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Putting Oil First? Some Ethnographic Aspects of Petroleum-related Land Use Controversies in Nigeria

Abstract

This article examines, based on recent ethnographic data, one of the lesser known processes through which petroleum operations sustain social conflict in Nigeria. Focussing on what has come to be termed 'eminent domain abuse' by the international environmental justice community, the article reveals the character of petroleum operations in a number of communities in Nigeria's oil-producing region. The article relates the practices of the transnational oil companies, the disposition of the regulatory authorities, and the oppositional discourses of ordinary people in the oil communities to the laws governing land use and mineral ownership in the country.

Introduction

'Whose land?' This question underpins much of the conflict associated with the exploitation of petroleum, diamond, gold, timber, coltan and other 'strategic' natural resources in Sub-Saharan Africa. It is a question on which the state (and extractive business corporations) and grass-root groups often substantially differ – one around which, for example, compensation for land expropriated for extractive industrial activities revolves. Differences between the state and stakeholder communities about who has a legitimate claim to land and the natural resources it harbours can become quite complicated. While the state believes it 'owns' the natural resources, and so must determine how best the exploitation of such resources can bolster national economic development objectives, indigenous communities often attach more than simply economic definitions to land. Many indigenous communities regard forests not merely as a collection of trees, an abode of animals or a space for gathering firewood or planting crops. They see the forest as intrinsically a sacred possession (Mitee 2002). The deepening strife in Nigeria's oil producing region, the Niger Delta, epitomises this clash of perspectives and is a powerful example of how conflict around land use sustains Africa's media image as unstable. In some important sense also, it signifies something that Chachage (2005) has recently pondered about: 'Can Africa's poor inherit the earth and its mineral rights?' The Niger Delta crisis is an example even at the global level because the region is a petro-

leum-rich minority ethnic province. As one analyst has noted, ‘a majority of the last remaining oil reserves are in low-income or indigenous communities’ (*The Washington Times*, 2001).

This article examines the workings of some of the compensation strategies through which the state and oil operators seek to win the co-operation of the local communities in the petroleum-exploitation process, and how such dynamics intersect with the laws that vest land and petroleum ownership rights in the state. Based on the experiences of some of the better known oil-producing communities in Nigeria, the article looks at the controversies surrounding land expropriation for petroleum operations, and compensation. The article is not an overall evaluation of the diverse factors associated with socio-political conflict in Nigeria’s oil-producing region, nor is it an attempt to prescribe what land use regimes mineral-rich countries should adopt. Rather, it is a modest contribution to the broader debate on why upstream petroleum operations (especially in Africa) tend to engender strong indignation among ordinary people, especially in the communities where petroleum production takes place. It also sheds some light on why petro-capitalism is often portrayed as a special kind of fundamentalism and violence.

The article is based on ethnographic data obtained in Nigeria’s Niger Delta region in 2003. As elaborated later, the fieldwork was done in rural communities in Rivers, Bayelsa and Akwa Ibom States.

Land Use and Eminent Domain – Revisiting the Debate

The deepening crisis of confidence between transnational oil corporations and oil-producing communities in Nigeria highlights an important development predicament. Fundamentally, the crisis is about whether the state (working through any number of agents) can exploit petroleum resources as if the oil-producing communities did not matter, since the state ‘owns’ both the land and the minerals underneath it. It is about what constitutes adequate and equitable compensation to affected communities (or the oil-producing province as a whole) when land is expropriated from communities and indigenous corporate groups for petroleum operations. It is a crisis that strikes at the heart of the state-land-society nexus and this must be interrogated.

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 by its very nature 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 themselves constantly impacted upon by both population growth and changes in the broader socio-economic and technological environment (Uchendu 1979:63). While it is easy to think that people hold interests in land, anthropologists hold

that interests are, in reality, held against other people and not on land as such (Lloyd 1962:60).

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 (1979:63) 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 pertains to people 'whose interest falls short of the plenary or allodial'. As indicated later in this article, in most rural Southern Nigerian communities (the Niger Delta region in particular), communities exercised allodial interest in land, the trustees characteristically being family heads and chiefs. As also shown later, petroleum operations constitute the single most important process through which such interests have become 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.

An overarching dimension of this discourse is the power of the state to utilise land anywhere within its territorial boundaries for developmental purposes irrespective of existing webs of private allodial interests or contractual occupancy. This 'ancient attribute of sovereignty', as 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 stadiums 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 international social justice activism – 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 Cato Institute (2002), 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 shown later, this is how ordinary people in the study communities tended to frame their petroleum-related land use grievances. Seen in this light, the contemporary eminent domain-related activism in many parts of the world may very well reflect a desire by ordinary people to put ‘teeth back into public-use restraint’ (Cato Institute 2002).

It will be difficult to grasp the conflict impact of land expropriation and compensation on ordinary farmers and fishermen in Nigeria’s oil region – or, indeed, how the compensation framework plays out at the grassroots – without some acquaintance with the history of the country’s upstream petroleum industry.

The Nigerian Upstream Petroleum Industry – A Historical Sketch

Although the early search for oil in Nigeria dates 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. This is a region at the southernmost tip of Nigeria reputed to be the world’s third largest wetland, after The Netherlands and Mississippi. The wetland areas measure about 70,000 square kilometres, although the present nine political divisions that make up the region (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers states) cover a land area of about 1,121,110 square kilometres (NDDC 2004: 2). It is through the Niger Delta’s network of creeks that the water systems of the Niger and Benue rivers flow into the Atlantic Ocean.

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 exports. Ironically, Oloibiri is one of the communities where to this day deep grassroots discontent exists over petroleum exploitation, especially over issues of land expropriation and compensation (Akpan 2004). This point is elaborated later.

Shell enjoyed almost a complete monopoly of the upstream petroleum sector prior to Nigeria’s independence in 1960 and still possesses the ‘best’ oilfields in the country. It controls most of Nigeria’s crude oil reserves and production (SPDC 2001:6). Its dominant (mainly onshore) position has, however, not always been a positive achievement. In fact, in recent years the onshore dominance has proved rather ominous, as local youths constantly threaten to expel (and in some places have succeeded in expelling) the company from their territory. The main reason for this conflict is the company’s alleged anti-community and exploitative operational ethos. The Niger Delta region as a whole is a study in social and environmental degradation, much of it directly or indirectly attributable to petroleum operations.

Some competition began to emerge in the Nigerian petroleum industry from 1960, when more foreign companies (mainly from the USA) began to acquire oil exploration concessions, and by the late 1960s the Niger Delta region had become a crowded theatre of upstream petroleum business. The sector is currently dominated by Shell, ExxonMobil, Chevron, Agip, Total and Phillips. Proven crude oil reserves stood at 32,255 billion barrels in 2003 (OPEC 2004) – about three percent of the world’s total. Ranked among the world’s top thirteen oil producing (and top eight oil exporting countries), Nigeria produced about 2.3 million barrels per day in 2005, representing about three percent of global daily output.

Just to give an idea of the amount of real estate that is directly or indirectly under the control of the petroleum industry, at least 5,284 oil wells have been drilled in over 1,500 Niger Delta communities (NDDC 2004:22) since the mid-1950s. About 120 oilfields were active in 2003, out of a possible total of 280 (UK Trade and Investment 2003; NBR Services 2003). 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). Shell reportedly held about 400 square kilometres 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). However, as shown later, petroleum-related land use contestations in the Niger Delta go beyond the physical space directly or indirectly impacted by oil operations: existing laws, policies and practices raise important sociological and ethnographic concerns for local communities.

Ownership and Control

About 95 percent of Nigeria’s oil and gas production takes place under a contractual fiscal regime known as joint ventures. The rest is covered by 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 in the designated concessions, and assumed full financial responsibility for its exploitation. The colonial government benefited mainly through the royalties and taxes paid by the companies (Mulder et al 2004).

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. Under a joint venture, the federal government-owned Nigerian

National Petroleum Corporation (NNPC – established in 1977) bears 55-60 percent of the cost of upstream petroleum operations while the joint venture partners (transnational oil companies) contribute the rest. The Nigerian government, through NNPC, also takes the greater portion of the revenues accruing from the operations (SPDC 2003:4). The foreign joint venture partners are designated ‘operators’ and are responsible for the day-to-day business of searching for oil, developing oilfields, laying and maintaining pipelines, managing the crude oil 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.

In production sharing contracts the financial costs of operations fall wholly on the contractor, the (foreign or local) oil company. The contractor recovers its costs, posts profits, and pays taxes and royalties to the government through stipulated fractions of the total quantity of oil produced, while the Nigerian government (through NNPC) shares the ‘profit oil’ with the contractor. Thus a major distinguishing attribute of production sharing contracts (as against joint ventures) is that specific quantities of crude oil (rather than money) change hands between NNPC and the contractors.

Since the major point of conflict between the oil communities and the Nigerian state on the one hand, and between 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 regard to land expropriation and compensation. These issues are taken up in detail after the following brief anatomy of the communities in which the original study was conducted.

The Study Communities

As mentioned earlier, this article is based on data obtained in the Niger Delta in 2003. The study communities were Oloibiri, Ebubu and Iko (in Bayelsa, Rivers and Akwa Ibom states respectively). Although purposively chosen, the three communities are fairly representative of the upland and riverine human ecologies of oil and gas production in Nigeria. As shown presently, they occupy significant positions within the context of Nigeria’s oil production history, are located in three of the country’s leading oil producing states, and have strategic relevance to the major transnational oil companies, such as Shell Petroleum.

Commercial oil production began in Oloibiri and Ebubu in 1956, and in Iko around 1974. Oloibiri is a relatively popular name in Nigeria, the reason being that it is where the first commercial oil deposit was struck in June 1956. Major production continued in the town into the mid-1970s. The oil flow station in Iko

was still in service in 2003, while in Ebubu (an Ogoni community), production had been halted due to community protests against the activities of oil companies. In terms of socio-economic development, the three communities were indistinguishable from most other rural towns in Nigeria: they lacked most modern social amenities like good roads, decent housing, good schools, health centres, potable water, sanitation and electricity (only Ebubu was connected to the national grid). Given their status as oil-producing communities, they are classic examples of what Georges Bataille meant when he quipped that ‘energy finally can only be wasted’ (quoted in Apter 2005: 200).

The social and environmental hazards of petroleum operations were evident in the three communities. These included polluted creeks, which served as a major source of drinking water in Iko and Oloibiri, and charred iron roofs of residential buildings, which residents (in Iko especially) attributed to acid rain resulting from incessant gas flaring. In Ebubu, a large portion of forest wasted through oil spills in the early 1970s had not been restored as at the time of the study. The author has documented elsewhere the political attributes of the three communities, such as structures of community governance (Akpan 2006).

It was indicated earlier that land-related conflict between local communities and oil companies is a major feature of social relations in the Niger Delta. The nature of these conflicts, especially as the author encountered them in the study communities, will now be examined. Special attention will be paid to the ways in which land-related contestations at the grassroots intersect with the laws defining land use and compensation, and with the ways in which the natural environment frames the social experiences of ordinary people.

State, Petroleum 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 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. As encountered during the fieldwork, a number of these laws came across to ordinary people as a form of eminent domain abuse. The principal legislation governing ownership and control of petroleum resources, and the associated contestations, are examined below.

The Petroleum Act

The most important petroleum ownership and control legislation in Nigeria is the 1969 Petroleum Act (originally Decree 51), which explicitly states that all petroleum resources in Nigeria belong to the federal government. This Act

repealed the 1914 Mineral Oils Ordinance (the first oil-related legislation since Nigeria formally became a British 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 petroleum ownership and control in the British Crown (Ebeku 2001).

Although petroleum ownership rights are enshrined in the Nigerian Constitution, it is the 1969 Petroleum Act that provides the enabling details. The Act not only set the stage for the participation of Nigerian companies and Nigerian citizens in upstream oil business, but also gave the state the legal basis to promote an operating, policy and fiscal environment that would best serve the development needs of the Nigerian society. However, reality is not always a true reflection of stated intentions, as evidenced in the deepening social instability in the oil-producing areas.

One logical consequence of the Nigerian government's ownership and control of petroleum resources within the country's territorial boundaries is that private land can be condemned to make way 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 are viewed by the state as public goods. 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 rights take pre-eminence over surface rights. In Nigeria, it would seem that existing laws spawn discontent in the oil-producing areas mainly because they stipulate no clear benchmarks as to what should be paid as compensation. Section 77 of the Petroleum 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 laws such as this would probably not be expected to be explicit on actual minimum or maximum amounts payable, the researcher found during his fieldwork a general lack of awareness by local residents about what anyone affected by any aspects of oil exploitation might legitimately be paid. Despite the protracted conflict associated with petroleum production in Nigeria, the researcher found no evidence of a clear government or NNPC outreach programmes directed towards the enlightenment of communities on matters of

entitlements, 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, leaves a penumbra, a grey area, over which affected groups either amicably negotiate with petroleum operators or are plunged into invidious squabbles. It would seem that by nationalising mineral rights, the state considered that it had saved itself the inherent complications of private claims. This possibly explains why, according to a study by Frynas (2000: 225), compensation-related court cases between oil-producing communities and transnational oil companies (who are joint venture partners with the state-owned NNPC) were almost always decided in favour of the oil companies. Indeed, Frynas's study found what seemed like constant collusion between the oil companies and the Nigerian government against the oil communities.

A key informant at Shell Nigeria disclosed to this author that in the face of so much vagueness about what was legally 'fair' or 'just', especially with regard to payments for land acquired for petroleum operations, the companies simply co-opted the statutory compensation calculations adopted by the state, although with slight 'improvements'. The companies, he said, went beyond mere compensation for infringements on surface rights (as with the state): they also paid for the 'loss of land value'. The respondent emphasised that the extra compensation was entirely voluntary, as payment for loss of land value was not required in the relevant laws. (The subsection entitled 'Whose Land' examines why the law attaches little importance to the loss of land value, and the associated contestations.) As the respondent put it, the oil companies incurred these additional costs because 'it is extremely risky to adopt a legalistic attitude when it comes to dealing with the communities'.

As a rule, the amounts paid by the oil companies are guided by what they regard as the 'current market value of the land'. However, because most petroleum exploration and production activities in Nigeria take place in very remote, rural communities the market value for land is often very meagre – where such 'market' value exists at all. Annual rentals for land acquired for petroleum drilling or related activities vary between \$3.85 and \$7.69 per hectare (OPTS 1997). These figures pertain to 'swamp' or 'sand beaches', and 'dry land' respectively. Land acquisitions are covered by decennial leases. In the event of permanent damage to land, the existing compensation regime requires the companies 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 once-off payment of \$209.04, being five percent of the annual rental compounded for a period of 20 years!

Concerning the payment for crops damaged, the companies also rely on the Oil Producers' Trade Section's (OPTS) recommendations. OPTS is the petroleum producers' section of the Lagos Chamber of Commerce and Industry (LCCI). OPTS's recommendations are in turn guided, as indicated earlier, by government rates – the rates the state uses when its 'public interest' projects encroach on private 'surface rights'. OPTS's rates are 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 distinguish between crops of 'economic' or 'cash' value (mainly tree crops), and those of 'consumption' or 'food' value (mainly shrubby or tuberous plants and vegetables). The former attract higher rates. Seedlings are 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. The author learnt that in distinguishing 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' imported 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 or crops.

Table 1 below has been constructed using the OPTS compensation rates just referred to. 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 strictly for cash. The data offer a useful basis for understanding the anger among ordinary people in the oil-producing communities and further gives an insight into the controversies surrounding compensation and petroleum-related land use Nigeria. Only 'cash' and 'food' crops commonly found in rural Niger Delta appear in the table.

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, and should this fail, 'take prompt steps' to contain the effects of pollution. These problems must be tackled in a 'proper and workmanlike manner in accordance with the regulations and practices accepted as "good oilfield practice"' (Gao 2003). The Act contains no threat of serious sanctions against polluters, leading to contro-

versial situations where oil companies sometimes preside over the processes of determining how much is payable to individuals and communities adversely affected by, say, an oil spill (Susu 1998).

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

Crop	Maximum Amount Per Hectare of Crop (US\$)	Alternative Criterion (Maximum Amount Per Crop/Stand – US\$)
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).

The companies benefit from lax regulation in other ways: they can more fully mobilise their biases about what does or does not constitute an adverse impact on communities. Writing on behalf Chevron, a local community relations manager once stated that an oil spill was the equivalent of a fire disaster, over which no company should be threatened with sanctions or pestered for compensation:

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 (Hastrup 1996).

None of the above should give the impression that there are no environmental laws in Nigeria to deal 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 30 December, 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 (NDDC). The main emphasis of this discussion is that these laws tend to operate from the basic premise that because the Nigerian state 'owns' the country's petroleum resources and the land under which it is found, it goes about compensation and other community issues as if the community did not matter.

The fieldwork also revealed that local discontent was not simply about the amount of compensation, but more fundamentally about the way land was defined in the relevant statutes. For instance, the Petroleum Act limits people's claims to crops, shrines, tombstones and other physical improvements, rather than also to the minerals under the land. A respondent 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 [oil] communities. I believe the agitation in the communities is fundamentally about changing the definition of land, which in terms of existing laws, is quite disgusting. Land should mean everything on and underneath the surface, and not just 'surface rights' as stipulated in existing laws. The government cannot issue licenses for petroleum exploitation without the consent of the land owner. However, my company tries to do what the Nigerian law says, not what I or any other officer here thinks.

Uchendu (1979) has documented some of the local beliefs concerning land. It would seem that 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). As Ebeku (2001) puts it:

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 (1979:64) 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 ‘mystical’ attachment that was out of all proportion to the mere two hectares a family might hold: land ‘embodies the spirit of the Earth deity, a revered mother who blesses...’ The author confirmed through interactions with ordinary people in the study communities what Uchendu calls the local ‘folk image’ of land, and that this image had implications for people’s day-to-day dispositions towards laws that made economics the defining criterion for land-related compensations. But even at the level of economics, the author 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.

Dichotomising the Source? – ‘Onshore’ and ‘Offshore’ Petroleum

‘Would the Nigerian government lay claim to “offshore” petroleum if the Niger Delta region was not part of Nigeria?’ This rhetorical question, which the author encountered 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 1 April, 1971. The Decree’s intention was to set apart an economic petro-zone for the federal government – a zone to whose petroleum resources the littoral states of the Delta (at present Bayelsa, Akwa Ibom, Cross River, Delta and Ondo) could legitimately make no claims. Two states (Akwa Ibom and Ondo) whose oil reserves are mainly offshore feel the impact of an onshore/offshore dichotomy more directly. 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 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 1994 when a decree enacted two years previously to abolish the dichotomy came into effect. The debate re-emerged after the return to civil rule

in 1999. 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 (civilian) government based such revenues only on offshore natural resources, with serious financial consequences for states like Akwa Ibom and Ondo.

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! The ruling was that ‘the seaward boundary of the country’s... littoral terminated at their low-water mark’. This restored the federal government’s control over 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’ thus faced the risk of refunding the federal government! According to Itse Sagay, a Senior Advocate of Nigeria (SAN), the ruling not only negated the rules of international law but also constituted a ‘blatant’ abuse of the resource rights of the littoral states (Africa Action 2002). Not surprisingly, it ignited a new spate of protests in the Niger Delta.

Eventually, to avert a wave of protests and resistance that could damage the country’s new democracy, the federal government struck what it called a ‘political settlement’ with the oil states by enacting an Onshore/Offshore Dichotomy Abrogation Act of 20 February, 2004, which 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 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. There are, however, reservations among some analysts that this was the kind of ‘political settlement’ needed to stem the tide of petroleum-related land use contestations in the Niger Delta (*Vanguard* 2005).

‘Whose Land?’ – Encountering Nigeria’s Land Use Act

The last piece of legislation to be discussed in some detail vis-à-vis the eminent domain discourse, especially as encountered in the study communities, is the Land Use Act, enacted as a military decree in 1978. Although not often listed among ‘oil-related legislation’ in Nigeria, the fieldwork brought up issues that indicate that analyses of petroleum-related conflict 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 bio-geophysical environment in Nigeria, which is why it is regarded as a ‘controversial’ piece of legislation (Uchendu 1979:69, Taiwo 1992:326). The author found 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 involve the leasing of land from communities and families. As elaborated to the author 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) of the proposed operational area. Once an area is confirmed as a possible site of operations, community liaison officers commence the process of ascertaining the land tenure system in place, verifying ownership and negotiating compensation issues with land owners' councils. In the company's experience, communities and families typically own land in the rural Niger Delta – an assertion corroborated by ethnographic research (Uchendu 1979, Ebeku 2001). A Shell officer who will be called Dandee in this article pointed out that swamp land was almost always communally owned, although 'reclaimed land' could change status from communal to family land. This 'tenure shift', he said, was itself an issue in the tension in the communities, although the researcher found that such tensions could equally result from or be exacerbated 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 you won't encounter trouble... trouble between community and family, and between leaders and the community as a whole.

Subsequent to tenure verification, Dandee continued, was 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. An idea has already been given in this article about the monetary worth of these transactions. From a royal archive at Oloibiri the researcher found documents indicating that rents were paid for the sites of the early oil wells between 1962 and 1972. A particular family whose land was acquired received 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 Ebubu, residents pointed out that rent payment to landlords stopped following the enactment of the Land Use Act. Respondents seemed fairly 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 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 did not know what financial implications the Petroleum Act had 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 ten years. Residents began to be aware of the implications when the leases were up 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 (HRW1997: 77), that the Land Use Act, Petroleum Act, and onshore/offshore laws made it easy for the Nigerian state to 'confiscate' land from ordinary people and hand over such land to petroleum operators without 'effective due process'.

Such 'collusion', however, does not mean that the Nigerian state and the oil companies are always in agreement about how to 'exploit' ordinary people. In fact, in some cases there could be strong disagreement, as Dandee disclosed concerning the alleged stoppage of rent payment referred to earlier:

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.

It was not so obvious whether the Nigerian government's power to stop the company from reacquiring expired leases 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 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 nothing more than 'a tenant at will on state land', whose 'proprietary interests in his land... are restricted to improvement he made on land'.

Some Conclusions

It is 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. However, to appreciate such impacts, one must go beyond the counting of hectares. This point is particularly important because as a way of downplaying the implica-

tions of oil industry landholding on traditional agricultural practices and occupational systems, transnational oil companies in Nigeria are keen to emphasise the fact that they maintain a policy of minimal landholding in the Niger Delta (SPDC 2001: 11). The focus of analysis must be both on the character of petroleum industry landholding and on the sociological and ethnographic problems occasioned at the grassroots by the laws, policies and practices pertaining to land use.

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 the legal and 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 study communities with the strong impression that it is. A crucial deduction from this is that the legal and 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) does not harmonise with local socio-cultural and ecologic sensibilities, and therefore, might be said to be fundamentally counter-developmental.

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