Right of Host Communities to The Benefits of Nigeria’s Oil Industry: An Appraisal Based on International Legal Standards

By

Dr. Florence U Masajuwa* and Dr. Simon Imoisi**

ABSTRACT

Since the commencement of oil production in commercial quantity in Nigeria in 1958, host communities (HCs) have drawn attention of the national government to their displeasure with the governance of the entire Nigerian oil industry through demonstrations, protests, picketing, kidnapping of prominent personnel for ransom, illegal bunkering, oil pipeline vandalism etc. Between May and June 2019, some HCs in Rivers State disrupted oil production by vandalizing oil pipelines to call the attention of government and affected oil production companies to their continuing neglect. The spate of agitations by communities are coming on the heels of surfeits of policies and laws mostly drawn by government and oil companies in reactions to communities’ displeasures. In view of the continuing dissatisfaction of HCs with prevailing oil industry’s arrangements for assuaging their anxieties, this paper argues for a recurs to acceptable international standards, the aim being to first ascertain whether international law recognizes HCs’ links to the oil industry and secondly, the forms that benefits of the oil industry to HCs can take. Data was from international legal documents, law reports, case laws and internet sources. The analytical and historical methods were deployed in the analysis of the data collected. Findings show that various sections of international law recognize HCs and gives detailed forms benefits (both intangible and tangible) to host communities can take. For example, participation in decision making, consultation, protection of their environment, revenue distribution, infrastructural development etc. The conclusion is that HCs keep agitating because government applies the law on community benefits haphazardly, like giving tangible benefits leaving out the intangible whereas the two ought to go together.

Keywords: Rights, Host Communities, benefits, Nigeria, oil industry, appraisal, international, legal standards.

INTRODUCTION

The discovery of petroleum in commercial quantity in 1956 in Oloibiri Community in Nigeria’s Niger Delta brought remarkable improvement in the economic and political fortunes of the country. Revenue from sale of petroleum became the main source of foreign exchange earning and backbone of the economy. Nigeria is ranked sixth petroleum producing country globally. Politically, Nigeria is respected internationally due to the immense wealth accruing to it from oil. This immense wealth from oil makes it possible for Nigeria to meet its international obligations. For example, Nigeria pays its financial dues to international bodies like the United Nations1 and regional bodies like Africa Union (AU), Economic Community of West African States

* Florence U Masajuwa, PhD , florence.masajuwa@edouniversity.edu.ng, +2348056736632, 09020454595, Faculty of Law, Edo University, Iyamho, Nigeria

** Simon Imoisi, PhD, imoisesimon@yahoo.com, +2348056460834, Faculty of Law, Edo University Iyamho, Nigeria

1 The Eagle Online. (April 9, 2018). Nigeria pays $5.08m full UN dues
(ECOWAS), West Africa Football Union (WAFU) etc. Nigeria’s oil wealth has made it *big brother* to most African countries. For instance, Nigeria assisted and played major roles in the nationalist and anti-apartheid struggles South Africa, Namibia, Zambia and Zimbabwe. The deep need for Nigeria’s money made black South African apartheid liberation fighters under the then African National Congress (ANC) to include Nigeria as a frontline state despite Nigeria being far away in West Africa and not being one of the countries in the southern African region.

In the area of physical development of Nigeria, revenue from oil facilitated the building of a new Federal Capital Territory and the city of Abuja as the political capital of Nigeria in 1986. The creation of thirty-six states and seven hundred and seventy-four local government areas in the country are sustainable due to the revenue from oil. Through the Federation Account, Nigeria’s income, the bulk of which comes from oil is distributed to the thirty-six states, the Federal Capital Territory of Abuja and the seven hundred and seventy-four Local Government Areas. International petroleum companies operating in Nigeria have also benefited immensely from the petroleum industry through the huge profits they make from the production of oil and gas and sale of the same in the international market.

Oil companies and the Federal government are principal partners or stakeholders of Nigeria’s oil industry as epitomized by the joint venture agreements. Host communities ordinarily should be a third principal stakeholder considering their strategic place as peoples having their ancestral homes in the locations where the actual extractive activities take place. In terms of benefits, host communities benefits have been in the breach. Compared to host communities of oil industries in the advanced west parts of the world such as Alberta, in Canada and Alaska in the United States.

The breach in the benefits accruing to host communities shows in the high level of pollution and general environmental degradation occasioned by extractive activities in the host communities. The high environmental stakes were recognised by an agency of the United Nations, the United Nations Environment Programme (UNEP) consequent upon which the Federal Government and oil companies were admonished to embark on environmental remediation of communities in Ogoni Land, considered the worst devastated of the communities. The disparities in actual benefits vis a vis the devastations caused the environment by oil extraction have led to frustration in the communities leading to outbursts such as street demonstrations, picketing of oil companies and outright violent attacks, vandalization of facilities and disruptions of oil companies operations. In one of such outbursts reported in the news on Sunday, June 16, 2019,

Under international law, states are enjoined to manage natural resources, including petroleum resources solely within their own territory or jurisdiction in a rational, sustainable and safe way in order to contribute to the development of their peoples. In doing this, states are, encouraged to

---


3 African Independent Television (AIT) main news, 8PM, Nigerian Time.

4 Channels TV News 4 PM, Sunday, June 16, 2019.
Right of Host Communities to The Benefits of Nigeria’s Oil Industry: An Appraisal Based on International Legal Standards

protect the rights of indigenous communities and its peoples. For successful execution of this expectation, states are required to carry their peoples along as government alone cannot handle development matters. In line with this international position, the Nigerian Federal Government has responded to HCs’ complaints, but mostly through palliative policies and programmes, not through purposive well thought out laws and policies. Oil companies on their part have reacted through corporate social responsibility programmes such as provision of electricity, schools and hospitals.

The continuing disruptions of oil facilities by aggrieved HCs notwithstanding, the measures so far taken by government and oil companies, raise the question of what else government and oil companies should do to protect the oil industry and the rights of the communities to benefits of the oil industry. In this context, we argue in this paper that governments recurs to palliative measures in addressing the perennial grievances of HCs instead of making clear-cut laws and policies that recognise and places in proper perspective, the position of host communities in the governance of the oil industry is traceable to governments lack of understanding or deliberate disregard of specific provisions of international law regarding the forms benefits of the oil industry to host communities should take.

It is against this background that this paper appraises specific provisions of selected international law to ascertain the extent such provisions protect the rights of communities as well as providing the needed guide for the Federal Government on how to treat HCs in the allocation of benefits from the petroleum industry. Arising from this, this paper sets out to achieve the following objectives:

1. To identify the meaning of communities as provided under international law
2. To examine the various forms benefits to host communities should take.
3. To suggest way forward for the oil industry and host communities.

The paper is divided into four sections. Section one deals with the introduction, section two was conceptual clarifications some terms used in the paper, section three looks at what constitutes benefits to oil communities and finally section four provides the summary and conclusion.

CONCEPTUAL CLARIFICATIONS

There are some terms that are germane to understanding the forms or what should constitute benefits to host communities of extractive industry. In this paper, the two terms selected as most important are the terms participants and communities.

---


6 NDDC Act 2000 creating NDDC, creation of Ministry of Niger Delta Affairs.
Participants

Conceptual uncertainty exists with regards to the participant and this has led to divided opinions as to who is really qualified to participate in the enjoyment of the rights to benefits of natural resources management. The controversy is notwithstanding the fact that, each of the international legal documents examined, defined or explained the term ‘public,’ ‘citizens,’ or ‘peoples’ as contained in ‘public participation.’ This section shall examine the positions of ILO 169, DRTD, Aarhus, Espoo, Rio Declaration and World Bank respectively.

ILO Convention No. 169 is the first international instrument that, in addition to recognising group rights, also referred to indigenous as ‘peoples. Article 1(a) of the Convention reads: This Convention applies to:

(a) tribal peoples (emphasis, that of the researcher) in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs and traditions or by special laws or regulations.

From ILO 169, those who shall participate are the entire people.

The Declaration on the Rights to Development (DRTD) identifies who should participate from the perspective of the right to development. Thus, from its Preamble it states that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. To DRTD, participants are the entire population and all individuals.

Article 2(4) of the Aarhus Convention defines “the public” as “one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups” and “the public concerned” as “those who are affected or likely to be affected by or

---

9 A. Xanthaki, Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land. (Cambridge: Cambridge University Press, 2007), p. 70. This study had stated earlier that the peoples and oil producing communities of the Niger Delta do not fit into ILO’s description of indigenous people as OPCs are simply ethnic minorities. However, because the generally poor condition of these people and their communities foisted by the petroleum industry, ILO’s definition can be used to explain as well as proffer solutions to their situation. For more on this see W. Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford: Clarendon Press, 1995), pp. 75–106. Cited in Xanthaki, Indigenous Rights and United Nations Standards. (2007), p. 72.
10 UN, Treaties Available at https://treaties.un.org/pages/viewdetails.
having an interest in the environmental decision-making.” *Rio Declaration Principle 10* states that “environmental issues are best handled with participation of all concerned citizens, at the relevant level. From a transboundary perspective, *Espoo convention* in its *Article 4* says the members of the public likely to be affected by a decision pertaining to project should be informed. World Banks operational Directive 4. No. 1 also carry similar injunction.

Arising from these definitions and explanations, the composition or make-up of the ‘public’ or ‘citizens’ that should participate in natural resources governance has variously been given by scholars and authorities. Cohen & Uphoff\(^\text{11}\) consider the citizens, “public” or “the public concerned” to be local residents, local leaders, government personnel and foreign personnel. Nwapi\(^\text{12}\) on his part lists this to include the local community or people, indigenous people, women, youth, and NGOs. The Commission on Sustainable Development (CSD), responsible for implementing *Agenda 21* also has defined its own ‘concerned public ‘for purposes of participation."\(^\text{13}\)

All of the major groups recognised by *Agenda 21* are officially recognized by the United Nations through an accreditation mechanism developed specifically for NGOs.\(^\text{14}\) Some scholars opine that the right of participation and self-determination in natural resources development now belongs to both the state and the individuals within the state, unlike in the past when the right belonged to the state alone. In effect, the state is also a participant and acts as a temporary guardian, custodian, agent or trustee charged with the responsibility of managing the natural resources for the benefit of the people.\(^\text{15}\)

In line with the conception of “public” as “the sum total of all of society’s potential actors,”\(^\text{16}\) this study views participants as consisting of all indigenes-men, women and children of Niger Delta’s oil producing communities who suffer environmental degradation of the oil industry and are also, presently denied direct access to the 13 per cent derivation fund from Nigeria’s petroleum business.

\(^{11}\) J.M. Cohen & N.T. Uphoff, “Participation’s Place in Rural Development: Seeking Clarity through Specificity,” *World development* 8, no. 3 (1980), P. 213-235, at 214

\(^{12}\) Nwapi, “A Legislative Proposal for Public Participation in Oil and Gas Decision-Making.” (2010), p.194

\(^{13}\) Gemmill and A. Bamidele-Izu. "The Role of NGOs and Civil Society,” in Global environmental governance: Options and opportunities, eds. Daniel C. Esty and Maria H. Ivanova (USA: Yale school of Forestry & Environmental Studies, 2002), P. 77-100, at p.4. The group are • Women • Children and Youth • Indigenous Peoples and Communities • Non-governmental Organizations • Workers and Trade Unions • The Scientific and Technological Community • Business and Industry • Farmers.


\(^{15}\) Olaniyan, *Corruption and the Human Rights Law in Africa.* (2014), p 281

Communities

The local oil producing communities of the Niger Delta is home to vast majority of Nigeria’s oil, making it critical not only for the economy of Nigeria but also for international energy interests. This strategic place of local oil producing communities to the international community in the extractive industry is recognised by international law. Thus, ILO 169 conferred the right of participation on communities collectively and not on the individual members of the communities because “indigenous and tribal peoples were struggling for their rights to their natural resources as collectivities.”

Agenda 21(23), principle 22 Rio Declaration, Article 8(j) of the Biodiversity Convention and the Convention on Desertification (Articles 3(a), 10(2) and 19(1) require the participation of oil producing communities in natural resources management. The legal recognition arises from the fact that communities and their people suffer most from the negative externalities of extractive industries, such as pollution, forced relocation, disruption of means of livelihood and so on. Another reason is that ‘local communities and peoples are very knowledgeable about their environment.’ Communities are thus, critical parties in the efforts towards conservation and sustainable use of all natural resources and the other developments associated with the environment.

The word ‘community’ is not succinctly defined under international law. However, the South African Minerals and Petroleum Resources Development Act (MPDA), 2002 as amended gives the legal definition of community thus:

‘Community’ means a group of historically disadvantaged persons with interest or rights in a particular area of land on which the members have or exercise communal rights in terms of an agreement, custom or law:

---

19 ILO Convention No. 107 widely referred to rights recognised to members of indigenous populations, which implied the recognition of individual rights. Whereas the text of ILO 169 Convention is an attempt to strike a balance between collective and individual rights. See ILO Working Document for 1986 Meeting of Experts, pp.9-10.
Right of Host Communities to The Benefits of Nigeria’s Oil Industry: An Appraisal Based on International Legal Standards

Provided that, where as a consequence of the provisions of this act, negotiations or consultations with the community is required, the community shall include the members or part of the community directly affect by mining on land occupied by such members or part of the community.26

In Nigeria like in many other jurisdictions, what constitutes a community is not in dispute. To this end, Omorogbe explains:

In local parlance and ordinary meanings, the local communities are those who are customarily resident or who are widely known as the owners of the land upon which the development is taking place. In Nigeria, one’s origin continues to be determined by the place from which one’s family originated. It takes several generations for a settler or the settlers’ descendants to be accepted as being indigenes of the place of settlement. Therefore, a member of a community is a person who originated from the community in question. This is irrespective of where any of these persons may habitually reside. No matter how long a person resides in a town that person remains a member of his or her ethnic group and a citizen of his or her hometown of origin.27

International law appears to have left out the issue of dimension of communities entitled to be recognised as host communities and therefore entitled to benefits being considered. But from these definitions and in the context of the contentious nature of the relationship among stakeholders in the petroleum industry, such recognition should also extend to neighbouring communities which though not oil producing, but are however, affected by whatever oil-induced happenstances that occur in the main oil producing communities.28 Taking this into consideration will check or mitigate conflicts between neighbouring communities arising from the operations of the oil industry in those neighbourhoods.29

26 South African Mineral and Petroleum Development Act, 2002, the amendment of 2013 expanded the definition of the word. Before the amendment community was defined as: “a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law;”.


28 The pending Nigerian Petroleum Governance Bill aptly captured the various types of communities in one of its provisions.

29 There are different dimensions of the oil-induced conflicts in the Niger Delta and they are: i) between the oil producing state and the federal government, ii) between the oil producing state and the other non-oil producing states; this aspect is intricately tied to the derivation question which have been discussed above. The former is seeking for the full application of the derivation principle in the sharing of oil derived revenue among the states of the federation, while the latter are strongly opposed to the full application of the derivation principle; iii) between oil
Forms and nature of Benefits
This is considered a necessary path to the development of the communities and their people. In this context, participation is viewed as entailing direct disbursement of the communities’ share of the oil revenue to them as against current practice where it is routed through governors of their states. The question is what are the contents of community participation under international law?

To respond to the question, recourse is made to definition of the concept of public participation by International Association for Public Participation, international laws directed at protecting collective and individual rights such as ILO 169, UN Declaration on the Right to Development (DRTD), Agenda 21, Regional instruments like Aarhus, African Chatter on Human and Peoples’ Rights and those other UN rights conventions protecting the political, civic, economic, social and cultural rights.

AARHUS CONVENTION
Under Aarhus, benefits in the main, entails informing the communities about a proposed project.\(^{30}\) This accord with the core value principles and definition of public participation given by International Association for Public Participation. Under Aarhus Convention, community’s benefits comes in three different types of decisions: decisions on specific activities, decisions concerning plans, programs and policies, and decisions concerning the preparation of regulatory and generally applicable legally binding normative instruments. The duty to consult the host communities entails the duty to inform them about the proposed activity and the application on which a decision will be taken as follows:\(^{31}\)

(a) The nature of possible decisions or the draft decision;
(b) The public authority responsible for making the decision;
(c) The envisaged procedure, including, as and when this information can be provided:
   (i) The commencement of the procedure;
   (ii) The opportunities for the public to participate;
   (iii) The time and venue of any envisaged public hearing;
   (iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;
   (v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
   (vi) An indication of what environmental information relevant to the proposed activity is available; and
(e) The fact that the activity is subject to a national or trans boundary environmental impact assessment procedure.\(^{32}\)

producing states who share the same boundaries due to struggle over oil wells; the confrontation between Bayelsa and River, and between Cross River and Akwa-Ibom state over who owns some oil wells between their boundary is a more recent case in point; iv) between youths in the oil producing communities and their double dealing local rulers or leaders; and v) between the various ethnic groups in the region. See A.T Akume, “The Dimensions of Oil Conflict and Impact on Nigeria’s Federal Relations: A Review.” Mediterranean Journal of Social Sciences, 5 no. 10 (June 2014), P. 222- 230, at p.226.

\(^{30}\) Nwapi, “A Legislative Proposal for Public Participation in Oil and Gas Decision.”(2010).

\(^{31}\) Aarhus Convention, art. 6 (2) (a).

\(^{32}\) Ibid. at (b)-(e).
Although the Aarhus Convention is a European legislation and therefore not directly applicable to Nigeria since it has not acceded to it,\textsuperscript{33} nonetheless, the provisions of the Convention has had profound impact on the laws and practices in the country. One example is the effort at implementing principle 10 norms adequately from both normative and practical standpoint.\textsuperscript{34} This is because the Aarhus Convention is the most comprehensive, concrete and coherent interpretative guide available for implementing Principle 10 of the Rio Declaration in Nigeria. The enactment in 2011 of the \textit{Freedom of Information Act}, the loosening of the erstwhile stiff requirement for public interest litigation and the opening up of the spaces in politics and natural resources arena for disaggregated participation of the citizens are some of the other ways the Aarhus Convention has influenced both law and policy in Nigeria.

**ILO 169 and UNDRIP**

Like the Aarhus Convention, ILO 169 and UNDRIP provide that communities should be consulted before a proposed project or policy gets underway. This is to enable the “concerned community” to prepare to participate effectively in discussions pertaining to the said project or policy. \textit{Article 6} requires consultation and participation “whenever consideration is being given to legislative and administrative measures which affect ‘indigenous and tribal peoples directly’” Consultation is understood as the process by which a government consults its citizens about policy or proposed actions. It is not consultation unless those consulted have a chance to make their views known, and to influence the decision.\textsuperscript{35} The reality on ground is that community men and women ‘consulted’ are mostly the influential and connected living ones who in most cases reside outside those communities. Another example is the award of contracts for the remediation of polluted Ogoniland in Rivers State. Ledum Mitee, former leader of Movement for Survival of Ogoni People (MOSOP) alleged that even with the award of contracts so far, the implementing Hydrocarbon Pollution Remediation Project, (HYPREP), has come to the alienation of the community stakeholders. According to Mitee, “You won’t imagine that one of those who got contract was asking what the direction to Ogoni is. He has not been here, he knows nothing about Ogoni.”\textsuperscript{36}

\begin{flushright}
\textsuperscript{34} Nigeria is signatory to the \textit{Rio Declaration 1992}. Principle 10 of the 1992 Rio Declaration Environmental issues is best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information held by public authorities concerning the environment, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
\textsuperscript{35} See Article 6(a), ILO 169.
\end{flushright}
ILO 169 provides further insights on the content and extent of benefits under articles 6(1) (b) and 7. Article 6(1) (b) provides that ‘governments should establish means by which these peoples can participate to at least the same extent as other sectors of the population, at all levels of decision-making’. This is a call on governments to establish indigenous institutions. ILO seeks autonomy for communities ‘to decide their own priorities for the process of development.’ Thus, Article 7(1) matches the right to participate actively in national decision making with potential of autonomy in certain areas. Furthermore, it recognises the right of host communities and its people ‘to exercise control, to the extent possible, over their own economic, social and cultural development.’

Some countries are already implementing this in the form of fund transfer schemes. These schemes aim at empowering the targeted group and thus putting their development in their own hands. While Nigeria is a member of the U.N., Nigeria is not a party to both ILO 169 and UNDRIPS, two international agreements that protect indigenous communities’ rights in natural resources governance.

Although Nigeria has not ratified these international legal documents, the existing administrative structures do not directly interfere with the cultures and ways of life of host communities’ and their people. The Nigerian Constitution nevertheless places the control and management of natural resources in the hands of the Federal Government. There is thus no requirement that the government first seek permission from leaders of host communities before commencing oil extraction on communities’ lands or to allow local group to share in the profit earnings. Therefore, indigenous groups like the Ogoni are precluded from asserting claims against the Nigerian government for allowing third parties to expropriate and waste the Ogoni’ land without their consent.

---

37 Xanthaki argued that the language allows a possible opening for special treatment, but at the same time, it encourages the empowerment of indigenous peoples to fend for themselves.

38 Examples of direct cash transfers from government or other agencies to the people are transfer to state residents eg Alaska, USA; Cash transfers targeted at the elderly eg Bolivia; cash transfers targeted at the young, eg Mongolia. See T. Moss, “Oil-to-Cash: Fighting the Resource Curse through Cash Transfers.” CGD Working Paper 237. Washington, D.C.: Center for Global Development. p.1


42 B.R.Konne, “Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland.” Cornell Int’l LJ 47 (2014), p.199- See Ratifications of C169, supra note 16. Of Konne’s study, The UNDRIP is not also binding on Nigeria because it was only passed as a General Assembly resolution.

43 Constitution of Nigeria (1999), § 44(3) (“[T]he entire property in control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.”); AMNESTY REPORT, supra note 2, at 9.


45 ibid
The Nigerian scenario is different from the position in the U’wa area an indigenous group that live in north-eastern Colombia. 46 In the culture of U’wa people, the oil under their land is the “blood of Mother Earth,” and therefore, any oil drilling would be an affront to God.47 Nevertheless, Occidental Petroleum Company (Occidental) has succeeded in oil exploration and drilling activities in U’wa communities. Occidental, like Shell in Nigeria, operates through a subsidiary, Occidental of Colombia, which is in partnership with the state-owned Ecopetrol Oil Company. 48 U’wa protested the threat of environmental damage posed by the extraction of oil from their land, which is estimated to hold up to 2.5 billion barrels of crude oil.49 Despite the protests by the communities, the Colombian government granted an oil exploration license to Occidental in 1995.50

Just like the UNDRIP and Convention 169, the Colombian Constitution recognizes the right of host communities and its people to own and manage their traditional lands and natural resources.51 In particular, the Constitution provides that there should be prior consultation with native peoples before commencing projects on their land.52 For oil exploration, companies seeking to drill on indigenous lands must first consult with indigenous groups and allow them to participate in the decision-making process that impacts their communities. U’wa challenged the government’s grant of the oil license to Occidental in the Colombian Constitutional Court on the ground that the license was issued without prior consultation with U’wa people.53 After considering the issues, the Colombian Constitutional Court held that the grant of the oil license violated U’wa people’s right to prior consultation under the domestic laws of Colombia.54 Despite the court’s decision, Council of State, which is the highest authority on government agencies, still approved the oil license.55

THE DECLARATION ON THE RIGHT TO DEVELOPMENT (UNDRTD)

49 Konne, "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry: The Case of Shell and Ogoniland.” (2014), p.198
51 Fortunately for the U’wa, Colombia’s domestic legal framework offers considerable legal protection to indigenous groups.
53 Evans, U’wa Protests Stall Occidental’s Development Plans in Colombia (1998), at p. 132.
55 Konne, "Inadequate Monitoring and Enforcement in the Nigerian Oil Industry©2007), p.199 According to Konne, since the decision, Occidental ceased oil operations, citing economic reasons for abandoning the project.
The UNDRTD and the Right to Development (RTD) it propagates allude to both an individual and a collective right. The framework for determining the content and extent of participation from the DRTD angle is encapsulated in the definition of development in the preamble of the Declaration and the provisions of Art 1(1). ‘Development’ is defined as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.”

Article 1(1) of the Declaration states, “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. From the definition and Art 1(1), the key contents of community benefits from the oil industry are:

1. Putting people at the center of development
2. Ensuring free, active and meaningful participation
3. Securing non-discrimination
4. Fair distribution of the benefits of development – infrastructure, cash distribution
5. Respecting self-determination, and sovereignty over natural resources
6. Advancing other civil, political economic, social and cultural rights

**Putting people at the center of development** - This entails development process that leads to constant improvement of wellbeing of the communities and their people.

**Ensuring free, active and meaningful participation** - This entails creating an enabling environment for the realization of all human rights and fundamental freedoms.

**Securing non-discrimination** - entails process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

**Fairly distributing the benefits of development** - Tenets of this principle is to the effect that every human person and all peoples are entitled to participate in, contribute to and enjoy broad-based development.

In summary, under the DRD, communities’ benefits entails equality of opportunity, equality of access to resources, equality in the sharing of benefits and fairness of distribution, and equality in the rights to participation.

Compensation as a redress for violation of rights is also an aspect of communities’ benefits under Article 28 of the 2007 UN Declaration on the Rights of Indigenous People (UNDRIP). ‘Redress through just and fair compensation’ recognises the right to redress, and possible restitution, for

---

57 Id. at pmbl.
60 Declaration on the Right to Development,
Right of Host Communities to The Benefits of Nigeria’s Oil Industry: An Appraisal Based on International Legal Standards

the lands, territories and resources which have been traditionally owned, occupied, used or damaged without their peoples’ free, prior and informed consent.

With regards to the international legal status of the RtD, the position is that it is yet to attain universal consensus on its nature and scope. It can be described as “soft law”, generally accepted by the world community and reaffirmed in declarations and resolutions but not legally binding. RTD lacks justiciability as the Declaration does not have the status of a treaty and so cannot be enforced legally. It draws its legal foundation from binding human rights covenants. According to positivist school of thought, a right to be taken seriously must be sanctioned by a legal authority and based upon appropriate legislation. Although the UNDRTD is a declaratory statement of the UN General Assembly, elements of the RTD have subsequently been echoed in various treaties.

MODE OF DISTRIBUTING BENEFITS

Under RTD, benefits are often through government development policies. “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Aarhus, ILO169 and UNDRIPs’ Article 32 benefits through participation mode is where free, prior and informed consent is obtained from the people on projects relevant to ‘the development, utilisation or exploitation of their mineral, water or other resources’. ILOs mode of communities’ participation is representation through institutions recognised and presented by communities.

CONCLUSION

The forms of benefits modes advocated by DRTD and Aarhus are both good and can be combined to attain the goal of participation of oil producing communities in the benefits of the oil industry. The law confers ownership of petroleum on the Federal Government. The government therefore makes all the laws and policies regulating the petroleum industry, notwithstanding the fact that oil extraction often involves three parties: indigenous communities, a multinational corporation and the government acting in ‘joint’ venture. Even though local groups often seek redress through domestic or international legal mechanisms, the alignment of interest in profit maximization that exists between the government and the oil companies who are also the corporate actors, often overrides communities’ claims. Attempts to involve the local community entail obtaining their consent before entering their ancestral homes to extract oil as advocated by Aarhus.

---

64 A. Xanthaki, Indigenous Rights and United Nations Standards,(2007), p.118 that “the procedure shall allow the public to submit in writing or as appropriate at a public hearing or inquiry with the applicant, any comments, information etc that it considers relevant to the proposed activity.”
65 ILO, art 6(1)(a)
Also, the Nigerian government should distribute both the tangible and intangible benefits simultaneously. Tangible benefits such as the 13% derivation, provision of infrastructures like hospitals, markets, schools, or even contracts to indigenes should be accompanied by the intangible ones like participation in decision making and others stipulated by sections of the international laws examined in this paper. Doing this will guarantee peace in the communities hosting the petroleum industry.