

**OIL, PEOPLE AND THE ENVIRONMENT: UNDERSTANDING LAND-RELATED CONTROVERSIES IN NIGERIA'S OIL REGION**

**1. Introduction**

'Whose land?' This is the one question that underpins much of the conflict associated with the exploitation of 'strategic' natural resources such as petroleum, diamond, gold, timber and coltan in Sub-Saharan Africa. It is an issue on which the state (and extractive business corporations) and grassroots groups often substantially differ. It is also the one issue that defines what communities and landowning groups receive by way of compensation for land expropriated for extractive industrial activities. The differing stances between the state and stakeholder communities as to who has a legitimate claim to land and the minerals under it can become quite complicated. While the state believes it 'owns' the 'strategic' natural resources and, so, must determine how best the exploitation of such resources can bolster national development objectives, indigenous communities often attach more than economic definitions to land. Many indigenous communities regard forests not merely as 'a collection of trees and the abode of animals but also, and more intrinsically, a sacred possession' (Mitee, 2002). Nigeria's oil producing region, the Niger Delta, epitomises this clash of perspectives and represents a powerful example of how conflict around land use sustains the continent's media image as unstable. The Niger Delta is an example even at the global, because, as one analyst has noted, 'a majority of the last remaining oil reserves are in low-income or indigenous communities' (Michael Brun, quoted in *The Washington Times*, 2001).

Besides looking at the laws that vest land and petroleum ownership rights in the state, this paper examines, more importantly, the actual workings of the compensation strategies through which the state and oil operators seek to elicit the cooperation of the local communities. Based on the experiences of some of the best-known oil-producing communities in Nigeria, the paper looks at the controversies surrounding land expropriation and compensation. The discussion in this paper may be understood as a contribution to the broader debate on why it is difficult for upstream petroleum operations in Africa to take place in a violence-free atmosphere.

The empirical data on which this paper is based was obtained in the Niger Delta in 2003 through a combination of ethnography, in-depth interview, focus group, and visual sociology. The fieldwork was done in rural communities in Rivers, Bayelsa and Akwa Ibom States. Interviews were also conducted with key informants at Shell Petroleum in Port Harcourt and at the Eastern regional offices of Department of Petroleum Resources (DPR), Nigeria's oil industry regulator.

**2. Land use and eminent domain—an age-old debate**

The deepening crisis of confidence between transnational oil corporations and oil-producing communities in Nigeria's Niger Delta region highlights an important development predicament. Fundamentally, the crisis is about whether the state can utilise petroleum resources as if the oil-producing communities did not matter, since the state 'owns' both the land and the minerals underneath it. In practice, however, the conflict is about what constitutes adequate and equitable compensation to affected communities (and/or the oil-producing province as a whole) when land is expropriated from communities and corporate groups for petroleum operations. It is a crisis that strikes at the heart of the state-land-society discourse.

Anthropologists have long argued that land tenure—the web of relationships among social groups and individuals vis-à-vis different and competing land-use options—is an issue that is fraught with problems. This, they argue, is fundamentally because human beings are *land users*, unlike other primates who merely occupy land. Because of their status as land users, humans must maintain certain interests in land, although such interests are constantly impacted upon by both population growth and changes in the broader social, economic and technological environment (Uchendu, 1979:63). While in theory, people seem to hold interests in land, the reality is that interests are held *against* other people, and not on land as such. As Peter Lloyd (1962:60) pointed out many years ago concerning land tenure among the Yoruba of Southwestern Nigeria, 'one holds a number of rights against various people in respect of a plot of land'.

Because of the differing and competing interests that often exist in a particular piece of land, anthropologists generally differentiate between those holding 'allodial or plenary interests' in land and those holding 'dependent interest or contractual occupancy' (Uchendu, 1979:63). These two sets of interest constitute a land tenure system. Uchendu defines allodial or plenary interests as the 'claim and exercise [of] the most comprehensive rights in a piece of land'. The second category of interests is used with reference to people 'whose interest falls short of the plenary or allodial status'. As indicated later in this paper, in most rural Southern Nigerian communities (the Niger Delta region, in particular), communities exercised allodial interest in land, with families and chiefs acting as trustees. As also shown later, petroleum operations constitute the single most important process through which such interests have become eroded or threatened, and through which there has been a deepening crisis of

confidence over the years between local communities and the state on the one hand and between communities and oil corporations on the other.

Intersecting with the above competing interests—indeed, overriding them—is the power of the state to utilise land anywhere within its territorial boundaries for developmental purposes without being caught in the web of private allodial interests or contractual occupancy. This ‘ancient attribute of sovereignty’, as Jeff Jacoby (2004) calls it, is what is commonly known as ‘eminent domain’. It is the power by which the state can ‘condemn private property and take title for public use’ (Cato Institute, 2002). Through this power, the state directly controls land or aspects of it, or can expropriate land from private owners for projects ranging from oil and gas pipeline rights-of-way and airports, to public highways, sports stadia and low-cost housing. For example, in the petroleum-rich Alberta province of Canada, the Surface Rights Act (enacted in January 1977) vests mineral rights in the government of the province: individual landowners control only the ‘land surface and the right to work it, in addition to any sand, gravel, peat, clay or marl which can be excavated by surface operations’ (Alberta Department of Energy, 2004). Accordingly, the right to ‘explore for and produce oil, gas, and other minerals’ rests with the state—although a fundamental difference between Canada and Nigeria is that in Canada the mineral rights vests in the government of the oil-producing province rather than in the national government.

The problem with the exercise of eminent domain—one that has become a major subject of social justice activism the world over—is the ‘justness’ of the compensation paid to affected individuals, families or corporate groups. This is because the power of eminent domain has historically been restrained by the need to pay ‘just compensation’ to the landowners. According to the Washington DC-based public policy research body, Cato Institute, eminent domain is prone to abuse in the sense that a government can ‘take property from one owner, often small and powerless, and transfer it to another, often large and politically connected, all in the name of economic development...’ As I show later, this is how ordinary people in the Niger Delta tend to frame their petroleum-related land use grievances. Cato Institute has also pointed out that contemporary eminent domain-related activism in many parts of the world is aimed at putting ‘teeth back into public-use restraint’.

One will not fully grasp the conflict impact of land expropriation and ‘unjust’ compensation on ordinary farmers and fishermen in Nigeria’s oil region—or, indeed, how the compensation framework plays out at the grassroots—without first becoming familiar with some historical facts about the Nigerian upstream petroleum industry.

### **3. The Nigerian upstream petroleum industry—a brief historical sketch.**

Although early initiatives to explore for petroleum in Nigeria date back to 1906, it was Shell (the Royal Dutch consortium then known as Shell D’Arcy Petroleum) that, on its arrival in Nigeria in 1937, began the search for oil in the Niger Delta. Prior exploration activities in Nigeria had been restricted to the southwest. Shell struck oil in the Niger Delta town of Oloibiri in June 1956. Nigeria formally commenced petroleum production in 1957 and a year later made its first crude oil export (Abe and Ayodele, 1986:84). As I point out elsewhere (Akpan, 2005), Oloibiri is one of the communities where there exists deep grassroots discontent over petroleum exploitation, and in particular over issues of land expropriation and compensation, as I elaborate later.

Prior to Nigeria’s independence (1960) Shell enjoyed almost complete monopoly of the upstream petroleum sector. It possesses to-date the ‘best’ oilfields in the country, and controls most of the crude oil reserves and production (SPDC, 2001:6). This dominant (mainly onshore) position has not always been a positive achievement for Shell, and in recent years has proved rather ominous for the company. Local youths have at different times since the early 1990s threatened to expel (and in some places have succeeded in expelling) the company from their territory because of what they regard as Shell’s anti-community and exploitative operational ethos. The entire region itself is a study in social and environmental degradation largely on account of petroleum production.

Some competitiveness began to be apparent in the industry from 1960, when more foreign companies (mainly from the United States of America) began to acquire oil exploration concessions in the country, and by the late 1960s, the Niger Delta region had become a crowded site of upstream petroleum business. Shell, ExxonMobil, Chevron, Agip, Total and Phillips currently dominate the Nigerian upstream petroleum sector.

At least 5,284 oil wells have been drilled in over 1,500 Niger Delta communities (NDDC, 2004:22) since the mid-1950s. There were about 120 active oilfields in 2003, out of a total of about 280 (UK Trade and Investment, 2003; NBR Services, 2003). Proven reserves were 32.255 billion barrels in 2003 (OPEC, 2004)—about three per cent of the world’s total. The country produced 2.25 million barrels per day in 2003, representing about two and a half per cent of global daily output of 77.9 million barrels. This makes Nigeria one of the world’s top thirteen oil producing (and top eight oil exporting) countries. Within OPEC, Nigeria ranks fifth as an oil producer, and sixth as an exporter (Akpan, 2005).

#### ***3.1 Ownership and control***

The Nigerian upstream petroleum industry is characterised by two contractual fiscal regimes, namely Joint Ventures (which accounts for about 95 per cent of production) and Production Sharing Contracts. These two regimes replaced the colonial-era sole concession system whereby companies obtained exploration rights to a given territory, became private owners of the petroleum resources in the designated concessions and assumed full financial responsibility for its exploitation. The government benefited mainly through the royalties and taxes paid by the companies (Mulder *et al*, 2004). Only British concessionaires could legally operate in Nigeria during the colonial period.

Decree No. 51 of 1969 repealed the colonial Mineral Oils Ordinance of 1914, ended the sole concessionaire era and laid the basis for the contractual system of joint ventures between the Nigerian government and transnational oil companies. In a joint venture the federal government-owned Nigerian National Petroleum Corporation (NNPC—established in 1977) and the transnational oil companies work as partners, with NNPC contributing between 55 to 60 per cent of the costs involved in upstream oil operations. The Nigerian government, through NNPC, also takes the greater portion of the revenues accruing from the operations (see SPDC, 2003:4). In the existing joint ventures, the foreign oil companies are the designated 'operators', responsible for the day-to-day business of searching for oil, developing oilfields, laying and maintaining pipelines, managing the export terminals, acting as custodians of the crude oil tanks as well as managing the operating budgets. This 'external' control of so many sensitive aspects of petroleum, Nigeria's most important economic commodity, partly explains why ordinary Niger Delta residents sometimes refer to Nigeria as a colony of Shell.

The major difference between a joint venture agreement and a production sharing contract is that the full financial costs of operations in the latter fall on the contractor, the (foreign or local) oil company. The contractor recovers its costs, posts profits, and pays taxes and royalties through stipulated fractions of the total quantity of oil produced, while the Nigerian government (through NNPC) shares the 'profit oil' with the contractor. In other words, what changes hands in a production sharing contract are specific quantities of crude oil, not money.

Since the major point of conflict between the oil communities and the Nigerian state on the one hand, and the communities and the oil companies on the other, is rooted in the issue of petroleum ownership and control, it is appropriate to examine closely the laws that define these relationships, and how the relationships play out in a given oil community with regards to land expropriation and compensation. I take this up in detail after the following brief anatomy of the communities in which the original study was conducted.

#### **4. The study communities**

As mentioned in the first section of this paper, this paper is based on data obtained in an empirical study conducted in the Niger Delta in 2003. The study communities were Oloibiri, Ebubu and Iko (in Bayelsa, Rivers and Akwa Ibom states respectively). In terms of physical size, the Niger Delta comes after The Netherlands and Mississippi, although its widely publicised land mass (70,000 square kilometres) is only a geographic estimation. Politically, the region is much larger: the nine states that make up the Niger Delta<sup>1</sup> occupy some 112,110 square kilometres (NDDC, 2004:2). It is through the Delta's network of creeks that the water systems of the Niger and Benue Rivers flow into the Atlantic Ocean (Udo, 1970:55).

The choice of the three study communities was guided by: a) the need to include a community in each of the country's leading oil producing states in order to accord the data the necessary spread and significance, b) the need to include communities that occupy significant positions within the context of Nigeria's oil production history, and c) the need to include communities with strategic relevance to the major transnational oil companies, such as Shell Petroleum. On the whole, however, a major consideration was that the towns must be fairly representative of the upland and riverine human ecologies of oil and gas production in Nigeria.

##### **4.1 Socio-economic profile**

Commercial oil production began in Oloibiri and Ebubu in 1956, and in Iko around 1974. In Nigerian oil studies, the name 'Oloibiri' is quite popular, for the simple reason that it is here that the first commercial oil deposit was struck in June 1956. Major production continued in Oloibiri into the mid 1970s. In Iko, production lasted till the mid-1990s (although Shell's flow station in this town was still in service in 2003). In Ebubu (an Ogoni town) Shell's flow station was functional as of 2003, although production had been halted owing to the 1990s conflict between the Ogoni and Shell. While there is no major social or physical difference between Oloibiri, Ebubu and Iko and most other rural towns in Nigeria, for anyone seeking to understand land-related community/oil enterprise conflict, there is no better place to begin than in these three communities. The three communities are classic examples of what Georges Bataille meant when he quipped that 'energy finally can only be wasted' (quoted in Apter, 2005:200).

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<sup>1</sup> The nine states that made up 'political Niger Delta' as of 2005 were: Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers. Nigeria was made up of 36 states and a Federal Capital Territory.

An important form of housing in the study communities is the mud-and-thatch hut, or 'mud house'—a term not to be confused with a similar one used by oilfield engineers to refer to the storage place for drilling mud additives. The basic wall frame of a 'mud house' is wood and bamboo, plastered with puddle (in place of concrete blocks and cement), while the roof is made of mats derived from raffia palm fronds (see Kennedy, 1996). Local variations to this type of shelter exist, such as those with the same types of wall structure but with roofs made of corrugated iron sheets.

Streams and the open creeks were the main sources of drinking water in Oloibiri and Iko, while in parts of Ebubu, there were some poorly completed water boreholes. Different parts of Oloibiri were linked by sandy footpaths; Ebubu by paved and dirt roads, and Iko by frail boardwalks as well as paved and dirt roads. The nearest city to Oloibiri could be accessed by car or speedboat. The major tarred roads between Iko and the nearest major towns had fallen into gross disrepair by 2003 and needed extensive rehabilitation, if not outright reconstruction. Only Ebubu could be readily accessed by tarred road, being the nearest of the three towns to the 'oil city' of Port Harcourt. None of the three communities had functional health facilities, and the local schools were at different stages of dilapidation. All other forms of public infrastructure (such as electricity and telephone) were largely dysfunctional or non-existent.

Virtually all the major community development projects in the three communities (sponsored by either Shell or NDDC<sup>2</sup>) were subjects of intra- and inter-community dispute. They were either not completed, believed by ordinary residents to have been abandoned, or poorly completed. Examples were water projects in Ebubu and Iko (uncompleted), a concrete landing jetty in Oloibiri ('possibly abandoned'), and a health centre in Iko ('abandoned'). The social and environmental hazards of petroleum operations were evident in the three communities. These included the dark and turbid creeks (Iko and Oloibiri), the corroded and charred iron roofs of residential houses (Iko), and a large portion of forest turned into a wasteland through oil spills (Ebubu). I have documented some political attributes of the three communities, such as structures of community governance, elsewhere (Akpan, 2005).

I mentioned earlier that land-related community/oil enterprise conflict is a major feature of social relations in the study communities. Let us now examine the nature of these conflicts, especially against the background of the laws that seek to define land use, compensation for expropriated land, and the broader relationship between people and the natural environment in Nigeria's oil province. Close attention will now be paid to the ways in which I encountered the operation of these laws in the study communities.

## **5. State, petroleum laws and land use in Nigeria—eminent domain abuse?**

The Nigerian petroleum industry is governed by a plethora of laws. The Department of Petroleum Resources (DPR) identifies on its website<sup>3</sup> more than 35 of these under what it calls 'principal' and 'subsidiary' pieces of legislation. These include the Oil Pipelines Act of 1956, Petroleum Control Act of July 13, 1967, Petroleum Act No. 51 of November 27, 1969, Offshore Oil Revenue (Registration of Grants Act) of April 1, 1971, Exclusive Economic Zone Act of October 2, 1978, and the National Inland Waterways Decree of 1997. For the purposes of this paper, the most viable approach to discussing ordinary people's perception of the petroleum laws as a form of eminent domain abuse is to examine the pieces of legislation that govern ownership and control of petroleum resources.

### ***5.1 The Petroleum Act***

The most important petroleum ownership/control legislation in Nigeria is the 1969 Petroleum Act (originally Decree 51), which explicitly and intricately defines the issues of petroleum resource ownership and control. This Act repealed the 1914 Mineral Oils Ordinance (the first oil-related legislation since Nigeria formally became a colony), which had forbidden the participation of non-British citizens or companies in oil prospecting and exploitation. It also repealed, among other colonial laws, the Minerals Act of 1945, which had vested ownership and control of in the British Crown (see Ebeku, 2001).

The 1969 Petroleum Act (the defining legislation in this discussion) transferred the rights cited above to the Nigerian government. This right is enshrined in Nigerian Constitution, but it is the Petroleum Act that provides the enabling details. Section 4.4(3) of the 1999 Constitution states thus:

Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

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<sup>2</sup> NDDC is the formal abbreviation for Niger Delta Development Commission, an agency created by the Olusegun Obasanjo administration to improve the social conditions in Nigeria's oil communities.

<sup>3</sup> <http://www.dprnigeria.com/legislation.htm>.

The Petroleum Act set the stage for the participation of Nigerian companies and Nigerian citizens in the oil enterprise and gave the state the legal basis to promote an operating, policy and fiscal environments that would best serve the development needs of the Nigerian society. But, as shown presently, reality is not always a true reflection of stated intentions.

The logical consequence of the Nigerian government's right to 'the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters' is that the government can condemn private land for any aspect of petroleum development. In other words, while individuals' land surface improvements (in the form of buildings, crops, tombstones, shrines and ancestral cemeteries) remain private, 'minerals, mineral oils and natural gas in, under or upon' the land are viewed by the state as public goods and government's intervention in their exploitation becomes simply a case of public use.

As shown in the earlier discussion on eminent domain, such a right is not new, nor is Nigeria the only country where mineral rights vest in the state while individual landowners have only surface rights. Even so, in many mineral-producing countries, mineral right takes pre-eminence over surface rights. In Nigeria, the Petroleum Act spawns discontent in the oil-producing communities mainly because it stipulates no clear benchmarks as to what should be paid as compensation. Section 77 of the Act expects an oil operator to pay to the landowner:

such sums as may be a fair and reasonable compensation for any disturbance of the surface rights of such owner or occupier and for any damage done to the surface of the land upon which his prospecting or mining is being or has been carried on and shall in addition pay to the owner of any crops, economic trees, buildings or works damaged, removed or destroyed by him or by any agent or servant of his compensation for such damage, removal or destruction.

While probably laws such as this might not be expected to be explicit on actual minimum or maximum amounts payable, I found during my fieldwork that local residents were generally not aware of what anyone affected by any aspects of oil exploitation might legitimately expect to be paid. Despite the protracted conflict associated with petroleum production in Nigeria, I found no clear government or NNPC outreach programmes through which communities were periodically enlightened about their entitlements on matters pertaining to mineral rights, surface rights and compensation (cf: Alberta Department of Energy, 2004; Alberta Department of Agriculture, 2004). The Petroleum Act's silence on compensation benchmarks, and the absence of outreach programmes leave a penumbra, a grey area, over which affected parties could amicably negotiate with petroleum operators or, otherwise, be plunged into protracted conflict. In other words, by nationalising mineral rights, the state probably considered that it had saved itself the inherent complications of private claims. This probably explains why in a study of litigations between oil-producing communities and transnational oil companies in Nigeria in the 1990s, compensation-related court cases were almost always decided in favour of the oil companies, which as I pointed out earlier, were joint venture partners with the state-owned NNPC (Frynas, 2000:225). The nationalisation of mineral rights probably laid the basis for the sort of anti-community collusion between the oil companies and the Nigerian government that Frynas's study found.

A key informant at Shell Nigeria disclosed to me that in the face of a lack of clarity on what was legally 'fair' or 'just', the oil companies traditionally adopted three major payment criteria for land acquired for petroleum operations. They paid for land value, economic trees/crops, and (physical) structures

The explanation was that if the companies were to go by the letters of the law, payment for 'land value'—which in many cases meant 'payment for loss of value'—would not apply, because the law did not require the oil companies to incur such costs. (Later, in the subsection 'Whose Land', I discuss the law that most directly supports this attitude, and the related contestations.) Oil companies incurred these costs because, as my informant indicated, 'it is extremely risky to adopt a legalistic attitude when it comes to dealing with the communities'. As a rule, amounts paid were determined by the 'current market value of the land'. However, because most petroleum exploration and production activities took place in very rural communities, the market value for land was often very meagre—if land had any 'market' value at all. I was given a copy of a document (OPTS, 1997) which showed that annual rentals for land acquired for petroleum drilling or related activities varied from \$3.85 per hectare (in the case of 'swamp' and 'sand beaches') to \$7.69 per hectare ('dry land'). These amounts were covered by decennial leases. In the event of permanent damage to land, the oil company was expected to 'capitalise' the applicable rental amount 'for a one-time payment... for a term of 20 years at a rate of 5%' (OPTS, 1997). Thus, a ten-hectare parcel of 'dry land' currently worth \$76.9 in yearly rental would, in the event of 'permanent damage', bring its owner a one-off payment of \$209.04, being five per cent of the annual rental compounded for a period of 20 years!

Concerning the payment for crops damaged, the companies also relied on the Oil Producers' Trade Section's (OPTS) recommendations. OPTS is the organ representing the interests of petroleum producers in the Lagos Chamber of Commerce and Industry (LCCI). OPTS's recommendations were in turn guided by government rates—the rates the state used when its 'public interest' projects encroached on private 'surface rights'. However,

according to the Shell interviewee, OPTS's rates were slightly higher than those used by any of the nine Niger Delta state governments. To make the rates 'realistic', the oil companies (or the state, for that matter) typically distinguished between crops of 'economic' or 'cash' value (mainly tree crops), and those of 'consumption' or 'food' value (mainly shrubby/tuberous plants and vegetables). The former attracted higher rates. Seedlings were considered less valuable than mature crops.

The reader may now recall the point made earlier, that in the rural Niger Delta, forests are not simply a collection of trees. I learnt that in making distinctions between 'economic' and 'food' crops, little attention was often paid to the fact that some crops that might not have high 'economic' value had important cultural significance for local people. In local marriage, funeral and initiation ceremonies, for example, only in very rare cases would cash be accepted in lieu of certain required items. Many such items were often part of the local ecology. Examples are *pami* and *kaikai* (local wines sourced from raffia palm). The 'finest' wines, brandies, whiskies and beers would normally not be regarded as substitutes for *pami* and *kaikai*. Also, a grove of wild oil palm trees (*Dura*) often served as an income source for a family for generations; in many cases, it defined a family's status in the community. Economistic compensation criteria would normally not take into cognisance the intergenerational economic and cultural importance of certain local 'economic' trees/crops.

Table 1 below has been constructed with data from the OPTS document referred to above. It gives a sense of how much, in monetary terms, an affected community, family or individual could have earned in 2003, and shows how farmers could be affected should they stick to indigenous food crops rather than plant for cash. It provides a useful basis for understanding the anger among ordinary people in the study communities and further helps us comprehend compensation and land-related controversies in Nigeria's oil region. Only 'cash' and 'food' crops commonly found in rural Niger Delta appear in the table.

**Table 1: Oil industry compensation rates (for selected crops)**

<b>Crop</b>	<b>Maximum Amount Per Hectare of Crop (US\$)</b>	<b>Alternative Criterion (Maximum Amount Per Crop/Stand – US\$)</b>
Maize	58.84	-
Beans	82	0.02
Yam	369.23	0.31
Cocoyam	123.08	-
Cassava	136	-
Pepper	76	-
Sweet Potato	50	0.02
Pumpkins		0.08
Okro		0.04
Bitter Leaf		0.10
Tomatoes	100	0.10
Melon	90	0.06
Pineapple	-	0.15
Waterleaf	-	0.004
Mango (hybrid variety)	-	7.69
Coconut	-	4.62
Guava	-	1.54
Pawpaw	-	1.54
Banana	-	2.36
Plantain	-	2.46
Orange	-	4.62
Raffia palm	-	2.46
Rubber	-	3.08
African Pear	-	2.46
Cocoa	-	7.69
Oil Palm (hybrid)	-	4.62
Oil Palm (indigenous)	-	7.69

Source: Oil Products Trade Section (OPTS), Lagos Chamber of Commerce and Industry (1997)

A second source of controversy and discontent relates to environmental protection. The Petroleum Act requires operators to 'adopt all practicable precautions' to prevent land and water pollution. Should such precautions fail, companies are required to 'take prompt steps' to contain the effects of pollution. Operators are to perform these

duties in a 'proper and workmanlike manner in accordance with the regulations and practices accepted as "good oilfield practice"' (See Gao, 2003). The Act contains no threat of serious sanctions against polluters. Possibly as a result of such 'silence', oil operators have on occasion contravened even the petroleum industry regulator's 'Let Polluter Pay' principle. For example, the claims procedures pertaining to the January 12, 1998 oil spill at Idoho, Eket (Akwa Ibom State) was, according to the Nigerian scientist, Professor Alfred Susu, fundamentally flawed. According to Susu, the polluting company presided 'over the ultimate process of determining the quantum of compensation payable to aggrieved individuals or communities', in addition to the fact that the entire claims process failed to take into account 'immediate, short-term and long-term damage of oil spills' (Susu, 1998).

An interesting dimension to the conduct of oil companies vis-à-vis the payment of compensation for third-party property damaged as a result of oil spillage, is that the operators regard the occurrence of spills as the petroleum industry's equivalent of a 'fire disaster'. In their thinking, oil spillage is not an occurrence over which a company should be threatened with sanctions or pestered for compensation. A local Chevron Community Relations Manager explained this to a gathering of senior energy correspondents in Nigeria in 1996:

Let us imagine that one of your organizations suffered a fire incident in which some offices were totally burnt and equipment worth millions of Naira [Nigerian currency] destroyed. I believe it would be your fair expectation that some sympathizers will call on you offering their commiseration and praying that such incidents never happen again (Haastrup, 1996)

The above is not to suggest that there are no environmental laws in Nigeria dealing with the adverse consequences of petroleum exploitation and other human activities, or that the country has no environmental policy: there are several pieces of legislation aimed at protecting the environment. There are, for example, laws targeting oil pollution in navigable waters, harmful waste disposal, and damage to sea fisheries, among several others. A Federal Environmental Protection Agency (FEPA) Decree was enacted on December 30, 1988 as the legislation on which a new environmental policy was to be based. An Environmental Impact Assessment Decree came into existence in 1992, and in June 1996 a Federal Ministry of Environment was created. There are also laws directly aimed at promoting development interventions in the oil region such as those that set up the Niger Delta Development Commission. The main point here is that these laws tend to operate from the basic template that because the Nigerian state 'owns' the country's petroleum resources, it tended to proceed with compensation and other community issues as if the community did not matter. The state, for example, relies heavily on the oil companies' volition and resources on matters affecting community interests and well being (see Gao, 2003; ITOPF, 2002; *The Guardian*, 1998).

As I found in the field, a third issue with the Petroleum Act was that citizen discontent was not simply about the amount of compensations, but more fundamentally about the way land was defined. The Act defines land in such a way as to limit people's claims to crops, shrines, tombstones and other physical improvements, rather than also to the minerals under the land. An informant at Shell acknowledged this issue:

The fundamental problem is the definition of 'land'. Except this is addressed, nothing significant will happen in favour of the communities. I believe the agitation in the communities is fundamentally about changing the definition of land, which in terms of existing laws, is very disgusting. Land should mean everything on and underneath the surface, and not just 'surface rights' as stipulated in existing laws. License for [petroleum] operations should be obtained from the government with the consent of the owner of the land. The duty of government should be to tax both the landowner and the oil operator. But the company tries to do what the Nigerian law says, not what I or any other officer here thinks.

The ethnographic beliefs of people in the area concerning land have been documented (see Uchendu, 1999; Ebeku, 2001). By limiting the definition of land to the visible surface, the Petroleum Act was always bound to spawn conflict between the oil communities and the Nigerian state (and its joint venture partners). According to Ebeku (2001):

The exclusive use and enjoyment of the land [in the Niger Delta] usually carried with it full rights to minerals, subject of course to the requirements of the prevailing custom and the relation of the particular occupier to the land; land usually included minerals.

Uchendu (1979) also points out that land in rural Southern Nigeria—especially those with limited experiences of conquests and displacements—is not a mere 'piece of earth', but a 'piece of earth' that produced a sense of pride and attachment that was out of all proportion to the mere two hectares a family might hold. Land embodies:

mystical qualities. For our people, land embodies the spirit of the Earth deity, a revered mother who blesses land with her bountiful gifts. Land is also the burial place for the ancestors, those invisible father-figures who bequeathed their land to a 'vast family' which includes the dead, the living, and the unborn (Uchendu, 1979:64)

I figured during interactions with local residents that such a 'folk image' of land—as Uchendu calls it—had implications for ordinary people's day-to-day dispositions towards laws and compensation regimes that made economics the defining criterion. But even at the level of economics, I deduced from conversations with local residents and from direct observations that on account of the laws that gave Nigerians only 'surface rights' to land, a person would remain poor even if vast petroleum reserves were struck under his or her bedroom.

### **5.2 Dichotomising the source?—'onshore' and 'offshore' petroleum**

'Would the Nigerian government claim to own "offshore" petroleum if the Niger Delta region was geographically and politically not part of Nigeria?' This rhetoric, which I heard repeatedly in the study communities, lies at the heart of the agitation that has trailed the Offshore Oil Revenue (Registration of Grants) Act, enacted by the General Yakubu Gowon regime as Decree 9 on April 1, 1971. The Decree's intention was to set apart an economic petro-zone for the federal government—a zone whose petroleum resources the littoral states of the Delta could legitimately make no claims. At present these states are Bayelsa, Akwa Ibom, Cross River, Delta and Ondo—although the impact of an onshore/offshore dichotomy would be most felt by Akwa Ibom and Ondo, the two states whose oil reserves are mainly offshore. The Act put offshore resources entirely in federal territory, thus amending the section of the 1963 constitution that had defined the continental shelf of a littoral state as part of that state. In terms of this Act, any revenue derivation<sup>4</sup> claims by affected littoral states could only be legitimately made on the value of petroleum sourced on land and in shallow waters.

The first notable response to years of overt and covert resistance to the law occurred in June 1992 when the Babangida administration enacted Decree 23 to abolish it. However, it was in 1994, under the General Sani Abacha regime, that the abolition came into effect. With the return to civil rule in 1999 and the eventual adoption of a new constitution, the debate re-emerged. Although the 1999 Constitution allowed for derivation funds of 'not less than 13 per cent of the revenue accruing to the Federation Account directly from any natural resources', the new government based such revenues only on offshore 'natural resources'. As indicated earlier, this policy had the effect of nearly crippling Akwa Ibom and Ondo States financially, since the two states' petroleum resources were (and still are) predominantly offshore.

Following widespread protests, the federal government instituted a case against the 36 states of the federation, asking the Supreme Court to interpret what constituted the seaward boundary of a littoral state in Nigeria. In April 2002, the court gave a ruling that effectively resuscitated the controversial 1971 Decree that had only in 1992 been abolished! The Supreme Court ruled that 'the seaward boundary of the country's... littoral states terminated at their low-water mark', thus 'effectively giving the federal government control over the offshore oil and gas resources'. Any state that had before the ruling received derivation revenues on oil and gas resources beyond 'their low-water mark' would have to refund the federal government! According to Professor Itse Sagay, a Senior Advocate of Nigeria (SAN), the ruling negated 'rules of international law, under which the continental shelf is an inalienable and inherent part of the coastal state'. Besides, he said, it constituted 'a blatant expropriation of the natural resources' of the littoral states (quoted in *Africa Action*, 2002). Not surprisingly, it ignited a new spate of protests in the oil region.

Eventually, to avert a wave of protests and resistance that could truncate the country's new democracy, the federal government struck what it called a 'political settlement' with the oil states. An Onshore/Offshore Dichotomy Abrogation Act of February 20, 2004 made it possible for the littoral states to receive derivation revenues on petroleum resources lying within a water depth of 200 metres. President Olusegun Obasanjo explained at the time that 200-metre depth made sense since generally sea boundaries were indeterminate. As he put it, the federal government was in a better position (than any state government in Nigeria) to handle any international disputes that might arise in relation to sea boundaries. An indication, however, of how this 'political settlement' is far from resolving the question of ownership and control of petroleum resources in Nigeria can be gleaned from the following remarks by Professor Itse Sagay:

By far, the most disturbing consequence of the coastal states' limitation to a 200-metre depth belt for derivation purposes is that all the major off-shore oil and gas finds are now in the deep off-shore zone between 1000 and 2,500 metres as against the 200-metre limitation for coastal states...

Moreover, some gigantic oil and gas fields have been discovered in the deep sea bed since 1996. These include [Bonga, Bosi, Agbami, Erha and Akpo]...

"It is, therefore, clear that the deep off-shore will progressively bring an increasing proportion of Nigerian oil and gas. As the land and shallow off-shore (200 metres) reserves are going exhausted, the deep off-shore reserve beyond 200 metres will keep on increasing. In short, the future of the Nigerian oil and gas

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<sup>4</sup> Nigeria operates a principle whereby a constitutionally stipulated fraction of revenues derived (in the form of value added tax, sale of crude oil and other minerals, etc.) from a state is paid back to or retained by that state. This is an aspect of fiscal federalism and is known in the country as the 'derivation principle'.



exploration and exploitation lie in the deep off shore outside the derivation zone to the coastal states under the [Onshore/Offshore Dichotomy Abrogation Act] (quoted in *Vanguard*, 2005).

### **5.3 'Whose land?'—encountering Nigeria's Land Use Act**

The last piece of legislation I shall touch on in some detail vis-à-vis the eminent domain controversy in the Niger Delta, especially the way I encountered the discourse in the field, is the Land Use Act, enacted as a military decree in 1978. This law is often not listed among 'oil-related legislation' in Nigeria—although, as I elaborate presently, specific issues I came across in the field indicated that analyses of oil-related contestations in Nigeria should take its provisions seriously. Generally, many Nigerians (especially in the south) view this law as having 'radically' redefined the relations between communities and the biogeophysical environment in Nigeria. For this reason, it is regarded as one of the most 'controversial' pieces of legislation in the country (see Uchendu, 1979:69; Taiwo, 1992:326). My field findings point to the possibility that the Petroleum Act and the onshore/offshore petroleum laws as they operate in contemporary Nigeria draw some strength from the Land Use Act. Indeed, it is in looking at these various laws as a totality that one gains a better insight into the allegations of eminent domain abuse and entitlement deprivation in the oil-producing region.

Petroleum operations in the Niger Delta technically involve the leasing of land from communities and families. As I learnt at Shell, this process begins when the company receives an 'Area Advice' from its relevant field team. An 'Area Advice' is a detailed map showing coordinates (longitudes and latitudes), pillars, and other geographic attributes of the proposed operational area. Once an area is confirmed as a possible site of operations, community liaison officers embark on the process of ascertaining the land tenure system in place, verifying owners and negotiating compensation issues with the counsels to the landowning communities or families. In the company's experience, communities and families typically own land in the rural Niger Delta. This has been confirmed by ethnographic research. For example, Uchendu (1979) has pointed out that land was 'owned' by the lineage, village or community and that control and management of land always vested in the heads of these various units. As such even though marriage, descent and other logics of kinship bestowed land rights on individuals, people enjoying such rights were subject to specific communal obligations—and thus to what Uchendu calls the 'political' or sovereign attribute of land (see also Ebeku, 2001).

'Swamp land', a senior Shell officer whom I shall call Dandee pointed out, was mainly communal, although 'reclaimed land' could change status from communal to family land. This 'tenure shift'—especially through the process of reclamation—is itself an issue in the tension in the communities, although there is a possibility that such tensions are exacerbated and sustained by the underlying corporate policies guiding compensation. According to Dandee:

much of what we acquired in the 1960s as 'community land' is now being claimed by families and many of the disputes we have now are as a result of this kind of tenure shift. In the Niger Delta there is hardly a place you acquire land that there won't be trouble... trouble between community and family, and between leaders and the community as a whole.

The verification process, Dandee continued, would be followed by a valuation of the 'surface rights' (to determine the 'market value' of man-made structures, crops, fishing ponds). Compensation would thereafter be paid for these items and the land leased. I have earlier given an idea of the monetary worth of these transactions. From a royal archive at Oloibiri I found documents showing that rents were paid for the sites of the oil wells between 1962 and 1972. A particular family whose land was acquired was paid one British Pound for the period 1954-1956. Other documents showed that people received only one British Pound between 1962 and 1972.

How does the Land Use Act intersect with these processes?

In Oloibiri and Egbu, residents pointed out that rent payment to landlords 'stopped absolutely' after the enactment of the Land Use Act. Respondents were aware that the Act technically made land the property of the Nigerian government. The reader may recall that land expropriation was implicit in the 1969 Petroleum Act, which vests mineral rights in the Nigerian government. However, it was difficult to confirm at first whether the 'absolute stoppage' of rent payments derived from the Land Use Act or from the Petroleum Act. What could be fairly clearly established from conversations in the community was that local residents themselves were not aware of the financial implications of the Petroleum Act for their status as 'landlords'. One interviewee in Oloibiri maintained that there was no way of knowing, since the leases were decennial: further discussions on matters of rent would not occur until after 10 years. Residents began to be aware of the implications when the leases were due for renewal in the 1970s but were not renewed, and yet petroleum activities continued on the land. Comments from interviewees revealed a strong disdain for the Land Use Act and in some sense confirmed an observation made by Human Rights Watch (HRW, 1997:77), that the Land Use Act, Petroleum Act, onshore/offshore laws and others:

Allow the government to expropriate land for the oil industry with no effective due process protections for those whose livelihood may be destroyed by the confiscation of their land. (HRW, 1997:77).

Despite the land acquisition, ownership verification and compensation payment processes discussed above, it is not entirely correct to suggest, as Human Rights Watch (HRW, 1997:77) does, that the decisions affecting these various processes are 'made by the oil industry itself'. When I sought to confirm how Shell viewed the 'absolute stoppage' of rent payment, Dandee said the company was 'at a loss' as to why expired leases in its 'host communities' should not be renewed. There seemed to be conflict regarding how the company would want community matters (such as land acquisition and compensation) handled and how the government expected the oil operators to apply the law in handling such issues. On 'land reacquisition', Dandee disclosed that:

we are at this moment at loggerheads with NAPIMS [National Petroleum Investment Management Services—a subsidiary of NNPC] over the issue of reacquisition of expired leases. They feel there is no need for 'reacquisition of expired leases'. According to them why do you have to 'reacquire' what already is government's property. But we know that it is extremely risky to adopt such legalistic attitude when it comes to dealing with the community. We are the operators, we are right there in the field, we wear the shoes and do know where they pinch.

I was shown a letter from NAPIMS warning Shell not to incur any land reacquisition costs—unless, of course, Shell wished to shoulder such costs alone. It was not so obvious whether the Nigerian government's *power* to think and act this way derived from the Petroleum Act or the Land Use Act, but it seemed quite likely that it derived from both laws and more.

Shedding some light on how the Land Use Act could contribute to the conflicting perspectives illustrated above, and in particular how the law could justify and sustain the 'absolute stoppage' of rent payment, Uchendu (1979:69-70) had argued a year after the enactment of the law that the Act makes the Nigerian land user:

a tenant at will on state land... The land user loses any proprietary interests in his land and his claims are restricted to improvement he made on land. Thus his previous proprietary interests in land become a wipeout captured by society (Uchendu, 1979:69-70).

Niger Delta activists generally believe the Land Use Act has exacerbated social exploitation in the area. The view is that whereas the 1969 Petroleum Act vested mineral rights in the Nigerian government and contemplated the payment of compensation to the landowner for the disturbance of 'surface rights' resulting from the extraction of the minerals, the 1978 Land Use Act made the state the landowner in the first place. However the reason given by the General Olusegun Obasanjo regime for enacting the law in 1978 had been that the country needed a 'developmental' land tenure system, one that would give the state unrestricted access to land for 'public interest' activities. Since state control of land had been in operation for a long time in northern Nigeria by this time, the idea of forging a 'developmental' land policy was in effect that of altering the legal status of land in southern Nigeria and harmonising it with the tenure system already in operation in the north. The Decree achieved this aim by vesting 'all land comprised in the territory of each State in the Federation... in the Military Governor of that State [to be] held in trust and administered for the use of common benefit of Nigerians'. Consequently, the 1978 Decree technically nullified the trusteeship of 'corporate groups, families, and chiefs'—the existing system in much of southern Nigeria at the time (Uchendu, 1979:69).

## **6. Petroleum-related land use in Nigeria—beyond counting the hectares**

It should be obvious from the foregoing discussion that one of the oil production-related processes by which, to use Ikein's (1990:164) phrase, 'poor conditions' in Nigeria's oil province are 'exacerbated' is land use. There is further material basis for this assertion, and it can be found in the amount of land held by the oil companies and the sociological consequences for local communities of such landholding. Available data suggest that a fairly substantial amount of land in the Niger Delta is under the control of transnational and national oil interests. This is partly because key aspects of the business (like pipeline laying, road and helipad construction, industrial and residential housing, and hydrocarbon waste disposal) require large tracts and parcels of land. According to one estimate, the length of oil and gas pipelines in the Niger Delta is over 7,000 kilometres—and traverses a land area of about 31,000 square kilometres (NDDC, 2004:22). Another important reason for the heavy petroleum-related land use is that unlike the Persian Gulf (and the North Sea countries, where oilfields are mainly offshore) 'Nigerian oil occurs in small fragmented pools' across the entire region (Udo, 1970:62). As result, full petroleum exploitation entails practically littering villages, farms, forests and streams with oil installations and oil wastes. As highlighted earlier, by 2003, some 1,500 had witnessed the drilling of about 5,284 oil wells (NDDC, 2004:22). Shell reportedly held about 400 square kilometers of land for its operations as of 2001, most of it reserved for future use. This excluded land acquired for 'short-term' purposes (such as for seismic projects and temporary staff) (SPDC, 2001:11) and land not acquired for petroleum development but, nonetheless, rendered useless as part of

ecological collateral damage arising from oil operations. Chevron's operations reportedly spanned 'over 5000 kilometres offshore and 2,600 kilometres onshore' as of 1998 (Ajayi *et al*, 1998).

The oil companies, like Shell, typically maintain that they uphold a policy of minimal landholding (SPDC 2001:11), a position often meant to downplay the implications of oil industry landholding on traditional agricultural practices. However, this claim hardly obscures the level of intrusiveness of oil operations in the Niger Delta, nor is it capable of quelling the sorts of controversies that surround petroleum operations in the country, some of which have been discussed in the preceding sections of this paper. One widely held view in the region (and in Nigeria generally) is that the construction of oil rigs, field camps, helipads, and the problem of oil spills—among other forms of intrusion—have led some affected farmers to abandon whole farmlands, often in return for paltry material compensations (see *Tempo*, 1998:8, *The Guardian*, 1997:7). As happened in Finima town in Rivers State in the 1980s, entire villages have in the past been forced to relocate to make way for oil activities (HRW, 2002:11). Against the background of very low average landholding per farming family (which is about two hectares), the adverse effects of land abandonment cannot be overemphasised. Land abandonment and occupational dislocation create conditions for unsustainable people-environment relationships (as exemplified by over-cultivation of marginal land, over-fishing, the denuding of forests, and land disputes). Rural occupational dislocation worsens the problem of rural-urban migration and gives frustrated rural youths an excuse to vandalise oil pipelines in order to access crude oil and financial 'fortune' (see Ibibia, 2003:23). What the foregoing sections of this paper have shown is that these consequences can hardly be totally divorced from the ways in which rights to minerals and land are defined in the country's statutes and the ways in which the laws manifest in day-to-day oil operations and in the experiences of ordinary people.

## **7. Conclusion**

Clearly, some of the laws that govern petroleum production in Nigeria, especially the ones defining petroleum ownership, control and compensation, as well as land, reflect negatively at the grassroots. From the narratives encountered in the field, it is obvious that the contestations around petroleum-related community entitlement, compensation for land use, and environmental protection are at bottom controversies around the 'justness' of legal/institutional framework governing petroleum operations. Assuming that the Nigerian state is not 'abusing' its power of eminent domain with particular regard to petroleum operations, the exercise of such power leaves ordinary people in the oil communities with the strong impression that it is. A crucial deduction from this is that the legal/institutional framework for petroleum operations in Nigeria (and the actual ways in which such operations occur on a day-to-day basis in the oil-producing communities) do not harmonise with local socio-cultural and ecologic sensibilities, and therefore, might be said to be fundamentally counter-developmental.

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