a *locus classicus*. The court was to set a judicial precedence. It was faced with a dearth of current legislation on the points of law raised. It decided that the bed of the territorial sea, exclusive economic zone and continental shelf of Nigeria did not form part of the littoral states but rather “belonged” to the federal government (Egede Edwin 2005:73).

The decision of the Supreme Court was predicated on the following:

*That the boundaries of the littoral states ended at the low-water mark by virtue of certain colonial Orders in council, which in the opinion of the court were still Valid laws, limiting such boundaries to the sea;*

*That by virtue of its nature, these offshore zones are not part of the territory of Nigeria, but rather extra-territorial terrain conceded to Nigeria by International law;*
That since international responsibility may arise from such offshore zones
and the constitution of Nigeria confers on the federal government the duty of
handling external affairs, such offshore zones cannot be regarded as part of the
Littoral states;

That the extensive control and management, inclusive of the powers to make
Laws, conferred by the Territorial Waters Act, Exclusive Economic Zone Act and
the Sea Fisheries Act on the federal government raised the inference that ownership
of such zones could not be vested in the littoral states (ibid).

The court examined the provisions of the 1982 United Nations convention on the law of
the sea (LOS), including Articles 2, 3, 55, 57, 76, 77 and 78 before arriving at its decision.
Ogundare JSC who read the lead judgment stated thus:

The sum total of all I have been saying above is that none of the Territorial
Waters Act, Sea Fisheries Act and Exclusive Economic Zone Act has extended
the land territory of Nigeria beyond its constitutional limit, although the Acts
give municipal effect to international treaties entered into by Nigeria by virtue of
its membership as a sovereign state, of the comity of Nations. These treaties
confer sovereignty and other rights on Nigeria over certain areas of the sea, the
Atlantic Ocean (ibid.652).

The decision of the court here simply divested littoral states which are mainly in the region
of the Niger Delta, the right to administer and benefit from resources within the continental
shelf which are contiguous to their territory. This is what Martha Nussbaum in her theory of
capabilities approach seeks to discourage. Item number 10 on the list specifically talks about
the right of control over one’s environment. It covers the right to hold property which
includes land and immovable goods (ibid.41). The court stated that though a coastal state can
exercise sovereign rights over its continental shelf that does not make the shelf part of her
land territory over which it has absolute and exclusive control. It went further to state that the sovereign right of such a state was a limited kind only (ibid.)

With due respect to the learned Law lords, this conclusion appears fallacious as the littoral states have administered their continental shelf over the years even before colonial times. They had always carried on their fishing and enjoyed other benefits that accrued to them as a result of inhabiting the region. The court surprisingly discountenanced evidence adduced by the chiefs and kings of these littoral states concerning their long administration of their continental shelf. It described the evidence as nebulous and that it fell short of the quality and nature of evidence required of a case of this nature as the claim of the defendant states to ownership of the sea ran contrary to the grain of statutory instruments (Orders in Council), the common law and international law.(ibid).

It is pertinent to note that though the case under discussion determined the issue of control over the continental shelf, other important issues came up for determination. Hence its unique and important nature. The legal issues raised are as follows:

(i) What is the procedure for making provision for the formula for distributing the amount standing to the credit of the Federation Account pursuant to section 162 of the constitution?

(ii) As from what moment in time do the state governments become entitled to receive their share of the amount standing to the credit of the Federation account?

(iii) Pending the arrival of the moment mentioned in question (ii) what provision should be applied to the distribution of the amount mentioned in question (ii).

(iv) Whether there is any legal basis for the Supreme Court to make an order against the plaintiff for an account of money in the Federation Account.

(v) Whether it is lawful for the Federal government to appropriate one percent of the amount in the Federation Account to the Federal capital territory.

(vi) Whether it is lawful to deduct moneys from the Federation Account to service
or pay debts owed by the Federal government.

(vii) Whether it is lawful for moneys intended for local governments or for purposes of primary education to be paid to any person or authority other than the state government.

(ix) And whether the Supreme Court has jurisdiction to grant a declaration, which will serve no useful purpose (ibid).

In the above case under examination, the littoral states had counter claimed against the plaintiff, the Federal government, on the grounds that it was entitled to at least 13% of the share of revenue accruing to the Federation Account derived from minerals. The littoral states relied on Section 162(2) of the 1999 constitution of Nigeria which provided for the derivation principle. The proviso to subsection(2) reads “Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources”.

This 13% as pointed out by the states was the barest minimum the states were entitled to under the constitution. The states also relied on the revenue allocation provision and decrees, particularly Allocation of revenue (Federation Account, etc) (Amendment) Decree 1992, No. 106 of 1992 which amended the Allocation of Revenue (Federation Account, etc) Act, caps 16 Laws of the Federation 1990. The Plaintiff and the Federal capital territory sought to rely on the provision of paragraph (d) (IV) of Section 1 of Cap. 16 Laws of the Federation (as amended) which was an imposition of the military. This law purported to have amended subsection (i) of Section 149 of the constitution and provided that 1% of revenue accruing to the Federation Account be given to the Federal capital territory. (Cap.16 Laws of the Federation of Nigeria, 1990). The Supreme Court declared the provision null and void for being inconsistent with the provisions of Section 162 of the Nigerian constitution, 1979.

It stated thus;

Paragraph (d)(iv) of Section 1 of Cap 16 (as amended) in so far as it provides For one percent of the revenue accruing to the Federation Account derived from minerals, it is equally in-consistent with Section 162(2) of the constitution. The
result is that paragraph (d) of Section 1 of Cap. 16 (as amended) is inconsistent with the provisions of the constitution and to that extent, Section 1 is void (ibid.670).

The court relied on its earlier judgement in A.G. Bendel State v. A.G. Federation & ors. (1983) A.N.L.R. 208 in deciding this point of law. The court went further to hold that the constitution of the Federal Republic of Nigeria 1999 having come into force on 29/5/99; the principle of derivation under proviso to Section 162(2) of the constitution came into operation (ibid.).

Despite accepting that the derivation principle as provided by the constitution was in operation, the court quite surprisingly refused to accede to the request of the defendant littoral states that at least they should be entitled to 13% of the revenue accruing to the Federation Account which was even the barest minimum recommended by the constitution. The court held that by the use of the expression “not less than 13%”, discretion is given to the lawmakers as to the figure to be used; that discretion according to the learned justices is not for the court to exercise but for the president, as prescribed authority, when making a modification Order or the National Assembly when enacting a law pursuant to Section 162(2). With due respect to the learned justices, the court simply shied away from its constitutional duty of interpreting the law as it is, giving it its literal meaning under the rules of legal interpretation. It thus lost a great opportunity of settling the issue of revenue allocation and revenue allocation formula. This is because based on the hierarchy of courts principle, its decision (Supreme Court) is stare decisis (final) and of binding authority on all other courts in Nigeria. It could only be upturned by a legislation of the National Assembly.

It is important to note that though this decision would not have completely satisfied the advocates of resource control, it would have at least assuaged the frayed nerves of the people of the Niger Delta who make up a great part of the littoral states and who have suffered more from the current state of lacuna in the Nigerian law concerning revenue allocation and revenue allocation formula.
5.2 THE PLAUSIBILITY OF THE JUDGEMENT

As has been stated earlier, the case under examination is a unique one because salient issues in the Nigerian polity especially as touching the resource control issue and revenue allocation came up for the determination. It was a great opportunity for the court to do justice to the people of the Niger Delta by interpreting the law judiciously. The court also had the opportunity of putting its stamp on the issue of revenue allocation, particularly the hot issue of revenue allocation formula.

The judgment of the court in certain respect is commendable because it is rare to see a court in a developing nation, especially within an African nation like Nigeria, declaring an action of an incumbent government null and void. The court held that the plaintiff, the Federal government of Nigeria was obliged to comply with the provisions of the Nigerian constitution (ibid.654). The court held further that the following policies and/or practices of the plaintiff (Federal government of Nigeria) are unconstitutional, being inconsistent and in conflict with the 1999 constitution, that is to say:

(i) Exclusion of natural gas as constituent of derivation for the purpose of the proviso to Section 162 (2) of the 1999 constitution.

(ii) Non payment of the shares of the 10th defendant (Delta State) in respect of proceeds from capital gains taxation and stamp duties.

(iii) Funding of the judiciary as a first line charge on the Federation Account.
(iv) **Servicing of external debts via first line charge on the Federation Account.**

(v) **Funding of joint venture contracts and the Nigerian Petroleum Corporation (NNPC) priority projects as first line charge on the Federation Account.**

(vi) **Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal capital territory (ibid.).**

The court further granted an injunction restraining the plaintiff from further violating the constitution in the manner so declared above. This is a very courageous and commendable declaration. This shows that the court is not completely a “lame duck” as some people may want to believe.

Despite the bold move by the court, it is however shocking that the court in another breadth chose to refuse the request by the littoral states for the court to declare them entitled to at least 13% of the revenue accruing to the Federation Account which was the barest minimum recommended by the constitution. The court made this refusal despite agreeing with the states that Section 162(2) of the constitution made provision for 13% based on the derivation principle. This was a contradictory decision by the Supreme Court. It is also equally surprising and disappointing that the court chose to rely on some archaic colonial Orders in council like the Nigerian (Boundaries) Order in council 1913, to arrive at some of its decisions. Some of these Orders have completely outlived their usefulness; some have become obsolete while others have become anachronistic. (Egede Edwin 2005:75). The Court also shied away from its responsibility of interpreting the constitution when it refused to settle the issue of revenue allocation formula for Nigeria, thus creating a lacuna in the jurisprudence of Nigeria. This gives room for unsavory speculations that the some of the decisions may have been politically motivated. The last is still yet to be heard on the issues.
5.3 DETERMINING AN APPROPRIATE REVENUE ALLOCATION FOR NIGERIA

Revenue allocation formula in Nigeria has had a long and tortuous history. The Supreme Court in its judgment described it as a “zigzag history”. (A.G. Federation v. A.G. Abia & 35 ors. Ibid.). The history has already been discussed in the chapter dealing with available literature on the subject of resource control. It would thus not be repeated here.

The issues of revenue allocation and revenue allocation formula have has been highly politicized. Successive administrations have changed the formula at their whim and caprice to suit their selfish political purposes. Some of the formulas adopted have also been based on ethnicity. As has already been discussed (chapter 2) the formula favored the principle of derivation when the economically viable region of the time had people in high position of government. Those were the days of the groundnut pyramid in the North and Cocoa in the South in the early years after independence in the 1960s. The majority ethnic tribes generated more revenue for the country. They were also the ruling majority in government and so could fix revenue allocation formulae that suited them. Cyril Obi, a researcher at Nordic Africa Institute, Uppsala in Sweden, commenting on this issue wrote thus:

Apart from the state creation exercise, and the centralization of the control of oil, the method of oil revenue allocation also changed overtime. The share of oil revenues allocated to the ethnic minority oil producing states of the Niger Delta fell from 5% in 1966 to 1.5% in the mid 1990s. It then rose to 13% in 1999, in response
to international campaigns and local protests by the minorities and the strategy of
the new democratic regime to win legitimacy by attending to the grievances of the
Oil-producing communities (ibid.).

The above comment by Cyril Obi gives a good picture of the shenanigans and intrigues that have attended the issue of revenue allocation formula in Nigeria. The Supreme court decision earlier examined has not really helped matters with the refusal of the court to make a pronouncement that the 13% of the total revenue in the Federation Account be given to the oil producing states in the Niger Delta region based on derivation.

It is quite possible to determine an appropriate revenue allocation formula for Nigeria. All that is required is the political will be those in government. The National Assembly (Nigerian parliament can pass a law to this effect. The Supreme Court has already passed the buck to them. It is high time the lawmakers debated on this issue. Any formula that would be appropriate must take into consideration the twin concepts of justice and equity. Fairness much be the watchword of the lawmakers. In the past, acceptable revenue allocation formulae took into consideration the principle of derivation which granted a sizable share of the revenue accruing from resources to areas where these resources were derived from. This is in line with reasoning and common sense. It is not fair to muzzle the ox that delivered the calf. The goose that laid the golden egg deserves some good treatment. Other indexes such as population should also be put into consideration in fashioning out an acceptable revenue allocation formula for Nigeria. Fixing an appropriate revenue allocation formula would be a giant step towards the resolution of the Niger Delta crisis.
CHAPTER SIX: RECIPE FOR PEACE IN THE NIGER DELTA

6.1 POSSIBILITY OF RESOLVING THE CONFLICT IN THE NIGER DELTA REGION

A discourse on conflict resolution in the Niger Delta must as a matter of necessity put into consideration sustainable development in the region and Nigeria in general. This is in line with Nussbaum’s capability approach. The step by the federal government in setting up the Federal Polytechnic in Bayelsa and the creating of more access roads to some rural communities are good steps in the right direction. Despite these laudable moves, the militants in the region promptly dismissed the steps as a ruse. They cited previous moves to build roads that turned out to be ‘white elephant projects’ (abandoned projects). They maintained that the move was an opportunity for corrupt politicians to enrich themselves at the detriment of the people. They insisted on the struggle and called for resource control of all oil revenues (ibid.65).

There is also an urgent need to raise the standard of living of the working population in the Niger Delta. The workers earn very low salary and therefore find it difficult to cope with the constant escalating cost of living in the region. The cost of living in the region is high due to the presence of multinational companies whose workers and those of their counterparts in the oil servicing and allied firms earn very high wages. They earn foreign currencies like U.S. dollars which is much stronger than Nigeria’s currency, the Naira. Their presence in the region encourages housing owners and even market traders to heighten the prices of their goods thus making it hard for the middle class workers, the civil servants in the region to cope with life. Their presence causes not just an increase in demand for certain goods but also an increase in the prices of goods. Ike Okonta and Oronto Douglas vividly describe the situation in Port Harcourt, one of the cities in the Niger Delta thus:
Income is badly distributed in Port Harcourt. With the enormous oil revenue at their disposal, the oil companies, in league with their senior government officials and the local elite secure for themselves choice residential areas, while the poor majority are banished to the sprawling waterfront slums and other city ghettos where there is no electricity, water supply, or sanitation facilities. Here also, refuse collection and dumping is inefficient and badly managed, and wastes dumps have taken over whole streets, vying with human beings for space. (ibid.192)

It is pertinent to observe that in such an atmosphere as described above, there is bound to be discontent among the indigenes of the region who are hardly employed by the multinational companies. This brings conflict and an explosion of crime. Poverty and unemployment drive otherwise decent people into crime. In such oil cities as Warri and Port Harcourt, there is an inexplicable explosion in armed robbery, hooliganism, prostitution and violence (ibid.). It is high time these companies reviewed their employment policies to give room for employment of qualified indigenes of the Niger Delta in their companies. Job opportunities have to be created for the youth in the region to discourage them from crime. More also needs to be done in terms of establishing community based projects that can help better the life of the teeming populace of the region.

The multinational companies must give back to the society from which they make a lot of their income. They have to do more in terms of their corporate social responsibilities. This will go a long way in ensuring the development of the capabilities of the individual as Martha Nussbaum suggests in her theory. Nick Ashton-Jones and his group of environmentalists, in their environmental survey titled, *The Human Ecosystem of the Niger Delta. A preliminary baseline Ecological Survey Participatory Survey of the Niger Delta, May 1994*, had this to say on this issue:

Poor urban environment and poverty are an economic cost to the society as a whole because the psychological stress that such conditions induce tend to result in inefficiency in the workplace and in the learning process, in domestic and public violence, in destruction of property and capital assets.
The above statement is a vivid description of the result of neglect of the Niger Delta. The majority of people of the region are unable to enjoy life as decent individuals within the society. They are made to live below the threshold of their capabilities, something Martha Nussbaum warns against.

The oil companies must also carry out ecological, environmental, social and economic impact assessments in the Niger Delta region with a view to improving on its oil field practices. Their obnoxious practices like gas flaring must be stopped. High ethical standards must be their watchword.

The International community must also wake up to its responsibility of checking the activities of multinational oil companies like Shell Petroleum, Mobil, Elf, Chevron etc, who indulge in obnoxious and atrocious practices while exploring for oil in developing countries. In 2009, a court in Netherlands declared that it had jurisdiction to hear a case brought against Royal Dutch Shell’s subsidiary in Nigeria by four farmers and Friends of the earth, an environmental rights action group. The court sat in The Hague.

The four farmers who lost their livelihoods after oil leaking from Shell’s pipelines spilled over their fields and fishing ponds claimed compensation. They subpoenaed both Shell’s subsidiary in Nigeria and Shell’s Dutch headquarters, alleging that due to the company’s negligence, agricultural lands had been devastated, drinking water polluted, fish ponds made unusable and the environment and health of the local people put in jeopardy (This Day, 31st December, 2009). This is the first time a Dutch company was brought to trial before a Dutch court for damages done abroad. The ruling in the case could set a judicial precedent for multinationals in the Netherlands. Its an initial victory for those who have been fighting for a cleaner habitat especially those in the Niger Delta region of Nigeria (ibid.). The final determination of the substantive suit will hopefully be a lesson for many who have contributed to the ecological degradation of the Niger Delta. Time is coming when the world will endorse the anathematization of such actions. Then will regions like the Niger Delta enjoy the much sought after elusive peace. “The time is not far off when the pollution of nature will become a sacrilege, a criminal act, even and mainly for the atheist, because of the one fact that the future of humanity is at stake” (Cheikh Anta1991: 375).
On the whole it can be seen that the issue of resource control is a very serious one in Nigeria. It touches upon issues of human rights. It also brings to the fore the marginalization and injustice perpetrated by successive administrations in Nigeria against the people of the Niger Delta region of Nigeria. It clearly reveals some of the inequities in the Nigerian polity. The issue of revenue allocation is closely linked to the issue of resource control. It is in fact a part of resource control, for there cannot be true resource control without an increase in revenue. This thesis has so far looked at resource control in Nigeria but with particular focus on the revenue allocation and the revenue allocation formula issue. This is an issue that touches on fiscal federalism in Nigeria. Professor Akpan Ekpo writing on this issue, states succinctly that, “Nigeria’s fiscal federalism has emanated from historical, economic, political, geographical, cultural and social factors. In all of these, fiscal arrangements remain a controversial issue since 1946. Therefore, there exist unresolved issues on this matter” (Ekpo 2004:3). Professor Ekpo’s statement is quite revealing. It clearly sums up the state of affairs of the issues of revenue allocation and revenue allocation formula in Nigeria. This is what even the Nigerian Supreme Court has been unable to resolve in the landmark case of A.G. Federation v. A.G. Abia State and 35 others (S.C. 2001:28).

The issue of revenue allocation and the sharing formula has generated such intense debate that led to the demand for a national conference in Nigeria. It was during this period that the resource control phenomena rose to an unprecedented dimension (Ekpo 2004:3). The issue of revenue allocation and revenue allocation formula has been very controversial in Nigeria. So contentious has the matter been that none of the formulae evolved at various times by a commission or by decree under different regimes gained general acceptability among the component units of the country. Indeed the issue, like a recurring decimal, has painfully remained the first problem that nearly every incoming regime has had to grapple with since
independence. In this process, as many as thirteen different attempts have been made at devising an acceptable revenue allocation formula, each of which is more remembered for the controversies it generated than issues settled (ibid).

Like most federal systems, Nigeria has a revenue distribution system in which the national government shares revenue with state and local governments. A key problem however is that revenue allocations over the years have been driven by political considerations and by formula factors, such as jurisdictional, population and state equality, rather than by factors associated with economic development imperatives (Philips 1991:103).

Finally, it can be seen that the issues of resource control and revenue allocation/ revenue allocation formula are very serious issues in the Nigerian polity that cannot be treated with levity. However, to tackle these issues successfully, there is a need to clearly distinguish between these issues. Resource control is a very wide concept that includes revenue allocation. Increase in revenue necessarily follows from resource control. This is part of what this research paper has been able to do. This paper has answered the questions it set out to answer. It has also proffered solutions to the crisis in the region. It is hoped that the cries of the people in the Niger Delta region would be heard. Their wailings have been made in courts, in the streets, in the jungles and creeks, with the pen and with the barrel of the gun. They have adopted peaceful means to make their point. They have exhausted local available remedies. This had prompted many of them to resort to violence. For as has been said, “the meek shall inherit the earth, but not with the mineral resources in them” (Waat Micheal, ibid.). The people of the Niger Delta are eagerly waiting for a change in their fortunes. The world is also waiting. Posterity will be the judge.
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