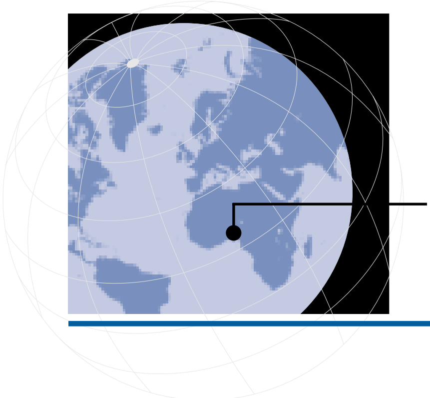

Oil wealth, federalism and democracy in Nigeria

BY CHIKA B. ONWUEKWE

Nigeria returned to democracy on May 29, 1999, after almost sixteen years of uninterrupted military dictatorship. Since then, the civilian regime has worked hard to keep the country together. Topmost on the agenda of the government led by President Olusegun Obasanjo is how to contain the demands of the oil-rich Niger delta. The nine states in the Niger delta (Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ogun, and Rivers) contest the federal government's ownership and control of the oil mineral resources in their communities and they are unhappy with the revenue sharing formula.

Crude oil exports account for over 90% of Nigeria's foreign exchange earnings. The 2001 federal government budget is based on a forecast oil price of $22 per barrel against the 2000 budget estimate of $18. The country's proven oil reserves are estimated at 22.5 billion barrels, most of which are found in the Niger delta area.

The Nigerian National Petroleum Corporation, a federal government agency, represents the federal government's interest in the oil and gas industry. It is the majority shareholder in joint venture arrangements with multinational oil companies. The Nigerian federal government's share in the joint venture arrangement with Shell is 55%, with Chevron it is 60%, ExxonMobil 60%, Texaco 60%, TotalFinaElf 60%, and Eni/Agip 60%.

Good deal for multinationals

In early August 2000 the government signed a new memorandum of understanding with its corporate partners. The agreement, which is valid for three years, raised production cost margins for the corporate partners to $4.00 per barrel from $3.50 per barrel. It also increased the profit margin for corporate partners beyond the 1996 level of a fixed $1.00 per barrel to between $2.50 and $2.70 per barrel on investments of up to $2.00 per barrel.

Another set of funding arrangements for oil operations in Nigeria is composed of the Production Sharing Contracts (PSCs). Under PSCs, companies fund oil exploration and related operations. Unlike joint ventures, PSC arrangements do not depend on government funding. However, PSC operators share their profits with the federal government after recouping any expenditure.

Overall, the multinationals appear satisfied with the federal government's efforts in protecting their investment.

In contrast, many of the people of the Niger delta are dissatisfied with the manner in which oil exploration is undertaken in their area. They contend that oil wealth from their area is being used to develop other parts of Nigeria while the Niger delta region remains relatively underdeveloped. They also complain that they have to live with the environmental degradation brought about by oil activities. For instance, in most parts of the Niger delta pipelines are not laid on the ground or buried, they are installed on the surface, above ground. A consequence of that practice is that there are frequent leaks of gas and oil that contaminate adjacent farmland.

Federal control of the resource

The 1999 Constitution is the legal basis for the ownership and control of all mineral resources in Nigeria. "Mines, minerals, including oil fields, oil mining, geological surveys and natural gas" are within the exclusive legislative competence of the federal National Assembly.

The Petroleum Act of 1990 (originally enacted in 1969) further confirms the federal government's ownership of petroleum resources. Its Section 1 vests the "entire ownership and control of all petroleum, under or upon any land" in Nigeria (onshore and offshore) in the federal government.

In addition, a federal agency, the Federal Inland Revenue Service, is responsible for collecting the Petroleum Profits Tax from upstream industry operators. This agency also collects the Value Added Tax on goods and services supplied to oil companies. The companies further pay royalties for oil production licences and oil mining leases to the federal government in addition to other levies and charges paid to various federal government agencies.

The only direct payments to individuals and communities in the oil-producing area relate to compensation for lands acquired by the government for oil exploration and pipeline construction. The Land Use Act of 1990 provides the legal basis for such acquisitions. Under it, land is held "in trust" for the people by each local and state government. However, in practice, multinational corporations pay compensation directly to owners of the land acquired for oil exploration or pipeline construction. The compensation is calculated on the basis of the *economic* use of the land, not its *inherent value*. Since most landowners in the affected communities are subsistence farmers whose cash production is very small, this practice means they are entitled to minimal compensation.

Unrest and the beginnings of a solution

Dissatisfied with both the government and the multinationals, some people in the Niger delta have taken direct and violent action. Individuals and militant groups in the Niger delta region have vandalized pipelines, seized oil rigs and taken expatriate workers as hostages. The federal government's reaction has been, at times, to send in massive military force—which sometimes resulted in the killing of innocent civilians.

The federal government hopes to answer dissatisfaction and unrest in the oil producing area through the creation of the Niger Delta Development Commission, a body that is mandated to formulate policies and guidelines for the social and economic development of the area. This body was created in June 2000 as a direct initiative of President Obasanjo. The main functions of the Commission, as outlined in the act that created it, include:

- "To conceive, plan and implement projects and programs for the *sustainable* development of the Niger delta area in the fields of transportation, health, education, employment, industrialization, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;
- "To cause the Niger delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and *socio economic* development; and
- "To execute such other works and perform such other functions, which in the opinion of the Commission, are required for the *sustainable* development of the Niger delta area and its peoples".

The Commission is financed through a complicated formula. Some of the monies that the federal government would normally allocate to the states are diverted to it. In addition, the Commission receives: financial contributions from the oil companies (3% of their annual budgets in Nigeria), and half of the money allocated to a special ecological fund set up by the federal government to deal with the environmental consequences of the oil industry.

The Commission has its main office in the coastal city of Port Harcourt, Rivers State, and satellite offices in each of the other Niger delta states. A governing board named by the President and confirmed by the National Assembly oversees its work. The Board includes representatives from all the oil producing states. It also has members from the non-oil states, the oil industry, and the federal government.

The creation of this Commission is one of the signs that Nigeria's newly restored democratic governments are ready to face the real consequences of oil production. At a ceremony to mark this year's World Environment Day Governor Alamieyeseigha of Bayelsa State said: "The Niger delta is sinking… If something is not done urgently, our children may not have a place." He added, "Whatever we can do to protect our environment, we should do it collectively and with patriotic zeal."

The Commission provides an opportunity for such collective effort.

Some hope, but still a long road to travel

On the positive side of the ledger, for many in the delta, is the fact that respected individuals from their area sit on the Commission's board and have key positions on the management team. These include Chief Onyema Ugochukwu (Chairman), Engineer Godwin Omene (Managing Director and Chief Executive), Chief Timi Alaibe (Executive Director of Administration and Finance), Mr. Udo Abosoh and Professor Victor Peretemode. The prominent roles played by these well-known Niger delta personalities signals to people in the region that the federal government is sincere about involving them in the decision-making process.

But there remains—at least to many in the region—a negative side.

First, the Commission has been slow to actually get to work. It is just (in September, 2001) getting started. The delay was caused by a dispute between the National Assembly and the President as to how board members should be named. The President wanted complete authority to name the board but the National Assembly insisted that it have the power to confirm appointments. The National Assembly prevailed. It enacted the Niger Delta Development Commission Bill—that included its authority to confirm board appointments —over the President's veto.

People in the Niger delta are also impatient with the slow progress of the Commission in dealing with environmental degradation. In the last few months there have been a number of reports of oil leaks, explosions and fires. These include ruptured pipelines in Gokana, in Ogoniland, and an explosion and oil spill at the Shell Nkpoku/ Rumuekpe facility in the Ogbodo area.

On the political and constitutional front, critics argue that the Niger Delta Development Commission detracts from the sovereign authority of the states. They contend that rather than create another federal agency it would have been preferable if more control over natural resources had been given to the states—in the spirit, as Nigerians like to say, of 'true federalism'. They point out that in a few other federations, such as Canada, the constituent units have preponderant control over all aspects of natural resource development on their territory.

But the history and current circumstances of Nigerian federalism are quite different from those of countries such as Canada. The 36-state structure was created by the military regime partly as a deliberate effort to weaken regional power, and there is no history or tradition of state control of natural resources in Nigeria.

People in support of the federal government's initiative in creating the Niger Delta Development Commission argue that if states were granted greater authority over resource control, the multinationals could pursue a "divide-and-conquer" strategy in pursuit of their own objectives. As well, these same people argue such a policy could lead to interstate rivalry and increased conflict between the federal and state governments.

Many believe the Commission is a cautious and prudent initiative to contain a hydra-headed problem. In the end, the people of the Niger delta and Nigerians sympathetic to their cause will judge the Commission on its deeds not words. To a large degree, the viability of Nigeria's renewed democratic federalism—at least in the oil communities—could rest on its success.