ALTERNATIVE DISPUTE RESOLUTION IN OIL AND GAS INDUSTRY IN NIGERIA WITH SPECIAL REFERENCE TO THE NIGER DELTA CRISIS

BY

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A dissertation submitted in fulfilment of the requirement for the degree of Doctor of Philosophy in Law

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ABSTRACT

This study explore ways of resolving oil and gas disputes especially environmental issues such as oil spillage, gas flaring, effluent discharge etc that create environmental degradation using Alternative Dispute Resolution, ADR mechanisms. The concept of ADR has its origin in African laws, thus is not alien to African people. The study exposes the limitation in environmental litigation through the courts in the oil and gas sector in Nigeria. The limitations are as a result of numbers of factors the most significant being the over bearing influence of the multinational corporations; the enormous support they enjoyed from the Federal Government; weak statutory provisions and limitation of the common law in tackling environmental problem. The study adopted the qualitative methodology in the gathering and analysis of it data. The study examined key legislations on environment guiding the operation of the Nigerian oil industry, case laws and common law principles applicable to the environment and environmental litigation in the Nigerian context. The study also gathered data through the instrumentality of semi-structured interview and focus group discussion with community leaders, environmental activists, alternative disputes resolution practitioners and employees in selected oil multinational corporations in Nigeria. The core problem that informed this study is the examination of the problem of environmental degradation arising from the operation of the oil industry and the associated crisis of neglect, marginalization, loss of livelihood and poverty in the Niger Delta. The core objective of the research is to explore how environmental degradation associated with the operation of the Nigerian oil and gas industry in the Niger Delta has generated endemic systemic conflict and to examine the efficacy of the various initiatives taken by the Nigerian State and the oil multinationals in resolving environmental based and related conflicts in the oil producing areas. The significance of the study lies in its attempt at highlighting the importance of ADR as the most amicable, economical and speedy way of settling disputes that often arise in the course of the operational activities of the oil and gas industry in the Niger Delta. The point being that such disputes deserves to be quickly and speedily resolved via the instrumentality of ADR in order to avoid the destabilization that might arise through long drawn court litigation. The literature confirmed grave environmental devastation in the Niger Delta and the inability of adversarial litigation in ensuring environmental justice in Nigeria. The findings show that there is increasing incidence of disputes that arise out of environmental concern between communities and companies in the region. These disputes are made worse by the failing inability of the court system to deliver environmental justice to claimants in the area. This failing inability is as a result of corrupt practices, obnoxious government policies, fraudulent practices among community leaders, unruly behaviour of multinational oil companies, attempts at avoiding culpability through dubious legal means among other issues. This has hindered efforts at achieving sustainable peaceful community-companies relations. This in turn has led to confrontation between host communities and companies over the control of natural resources and sustainable use of the environment. According to findings of this study litigation has failed the people in the Niger Delta in their struggle for justice. This is also corroborated by existing literature on the issue. Hence ADR is therefore, considered as the best alternative non-adversarial methods of resolving environmental and other related disputes in the Nigerian oil and gas industry in addition to the use of faith based principle if properly implemented.
ملخص البحث

يهدف هذا البحث إلى اكتشاف طرق ناجعة لحل نزاعات النفط والغاز من منطقة دلتا النيل، في نيجيريا، وما يتعلق به من قضايا البيئة، وذلك من اقتصاد النفط، وإبراز مواقع المتغيرات البيئية، ونحو ذلك، وافتراض حلول سلمية بدلاً من تلك النزاعات، والتي تكون عادةً بالإرشاد القضائي، وليس وافداً على أهل المنطقة. حيث حظي هذا الموضوع بنشاطاً واسعاً على المستوى الإقليمي. وقد اكتشف البحث بعض العوائق التي تعيق أمام تطبيق القوانين البيئية عند التناقض، في محاكم والتي تنظر في قضايا قطاع النفط والغاز في نيجيريا. ولأنها ملاحظة تأثير بعض الشركات المتعددة الجنسيات في تلك الإجراءات القانونية، وما تجدها من دعم هائل من الحكومة الفدرالية، إضافة إلى وجود بعض الأحكام القانونية التي تعقد الأحكام القانونية العامة من فاعلية القوانين العام في معالجة المشكلات البيئية. واستخدام في هذا البحث المنهج التوطيح والكلمي، حيث يشمل المنهج التوطيح المستخدم المصادر والمراجع في الكتب والمجلات والوثائق القانونية ونظريات الأنقض، ومبدأ القانون العام، وآليات المنهج الكمي فقد استخدم للحصول على معلومات ذات صلة مثل المقابلات والتقارير الميدانية ودمرت مشكلة البحث قضايا التهاب النزاع، والإعلان، وتقويض البيئة، حيث تبين من خلال التأكد من تحقق أهداف البحث الوصول إلى الإجابة على ما يعتقد أن تكون فيه وراء النزاعات في تلك المنطقة. كما تم اكتشاف مدى فعالية مبادرات الحكومة النيجيرية المختلفة، وشركات النفط والغاز متعددة الجنسيات في حل تلك النزاعات. وترمز أهمية البحث في التعريف بأهمية الحلول السلمية البديلة كأداة جيدة وطريقة اقتصادية وسريعة لحل المشكلات التي تنشأ في المنطقة في الآخرين وذلك بقياس تلك الشركات في المنطقة بعمل انتاج النفط والغاز، وما ينتج من هذه النزاعات من زعزعة استقرار الاقتصاد المحلي والعالمي، مع عدم مناسبة ترك قضايا هذه النزاعات تحت إجراءات قضائية بطيئة. كما أكدت النزاعات السابقة خطورة النزاع والانفجارات التي تكون في المنطقة، وقد قدرت القضاء على إرسال العدل فيها وفقه في القضايا البيئية نيجيريا. وأظهرت تنازعاً مستمراً ومنتجة حول المنطقة نتيجة انتشار الفساد والسياسات الحكومية غير مفتوحة، والتأثيرات الاجتماعية بين قادة المجتمع، وعدم التزام شركات النفط والغاز متعددة الجنسيات بالنظام، وقررتها من العدالة القضائية عبر بعض الوسائل القانونية المشكوك فيها.

الأمر الذي أقام أمام أمم تحقق السلام وأدى إلى المواجهات العنيفة بين الأطراف المعنية وأمالي المنطقة المضيفة، فنظراً لإزالة النزاعات الطبيعية. كما أظهرت النتيجة أن النزاعات السلبية قد أظهرت لأهمية المنطقة حضورهم على مبناكم وهو العدالة، وعليه فإن الحلول السلمية البديلة هي الأداة الأفضل لحل تلك النزاعات بالإضافة إلى المبادئ الإسلامية. لم يستخدم بشكل صحيح.
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DECLARATION

I hereby declare that the findings of this study are the product of my research effort. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or any other institution.

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Signature…………………….                                      Date………………………….
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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Affirmed by Fatima Motunrayo Lawal

........................................... ...........................................
Signature Date
I dedicate this thesis to the memory of my parents and the glory of my children.
AKNOWLEDGEMENTS

Bismillahir Rahmanir Rahim. Subhanallah AlhamdulillahAllahu

In the name of GOD almighty, the beneficent, the merciful. All praises and adorations are due to Allah Subhana Watahala for the successful completion of this work. Peace and blessing of Allah be upon our beloved prophet Muhammad (SAW). My first and foremost words of gratitude and warmest thanks to my amiable supervisor, professor Syed Khalid Rashid a great scholar, a prolific writer and a diligent supervisor who took pain to go through my work and turn the whole thesis round to what it is today. I am most grateful, without his relentless effort, the work will not have been completed. I am also indebted to Assistant Professor Maizatun Mustafa, my co-supervisor who has also gone through the work to make corrections with unbiased criticism on the work.

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<th>Alternative Dispute Resolution</th>
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<td>MED-ARB</td>
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<td>SDPC</td>
<td>Shell Development Petroleum Company</td>
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<td>ERA</td>
<td>Environmental Right Action</td>
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<td>FCT</td>
<td>Federal Capital Territory</td>
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<td>OMPADEC</td>
<td>Oil Mineral Producing Areas Development commission</td>
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<td>NDDB</td>
<td>Niger Delta Development Board</td>
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<td>NDRBDC</td>
<td>Niger Delta River Basin Development Commission</td>
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<td>UNDP</td>
<td>United Nation Development Program</td>
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<td>MOSOP</td>
<td>Movement for the Survival of the Ogoni People</td>
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<td>INC</td>
<td>Ijaw National Congress</td>
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<td>IYCY</td>
<td>Ijaw Youth Council</td>
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<td>OBR</td>
<td>Ogoni Bill of Rights</td>
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<td>JTF</td>
<td>Joint Task Force</td>
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<td>G-MOU</td>
<td>Global Memorandum of Understanding</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>CSD</td>
<td>Corporate Social Development</td>
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<td>NDDC</td>
<td>Niger Delta Development Commission</td>
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<td>NCBWA</td>
<td>National Council of British West Africa</td>
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<td>NNNDP</td>
<td>Nigerian National Democratic Party</td>
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<td>AG</td>
<td>Action Group</td>
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<td>OPEC</td>
<td>Organization of Oil Exporting Countries</td>
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<td>APPA</td>
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<td>GDP</td>
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<td>Nigerian’s National Oil Corporation</td>
</tr>
<tr>
<td>BPD</td>
<td>Barrel of oil Per day</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>SITP</td>
<td>Shell Intensive Training Program</td>
</tr>
<tr>
<td>SNEPCO</td>
<td>Shell Nigeria Exploration of production Company Limited</td>
</tr>
<tr>
<td>SNOP</td>
<td>Shell Nigeria Oil Limited</td>
</tr>
<tr>
<td>SGL</td>
<td>Shell Gas Limited</td>
</tr>
<tr>
<td>MCF</td>
<td>Million Cubic feet</td>
</tr>
<tr>
<td>FEPA</td>
<td>Federal Environmental Protection Agency</td>
</tr>
<tr>
<td>GNPC</td>
<td>Ghana National Petroleum Corporation</td>
</tr>
</tbody>
</table>

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xvii
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Name</th>
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</thead>
<tbody>
<tr>
<td>MPN</td>
<td>Mobile Producing Nigeria Unlimited</td>
</tr>
<tr>
<td>EEPNL</td>
<td>Esso Exploration and Production Limited</td>
</tr>
<tr>
<td>MON</td>
<td>Mobile Oil Nigeria</td>
</tr>
<tr>
<td>SVOC</td>
<td>Socony Vacuum Oil Company</td>
</tr>
<tr>
<td>OSONGL</td>
<td>OSO Natural Gas Liquids</td>
</tr>
<tr>
<td>MENI</td>
<td>Mobile Exploration Nigeria Incorporation</td>
</tr>
<tr>
<td>NAOC</td>
<td>Nigerian Agip Oil Company</td>
</tr>
<tr>
<td>NDVF</td>
<td>Niger Delta Volunteer force</td>
</tr>
<tr>
<td>NDPVF</td>
<td>Niger Delta people’s volunteer force</td>
</tr>
<tr>
<td>NOSDRA</td>
<td>National Oil Spill Detection and Response Agency</td>
</tr>
<tr>
<td>NESREA</td>
<td>National Environment Standards and Regulation Enforcement Agency</td>
</tr>
<tr>
<td>EIA</td>
<td>Environment Impact Assessment</td>
</tr>
<tr>
<td>FOE</td>
<td>Friends of the earth</td>
</tr>
<tr>
<td>DPR</td>
<td>Department of Petroleum Resources</td>
</tr>
<tr>
<td>CMS</td>
<td>Church Missionary Society</td>
</tr>
<tr>
<td>CCN</td>
<td>Christian Council of Nigeria</td>
</tr>
<tr>
<td>PFN</td>
<td>Pentecostal Fellowship of Nigeria</td>
</tr>
<tr>
<td>CPFN</td>
<td>Christian Pentecostal Fellowship of Nigeria</td>
</tr>
<tr>
<td>ECWA</td>
<td>Evangelical Church of West Africa</td>
</tr>
<tr>
<td>OAIC</td>
<td>Organization of African Instituted Churches</td>
</tr>
<tr>
<td>JDP</td>
<td>Justice Development Peace</td>
</tr>
<tr>
<td>CBO</td>
<td>Community Based Organizations</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organization</td>
</tr>
<tr>
<td>RCICA</td>
<td>Regional Centre for International Commercial Arbitration</td>
</tr>
<tr>
<td>IBID</td>
<td>(ibidem): in the same place</td>
</tr>
<tr>
<td>ID</td>
<td>(idem): the same below</td>
</tr>
<tr>
<td>L.E</td>
<td>Law of Evidence</td>
</tr>
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CHAPTER ONE
INTRODUCTION

1.1 INTRODUCTION

Dispute is an inevitable aspect of human society. It is as old as mankind itself. Man in his barbaric nature tends to settle disputes by resorting to violence\(^1\). Progress in human civilization has led to the devising of ways and means for resolving disputes without recourse to violence. The courts and their litigation system ultimately become an indispensable instrument for dispute resolution. It marks the institutionalization of litigation as the sole conflict resolution mechanism in human society\(^2\).

In the beginning the traditional method of resolving disputes was bilateral negotiation but with the passage of time, there was a considerable increase in the number of cases going to the courts. Various factors made litigation more and more costly, cumbersome, time consuming, acrimonious and technically complex. For these reasons, courts of law became saddled with problems of their own. This situation disillusioned many people in the West who started losing faith in the ability as well as the viability of the courts as a conflict settlement forum.

An apt description of the unfortunate situation in which the court system found itself could be gathered from the following statement: ‘*No man as things now stands can enter into a suit with any reasonable hope of being alive at its termination, if he*

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\(^2\) Closer work discusses in details the inevitable nature of conflict in society. This treatise is one of the earliest works on social conflict in the post-war years. While noting that conflict might be destructive the work also points out that in some instances conflict serves some intrinsic social functions. For details on this and other issues regarding social conflict see: Closer, L.A, *The Functions of Social Conflict*, (Glencoe, IL: Free Press, 1956), p. 6.
has a determined adversary\textsuperscript{3}. Corroborating the view of Lord Layer, Honorable Justice C.O Oputa (Justice of the Supreme Court of Nigeria) also has this to say about court litigation and its attendant problems in Nigeria:

Today the administration of justice in our courts suffers from two major constraints, namely delay and expense. If it takes seven to ten years to determine a case, a prospective litigant may decide not to go to court at all but one thing which frightens litigant away from the courts is inordinate expense which has to be incurred with the result that a very large proportion of our countrymen are as it were priced out of our legal system\textsuperscript{4}.

Another critical problem facing court litigation is its technicality and protracted nature of its proceedings. Sometimes cases are won and lost not on merits but on flimsy excuses of technical nature and procedure. This definitely creates frustration on the part of litigants and in no small way erodes public confidence in the judicial system. Studies have shown that there are too many hardship inherent in litigation proceedings, which include court fees, heavy burden of proof, discovery, and tiers upon tiers of appeal, revision and sub litigations about jurisdiction, to name a few. All these challenges constitute a wedge in the wheel of fair and speedy justice\textsuperscript{5}.

Given the often quoted legal maxim “justice delayed is justice denied”, it may be seen that delay in legal proceeding strikes deep into the heart of all types of litigation in many ways. Delay of justice affects not only the litigants but also the court and strikes deep at the very foundation of justice. Delay is highly problematic as it may induce an out of date settlement which may neither be fair nor just; offends public opinion and diminishes the regard and respect for the laws and legal system.

\textsuperscript{3} This statement was made by Lord Louis Layer the Director of Columbia University Project for Effective Justice in his address to the US Senate Judicial Committee in 1964 New York.


Delay has made litigation a miserable business that affects the lives of litigants and the longer it lasts, the more deleterious become its effects on social relations. In many instances, delay causes litigation to become an all-absorbing mania affecting the way of life of the whole family, and litigants experience what doctors diagnose as litigation neurosis.

This picture represents the state of affairs in the world and this situation not only affects individuals but it also affects the growth of business and many a time kills commercial initiatives. A lot of money, time and energy are expended on litigation with regard to matters which could have been amicably resolved without jeopardizing business relationships, and without the wastage of time and money. Any measure that can take care of these important issues will definitely be appealing to an average disputant. It is therefore not surprising to find that more and more people, including lawyers, are advocating a wider usage of alternative dispute resolution, (ADR). Some in Africa have even argued that ADR processes bear closer resemblance to African traditional modes of dispute settlement, and very different compared to litigation, which for Africa is quite alien. The ADR processes include Arbitration, Conciliation, Mediation, Minitrial, Expert Determination, Dispute Review Board, Med-Arb, and a host of others. The use of any particular process depends on the agreement between parties, the nature of the case, the support provided by the legal system of the country,

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6 For more on the deleterious impacts of delay in the working of the judicial system in Nigeria and modalities for combating it see, Johnson Amadi, Enhancing Access to Justice in Nigeria with Judicial Case Management: an Evolving Norm in Common Law Countries, (Nigeria: Centre for African Law and Development (CALD), Monograph Series, 22nd March, 2009); These problems were also alluded to by Frynas as major impediments in instituting legal case against oil multinationals in Nigeria in his path breaking work on Nigerian Justice system and the Oil Industry. For details, see Jedrzej, G. Frynas, Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities (Hamburg and London: LIT VERLAG Munster, 2000).

7 This view has been projected in scholarly works of African lawyers, jurists and academics. For instance it was expressed by Bolaji Owasanoye, “Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa”, in Alternative Dispute Resolution Methods, Edited by UNITAR (Geneva: United Nations Institute for Training and Research, UNITAR, Document Series No. 14, 2001), p. 15.
the availability of necessary expertise and infrastructural facilities. ADR thus becomes a substitute to the rigors of litigation.

Disputes arising out of oil and gas industry are like any other disputes but their important economic impact may paralyze the economy of an oil producing country, given it reliance on the oil industry. A dispute that leads to strikes, lockouts or shut downs of oil wells, flow stations, loading platforms and refineries in an oil producing country like Nigeria may produce results that may reverberate even through the world-wide energy market. Wars have been fought, won, or lost because of oil. Thus, disputes that have the potential to destabilize the national or international economy need not be left at the mercy of a long drawn court litigation process. Such disputes deserve to be quickly and speedilly resolved in order to avoid the destabilization that court litigation could bring about.

Differences and disputes could be ironed out in a friendly and congenial manner through the adoption and usage of various ADR process. Given the technicality and complexity of issues arising from the operation of the oil industry, such disputes need to be resolved by persons who are experienced and knowledgeable in this particular area. Thus, recourse to alternative dispute resolution (ADR) methods is certainly more appropriate in the settlement of such disputes.

The utilisation of ADR as an alternative approach to litigation in the oil industry is not restricted to disputes between contractual parties like the state and oil multinationals alone. ADR is also particularly suitable in resolving disputes between host communities and oil multinationals and service

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companies operating in oil producing areas like the Niger Delta in Nigeria. The utility and suitability of ADR is well reflected in the fact that one takes into account the asymmetric nature of and big gulf in power equation resource availability between the multinationals and the host communities. In Nigeria, such imbalance gives the oil multinationals an unfair advantage over the host communities, denying them justice and in obtaining compensation for environmental despoliation and other damages that normally arise from the operations of oil production.

Studies show that oil multinationals do employ delay tactics and misuse the judicial process to frustrate host communities from seeking justice⁹. As such, it becomes imperative that ADR methods of dispute resolution and avoidance should be explored as alternatives to litigation, particularly in the context of the host communities in the Niger Delta. The use of ADR methods may certainly facilitate discussion and dialogue and make oil multinational realize their corporate responsibility. It can certainly ease tension and defuse the conflict situation existing now in the Niger Delta region. To study the utility and importance of ADR as a means of dispute resolution in the oil and gas industry, particularly in the Niger Delta of Nigeria is the topic on which this study focuses.

1.2 BACKGROUND OF THE PROBLEM

The search for oil in Nigeria dates back to 1909 when a German company, Nigerian Bitumen Company, was granted license to start exploration for oil in the area between Ijebu-Ode in present day Ogun State and Okitipupa in Ondo State. While the company was able to establish the presence of sand tar in its concession area, its efforts to find oil failed. Prospecting was later on abandoned in South Western Nigeria. It was Shell

D’Arcy, later renamed as Shell-BP that struck oil in 1958 in the town of Oloibiri in the delta swamp of former Eastern Nigeria. Commercial exploration and production commenced in 1958 and Shell-BP Nigeria went ahead to discover more oil fields across the swamps and creeks of the Niger Delta in the then Eastern Region. Since the discovery and commencement of full commercial operations, disputes of one kind or another have arisen between the multinational operators of the oil industry and the State of Nigeria, between the oil companies and local communities and between the alliance of the oil multinationals and the people of the region. The situation in the region worsened due to the crisis of corruption, long years of authoritarian military rule, underdevelopment, environmental degradation and long time neglect of the area. All these have created mistrust and anger that now pervade the relationship of the various stakeholders in the nation’s oil industry. The high stake politics that surrounds oil and gas in international politics has influenced the dynamics of the present animosities in the region.

An examination of the complex dynamics of the international politics of oil and gas and the conflict of interests that surrounds it, is out of the scope of this study, which is confined to an examination of the ways of taking care of the dispute resolution among various stakeholders in the Nigerian oil industry. This study strives to examine issues revolving around oil industry, its negative impact on local environment; issues of compensation for land acquisition and other property rights of individuals and communities in the oil producing area (Niger Delta), that is the corporate social responsibility of oil corporations to host communities in line with

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