

REFLECTIONS ON RESOURCE CONFLICT AND POLITICO- LEGAL VIOLENCE IN NIGERIA'S JURISPRUDENCE

**BY
CHRIS WIGWE***

INTRODUCTION:

The struggle to control resources shows a particular kind of struggle, a historical but human conflict. It is an age long conflict of control of one man over the next man. It is a conflict over the ownership and control of resources. This conflict, over the centuries, has adopted several strategies ranging from systematic subjugation and decimation of the weak and powerless to outright armed conflict. It has also adopted slavery and colonialism aided by the force of arms. This conflict has also adopted structural marginalization, oppression, suppression, subtility and deceit as its ready handmaids and instruments ancillary to its peculiar warfare. This conflict has also used legality (laws) as one of its instrument of war since by the social contract theory one is expected to obey laws made in his society on the pain of sanction for default. The purpose of this article is to do a critical survey of the unending war or conflict over resources in the Nigerian State and proffering solutions to this ugly situation in Nigeria's politico-legal environment.

Resource conflict is a conflict of interests where the God given owners of resources struggle to assert their ownership rights and control over their resources but another set of people who are always powerful, denies them this God given rights through the force of arms, unjust and confiscatory laws, slavery, colonialism, subjugation, suppression, structural marginalization, divide and rule tactics, double standards, the list is indeed endless as if to say, whatever comes, the oppressor can always adopt a strategy to steal and cart away peoples resources. Whatever stands on the path of this "honourable theft" whether humanitarian concerns, environmental concerns, socio-political concerns, health concerns, etc, is immediately spotted and seen as an enemy of the State and such "must be removed" by any of the above mentioned strategies.

Historically, one ingredient that has played itself out in this struggle is the

*Senior Lecturer, Faculty of Law, River State University of Science and Technology, Port Harcourt.
Rivers State, Nigeria

palpable level of insensitivity and violence unleashed on the weak and powerless by those who “must take”, sorry, ‘steal” these resources.

Another striking observation is that the world’s natural resources are, as if a rule, found mostly in regions inhabited by indigenous people who are powerless. According to Ledum Mitee,¹ one characteristic feature of such regions is that they, as if a rule, have very difficult terrain, bad roads, and where government presence and governance are very rudimentary. The human and environmental rights activist maintains that these abode of natural resources has over the years constituted a fault line in nation building and that it is also in these regions that most of the violent crises and senseless massacre has taken place.²

The real root of this violence is that sections of the society, who are usually powerful, use their advantage to capture the state itself or the government apparatus (both in political and economic sense) to secure political power and those in power, and to own and control the economy as a means of securing political power.³ In other words, the very natural resources over which International law⁴ confers peoples with an inalienable right to full sovereignty are now being captured by a few whose preoccupation is to irresponsibly amass considerable wealth (whilst afflicting its real owners with misery and squalor) as a means to capturing political power, and cynically, to use political power in turn to capture and confiscate, sorry, steal the resources to masturbate their unquenchable greed.

In Nigeria, even before the unfortunate mistake of 1914, institutional violence had been established as a process of consolidating the commercial and economic interests of British shareholders and the British Government during the era of slavery and colonial rule. In the era of the inhuman trade

¹ Ledum Mitee; Nigeria: The challenge of statehood (Ebenezer publishers, Port Harcourt 2007) p. 36-37.

² Ibid.

³ Ibid at p. 41.

⁴ Article 1, United Nations Declaration on the Right to Development, Resolution 41/128 of December 4, 1986; Article 21, African Charter on Human and Peoples’ Rights. By the decision of the Supreme Court in Abacha vs. Fawehinmi (2000) 6 NWLR (part 660) 228, the African Charter on Human and peoples Rights is not just part of our corpus juris but it occupies a hierarchy just below the constitution

of slavery, men, women and children were carted away through violence to Europe and America⁵

When slavery abated and attention shifted to palm oil trade, the indigenous people and communities became enmeshed in a new struggle as they protested their denial of benefits of the palm oil trade by British merchants who ruled over the area, using brutal force and bribes to maximize profits while leaving the local people and the local communities with nothing in return and/or threatened livelihoods. Traditional rulers were either deceived or forced to sign treaties and agreements they never understood⁶ just to ensure the British get “Resources”. This period witnessed whole invasion, subjugation, decimation and massacre of communities that resisted the trading practices of European merchants, and, the deposition, exile and death of community traditional rulers such as king Jaja of Opobo, Chief Nana Olumu of Itsekiri, Ovonramwen Nogbaisi of Benin Empire, etc.⁷

In the colonial rule itself motivated by the craze to grab more resources for British, the policy of violence reigned supreme. In fact, it elevated violence as a state policy in its conquests of territories, which subdued communities through serious and conventional warfare just to open up access to, grab and control resources in those areas for the good of the British government and its business partners, however, this spelt misery for the powerless, weak but original resource owners.⁸

The colonial administration quickly seized all mineral resources probably as booties of war and vested it on themselves, that is, the British crown (what more is called stealing?) and made confiscatory and dispossessional laws vesting the ownership and control of all minerals in the British Crown (clothing injustice and illegality with legality⁹). The colonial administration granted concessions to, and entered into agreements with its companies and merchants to exploit resources without the consent or even knowledge of the indigenous people.¹⁰

⁵ J. D. Fage, “Introduction to the History of West Africa” (Cambridge: 1965) p. 57; Ledum Mitee; *ibid* p. 2.

⁶ Ledum Mitee; *ibid* @ II 12; see fn 13 ch 1.

⁷ Sagay; Nigeria: Federalism, constitution and Resource control; *The Guardian*, Wednesday, May 23, 2007; see Ola Rotim; Ovonramwen Nogbaisi (Oxford:1974).

⁸ *Ibid*.

⁹ Minerals Oil Ordinance, 1914; Minerals Act, 1946.

¹⁰ See

After independence, successive governments in Nigeria did not only inherit this inhuman practice and posturing but also reinforced this theft through the state apparatus via statutory enactments and even constitutional entrenchments, which dispossesses, confiscates, expropriates and divests the local people of rights of ownership and control of all lands and mineral resources that are now vested in the central government¹¹. In addition, the state uses military might and superior violence to quell any likelihood or semblance of dissent that stands on the path of resource capture, sorry, resource theft.

The Nigerian political history is replete with senseless murders, cruelty and massacre of indigenous peoples who are mostly of the minority tribes. Isaac Adaka Boro was murdered because he dared to confront these injustices in the Nigerian State.

The blood-chilling massacres of the Ogonis by the Nigerian state constitute an eloquent testimony of the ever-raging conflict and violence in Nigeria's politico-legal environment. Ken Saro-Wiwa,¹² appalled by the denigrating poverty of the Ogoni people who live on a richly-endowed land, distressed by their political marginalization and economic strangulation in the iniquitous Nigerian state, angered by the devastation and degradation of their land (their ultimate heritage), anxious to preserve their right to life and a decent living and determined to usher to the Country as a whole a fair and just democratic system which protect everyone and every ethnic group and gives all a valid claim to human civilization; took the Ogoni cause to the international community¹³ under the auspices of the Movement for the Survival of Ogoni People (MOSOP) after the Nigerian Government maintained a graveyard silence over the plight of the Ogonis even after the Ogoni Bill of Rights was severally presented to the Nigerian state. The Ogonis had to confront the injustice and the artificial contraption called Nigeria, albeit in a non-violent manner.

¹¹ S. 44 (3) 1999 Constitution; Petroleum Act, 1969; Offshore Oil Revenue Decree No. 9, 1971; Territorial Waters Act, Exclusive Economic Zone Act, Land Use Act, 1978, Oil Pipelines Act, 1956, and many more.

¹² Human & Environmental Rights Activist, Writer & Poet, Ogoni Martyr, sentenced to death by a Kangaroo tribunal and executed on No. 10th 1995 alongside 8 other Ogonis by the Abacha regime amidst International pleas for clemency. For full detail on the Ogoni issue see; Ogoni: Trials & Travails, Civil Liberties Organization (Nig. 1996); HRW; the price of Oil (2000).

¹³ CLO, *ibid* @ p. 43; The price of oil.

Ken Saro-Wiwa's response to the allegations of murder against him at the Justice Auta Tribunal¹⁴ gives a lucid picture of the criminal injustice and politico-legal institutionalized violence orchestrated against the Ogonis symbolic of the Niger Delta and other minorities in the Nigerian state:

Shell (SPDC) and the Nigerian Military dictatorship are violent institutions and both depend heavily on violence to control those areas of Nigeria in which oil is found....

Shell has waged an ecological war in Ogoni since 1958. An ecological war is highly lethal, the more so as it is unconventional. It is omniscidal in its effects. Human life, flora, fauna, the air, fall at its feet, and finally, the land itself dies. This is violence at its height although society (particularly the third world) is not aware of its methods and effects. Generally, it is supported by the entire traditional instruments ancillary to warfare: propaganda, money and deceit. Victory is assessed by profits, and in this sense, Shell's victory in Ogoni has been total¹⁵

The human rights crusader explains further that *"the Nigerian State survives on the practice of violence and the control of the means of violence. Since it also depends for survival on the availability of oil money, its violence is directed at oil producing areas such as Ogoni. Apart from physical attacks, it takes other forms: the denial of employment, of political power, of oil royalties and rents to landlords. Looking the other way while a multinational oil giant such as Shell and Chevron devastates the environment is also violence.... Between oil companies such as Shell and the Nigerian military dictatorship, there is alliance. The military dictatorship holds down oil-producing areas such as Ogoni by military Decrees and the threat or actual use of physical violence so that Shell can wage its ecological war without hindrance and so produces the oil and petrodollars"*.¹⁶

¹⁴ Ogoni Civil Disturbances special Tribunal (OCDST) popularly called "Kangaroo Tribunal" Constituted by the Abacha Military regime, which have gone down the annals of history as the greatest debasement of the legal profession and Legal trials

¹⁵ Ken Saro-Wiwa: "My story", text of statement to the civil Disturbances Tribunal, reprinted in Ogoni: Trials and Travails (Lagos: CLO, 1996) pp. 42-44

¹⁶ Ken Saro-Wiwa, *ibid.*

In another breath, the environmental rights crusader stated that:

The demand for the control of economic resources is naturally concomitant with political control. It is wrong that the resources of the Ogoni people should be used to develop other Nigerian ethnic groups and to the exclusion of the Ogonis themselves. Since Nigeria is a federation, each ethnic group should control its resources, contributing only what it can to the federal purse for the use of agreed federal services. The practice in Nigeria today where the military dictator or a civilian ruler backed by a pliant army arrogates to himself all the resources is armed-robbery. It is irrelevant that such sharing is backed by decree or by law. Who makes the decree or law? Are the owners of the resources adequately represented at the making of such decrees and laws? Do their views matter? The answer is no. And to that extent, it is neither fair nor proper¹⁷

The message of the Ogoni movement was rather too hot for the system; they had to destroy the messenger. There was a military crackdown in Ogoni from 1993 to 1996. More than 2000 Ogonis¹⁸ were senselessly massacred by the military under the different command of Obi Umahi and Major Paul Okuntimo¹⁹ who carried out the notorious “wasting operations”²⁰ in Ogoniland. They razed down buildings, wounded several thousands, looted, raped women and young girls and maimed the Ogoni people. This was climaxed by the judicial murder of Ken Saro-Wiwa, the arrowhead of the Ogoni struggle, and 8 other Ogoni martyrs. The murderous Nigerian state sent deaths, gruesome and blood-chilling massacre of innocent citizens across the length and breadth of Ogoniland for daring to find a voice to assert, protest and demand their inalienable rights.²¹

Another example we cannot forget easily is the raid, gruesome massacre and mass slaughter of the Umuechem people by the paramilitary Mobile

¹⁷ Ogoni: Trials and Travails (Lagos: CLO, 1999) p. 77.

¹⁸ Human Rights and Environmental Operations in Nigeria: Green Peace Report, 2000, p. 2.

¹⁹ The Price of Oil (New York: Human Rights Watch, 2000) p. 123-129

²⁰ Fact Sheet, R/S, May 12, 1994; Major Paul Okuntimo's Secret memo to the then Rivers State Military Administrator, Lt. Col. Dauda Komo; detailing the wasting operations on the Ogonis and Government's sponsoring of intertribal wars against the people.

²¹ The Price of Oil, ibid @p123-129, The Ogoni Bill of Rights

police popularly known in Nigeria as “kill and go” at the instance and request of SPDC to the Rivers State Government²² on October 30 and 31, 1990 killing eighty unarmed demonstrators leaving several others wounded and 495 houses destroyed.

Under president Obasanjo, in the year 2000, the Odi Community was completely razed down by soldiers.

All these senseless slaughter of fellow citizens and innocent minorities is for one reason, just to capture oil and oil revenue to service the murderous greed of the majority tribes and a handful of political elites. It drives the point home of Ken Saro-Wiwa’s statement that:

“Human life does not mean much to those who have benefited from the oil”.²⁴

The battle for ownership and control over resources rages on. The entire drama surrounding what is popularly known as the Resource Control Suit²⁵ deserves our attention in this post-military, 21st century civilian era.

The above suit, though not strictly about resource control as popularly called, has some implications on resource control and ownership. According to an environmental activist;²⁶

Although the legal matter over oil and gas instituted by the Federal Government against the 36 states of the Federation is strictly not resource control, in its wider meaning, it is a move towards permanent seizure, ownership, control, use and management of oil and gas resources offshore. The communities and the people of the Niger Delta living on the coast stand to lose or gain on the matter.....a community understanding of resource control cannot ignore this suit because its outcome may have earth-shaking

²² The Price of Oil (New York: Human Rights Watch, 2000) p. 123-124; Anyakwee Nsirimovv; “The Massacre of an Oil producing Community: The Umuechem Tragedy Revisited (IHR & HL. Port Harcourt, Nov. 1994).

²⁴ Shell-shocked: The environmental and Social cost of Living with Shell in Nigeria, Green peace report (Netherlands: Green Peace International, 1994) p. 18.

²⁵ A. G. Federation vs. A.G. Abia & 35 Ors (2001)11 NWLR (Pt.725)689

²⁶ Orono Douglas; “Resource Control and Politics of Definition”, The South-Sought Express, Friday, Nov. 16, 2001.

*implications for the continuing struggle for resource control and by extension self-determination.*²⁷

The suit was about the controversy concerning the treatment of offshore oil and gas production in the allocation of the revenue. Whereas the oil producing states argue that the production from offshore fields are to be taken into account in computing the revenue accruable to them from the Federation's account, the Federal Government insists that offshore production cannot be taken into account, as no littoral state can lay claim to ownership of the offshore territory abutting that state. The Supreme Court held (Karibi-Whyte JSC dissenting) that the littoral states cannot claim derivation from offshore oil production, thereby affirming the claim of ownership of the federal government to all mineral resources, both onshore and offshore. This is another instance of bullying the Oil Producing States, coincidentally, the minorities: the Niger Deltans.

It is important to point out that amongst the seven justices of the Supreme Court that decided this case, only one was from the Niger Delta (i.e. Karibi-Whyte JSC as he then was). No wonder he was the only one who gave a minority, dissenting judgment. All the rest were from the majority tribes from whom the minorities have been striving to get liberated from the shackles of their political and economic slavery. With profound respect to the venerable law lords, it is, indeed, childish and laughable to think that the justices of the Supreme Court were mere logs of wood with no blood flowing through their veins.

The composition of the Supreme Court that heard the case was made up of mostly members of the major ethnic groups from whom the South-South people are struggling to free themselves from their economic and political enslavement. The composition thus negates the principle of natural justice, *nemo judex in causa sua* - you shall not be a judge in your own case²⁸.

Again, out of the seven justices, four were from the North so that at any point in time, the North can always have a majority judgment. This is the same situation with the Senate and House of Representatives of the National Assembly where the North alone, having 19 states, can always form a simple majority. This is the very reason for the fragmentation and

²⁷ *ibid.*

²⁸ See Gani Fawehinmi vs. NBA.

balkanization of states by the majority tribes, so as to everly bully, enslave and stampede the minority tribes into unfavorable and servile submission.

Another sore point in the above decision of the Supreme Court is that the court, with profound respects, ignored certain relevant laws thereby placing a wrong interpretation on many others laws. First of all, the distinction between offshore and onshore revenue for the purposes of derivation which, hitherto, had been the norm since the obnoxious Offshore Oil Revenue Decree No. 9 of 1971 that vested the ownership of offshore revenue in the Federal Government but survived the repeal of that law in 1975, was finally abolished by S. 6 (6) of the Federal Allocation Revenue (Federation Account, etc) Act No 106 of 1992, which provides thus:

“For the avoidance of doubt, the distinction hitherto made between the offshore oil and onshore oil mineral revenue for the purpose of revenue sharing and the administration of the funds for the development of the oil producing areas is hereby abolished”²⁹.

The fact that this Act was not repealed by any subsequent Act of the Federal Republic of Nigeria (Certain Consequential Repeals etc) Act of 1999 or inconsistent with any subsequent Act makes it an existing law deemed to be made by the National Assembly. Any claim by the states to have exclusive or concurrent jurisdiction to exercise executive, legislative or judicial powers over the territorial waters or the exclusive economic zone is beside the point, as our laws on this regard are clear. However, this aspect of sovereign right bears no relationship with demands for derivation of revenue from natural resources; neither does the exercise of sovereign right in the face of S. 162(2) of the 1999 Constitution³⁰ obliterates the prior beneficial right of the peoples of the littoral states, who had lost their quiet use and profits from the waters and have to contend with oil pollutions and spillages from offshore operations that threaten their fragile environment by killing flora and fauna and poison their waters, a complete threat to their livelihood and existence.

It is in view of the above unassailable argument that we submit, with respects, that the Supreme Court erred in law when it held for dichotomy between onshore and offshore revenue and that the littoral states are not

²⁹ Section 6(6) Federal Allocation of Revenue (Federation Account, etc) Act No. 106 of 1992.

³⁰ CAP C 23, LFN, 2004.

entitled to claim derivation from offshore oil production. It is therefore submitted that the littoral states, in the light of the above reasoning, are entitled on the merits, to a share of 13% of all revenues derived from offshore natural resources.

Notwithstanding the above, there were subsequent attempts, albeit haphazardly, at a political resolution of the issue by the enactment of the Allocation of Revenue (Abolition of Dichotomy in the Application of Principle of Derivation) Act 2004, which prescribed the area to be used for purposes of computing revenue accruable to the Federal Government to include all areas within the 200 meters isobaths contiguous to a littoral state as forming part of the territory of that state for derivation purposes, leaving the vast area of the Continental Shelf and the Exclusive Economic Zone within the jurisdiction of the Federal Government.³¹ This is another “carrot” measure by the greedy federal government bent on stealing revenue accruing to the people. The battle rages on.

Another instance of the ongoing conflict is the drama surrounding a proposal placed before the House of Representatives in 2001. The proposal was for the transfer of ownership from the government to the local communities under the Petroleum Act in 2001 presented by Honourable Temi Harriman of the House of Representatives from Delta State but was defeated by the ganging up of Northern House members with shouts of its unconstitutionality although the bill was welcomed by the south. Sadly, as one of the weapons of enslavement and bully, our constitutional arrangement favours a simple majority to the Northern states in both chambers of the National Assembly, so that any bill, which they consider unacceptable to Northern interest is out rightly defeated, even in the face of complete southern unanimity.

Also, the National Political Reform Conference (NPRC) convened by President Olusegun Obasanjo Government in 2005, is another forum that demonstrates the ranging conflict over who controls and gets more resources in the Nigerian state, and as expected, the majority tribes had their way, irrespective of the feelings and plight of the minorities. In the different position papers submitted at the conference by the geopolitical

³¹ Allocation of Revenue (Abolition of Dichotomy in the Application of Principle of Derivation) Act, 2004.

zones which make up Nigeria,³² the Niger Delta States insisted on a minimum of 50% of the revenues from oil and gas operations, to be achieved in a phased manner, from an immediate 25% at the conclusion of the conference, to a phased increase over the next 5 years to 50%.³³ This issue including that of resource ownership and control tore the conference into pieces as the North and West (Hausa-Fulani and Yoruba) got into an unholy marriage just to oppose the South amidst shouts, boos and jeers at the Southern delegates. The Southern delegates had to stage a walk-out since their views and interests did not matter to the major tribes benefiting from the unjust structure.³⁴ The question is what nation on earth can continue in this manner and achieve unity?

In the light of the digest of the matrix of resource conflicts pervading the political history of Nigeria highlighted and demonstrated above, it becomes graphically clear that Nigeria has been, from history till today, a nation at war with itself since the political class and majority tribes that control the machinery of the Federal Government have shamelessly demonstrated an acute self – deceit, hypocrisy, unwarranted oppression, repression, marginalization, insensitivity and lack of a true and sincere will to finding a lasting solution to these vexing issues rocking the very foundation of the Nigeria state. The very many crises and conflicts in the Nigerian state in different hues and nomenclatures such as resource control or ownership, true federalism (which ensure autonomy over the very resources themselves), state creation, derivation or revenue allocation, increased revenue for the oil producing communities, the minority question and agitations in the Niger Delta region, youth restiveness and militancy; are but different avenues and expressions by the minorities to either assert their ownership and control over their resources or are avenues to circumvent and assuage their already expropriated, dispossessed and confiscated rights. To achieve peace and end the psychological war, Nigeria must be sincere with itself. The rights to ownership and control of resources must be given to their God given owners be they minority or majority.

³² Madaki O. Ameh, Ownership and control of Mineral Resources: Can the Brazilian Model be use to Douse Resource control Agitation in Nigeria's Oil producing states? Published at <http://www.dundee.ac.uk/cepmlp/car/html/CAR/o>

³³ Memoranda submitted by Delta State in the Guardian Newspaper, 13-14th April, 2005.

³⁴ Ogoni Star Newspaper, 15th April, 2005, pp. 1-2.

Nigeria must practice true federalism where states have control and autonomy over their resources and only pay taxes to the Federal Government and not to run cap-in-hand to Abuja for monthly allocation like beggars with no choice. Such is quite antithetical to the very tenets of federalism. The nation should roll out programs aimed at developing and healing the wounds inflicted on the minorities in the Nigerian state. Compensation and support should be given out to families and communities of those gruesomely murdered in the above various massacre.

Nigeria should, as a matter of superlative, urgency step up an efficient cum effective machinery for proper representation and effective electoral system to enhance the emergence of persons of patriotic zeal at positions of trust for his people and the Nation at large to ensure proper governance.