

Resource Control in the Niger Delta: Conceptual Issues and Legal Realities

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RHUKS AKO, MAY 25 2012

Resource Control: Conceptual Issues

A significant difficulty when engaging the 'resource control' discourse from the purview of the Niger Delta is its conceptual ambiguity. There are three broad notions of resource control that may be distilled from numerous definitions proffered since the Ijaw Youth Council's (IYC) Kaiama Declaration that expressly employed the phrase in connection with oil resources and the Niger Delta for the first time. These include 'absolute' and 'principal' resource control as well as increased derivation.[1] Proponents of 'absolute resource control' take the stance proffered by the Kaiama Declaration that '[E]very region should control its resources 100 per cent...'[2] Advocates of 'principal resource control' define resource control as the Niger Delta region having 'a direct and decisive role in the exploration for, the exploitation and disposal of, including sales of the harvested resources'.[3] Resource control is also defined in terms of the right to control or manage the revenue accruing from oil and other natural resources in line with the tenets of true federalism.[4] The introduction of 'true federalism' to the resource control debate contributes to misunderstanding the resource control debate. The governors of the southern states in Nigeria also refer to this notion of 'true federalism' in the discourse of resource control.[5] However, they do so to promote their agenda that states ought to control their resources and contribute (usually a smaller percentage of such revenues) to the federal coffers. In some way, they have elevated the notion of resource control to be synonymous with 'true' federalism.

It is argued that while resource control is not synonymous with federalism, a 'true federalism' is a utopian notion. Federalism as a system of governance emphasizes both vertical power sharing across different levels of governance and, at the same time, the integration of different territorial and socio-economic units, cultural and ethnic groups in on single polity.[6] The Constitution that allocates powers among the strata of government is a legal document whose provisions are determined pragmatically based on peculiar societal political and socio-economic experiences. What the advocates of resource control appear to describe when they speak of 'true federalism' is a 'fiscal federalism' wherein the federating units own and manage their resources and revenues but make a contribution to the central government to fund federal responsibilities.[7] However, it should be noted though that fiscal federalism might also be an arrangement whereby the central government generates most of the revenues and shares such revenues with other strata of government.[8]

A fourth category of resource control – the 'local' variant – ought to be recognized in addition to the three broad conceptions highlighted. 'Local resource control' simply refers to availing the inhabitants of the Niger Delta region the opportunities to enjoy access to the environmental resources and benefits of their ancestral land. The relevance and importance of this fourth conception is borne out of the failures of the political class and militants alike to make any palpable positive changes to the lives of the ordinary Niger Delta citizens they claim to represent. While the political class have exhibited gross irresponsibility in the management of accruing oil revenues to state coffers, the militants enjoy the 'rewards' of their struggle with monthly stipends from the government as well as vocational and educational training opportunities to the exclusion of these ordinary citizens. In other words, the ordinary citizens on whose behalf political and militant agitation has taken place are practically worse off.

Resource Control: Agitation without Success?

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The history of the Niger Delta is characterized by agitation for resource control. First, after the abolition of slave trade in 1807, local traders engaged in 'resource control' struggles to participate actively in the trade in oil palm.[9] Similarly, resource control was one of the highlights of the Ijaws' representation to the Willink Commission to Enquire into the Fears of the Minorities and the Means of Allaying Them in 1957. Resource control struggles in the post-crude oil era that began with the botched Boro-led attempt to create the Niger Delta Republic in 1966 has culminated in contemporary oil-related restiveness in the region.[10] Since the Ijaw representatives failed to achieve their desired results to be left out of independent Nigeria, or, alternatively have a state created,[11] subsequent 'resource control' struggles have suffered a similar fate. However, the Ijaws' argument that the peculiar problems of those living in the creeks and the swamps of the delta were not understood and indeed were deliberately neglected by both the regional and federal governments[12] remains true till date and feeds into the resource control struggle.

The contemporary notions of resource control have been characterized by both peaceful and violent activities. While the period when the Ogonis were at the forefront of the struggle was largely peaceful, the recent shift of focus to the Ijaws witnessed an escalation in militancy and violence. The response of the federal government has typically included the creation of development boards, state creation, pacification[13] and more recently, the amnesty initiative. The relative peace in the region and consequent increase in oil production figures is touted as evidence of the success of the amnesty initiative by the federal government. Basking in the euphoria of allegedly curbing the consequences of the malaise, the federal government has neglected to resolve the underlying issues that instigated and/or exacerbated the agitation for resource control and resultant restiveness in the region. Thus, while the government is spending billions of Naira in stipend payments as well as educational and vocational training for (ex)militants, it has not invested any meaningful resources to remedy the root causes of the agitation for resource control. In a sense, the agitation for resource control has not recorded any meaningful success.

Resource control: Pursuing Legal realities

It is acknowledged that the drivers for the agitation for resource control are wide-ranging. However, as is the case in modern societies, law is a tool of social engineering that determines the relations between the state and its citizens. Indeed, successive governments, colonial and otherwise, have used the law to effectively wrest control of land, including natural resources from the inhabitants of the Niger Delta. For instance, while the Constitution maintains unequivocally that oil resources belong to the State,[14] the Land Use Act that generally vests ownership of land in the state permits land to be appropriated for any oil-related activities subject to the payment of miserly compensation.[15] These culminate in the Niger Delta people becoming antagonistic and prone to conflict at the slightest misunderstanding.[16] Based on this reasoning, it is posited the law, particularly the Constitution that regulates the relationship between the federating units and the federal government as well as the legal framework regulating Nigeria's oil industry, is the fundamental cause of resource control-oriented restiveness in the region.[17]

In essence, irrespective of which of the four broad classes of resource control is being advocated, amendment to the extant legal framework is necessary. The extent of review is however dependent on the variant of resource control being advocated with all but the 'local' variant requiring constitutional amendment. Amending the Constitution is a convoluted process that the Niger Delta states are unlikely to achieve due to their minority status in national politics. The region's experience at the National Political Reforms Conference (NPRC) in 2005 where they failed to garner the support required to obtain the conference's approval to propose an increase the derivation percentage of oil revenues allocated to the region is a recent reminder of the difficult, if not impossible, task the region faces in the agitation for resource control.[18] Realising this fundamental weakness, it is suggested that the Niger Delta region makes a tactical withdrawal from relentlessly engaging the political rhetoric of resource control since it lacks the political muscle to instigate the requisite legal changes. Instead, achieving elements of 'local' resource control should be recognized and prioritized. These elements are not only relatively achievable (since what is required is the amendment of extant subsidiary legislation) but also have direct positive impacts on the ordinary citizens' lives.

The laws referred to in this regards include those that implicate land use, oil operations, oil-related compensation, access to information, participation in decision-making and access to justice in environmental matters.[19] The amendment of these laws will avail local communities the opportunity to participate in decision-making process concerning their land and natural resources while providing access to legal avenues to resolve matters of dispute

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thereby reducing recourse to militancy. While legislators from the Niger Delta states may sponsor bills to amend the relevant laws, the States ought to explore partnership opportunities with specialist organizations and NGOs to assist in achieving 'local' resource control. There are also international organizations that may contribute to the achievement of 'local resource control' such as the United Nations Environmental Programme and the newly created United Nations Indigenous Peoples Partnership (UNIPP). The former's report 'Environmental Assessment in Ogoniland' commissioned by the Nigerian government has certainly raised the profile of the bad environmental situation in Ogoniland, both locally and internationally, in recent times. The UNIPP created in May 2011 on the other hand has as its primary mandate the assistance of indigenous peoples to fully participate in governance and policy processes at the local and national levels, including conflict prevention in regard to ancestral land and use of natural resources, in essence 'local resource control'.^[20]

Of course, State governments maintain the primary responsibility to promote the human development of their citizens. Evidently, a major factor that hampers human development in the region is hindered access to environmental resources caused by the activities of the oil industry. In essence, citizens should be empowered by their states to protect and enforce their environmental rights including provision of legal aid to access administrative and judicial processes to seek remedies in the event of land appropriation, oil-related environmental pollution, amongst other oil-related issues that have negative impacts on them. Indeed, access to environmental resources not only provide the economic basis of the region's population but also determines their socio-cultural existence. While the hindered access to environmental justice has generally contributed to the violent agitation for resource control in the Niger Delta,^[21] providing access to ordinary citizens enables them to use legal processes to assert their right to 'resource control'.

Conclusion

Briefly, we have attempted to clarify conceptual issues related to defining resource control, a term that represents the agitation of the impoverished, politically and socially excluded and environmentally devastated Niger Delta region to control its environmental resources and enjoy its benefits. This article identified the categories 'absolute' resource control, 'principal' resource control and increased derivation as the three established broad conceptions of resource control. It argued that the conceptualization of resource control be broadened to include a 'local' variant that should aim at ensuring that ordinary citizens have access to their environmental resources and enjoy the benefits therefrom. This article also examined the legal realities of achieving the variants of resource control and revealed that 'local resource control' is the most practicable at this time in the country's history. In conclusion, it is suggested that resource control in the Niger Delta be reconceptualised to recognize and give priority to the 'local' variant of resource control for the benefit of ordinary citizens while providing the basis to promote peaceful resolution of 'resource control' issues.

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[1] R. Ako, 'The Struggle for Resource Control and Violence in the Niger Delta', in C. Obi and S. Rustad, (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics and Complex* (London: Zed Books, 2011), 42.

[2] Paragraph (5) of the Kaiama Declaration. The text of the Declaration is available online at www.unitedijawstates.com/kaiama.html. Accessed on 23 May 2012.

Resource Control in the Niger Delta: Conceptual Issues and Legal Realities

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- [9] 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.
- [10] R. Ako, 'The Struggle for Resource Control and Violence in the Niger Delta', in C. Obi and S. Rustad, (eds.) *Oil and Insurgency in the Niger Delta: Managing the Complex Politics and Complex* (London: Zed Books, 2011), 42.
- [11] See generally, Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (Washington DC: Human Rights Watch Africa, 1999), 92.
- [12] S. Okafor, 'Ideal and reality in British administrative policy in Eastern Nigeria', (1974) 73

Resource Control in the Niger Delta: Conceptual Issues and Legal Realities

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[14] Section 44(3) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

[15] Refer to sections 1 and 28 of the Land Use Act. See sections 2, 28, 29(2) and 47(2) of the Land Use Act and section 20 of the Oil Pipelines Act regarding compensation payments.

[16] Constitutional Rights Project, *Land, Oil and Human Rights in Nigeria's Delta Region* (Benin: Constitutional Rights Project, 1999), 16.

[17] R. Ako, 'Resource Exploitation and Environmental Justice in Developing Countries: The Nigerian Experience' in F. Botchway (ed.), *Natural Resource Investment and Africa's Development* (Cheltenham: Edward Elgar, 2011), 72-104.

[18] R. Ako, 'Nigeria's Land Use Act: An Anti-Thesis to Environmental Justice', (2009) 53 *Journal of African Law* 2, 302.

[19] R. Ako, 'Resource Exploitation and Environmental Justice in Developing Countries: The Nigerian Experience' in F. Botchway (ed.), *Natural Resource Investment and Africa's Development* (Cheltenham: Edward Elgar, 2011), 72-104.

[20] UNDP webpage: <http://mptf.undp.org/factsheet/fund/IPP00>. See also, ILO webpage: http://www.ilo.org/wcmsp5/groups/public/—ed_norm/—normes/documents/newsitem/wcms_167432.pdf. Accessed on 22 April 2012.

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