

The Impact of Federalism and Constitutional Formula in furthering Sustenance Development of States in Nigeria: A study on Niger Delta

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Abstract

Before the abolition of the principle of derivation in Nigeria, Nigerian's economy was basically on Agriculture and the principle, made it unarguably, that the Northern part of the country, that had the higher resources, was paid hundred percent however, as the country's economics mainstay moved from Agriculture to oil and gas resources, the constitution introduced the formular of revenue sharing which reserved bulk of the proceeds to the federal government given that Nigeria practices federalism, and the balance of the proceeds shared among the other states. Indeed, federalism birthed the constitutional power of federal ownership of natural resources whose effect is the devolving of political and economic power to the state and other components to the federal government.

This Paper appraises the activities and effect of the Exploration and Exploitation of oil and gas resources on the Niger Delta Region

Key Words: *Federalism, revenue allocation formula, industrialization, sustainable development*

Introduction:

The constitution¹ vested the entire property in and control of natural resources which includes the economic mainstay of Nigeria being oil and gas on the Federal government and this was birthed by the practice of federalism which is an arrangement of power at the central level and regional and both are independent but having the limit of their powers defined. The allocation / revenue sharing formular, was to enhance federalism as it will reduce gaps being that the federal government holds a upper hand².

¹ CFRN 1999 (as amended) Cap C23 LFN 2004; S 44(3) & Item 39 Schedule II of the Exclusive Legislative List

² W Norman, 'Negotiating Nationalism' Nation - Building, Federalism and succession in the Multinational State (Oxford; Oxford University Press, 2006) 77

Notably, it was recorded that between 1970 and 1991, the oil enriched region, did not receive any income until 1992 wherein they were allotted 1.5 percent of the income. However, the constitution³, stated that oil revenue allocation should be shared on the basis of land mass and population density and in reality, the non oil and gas producing states, have more land mass allocation from the oil and gas resource producing states whereas the resource enriched region bear the brunt of the exploration and exploitation of the resources, have their waters polluted, their lands degraded thereby swimming in poverty and health threats which outburst of tears and depression has accounted for agitation, restiveness and struggle to take back actual possession and control of their resources as dare⁴ stated that with respect to Nigerian's federalism as it relates to natural resources control, that even a victory at the apex court of the land for oil producing states would not lay the ghost of resource control to rest as the people are bittered.

More interestingly, Sagay⁵ also moved further to the issue of increase in revenue allocation not being enough to curb the restiveness of the people as the people want to take their destinies into their hands so as to prevent environmental pollution and also restore the region from the activities of oil and gas exploitation and exploration industries.

Definition of Key Words:

Federalism, constitution, industrialization and sustainable development and derivation.

- i. Federalism is a process of severing powers to achieve co-ordinate and independent sphere of both general and regional government to the extent that none has supreme authority over the other.⁶
- ii. Derivation is a constitutional device targeted at providing a recompense to the producers of natural resources for the sequestration of their rights to manage and control the whole of their resources.⁷
- iii. Constitution is the fundamental and organic law of a people that establishes institutions and apparatus of government, defines the scope of governmental sovereign powers and assures the people of their civil right and liberties.⁸
- iv. Industrialization is the process of transforming the economy of a people from a focus on agriculture or their natural resources to a reliance on manufacturing. It is a mechanized/technological way of mass production.⁹
- v. Sustainable development is that development that is able to maintained at a certain rate or level, upheld or defended in the quest for economic growth and yet is able to secure the ability of the future generation from enjoying same as the present generation that initiated the industrialization process.

³ CFRN (1); S162 (2)

⁴ A Dare, 'The Resource Control Gambit' TELL April 16 2001 (a) The roles of the Judiciary in the Nigerian Democratic process Essay in Honour of Sir Hon. Justice N Ndu (Lagos, VOX Nigeria Limited, 2008)

⁵ I Sagay, 'Resource Control' Guardian Newspaper, August 13, 2001 (a) The Role of the Judiciary in the Nigerian DEMOCRATIC Process' Essay in Honour of Sir. Hon. Justice Iche N. Ndu (Lagos, VOX)

⁶ Norman (n2)

⁷ Zadnjo, 'the principle of derivation and search for distributive justice in the Niger Delta Region of Nigeria: The journey so far' (2015) www.research.angate.com> accessed 1 May, 2023

⁸ B. A. Garner, 'Blacks law Dictionary' (9th edn, West A. Thomas reulers Business, 2009 353)

⁹ Invest Pedia, 'Industrialization' <<https://www.investopedia.com>>terms> accessed 2 May, 2023

Effect of industrialization on the Niger Delta Region.

Oil and gas is the main stay of the nation and it is found majority in the Niger Delta Region of Nigeria but the oil and resource is constitutionally owned, controlled and managed by the Federal government who in turn declared that it is her responsibility to protect the environment¹⁰ yet the Region's environment have been deeply battered, depleted, degraded due to over exploitation and lack of sustainable development skills yet the same government constitutionally stated that it shall prevent over exploitation of natural resources except where it is for the good of the people.¹¹ However, with the United Nations environmental programme report of 2011,¹² it is clear that pollution that will take up to thirty or more years to clean up and restore is definitely not for the good of the people.

The exploration and exploitation of oil and gas which is industrialization has affected the regions farming life generally as both land and water thereby the hands are unable to produce enough food leading to importation to food to feed from, death of fishes mostly resulting from introduction of oil into water and air emissions, whereas the people are fishermen/women who do that for their livelihood. Fire out breaks, human health hazards, tourism education and economic loss are attributes of the impact of industrialization of oil and gas and they lead to destruction of aquatic life, ruins wildlife habitats, kills birds, contaminates water supply and also destroys 6 each areas.¹³

Oil prevents the transmission of light which in turns inhibits photosynthesis and photosynthesis is vital for plants. Seismic activities which is a survey carried out of the oil and gas exploration companies for the purpose of industrialization, causes low and/or depreciation of the value and number of fishes.¹⁴

For the purpose of industrialization, the healthy land use pattern employed by the communities are broken as due to acquisition or land for industrial activity, the traditional law of allowing a particular land for some time before re-farming there, have been retired. The lands are degraded and impoverished yet the people are unemployment, gas is constantly flared yet the cost of cooking gas is very high, the people do not also enjoy steady electricity whereas the gas rather than being flared, can be converted to these to better the lives of the people but what more can be said or done where the people do not have the right to their resources, cannot manage, direct or control the activities involved in the development of their response but only are entitled to the 13% revenue allocation for oil and bear the brunt of the effect of industrialization.¹⁵

The health of the people have been jeopardized following the atmospherically impacts of oil and gas development when Gas is flared, covering that gas contains sulfide (H₂S) which causes acute

¹⁰ CFRN 1999 (as amended) Cap C23 LFN 2004; S. 20

¹¹ *Ibid*; S 17 (2) c)

¹² UNEP report, 'The UNEP Environmental assessment of Ogoni land' (August, 2011) <<https://www.shell.com.ng>> accessed 3 May, 2023

¹³ JFN Abowei and F D Sikoki 'Water Pollution Management and Control' (1st edn. Port Harcourt, Double Trust Publication Company 2005) 27

¹⁴ *Ibid*

¹⁵ E & P, 'Environmental Management in Oil and Gas Exploration and Production' <<https://www.wedocs.unep.org/bit.stream>> accessed 4 May, 2023

intoxication like cough mix blood, diarrhea, headache and other sort of it, gas contains ecotoxicity and chronic explosive that are deadly as it leads to rapture of tissues on the eyes and nose and damages respiratory system¹⁶

The laws on protection of the environment: The dilemma of Niger Delta Region

The government who due to federalism, and the constitutional provisions owns all natural resources and pledged to protect the environment, had promulgated, put in place laws and institutions for this subject matter however, it is worrisome to know that the National Environmental Standard, Regulation Enforcement Agency (NESREA), whose function was defined by the NESREA Act.¹⁷ Has it functions as ensuring compliance of environmental rules and standards given, excluded from the oil and gas sector who are the major polluters and even in the amendment to NESREA Act, it was not treated.

Also looking at other laws on this discuss, even the constitution, it is clear that the federal government did not have the region at hand when it came up with the ownership control and management of the natural resources as the subject matter is made one unenforceable in the court by reason of the constitutional provision.¹⁸

The penalties accompanying the laws are also very laughable and the main dilemma of the region as they do not encourage sustainable development Also, the laws did not provide for mitigating measures by the industries.

Brazil operates true federalism and also is rich in gas and it is important to state that their law¹⁹ created a body with the power to inspect the functioning of natural gas market and use mechanism to reduce concentration in the supply of natural gas so as to prevent market conditions favourable to the practice of violation against the economic order submissively, Brazil have long devolved the power of ownership of the natural resources to the natural owners of the resources rather than the Nigerian Federalism where it seems practically impossible for such power to devolve.

On the other hand, the people of Niger Delta are helpless as they cannot successfully approach the court.

Industrialization instead of running in line with sustainable development has impoverished, cut short and even placed the life of host communities at a high risk yet the region is constitutionally entitled to only 13% of the derivation proceeds accruing from the allocation sharing formula and no more.

Recommendations

We hereby recommend

- 1) The review of the constitution as it relates to environmental right particularly sections 6 (6)c of the 1999 constitution.

¹⁶ *Ibid*

¹⁷ NESREA 2007, Cap F25; S. 7

¹⁸ CFRN 1999 (as amend) cap C23 LFN 2004, S 6 (6) (C)

¹⁹ Natural Gas Law 2011 (ANP)

- 2) Power of control and management of oil and gas resources should devolve to the states that naturally own them like is the case in Brazil
- 3) An upward constitutional review of the 13% allocation to 75%.
- 4) A review of the functions of the governmental agencies saddled with the responsibility for the protection of the environment as it relates to oil and as rather than exempting the sector from their functions in any way.
- 5) The courts should wake up to the reality of her constitutional function of interpretation of the laws without any exception than allow the error in the written constitution limit it.

Conclusion

The result of federalism in Nigeria following the constitutionally formular of revenue allocation with the impact of industrialization devoid of sustainable development have turned a gold region to a black cursed region with no capacity on the side of the people, the help themselves both health wise and momentary wise. This region has suffered tremendously following the exploration and exploitation of natural resources particularly oil and gas resources majorly due to federal ownership of the resources which encapsulates the right of solely making decision as regards the mode and style of carrying out the development of these resources by licenced industries through the aid of the laws for the protection of the environment consequent upon the incessant and negligent use of the resources.