

THE CONSTITUTIONAL ROLE OF THE NIGERIAN STATE ON THE ENVIRONMENT: A CRITICAL APPRAISAL

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Abstract

The Nigerian State has continued to play an unsatisfactory role in the management of the environment and her politics. Analysts and social commentators are of the view that the roles played so far by the Nigerian state in the management of environmental issues have been very disappointing and frustrating, thus, putting our environment and indeed inhabitants in serious health danger. This paper critically examines the role played by the Nigerian State since independence with regards to environmental issues. The paper begins with the conceptualization of the modern state by looking vividly at the various schools of thought. It goes further to highlight the relevant theoretical approaches which link it to the Nigeria experience. After thoroughly examining the dismal performance of the State in ensuring environmental protection which would enhance sustainable development, the paper recommends that among others that the Nigerian State, as a matter of urgency put in place relevant measures to enhance the protection of the environment as a way of combating environmental degradation and ensuring sustainability.

Introduction

The Nigerian State cannot be said to be different from all other states as it parades the attributes of the modern state (Otite, 2007) Some of the attributes, according to analysts are: (1) Political Sovereignty (2) Legal Sovereignty (3) National Identity (4) Population (5) Territory (6) Definite Government, etc. The State is a legal organization which binds sub nations or groups together. It is an organization which exercises cohesive authority over the inhabitants. It is also a fundamental instrument of political power in a class society.

Furthermore, the State is an institutionalized political authority which encompasses the three arms of Government, the police and the defense forces. With all the characteristics listed above under its shoulders, the state is expected to carry out various functions ranging from the

enforcement of law and order to the provision of welfare packages for her citizens (Anyawu, 1999). Before we go on to examine how well the Nigerian State has played the role of meeting her obligations to the citizens we shall first examine the conceptualization of the modern state by

discussing three views on the state. They are:

- (1) The Classical Scholars School of thought
- (2) The Neo — Classical School of thought
- (3) Marxist Political Economy School of thought

This will make clearer, which of the approaches that can best describe and explain the Nigerian situation.

Conceptualization of the Modern State

In conceptualizing the modern State, we shall look at the following schools of thought:

- (1) The Classical Scholars: Also called liberal scholars, make the following proposition:
 - (a) That human beings are propelled in two diametrically opposite directions. The first is that man sees the need to cooperate with one another, and so by this man is ready to subject himself to the rules of the society. They also argue that man is selfish and assertive in all his dealings, and so man becomes domineering and ungovernable. From their postulations, it becomes clear therefore that man in all his dealings is uncooperative and lawless and on the other hand man is peaceful. The state emerges therefore to resolve this contradicting interest. They place emphasis on the defense of political rights. From this point of

view, the state is presented as an impartial referee, and arbiter in its dealings with human beings.

- (b) **Neo Classical Scholars:** Also referred to as the elite group, argue that the control of the means of production or wealth is the major determinant of political power. The settled argument is that the control of basic means of production in a society is the basic determinant of political power. If you have no resources, you have no power.
- (c) **Marxist Political Economy:** Postulation is based on the infusion and interrelationship between politics and the economy and the pre-eminence of the economy in the relationship. It argues that the economy is the foundation upon which politics is built. Today the state is an instrument of managing the common affairs of the elites.

Theoretical Anchor

Having examined thoroughly the various schools of thought as they relate to the state, we find two political theories relevant to the explanation of this phenomenon, i.e. the role of the state in environmental issues.

They are:

- (1) The Marxist Political Economy approach and the
- (2) Psychological frustration/aggression deprivation thesis.

The former is used to explain the methods used by the bourgeoisie class to control the economy to the disadvantage of the common man (Ohwona, 2007), while the latter is

used to explain the reactions and aggressions of the frustrated host communities from whose lands the oil and solid Mineral resources are exploited (Aboyade, 1993).

1. The Marxist Political Economy Thesis: Although, this had been discussed under the sub-heading of conceptualization of the modern state, its application to the Nigerian situation was not discussed and explained. This thesis argues that the economy is the foundation upon which politics is built. Viewed succinctly, the political leaders are also the same persons that control ownership of the big mines and oil companies that leave the environment degraded after massive exploitation of mineral resources (Ogbiede, 1993). Right from the period of inception of Nigeria as a nation, the bourgeoisie class formed themselves into compradors, through conspiracy with the multinationals to perpetrate underdevelopment through expropriation of surplus extractions (Ekwerhare, 1997).

Of all associations formed by man, the state is the most organized at which level politics can be conceptualized. Today, the state is an instrument for managing the common affairs of those who control the economic base. To the Marxist political economy scholars, the state is not an impartial arbiter. They believe that the state is biased and is controlled by the dominant class. Class here is defined concretely as a relationship of one group to the ownership and control of the means of production. This endemic struggle between the haves and the have-nots results into perpetual

instability, which has characterized the Nigerian state. The strength in this thesis are:

1. A ruling dominant class actually exists in the state and members can be easily identified-owners of the means of production.
2. The state is not neutral in the monitoring of human relations — the state is an institution for the promotion of the interest of the dominant class. The state is therefore a partial judge.

Applied to this debate, the disappointing role of the state has consistently led to oppression and chaos in the management of environmental protection regimes in the country. It will be safe to say that policies which are relevant to protection of the environment are not formulated at all, and even where there are little traces of formulation of such policies, they are either haphazardly implemented or not implemented at all. We shall discuss this in detail in the main body of this work.

The Psychological Frustration/ Aggression/ Deprivation Approach The second theoretical approach which has been found to be relevant in this discourse is the psychological frustration aggression deprivation thesis. The wave of reactions to government nonchalant posture in addressing environmental problems has led to aggressions and violence in the country especially, the Niger Delta. This thesis was given vent by some Yale University Scholars (Dollard et al, 1939). This model, premised aggression on frustration which according to (Dollard et al, 1939), states that the occurrence of aggression behaviour also presupposes the existence of

frustration and that the existence of frustration always leads to some form of aggression. They argue that there is a direct positive proportionate reaction between the instigation of aggression and the amount of frustration. This amount is dependent on the strength of interference and the number of frustrated responses. The resulting instigation to aggression will be directed towards the perceived agent of frustration and the act of aggression reduces instigation to aggression. Frustration is defined as interference with a goal response, while aggression is equated with desire to hurt or injure others (Bollard et al, 1939). For instance, (Anifowose, 2003) contends that individuals or groups who feel frustrated in the attainment of their desires will introduce aggression. In this case, relative deprivation is used to explain the frustration of inhabitants of the mineral bearing regions and Communities. Gur (1970) is one of the major advocates of this approach in explaining conflict and violence.

This paradigm is premised on two assumptions, viz:

- (a) A discrepancy between outcome and expectations and the prevalence of outcomes that are regarded as unjust. These assumptions can singly or jointly cause a feeling of relative deprivation.

In explaining the importance of this theory to understanding conflict, Draman (2003), explains that “with poor governance structures and unequal access to the distribution of economic resources, some segment of the population tends to have better opportunities than others. This inevitably alters power relation and in turn leads to the persistence of poverty amongst certain groups with very

serious consequences for social instability. When people perceive poverty and other oppressive woes as being inflicted on them, then the frustration – aggression thesis becomes relevant in understanding why men rebel.

The Nigeria Experience

The extraction of solid mineral and oil in Nigeria has been on for over a century. Apart from the environmental degradation inflicted on the areas of extraction, ecological adverse effects caused by erosion, drought and other natural disasters on the environment have received little or no attention by State authorities (Oniboge, 2003). A cursory look at the Jos Plateau Environment will quickly give an evidence of this malady. Gorges and undulated terrain are easily visible. These annoying features are as a result of massive extraction of tin and columbite minerals from the area. Elsewhere, devastation of the environment caused by flood and erosion are also easily visible — look at the Agbor area of Delta State for example.

Also, in the Gbaramatu area of Delta State, there is a serious environmental threat both to human and aquatic lives as a result of massive crude exploration and gross neglect of the environment by the government and the multinational oil companies operating in the area. The illegal refineries set up by the militia groups and sea pirates have not also helped the environment as in most cases when the illegal refineries are destroyed by the agents of the Nigerian State, nothing is done to clean up the environment. Deep cuts on major highways are not difficult to notice in most of the States, and Government has done nothing about this life threatening situation. In the Jos Plateau area, reclamation of lands which ought to be a

priority policy by relevant authorities has been abandoned. More annoying is that compensation packages are not usually given to land owners. Once the mining organizations are issued licenses and blocks by government, they no longer give audience to the traditional land owners. This accounts for the neglect of the host Communities in terms of company's corporate social responsibilities.

Having considered some national environmental problems, especially those concerned directly with extraction of resources, we shall now consider vividly environmental issues in the Niger Delta Region. This is very important because that area has become a flash point for crisis in the Nigerian State, as that region provides over 90% of the country's total resources (Onibogi, 2001).

Critical Environmental Issues in the Niger Delta

It is important at this point to list some of the critical environmental issues in the Niger Delta. Some of them are:

- (1) Oil spillage
- (2) Gas flaring
- (3) Environmental Degradation
- (4) Poverty
- (5) Pipeline explosions
- (6) Limited government/public sector presence
- (7) Distrust of the government / petro-business alliance
- (8) Poor Health facilities
- (9) Lack of basic infrastructure
- (10) Political marginalization

Since the focus of this essay is government or state role in environmental issues, we shall examine item six (6) limited

government/public sector presence in combating these maladies.

Environmental Strategy in the Oil Industry

Historically, industrialization has been largely considered as the surest way to rapid development, and so for quite a long time, nobody paid any serious attention to the environmental consequences of industrial activities in Nigeria. Concerns for the environment were consequently in late 1950s and early 1960s more related to the issues of public health and the pollution of water bodies by ship craft (Falomo, 1977). Some of the earliest legislative steps taken in this regard are to be found in the Public Health Act 1958, the Destruction of Mosquitoes Act, 1958, Oil in Navigable Waters Act 1968. The dumping of a large quantity of toxic waste at Koko in 1988 provided a turning point in the Nigerian experience with environmental policy. The swift response of Government was the establishment of the Federal Environmental Protection Agency (FEPA). Decree No. 58 which established FEPA empowered the body to define and prescribe minimum national standards and guidelines for environmental parameters such as water and air quality, noise level, etc and to monitor and control the movement of hazardous substances. Since the creation of FEPA in

1988, several other legislations and regulations have been put in place in order to check environmental hazards in the country. The implementation of FEPA's mandate had been a systematic chain of events beginning with the development of the National Policy on the Environment (NPE) that was launched in November 1989 (Orubu, 2000a).

As with all cases of environmental strategy, the key objective of the NPE is the achievement of sustainable development through:

- (i) Security for all Nigerians a quality of environment which is adequate for their health and well-being.
- (ii) Conserving and using the environment and natural resources for the benefit of present and future generation.
- (iii) Restoring, maintaining and enhancing the ecosystems and ecological processes which are essential for the functioning of the biosphere, and to preserve it.
- (iv) sBiological diversity and uphold the principle of optimum sustainable yield in the use of living natural resources and ecosystems.
- (v) Co-operating in good faith with other countries, international organizations and agencies to achieve optimal use of trans-boundary natural resources and effective prevention or abatement of tans-boundary pollution.

In 1991, the National Environmental Improvement Effluent Limitation Regulation, as well as the Pollution Abatement, Industries and Facilities Generating Waste Regulation were put in place. Furthermore, in 1992, the Environmental Impact Assessment (EIA) Decree (No. 88) was promulgated, which made EIA studies mandatory for a wide spectrum project, including field and related development projects in the oil industry.

Apart from the existing regulation relating to the control of pollution in the oil industry (such as the Oil Pipeline Act 1956, 1965;

Oil in Navigable Waters Act 1968, the Petroleum Act 1969; petroleum (drilling and production) Regulations 1969; Associated Gas Injection Act 1979 and related regulations (1984, 1985), the petroleum industry has generally received critical attention of the environmental institutions in Nigeria. For example, environmental surveillance in the oil industry was placed squarely as the responsibility of the Department of Petroleum Resources (DPR). In principle, the activities of DPR, with respect to environmental surveillance in the oil industry were guided by the objectives of the NPE and the overall regulatory framework established by FEPA.

In 1991, DRP came up with a set of Environmental Guidelines and Standards for environmental protection and management in the petroleum Industry. In drawing up the Environmental Guidelines and Standards, DPR drew its authority and power from the relevant petroleum statutes and regulation 1969' part II section 8 (1) b (iii) of the petroleum Act 1965; section 43 of the petroleum Refining Regulation 1974; section 25 and 36 of the petroleum (Drilling and Production) Regulation 1969; part II, section 7 and part iv section 44 and 45 of the Mineral Oil (safety) Regulation 1963 (Nwankwo, 1998).

The Environmental Guidelines and Standards for the petroleum industry as issued by the DRP require all operators to do the following (among others):

- Prepare an environmental management manual

- Put in place an environmental audit procedure
 - Put in place an environmental site inspection and remediation procedure, based on risk assessment
 - Oil spill investigation and clean up requiring a joint investigation involving the spiller, DPR and the community impacted, within 24 hours of reporting such spill, and the issuance of a clean-up certificate by DPR
 - Prepare list of projects which require environmental impact assessment (EIA), which should include seismic and dredging activities, waste treatment and disposal projects.
 - Establish testing criteria for reusable materials mostly from treatment waste.
- Waste treatment disposal projects to require EIA
 - Criteria for laboratory accreditation
 - Solid Phase Biodegradability Test Protocol.

In 1998, the Environmental Guidelines and Standards for the Petroleum Industry were reviewed by DPR. Apart from the original issues contained in the 1991 Guidelines and Standards, the 1998 revision made several additions including:

- Extension of monitoring to Low Specific Activity (LSA), or Naturally Occurring Radio-Active Materials (NORM)
- Stipulation of objectives for the monitoring programmes of recipient media (say water, air, etc.)
- More stringent requirement for the discharge of special saline substances, cuttings and produced formation water.

It could be said that the existing guidelines and standards are friendly broad, and if well-implemented should, result in environmentally-friendly production practices in the petroleum industry. To what extent environment strategy in the oil industry has conformed to the expectations of environmental protection and sustainable development in the Niger Delta is the focus of the next section.

Government Role (The Role of the State)

The extraction of crude oil over the years has caused an immeasurable damage to the environment. Oil spillage and gas flaring have both affected our soils and water and even atmospheric air. The nonchalant attitude of government has consequently led to poverty, environmental degradation, poor health facilities, lack of basic infrastructure, political marginalization etc in the Niger Delta Region (Otite, 2004).

The oil bearing communities lack any measure of government presence. In most of these communities, any evidence of local, state or federal government presence exists in the fertile imaginations of government spin-doctors and sycophants. However, there is a recurring government presence in Niger Delta in the form of Police stations and military patrol units armed to the teeth and ready for action with the slightest provocation and in some instances,

unprovoked. The government does this to intimidate, strangulate and cow the people into submission which often result in violent confrontations and its attendant consequences.

For the inhabitants of the oil producing communities that sustain the Nigerian state, basic necessities such as functional schools and hospitals are luxury items. If they dare agitate for these luxuries, the state deploys maximum force against them for disturbing the peace, thereby keeping them in check.

This is exactly the case with the Gbaramatu people and many other oil producing communities in the Niger Delta. The lack of basic infrastructure in the Niger Delta is perhaps one of the most visible signs of neglect. Electricity, drinkable water, roads, elementary and secondary schools, health centres and telecommunications system are largely inadequate in Niger Delta Communities. At the beginning of Nigeria return to democratic governance in May 1999, the Oil Producing State of Bayelsa was not connected to the National electricity grid. Oil companies have active community based projects that are promoted with evangelical fervor in media establishments. However, these projects are fewer than expected in the oil producing communities to meet their demands, limited in scope and sometimes these projects are given as patronage to community, political and traditional elites which keep them in perpetual ongoing status. In some cases, the projects are mindlessly abandoned to the detriment of the end users. The lack of basic infrastructure in Niger Delta is not only outrageous but also callous.

Distrust of Government and Oil

Companies

In developed countries, the most strategic and resilient partnership is the military/Industrial complex. However, to survive, the military/industrial complex in developed countries must remain sensitive to the final arbiters of public policy - citizens that vote in democratic elections. In Nigeria the dominant superstructure is the government/petro business alliance that acts with impunity. Every Nigerian government, including the present government, brooks no opposition to this unique alliance. This powerful alliance with mutual benefits does anything humanly possible to prosper and maintain their continuous grip over the institutions of state which they use to reward loyalists and punish dissenting voices. To those who manage the institutions of state and their collaborators in the private sphere of the economy- Nigeria is seen as a rentier state.

The oil producing communities understand the existence and importance of the alliance, and consequently recognize the state and the oil/gas industry as one and the same. Thus, it is an exercise in futility for the oil/gas industry to distinguish their obligations to host communities from that of the state. This is so because of the conspiratorial role between the state and multinational oil corporations operating in Nigeria.

Current Trends

To begin our discussion here, we will like our readers to carefully review the National Petroleum Policy of Nigeria as announced by the Nigeria National Petroleum Corporation, (NNPC). The broad objectives of the National Petroleum Policy amongst others include the following among others: s

- (1) Ensuring that petroleum exploration and development activities are conducted with due regards to adequate environmental protection.
- (2) Ensuring peaceful conducive environment in the domestic oil and gas geographical areas of operation as well as safety of oil facilities.
- (3) Investing part of the revenue accruing from Petroleum in other sectors of the economy such as agriculture, industries and infrastructure in realization of the fact that petroleum is a wasting asset.

From the provisions above, it is clear that government recognizes that environmental issues in the Niger Delta are very important as indicated in number one above. Also in (3) above, government recognizes that oil could dry up any day and so there is need for diversification through serious investments in other sectors of the economy. Perhaps it is for some of the above reasons that departments and ministries of environment are established at states and federal levels of government. The question being asked is “are these bureaucracies functioning? This is because the starkest evidence found is the embezzlement of funds allocated to them for environmental problems.

Furthermore, the much expected diversification of the economy is still not in sight as the country still depends largely on oil as seen from the present strangulating economic hardship occasioned by the global crude downturn and the government over reliance on crude oil. Environmental impact assessment programmes are usually shoddily handled by government officials. The oil producing companies, however, do better than

government as the incidence of bribery and corruption is less severe here. Recently, Nigeria finally got a National Biodiversity strategy action plan. The high point of the strategy and action plan is the strong evidence it provides that the life support systems on which the nation’s economy and society depend are being overloaded and eroded. It also argues that unless a shift is made towards sustainable development, severe irreversible damage may face the environment with profound ethical and aesthetical implications. This move is described as a blue print of responsibilities for future generations.

In preparing the national plan, the process had involved broad participation from various agencies of the federal and state governments, the academia, non governmental agencies and local communities through national and regional level consultative workshops.

The National Biodiversity Strategy and Action Plan (NBSAP) is expected to drive the sustainable use of biodiversity through addressing the fundamental problem of poverty and degradation which will involve a programme of rural communities, a significant portion of the benefits of conservation will be ploughed back. Also, other environmental improvement strategies are planned by the NBSAP to improve the environment and living conditions of people in the oil producing and impacting communities.

Environmental Pressure Groups

This is still very much at its lowest ebb in this part of the world. Only a few of them exist. The ones that abound are not real pure environmental pressure groups. They are quasi environmental pressure groups. This is

because their objectives are actually to amass personal gains and not to improve on the total environment. In the developed societies, several of them abound and are purely objective in their demands. Some of the reasons why environmental pressure groups are difficult to emerge are:

- (1) They relate to the commons
- (2) Those who are supposed to be the target are those who benefit, i.e those involved in environmental degradation.
- (3) The technicality and scientificity of environmental issues.

These bodies include: Friends of the earth, Nature Police, World Environmental Movement, and Environmental Rights Agency, based in Berlin are some existing environmental pressure groups. At the quasi level are MOSOP (Movement for the Survival of Ogoni People, MEND — Movement for the Emancipation of Niger Delta, etc.

At inception, the demands of these local groups were genuine, as they were centred on drawing government and the world attention to the deplorable state of the Niger Delta environment and the gross marginalization of the region by successive administrations in Nigeria in terms of political patronage and infrastructural development. Pockets of achievements were recorded during the early days of the agitations as it led to the emergence of an Ijaw man from the Niger Delta as Vice President and President of Federal Republic of Nigeria. The agitation from these groups also brought about the Presidential Amnesty programme where a

number of ex-agitators were granted amnesty and subsequently trained on various skills until the movement and agitations became commercialized and thus criminalized.

It is therefore disheartening to note that till date, there are no serious efforts at the Ogoni clean-up despite the fanfare and media hype that greeted the federal government announcement on Ogoni clean up. This is the brutal and bitter reality of neglect and mindless abandonment being experienced by the Niger Delta people from the Nigerian state and the oil industry.

Conclusion

Thus far, we have discussed vividly the role of the state in the management of environmental issues. We concentrated our discussions on the domestic front that is Nigeria, our country. In our introduction of the topic we explained clearly the issues to be x-rayed. We also employed two theoretical perspectives to clearly explain the phenomenon under discourse. They are the Marxist Political Economy approach and the psychological frustration and deprivation thesis. We explained the contemporary conceptualization of the modern state and exposed the classical scholars, neo classical scholars and the Marxist schools of thought on the conceptualization of the modern state. We went further to extract the Nigerian experience in the formulation and implementation of environmental protection policies and the challenges. It was discovered that the Nigerian state is a total failure in environmental issues.

The paper asserted clearly that the role of the state in managing environmental Issues has been very disappointing and frustrating. It clearly advocated reasons why it felt so and

the reasons are clearly convincing. The paper went further to examine critical environmental issues in the Niger Delta where environmental degradation is most pronounced in Nigeria. Thereafter, it examined and explained clearly, the devastation caused on our land and people by mining activities and natural disasters which are beyond the control of man and for which the state has continued to play disappointing roles as regards creating succor to environmental problems.

Government role (the role of the state) was exhaustively analyzed in that section of the paper.

Briefly, the influence and paltry activities of the international community was also discussed and it was found that the international community's role in environmental issues had not been encouraging due to some inhibiting factors.

Finally, current trends in the direction of environmental protection pursuit were highlighted. It was clear from these explanations that efforts are being made to address environmental issues in Nigeria. The areas where the state has made commitments to environmental challenges were listed.

Our Conclusion is that considering all factors advanced in this argument, Government (State) has woefully failed in meeting its obligation to environmental issues in the country.

Recommendations

The paper therefore suggests the following:

1. The state should rise to meet its obligation to environmental issues in the country. This should be done through the formulation and implementation of positively focused, environmental protection

policies which will assist in the protection of our environment and create situations for sustainable development.

2. Apart from returning enduring peace to the Niger Delta and other parts of the country where mineral extraction or natural disaster have inflicted some damages into our natural habitat and have deprived our citizens from getting legitimate claims on their lands, crops and other displaced valuable assets, the country should improve on its images at the international front as environmentally friendly.

3. The Nigerian state must urgently embark on massive clean-up exercise in Ogoni land and other areas that have suffered oil spillages and other environmental hazards within the Niger Delta region if the relative peace must be maintained and sustained.

4. Government must also put adequate compensation plans in place for those who suffer from the impact of the oil extraction activities especially whose farmlands and aquatic sources are destroyed. The government can do this by coming up with new policies which compel the oil companies to live up to their responsibilities.

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