

AMNESTY IN THE NIGER DELTA: VERTICAL MOVEMENT TOWARDS SELF-DETERMINATION OR LATERAL POLICY SHIFT?

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ABSTRACT

The inhabitants of Nigeria's oil-rich Delta region have engaged the State in long-drawn disputes over the ownership and control of oil resources and revenues. While the country's Constitution vests the absolute ownership and control of oil resources as well as the distribution of oil revenues in the federal government, the Niger Delta communities claim that they are entitled to participate in the industry that exploits resources from their environment. Simply, they claim that the country's extant laws and the actions of the federal government infringe on their rights to self-determination. The conflicting stance is one of the fundamental causes of violent conflicts that have besieged the region; particularly in the last decade. Coming off the backdrop of peaceful struggles of the Ogoni peoples considered to be largely ineffectual in achieving the desired objectives, ethnic groups have embraced militancy as a means to force the government and oil-multinationals reckon with their demand for self-determination. The consequent breakdown of law and order in the region and the impacts of shortages in production prompted the federal government to initiate the amnesty initiative in June 2009. Under the amnesty programme, militants were offered a presidential pardon, training opportunities, promises of infrastructure development in the region and direct payments of oil revenues to host-communities. This paper seeks to examine the recent developments vis-à-vis the government's amnesty initiative to determine if this policy has bridged the gap in the longstanding self-determination demands of the Niger Delta communities.

1.1 INTRODUCTION

Nigeria is blessed with abundant human and natural resources, and is one of the major producers of crude oil. The country possesses the requisite potentials – human and natural resources – to be economically developed. However, this is not the case as the development potentials of the country has been hindered by political instability, macroeconomic challenges, inconsistent policy regimes to mention a few that have been in some way instigated by the discovery and/or the conflicts over the ownership, management and access to oil resources (and revenues). Crude oil was discovered in commercial quantities in 1956 in Oloibiri town located in the Niger Delta region, which for the purpose of this paper refers to all the oil-producing states in Nigeria.¹ To put the natural resource qualities of the Niger Delta in perspective, the area is one of the largest deltas in the world;² the third largest mangrove in the world;³ world's largest wetlands;⁴ and, the most extensive fresh water swamp forests

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¹ Currently, this includes nine of 36 states: Akwa- Ibom, Bayelsa, Delta, Rivers, Ondo, Edo, Cross Rivers, Imo and Abia. Section 2 (1) (b) of the Niger Delta Development Commission Act, Chapter N68, Laws of the Federation of Nigeria (LFN) 2004.

² -- 'Niger River Delta' <<http://www.worldwildlife.org/wildworld/profiles/g200/g155.html>> accessed 01 December 2007.

³ Human Rights Watch Report, 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities', HRW Index No. 1-56432-225-4 (1999), p. 49.

in west and central Africa.⁵ The region which holds 60-80% of all Nigerian plant and animal species,⁶ in addition to its oil reserves has been of immense importance to the national and global economy.⁷ Notably, since crude-oil was discovered in commercial quantities, the resource has become the mainstay of Nigeria's economy.⁸

Till date, the ownership, management of oil resources and the distribution of accruing revenues have instigated more acrimony than development to the Nigeria and is the fundamental reason why the host-communities (in the Niger Delta) have been restive. Essentially, the host-communities argue that because they are a minority in the complex federalism, they unfairly bear the detrimental impacts of the oil exploitation without commensurate benefits.⁹ To register their discontent with the status quo; that is, their exclusion from the oil industry generally, the host-communities have resulted to various form of protests – peaceful and violent – over the years. In the last decade, militant expressions of violence characterized the protests against the oil industry exploited by oil-multinationals corporations (OMNCs) and the Federal Government (FG). Militia groups that have developed mainly from ethnic youth organizations are now at the forefront of the movement to 'emancipate' the Niger Delta from the clutches of the oil-industry's operators (and managers). Following the perceived failures of peaceful protests, ethnic groups (mainly youths) from the Delta organized themselves into militant organizations that have adopted more forceful means to register their grouses against the oil industry. These networks of organized ethnic groups have engaged in what may best be qualified as militant insurgency and routinely attacked government security forces (either pro-actively or in retaliation) and oil installations.¹⁰ The grave local and global consequences of militancy in the Niger Delta region necessitated a fresh approach to tackle restiveness in the Niger Delta region.¹¹

Consequently, after several years of militancy and reduced oil production in the Niger Delta region, the FG opted to pursue an alternative to its failed 'security' option by initiating the amnesty program. Briefly, the amnesty initiative is a process of disarmament, demobilization and reintegration (DDR) for individuals and promises of infrastructural development for the region. The FG offered all who

⁴ R. Ranglely 'International River Basin Organization in Sub-Saharan Africa', Technical Paper 250 (World Bank, Washington D.C. 1994).

⁵ D. Moffat and O. Linden, 'Perception and Reality: Assessing Priorities for Sustainable Development in the Niger River Delta' (1995) 24 *Ambio* 7-8.

⁶ N.J. Ashton-Jones and O.N. Douglas, Report to Statoil (Nigeria) Ltd.: Baseline Ecological Survey of the Niger Delta, 1994, p. 29, quoted in K. Ebeku, *Oil and the Niger Delta People in International Law: Resource Rights, Environmental and Equity Issues*, Rudiger Koppe Verlag, Germany 2006, p. 130.

⁷ See generally, R. Ako and P. Okonmah, 'Minority Rights Issues in Nigeria: A Theoretical Analysis of Historical and Contemporary Conflicts in the Oil-Rich Niger Delta Region', (2009) 16 *International Journal on Minority and group Rights* 1, 53-65. The paper highlights the significance of the trade in palm-oil and crude-oil from the Niger Delta to the global economy.

⁸ See generally, I. Gary and T. Karl, *Bottom of the Barrel: Africa's Oil Boom and the Poor* (Baltimore: Catholic Relief Services, 2003).

⁹ See generally: R. Ako and P. Okonmah, (note 8); R. Ako, 'Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice', (2009) 53 *Journal of African Law* 2, 289-304; C. Obi, 'Globalization and Local Resistance: The Case of the Ogoni versus Shell' (1997) 2 *New Political Economy* 1, 137-48; and E. Osaghae, 'The Ogoni Uprising: Oil Politics, Minority Agitation and the Future of the Nigerian State' (1995) 94 *African Affairs* 376, 325-344.

¹⁰ R. Ako, 'The Struggle for Resource Control and Violence in the Niger Delta' in . Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011), 46.

¹¹ See generally, C. Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011). This volume discusses contemporary issues all related to the Niger Delta crisis, the failure to resolve them thus far and prospects for the future.

accepted the deal presidential pardons and other incentives including training opportunities and payment of monthly allowances in return for submission of arms and ammunitions and renouncing violence. Apparently, a large number of militants accepted the amnesty deal but a few pockets of defiant militant groups who doubt(ed) the sincerity of the government's ignored it. While the debate on the efficacy of the amnesty deal rages on, this paper seeks to ascertain the impact of the amnesty initiative on the clamour for self-determination - which in the view of this paper is the fundamental basis upon which all the demands of the Niger Delta people is hinged – and therefore a demand which must be taken into cognizance to effectively minimize oil-related conflicts in the region.

To this end, it is the objective of this paper to examine the effects and implications of the federal government's amnesty initiative on the clamour for self-determination in the Niger Delta Region. To achieve this objective, this paper is divided into five sections including this introduction. The second section highlights the origin and evolution of the concept of self-determination under international law with emphasis on economic self-determination; a variant of the concept which reflects the clamour of the Niger Delta people over the years for control of the resources harnessed from the region. The third section traces the historical antecedents of the Niger Delta peoples' clamour for economic self-determination while the fourth highlights the amnesty deal as proffered by the federal government in perspective. The fifth section analyses the amnesty deal to determine whether it measures up to the Niger Delta region's longstanding demands for economic self-determination in conclusion.

2.1 Self-Determination and the Ownership and Control of Natural Resources under International Law

The right to self-determination is expressly recognized globally via the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which both entered into force in 1976.¹² Article 1 of both the ICCPR¹³ and ICESCR¹⁴ provide that:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust

¹² The African Charter for Human and Peoples Rights (ACHPR) also contains express provisions that guarantee peoples' rights to self-determination. In particular, Article 21 states:

- (1) All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
- (2) In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

¹³ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

¹⁴ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Self-determination; as a recognizable international concept, originated after the First World War after it was explicitly embraced by US President Woodrow Wilson, by Lenin and others, and became the guiding principle for the reconstruction of Europe following World War I.¹⁵ Self-determination was understood differently by the USA and Western Europe as popular sovereignty, individual freedom and representative government, while Eastern and Central Europe considered it as based on the notion of nationalism.¹⁶

The United Nations (UN) Charter made a couple of general references to 'self-determination'¹⁷ as a political principle.¹⁸ The status of self-determination developed in 1960 following the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the UN General Assembly (GA) which states 'all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.¹⁹ In 1970, following the wide adoption of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN,²⁰ the concept of self-determination further developed and arguably became recognized as *jus cogens* thus a source of international law.²¹ It has been argued that given the unanimity of the adoption of the Resolution, the notion of self-determination should be considered as a reflection of international custom or state practice which enjoy higher ranking amongst the sources of International law.²² Also, Self-determination is now recognized as an integral part of human rights law which has a universal application and is a necessary condition for the enjoyment of other human rights and fundamental freedoms.²³ For this reason, it is not surprising that where a state denies a group asserting its right to self-determination, armed conflicts result as in the case in Nigeria's Delta region which is the focus of this paper. Historically, the quest for political self-determination; influenced by the high spate of decolonization, secessions and general feelings of national consciousness which characterized the

¹⁵ M. van Praag and O. Seroo, 'The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention' Report of the International Conference of Experts held in Barcelona from 21-27 November 1998, online: <http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>

¹⁶ T Musgrave p. 13

¹⁷ Article 1(2) and Article 55.

¹⁸ M. van Praag and O. Seroo, (note 16)

¹⁹ Article 2 of UN General Assembly (GA) Resolution 1514 adopted at the 947th plenary meeting held on 14 December 1960.

²⁰ Resolution 2625 by the UNGA.

²¹ Article 38 of the Statute of International Court of Justice (ICJ).

²² B. Cop and D. Eymirlioglu, 'The Right Of Self-Determination in International Law towards the 40th Anniversary of the Adoption of ICCPR And ICESCR', <http://www.sam.gov.tr/perceptions/Volume10/winter2005/Cop-Eymirlioglu.pdf>.

M Bulajic, *Principle of International Development Law: Progressive Development of the Principles of International Law relating to the New International Order*, (Martinus Nijhoff Publishers, 1993), 263.

²³ M. van Praag and O. Seroo, (note 19)

international system since the end of the Second World War, has been most prominent in the past 50 years.²⁴

That notwithstanding, economic self-determination also gained prominence after the end of hostilities of the Second World War even if its propagation has been suppressed in the post-Cold War era.²⁵ Generally, economic self-determination; in its contemporary understanding, refers to a people's capacity to dispose freely of natural resources in accordance with democratically-taken decisions.²⁶ The quest for a New International Economic Order (NIEO) within the UN played a significant role in the development of economic self-determination²⁷ which Farmer describes as the 'existing conversation between a government and its peoples'.²⁸ Thus, even though economic self-determination was considered an appendage to political self-determination for all practical purposes, the concept can operate independently of secessionary movements.²⁹ The situation in the Niger Delta where inhabitants of the region are clamouring for 'economic self-determination' without necessarily looking to secede from Nigeria lends credence to this assertion.³⁰ The movement of newly independent states to establish their political independence as well as concurrently ascertain their economic dependence from their previous colonial governments may explain the consideration that though economic self-determination was considered an appendage to political self-determination it still has a distinctive existence on its own.³¹

Returning to the core of economic self-determination; which is the internal struggle for control of resources between a State and 'peoples' or the 'antagonism between claims to self-determination and to state sovereignty', it must be noted that the attitude of the State to claims (of economic self-determination) determines the outcomes. Where the State completely denies the groups claim, as experienced in Nigeria which this paper focuses upon, there is a higher probability that violent conflicts will ensue.

However, claims to economic self-determination do not necessarily lead to violence as there are several avenues to resolve such claims depending on the situations, needs, interests and conditions of concerned parties.³² However, claims for economic self-determination often fuel armed conflicts because there are few well defined procedures for adjudication of claims for self-determination or for their implementation.³³ In the same vein, the resultant violent conflicts are dealt with differently by States in which they occur. What is clear though is that self-determination should not be viewed as a one-time choice, but as an on-going process which ensures the continuance of a people's participation in decision making and

²⁴ A. Farmer, 'Towards A Meaningful Rebirth of Economic Self-Determination: Human Rights Realization in Resource-Rich Countries', (2007) 39 N.Y.U. J. Int'l L. & Pol. 417, 423.

²⁵ *ibid*

²⁶ For a comprehensive discussion of the evolution of economic self-determination, see A. Farmer, *ibid*, 418.

²⁷ See generally The Declaration on the establishment of a New International Economic Order, (Res. 3201/S-VI) < <http://www.un-documents.net/s6r3201.htm> > accessed 27 July 2010; see generally E Laszlo and Others, 'The Objectives of the New International Economic Order' (Pergamon press, New York 1978) 159 - 168

²⁸ A. Farmer, (note 27) 421.

²⁹ *ibid*

³⁰ For instance the Kaiama Declaration. See section 5.1 below.

³¹ A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: University Press, 1995), 49.

³² M. van Praag and O. Seroo, (note 24)

³³ *Ibid*.

control over its own destiny.³⁴ In Nigeria where demands for self-determination from the inhabitants of the oil-rich Niger Delta region have led to violent conflicts, the federal government has initiated several (failed) initiatives to address the demands. The latest of these initiatives; the amnesty deal has succeeded, even if momentarily, in reducing the spate of violent conflicts in the region. The following section highlights the genealogy of the clamour for economic self-determination of the Niger Delta people that culminated in violent conflicts.

3.1 A Genealogy of the Economic Self Determination Clamour by the Niger Delta people.

The Niger-Delta problem has been described as an accumulation of years of neglect to the anomalies' which have been perpetuated in the region since the discovery of crude oil in the region in 1956.³⁵ The clamour for economic self-determination in the Niger Delta may be analysed within four time-lines - pre-independence till 1978, 1979-1989, 1990-1998 and 1999-2009. The first period represents the early periods of Nigeria's oil industry when the resource was discovered in commercial quantities and a flurry of legislation followed to transfer ownership of oil resources that originally belonged to host-communities³⁶ to the federal government. Indeed, oil resources belonged to the host-communities up till 1916 when the British Colonial Government appropriated the ownership of all oil resources via the Mineral Oil Ordinance³⁷ which later became vested in the federal government, the progeny of the Crown.³⁸ By the time oil was discovered in commercial quantities in Oloibiri, ownership of the resource was vested in the federal government. It is argued that the struggle for economic self-determination began during this period when the Ijaws³⁹ made representations to the Willink Commission that was appointed by the British government to enquire in to the fears of the minorities and allay them in preparation for political independence. Although oil was not expressly mentioned during the Commission's deliberations, it is not farfetched to suggest that oil was a consideration (however trivial) in the minds of the Ijaws who expressed their fears that they would be dominated by economically and otherwise the main ethnic groups.⁴⁰ Given the limitation of the Commission's terms of reference to 'ascertain facts about the fears of minorities...' ⁴¹ it is unlikely; with oil being an undeveloped resource at the time, that speculative assertions would have been entertained by the Commission.

³⁴ *ibid*

³⁵ C. Ukeje, 'Changing the Paradigm of Pacification: Oil and Militarization in Nigeria's Delta Region', in C. Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011), 85.

³⁶ See, section 5 of the Mining Regulation (Oil) Ordinance of 1907, C.O. 588/ 2: Southern Nigeria Certified Ordinances, 1906-1907. By the provisions of this law, the colonial government assumed ownership of oil only after the Governor entered into agreement with any Native Authority 'for the purchase of full and exclusive rights in and over all mineral oils within and under any lands which are the property of any Native Community'.

³⁷ Section 3(1) Mineral Oil Ordinance 1916.

³⁸ See generally, the Petroleum Act, P10 Laws of the Federation of Nigeria (LFN), 2004; Territorial Waters Act, Chapter T4 LFN 2004; Exclusive Economic Zone Act, Chapter E17 LFN 2004; and, the Minerals and Mining Act, Chapter M12 LFN 2004.

³⁹ The Ijaws are the fourth largest ethnic group in Nigeria and are the major ethnic group in the Niger Delta region.

⁴⁰ Report of the Commission appointed to enquire into fears of Minorities and the means of allaying them' (Willink Commission), C.O.957/4, Colonial Office, July 1958, 16-17.

⁴¹ *Ibid*, iii.

Interestingly, subsequent events arising from the recommendations of the Willink Commission contributed to instigating the first oil-related crisis in Nigeria in 1966; barely six years after independence. The Willink Commission had in recognition of the fears of the Ijaws recommended the establishment of a board; the Niger Delta Development Board (NDDDB), to speedily develop the 'poor, backward and neglected' region.⁴² The performance of the NDDDB, or lack thereof, as well as the host-communities' early frustrations with the growing oil-industry led Adaka Boro and his Niger Delta Volunteer Force to declare a Niger Delta Peoples Republic with the intent that the 'Republic' would control its resources. The revolution was short-lived as it was quashed twelve days later by the military. However, the seeds of economic self-determination had been sown and a year later, Nigeria was plunged into civil war that was ostensibly precipitated by the quest for self-determination.⁴³

The war, largely considered to have been more of a battle to control the oil fields of the Niger Delta than to maintain the unity of the nation,⁴⁴ was described aptly by Soremekun and Obi as a 'struggle for the physical possession of the oil wealth in the Niger Delta between factions of the domestic ruling class on the one hand, and between the Eastern faction and the producing areas on the other hand'.⁴⁵ Following the conclusion of the war in 1970, the Federal Military Government made sweeping changes to the administration of the country and the oil industry. While the country was decentralized as a means to neutralize the possible recurrence of the Biafra experience, the federal government re-affirmed its legal ownership and control of oil resources and revenues by promulgating several decrees including the Petroleum Act,⁴⁶ Oil in Navigable Waters Act,⁴⁷ Oil Pipelines Act⁴⁸ and the Offshore Revenues Act.⁴⁹

The promulgation of the Land Use Act in 1978 marked a watershed in the development of Nigeria's oil industry and changed local perspectives with regards the oil industry in the second timeframe lasting between 1979 till 1998. Basically, the Act abrogated communal ownership of land and vested same in the government⁵⁰ thereby excluding the host-communities from participating in the oil-industry while instigating and/or exacerbating oil-related environmental injustices.⁵¹ Particularly, the resultant economic hardships increased the frustration in the oil communities and contributed to a resurgence of violence; albeit on a smaller scale compared to the previous secession attempts as inhabitants from the region protested against the legal framework and its impacts, especially their economic subjugation. However, claims for economic self-determination at this time though widespread were poorly organized protests by sections of the Niger Delta society such as youth, women and ethnic organizations which were largely ineffectual. Unsurprisingly, the official

⁴² Ibid, 94.

⁴³ C. Uche, 'Oil, British Interests and the Nigerian Civil War', (2008) 49 *Journal of African History* 122-123.

⁴⁴ See generally, I Okonta and O Douglas, *Where Vultures Feast: Shell, Human Rights and Oil* (Verso, London 2003) 33; and, A Oyefusi, 'Oil Dependence and Civil Conflict in Nigeria', (2007) CSAE WPS/2007-09, online: <www.csae.ox.ac.uk/workingpapers/pdfs/2007-09text.pdf> accessed 30 October, 2009.

⁴⁵ K Soremekun and C Obi, 'The Changing Pattern of Foreign Investment in the Nigerian Oil Industry' (1993) 18 *Africa Development* 3, 14.

⁴⁶ Chapter P10

⁴⁷ Chapter O6 LFN 2004.

⁴⁸ Chapter O7 LFN 2004.

⁴⁹ Decree No. 9 of 1971.

⁵⁰ Section 1 of the Land Use Act, Chapter L10 LFN 2004.

⁵¹ See generally, R. Ako, (note 10) 289–304.

reaction to communal restiveness in the Niger Delta during this period was expressed by Chief Phillip Asiodu thus: '(Given) the small size of and population (of oil-producing communities) it is not cynical to observe that even if the resentment ... continues they cannot threaten the stability of the country nor affect its continued economic development.'⁵²

The 1990s witnessed a new wave of organizational dexterity in the Niger Delta communities with the formation and influential growth of the Movement for the Survival of the Ogoni People (MOSOP). MOSOP effectively reached out to its primary constituents; the Ogoni people, and teamed up with several local and international Non-Governmental Organizations working in the area of human and environmental rights protection to advance their claims to economic self-determination⁵³ amongst others. These organizations provided MOSOP the financial and logistic support it required to launch a largely successful campaign against the oil companies and the federal government which included the termination of oil exploration and production activities in Ogoniland by 1993.⁵⁴ Other communities in the Niger Delta reshaped their campaigns against the oil industry based on the largely successful MOSOP model as they adopted Bills of Rights which included their demands for economic self-determination.⁵⁵ This period also witnessed an increase in violent conflicts as kidnapping, hostage taking of oil-company workers, and the occupation, disruption and vandalization of oil installations and facilities by (mainly) youths from the host-communities became rife.⁵⁶ The government's crackdown on restive communities including the hanging of the Ogoni Nine exacerbated the state of anomie and strife in the Niger Delta which assumed a new dimension following the expiration of the Ijaw ultimatum that oil companies withdraw from their land by 30 December 1998.⁵⁷

The final timeline (1999-2009) in examining the development of the Niger Delta's claims to economic self-determination was predominantly shaped by two events; the government's unabated attempts to crush MOSOP and the Ijaw Youth Council (IYC)⁵⁸ leadership and the return to democratic governance after decades of military dictatorships.⁵⁹ According to Ikelegbe, the former 'paved way for a discourse that clearly expressed frustration with the failure of non-violent protests to gain the attention of the government and oil-companies and get them to respond to the demands of the people' and coupled with the later, 'gave vent to, and provided resources for, more militant forms of resistance'.⁶⁰ During this period, militancy in the Niger Delta region blossomed as several youth militia groups that had been granted access to arms and ammunitions by political godfathers that later dumped

⁵² C Ukeje, 'Oil Communities and Political Violence: the Case of Ethnic Ijaws in Nigeria's Delta Region', (2001) 13 *Terrorism and Political Violence* 4, 15.

⁵³ In local parlance, the Ogonis and other ethnic nationalities of the Niger Delta were (and still are) agitating for resource control. For a discussion on resource control in the Niger Delta, see generally, R. Ako, (note 11) 42-54.

⁵⁴ M Fleshman, 'The International Community and the Crisis in Nigeria's Oil Producing Communities: A Perspective on the US Role', (2001) 61 *ACAS Bulletin*, 6.

⁵⁵ C Ukeje, (note 53) 24-25.

⁵⁶ *ibid*, 16.

⁵⁷ A. Ikelegbe, 'Popular and Criminal Violence as Instruments of Struggle in the Niger Delta' in Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011), 127.

⁵⁸ The IYC had organized Ijaws and produced the Kaiama Declaration on 11 December 1998 which expressed their grievances against the oil-industry and claims to self-determination.

⁵⁹ A. Ikelegbe, (note 58) 127.

⁶⁰ *Ibid*.

them, turned their attention to the ‘emancipation’ of the oil-rich but impoverished region.⁶¹

Recourse to violence was further entrenched after a deceit-laden peace agreement was made by (then) President Obasanjo in 2004 to stop the two main militant leaders at the time; Tom Atake and Asari Dokubo, from carrying out their threat to join forces against the State and oil-companies.⁶² The conditions included the surrender of arms for money, provision of vocational training for fighters. With peace secured on the short-term by the accord, the funding to see it through remained in the ‘pipelines’ with consequences including the escalation of violent expressions of economic self-determination with the entry of the Movement for the Emancipation of the Niger Delta (MEND).⁶³ MEND transformed the struggle for the economic self-determination of the Niger Delta as with their astute (and faceless) organization, deft planning and operational dexterity as the consequences of their well-publicized threats of, and operations, reverberated globally. State attempts to quell violent expressions of the demand for economic self-determination including increased funding to the region via derivation and abolition of the inshore/offshore dichotomy, convening of a National Political Reforms Conference (NPRC) and the establishment of the Niger Delta Development Commission (NDDC) all failed to quell the momentum in the Niger Delta region.

The government’s (mis)management – the failure of the above incentives amongst others – also contributed to the escalation of the Niger Delta peoples’ resolve to maintain their violent expressions for economic self-determination. For instance, although the new Constitution provides that at least 13% of oil revenues be paid to the Niger Delta region,⁶⁴ President Obasanjo delayed the payments and when he made them, there were several illegal deductions made therefrom.⁶⁵ The President abolished the onshore/offshore dichotomy to avoid imminent escalation of violence in the region that could have derided the (then) impending 2003 elections. The NPRC; the government’s compromise to the agitation mainly from the Niger Delta area for a national sovereign conference (SNC) to decide the future relationship between the oil-rich region and the rest of the country, failed to record any significant gains in this regards. Rather, the president used this as an opportunity to highlight his feelings that the Niger Delta region is inconsequential in the political configuration of the country.⁶⁶ As with previous development boards set-up to

⁶¹ S. Davies, *The Potential for Peace and Reconciliation in the Niger Delta*, (Coventry Cathedral, 2009) 70-71. International Crisis Group, ‘The Swamps of Insurgency: Nigeria’s Delta Unrest’, Crisis Group Africa Report N°115 2006, 21.

⁶² Tom Atake led the Niger Delta Vigilante (NDV) while Asari Dokubo led the Niger Delta People’s Volunteer Force (NDPVF). See S. Davies, *The Potential for Peace and Reconciliation in the Niger Delta*, (Coventry Cathedral, 2009) 70-71.

⁶³ M. Boás, ‘Mend Me’: The Movement for the Emancipation of the Niger Delta and the Empowerment of Violence’ in Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011), 121.

⁶⁴ Section 162(2) of the Constitution of the Federal Republic of Nigeria 1999.

⁶⁵ *Attorney-General of the Federation v Attorney-General of Abia State and 35 others* (2001) 11 NWLR (pt. 725) 689. The illegal deductions made to revenue before paying out 13% to the Niger Delta as derivation included excluding natural gas as a constituent for derivation; servicing of external debts, funding the judiciary and joint venture contracts and Nigerian National Petroleum Corporation (NNPC) priority projects via first line charge.

⁶⁶ Following a staged walk-out by delegates from the Niger Delta when it was obvious that their demands for increased participation in the oil industry would go unsupported by other parts of the country, President Obasanjo declared that the absence of a small percentage of unsatisfied conference delegates did not affect the success of the conference. ‘Obasanjo, Tobi, declare confab a success’,

speed-up the development process in the Niger Delta, the NDDC did not perform to the expectations of the region.⁶⁷ It is instructive to note that MEND accused the federal government of displaying lack of seriousness with its development plan for the region which failed to address their demand for the control of their resources.⁶⁸ It is based on the foregoing that militant groups; particularly MEND, stepped up their violent expression of economic self-determination that culminated in the President Yar'Adua government's amnesty initiative to rid the region of the endemic violence.⁶⁹

4.1 The Amnesty Deal

Amnesty, in the general sense, is a political tool of compromise and reunion granted by a sovereign to individuals that have committed acts against the State; usually treasonable offences and/or rebellion. O'Shea who defines amnesty as immunity in law from either criminal or civil legal consequences, or from both, for wrongs committed in the past in a political context opines that granting of amnesty implores the following:

1. That its grantee has committed some form of offence which is identifiable and punishable under some national criminal legal system or in other cases a crime recognised and punishable under international law.
2. That the granting authority forgoes all legal sanctions or remembrance of the offence(s) committed by the offender.
3. That the grantees are given a clean slate in the eyes of the law.⁷⁰

In essence, amnesty could be summarised as a trade off on justice in the interest transition, peace, reconciliation, forgiveness and truth.⁷¹ Peace in the Niger Delta was the major factor for the initiation of the amnesty programme in Nigeria as it is a crucial element to ensure the optimal exploitation of oil resources required to satisfy varied interests including the federal government and oil-multinationals that pecuniary interests and the global community that requires a steady supply of the resource. This section outlines the federal government's amnesty initiative that was calculated to reduce the spates of violence emanating from the Niger Delta region where the inhabitants were expressing their desire for economic self-determination specifically to determine if, and to what extent, these demands were (or, are capable of being) satisfied.

article posted on the NPRC website on July 25, 2005; available at: <www.nprc-online.org/ab_8900136.html> accessed 20 February 2006.

The direct reference to their minority status and his opinion that their participation in matters of national importance made no difference to its outcomes lacked political discretion and was clearly insensitive to the feelings of a visibly aggrieved population that attribute their misfortunes; and rightfully so, to political marginalization.

⁶⁷ The low level of funding the agency received despite being the 'brain-child' of the incumbent president is substantial evidence to suggest that the immediate success of the commission was not top priority.

⁶⁸ Integrated Regional Information Network News 'NIGERIA: Delta militants denounce Obasanjo's plan for oil region, threaten more attacks' <<http://www.irinnews.org>> accessed 12 July 2010.

⁶⁹ President Yar'Adua assumed office in May 2007 after Obasanjo two-term of four years tenure ended.

⁷⁰ A. O'Shea, *Amnesty for Crime in International Law and Practice*, (Leiden, NLD: Brill Academic Publishers, 2002), 1.

⁷¹ L. Mallinder, 'Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa', Working Paper No. 2 From Beyond Legalism: Amnesties, Transition and Conflict Transformation, Institute of Criminology and Criminal Justice, Queen's University Belfast February 2009.

The origin of the amnesty initiative lies in the recommendations of the Niger Delta Technical Committee (NDTC) that was inaugurated on 8 September, 2008 by the federal government whose terms of reference were:

- To collate, review and distil the various reports, suggestions and recommendations on the Niger Delta from the Willink Commission Report (1958) to the present, and give a summary of the recommendations necessary for government action.
- To appraise the summary recommendations and present a detailed short, medium and long term suggestion to the challenges in the Niger Delta.
- To make and present to Government any other recommendations that will help the Federal Government achieve sustainable development, peace, human and environmental security in the Niger Delta region.

The NDTC proposal identified the three main issues as constraints to sustainable peace and development in the Niger Delta that require reforms to include issues of governance and the rule of law, socio-economic development, and human development.

The Committee made far-reaching proposals on each of these and with specific reference to stemming the tide of resurgent violence in the region, it recommended the application international standards of disarmament, demobilization and reintegration (DDR) of militants as prescribed in the United Nations Integrated DDR Standards.⁷² It suggested that the federal government

1. Establish a credible and authoritative DDR institution and process including international negotiators to plan, implement, and oversee the DDR programmes at regional, state and local government levels;
2. Provide for open trial and release on bail (with a view to eventual release) of Henry Okah and others involved in struggles relating to the Region;
3. Grant amnesty to all Niger Delta militants willing and ready to participate in the DDR programme;
4. Address short term issues arising from amnesty to militants, by promoting security for ex-militants and rebuilding of communities destroyed by military invasion;
5. Work out long-term strategies of human capacity development and reintegration for ex-militants;
6. Reflect on a time-line with adequate funds for the DDR programme to take place;
7. Stop the illegal demands put on youths from the Region by prosecuting the suppliers of small arms and light weapons and also those involved in oil bunkering by identifying highly placed persons in and outside of government who are engaged in sponsoring violence for economic and political reasons;
8. Exclude from amnesty and criminalise the activities of those militants not committed to the DDR process and unwilling to surrender their arms;
9. Ensure that signatories to the DDR programme show clear commitment to the entire process.⁷³

On June 25, 2009, the Federal Government announced the amnesty deal. According to the President, the offer of amnesty was predicated on the willingness and readiness of the militants to give up all illegal arms in their possession, completely renounce militancy in all its ramifications unconditionally, and depose an

⁷² Report of the Technical Committee on the Niger Delta', vol. 1, (2008), 66.

⁷³ Ibid.

undertaking to this effect.⁷⁴ A summary of the main terms of the amnesty offer included:

- an unconditional offer of forgiveness for all militants who accept the offer, willingly surrender their weapons and embrace dialogue with a view to broker peace in the region;
- rehabilitation programmes, education and/or training touching on the physical and psychological re-orientation of their ideologies so as to create a re-focused group of people who would be better able to tackle the challenges and issues militating against their communities in particular and Nigeria in general;
- pecuniary entitlements of N65,000 (US \$841) paid to each militant monthly as feeding allowance and stipend for the duration of the rehabilitation process.⁷⁵

The president gave a 60-day window from date of announcement of the offer within which interested militants were to take up this offer. On the expiration of the deadline, about 15,000 ex-militants reportedly surrendered themselves and caches of weaponry to accept the amnesty deal.⁷⁶

The government also made promises to the region including a new regional railway project, the LNG projects, new refinery projects, new town projects, environmental remediation projects and the crucial east-west road projects as well as other coastal roads in the zone. In addition to contributing to the infrastructural development of the region, the government intends for these projects to be an avenue to offer gainful employment opportunities to the thousands of ex-militants that benefit from the skills acquisition and training programmes.⁷⁷ The federal government also committed to transfer 10 per cent equity of its oil and gas ventures directly to oil-producing communities (thereby bypassing the state governors) in the Niger Delta but reneged on this citing contentious legal issue.⁷⁸ Instead, the government intends to share dividends from the oil-industry amongst host-communities based on the value of assets in their areas.

5.1 Amnesty: Lateral or Vertical Policy Shift?

Having highlighted the amnesty and post-amnesty promises made by the government in response to the violent expression of the Niger Delta region's peoples', we examine what extent these promises meet the demands of the Niger Delta indigenes' for economic self-determination. The demands as contained in the Ijaw peoples' Kaiama Declaration are used as the reference point in this section. There are three reasons for this choice; first the Ijaws are the majority group in the region, MEND is comprised mainly of Ijaws and the Bills of Rights that emanated

⁷⁴ A Chinweoke, V Enebele and A Onwuka, 'The terms of amnesty, by Yar'Adua', Vanguard Newspaper (Nigeria) 17 October 2009.

⁷⁵ 'FG approves N10.14bn for amnesty' Daily Triumph Newspaper (Nigeria) 09 October 2009. See also, S Ologun, 'Amnesty to cost N10b', The Nation Newspapers (Nigeria), 09 October 2009.

⁷⁶ C. Obi and S. Rustad, 'Conclusion: Amnesty and Post-Amnesty Peace, Is the Window of Opportunity Closing for the Niger Delta?' in C. Obi and S. Rustad (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence* (London: Zed Books, 2011), 204.

⁷⁷ C. Ajunwa, 'Nigeria: Fed. Govt Approves 6,166 Ex-Militants for Amnesty', Codewit News, 29 November 2010, <<http://www.codewit.com/north-america/2338-nigeria-fed-govt-approves-6166-ex-militants-for-amnesty>> accessed 13 April 2011.

⁷⁸ T. Hallah, 'Niger Delta to get 10% of oil wealth', Daily Trust (Nigeria), 20 October 2009, <http://www.news.dailytrust.com/index.php?option=com_content&view=article&id=8113%3Aniger-r-delta-to-get-10-of-oil-wealth&catid=46%3Alead-stories&Itemid=140> accessed 13 April 2011.

from the region are all identical. Briefly, the Kaiama Declaration is the blueprint that contains the demands of the Ijaws and is considered as the ideological basis for their struggle for their economic self-determination. The resolutions contained in the declaration aver that:

- all land and natural resources including mineral resources belong to the Ijaw communities and are the basis of their survival;
- the oil-industry's regulatory framework which is undemocratic, was made without their participation and consent and deprives them of the right to ownership and control of our lives and resources;
- military forces stationed in the region should leave;
- oil companies pollute their land;
- they are not saboteurs and terrorists;
- they are proud of their heritage, intend to remain neighbourly with surrounding ethnic nationalities and remain part of the Nigerian federation should be run on the basis equality and social justice.

Based on these principles amongst others, the Ijaws resolved 'to set up the IYC to coordinate the struggle of the Ijaw people for self-determination'.

The above demands reveal that the main issues that have instigated the struggle for economic self-determination in the Niger Delta region include the government's abrogation of land, the legal framework regulating the oil-industry, militarization of the oil-rich region and oil-related environmental pollution. Furthermore, they demand that they be recognized as a group striving for self-determination and not as 'saboteurs and terrorists'. From the list of demands, it appears that the amnesty deal may not have addressed any of the substantial demands as expressed in the Kaiama Declaration replicated across the ethnic-nationalities across the oil-rich Niger Delta region. For starters, the amnesty deal is predicated on the notion that the beneficiaries are 'saboteurs and terrorists' that will be forgiven their misdeeds on acceptance of the terms of the deal. In fact, this is one of the basis upon which MEND criticize the government's amnesty initiative. According to MEND, amnesty in the context of the Niger Delta militancy is a misplaced notion because amnesty is a lifeline for criminals not militants whose motivation is the emancipation and survival of their lands and people. They argue that it is the federal government that has committed crimes of oppression against the Niger Delta people and should rather, as a sign of good faith, withdraw its security operatives from their region and provide a comprehensive plan to improve the lives of the region's inhabitants.⁷⁹

However, demilitarization of the Niger Delta as Nwajiakwu-Dahou notes is not in sight despite the disarmament, demobilization and reintegration (DDR) process under the amnesty initiative which is meant to rid the ex-militants of their weaponry retrain them and reintegrate them into society.⁸⁰ Indeed, it will be foolhardy to suggest that militancy in the Niger Delta has ended with the amnesty deal but clearly, there is still a large military presence in the area that does not augur well for long-term peace. Interestingly, about the same time the federal government announced its amnesty deal, it invested N440 billion on the 'security' of the Niger Delta which afforded the Joint Task Force (JTF) the opportunity to upgrade its

⁷⁹ L. Leba, 'Dividends of N440bn security vote for Niger Delta', 20 July 2009, online: <<http://www.vanguardngr.com/2009/07/20/dividends-of-n440bn-security-vote-for-niger-delta>> accessed 03 November 2009.

⁸⁰ K. Nwajiakwu-Dahou, 'The Politics of Amnesty in the Niger Delta: Challenges Ahead', IFRI Sub-Saharan Africa Program (2010), 12.

weaponry and resolve to expel ‘militant elements’ from the region so that oil exploration and production activities could continue as usual.⁸¹ The situation with the regulatory framework; including the Land Use Act, also remains unchanged. The government has not given any indication that it is willing to review laws relating to the ownership and management of oil as well as the distribution of oil revenues. It is acknowledged that the much expected Petroleum Industry Bill (PIB) which contains the provisions on payments to be made directly to the host-communities mentioned above will invariably revoke some existing legislation when ratified. However, the bill mainly addresses the federal government’s desire to remedy key fiscal, operational and sectoral challenges rather than addressing host-communities’ specific demands for abolition or review of particular ‘unfair’ laws. In the same vein, there is no evidence to suggest that the government intends to enforce extant laws to protect the Niger Delta from oil-induced pollution. If anything, the converse has been the case as the federal government recently postponed the date to end gas flaring in the region for the umpteenth time from January 2010, the flare-out date was moved to 31st December, 2012.⁸² While it remains uncertain whether this new deadline will be adhered to, experiences from past postponements instill a sense of skepticism regarding both the oil-companies likely adherence to the date and the federal government’s enforcement of the law thereafter.

Consequently, it is suggested that the amnesty deal is a vertical policy shift rather than a vertical one towards the Niger Delta peoples’ aspiration of economic self-determination. With the benefit of hindsight, one may argue that the federal government’s amnesty package is a volte face following the failure of its security forces to overrun the militants after increased funding and military operations in the Niger Delta. Indeed, the government’s lackadaisical attitude towards its post-amnesty commitments reinforces the above suggestion, which precipitated Nwajiakwi-Dahou to suggest that the amnesty deal was initiated as a process to ‘increasingly insulate oil companies from over-exposure to militant pressure’.⁸³ If this is really the case, one might be tempted to suggest that the amnesty deal has succeeded; even if momentarily, to curb the hitherto widespread violent expressions for economic self-determination. However, given the unsatisfactory implementation of the amnesty deal and recurring threats of violence from factions of MEND that refused to be a part of the amnesty deal, the final word is that violent claims for economic self-determination in the Niger Delta are bound to recur.

⁸¹ L Leba, (note 80)

⁸² R. Ako and O. Oluduro, ‘Bureaucratic Rhetoric of Climate Change in Nigeria: International Aspiration versus Local Realities’ paper presented at the 8th IUCN Academy of Environmental Law Colloquium, Ghent, Belgium held between 14-16 September, 2010.

⁸³ K. Nwajiakwu-Dahou, ‘The Politics of Amnesty in the Niger Delta: Challenges Ahead’, IFRI Sub-Saharan Africa Program (2010), 23.